Court File No. CV-21-00673856-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF LTL MANAGEMENT LLC

APPLICATION OF LTL MANAGEMENT LLC
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

APPLICATION RECORD
(Initial Recognition Order – Foreign Main Proceeding)
Returnable December 17, 2021

December 16, 2021

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Gordon McKee (LSO#: 28557R)
gordon.mckee@blakes.com

Linc Rogers (LSO#: 43562N)
linc.rogers@blakes.com

Caitlin McIntyre (LSO#: 72306R)
Tel: 416.863.4174
Fax: 416.863.2653
caitlin.mcintyre@blakes.com

Lawyers for LTL Management LLC, in its capacity as Foreign Representative

TO: SERVICE LIST

Court File No. CV-21-00673856-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF LTL MANAGEMENT LLC

APPLICATION OF LTL MANAGEMENT LLC
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

SERVICE LIST
(As at December 16, 2021)

BLAKE, CASSELS & GRAYDON LLP 199 Bay Street Suite 4000, Commerce Court West Toronto, Ontario M5L 1A9 **Gordon McKee**, LSO#: 28557R Tel: 416-863-3884 Email: gordon.mckee@blakes.com **Linc Rogers** LSO#: 43562N Tel: 416-863-4168 Email: linc.rogers@blakes.com **Caitlin McIntyre**, LSO#: 72306R Tel: 416-863-4174 Fax: 416-863-2653 Email: caitlin.mcintyre@blakes.com **Lawyers for LTL Management LLC, in its capacity as Foreign Representative**	**JONES DAY** 2727 North Harwood Street, Suite 500 Dallas, Texas 75201-1515 **Dan B. Prieto** Email: dbprieto@jonesday.com **Amanda Rush** Tel: 212-969-4869 Email: asrush@jonesday.com **US Lawyers for LTL Management LLC**

ERNST & YOUNG INC. EY Tower, 100 Adelaide Street West P.O. Box 1 Toronto, Ontario M5H 0B3 **Stuart Clinton** Email: stuart.clinton@parthenon.ey.com **Alex Morrison** Email: alex.f.morrison@parthenon.ey.com **Proposed Information Officer**	**CASSELS BROCK & BLACKWELL LLP** 40 King Street West Suite 2100, Scotia Plaza Toronto, Ontario M5H 3C2 **Shayne Kukulowicz** Tel: 416-860-6463 Email: skukulowicz@cassels.com **Natalie Levine** Tel: 416-860-6568 Email: nlevine@cassels.com **Lawyers for the Proposed Information Officer**
OSLER, HOSKIN & HARCOURT LLP 1000 Rue De La Gauchetière O #2100 Montréal, Quebec H3B 4W5 **Éric Préfontaine** Email: eprefontaine@osler.com **Jessica Harding** Email: jharding@osler.com **Tommy Gelbman** Email: tgelbman@osler.com **Lawyers for Valeant Pharmaceuticals International, Inc., now Bausch Health Companies Inc.**	**MILLER THOMSON LLP** Scotia Plaza 40 King Street West, Suite 5800 P.O. Box 1011 Toronto, Ontario M5H 3S1 **Asim Iqbal** Tel: 416-597-6008 Email: aiqbal@millerthomson.com **Jeff Carhart** Tel: 416-595-8615 Email: jcarhart@millerthomson.com **Gavin H. Finlayson** Tel: 416-595-8619 Email: gfinlayson@millerthomson.com **Canadian Counsel to the Official Committee of Talc Claimants**
OSLER, HOSKIN & HARCOURT LLP Suite 2700, Brookfield Place 225 – 6th Avenue S.W. Calgary, Alberta T2P 1N2 **Emily Paplawski** Tel: 403-260-7071 Email: epaplawski@osler.com **Canadian Counsel for Bausch Health Companies Inc.**	**SIMPSON THATCHER & BARTLETT LLP** 425 Lexington Avenue New York, NY 10017 **Jamie Fell** Tel: 212-455-2502 Email: jamie.fell@stblaw.com **US Counsel for Bausch Health Companies Inc.**

UNITED STATES DEPARTMENT OF JUSTICE **OFFICE OF THE UNITED STATES TRUSTEE** One Newark Centre, Suite 2100 Newark, NJ 07102 **Mitchell B. Hausman, Esq.** Email: mitchell.b.hausman@usdoj.gov **Jeffrey M. Sponder, Esq.** Email: jeffrey.m.sponder@usdoj.gov **Lauren Bielskie, Esq.** Email: lauren.bielski@usdoj.gov	**THORNTON GROUT FINNIGAN LLP** Suite 3200, TD West Tower 100 Wellington Street West P.O. Box 329, Toronto-Dominion Centre Toronto, Ontario M5K 1K7 **Grant B. Moffat** Tel: 416-304-1616 Email: gmoffat@tgf.ca **Counsel to Rochon Genova LLP in its capacity as lawyers to Cindy Lou Strathdee, et al.**

Plaintiff's Counsel:

MERCHANT LAW GROUP LLP #304 - 15127 100th Avenue Surrey, British Columbia V3R 0N9 **E.F. Anthony Merchant, Q.C.** Tel: 306-359-7777 Email: tmerchant@merchantlaw.com **Steven Roxborough** Tel: 604-951-0777 Email: sroxborough@merchantlaw.com **Anthony Tibbs** Tel: 306-359-7777 Email: atibbs@merchantlaw.com **Evatt Merchant** Tel: 613-366-2795 Email: emerchant@merchantlaw.com **Lawyers for Linda Williamson**	**ROCHON GENOVA LLP** 121 Richmond Street West, Suite 900 Toronto, Ontario M5H 2K1 **Joel Rochon** Tel: 416-363-1867 Email: jrochon@rochongenova.com **Golnaz Nayerahmadi** Email: gnayerahmadi@rochongenova.com **HOWIE, SACKS & HENRY LLP** 20 Queen Street West, Suite 3500 Toronto, Ontario M5H 3R3 **Paul Miller** Tel: 416-646-3901 Email: pmiller@hshlawyers.com **Victoria L.W. Yang** Email: vyang@hshlawyers.com **Lawyers for Cindy Lou Strathdee; Mario Nunziato; Matthew Strathdee; Shaeda Begum Farooqi-Willison; Gerald Douglas Willison; Thérèse Bernier, Deceased, by her Estate Representative Marilyne Bernier; Marilyne Bernier; Janet Heaton; and Barry Heaton**

MERCHANT LAW GROUP LLP 9173 rue Perinault Saint-Leonard, Quebec H1P 2L6 **Christine Nasraoui** Tel: 514-248-7777 Email: cnasraoui@merchantlaw.com **Lawyers for Rosemary Kramar**	**GUARDIAN LAW GROUP LLP** 342 – 4 Avenue S.E. Calgary, Alberta T2G 1C9 **Clint Docken, Q.C.** Tel: 403-457-7778 Email: cdocken@guardian.law **JAMES H. BROWN & ASSOCIATES** 2400, 10123 – 99 Street NW Edmonton, Alberta T5J 3H1 Tel: 780-428-0088 Email: info@jamesbrown.com **Lawyers for Diane Di Santo, as Representative Plaintiff**
HARPER GREY LLP 3200 – 650 West Georgia Street Vancouver, British Columbia V6B 4P7 **Rose Keith, Q.C.** Tel: 604-895-2911 Email: rkeith@harpergrey.com **Lawyers for Amanda Lorraine Lee**	

Email Distribution List:

gordon.mckee@blakes.com; linc.rogers@blakes.com; caitlin.mcintyre@blakes.com; dbprieto@jonesday.com; asrush@jonesday.com; stuart.clinton@parthenon.ey.com; alex.f.morrison@parthenon.ey.com; skukulowicz@cassels.com; nlevine@cassels.com; eprefontaine@osler.com; jharding@osler.com; tgelbman@osler.com; aiqbal@millerthomson.com; jcarhart@millerthomson.com; gfinlayson@millerthomson.com; epaplawski@osler.com; jamie.fell@stblaw.com; mitchell.b.hausman@usdoj.gov; jeffrey.m.sponder@usdoj.gov; lauren.bielski@usdoj.gov; gmoffat@tgf.ca; tmerchant@merchantlaw.com; sroxborough@merchantlaw.com; atibbs@merchantlaw.com; emerchant@merchantlaw.com; jrochon@rochongenova.com; gnayerahmadi@rochongenova.com; pmiller@hshlawyers.com; vyang@hshlawyers.com; cnasraoui@merchantlaw.com; cdocken@guardian.law; gloria@guardian.law; info@jamesbrown.com; rkeith@harpergrey.com;

Court File No. CV-21-00673856-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF LTL MANAGEMENT LLC

APPLICATION OF LTL MANAGEMENT LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

APPLICATION RECORD

I N D E X

TAB 1

Electronically issued
Délivré par voie électronique : 16-Dec-2021
Toronto

Court File No./N° du dossier du greffe: CV-21-00673856-00CL

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

[illegible] OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED

AND IN THE MATTER OF LTL MANAGEMENT LLC

APPLICATION OF LTL MANAGEMENT LLC
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

NOTICE OF APPLICATION

TO THE RESPONDENT

A LEGAL PROCEEDING HAS BEEN COMMENCED by the applicant. The claim made by the applicant appears on the following page.

THIS APPLICATION will come on for a hearing before a Judge presiding over the Commercial List:

☐ In person;
☐ By telephone conference;
☒ By video conference.

on **December 17, 2021 at 10:00 a.m.,** or as soon after that time as the application can be heard, at the following location:

Join Zoom Meeting
https://us02web.zoom.us/j/87961620898?pwd=cTN0bk5yeWpERUliczkzV3dKTjZkZz09

Please refer to the video conference details attached at Schedule "A" hereto in order to attend the application, and advise if you plan to attend the application by emailing Caitlin McIntyre at caitlin.mcintyre@blakes.com.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the applicant's lawyer or, where the applicant does not have a lawyer, serve it on the applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

Date: December 17, 2021 Issued by: ______________________
Local Registrar

Address of Court Office: 330 University Avenue
Toronto, Ontario M5G 1R7

TO: SERVICE LIST

APPLICATION

1. LTL Management LLC ("**LTL**" or the "**Debtor**") in its capacity as duly appointed and authorized foreign representative of itself (in such capacity, the "**Foreign Representative**"), makes this application pursuant to Section 46 of the *Companies' Creditors Arrangement Act*, R.S.C. 1985 ("**CCAA**"), for:

   (a) an Initial Recognition Order (Foreign Main Proceeding) substantially in the form attached at Tab 3 of the Foreign Representative's Application Record, *inter alia*:

      (i) abridging and validating the time for service;

      (ii) declaring that LTL is the "foreign representative" of the Debtor as defined in section 45 of the CCAA;

      (iii) declaring that the centre of main interest for the Debtor is the United States of America and recognizing the case (the "**Chapter 11 Case**") commenced by the Debtor under chapter 11 of title 11 of the United States Code (the "**US Bankruptcy Code**") commenced in the United States Bankruptcy Court of the Western District of North Carolina (the "**North Carolina Bankruptcy Court**") and continued in the United States Bankruptcy Court of the District of New Jersey (the "**New Jersey Bankruptcy Court**") as a "foreign main proceeding" as defined in section 45 of the CCAA;

      (iv) granting a stay of proceedings in respect of the Debtor and ordering the other mandatory relief set out in section 48(1) of the CCAA; and

   (b) a Supplemental Order (Foreign Main Proceeding) substantially in the form attached at Tab 5 of the Foreign Representative's Application Record, *inter alia*:

(i) recognizing and enforcing the terms of the *Order Granting the Debtor's Request for Preliminary Injunctive Relief* granted November 15, 2021 (the "**US Preliminary Injunction**"), by the North Carolina Bankruptcy Court;

(ii) recognizing and enforcing the terms of the *Order Authorizing the Debtor to Act as Foreign Representative on Behalf of the Debtor's Estate* granted December 15, 2021 (the "**Foreign Representative Order**", together with the US Preliminary Injunction, the "**US Orders**"), by the New Jersey Bankruptcy Court;

(iii) appointing Ernst & Young Inc. as information officer (in such capacity, the "**Information Officer**") in respect of these proceedings; and

(iv) ordering that the Foreign Representative shall not be required to publish notice of this recognition proceeding pursuant to Section 53(b) of the CCAA in any newspaper in Canada; and

(c) such further and other relief as this Honourable Court deems just.

2. The grounds for the application are as follows.

Background

3. The Debtor in this proceeding is an indirect subsidiary of Johnson & Johnson ("**J&J**"). J&J is a global innovator and leader in public health that has been at the forefront of healthcare innovation for over 130 years since its incorporation in 1886.

4. The Debtor's roots can be traced back to Johnson & Johnson Baby Products Company ("**J&J Baby Products**") incorporated in 1970. Through a series of name changes and intercompany transactions, J&J Baby Products ultimately became known as Johnson and Johnson Consumer Companies, Inc. ("**J&J Consumer Companies**").

5. In 2015, J&J Consumer Companies merged with and into an affiliate resulting in an entity known as Johnson & Johnson Consumer Inc. (including all former names and corporate predecessors, "**Old JJCI**"). Old JJCI became responsible for all claims in respect of JOHNSON'S® Baby Powder and other talc-containing products.

6. In 2021, Old JJCI implemented a corporate restructuring (the "**2021 Corporate Restructuring**"), which was completed on October 12, 2021. The 2021 Corporate Restructuring occurred through a series of sequential corporate steps, including a divisional merger under the Texas Business Organizations Code.

7. Upon the effectiveness of the divisional merger, Old JJCI ceased to exist and two new entities were created which shared a newly formed direct parent: (a) the Debtor, and (b) another entity, which then changed its name to Johnson & Johnson Consumer Inc. ("**New JJCI**"). As a result of the 2021 Corporate Restructuring, the Debtor holds certain of Old JJCI's assets and is responsible for the all talc-related claims against Old JJCI (other than claims for which the exclusive remedy is provided under a workers' compensation statute or similar laws).

8. The 2021 Corporate Restructuring was designed to ensure that the Debtor has the same, if not greater, ability to fund the costs of defending and resolving future and present talc-related claims as Old JJCI did before the 2021 Corporate Restructuring.

The Chapter 11 Case

9. The Chapter 11 Case was precipitated by the filing of thousands of talc-related lawsuits in the United States against, among others, Old JJCI and J&J, which allege that JOHNSON'S® Baby Powder purportedly causes ovarian cancer and mesothelioma.

10. In addition to the talc claims faced by Old JJCI in the United States, Old JJCI, J&J, Johnson & Johnson Inc. (subsidiary of J&J) ("**J&J Canada**") and Valeant Pharmaceuticals International,

Inc. ("**Valeant**"), now Bausch Health Companies Inc. ("**Bausch**"), are named co-defendants (collectively, the "**Canadian Co-Defendants**") in some or all of the talc lawsuits commenced in Canada (collectively, the "**Canadian Actions**"). The Debtor is not, itself, a named Canadian Co-Defendant.

11. The Debtor is of the view that these claims have no valid scientific basis. Nevertheless, the number of claims has continued to increase. The Debtor anticipates that, absent finality reached through a global resolution, the talc claims and their associated burdens will continue for decades to come and grow, as will the extraordinary costs of defending and resolving tens of thousands of anticipated claims.

12. The Debtor therefore determined that the filing of the Chapter 11 Case in the North Carolina Bankruptcy Court was prudent and necessary. On October 14, 2021 (the "**Petition Date**"), LTL commenced the Chapter 11 Case by filing a voluntary petition for relief under US Bankruptcy Code with the North Carolina Bankruptcy Court. The Debtor's goal in the Chapter 11 Case is to pursue a global resolution to all current and former talc-related claims.

Recognition of the Chapter 11 Case

13. The Chapter 11 Case is a judicial proceeding that deals with creditors' collective interests generally under a law relating to bankruptcy or insolvency in which the relevant Debtor's business and financial affairs are subject to control or supervision by a court for the purpose of reorganization. Accordingly, the Chapter 11 Case constitutes a "foreign proceeding" under section 45(1) of the CCAA.

14. The Debtor's centre of main interest is the located in the United States and, as such, the Chapter 11 Case constitutes a "foreign main proceeding" under section 45(1) of the CCAA.

15. LTL has been appointed as the "foreign representative" of the Debtor in the Chapter 11 Case pursuant to the Foreign Representative Order and, as such, falls within the definition of "foreign representative" under section 45(1) of the CCAA.

16. Pursuant to section 46(1) of the CCAA, the Foreign Representative may apply to this Court for recognition of the Chapter 11 Case.

17. Pursuant to subsection 47(1) of the CCAA, this Court shall make an order recognizing the Chapter 11 Case if it is satisfied that the application relates to a "foreign proceeding" and the applicant is a "foreign representative".

The Requested Stay is Required and Appropriate

18. Under section 48 of the CCAA, this Court shall, in the case of a foreign main proceeding, exercise its jurisdiction to prohibit the commencement or furtherance of any action, suit or proceedings against the Debtor, subject to any terms and conditions it considers appropriate.

Recognition of the US Orders is Appropriate

19. For the purposes of ensuring that all interested parties cooperate in the efforts of the Debtors, the Foreign Representative requests that the terms of the US Orders be recognized by this Court pursuant to section 49 of the CCAA.

20. The Foreign Representative also requests recognition of the US Orders to bring symmetry between neighbouring jurisdictions.

21. Pursuant to the US Preliminary Injunction, the Debtor obtained a preliminary ruling in effect for 60 days, subject to modification or extension by court order, staying and enjoining

commencement or continuation of any action by the plaintiffs, including the plaintiffs in the Canadian Actions, seeking to hold the following entities liable for Debtor Talc Claims[1]:

(a) the Debtor

(b) Old JJCI;

(c) certain of the Debtor's non-debtor affiliates, including New JJCI, J&J and J&J Canada;

(d) certain third-party retailers who sold Old JJCI's talc-containing products and other third parties, including Valeant and Bausch, whom the Debtor has indemnified contractually; and

(e) certain insurance entities.

(collectively, the "**Protected Parties**").

22. The Canadian Co-Defendants therefore benefit from the US Preliminary Injunction. Absent recognition and enforcement of the US Preliminary Injunction in Canada, talc claimants in the Canadian Actions could pursue the Canadian Co-Defendants and Old JJCI while talc claimants in the US are stayed and enjoined from pursuing the Protected Parties, resulting in disparate treatment. In addition, the Debtor may then be forced to participate in the Canadian Actions to protect its interests.

23. The fundamental purpose of the Chapter 11 Case is to implement a global resolution of the Debtor's talc liability. In the Debtor's view, in order to pursue the proposed global resolution and to maximize the benefit of the resolution for stakeholders, it is necessary to pause the Canadian Actions. The Foreign Representative is therefore requesting that the relief provided to Old JJCI

[1] "Debtor Talc Claims" means, collectively, any talc-related claims against the Debtor, including all claims relating in any way to talc or talc containing materials that were formerly asserted (or that could have been asserted) against Old JJCI on any theory of liability.

and the Protected Parties in the US Preliminary Injunction be recognized and enforced in Canada in respect of the Canadian Actions to allow the parties to explore whether a global resolution that includes the Canadian Actions can be accomplished.

Appointment of the Information Officer is Appropriate

24. Ernst & Young Inc. ("**EY**") is qualified to act as Information Officer and has consented to act as the Information Officer in the within proceeding.

Dispensing with Notice in Canada

25. An order dispensing with the notice requirement under Section 53(b) of the CCAA is appropriate in the circumstances as (a) plaintiffs' counsel in the Canadian Actions were provided with notice of this application on December 3, 2021 by way of letter enclosing the Foreign Representative's draft Application Record (Canadian counsel to the Official Committee of Talc Claimants was provided with the draft Application Record on December 10, 2021), and (b) with the exception of the plaintiffs in the Canadian Actions, creditors, suppliers, customers, employees and other stakeholders in Canada are not affected by the Chapter 11 Case.

26. Such further and other grounds as counsel for the Foreign Representative may advise.

27. The following documentary evidence will be used at the hearing of the application:

Material or evidence to be relied upon:

(a) The Affidavit of John K. Kim to be sworn, and the exhibits thereto;

(b) The consent of EY to act as Information Officer; and

(c) Such further and other evidence and material as counsel for the Foreign Representative may advise and his Honourable Court may permit.

Applicable acts, regulations and rules:

(d) The provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Honourable Court;

(e) Rules 2.03, 3.02, 14.05(2) and 16 of the *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194, as amended; and

(f) Such further acts, regulations and rules as counsel for the Foreign Representative may advise and this Court may permit.

December 16 ~~15~~, 2021

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Gordon McKee (LSO#: 28557R)
gordon.mckee@blakes.com

Linc Rogers (LSO#: 43562N)
linc.rogers@blakes.com

Caitlin McIntyre (LSO#: 72306R)
Tel: 416.863.4174
Fax: 416.863.2653
caitlin.mcintyre@blakes.com

Lawyers for LTL Management, LLC, in its capacity as Foreign Representative

SCHEDULE "A"

Join Zoom Meeting
https://us02web.zoom.us/j/87961620898?pwd=cTN0bk5yeWpERUliczkzV3dKTjZkZz09

Meeting ID: 879 6162 0898
Passcode: 973160
One tap mobile
+16132093054,,87961620898#,,,,*973160# Canada
+16473744685,,87961620898#,,,,*973160# Canada

Dial by your location
+1 613 209 3054 Canada
+1 647 374 4685 Canada
+1 647 558 0588 Canada
+1 778 907 2071 Canada
+1 438 809 7799 Canada
+1 587 328 1099 Canada
+1 470 381 2552 US (Atlanta)
+1 602 753 0140 US (Phoenix)
+1 646 518 9805 US (New York)
+1 651 372 8299 US (Minnesota)
+1 669 219 2599 US (San Jose)
+1 669 900 6833 US (San Jose)
+1 720 928 9299 US (Denver)
+1 786 635 1003 US (Miami)
+1 929 205 6099 US (New York)
+1 971 247 1195 US (Portland)
+1 206 337 9723 US (Seattle)
+1 213 338 8477 US (Los Angeles)
+1 253 215 8782 US (Tacoma)
+1 267 831 0333 US (Philadelphia)
+1 301 715 8592 US (Washington DC)
+1 312 626 6799 US (Chicago)
+1 346 248 7799 US (Houston)
+1 470 250 9358 US (Atlanta)
Meeting ID: 879 6162 0898
Passcode: 973160
Find your local number: https://us02web.zoom.us/u/kbVeqzefKA

Join by SIP
87961620898@zoomcrc.com

Join by H.323
162.255.37.11 (US West)
162.255.36.11 (US East)
213.19.144.110 (Amsterdam Netherlands)
213.244.140.110 (Germany)
69.174.57.160 (Canada Toronto)
65.39.152.160 (Canada Vancouver)
Meeting ID: 879 6162 0898
Passcode: 973160

Court File No.:

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

NOTICE OF APPLICATION

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Gordon McKee (LSO#: 28557R)
gordon.mckee@blakes.com

Linc Rogers (LSO#: 43562N)
linc.rogers@blakes.com

Caitlin McIntyre (LSO#: 72306R)
Tel: 416.863.4174
Fax: 416.863.2653
caitlin.mcintyre@blakes.com

Lawyers for LTL Management, LLC, in its capacity as Foreign Representative

TAB 2

Court File No. CV-21-00673856-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF LTL MANAGEMENT LLC

APPLICATION OF LTL MANAGEMENT LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

AFFIDAVIT OF JOHN K. KIM
(Sworn December 16, 2021)

I, John K. Kim, of the city of Princeton in the State of New Jersey, United States, **MAKE OATH AND SAY**:

1. I am employed by Johnson & Johnson Services, Inc. ("**J&J Services**"), a non-debtor affiliate of LTL Management LLC ("**LTL**" or the "**Debtor**") and a subsidiary of the Debtor's ultimate non-debtor parent company, Johnson & Johnson ("**J&J**"). I have been seconded to LTL by J&J Services, as described in greater detail below, to act as its Chief Legal Officer. I have held this position with LTL since its formation on October 12, 2021.

2. Prior to beginning my role as Chief Legal Officer of the Debtor, I was J&J's Assistant General Counsel, Practice Group Lead for the Product Liability Litigation Group. In that role, I was responsible for product liability litigation globally, including in Canada. I began my employment with J&J and its affiliates in 2001 as a Senior Counsel in the Litigation Group.

3. On October 14, 2021 (the "**Petition Date**"), LTL commenced a case (the "**Chapter 11 Case**") by filing a voluntary petition (the "**Petition**") for relief under chapter 11 of title 11 of the United States Code (the "**US Bankruptcy Code**") with the United States Bankruptcy Court for the Western District of North Carolina (the "**North Carolina Bankruptcy Court**"). A certified

copy of the Petition is attached as **Exhibit "A"** to my affidavit. I am not aware of any other foreign insolvency proceedings in respect of the Debtor.

4. I submitted a declaration (the "**Declaration**") that was filed on the Petition Date in the Chapter 11 Case and provides further background on the Debtor and outlines the various types of relief sought from the North Carolina Bankruptcy Court in certain first day pleadings. A copy of my Declaration without exhibits is attached as **Exhibit "B**" to my affidavit.

I. INTRODUCTION

5. The Chapter 11 Case commenced by the Debtor was precipitated by the commencement and continuation of numerous lawsuits against the predecessor entity of LTL, Old JJCI (defined below) in relation to the use of JOHNSON'S® Baby Powder and its disputed role in the development of certain health issues, including ovarian cancer and mesothelioma.

6. While Old JJCI vigorously denied liability for talc claims, the number of claims have continued to increase and the anticipated cost of litigation and its associated burdens became untenable. The Debtor was formed pursuant to Texas law and was allocated responsibility for Old JJCI's liabilities arising from talc-related claims against it (other than claims for which the exclusive remedy is provided under a workers' compensation statute or similar laws). The Debtor has access to the funding needed to place it in the same or better financial position as its predecessor.

7. The Debtor has commenced the Chapter 11 Case in order to equitably and permanently resolve all current and future talc-related claims against it. The Debtor's goal in the Chapter 11 Case is to negotiate, obtain approval of and ultimately consummate a plan of reorganization that

will, among other things, (a) establish and fund a trust to resolve and pay current and future talc-related claims, and (b) provide for the issuance of an injunction that will permanently protect the Debtor, its affiliates and certain other parties from further talc-related claims arising from products manufactured and/or sold by Old JJCI, or for which Old JJCI may otherwise have had legal responsibility. The Debtor seeks to engage in good faith negotiations to reach a consensual resolution of the Chapter 11 Case with representatives for current and future claimants as soon as possible.

8. At the first day hearings held on October 20, 2021 (the "**First Day Hearings**"), the Debtor asserted that the automatic stay that arose on the filing of the Petition applied to the Debtor, Old JJCI, Johnson & Johnson, other of the Debtor's corporate affiliates, certain identified retailers, insurance companies and certain other indemnified parties. The North Carolina Bankruptcy Court did not make a final determination at the First Day Hearings with respect to the application of the automatic stay. Instead, the North Carolina Bankruptcy Court issued a temporary restraining order ("**TRO**") in respect of the Debtor and Old JJCI, enjoining certain litigation as against those parties.

9. On November 10, 2021, the North Carolina Bankruptcy Court made an interim ruling (i) declaring that the automatic stay applies to prohibit, and (ii) preliminarily enjoining, the commencement or continuation of Enjoined Talc Claims[1] against Protected Parties (defined below) for 60 days (i.e. until January 14, 2022), subject to modification or extension by an order

---

[1] Enjoined Talc Claims" means, collectively, any talc-related claims against the Debtor, including all claims relating in any way to talc or talc containing materials that were formerly asserted (or that could have been asserted) against Old JJCI on any theory of liability.

of a court. On this same date, the North Carolina Bankruptcy Court transferred the Chapter 11 Case to the District of New Jersey.

10. On December 15, 2021, the United States Bankruptcy Court of the District of New Jersey (the "**New Jersey Bankruptcy Court**") granted an order authorizing the Debtor to act as foreign representative (in such capacity, the "**Foreign Representative**") on behalf of its estate.

11. The Foreign Representative seeks recognition of the Chapter 11 Case in Canada in order to (a) obtain the benefit of a stay of proceedings for itself and the Canadian Co-Defendants (as defined below), and (b) provide a venue to ultimately seek recognition in Canada of an order confirming a plan of reorganization to facilitate a global resolution to talc-related claims against the Debtor.

12. Accordingly, I swear this affidavit in support of the application by the Foreign Representative under Part IV of the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**") seeking recognition of the Chapter 11 Case as a "foreign main proceeding" under the CCAA and various supplemental relief in respect of the Chapter 11 Case, including:

(a) Recognizing and giving full force and effect in all provinces and territories of Canada to the US Preliminary Injunction and Foreign Representative Order (each as defined below); and

(b) Appointing Ernst & Young Inc. ("**E&Y**") as information officer in connection with this proceeding.

13. The various matters described in summary manner above are discussed in greater detail below.

II. JOHNSON & JOHNSON GROUP OF COMPANIES

14. The Debtor in this proceeding is an indirect subsidiary of J&J. J&J is a global innovator and leader in public health that has been at the forefront of healthcare innovation for over 130 years since its incorporation in 1886. That innovation includes novel oncology, immunology and vaccine products, including its COVID-19 vaccine and the development of medical devices, pharmaceuticals and consumer goods for household sale.

15. The J&J group of companies (the "**J&J Group**") includes approximately 250 subsidiary companies with operations in 60 countries and products sold in over 175 countries, including Canada. One of the Canadian subsidiaries, Johnson & Johnson Inc. ("**J&J Canada**") which is also a Canadian Co-Defendant, is discussed in greater detail below.

16. Attached hereto as **Exhibit "C"** is a copy of the simplified organizational chart illustrating the corporate relationship between J&J, the Debtor and J&J Canada.

III. LTL MANAGEMENT LLC

17. The Debtor's roots can be traced back to Johnson & Johnson Baby Products Company ("**J&J Baby Products**"), a New Jersey company incorporated in 1970 as a wholly-owned subsidiary of J&J. In 1979, J&J transferred all its assets associated with its baby products division to J&J Baby Products. In connection with this transfer, J&J Baby Products assumed all liabilities associated with the baby products division, including those related to JOHNSON'S® Baby Powder. Following this transaction, J&J no longer manufactured or sold baby products, including JOHNSON'S® Baby Powder.

18. Through a series of name changes and intercompany transactions occurring between 1981 and 1997, J&J Baby Products ultimately became known as Johnson and Johnson Consumer Companies, Inc. (“**J&J Consumer Companies**”).

19. In 2015, J&J Consumer Companies merged with and into an affiliate resulting in an entity known as Johnson & Johnson Consumer Inc. (including all former names and corporate predecessors, “**Old JJCI**”).

20. Following this series of intercompany transactions, Old JJCI became responsible for all claims in respect of JOHNSON’S® Baby Powder and other talc-containing products.

21. In 2021, Old JJCI implemented a corporate restructuring (the “**2021 Corporate Restructuring**”), which was completed on October 12, 2021. The 2021 Corporate Restructuring occurred through a series of sequential corporate steps, including a divisional merger under Chapter 10, Subchapter A of the Texas Business Organizations Code. The divisional merger was conducted in accordance with the laws of the State of Texas, which laws make it possible to divide a single corporation into two or more entities and to allocate the liabilities of the divided entity among those multiple entities. Other companies, including Bestwall LLC, DBMP LLC, Aldrich Pump LLC and Murray Boiler LLC, were involved in a divisional merger under Texas law prior to commencing a chapter 11 case in order to resolve current and future personal injury claims pursuant to the US Bankruptcy Code.

22. Upon the effectiveness of the divisional merger, Old JJCI ceased to exist and two new entities were created which shared a newly formed direct parent: (a) the Debtor, which was initially formed as a Texas limited liability company and then converted into a North Carolina limited liability company; and (b) another entity, which was initially formed as a Texas limited liability

company and then merged into the direct parent, a New Jersey corporation. This entity then changed its name to Johnson & Johnson Consumer Inc. (“**New JJCI**”). As a result of the 2021 Corporate Restructuring, the Debtor holds certain of Old JJCI’s assets and is responsible for all talc-related claims against Old JJCI (other than claims for which the exclusive remedy is provided under a workers’ compensation statute or similar laws), as discussed in more detail below. New JJCI holds all other assets of Old JJCI and is solely responsible for all other liabilities of Old JJCI. New JJCI is now the direct parent of the Debtor.

23. The Debtor maintains its registered head office in New Jersey.

24. All members of the board of directors and all management of the Debtor reside in the United States.

25. To ensure that the Debtor has access to the services it needs to effectively operate its business in connection with the 2021 Corporate Restructuring, the Debtor entered into a services agreement (the “**Services Agreement**”) with J&J Services, a non-debtor affiliate of the Debtor and a US-based subsidiary of the Debtor’s ultimate non-debtor parent company, J&J.

26. Pursuant to the Services Agreement, J&J Services has agreed to provide the Debtor with certain corporate and administrative services, including treasury and procurement, corporate finance, accounting, human resources, information technology, legal, risk management, tax and other support services. These services are all provided out of the United States. In addition, the Debtor and J&J Services entered into a secondment agreement pursuant to which J&J Services has agreed to second to the Debtor certain of its employees, including myself, the Debtor’s Chief Legal Officer, on a full-time basis.

27. In connection with the commencement of the Chapter 11 Case, the Debtor filed an Informational Brief, which provides a more detailed overview of the talc litigation in the United States, related costs, and the proposed path forward in the Chapter 11 Case (the "**Informational Brief**"). A copy of the Informational Brief is attached hereto as **Exhibit "D"**.

Assets and Liabilities of the Debtor

28. As noted above, as part of the 2021 Corporate Restructuring, the Debtor became responsible for all talc-related claims against Old JJCI (other than claims for which the exclusive remedy is provided under a workers' compensation statute or similar laws).

29. The 2021 Corporate Restructuring was designed to ensure that the Debtor has the same, if not greater, ability to fund the costs of defending and resolving future and present talc-related claims as Old JJCI did before the 2021 Corporate Restructuring. To that end, the Debtor received the following assets as part of the 2021 Corporate Restructuring:

(a) all equity interests in Royalty A&M LLC ("**Royalty**"), a North Carolina limited liability company and wholly owned subsidiary of the Debtor. Royalty owns a portfolio of royalty revenue streams, including revenue streams based on third-party sales. It plans to review royalty monetization opportunities in the healthcare industry and grow its business. Such opportunities include reinvesting the income from existing royalty revenue streams into the acquisition of additional external royalty revenue streams and providing financing to third parties, which financing would be secured by similar royalty streams. The Debtor estimates that the fair market value of the equity interest was approximately $367.1 million as of the

Petition Date. Royalty is expected generate more than $50 million in revenue over the next five years as well as certain additional revenue thereafter;

(b) a bank account with approximately $6 million in cash;

(c) a funding agreement (the "**Funding Agreement**") between the Debtor, on the one hand, and J&J and New JJCI on the other;

(d) all contracts of Old JJCI related to talc-related litigation, including settlement agreements, interests in qualified settlement trusts, indemnity rights, service contracts and engagement and retention contracts, if any;

(e) causes of action that relate to the assets and liabilities allocated to the Debtor;

(f) privileges that relate to the assets and liabilities allocated to the Debtor; and

(g) records that relate to the assets and liabilities allocated to the Debtor.

30. The Funding Agreement imposes no repayment obligation on the Debtor. It obligates New JJCI and J&J (on a joint and several basis) to provide funding, up to the full value of New JJCI, to pay for costs and expenses of the Debtor incurred in the normal course of its business (a) at any time when there is no bankruptcy case and (b) during the pendency of any chapter 11 case, including the costs of administering a chapter 11 case, in both situations to the extent that cash distributions received by the Debtor from Royalty are insufficient to pay such costs and expenses.

31. In addition, the Funding Agreement requires New JJCI and J&J to, up to the full value of New JJCI, fund amounts necessary to (a) satisfy the Debtor's talc-related liabilities at any time when there is no bankruptcy case and (b) in the event of a chapter 11 filing, to provide funding for

a trust, in both situations to the extent that any cash distributions received by the Debtor from Royalty are insufficient to pay such costs and expenses or funding (in the case of funding a trust) and further, in the case of the funding of a trust, the Debtor's other assets are insufficient to provide that funding..

32. The only asset that the Debtor will have in Canada are funds to be held by the Toronto office of Blake, Cassels & Graydon LLP, Canadian counsel to the Debtor. Such funds have been wired but not yet received at the time of swearing of this affidavit. I am informed by counsel that it will undertake to advise the Court when such funds are received.

IV. J&J CANADA

33. As set out in the organizational chart, J&J Canada, like the Debtor in the Chapter 11 Case, is a subsidiary of J&J.

34. J&J Canada is a federal corporation incorporated under the laws of Canada. Its principal place of business currently is in Markham, Ontario. J&J Canada engages in the business of importing, marketing, promoting, selling and/or distributing JOHNSON & JOHNSON® products in Canada. One of the products J&J Canada has marketed in Canada is JOHNSON'S® Baby Powder, which is the subject of the talc litigation.

35. J&J Canada is not a debtor in the Chapter 11 Case and is not named in any of the US talc litigation. J&J Canada is however, a Canadian Co-Defendant in the Canadian Actions (defined below).

V. FINANCIAL CHALLENGES & TALC CLAIMS

Talc Claims in the United States

36. As described above, the Debtor traces its history back to J&J's Baby Products business that was acquired by Old JJCI from J&J in 1979. Old JJCI continued to sell these talc-based products following this acquisition. On May 19, 2020, Old JJCI announced that it would permanently discontinue its line of talc-based JOHNSON'S® Baby Powder in the US and Canada. The decision was based on business considerations, including lack of sales due to misinformation about the safety of JOHNSON'S® Baby Powder.

37. The Chapter 11 Case was precipitated by the filings of thousands of talc-related lawsuits in the United States against, among others, Old JJCI and J&J, which allege that JOHNSON'S® Baby Powder purportedly causes ovarian cancer and mesothelioma. The Debtor is of the view that these claims have no valid scientific basis. Nevertheless, the number of claims has continued to increase and the Debtor anticipates that, absent finality reached through a global resolution, the talc claims and their associated burdens will continue for decades to come.

38. As of the Petition Date, there were approximately 38,000 ovarian cancer cases pending against Old JJCI in the United States, including approximately 35,000 cases pending in federal multi-district litigation in New Jersey, and approximately 3,300 cases in multiple state court jurisdictions across the United States.

39. In addition to the ovarian claims, more than 430 mesothelioma cases were pending against Old JJCI on the Petition Date in the United States.

Talc Claims in Canada

40. In addition to the talc claims faced by Old JJCI in the United States, Old JJCI, J&J, J&J Canada and Valeant Pharmaceuticals International, Inc. ("**Valeant**"), now Bausch Health Companies Inc. ("**Bausch**"), are named co-defendants (collectively, the "**Canadian Co-Defendants**") in some or all of the talc lawsuits commenced in Canada (collectively, the "**Canadian Actions**").

41. Unlike J&J, J&J Canada and Old JJCI, the Canadian Co-Defendant Bausch is not now, nor was it previously, a member of the J&J Group. Bausch is a multinational, specialty pharmaceutical and medical device company that develops, manufactures and markets a broad range of pharmaceuticals, over-the-counter products and medical devices. Bausch is headquartered in Laval, Quebec and, in 2013, was continued under the British Columbia *Business Corporations Act*.

42. Effective July 2018, Valeant changed its name to Bausch. On or about September 28, 2012, Valeant acquired certain assets from Old JJCI, including the rights in the brand Shower to Shower®, an absorbent body powder.

43. The Debtor, as successor to Old JJCI, has indemnified Bausch with respect to talc-related liabilities.

44. The Canadian Actions are set out in more detail below together with the current status of each action:

Date, Jurisdiction and Case Number	Type of Proceeding and Status	Plaintiff(s)	Defendants
March 24, 2016 **British Columbia (New Westminster), No. 179011**	Proposed Class Action. certification application dismissed against Valeant and adjourned with leave to amend and file additional evidence as against J&J Group entities.	Linda Williamson	Johnson & Johnson, Johnson & Johnson Consumer Companies Inc., Johnson & Johnson, Inc. and Valeant Pharmaceuticals International
April 12, 2016 **Quebec (Montreal), No. 500-06-000787-164**	Authorized (certified) as class action.	Rosemary Kramar	Johnson & Johnson, Johnson & Johnson Consumer Inc., Johnson & Johnson Inc., and Valeant Pharmaceuticals International Inc.
May 18, 2016 **Ontario (Toronto), CV-16-553046**	Proposed class action (certification motion has not been heard or decided).	Cindy Lou Strathdee, Mario Nunziato, Matthew Strathdee, Shaeda Begum Farroqi-Willison, Gerald Douglas Willison, Theres Bernier, by her estate representative Marilyne Bernier, Marilyne Bernier, Janet Heaton and Barry Heaton	Johnson & Johnson Inc., Johnson & Johnson, and Johnson & Johnson Consumer Companies Inc.
August 22, 2019 **Alberta (Calgary), No. 1901-11748**	Proposed class action (currently inactive).	Diane DiSanto	Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc.,

			and Johnson & Johnson Inc.
October 26, 2020 **British Columbia (Vancouver Registry), VLC-S-S-2011369**	Individual action (at pleadings stage).	Amanda Lorraine Lee	Johnson & Johnson, Johnson & Johnson Consumer Companies Inc., Johnson & Johnson Inc.

45. As set out in the above chart, the Debtor is not, itself, a named defendant in any of the Canadian Actions, but, Old JJCI is a named defendant in all of the Canadian Actions.

46. On November 16, 2021, I swore an affidavit attesting that any liabilities for the claims that are the subject of the Ontario Strathdee class action were transmitted (allocated) from Old JJCI to LTL, and that Old JJCI no longer exists. This affidavit was sworn in support of an order to continue that action against LTL rather than Old JJCI pursuant to Rule 11 of the *Ontario Rules of Civil Procedure*. A requisition has since been filed with Registrar, along with the affidavit, for the order to continue.

47. Similarly, a Notice of Continuance was filed in the Quebec Kramar class action on December 3, 2021 advising that the Old JJCI no longer exists, that any liabilities for the claims that are the subject of that action were transmitted (allocated) to a LTL and that it is continuing as the defendant in place of Old JJCI. The Notice of Continuance was not contested and was deemed admitted on December 13, 2021.

Financial Challenges Resulting from Talc Litigation

48. Prior to the Petition Date, roughly 1,300 ovarian cancer and over 250 mesothelioma cases were dismissed in the United States without payment and Old JJCI had achieved 16 key defense

verdicts, including four trial decisions in 2021 alone. Old JJCI also succeeded in obtaining reversals of many plaintiff verdicts on appeal. Despite these results, Old JJCI was also subject to a number of plaintiff verdicts involving divergent compensatory and punitive damage awards.

49. All ovarian cancer plaintiff verdicts to date have been reversed on appeal with the exception of the *Ingham* case in St. Louis, Missouri. Although the verdict in *Ingham* was reversed in part and reduced, total damages in the amount of approximately $2.243 billion were awarded.

50. Prior to the commencement of the Chapter 11 Case, Old JJCI incurred nearly $1 billion in costs to defend personal injury lawsuits relating to alleged talc exposure, nearly all of which was spent in the last five years. In the months prior to the Petition Date, Old JJCI was paying defense costs in the range of $10 million to $20 million a month. In addition to these costs, Old JJCI has made approximately $3.5 billion in indemnity payments in connection with settlements and verdicts (all amounts in USD).

51. Prior to the 2021 Corporate Restructuring, the talc claims against Old JJCI were anticipated to continue for decades more and grow, as were extraordinary costs of defending and resolving tens of thousands of anticipated claims. In addition to the influx of ovarian cancer claims, plaintiffs have also filed mesothelioma claims. Plaintiff experts estimate that the latency period for mesothelioma can be as long as 60 years and have begun to allege latency periods for ovarian cancer allegedly caused by asbestos exposure in talc products. As a result, even though Old JJCI stopped selling its talc-based JOHNSON'S® Baby Powder in North America in 2020, individuals who develop mesothelioma in 2080 and beyond could sue the Debtor (as successor to Old JJCI), potentially drawing out litigation beyond the end of this century.

52. The Debtor asserts that it has insurance coverage for its talc-related liabilities. In particular, the Debtor has access to certain primary and excess liability insurance policies that cover, among other things, the defense and/or indemnity costs related to talc bodily injury claims, subject to the terms of the policies.[2] In total, the limits of solvent primary and excess insurance policies issued to J&J by third-party insurers that potentially cover talc-related liabilities are in excess of $1.95 billion. J&J and Old JJCI have tendered talc-related claims to their third-party insurers. To date, none of those insurers has acknowledged its coverage obligations, defended Old JJCI or J&J, paid its costs of defense, or indemnified J&J or Old JJCI for settlements or judgments. Instead, the third-party insurers have asserted coverage defenses.

VI. THE CHAPTER 11 PROCEEDINGS

53. As described above, Old JJCI was subject to a deluge of talc-related claims during the last 5 years and the significant number of claims being filed against it were expected to continue unabated, if not increase, for decades more. In addition, the inconsistent results of the litigation created substantial uncertainty and inhibited Old JJCI's ability to focus on its business operations. After consideration of the cost, burden, uncertainty and anticipated duration of the talc litigation, the Debtor determined that the filing of the Chapter 11 Case in the North Carolina Bankruptcy Court was prudent and necessary. The Debtor further concluded that the Chapter 11 Case offered the only alternative for equitably and permanently resolving all current and future talc-related claims against it.

[2] The policies that cover the Debtor were issued to J&J as Named Insured. Those policies cover the period when Old JJCI was operated as a business unit of J&J, as well as during the period when Old JJCI was a subsidiary of J&J. Old JJCI's rights to coverage were allocated to the Debtor in connection with the 2021 Corporate Restructuring.

54. The North Carolina Bankruptcy Court entered the following first day orders in respect of the Chapter 11 Case (the "**First Day Orders**") on November 4, 2021 and November 12, 2021, respectively:

(a) *Order Authorizing the Retention and Employment of Epiq Corporate Restructuring, LLC as Claims, Noticing and Ballot Agent;*

(b) *Order: (I) Authorizing it to File a List of the Top Law Firms with Talc Cases Against the Debtor in Lieu of the List of 20 Largest Unsecured Creditors; (II) Approving Certain Notice Procedures for Talc Claimants; and (III) Approving the Form and Manner of Notice of Commencement of This Case;*

(c) *Order Establishing Certain Notice, Case Management and Administrative Procedures;* and

(d) *Order: (I) Approving the Continued Use of Its Bank Account and Business Forms; (II) Granting a Waiver of the Requirements of Section 345(b) of the Bankruptcy Code; and (III) Authorizing the Debtor's Bank to Charge Certain Fees and Other Amounts.*

55. An executive summary of each of the First Day Orders, prepared by counsel, is attached hereto as **Exhibit "E"**.

The US Preliminary Injunction and Change of Venue

56. As noted above, at the First Day Hearing, the North Carolina Bankruptcy Court issued a TRO in favour of the Debtor and Old JJCI, but did not reach a final decision regarding whether a stay order should be extended to the other Protected Parties.

57. On October 21, 2021, the Debtor filed a complaint commencing an adversary proceeding against the plaintiffs in pending talc-related lawsuits against Old JJCI (the "**Complaint**"). The purpose of the Complaint was to obtain (a) a declaration that the automatic stay in place in respect of the Debtor by virtue of the filing of the Petition also applies stay the commencement or continuation of talc-related claims against the Protected Parties; (b) a preliminary injunction enjoining such actions; and (c) a TRO in respect of such actions pending a final hearing. Consistent with US bankruptcy practice, contemporaneously, the Debtor filed a motion in the Chapter 11 Case seeking the same relief requested in the Complaint. Copies of the Complaint and related motion are attached hereto as **Exhibits "F"** and **"G"** respectively.

58. The Debtor argued that the requested relief was both appropriate and necessary. It was the Debtor's position before the North Carolina Bankruptcy Court that to permit the claimants to continue or commence talc-related lawsuits against the Protected Parties while the Debtor simultaneously works to reorganize by resolving the same claims in its Chapter 11 Case pursuant to the US Bankruptcy Code would (a) defeat the purpose of the Debtor's bankruptcy case, (b) result in irreparable harm to the Debtor's estate due to indemnification obligations in favour of certain of the Protected Parties, (c) undermine and circumvent the purposes and spirit of the automatic stay, and (d) divert the Debtor from its reorganization efforts.

59. The matter was heard on November 4 and 5, 2021. On November 10, 2021, by which time the original TRO in respect of the Debtor and Old JJCI had expired, the North Carolina Bankruptcy Court issued an interim ruling embodied in the *Order Granting the Debtor's Request for Preliminary Injunctive Relief* dated November 15, 2021 (the "**US Preliminary Injunction**"). A copy of the US Preliminary Injunction is attached hereto as **Exhibit "H"**.

60. Pursuant to the US Preliminary Injunction, the Debtor obtained a preliminary ruling in effect for 60 days, subject to modification or extension by court order, staying and enjoining commencement or continuation of any action by the plaintiffs, including the plaintiffs in the Canadian Actions, seeking to hold the following entities liable for Enjoined Talc Claims:

(a) the Debtor

(b) Old JJCI;

(c) the Debtor's non-debtor affiliates set forth specifically on an Appendix B to the Complaint (the "**Protected Party Appendix**"), including J&J, New JJCI and J&J Canada;

(d) third party retailers who sold Old JJCI's talc-containing products and other third parties, including Valeant and Bausch, whom the Debtor has indemnified contractually, also set forth on the Protected Party Appendix; and

(e) insurance entities set forth on the Protected Party Appendix.

(collectively, the "**Protected Parties**").

61. Also on November 10, 2021, the North Carolina Bankruptcy Court made a ruling directing that the Chapter 11 Case be transferred to the District of New Jersey. This ruling is embodied in the *Order Transferring Case to District of New Jersey* dated November 16, 2021 (the "**Transfer of Venue Order**"). A copy of the Transfer of Venue Order is attached hereto as **Exhibit "I"**.

62. The North Carolina Bankruptcy Court considered that New Jersey was the more appropriate forum to hear the Chapter 11 Case. The Court considered various factors, including that certain multi-district litigation in the federal court is pending in New Jersey.

63. Following transfer of the Chapter 11 Case to the New Jersey Bankruptcy Court, a status conference was held before Judge Michael B. Kaplan (the "**Status Conference**"). At the Status

Conference, the New Jersey Bankruptcy Court scheduled a hearing for January 11, 2022 to determine whether a more permanent injunction should be put in place. The US Preliminary Injunction currently expires on January 14, 2022.

The Foreign Representative Order

64. At the Status Conference, a hearing was also scheduled for December 15, 2021 to hear the *Debtor's Motion Pursuant to U.S.C. §1505 for an Order Authorizing it to Act as Foreign Representative on Behalf of the Debtor's Estate* (the "**Foreign Representative Motion**"). A copy of the Foreign Representative Motion is attached hereto as **Exhibit "J"**.

65. Pursuant to the Foreign Representative Motion, the Debtor sought authorization to act as the Foreign Representative on behalf of its estate in any judicial or other proceedings in Canada.

66. On December 8, 2021, the Official Committee of Talc Claimants (the "**Claimant Committee**") filed a limited objection in the Chapter 11 Case to the Foreign Representative Motion on the basis that the role of the foreign recognition proceeding should solely be to enforce the US Preliminary Injunction.

67. This objection was ultimately resolved and on December 15, 2021, the New Jersey Bankruptcy Court granted the *Order Authorizing the Debtor to Act as Foreign Representative on Behalf of the Debtor's Estate* (the "**Foreign Representative Order**"). At the time of swearing of this affidavit, a certified copy of the entered order is not yet available. I am informed by counsel that it will undertake to deliver such certified copy to this Court as soon as it becomes available. The Debtor has submitted the Foreign Representative Order to the New Jersey Bankruptcy Court in the form attached as **Exhibit "K"** to be issued and entered.

68. The Foreign Representative Order expressly authorizes the Debtor, in its capacity as Foreign Representative, to (a) seek recognition of the Chapter 11 Case in Canada, (b) request that the Canadian Court (as defined therein) grant comity to the Foreign Representative and the Chapter 11 Case, (c) seek any other appropriate relief from the Canadian Court that is just and proper in furtherance of the protection of the Debtor's estate, and (d) consistent with any orders of the Canadian Court, pay the costs of the Information Officer (defined below) and its counsel, each without further order of the New Jersey Bankruptcy Court.

69. Accordingly, the Foreign Representative is before this Court seeking to have the US Preliminary Injunction and Foreign Representative Order recognized in Canada.

Motion to Dismiss

70. On December 1, 2021, the Claimant Committee in the Chapter 11 Case filed a motion to dismiss the Chapter 11 Case (the "**Motion to Dismiss**"). The Claimant Committee asserts that the 2021 Corporate Restructuring was improper and that the Chapter 11 Case should be dismissed "for cause". The Debtor strongly disputes this position and maintains that 2021 Corporate Restructuring was proper and that the Chapter 11 Case was filed in good faith and should not be dismissed.

71. The New Jersey Bankruptcy Court is scheduled to hear the Motion to Dismiss on February 15, 2022.

VII. RECOGNITION

72. The Debtor requests Canadian recognition of the Chapter 11 Case as a "foreign main proceeding" and related relief, including a stay of proceedings.

73. While the Debtor is responsible for the talc related claims against Old JJCI, the Debtor is not itself a named Canadian Co-Defendant in all of the Canadian Actions and has no material assets in Canada. Thus, the stay arising upon recognition of the Chapter 11 Case in respect of the Debtor does not adequately protect the Debtor's estate. Absent recognition of the US Preliminary Injunction as well, the Canadian Actions may be able to proceed, resulting in unequal treatment as between US and Canadian plaintiffs, as plaintiffs in the US actions are currently stayed as a result of the Chapter 11 Case and the US Preliminary Injunction.

74. It is for this reason - to bring symmetry between the two neighbouring jurisdictions - that the Foreign Representative seeks recognition of the US Preliminary Injunction

75. In addition, if the requested relief is not granted, the Debtor may then be forced to participate in the Canadian Actions to protect its interests. The Debtor may also be subject to various discovery requests if the Canadian Actions proceed in respect of Old JJCI and the Canadian Co-Defendants, consuming funds and internal human resources of the Debtor.

76. The fundamental purpose of the Chapter 11 Case is to implement a global resolution of the Debtor's talc liability. In the Foreign Representative's view, in order to pursue a global resolution for the benefit of all its stakeholders, it is necessary and appropriate to pause the Canadian Actions.

77. In this regard, the Foreign Representative notes that:

(a) the plaintiffs in the Canadian Actions were named in the Complaint and the Canadian Co-Defendants were included as Protected Parties;

(b) the plaintiffs in the Canadian Actions have asserted claims which are intended to be resolved as part of the Chapter 11 Case;

(c) the unliquidated claims in the US against the Debtor, as successor to Old JJCI, have significant overlapping issues with the claims asserted in the Canadian Actions; and

(d) the Chapter 11 Case presents a unique opportunity for the parties to explore resolution of the claims instead of the current litigious path, which is costly and time consuming.

78. Accordingly, in addition to seeking recognition of the Chapter 11 Case as a foreign-main proceeding, the Foreign Representative is seeking, among other things, recognition and enforcement of the US Preliminary Injunction in Canada.

VIII. INFORMATION OFFICER

79. The Foreign Representative, is also requesting that the Court appoint E&Y as the information officer (in such capacity, the "**Information Officer**") to ensure that this Court is kept apprised of the status of the Chapter 11 Case by an independent third-party licensed insolvency professional and to assist in providing information to and responding to inquiries from interested parties in Canada.

80. E&Y has consented to this appointment. A copy of E&Y's consent to act is attached hereto as **Exhibit "L"**.

IX. NOTICE

81. The proposed Initial Recognition Order provides that no notice will be required to be published in any newspaper in Canada.

82. I believe that an order dispensing with the requirement under section 53(b) of the CCAA is appropriate in the circumstances as (a) plaintiffs' counsel in the Canadian Actions were provided with notice of this application on December 3, 2021 by way of letter enclosing the Foreign Representative's draft Application Record (Canadian counsel to the Official Committee of Talc Claimants was provided with the draft Application Record on December 10, 2021), which included a draft of this affidavit in substantially the same form sworn by me today, and (b) with the exception of the plaintiffs in the Canadian Actions, creditors, suppliers, customers, employees and other stakeholders in Canada are not affected by the Chapter 11 Case.

83. Additionally, all documents related to the Chapter 11 Case are available to the public on a website that has been established by the Claims, Noticing and Ballot Agent, Epiq Corporate Restructuring LLC at the following URL: https://dm.epiq11.com/case/ltl/info. All documents related to the within recognition proceeding will be available to the public on a website established by the Information Officer at the following URL: www.ey.com/ca/ltlmanagement.

X. CONCLUSION

84. The Chapter 11 Case presents the only alternative for the Debtor to resolve the current and future talc-related claims it faces equitably and permanently. Recognition of the Chapter 11 Case in Canada is a vital step in the Debtor achieving a permanent and complete resolution of its liabilities.

85. Similarly, absent recognition of the US Preliminary Injunction, the Canadian Actions may continue to progress, serving as a distraction and demand on the Debtor's resources for the duration of the Chapter 11 Case.

86. Recognition of the Chapter 11 Case will facilitate the Debtor's progression towards a plan of reorganization. If a plan is filed and approved by the requisite majorities of creditors and the New Jersey Bankruptcy Court, the Foreign Representative intends to return to this Court to seek recognition of the plan confirmation order.

SWORN remotely by John K. Kim at the City of Princeton in the State of New Jersey, before me at the City of Burlington, in the Province of Ontario, on December 16, 2021, in accordance with O.Reg.431/20, Administering Oath or Declaration Remotely.

Commissioner for Taking Affidavits

Caitlin McIntyre
LSO#72306R

JOHN K. KIM

This is **Exhibit "A"** referred to in the

Affidavit of John K. Kim

sworn before me by video conference
this 16th day of December, 2021

A Commissioner, etc.

Caitlin McIntyre, LSO #72306R

State of Texas)
)
County of Dallas)

The attached document, Voluntary Petition for LTL Management LLC, dated October 14, 2021 and containing 22 pages, is a true and correct copy of an electronic record obtained by me from the United States Bankruptcy Court for the District of New Jersey via the Public Access to Court Electronic Records service. At the time I obtained this record, no security features present on the electronic record indicated any changes or errors in an electronic signature or other information in the electronic record after the electronic record's creation or execution.

This declaration is made by me under penalty of perjury, and signed this 16th day of December, 2021.

CHRISTA L. SMITH
Notary Public, State of Texas
Comm. Expires 06-08-2025
Notary ID 10928801

Christa L. Smith
Notary Public's Signature

Christa L. Smith
Printed Name of Notary Public

Fill in this information to identify the case:

United States Bankruptcy Court for the:

Western District of North Carolina (State)

Case number (If known): ______________ Chapter 11

☐ Check if this is an amended filing

Official Form 201

Voluntary Petition for Non-Individuals Filing for Bankruptcy

04/20

If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write the debtor's name and the case number (if known). For more information, a separate document, *Instructions for Bankruptcy Forms for Non-Individuals,* is available.

1. **Debtor's name** — LTL Management LLC

2. **All other names debtor used in the last 8 years** — f/k/a Chenango One LLC

   Include any assumed names, trade names, and *doing business as* names

3. **Debtor's federal Employer Identification Number** (EIN) — 87-3056622

4. **Debtor's address**

   Principal place of business

   501 George Street
   Number Street

   New Brunswick NJ 08933
   City State ZIP Code

   Middlesex County
   County

   Mailing address, if different from principal place of business

   Number Street

   P.O. Box

   City State ZIP Code

   Location of principal assets, if different from principal place of business

   Number Street

   North Carolina
   City State ZIP Code

5. **Debtor's website** (URL) — https://dm.epiq11.com/LTL

Debtor LTL Management LLC Case number (if known)
Name

6. Type of debtor

■ Corporation (including Limited Liability Company (LLC) and Limited Liability Partnership (LLP))
☐ Partnership (excluding LLP)
☐ Other. Specify: _____

7. Describe debtor's business

A. *Check one:*

☐ Health Care Business (as defined in 11 U.S.C. § 101(27A))
☐ Single Asset Real Estate (as defined in 11 U.S.C. § 101(51B))
☐ Railroad (as defined in 11 U.S.C. § 101(44))
☐ Stockbroker (as defined in 11 U.S.C. § 101(53A))
☐ Commodity Broker (as defined in 11 U.S.C. § 101(6))
☐ Clearing Bank (as defined in 11 U.S.C. § 781(3))
■ None of the above

B. *Check all that apply:*

☐ Tax-exempt entity (as described in 26 U.S.C. § 501)
☐ Investment company, including hedge fund or pooled investment vehicle (as defined in 15 U.S.C. § 80a-3)
☐ Investment advisor (as defined in 15 U.S.C. § 80b-2(a)(11))

C. NAICS (North American Industry Classification System) 4-digit code that best describes debtor. See http://www.uscourts.gov/four-digit-national-association-naics-codes .
6 7 1 9

8. Under which chapter of the Bankruptcy Code is the debtor filing?

A debtor who is a "small business debtor" must check the first sub-box. A debtor as defined in § 1182(1) who elects to proceed under subchapter V of chapter 11 (whether or not the debtor is a "small business debtor") must check the second sub-box.

Check one:

☐ Chapter 7
☐ Chapter 9
■ Chapter 11. *Check **all** that apply*:

- ☐ The debtor is a small business debtor as defined in 11 U.S.C. § 101(51D), and its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $2,725,625. If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ The debtor is a debtor as defined in 11 U.S.C. § 1182(1), its aggregate noncontingent liquidated debts (excluding debts owed to insiders or affiliates) are less than $7,500,000, **and it chooses to proceed under Subchapter V of Chapter 11.** If this sub-box is selected, attach the most recent balance sheet, statement of operations, cash-flow statement, and federal income tax return, or if any of these documents do not exist, follow the procedure in 11 U.S.C. § 1116(1)(B).
- ☐ A plan is being filed with this petition.
- ☐ Acceptances of the plan were solicited prepetition from one or more classes of creditors, in accordance with 11 U.S.C. § 1126(b).
- ☐ The debtor is required to file periodic reports (for example, 10K and 10Q) with the Securities and Exchange Commission according to § 13 or 15(d) of the Securities Exchange Act of 1934. File the *Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11* (Official Form 201A) with this form.
- ☐ The debtor is a shell company as defined in the Securities Exchange Act of 1934 Rule 12b-2.

☐ Chapter 12

Debtor LTL Management LLC
Name

Case number (if known) ______

9. Were prior bankruptcy cases filed by or against the debtor within the last 8 years?

If more than 2 cases, attach a separate list.

■ No

☐ Yes. District ______ When ______ MM / DD / YYYY Case number ______

District ______ When ______ MM / DD / YYYY Case number ______

10. Are any bankruptcy cases pending or being filed by a business partner or an affiliate of the debtor?

List all cases. If more than 1, attach a separate list.

■ No

☐ Yes. Debtor ______ Relationship ______

District ______ When ______ MM / DD / YYYY

Case number, if known ______

11. Why is the case filed in *this district*?

Check all that apply:

■ Debtor has had its domicile, principal place of business, or principal assets in this district for 180 days immediately preceding the date of this petition or for a longer part of such 180 days than in any other district.

☐ A bankruptcy case concerning debtor's affiliate, general partner, or partnership is pending in this district.

12. Does the debtor own or have possession of any real property or personal property that needs immediate attention?

■ No

☐ Yes. Answer below for each property that needs immediate attention. Attach additional sheets if needed.

Why does the property need immediate attention? (*Check all that apply.*)

☐ It poses or is alleged to pose a threat of imminent and identifiable hazard to public health or safety.

What is the hazard? ______

☐ It needs to be physically secured or protected from the weather.

☐ It includes perishable goods or assets that could quickly deteriorate or lose value without attention (for example, livestock, seasonal goods, meat, dairy, produce, or securities-related assets or other options).

☐ Other ______

Where is the property? ______
Number Street

______

City ______ State ______ ZIP Code ______

Is the property insured?

☐ No

☐ Yes. Insurance agency ______

Contact name ______

Phone ______

Statistical and administrative information

Debtor LTL Management LLC
Name

Case number (if known)

13. Debtor's estimation of available funds

Check one:

- ☒ Funds will be available for distribution to unsecured creditors.
- ☐ After any administrative expenses are paid, no funds will be available for distribution to unsecured creditors.

14. Estimated number of creditors

☐ 1-49	☐ 1,000-5,000	☒ 25,001-50,000
☐ 50-99	☐ 5,001-10,000	☐ 50,001-100,000
☐ 100-199	☐ 10,001-25,000	☐ More than 100,000
☐ 200-999		

15. Estimated assets

☐ $0-$50,000	☐ $1,000,001-$10 million	☐ $500,000,001-$1 billion
☐ $50,001-$100,000	☐ $10,000,001-$50 million	☒ $1,000,000,001-$10 billion
☐ $100,001-$500,000	☐ $50,000,001-$100 million	☐ $10,000,000,001-$50 billion
☐ $500,001-$1 million	☐ $100,000,001-$500 million	☐ More than $50 billion

16. Estimated liabilities

☐ $0-$50,000	☐ $1,000,001-$10 million	☐ $500,000,001-$1 billion
☐ $50,001-$100,000	☐ $10,000,001-$50 million	☒ $1,000,000,001-$10 billion
☐ $100,001-$500,000	☐ $50,000,001-$100 million	☐ $10,000,000,001-$50 billion
☐ $500,001-$1 million	☐ $100,000,001-$500 million	☐ More than $50 billion

Request for Relief, Declaration, and Signatures

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

17. Declaration and signature of authorized representative of debtor

The debtor requests relief in accordance with the chapter of title 11, United States Code, specified in this petition.

I have been authorized to file this petition on behalf of the debtor.

I have examined the information in this petition and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/14/2021
MM / DD / YYYY

✗ [signature] John K. Kim
Signature of authorized representative of debtor Printed name

Title Chief Legal Officer

Debtor LTL Management LLC
Name

Case number (if known)

18. Signature of attorney

✘ */s/ Gregory M. Gordon*
Signature of attorney for debtor

Date 10/14/2021
MM / DD / YYYY

Gregory M. Gordon
Printed name

Jones Day
Firm name

2727 North Harwood Street
Number Street

Dallas TX 75201
City State ZIP Code

(214) 220-3939
Contact phone

gmgordon@jonesday.com
Email address

08435300
Bar number

TX
State

Official Form 201A (12/15)

[If debtor is required to file periodic reports (e.g., forms 10K and 10Q) with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is requesting relief under chapter 11 of the Bankruptcy Code, this Exhibit "A" shall be completed and attached to the petition.]

[Caption as in Form 416B]

Attachment to Voluntary Petition for Non-Individuals Filing for Bankruptcy under Chapter 11

1. If any of the debtor's securities are registered under Section 12 of the Securities Exchange Act of 1934, the SEC file number is N/A.

2. The following financial data is the latest available information and refers to the debtor's condition on October 12, 2021

a. Total assets $ Undetermined

b. Total debts (including debts listed in 2.c., below) $ Undertemined

c. Debt securities held by more than 500 holders

				Approximate number of holders:
secured ☐	unsecured ☐	subordinated ☐	$ N/A	
secured ☐	unsecured ☐	subordinated ☐	$ N/A	
secured ☐	unsecured ☐	subordinated ☐	$ N/A	
secured ☐	unsecured ☐	subordinated ☐	$ N/A	
secured ☐	unsecured ☐	subordinated ☐	$ N/A	

d. Number of shares of preferred stock N/A

e. Number of shares common stock N/A

Comments, if any: N/A

3. Brief description of debtor's business: Debtor LTL Management LLC manages and defends thousands of talc-related claims and oversees the operations of its subsidiary, Royalty A&M LLC

4. List the names of any person who directly or indirectly owns, controls, or holds, with power to vote, 5% or more of the voting securities of debtor:
N/A

SECRETARY'S CERTIFICATE

October 14, 2021

John K. Kim, in his capacity as Secretary of LTL Management LLC, a North Carolina limited liability company (the "Company"), hereby certifies that (1) the resolutions attached hereto as Exhibit A (the "Resolutions") are a complete and accurate copy of the resolutions adopted on October 14, 2021 by the board of managers of the Company related to the authorization of the Company to file a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Western District of North Carolina (the "Chapter 11 Case") and (2) all the Resolutions are in full force and effect and are all the resolutions adopted in connection with the filing of the Chapter 11 Case as of the date hereof.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned has executed and delivered this certificate as of the date first written above.

LTL MANAGEMENT LLC,
a North Carolina limited liability company

By: ______________________________
Name: John K. Kim
Title: Secretary

EXHIBIT A

Resolutions

LTL MANAGEMENT LLC

Resolutions

October 14, 2021

Chapter 11 Filing

WHEREAS, the board of managers (the "Board") of LTL Management LLC, a limited liability company organized and existing under the laws of the State of North Carolina (the "Company") has: (1) carefully reviewed the materials and other information presented by the management and the advisors of the Company regarding the Company's talc-related liabilities, and other relevant information; (2) thoroughly evaluated the Company's strategic alternatives, including a possible bankruptcy filing; (3) conferred with the Company's management and advisors regarding these matters; and (4) determined that the filing of a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") is in the best interests of the Company and its stakeholders; and

NOW, THEREFORE, BE IT RESOLVED, that in the judgment of the Board, it is desirable and in the best interests of the Company, its creditors and other interested parties that the Company seek relief under the Bankruptcy Code;

FURTHER RESOLVED, that the Company be, and it hereby is, authorized to file a voluntary petition (the "Petition") for relief under chapter 11 of the Bankruptcy Code (the "Chapter 11 Case") in the United States Bankruptcy Court for the Western District of North Carolina or such other court as any of the managers of the Company, the officers of the Company and their designees (collectively, the "Authorized Persons") may determine to be necessary, desirable or appropriate (the "Bankruptcy Court") and perform any and all such other acts as any Authorized Person may determine to be necessary, desirable or appropriate to effect any of the foregoing, with the filing of such Petition or performance of such other act to be conclusive evidence of such determination; and

FURTHER RESOLVED, that the Authorized Persons be, and each of them hereby is, authorized, directed and empowered, in the name and on behalf of the Company, to: (1) execute, acknowledge, deliver and verify, and cause to be filed with the Bankruptcy Court, the Petition and all other ancillary documents, with each in such form, as any Authorized Person may determine to be necessary, desirable or appropriate to carry out the intent and accomplish the purposes of these resolutions; (2) execute, acknowledge, deliver, verify and file, or cause to be filed, all petitions, schedules, statements, lists, motions, complaints, declarations, applications, notices and other papers or documents, with each in such form, as any Authorized Person may determine to be necessary, desirable or appropriate in connection with the foregoing; and (3) execute, acknowledge, deliver and verify any and all other documents, with each in such form, as any Authorized Person may determine to be necessary, desirable or appropriate in connection therewith and to administer the Chapter 11 Case, including by executing, acknowledging, delivering, verifying and filing, or causing to be filed, such petitions, schedules, statements, lists, motions, complaints, declarations, applications, notices and other papers or documents as may be determined to be necessary, desirable or appropriate in connection with the Chapter 11 Case; all with the taking of any such action, including any such execution, acknowledgment, delivery, verification or filing, to be conclusive evidence of such determination.

Retention of Professionals

RESOLVED, that the Authorized Persons be, and each of them hereby is, authorized, directed and empowered, in the name and on behalf of the Company, to retain (1) Jones Day, (2) Rayburn Cooper & Durham, P.A., (3) King & Spalding LLP, (4) Shook, Hardy & Bacon L.L.P., (5) McCarter & English, LLP, (6) Bates White, LLC, (7) AlixPartners, LLP and (8) such additional professionals, including attorneys, accountants, financial advisors, actuaries, consultants or agents (together with the foregoing identified firms, the "Professionals"), as any Authorized Person may determine to be necessary, desirable or appropriate in connection with the Chapter 11 Case and other related matters, and to execute, deliver and perform retention agreements with the Professionals in such form and reflecting such terms as any Authorized Person may approve, all with the retention of any Professional to be conclusive evidence of such determination and approval; and

FURTHER RESOLVED, that the law firms of Jones Day and Rayburn Cooper & Durham, P.A. and any additional special or local counsel selected by any Authorized Persons be, and each of them hereby is, authorized, directed and empowered to represent the Company, as debtor and debtor in possession, in connection with any chapter 11 case commenced by or against the Company under the Bankruptcy Code, including the Chapter 11 Case.

QSF Settlement Facility

WHEREAS, the Company intends to commence the Chapter 11 Case in the Bankruptcy Court in accordance with the foregoing resolutions;

WHEREAS, the Company, as payee, and Johnson & Johnson ("J&J") and Johnson & Johnson Consumer Inc. ("JJCI"), as payors, are parties to that certain Amended and Restated Funding Agreement, dated as of October 12, 2021 (the "Funding Agreement"), which Funding Agreement is available to provide the Company with funding for, among other things, the funding of one or more trusts established under the Bankruptcy Code for the benefit of current and future talc claimants as provided in a plan of reorganization for the Company to the extent the Company's other assets are insufficient to satisfy the Company's liabilities in connection with such plan and subject to the limitations set forth therein;

WHEREAS, the Company desires, with the support of J&J and JJCI, to create a "qualified settlement fund" under section 468B of the Internal Revenue Code of 1986, as amended, for the purpose of resolving and satisfying current and future talc-related claims asserted against or related to the Company (the "Settlement Facility"), with J&J and JJCI to provide the Settlement Facility with aggregate funding of $2 billion in cash; and

WHEREAS, the Debtor desires to provide for the creation, funding and administration of the Settlement Facility in accordance with the terms of the settlement facility agreement, in substantially the form presented to the Board, with J&J, JJCI and the trustee thereunder (the "Settlement Facility Agreement").

NOW, THEREFORE, BE IT RESOLVED, that it is desirable and in the best interest of the Company, its creditors and other interested parties that the Company enters into the Settlement Facility Agreement;

FURTHER RESOLVED, that the Settlement Facility Agreement, and all of the terms and provisions thereof and transactions contemplated thereby, be, and each of them hereby is, approved by the Board;

FURTHER RESOLVED, that the Authorized Persons be, and each of them hereby is, authorized, in the name and on behalf of the Company, to file with the Bankruptcy Court in the Chapter 11 Case a motion to approve the Settlement Facility Agreement and the establishment of the Settlement Facility pursuant thereto and perform any and all such other acts as are reasonable, advisable, expedient, convenient, proper or necessary to establish the Settlement Facility pursuant to the Settlement Facility Agreement, with the performance of such acts to constitute conclusive evidence of the reasonableness, advisability, expedience, convenience, propriety or necessity thereof; and

FURTHER RESOLVED, that, subject to the approval of the Settlement Facility Agreement and the establishment of the Settlement Facility by the Bankruptcy Court, the Authorized Persons be, and each of them hereby is, authorized to execute, deliver and perform, in the name and on behalf of the Company, the Settlement Facility Agreement, with such modifications thereto as any Authorized Person may determine to be reasonable, advisable, expedient, convenient, proper or necessary, with the execution and delivery of the Settlement Facility Agreement to be conclusive evidence of such determination.

General Authority

RESOLVED, that the Authorized Persons be, and each of them hereby is, authorized and empowered to execute and deliver such additional agreements, instruments and documents, and to take such other actions (including the payment of costs and expenses), in the name and on behalf of the Company, in each case, as any Authorized Person may determine to be necessary, desirable or appropriate to implement the purposes and intent of the foregoing resolutions, with the execution and delivery of any such agreement, instrument or document or taking of any such action by any Authorized Person to be conclusive evidence of such determination;

FURTHER RESOLVED, that the Authorized Persons be, and each of them hereby is, authorized and empowered to certify and furnish to any person or entity such copies of the resolutions set forth herein, and to certify to any person or entity that the resolutions set forth herein have been duly adopted by the Board, are in full force and effect and are in conformity with the Articles of Organization and Conversion of the Company and the Operating Agreement of the Company, as any Authorized Person may determine to be necessary, desirable or appropriate to implement the purposes and intent of the foregoing resolutions, with the certification and furnishing of such copies or the certification of such matters to be conclusive evidence of such determination; and

FURTHER RESOLVED, that, in the event that any Authorized Person determines a specific form of resolutions is necessary or advisable in connection with the implementation of the purposes and intent of the foregoing resolutions, resolutions in such form be, and they hereby are, adopted by the Board as if such resolutions were expressly set forth herein and that any Authorized Person be, and each of them hereby is, authorized and empowered to certify and furnish to any person or entity copies of such resolutions, and to certify to any person or entity that such resolutions have been duly adopted by the Board, are in full force and effect and are in conformity with the Articles of Organization and Conversion of the Company and the Operating Agreement of the Company, with the certification and furnishing of such copies or the certification of such matters to be conclusive evidence of such determination.

Ratification

RESOLVED, that all actions taken in the name and on behalf of the Company prior to the adoption of these resolutions that would have been authorized by the foregoing resolutions had they been taken after the adoption of these resolutions be, and each of them hereby is, approved, adopted, ratified and confirmed in all respects.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re LTL MANAGEMENT LLC,[1] Debtor.	Chapter 11 Case No. 21-_____

CORPORATE OWNERSHIP STATEMENT

LTL MANAGEMENT LLC

Check one: _X_ DEBTOR ___ PLAINTIFF ___ DEFENDANT ___ OTHER (specify):

Instructions: Federal Rule of Bankruptcy Procedure 7007.1 requires corporate parties to an adversary proceeding, other than the debtor or a governmental unit, to file a statement of corporate ownership with the first pleading filed. Similarly, Federal Rule of Bankruptcy Procedure 1007(a)(1) requires corporate debtors to file a corporate ownership statement with their petitions containing the information described in Rule 7007.1. Check one of the statements set forth below and provide any information as directed.

☒ **1. The following corporations directly or indirectly own 10% or more of any class of the above named corporate debtor's/party's equity interests:[2]**

DePuy Synthes, Inc.
700 Orthopaedic Drive
Warsaw, IN 46582

Janssen Pharmaceuticals, Inc.
1125 Trenton-Harbourton Rd.
Titusville, NJ 08560

Johnson & Johnson Consumer Inc.
199 Grandview Road
Skillman, NJ 08558

---

1 The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

2 The corporations are listed in alphabetical order.

Johnson & Johnson International
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

☐ 2. There are no entities that directly or indirectly own 10% or more of any class of the above named corporate debtor's/party's equity interests.

Date: October 14, 2021

/s/ John K. Kim
Signature of Authorized Individual for Corporate Debtor/Party

John K. Kim
Printed Name of Authorized Individual for Corporate Debtor/Party

Chief Legal Officer
Title of Authorized Individual for Corporate Debtor/Party

Fill in this information to identify the case:
Debtor name: LTL Management LLC
United States Bankruptcy Court for the Western District of North Carolina
Case Number (if known): ____________________________

❑ Check if this is an amended filing

Chapter 11 Case: List of 30 Law Firms With the Most Significant Representations of Talc Claimants

The following is an alphabetical list of the law firms with the most significant representations of parties with talc claims against LTL Management LLC, as debtor (the "Debtor"), based on the volume of filings or other related factors, across the major types of claims faced by the Debtor (the "Top Talc Counsel List"). Concurrently with this petition, the Debtor has filed a motion seeking authority to file this Top Talc Counsel List in lieu of a list of the 20 largest unsecured creditors.[1] This list does not include any person or entity who is an "insider" under section 101(31) of title 11 of the United States Code. The Top Talc Counsel List was prepared with information existing as of the date hereof. The Debtor reserves the right to amend the Top Talc Counsel List based on additional information it may identify. The information contained in the Top Talc Counsel List shall not constitute an admission by, nor shall it be binding on, the Debtor.

	Name of law firm and complete mailing address, including zip code	Name, telephone number, and email address of law firm contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
1	Arnold & Itkin LLP 1401 McKinney St., Ste. 2250 Houston, TX 77010	Kurt Arnold, Caj Boatright, Roland Christensen, Jason Itkin (713) 222-3800 E-mail: cboatright@arnolditkin.com christensen@arnolditkin.com jitkin@arnolditkin.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
2	Ashcraft & Gerel, LLP 4900 Seminary Road Alexandria, VA 22311	James Green, Patrick Lyons, Michelle Parfitt (703) 931-5500 Email: jgreen@ashcraftlaw.com plyons@ashcraftlaw.com mparfitt@ashcraftlaw.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
3	Aylstock, Witkin, Kreis & Overholtz, PLLC 17 East Main St., Ste. 200 PO Box 12630 Pensacola, FL 32502	Mary Putnick, Daniel Thornburgh (850) 916-7450 E-mail: marybeth@putnicklegal.com Dthornburgh@awkolaw.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
4	Barnes Firm 420 Lexington Ave., Ste. #2140 New York, NY 10170	Joe Vazquez (800) 800-0000 E-mail: joe.vazquez@thebarnesfirm.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
5	Beasley Allen Law Firm 218 Commerce Street Montgomery, AL 36104	Charlie Stern (334) 269-2343 E-mail: charlie.stern@beasleyallen.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated

1 This list is in substantially the same form as Official Bankruptcy Form 204 for chapter 11 cases setting forth the list of creditors, other than insiders, who have the 20 largest unsecured claims against a debtor.

Debtor Name: LTL Management LLC Case Number (if known): ____________________

	Name of law firm and complete mailing address, including zip code	Name, telephone number, and email address of law firm contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
6	Cellino Law LLP 800 Delaware Ave. Buffalo, NY 14209	Brian Goldstein (716) 281-5618 E-mail: brian.goldstein@cellinolaw.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
7	Dalimonte Rueb Stoller, LLP 1250 Connecticut Ave. NW Ste. 200 Washington, DC 20036	John A. Dalimonte, Jennifer Orendi, Gregory Rueb (202) 883-8334 E-mail: john@drlawll.com jorendi@drlawllp.com greg@drlawllp.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
8	Dean Omar Branham Shirley, LLP 302 N. Market St., Ste. 300 Dallas, TX 75202	Jessica Dean (214) 722-5990 E-mail: jdean@dobslegal.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
9	Driscoll Firm, LLC 1 South Church Street, 3rd Floor Belleville, IL 62220	John Driscoll (314) 932-3232	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
10	Fears Nachawati Law Firm 5473 Blair Road Dallas, TX 75231	Darren McDowel (866) 705-7584 E-mail: dmcdowell@fnlawfirm.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
11	Ferraro Law Firm 600 Brickell Ave., Ste. 3800 Miami, FL 33131	Leslie Rothenberg, Jose Becerra (305) 375-0111 E-mail: lbr@ferraroaw.com JLB@ferrarolaw.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
12	Flint Law Firm LLC 222. E. Park St., Ste. 500 PO Box 189 Edwardsville, IL 62034	Ethan Flint (618) 288-4777 E-mail: eflint@flintlaw.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
13	Golomb Spirit Grunfeld, P.C. 1835 Market St., Ste. 2900 Philadelphia, PA 19103	Richard Golomb, Andrew Spirit, Kenneth Grunfeld (215) 278-4449 E-mail: kgrunfeld@golombhonik.com rgolomb@golombhonik.com aspirt@golombhonik.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
14	Gori Law Firm 156 N. Main Street Edwardsville, IL 62025	D. Todd Matthews, Beth Gori, Sara Salger (618) 659-9833 E-mail: todd@gorijulianlaw.com beth@gorijulianlaw.com sara@gorijulianlaw.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
15	Honik LLC 1515 Market St., Ste. 1100 Philadelphia, PA 19102	Ruben Honik, David Stanoch (267) 435-1300 E-mail: ruben@honiklaw.com david@honiklaw.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated

Debtor Name: LTL Management LLC Case Number (if known): ____________________

	Name of law firm and complete mailing address, including zip code	Name, telephone number, and email address of law firm contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	Deduction for value of collateral or setoff	Unsecured claim
16	Johnson Law Group 2925 Richmond Ave., Ste. 1700 Houston, TX 77098	Blake Tanase, Basil Adham (713) 626-9336	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
17	Karst & von Oiste LLP 23923 Gosling Rd., Ste. A Spring, TX 77389	Eric Karst (281) 970-9988 E-mail: epk@karstvonoiste.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
18	Kazan, McClain, Satterly & Greenwood PLC 55 Harrison St., Ste. 400 Oakland, CA 94607	Joseph Satterley (510) 302-1000 E-mail: jsatterley@kazanlaw.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
19	Lanier Law Firm 21550 Oxnard Street, 3rd Floor Woodlands Hills, CA 91367	Michael A. Akselrud (310) 277-5100 E-mail: Michael.Akselrud@LanierLawFirm.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
20	Levy Konigsberg LLP 101 Grovers Mill Rd., Ste. 105 Lawrence Twp, NJ 08648	Moshe Maimon (609) 720-0400 E-mail: mmaimon@levylaw.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
21	Maune Raichle Hartley French & Mudd, LLC 1015 Locust St., Ste. 1200 St. Louis, MO 63101	T. Barton French (314) 244-1397 E-mail: bfrench@mrhfmlaw.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
22	Miller Firm, LLC 108 Railroad Ave. Orange, VA 22960	Curtis G. Hoke (540) 672-4224 E-mail: choke@millermiller.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
23	Motley Rice LLC 50 Clay St., Ste. 1 Morgantown, WV 26501	John D. Hurst (304) 413-0457 E-mail: jhurst@motleyrice.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
24	Napoli Shkolnik PLLC 919 North Market St., Ste. 1801 Wilmington, DE 19801	James Heisman, Christopher LoPalo (844) 230-7676 E-mail: clopalo@napolibern.com JHeisman@napliLaw.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
25	OnderLaw, LLC 110 East Lockwood, 2nd Floor St. Louis, MO 63119	James Onder (314) 963-9000 E-mail: onder@onderlaw.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
26	Simmons Hanly Conroy LLC 112 Madison Avenue New York, NY 10016	James Kramer (212) 784-6400 E-mail: jkramer@simmonsfirm.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
27	Simon Greenstone Panatiere Bartlett, PC 1201 Elm St., Ste. 3400 Dallas, TX 75204	Chris Panatier (214) 276-7680 E-mail: cpanatier@sgpblaw.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated

Debtor Name: LTL Management LLC Case Number (if known): ____________________

	Name of law firm and complete mailing address, including zip code	Name, telephone number, and email address of law firm contact	Nature of the claim (for example, trade debts, bank loans, professional services, and government contracts)	Indicate if claim is contingent, unliquidated, or disputed	Amount of unsecured claim If the claim is fully unsecured, fill in only unsecured claim amount. If claim is partially secured, fill in total claim amount and deduction for value of collateral or setoff to calculate unsecured claim.		
					Total claim, if partially secured	**Deduction for value of collateral or setoff**	**Unsecured claim**
28	Trammell PC 3262 Westheimer Rd., Ste. 423 Houston, TX 77098	Fletcher V. Trammell (800) 405-1740 E-mail: fletch@trammellpc.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
29	Weitz & Luxenberg, P.C. 700 Broadway New York, NY 10003	Danny Kraft (212) 558-5500 E-mail: dkraftjr@weitzlux.com	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated
30	Williams Hart Law Firm 8441 Gulf Freeway, Ste. 600 Houston, TX 77017	John Boundas, Sejal Brahmnhatt, Walt Cubberly, Margot Trevino (713) 230-2200	Talc Personal Injury	Disputed/ Contingent/ Unliquidated	N/A	N/A	Unliquidated

NAI-1519811835

Fill in this information to identify the case and this filing:

Debtor Name LTL Management LLC

United States Bankruptcy Court for the: Western District of North Carolina (State)

Case number (*If known*): ____________________

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ *Schedule A/B: Assets–Real and Personal Property* (Official Form 206A/B)
- ☐ *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- ☐ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- ☐ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- ☐ *Schedule H: Codebtors* (Official Form 206H)
- ☐ *Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- ☐ Amended *Schedule* ____
- ☐ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- ■ Other document that requires a declaration List of 30 law firms with the most significant representations of talc claimants.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/14/2021
MM / DD / YYYY

✘ /s/ John K. Kim
Signature of individual signing on behalf of debtor

John K. Kim
Printed name

Chief Legal Officer
Position or relationship to debtor

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re LTL MANAGEMENT LLC,[1] Debtor.	Chapter 11 Case No. 21-_____

MASTER CREDITORS LIST

LTL Management LLC, as debtor in the above-captioned chapter 11 case (the "Debtor"), filed a petition in this Court on the date hereof for relief under chapter 11 of title 11 of the United States Code (the "Voluntary Petition"). In accordance with Rule 1007(a) of the Federal Rules of Bankruptcy Procedure, the Debtor filed concurrently herewith a matrix of the names and addresses of creditors, potential creditors and other parties in interest (the "Master Creditors List"). The Master Creditors List has been prepared from the books and records of the Debtor or its predecessor, and contains only those parties whose names and addresses were maintained in the databases of the Debtor or its predecessor or were otherwise readily ascertainable by the Debtor prior to the commencement of this chapter 11 case. The Debtor will update the Master Creditors List as more information becomes available.

Contemporaneously with the filing of the Voluntary Petition, the Debtor filed a motion (the "Motion") requesting, among other things, authority to serve all notices, mailings or other documents required to be provided to creditors who are claimants in talc-related lawsuits or other proceedings involving the Debtor, or who have similar claims asserted through counsel (collectively, the "Talc Claimants"), on the Talc Claimants in care of their counsel at such counsel's address in lieu of service on the individual Talc Claimants at their personal addresses. Accordingly, the Master Creditors List includes the addresses of counsel for each of the Talc Claimants rather than the addresses of each individual Talc Claimant.

Certain of the creditors listed on the Master Creditors List may not hold outstanding claims against the Debtor and therefore may not be creditors in the Debtor's bankruptcy case. By filing the Master Creditors List, the Debtor is not acknowledging that any listed party is a creditor, nor is it waiving or otherwise affecting its right to object to the extent, validity or enforceability of the claims, if any, held or asserted by the parties listed on the Master Creditors List.

---

1 The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

Fill in this information to identify the case and this filing:

Debtor Name LTL Management LLC

United States Bankruptcy Court for the: Western District of North Carolina (State)

Case number (*If known*): ____________________

Official Form 202

Declaration Under Penalty of Perjury for Non-Individual Debtors

12/15

An individual who is authorized to act on behalf of a non-individual debtor, such as a corporation or partnership, must sign and submit this form for the schedules of assets and liabilities, any other document that requires a declaration that is not included in the document, and any amendments of those documents. This form must state the individual's position or relationship to the debtor, the identity of the document, and the date. Bankruptcy Rules 1008 and 9011.

WARNING -- Bankruptcy fraud is a serious crime. Making a false statement, concealing property, or obtaining money or property by fraud in connection with a bankruptcy case can result in fines up to $500,000 or imprisonment for up to 20 years, or both. 18 U.S.C. §§ 152, 1341, 1519, and 3571.

Declaration and signature

I am the president, another officer, or an authorized agent of the corporation; a member or an authorized agent of the partnership; or another individual serving as a representative of the debtor in this case.

I have examined the information in the documents checked below and I have a reasonable belief that the information is true and correct:

- ☐ *Schedule A/B: Assets–Real and Personal Property* (Official Form 206A/B)
- ☐ *Schedule D: Creditors Who Have Claims Secured by Property* (Official Form 206D)
- ☐ *Schedule E/F: Creditors Who Have Unsecured Claims* (Official Form 206E/F)
- ☐ *Schedule G: Executory Contracts and Unexpired Leases* (Official Form 206G)
- ☐ *Schedule H: Codebtors* (Official Form 206H)
- ☐ *Summary of Assets and Liabilities for Non-Individuals* (Official Form 206Sum)
- ☐ Amended *Schedule* ____
- ☐ *Chapter 11 or Chapter 9 Cases: List of Creditors Who Have the 20 Largest Unsecured Claims and Are Not Insiders* (Official Form 204)
- ■ Other document that requires a declaration Master Creditors List

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 10/14/2021
MM / DD / YYYY

✘ */s/ John K. Kim*
Signature of individual signing on behalf of debtor

John K. Kim
Printed name

Chief Legal Officer
Position or relationship to debtor

This is **Exhibit "B"** referred to in the

Affidavit of John K. Kim

sworn before me by video conference
this 16th day of December, 2021

A Commissioner, etc.

Caitlin McIntyre, LSO #72306R

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re LTL MANAGEMENT LLC,[1] Debtor.	Chapter 11 Case No. 21-30589 (JCW)

DECLARATION OF JOHN K. KIM
IN SUPPORT OF FIRST DAY PLEADINGS

John K. Kim, being first duly sworn, deposes and states as follows:

1. I am the Chief Legal Officer of LTL Management LLC, a North Carolina limited liability company (the "Debtor") and the debtor in the above-captioned chapter 11 case. I have held this position with the Debtor since its formation on October 12, 2021.

2. I am employed by Johnson & Johnson Services, Inc. ("J&J Services"), a non-debtor affiliate of the Debtor and a subsidiary of the Debtor's ultimate non-debtor parent company, Johnson & Johnson ("J&J"). Just prior to my role as the Chief Legal Officer of the Debtor, I was J&J's Assistant General Counsel, Practice Group Lead for the Product Liability Litigation Group. In that role, I was responsible for product liability litigation globally. I began my employment with J&J and its affiliates in 2001 as a Senior Counsel in the Litigation Group, handling a variety of cases ranging from commercial disputes and international arbitrations to product liability litigation.

3. Prior to my employment with J&J and its affiliates, I was associated with the law firm of Simpson Thacher & Bartlett in its Litigation Group from 1989 to 2001, where I

---

1 The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

handled a number of complex litigation engagements, including bankruptcy proceedings, anti-trust disputes, insurance coverage arbitrations and securities actions.

4. I earned a Juris Doctor degree from Fordham University School of Law in 1989 and a Bachelor of Arts degree from Tufts University in 1985.

5. On the date hereof (the "Petition Date"), the Debtor filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code, as well as certain motions and other pleadings (collectively, the "First Day Pleadings").

6. I submit this Declaration to support the First Day Pleadings and provide certain information about the Debtor, its decision to commence this chapter 11 case and its objectives for this case. I have reviewed each of the First Day Pleadings, and it is my belief that the relief sought therein is necessary to (a) avoid immediate and irreparable harm to the Debtor, (b) maximize and preserve the value of the Debtor's chapter 11 estate, (c) assist in the smooth transition of the Debtor into chapter 11 and/or (d) promote the efficient administration of this case.

7. As the Chief Legal Officer, I am familiar with the Debtor's day-to-day operations, assets, financial condition, business affairs and books and records. Except as otherwise indicated, all facts and statements set forth in this Declaration are based upon: (a) my personal knowledge; (b) information supplied to me by other members of the Debtor's management, professionals or employees; (c) my review of relevant documents; and/or (d) my opinion based upon my experience and knowledge of the Debtor's assets, liabilities and financial condition. If called upon to testify, I could and would testify to the facts and opinions set forth herein.

8. Section I of this Declaration provides an overview of the Debtor's history and corporate structure. Section II describes the corporate restructuring that was completed on October 12, 2021. Section III describes the circumstances surrounding the commencement of this chapter 11 case and the Debtor's objectives for this case. Section IV sets forth relevant facts in support of the First Day Pleadings.

I. THE DEBTOR'S HISTORY AND CORPORATE STRUCTURE

9. The Debtor traces its roots back to Johnson & Johnson Baby Products Company ("J&J Baby Products"), a New Jersey company incorporated in 1970 as a wholly-owned subsidiary of J&J.

10. J&J, a New Jersey company incorporated in 1887, first began selling JOHNSON'S® Baby Powder in 1894, launching its baby care line of products. In 1972, J&J established a formal operating division for its baby products business, which included JOHNSON'S® Baby Powder. In 1979, J&J transferred all its assets associated with the Baby Products division to J&J Baby Products. In connection with this transfer, J&J Baby Products assumed all liabilities associated with the Baby Products division. Following this transaction, J&J no longer manufactured or sold baby products, including JOHNSON'S® Baby Powder.

11. In 1981, J&J Baby Products transferred all its assets, except those assets allocated to its diaper programs, to Omni Education Corporation ("Omni"), a wholly-owned subsidiary of J&J Baby Products. In turn, Omni assumed all liabilities of J&J Baby Products except those liabilities related to its diaper program. Immediately following the transaction, J&J Baby Products merged into another subsidiary of J&J and was renamed Personal Products Company, and Omni changed its name to Johnson & Johnson Baby Products Company.[2]

[2] In 1989, Personal Products Company changed its name to McNeil-PPC, Inc.

12. In 1988, Johnson & Johnson Baby Products Company transferred all its assets in respect of its baby products business to Johnson & Johnson Dental Products Company, which assumed all of its liabilities and was renamed Johnson & Johnson Consumer Products, Inc.

13. In 1997, Johnson & Johnson Consumer Products, Inc. changed its name to Johnson and Johnson Consumer Companies, Inc. ("J&J Consumer Companies").

14. In 2015, J&J Consumer Companies merged with and into an affiliate, which then merged into McNeil-PPC, Inc. The resulting entity was renamed Johnson & Johnson Consumer Inc. (including all former names and historical forms, "Old JJCI").

15. Following these intercompany transactions, Old JJCI became responsible for all claims alleging that JOHNSON'S® Baby Powder and other talc-containing products cause cancer or other diseases.

16. In 2021, Old JJCI implemented a corporate restructuring (the "2021 Corporate Restructuring"), which was completed on October 12, 2021. As a result of that restructuring: Old JJCI ceased to exist and two new entities were created: (a) the Debtor in this case, which was initially formed as a Texas limited liability company and then converted into a North Carolina limited liability company; and (b) another entity, which was initially formed as a Texas limited liability company and then merged into a New Jersey corporation that was its direct parent (as well as the direct parent of the Debtor), whereupon this entity changed its name to "Johnson & Johnson Consumer Inc." ("New JJCI"). As a result of the 2021 Corporate Restructuring, the Debtor holds certain of Old JJCI's assets and is solely responsible for the talc-related liabilities of Old JJCI and New JJCI holds all other assets of Old JJCI and is solely responsible for all other liabilities of Old JJCI.

17. New JJCI is the direct parent of the Debtor; and the Debtor is the direct parent of Royalty A&M LLC ("Royalty A&M"), a North Carolina limited liability company. A chart depicting the Debtor's corporate structure is attached to this Declaration as Annex 1.

18. The Debtor was formed to manage and defend thousands of talc-related claims and to oversee the operations of its subsidiary, Royalty A&M. Royalty A&M owns a portfolio of royalty revenue streams, including royalty revenue streams based on third-party sales of LACTAID®, MYLANTA® / MYLICON® and ROGAINE® products. It plans to review royalty monetization opportunities in the Healthcare industry and grow its business by reinvesting the income from these existing royalty revenue streams into both the acquisition of additional external royalty revenue streams as well as financings to third parties secured by similar royalty streams.

19. New JJCI manufactures and sells a broad range of products used in the baby care, beauty, oral care, wound care and women's health care fields, as well as over-the-counter pharmaceutical products. The Debtor's ultimate parent company, J&J, is a holding company that through its operating subsidiaries conducts business in virtually all countries in the world, focused primarily on products related to human health and well-being. J&J is a global innovator and leader in public health and has been at the forefront of healthcare innovation for over 130 years. That innovation includes novel oncology, immunology and vaccine products, including its COVID-19 vaccine that it developed and supplied at non-profit pricing. J&J's shares of common stock are publicly traded under the symbol JNJ on the New York Stock Exchange.

II. THE 2021 CORPORATE RESTRUCTURING

20. As described above, Old JJCI and its affiliates have engaged in multiple restructurings through the years to achieve business and operational objectives. Since it was

formed in 1970, Old JJCI has merged with other companies, been repositioned in its corporate family and acquired and transferred a number of assets.

21. Most recently, Old JJCI implemented the 2021 Corporate Restructuring to enable the Debtor to globally resolve talc-related claims through a chapter 11 reorganization without subjecting the entire Old JJCI enterprise to a bankruptcy proceeding. A key objective of this restructuring was to make certain that the Debtor has the same, if not greater, ability to fund the costs of defending and resolving present and future talc-related claims as Old JJCI did prior to the restructuring. This was achieved through the establishment of a funding agreement between the Debtor, on the one hand, and J&J and New JJCI (on a joint and several basis) on the other, which is in addition to the value of and revenues generated by Royalty A&M, the Debtor's wholly-owned operating subsidiary.

22. The 2021 Corporate Restructuring was effectuated through a series of steps. On October 11, 2021, Old JJCI organized Royalty A&M as a direct subsidiary and, in exchange for full ownership of Royalty A&M's equity, contributed to it $367.1 million. Subsequently, Royalty A&M used those funds to acquire certain royalty streams from Old JJCI and certain of its affiliates. That same day, the following transactions were effected, in sequence:

- Old JJCI's then-direct parent, Janssen Pharmaceuticals, Inc., organized Currahee Holding Company Inc. ("Currahee"), contributing to it all of the issued and outstanding stock of Old JJCI, whereupon Currahee became the direct parent of Old JJCI; and
- Currahee organized Chenango Zero LLC, a Texas limited liability company, as its wholly owned subsidiary.

23. On October 12, 2021, the remaining transactions in the 2021 Corporate Restructuring occurred in the following sequence:

- Old JJCI merged with and into Chenango Zero LLC, with Chenango Zero LLC as the surviving entity;
- J&J and Currahee, as payors (on a joint and several basis), and Chenango Zero LLC, as payee, entered into a funding agreement (as amended from time to time, the "Funding Agreement");
- Old JJCI effected a divisional merger under Chapter 10, Subchapter A of the Texas Business Organizations Code;
    - Upon the effectiveness of the divisional merger, (a) Old JJCI ceased to exist; (b) two new Texas limited liability companies—Chenango One LLC and Chenango Two LLC—were created; and (c) all of the assets and liabilities of Old JJCI were allocated between Chenango One LLC and Chenango Two LLC, as described below;
- Immediately following the effectiveness of the divisional merger, (a) Chenango One LLC and Chenango Two LLC entered into certain agreements, including a divisional merger support agreement that, among other things, provides that Chenango One LLC will indemnify and hold harmless Chenango Two LLC and its affiliates for any losses, liabilities or other damages relating to claims against Chenango Two LLC and its affiliates in respect of the assets and liabilities of Chenango Two LLC, including talc-related liabilities and (b) Chenango One LLC entered into

certain agreement with other affiliates, including the secondment and services agreements discussed further below;

- Following the effectiveness of the divisional merger, (a) Chenango Two LLC merged with and into Currahee, with Currahee as the surviving entity, which then changed its name to "Johnson and Johnson Consumer Inc."; and (b) Chenago One LLC converted from a Texas Limited liability company into a North Carolina limited liability company and changed its name to "LTL Management LLC";
- Among its agreements with non-debtor affiliates, the Debtor entered into a divisional merger support agreement with New JJCI (which was initially entered into between Chenango One LLC and Chenango Two LLC immediately after the divisional merger) that, among other things, provides that the Debtor will indemnify and hold harmless New JJCI and its affiliates for any losses, liabilities or other damages relating to claims against New JJCI and its affiliates in respect of the Debtor's assets or liabilities, including the Debtor's talc-related liabilities; and
- Finally, the Funding Agreement, the divisional merger support agreement and the other intercompany agreements, including the secondment and services agreements discussed further below (which were initially entered into between Chenango One LLC and non-debtor affiliates prior to the divisional merger), were amended and restated to reflect the names of

the parties to those agreements at the conclusion of the 2021 Corporate Restructuring.[3]

24. Pursuant to the divisional merger, the Debtor became solely responsible for Old JJCI's liabilities arising from talc-related claims against it (other than claims for which the exclusive remedy is provided under a workers' compensation statute or similar laws), and the defense of those claims. In addition, the Debtor received the following assets:

(a) A bank account and approximately $6 million in cash;

(b) Old JJCI's rights and interests as payee under the Funding Agreement;

(c) All contracts of Old JJCI related to its talc-related litigation, including settlement agreements, interests in qualified settlement trusts, indemnity rights, service contracts and engagement and retention contracts, if any;

(d) All equity interests in Royalty A&M;

(e) Causes of action that relate to the assets and liabilities allocated to the Debtor;

(f) Privileges that relate to the assets and liabilities allocated to the Debtor; and

(g) Records that relate to the assets and liabilities allocated to the Debtor.

25. Pursuant to the divisional merger, the predecessor to New JJCI received all other assets and liabilities of Old JJCI, and became solely responsible for those other liabilities.

26. As I mentioned above, the design of the 2021 Corporate Restructuring ensures that the Debtor has at least the same, if not greater, ability to fund talc-related claims and

---

[3] A copy of the Funding Agreement in effect as of the Petition Date (without its Schedule 2 that includes confidential bank account information) is attached hereto as Annex 2. The summary of the terms of the Funding Agreement in this Declaration is provided for the convenience of the Court and parties in interest and is qualified in all respects by the more detailed terms contained in the Funding Agreement.

other liabilities as Old JJCI had before the restructuring. The Debtor received the equity of Royalty A&M, which the Debtor has projected will generate approximately $50 million in revenue per year over the next five years. The Debtor estimates the fair market value of its interest in Royalty A&M to be approximately $367.1 million as of the Petition Date. In addition, as noted, as part of the 2021 Corporate Restructuring, the Debtor received $6 million in cash and became party to the Funding Agreement with New JJCI and J&J. In total, therefore, the Debtor's value is approximately $373.1 million, without taking into account the Funding Agreement with New JJCI and J&J.

27. Significantly, the Funding Agreement imposes no repayment obligation on the Debtor; it is not a loan. It obligates New JJCI and J&J, on a joint and several basis, to provide funding, up to the full value of New JJCI, to pay for costs and expenses of the Debtor incurred in the normal course of its business (a) at any time when there is no bankruptcy case and (b) during the pendency of any chapter 11 case, including the costs of administering the chapter 11 case, in both situations to the extent that any cash distributions received by the Debtor from Royalty A&M are insufficient to pay such costs and expenses. In addition, the Funding Agreement requires New JJCI and J&J to, up to the full value of New JJCI, fund amounts necessary (a) to satisfy the Debtor's talc-related liabilities at any time when there is no bankruptcy case and (b) in the event of a chapter 11 filing, to provide the funding for a trust, in both situations to the extent that any cash distributions received by the Debtor from Royalty A&M are insufficient to pay such costs and expenses and further, in the case of the funding of a trust, the Debtor's other assets are insufficient to provide that funding.

28. In addition, J&J and New JJCI have committed to fund as early as January 31, 2022 a North Carolina trust (the "QSF Trust") that will constitute a "qualified

settlement fund" with an aggregate amount of $2 billion for the payment of current and future talc-related claims asserted against or related to the Debtor. These funds will be dedicated exclusively for use in paying such claims. Although J&J and JJCI have no obligation to make this contribution, they have agreed to do so as a pre-funding of Permitted Funding Uses (as such term is defined in the Funding Agreement) under the Funding Agreement. The funds in the QSF Trust will be immediately available for the Debtor's eventual use when and as needed to resolve its talc-related claims.

29. To ensure that the Debtor has access to services it needs to effectively operate its business, in connection with the 2021 Corporate Restructuring, the Debtor entered into a services agreements (the "Services Agreements") with J&J Services. Pursuant to the Services Agreement, J&J Services has agreed to provide the Debtor with certain corporate and administrative services, including treasury and procurement, corporate finance, accounting, human resources, information technology, legal, risk management, tax and other support services. In addition, the Debtor and J&J Services entered into a secondment agreement pursuant to which J&J Services has agreed to second to the Debtor certain of its employees, including the Debtor's Chief Legal Officer, on a full-time basis to manage the Debtor's business.

30. Royalty A&M similarly has agreements it needs to conduct its business. In particular, Royalty A&M has entered into a services agreement with J&J Services pursuant to which J&J Services has agreed to provide certain corporate and administrative services and an intercompany loan facility agreement with J&J. Under the loan facility agreement, Royal A&M has the ability to borrow up to $50 million from J&J on terms consistent with those provided to other J&J affiliates. In addition, Royalty A&M has entered into a services agreement with the Debtor pursuant to which the Debtor will provide ongoing access to and support from the

Debtor's chief executive officer and chief financial officer (in their capacities as officers of Royalty A&M) to perform their roles as such, including supporting Royalty A&M's operations, tracking, administering and auditing any royalty streams or other sources of income, and providing strategic planning and analysis, including to seek out opportunities to invest in additional external royalty revenue streams.

III. EVENTS LEADING TO THE COMMENCEMENT OF THIS CASE AND THE DEBTOR'S OBJECTIVES FOR ITS CHAPTER 11 REORGANIZATION

A. Cosmetic Talc Litigation Against the Debtor

31. As described more fully in the *Informational Brief of LTL Management LLC* (the "Informational Brief"), filed concurrently with this Declaration, this chapter 11 case has been precipitated by the filings of thousands of cosmetic talc lawsuits against Old JJCI and J&J. The Debtor believes, for the reasons set forth in the Informational Brief, that these claims have no valid scientific basis, as Old JJCI's talc products never contained asbestos and the safety of cosmetic-grade talc has been confirmed by dozens of peer-reviewed studies and multiple regulatory and scientific bodies for decades. Nevertheless, the number of claims has continued to increase, and the Debtor anticipates that the litigation and its associated burdens will continue for decades more.

32. Cosmetic talc litigation against the Debtor, Old JJCI and J&J focused primarily on JOHNSON'S® Baby Powder as the purported cause of ovarian cancer and mesothelioma. JOHNSON'S® Baby Powder has been used by hundreds of millions of people worldwide for over 125 years.

33. The Debtor traces its history to J&J's Baby Products business that was acquired by Old JJCI from J&J in 1979. Old JJCI continued to sell these talc-based products following this acquisition. On May 19, 2020, Old JJCI announced it would permanently

discontinue its line of talc-based Baby Powder in the U.S. and Canada. The decision was based on business considerations, including lack of sales due to misinformation about the safety of Old JJCI's talc-based Baby Powder.

34. Prior to 2010, only a small number of isolated cases involving cosmetic talc had been filed against Old JJCI and J&J. These cases alleged a range of claims, including talcosis due to substantial misuse of Johnson's Baby Powder, mesothelioma, dermatitis, and rashes.

35. The number of claims began to skyrocket after the *Berg* (2013) and *Fox* (2016) trials. *Berg v. J&J*, filed in December 2009, was the first case alleging ovarian cancer as a result of genital exposure to Old JJCI's cosmetic talc-based products. The jury found for the plaintiff, but awarded no damages. By the end of 2015, there were over thirteen hundred ovarian cancer lawsuits filed against Old JJCI and J&J.

36. In February 2016, the first St. Louis ovarian cancer case, *Fox*, went to trial. The jury awarded the plaintiff $72 million dollars. While ultimately overturned on appeal, the verdict sparked even more interest on the part of plaintiff lawyers. Five more cases were tried in that venue over the next year and a half, resulting in plaintiff verdicts totaling more than $235 million dollars (in addition to a defense verdict and a mistrial). All of those verdicts subsequently were reversed on appeal.

37. New filings alleging that JOHNSON'S® Baby Powder caused mesothelioma also dramatically increased. At the time of the *Fox* trial, there were only six mesothelioma cases naming Old JJCI or J&J as a defendant and alleging JOHNSON'S® Baby Powder as a cause of the plaintiff's disease. Within two months of the *Fox* trial, that number had increased to 23 mesothelioma cases. By the beginning of 2017, more than 100 mesothelioma

cases had been filed naming Old JJCI or J&J as a defendant. The number of mesothelioma cases steadily grew in the years that followed

B. The Costs and Burdens of the Cosmetic Talc Litigation

38. Prior to the Petition Date, roughly 1,300 ovarian cancer and over 250 mesothelioma cases were dismissed without payment, and Old JJCI achieved 16 key defense verdicts, including in four trials in 2021 alone. Old JJCI also succeeded in obtaining reversals of many plaintiff verdicts on appeal. Despite these results, Old JJCI was also subject to a number of plaintiff verdicts involving unpredictable and wildly divergent compensatory and punitive damages awards.

39. Notably, all of the ovarian cancer plaintiff verdicts to date have been reversed on appeal with the exception of *Ingham.* Although the verdict in that case was reversed in part and reduced, the total damages award was still $2.243 billion. The St. Louis, Missouri trial court had improperly permitted the consolidation of 22 ovarian cancer plaintiffs, 17 of whom were non-residents, for a single trial. The jury found defendants Old JJCI and J&J liable for every claim. The jury awarded compensatory damages in the aggregate amount of $550 million and punitive damages in the aggregate amount $4.1 billion. On appeal, the punitive damages award was later reduced to $1.6 billion.

40. Prior to the commencement of this case, Old JJCI incurred nearly $1 billion in defending personal injury lawsuits relating to alleged talc exposure, nearly all of which was spent in only the last five years. In the months prior to the Petition Date, Old JJCI was paying anywhere from $10 million to $20 million in defense costs on a monthly basis. In addition to these costs, Old JJCI paid approximately $3.5 billion in indemnity in connection with settlements and verdicts.

41. Cosmetic talc litigation against the Debtor was anticipated to continue for decades more and grow, as were the extraordinary costs of defending and resolving tens of thousands of expected claims. Beyond the sudden influx of ovarian cancer claims, plaintiffs were filing mesothelioma claims, alleging in the case of mesothelioma claims that Old JJCI's cosmetic talc products contained asbestos, which the Debtor disputes. Plaintiff experts estimate that the latency period for mesothelioma can be as long as 60 years and have begun to allege extended latency periods for ovarian cancer allegedly caused by asbestos exposure. As a result, even though Old JJCI stopped selling its talc-based JOHNSON'S® Baby Powder in North America in 2020, individuals who develop mesothelioma in 2080 and beyond could sue the Debtor, potentially drawing out the litigation to the end of this century.

42. As of the Petition Date, there were approximately 38,000 ovarian cancer cases pending against the Debtor, including approximately 35,000 cases pending in a federal multi-district litigation in New Jersey, and approximately 3,300 cases in multiple state court jurisdictions across the country.

43. Moreover, the number of ovarian cancer cases skyrocketed. In 2014, Old JJCI was served with 46 ovarian cancer complaints. In 2017—just three years later—that number was nearly 5,000. This acceleration in ovarian cancer claims asserted against Old JJCI showed no signs of abating. As of the Petition Date, Old JJCI had been served with over 12,300 ovarian cancer complaints in just the first ten and a half months of 2021.

44. In addition to the ovarian claims, more than 430 mesothelioma cases were pending against the Debtor on the Petition Date. These claims, like the ovarian cancer claims, spanned the U.S. with cases pending in New Jersey, California, Illinois, Missouri, New York, and Ohio.

45. The Debtor expects that, absent its bankruptcy filing, thousands of additional ovarian cancer and mesothelioma cases would have been filed against it for decades to come.

C. The Debtor's Insurance Coverage and Related Litigation

46. The Debtor believes it has insurance coverage for its talc-related liabilities. In particular, the Debtor has access to certain primary and excess liability insurance policies that cover, among other things, defense and/or indemnity costs related to talc bodily injury claims, subject to the terms of the policies.[4] I provide below a general overview of the Debtor's insurance coverage.

47. Aetna Casualty and Surety Company ("Travelers")[5] issued primary general liability policies to J&J (which policies cover the Debtor) for the period 1957 to 1980 (the "Travelers Policies"). The combined limits of the Travelers Policies (not accounting for deductibles or erosion/exhaustion of limits) total more than $214 million per occurrence and $293 million in the aggregate. The deductibles increase over time, starting at a minimal level and increasing to $5 million per occurrence by 1977. The limits of the Travelers Policies before 1973 are not eroded by defense costs; under later policies, defense costs erode limits.

48. From 1957 to 1985, Travelers also provided excess liability coverage to J&J that covers the Debtor. The combined aggregate limits of those policies total approximately $563 million.

49. From 1973 to 1985, a variety of other insurers issued excess policies that cover the Debtor. Those insurers include subsidiaries or affiliates of the following companies:

---

[4] The policies that cover the Debtor were issued to J&J as the Named Insured. Those policies cover the period when Old JJCI was operated as a business unit of J&J, as well as during the period when Old JJCI was a subsidiary of J&J.

[5] Aetna Casualty and Surety Company is now part of Travelers Insurance Company.

American International Group, Allstate Insurance Company, The Hartford, Home Insurance Company, Nationwide Indemnity Company, and North River Insurance Company. The combined limits of those excess policies total more than $1.09 billion in the aggregate. Certain of the insurers that issued these excess policies are insolvent (including, in particular, Home Insurance Company).

50. From 1981 to 1985, American Motorists Insurance Company ("AMICO") issued primary coverage that covers the Debtor (the "AMICO Policies"). AMICO is insolvent, having been placed into liquidation in 2013. The Debtor currently believes that the applicable limits of the AMICO Polices were exhausted by payments made by AMICO on claims while it was still solvent.

51. From 1973 through 1985, Middlesex Insurance Company ("Middlesex"), a captive insurance company that is a wholly-owned subsidiary of J&J, issued policies that cover J&J and the Debtor. Those policies insured J&J and Old JJCI for large deductibles under the Travelers Policies and the AMICO Policies. From 1977 to 1985, Middlesex also issued excess insurance policies that cover J&J and Old JJCI. After 1985, Middlesex issued liability coverage to J&J and the Debtor. As described below, there is a dispute between J&J, the Debtor, and Middlesex, on the one hand, and the third-party insurers (i.e., insurers other than the Middlesex captive), on the other hand, regarding the applicability and extent of coverage the Middlesex policies provide, as well as the potentially applicable Middlesex coverage limits, including in particular with respect to post-1985 Middlesex policies.

52. In total, the limits of solvent primary and excess insurance policies issued to J&J by third-party insurers that potentially cover talc-related liabilities are in excess of $1.95 billion.

53. J&J and Old JJCI tendered talc-related claims to the third-party insurers. To date, none of those insurers has acknowledged its coverage obligations, defended Old JJCI or J&J, paid its costs of defense, or indemnified J&J or Old JJCI for settlements or judgments. Instead, the third-party insurers have asserted coverage defenses.

54. In May 2019, certain of the Debtor's third party insurers filed a lawsuit against Old JJCI and J&J, along with Middlesex, in the Superior Court of Middlesex County (Docket No. MID-L-003563-19) (the "New Jersey Coverage Action"), seeking a declaratory judgment regarding the parties' respective obligations under the plaintiff insurers' policies including, in particular, the plaintiff insurers' duties to pay defense and indemnity costs to, among other things, Old JJCI. The insurer plaintiffs filed a Second Amended Complaint on June 22, 2020, which is currently the operative complaint. J&J, Old JJCI, and Middlesex filed answers to the Second Amended Complaint on July 31, 2020, and asserted counterclaims, as well as cross-claims against certain defendants. Travelers and certain other insurers filed Cross-Claims against J&J, Old JJCI, and Middlesex, to which J&J, Old JJCI, and Middlesex responded later in 2020. The New Jersey Coverage Action remains pending.

D. Chapter 11 Filings by Talc Suppliers

55. In February 2019, Old JJCI's talc supplier, Imerys Talc America, Inc. and two of its affiliates, Imerys Talc Vermont, Inc. and Imerys Talc Canada, Inc. (collectively, "Imerys") filed voluntary petitions under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Imerys Bankruptcy"). Imerys has potential liability for personal injury claims arising from exposure to talc it sold to customers, including Old JJCI. In its bankruptcy case, Imerys has contended that it has claims against Old JJCI and J&J for indemnification and joint insurance proceeds. The Debtor and J&J dispute those claims.

56. Cyprus Mines Corporation and its parent company (together, "Cyprus"), which had owned certain Imerys talc mines, filed in the Imerys Bankruptcy an adversary proceeding against Old JJCI, J&J, Imerys Talc America, Inc. and Imerys Talc Vermont, Inc. seeking a declaration of indemnity under certain contractual agreements. The Debtor and J&J deny that any indemnification is owed. In February 2021, Cyprus Mines Corporation filed its own voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

57. In July 2021, Imerys Talc America, Inc. and Imerys Talc Vermont, Inc. filed an adversary proceeding against Old JJCI and J&J in the Imerys Bankruptcy seeking declaratory judgments with respect to certain indemnity agreements with Imerys. The Debtor and J&J contest the claims in the adversary complaint.

E. The Decision to File This Case

58. After consideration of the cost, burden, uncertainty and anticipated duration of the cosmetic talc litigation, the Debtor determined that the filing of a chapter 11 case in this Court was prudent and necessary. The Debtor further concluded that this chapter 11 case offered the only alternative for equitably and permanently resolving all current and future talc-related claims against it. As I described above, Old JJCI was the subject of a virtual tidal wave of claims during the last five years and the significant number of claims that were being filed against it were anticipated to continue unabated, if not increase, for decades more. In addition, the lottery-like results of the litigation created substantial uncertainty and were inhibiting Old JJCI's ability to fully focus on its business operations.

59. The Debtor's goal in this case is to negotiate, obtain approval of and ultimately consummate a plan of reorganization that would, among other things, (a) establish and fund a trust to resolve and pay current and future talc-related claims and (b) provide for the

issuance of an injunction that will permanently protect the Debtor, its affiliates and certain other parties from further talc-related claims arising from products manufactured and/or sold by Old JJCI, or for which Old JJCI may otherwise have had legal responsibility, pursuant to sections 105(a) and/or 524(g) of the Bankruptcy Code.

60. The Debtor is prepared to commit the necessary resources to reach an agreement with representatives of current and future claimants on a fair and equitable plan of reorganization as soon as possible. In that regard, the Debtor seeks to engage in good faith negotiations to reach a consensual resolution of this chapter 11 case with representatives for current and future claimants as soon as they are appointed and willing to begin discussions.

F. Automatic Stay of Prosecution of Talc-Related Claims

61. As I discussed above, as a result of the 2021 Corporate Restructuring the Debtor became responsible for all of Old JJCI's talc-related liability related in any way to injury or damage, or alleged injury or damage, sustained or incurred in the purchase or use of, or exposure to, talc, including talc contained in any product, or to the risk of, or responsibility for, any such damage or injury, except for any liabilities for which the exclusive remedy is provided under a workers' compensation statute or act ("Talc-Related Liabilities"). As I understand it, because any claims in respect of Talc-Related Liabilities against Old JJCI (which no longer exists) would be efforts to recover on account of claims against the Debtor, they are automatically stayed under the Bankruptcy Code. See Aldrich Pump LLC v. Those Parties to Actions Listed on Appendix A to Complaint (In re Aldrich Pump LLC), 2021 WL 3729335, at *30-32 (Bankr. W.D.N.C. Aug. 23, 2021); DBMP LLC v. Those Parties Listed on Appendix A to Complaint (In re DBMP LLC), 2021 WL 3552350, at *27-28 (Bankr. W.D.N.C. Aug. 11, 2021).

62. It is my further understanding that any such talc-related claims (collectively, the "Debtor Talc Claims") are likewise automatically stayed as to other parties. Aldrich Pump, 2021 WL 3729335, at *30-32; DBMP, 2021 WL 3552350, at *27-28. In particular, any claims that seek to hold third parties liable for the Debtor Talc Claims—such as fraudulent transfer, alter ego and successor liability—are property of the Debtor's estate and subject to the automatic stay. Aldrich Pump, 2021 WL 3729335, at *31-32; DBMP, 2021 WL 3552350, at *28.

63. Claims that seek to recover against insurers who have provided insurance to the Debtor are subject to the automatic stay. Aldrich Pump, 2021 WL 3729335, at *32. Similarly, the assertion of the Debtor Talc Claims against J&J or its non-debtor affiliates is also automatically stayed. These claims would deplete available insurance coverage that J&J and its non-debtor affiliates share with the Debtor. In addition, I understand that actions against parties who share such an identity of interests with the debtor that the debtor is, in effect, the real-party defendant are likewise automatically stayed. The Debtor owes indemnity or is otherwise responsible or otherwise agreed to be responsible or is alleged to be contractually responsible for the Debtor Talc Claims asserted against J&J or any of its non-debtor affiliates, retailers who sold Old JJCI's talc-containing products and certain other parties. In view of these agreements and obligations, I believe that such an identity of interests exists. Aldrich Pump, 2021 WL 3729335, at *30-31; DBMP, 2021 WL 3552350, at *27.

IV. FIRST DAY PLEADINGS

64. Concurrently with the filing of this chapter 11 case, the Debtor filed First Day Pleadings requesting various forms of relief.

65. The Debtor will move for entry of an order scheduling an expedited hearing on certain of the First Day Pleadings.[6] The Debtor anticipates that the Court will conduct a hearing (the "First Day Hearing") as soon after the commencement of its chapter 11 case as the Court's schedule will permit, at which the Court will hear and consider certain of the First Day Pleadings. The Debtor also anticipates that the Court will consider the remainder of the First Day Pleadings at a later time. The First Day Pleadings that the Debtor anticipates will be heard at the First Day Hearing are described in Section IV.A and IV.B, below. The remaining First Day Pleadings are described in Section IV.C, below.

66. Generally, the purpose of the First Day Pleadings is to: (a) obtain authorization for the continued use of the Debtor's bank account; (b) obtain authorization to establish and fund a qualified settlement fund; and (c) establish procedures for the smooth and efficient administration of this chapter 11 case. I have reviewed each of the First Day Pleadings, including the exhibits thereto, and I believe that the relief sought in each of the First Day Pleadings is tailored to meet the goals described above and, ultimately, will be critical to the Debtor's ability to achieve a successful reorganization.

A. The Case Administration Motions

Appointment of Claims, Noticing and Voting Agent

67. The Debtor will seek the entry of an order appointing Epiq Corporate Restructuring, LLC ("Epiq") as claims, noticing and ballot agent in this chapter 11 case. I understand that Epiq may, among other things: (a) prepare and serve all notices required in the Debtor's chapter 11 case, including the notice of the commencement of this case and the meeting of creditors pursuant to section 341 of the Bankruptcy Code; (b) maintain the official

---

[6] Capitalized terms used below in the descriptions of the First Day Pleadings and not otherwise defined herein have the meanings given to them in the applicable First Day Pleadings.

claims register; and (c) assist with the mailing and tabulation of ballots in connection with any vote to accept or reject any plan or plans proposed in this chapter 11 case. Two engagement proposals were obtained and reviewed to ensure selection through a competitive process. The Debtor submits, based on all engagement proposals obtained and reviewed, that Epiq's rates are competitive and reasonable given Epiq's quality of services and expertise.

Entry of an Order Establishing Certain Notice, Case Management and Administrative Procedures

68. The Debtor will request that the Court enter an order establishing certain notice, case management and administrative procedures (collectively, the "Case Management Procedures") to facilitate the orderly administration of the Debtor's chapter 11 case while ensuring that appropriate notice is provided to parties who express an interest in the chapter 11 case and those directly affected by a request for relief.

69. The Debtor believes that implementation of the Case Management Procedures, among other things, will facilitate service of Court Filings and Orders in a manner that will maximize the efficiency and orderly administration of the chapter 11 case, ensure that appropriate notice is provided to parties in interest and alleviate the significant administrative burden and cost that otherwise could be imposed on the Debtor's estate, parties in interest, the Court and the Clerk of Court due to (a) the substantial number of parties in interest expected to be involved and (b) the number of Court Filings anticipated in the Debtor's chapter 11 case.

List of the Top Law Firms With Talc Cases Against the Debtor in Lieu of the List of the 20 Largest Unsecured Creditors and Notice Procedures for Talc Claimants

70. I understand that the Top 20 List primarily would be used by the Bankruptcy Administrator to understand the types and amounts of unsecured claims against the debtor and thus evaluate prospective candidates to serve on an official committee in the debtor's case. I further understand that an official committee of talc claimants is expected to be

appointed. Because committees in mass tort chapter 11 cases typically consists of plaintiff law firms acting on behalf of individual talc claimants, the Debtor will seek authority to file and provide the Bankruptcy Administrator with a list of the 30 law firms with the most significant representations of claimants, based on the volume of filings or other related factors, across the major types of claims faced by the Debtor (a "Top Talc Counsel List"), in lieu of listing the individual talc claimants with the largest unsecured claims against the Debtor on a "Top 20" list of unsecured creditors. The Debtor believes that providing the Bankruptcy Administrator with a Top Talc Counsel List would better facilitate the Bankruptcy Administrator's evaluation of members of an official committee of talc claimants.

71. The Debtor also will seek Court approval for certain notice procedures relating to individuals (collectively, the "Talc Claimants") who are claimants in talc-related personal injury lawsuits or other proceedings involving the Debtor, including to (a) serve all notices, mailings, filed documents and other communications relating to its chapter 11 case, including, without limitation, pleadings, in any contested matter or otherwise, seeking relief that could directly impact Talc Claimants' rights and obligations in this chapter 11 case, on Talc Claimants in care of their counsel (collectively, the "Talc Firms") at such counsel's address, as further described in the Motion; and (b) list the names, addresses and other contact information, as applicable, of the Talc Firms in any creditor or service lists, including the creditor matrix provided to the Court or filed in this case, in lieu of listing the contact information of individual Talc Claimants. To date, the Debtor has communicated solely with the Talc Firms regarding the talc-related claims against the Debtor. The Debtor in many cases cannot be sure that it has the current addresses (or any addresses) for the Talc Claimants. Further, consistent with the rules of professional conduct, communicating with an adversary in litigation generally is conducted

through counsel. The Debtor therefore believes that providing notice to Talc Claimants through the Talc Firms, in accordance with past practice, is much more reliable and consistent with the rules of professional conduct.

72. The notice procedures proposed in the Motion provide for an effective and appropriate noticing process for the Talc Claimants. Further, implementing the proposed Notice Procedures would alleviate the administrative burden and expense of gathering current contact information for each of the Talc Claimants, which, in many cases, is not readily available or is difficult to verify. The Debtor has access to the names and addresses of the counsel for the Talc Claimants (including counsel of record in pending lawsuits), but the names and addresses of a significant number of individual Talc Claimants themselves are not readily available. It would be extremely burdensome, costly and time-consuming for the Debtor to attempt to obtain this information. In addition, any contact information for the individual Talc Claimants the Debtor has or is able to obtain may be outdated and unreliable. Consequently, providing notice in this chapter 11 case in accordance with the Notice Procedures will be more efficient and reliable than providing notice to the individual Talc Claimants directly.

Extension of Time to File Schedules

73. The Debtor believes it will need additional time beyond the time period allotted under the Bankruptcy Code to assemble all of the information necessary to complete and file the required schedules of assets and liabilities and statement of financial affairs (collectively, the "Schedules"). The Debtor will need the additional time because of (a) the size and complexity of this chapter 11 case and (b) the volume of materials that must be compiled and reviewed by the Debtor's limited staff to complete the Schedules during the hectic early days of this restructuring. Because the Debtor's chapter 11 case will involve tens of thousands of

claimants and other parties in interest, it is my understanding that the Debtor would need to collect, review and assemble a substantial amount of information to complete the Schedules.

74. Given (a) the large number of claimants and (b) the critical matters that the Debtor and its professionals were required to address prior to the commencement of this chapter 11 case, the Debtor was not in a position to complete the Schedules by the Petition Date, even with the assistance of professionals. The Debtor further estimates that, with the many critical matters to be addressed in the early days of this case, the Debtor will require more than 14 days after the Petition Date to complete the Schedules.

75. The additional time requested is important to help ensure that the Schedules are as accurate as possible. Given the volume of information that is provided in the Schedules, and the fact that the information must be accurate as of the Petition Date, additional time to complete the Schedules will help ensure that the relevant information is fully collected and evaluated and can be incorporated into the relevant filings. Rushing to complete the Schedules soon after the Petition Date, on the other hand, could compromise their completeness. Accordingly, the Debtor will seek to extend the deadline by which it must file its Schedules to 46 days after the Petition Date, which is November 29, 2021, without prejudice to the Debtor's right to seek a further extension for cause.

B. Request to Continue Using Bank Account and Related Relief

76. The Debtor will seek approval of the continued use of its prepetition bank account, as well as authority to open and close bank accounts during the chapter 11 case, as necessary or appropriate. In the ordinary course of business, the Debtor maintains a bank account at Bank of America in Charlotte, North Carolina (the "Bank Account"). All payments and other funds that are received by the Debtor are deposited into that account, including cash payments from New JJCI and J&J under the Funding Agreement. The Bank Account also serves

as a disbursement account and is used to pay all of the Debtor's costs and expenses, including professional fees.

77. In addition, the Debtor will request authority for Bank of America, and any other bank to charge, and the Debtor to pay or honor, both prepetition and postpetition service and other fees, costs, charges and expenses to which a bank may be entitled under the terms of and in accordance with its contractual arrangements with the Debtor. Further, the Debtor will request that the Court authorize Bank of America and any other bank to charge back returned items to the Bank Account in the ordinary course of business. The Debtor requires this relief to minimize disruption to its Bank Account and to assist in accomplishing a smooth transition to, and operation in, chapter 11.

78. The Bank Account is insured by the United States through the Federal Deposit Insurance Corporation (the "FDIC") and is maintained at Bank of America, a large, well-known and well-capitalized institution. Therefore, the Debtor will seek a waiver of section 345(b) of the Bankruptcy Code in this case to the extent that the funds maintained in the Bank Account or any other domestic accounts during this chapter 11 case exceed the amount insured by the FDIC or the Federal Savings & Loan Insurance Corporation.

79. To protect against the possible inadvertent payment of prepetition claims, the Debtor will advise Bank of America not to honor checks issued prior to the Petition Date, except as otherwise expressly permitted by an order of the Court and directed by the Debtor. The Debtor has the capacity to draw the necessary distinctions between prepetition and postpetition obligations and payments without closing the Bank Account and opening a new one.

80. In the ordinary course of its business, the Debtor uses certain business forms (collectively, and as they may be modified, the "Business Forms"). The Debtor will

request that it not be required to include the legend "D.I.P.," or any other debtor in possession designation, and the corresponding bankruptcy case number, on its Business Forms because such alteration is not necessary in this case. The Debtor has few business relationships, and the parties it conducts business with (such as law firms) are expected to be well aware of the Debtor's status as a debtor in possession.

C. Anticipated First Day Pleadings to Be Heard at a Later Hearing

Establishment of a Qualified Settlement Fund for Payment of Talc Claims

81. As mentioned above, and to promote a prompt resolution of this chapter 11 case and avoid unnecessary litigation regarding any alleged harm suffered by claimants as a result of the 2021 Corporate Restructuring, the Debtor will seek approval of the establishment and funding of the QSF Trust, which J&J and New JJCI have agreed to fund under the Funding Agreement as early as January 31, 2022. The QSF Trust will constitute a "qualified settlement fund" and will be funded with an aggregate amount of $2 billion to resolve or satisfy current and future talc-related claims asserted against or related to the Debtor but excluding any such claims pursuant to which amounts will be paid or incurred to, or at the direction of, any government or governmental entity (collectively, the "QSF Talc Claims").

82. By agreeing to fund the QSF Trust at this time, New JJCI and J&J are committing to provide funding when they are not required to do so under the Funding Agreement. The funding of the QSF Trust will be considered as pre-funding for Permitted Funding Uses (as such term is defined in the Funding Agreement) and treated as a Payment (as such term is defined in the Funding Agreement) for all purposes. In addition, to the extent permissible under the terms of the Trust Agreement, a Permitted Funding Use, including funding for a Talc Trust included in a chapter 11 plan in the Chapter 11 Case, shall first be paid by the disbursement of funds from the QSF Trust to the full extent such funds are available therefor

before additional funds are sought by the Debtor under the Funding Agreement for such Permitted Funding Use. The establishment of the QSF Trust will not otherwise affect the Debtor's rights or J&J's and New JJCI's obligations under the Funding Agreement in any way.

83. The Debtor believes that establishing the QSF Trust by Court order will be beneficial to all parties. Specifically, it will (a) benefit the Debtor and the talc claimants by placing a significant amount of funds in an irrevocable trust for the benefit of holders of QSF Talc Claims and (b) as with most qualified settlement funds, benefit the direct or indirect owners of the Debtor by giving rise to certain tax benefits. Although the same funding from J&J and New JJCI would be available to the Debtor in the future under the Funding Agreement even without this arrangement, obtaining and segregating $2 billion now (a) should eliminate any doubt regarding the Debtor's financial ability to pay legitimate claims, (b) will assist in funding any Talc Trust set forth in a chapter 11 plan of reorganization in this chapter 11 case and (c) inures to the benefit of talc claimants and the Debtor's estate.

Motion to Seal Confidential Commercial Information in Connection with QSF Motion

84. In connection with the QSF Motion, the Debtor attached the Trust Agreement establishing the QSF Trust as a North Carolina trust without the Fee Agreement, which establishes the amount and terms of the Trustee's compensation, as an exhibit. The Debtor understands that while the Trust Agreement requires the disclosure of certain information with respect to the Trustee's compensation and any expense reimbursement on an annual basis, the Trustee considers the specific terms of the Fee Agreement to be confidential and proprietary commercial information. Disclosure of such information could result in competitive harm to the Trustee. As a result, the Debtor will request authorization to file the Fee Agreement under seal and will further request that, to the extent a hearing is held on the QSF Motion that requires the

disclosure of the terms of the Fee Agreement, any such portion of the hearing be conducted in camera.

Procedures for Engaging Ordinary Course Professionals

85. The Debtor will call upon certain professionals in the ordinary course of its business (the "Ordinary Course Professionals") to provide professional services to assist the Debtor's members and management in the performance of their duties and responsibilities in the ordinary course of the Debtor's business. These Ordinary Course Professionals provide valuable assistance in addressing issues of importance to the Debtor and its business in connection with the management of the Debtor's talc litigation.

86. The Debtor desires to employ the Ordinary Course Professionals, as and when requested by the Debtor, to render professional services to its estate in the same manner and for the same general purposes as such services were provided to Johnson & Johnson Consumer Inc. prior to the Petition Date. To avoid potential disruptions, it is important that the Debtor has the ability to employ the Ordinary Course Professionals (e.g., for defense counsel, to provide services related to the cases they have been defending), many of whom are familiar with the Debtor's history, business and affairs, including the thousands of pending litigation matters.

87. Although the Ordinary Course Professionals identified to date are counsel in talc litigation that I understand is expected to remain stayed under section 362 of the Bankruptcy Code, services from these professionals may be needed from time to time. For example, the Debtor may require services in talc litigation relating to filing stay notices, addressing potential stay violations, monitoring dockets and providing information about these cases that is not available from any other source. However, without assurance that the Debtor is authorized to use and pay these parties, I believe that many Ordinary Course Professionals may

be reluctant to assist the Debtor when needed. Therefore, the Debtor will request approval of certain procedures for the engagement and compensation of Ordinary Course Professionals.

CONCLUSION

88. For all the reasons described herein and in the First Day Pleadings, I respectfully request that the Court grant the relief requested in each of the First Day Pleadings.

Dated: October 14, 2021

/s/ John K. Kim
John K. Kim

This is **Exhibit "C"** referred to in the

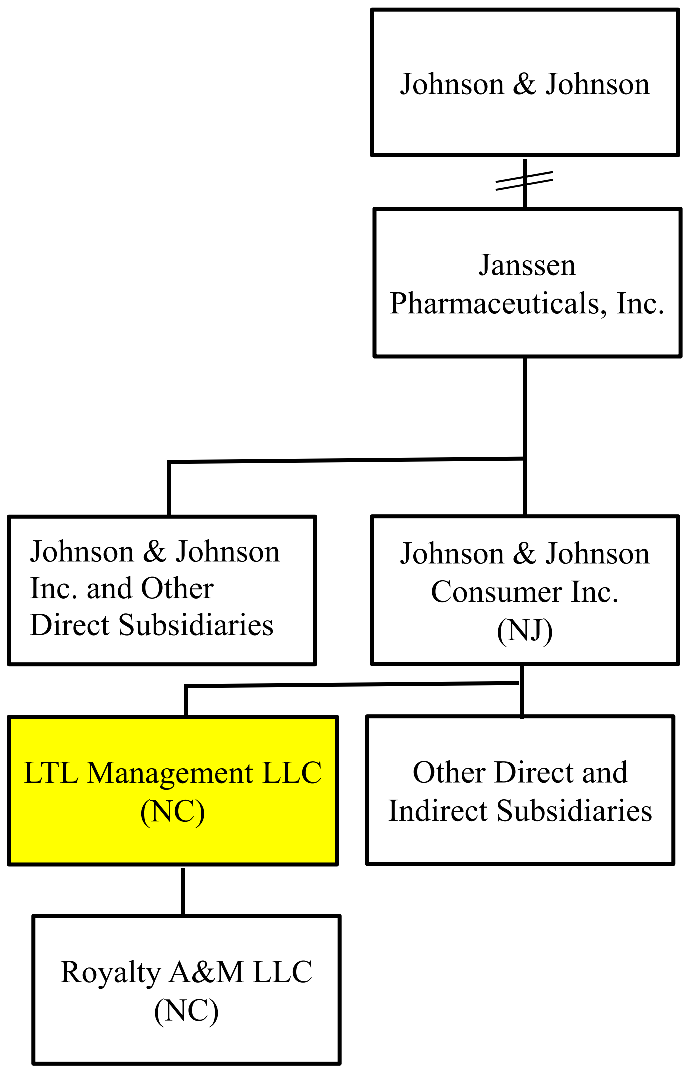
Affidavit of John K. Kim

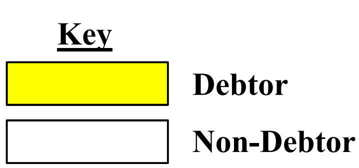
sworn before me by video conference
this 16th day of December, 2021

A Commissioner, etc.

Caitlin McIntyre, LSO #72306R

Organizational Structure of LTL Management LLC





This is **Exhibit "D"** referred to in the

Affidavit of John K. Kim

sworn before me by video conference
this 16th day of December, 2021

A Commissioner, etc.

Caitlin McIntyre, LSO #72306R

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re LTL MANAGEMENT LLC,[1] Debtor.	Chapter 11 Case No. 21-[_____] (___)

INFORMATIONAL BRIEF OF LTL MANAGEMENT LLC

Gregory M. Gordon
Dan B. Prieto
Amanda Rush
JONES DAY
2727 N. Harwood Street
Dallas, Texas 75201

Brad B. Erens
Caitlin K. Cahow
JONES DAY
77 West Wacker
Chicago, Illinois 60601

C. Richard Rayburn, Jr.
John R. Miller, Jr.
RAYBURN COOPER & DURHAM, P.A.
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202

Kristen R. Fournier
KING & SPALDING LLP
1185 Avenue of the Americas
34th Floor
New York, NY 10036

Kathleen A. Frazier
SHOOK, HARDY & BACON L.L.P.
JPMorgan Chase Tower
600 Travis Street, Suite 3400
Houston, TX 77002

Dated: October __, 2021

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

I. Introduction

LTL Management LLC—the debtor in this chapter 11 case (the "Debtor" or "LTL")[2] and an indirect subsidiary of Johnson & Johnson ("J&J")—files this chapter 11 case to resolve permanently all mass tort claims relating to its cosmetic talc products in a manner that is efficient and equitable to all parties, including current and future claimants. Specifically, the Debtor seeks to confirm as promptly as possible a chapter 11 plan of reorganization that establishes a trust to efficiently process and pay such claims—notwithstanding that the Debtor continues to stand behind the safety of its cosmetic talc and does not believe the claims have merit.

The unfortunate reality is that this filing is necessitated by an unrelenting assault by the plaintiff trial bar, premised on the false allegations that the Debtor's 100+ year old talc products contain asbestos and cause cancer. These litigation-created allegations lack any scientific support and have been disavowed for decades by independent experts, as well as governmental and regulatory bodies. Unsurprisingly, therefore, the Debtor's predecessor—Johnson & Johnson Consumer Inc. ("Old JJCI")[3]—ultimately prevailed in the majority of talc cases it tried. Yet—due to the well-documented abuses that occur in the state court tort system and an inability to secure review by the U.S. Supreme Court—Old JJCI and J&J were subject intermittently to extraordinary judgments, including a $4.69 billion verdict—the fifth largest personal injury

---

[2] A comprehensive description of the Debtor, its history, its assets and liabilities and the events leading to the commencement of this chapter 11 case can be found in the declaration of John K. Kim (the "First Day Declaration"), which was filed contemporaneously herewith.

[3] In 1979, J&J stopped manufacturing JOHNSON'S® Baby Powder and the manufacturing operations instead were transferred to Old JJCI (or its predecessors), at which time Old JJCI assumed from J&J all liabilities associated with the business. Nevertheless, J&J continued to be named as a defendant in cosmetic talc litigation. In light of these facts, this Informational Brief refers to J&J and/or Old JJCI, where appropriate.

verdict in the history of the United States[4]—awarded to just 22 plaintiffs whose claims a state court wrongly permitted to be consolidated into a single trial."[5] In 2021 alone, Old JJCI and J&J were victorious in the six cases that have gone to a jury verdict (one of which was a three plaintiff consolidation), but suffered two adverse verdicts in which the jury awarded upwards of $26 million to one plaintiff and $27 million to the other. The incongruity of those two adverse verdicts is telling. In the first, the jury awarded $25 million in compensatory damages and a nominal $100,000 in punitive damages. In the second, the jury awarded the inverse, just shy of $2.5 million in compensatory damages and $25 million in punitive damages.

If only a small fraction of the pending cases continued to yield such inconsistent and excessive awards, the assets available to pay current and future claimants could have been exhausted. And the costs associated with the continued litigation of the claims for decades to come would have been simply unsustainable. The *status quo* therefore was untenable, and this chapter 11 case is necessary to appropriately assess, resolve, and administer these claims in an efficient and equitable manner.

Prior to the filing of this chapter 11 case, Old JJCI engaged in a Texas divisional merger. As a result of that divisional merger, Old JJCI ceased to exist and the Debtor and Johnson & Johnson Consumer Inc. ("New JJCI") were created. Through the divisional merger, the Debtor was allocated talc-related liabilities of Old JJCI and certain assets, including the shares of

---

4 *See, e.g.*, *10 of the Largest Personal Injury Verdicts & Settlements in History*, Oasis Financial, *available at* https://www.oasisfinancial.com/largest-personal-injury-verdicts-settlements-in-history/.

5 *See Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 680 (Mo. App. 2020). The total compensatory award was $550 million, with a punitive award for $4.14 billion. *Id.* This punitive damages award was later reduced on appeal to approximately $1.6 billion. *Id.* at 724-25. And, the appellate court ultimately reversed the decision with respect to two plaintiffs. *Id.* at 693-94.

Royalty A&M LLC, which has a royalty management and finance business. New JJCI was allocated the remaining assets and liabilities of Old JJCI.

To promote a prompt resolution of this case and avoid unnecessary litigation regarding alleged harm suffered by claimants as a result of the divisional merger (there was none),[6] Old JJCI and J&J have taken a number of steps to ensure that the financial interests of claimants are fully protected. First, the Debtor's ability to pay claims is supported by a funding agreement with both New JJCI and J&J, as joint obligors, for the full amount of the value of New JJCI. J&J's inclusion in the funding agreement should put to rest any concerns regarding the divisional merger or any hypothetical JJCI intercompany transactions, including issuance of dividends or forgiveness of intercompany debt, that could potentially diminish New JJCI's assets during the course of this chapter 11 case. Second, J&J and New JJCI have agreed to advance an aggregate amount of $2 billion under the funding agreement into a qualified settlement fund for the payment of cosmetic talc claims. These funds will be dedicated exclusively for use in paying such claims. Although the Debtor and J&J strongly believe $2 billion is substantially in excess of any liability the Debtor should have, J&J and New JJCI have made this commitment to eliminate any doubt regarding the Debtor's financial ability to pay legitimate claims. Third, the Debtor received an equity interest in Royalty A&M LLC, which operates a royalty management and finance business that has royalty streams with a present value of over $350 million. Royalty A&M LLC plans to grow this business by periodically reinvesting the income from these royalties in exchange for additional royalties.

---

[6] Prior to the commencement of this case, on three separate occasions, claimants alleged that any divisional merger undertaken by Old JJCI regardless of its terms would constitute a fraudulent transfer and sought to enjoin Old JJCI from undertaking it. The relief was denied by the United States Bankruptcy Court for the District of Delaware and the Superior Court of New Jersey, and plaintiffs sought and then withdrew the request for such an injunction in Missouri federal court.

Simply put, there can be no legitimate argument that the divisional merger prejudiced claimants. Through the funding agreement, both J&J and New JJCI are standing behind the Debtor's responsibility for cosmetic talc claims, up to the value of New JJCI. In addition, J&J and New JJCI have agreed to advance $2 billion under the funding agreement for deposit into a qualified settlement fund dedicated exclusively to the payment of cosmetic talc claims. And these funding commitments are further buttressed by Royalty A&M LLC's operating business with assets in excess of $350 million. In sum, the Debtor undeniably has more than sufficient funding to pay any legitimate cosmetic talc claims.

The cosmetic talc claims for which the Debtor seeks a complete resolution mainly target JOHNSON'S® Baby Powder (hereinafter, "Johnson's Baby Powder") as a purported cause of ovarian cancer and mesothelioma. But Johnson's Baby Powder has been a staple for hundreds of millions of people for over 125 years. If claimants' allegations were correct that the product causes disease, there should have been long ago an epidemic clearly attributed to the use of the product. That is not the case.

To the contrary, the timing of the claims highlights their lack of merit. Questions regarding whether Johnson's Baby Powder contained asbestos and whether use of cosmetic talcum powder could cause ovarian cancer were raised as early as the 1970s and 1980s, respectively. Such allegations have been investigated by the Food & Drug Administration (the "FDA"),[7] among others, and found to be unsupported by fact or science. Few cosmetic talc cases were filed until the mid-2010s when plaintiffs' counsel, looking for a new solvent

---

7 *See, e.g.,* 7/11/1986 Letter from J.W. Swanson, Acting Associate Commissioner for Regulatory Affairs, U.S. Food and Drug Administration, to P. Douillet with enclosures re: Petition Requesting that Cosmetic Talc be Labeled with and Asbestos Warning Statement, and related correspondence [Recently identified on publicly filed exhibit list in *Prudencio* as DX-17214]; 4/1/2014 FDA's 2014 denial of Citizen's Petition requesting warning on talcum powder products and related correspondence [Recently identified on publicly filed exhibit list in *Prudencio* as DX-17456].

"asbestos" defendant after most had left the tort system, revived the decades-old allegations to advance the current claims pending against the Debtor.

Unlike the debtors in typical asbestos mass-tort bankruptcy cases, Old JJCI never manufactured a product that contained asbestos. Regardless, and despite the absence of legitimate scientific support, plaintiffs have alleged that Old JJCI's cosmetic talc products contained asbestos and cause mesothelioma or ovarian cancer. But as a New Jersey appellate court recently held, plaintiffs' expert opinions regarding Old JJCI's cosmetic talc products and their alleged health effects should have been excluded as lacking the requisite scientific rigor and analysis, and their proffer inevitably would (and did) confuse jurors.[8]

Moreover, in the absence of science to support claims that Old JJCI's talcum powder products caused ovarian cancer and mesothelioma, as well as other diseases, the plaintiff bar has developed alternative disingenuous strategies to advance such claims. These strategies have included plaintiff experts' contrived "scientific" discoveries purportedly showing the presence of trace amounts of "asbestos" in the talcum powder products; trial by media through misinformation campaigns launched via news articles, planted medical literature, advertising, and lobbying efforts; and prejudicial litigation tactics, including forum shopping and consolidation of multiple plaintiffs in a single trial to obfuscate causation issues.[9]

---

8 *See Lanzo v. Cyprus Amax Minerals Co., et al.*, 467 N.J. Super. 476, 510-18 (App. Div. 2021).

9 Plaintiffs' counsel has amassed vast listings of individuals diagnosed with ovarian cancer or mesothelioma. These lists were then used to assert claims against Old JJCI and J&J in an effort to coerce settlement. As a plaintiff's counsel recently was forced to concede under oath, certain plaintiffs' counsel took the list and asserted claims against Old JJCI and J&J without even assessing whether the claimants had been exposed to the talc used in Johnson's Baby Powder, and in some cases, pursued such claims even though the claimant had previously alleged and recovered on a theory that the disease was exclusively attributable to other products. *See* 9/20/2021 telephonic hearing transcript in *In re Imerys Talc America, Inc.*, (D. Del. Bankruptcy Ct., No. 19-10289-LSS) at 52:1-56:15, 60:16-22, 63:11-64:2, 66:10-67:10, 67:22-68:19.

These tactics have led to a few blockbuster plaintiff verdicts, with extreme and duplicative punitive damages awards, in plaintiff-friendly jurisdictions. While many of these extraordinary verdicts have been reversed on appeal, such reversals have done little to temper the now booming cosmetic talc litigation industry. Rather, each plaintiff verdict has resulted in substantial media attention and inevitably inspired the filing of more cases. That deluge of cases has resulted in astronomical costs, with Old JJCI having incurred nearly $1 billion in defense costs on account of cosmetic talc litigation, nearly all of which has been spent in only the last five years. This does not account for payments for settlements and verdicts, which have totaled approximately $3.5 billion. The ubiquity of Old JJCI's products, the relative prevalence of ovarian cancer, and the extended latency period for mesothelioma—and allegedly also for ovarian cancer—ensure that the Debtor will continue to be sued for decades, regardless of its liability. The prospect that defense spending will continue apace, or even accelerate, coupled with the unpredictability of astronomical verdicts, necessitated the commencement of this case. Indeed, the wildly-divergent verdicts across cases resulted in claimants with the same alleged injury receiving substantially disparate treatment, an unfortunate and well-chronicled deficiency of the tort system.

This chapter 11 case appropriately affords the parties an efficient and certain pathway to resolve all current and future cosmetic talc claims, while allowing New JJCI, J&J, and its affiliates to operate their businesses and continue to develop, manufacture, and distribute lifesaving therapies and devices. This is unquestionably a proper objective of a chapter 11 case.[10] J&J is a global innovator and leader in public health and has been at the forefront of

10 *See e.g., In re Bestwall LLC*, 605 B.R. 43, 49 (Bankr. W.D.N.C. 2019) ("Attempting to resolve asbestos claims through 11 U.S.C. § 524(g) is a valid reorganizational purpose, and filing for Chapter 11, especially in the context of an asbestos or mass tort case, need not be due to insolvency.").

healthcare innovation for over 130 years. That innovation includes novel oncology, immunology, and vaccine products, including its COVID-19 vaccine that it developed and supplied at non-profit pricing. The applicable provisions of the Bankruptcy Code are the only means available for companies, like the Debtor, that are plagued by massive numbers of tort claims, to permanently resolve those claims in a manner that is fair and equitable to all parties, including current and future claimants.

The global and equitable resolution of similarly-situated claimants is a hallmark of the chapter 11 process. These resolutions have been achieved in over 60 asbestos and other mass tort bankruptcy cases, where trusts have been established to efficiently and equitably compensate current and future claims based on uniform sets of criteria for similar claims. These trusts have been recognized as a resounding improvement on the tort system. As the Third Circuit explained in *Federal-Mogul*:

> [T]he trusts appear to have fulfilled Congress's expectation that they would serve the interests of both current and future asbestos claimants and corporations saddled with asbestos liability. In particular, observers have noted the trusts' effectiveness in remedying some of the intractable pathologies of asbestos litigation, especially given the continued lack of a viable alternative providing a just and comprehensive resolution.

See In re Federal-Mogul Global, Inc., 684 F.3d 355, 362 (3d Cir. 2012) (citing studies).

In the absence of this chapter 11 filing, the Debtor anticipates that it could soon be spending hundreds of millions of dollars per year in defense costs alone, in addition to settlements and verdicts which, if history is any indicator, would range dramatically in magnitude, regardless of any actual liability.

This Informational Brief provides an overview of Old JJCI cosmetic talc products and issues underlying the current tidal wave of cosmetic talc litigation. It describes the history of and science surrounding the safety of cosmetic talc, including Old JJCI products, as well as the radically upward trajectory of cosmetic talc litigation itself, and the challenges that litigation posed to the Debtor. Finally, this Informational Brief provides a brief overview of the Debtor's goals in this case.

II. Decades of Studies and Testing Showing that J&J's/Old JJCI's Talcum Powder Products Are Safe

A. Background on Talc

Talc is a naturally occurring mineral—the softest mineral on earth—and is composed of magnesium, silicon, oxygen, and hydrogen.[11] It is found in rock deposits all over the world, including Canada, China, South Korea, India, the United States, Brazil, France, and Japan, where it is mined like many other minerals.[12] While some talc deposits are relatively pure, others may also contain various "accessory" minerals, depending on the geographic location, age, and temperature of the ore body, as well as other conditions during formation.[13] As a result, talc from different locations—even those in close proximity—may have very different mineral profiles and characteristics.[14]

Talc is "inert," meaning it does not generate a chemical reaction when ingested or used on the skin, and is known for its fragrance retention, luster, purity, softness, whiteness, high dielectric strength and thermal conductivity, low electrical conductivity, and oil and grease

---

11 USGS Fact Sheet 0065-00, *Industrial Minerals of the United States: U.S. Talc—Baby Powder and Much More*, U.S. GEOLOGICAL SURVEY (SEPT. 2000) ("USGS Fact Sheet 0065-00"), *available at* https://pubs.usgs.gov/fs/fs-0065-00/fs-0065-00.pdf.

12 *See, e.g.*, *Mineral Commodity Summaries: Talc and Pyrophyllite Statistics and Information*, U.S. GEOLOGICAL SURVEY (Jan. 2021) ("USGS Mineral Commodity Summaries 2021"), *available at* https://pubs.usgs.gov/periodicals/mcs2021/mcs2021-talc.pdf.

13 USGS Fact Sheet 0065-00.

14 *See e.g.,* IARC Monographs on the Evaluation of Carcinogenic Risks to Humans. Volume 93: Carbon Black, Titanium Dioxide, and Talc. Lyon, France: International Agency for Research on Cancer (2010) (the "IARC 2010 Monograph") at 284, *available at* https://monographs.iarc.who.int/wp-content/uploads/2018/06/mono93.pdf.

adsorption.[15] Due to these commercially useful properties, talc can be found in numerous products that are used by many people every day, such as soap, deodorant, make-up, and tablets.[16]

After mining, talc is partially crushed and initially sorted according to "grades" based on whiteness and conformity with specifications.[17] The best grades, including what ultimately becomes talcum powder, are produced through special mining and sorting operations.[18] Non-talc materials in the talc may have an undesirable effect on the color of the talcum powder, its softness, lubricity, or its moisture-adsorbing properties.[19] Thus, as part of the process of manufacturing talcum powder, non-talc minerals are removed using a variety of processes, including wash or "beneficiation" processes, hand sorting, washing and froth flotation, or magnetic separation.[20]

Talcum powder marketed in the United States is normally more than 95% "pure," which qualifies it for use in cosmetics and other personal care products, including baby and body products.[21] These products take advantage of talcum powder's ability to adsorb moisture, oils, and odor, lubricate, prevent "caking," make products like facial makeup opaque, or improve the

---

15 USGS Fact Sheet 0065-00.

16 *Id.*

17 *See, e.g.*, Zazenski, R, et al., *Talc: Occurrence, Characterization, and Consumer Applications*, REGUL. TOXICOL. PHARMACOL., 21:218-229 (1995) ("Zazenski 1995") at 219-220; *see also* Fiume, MM et al., *Safety Assessment of Talc as Used in Cosmetics*, INT'L. J. OF TOX., 34(Supp. 1):66S-129S (2015) ("Fiume 2015") at 69S; 2/25/2019 Expert Report of Dr. Mary Poulton, Ph.D. for General Causation *Daubert* Hearing in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-31 ("Poulton Rep.") at § III.

18 *See, e.g.*, Zazenski 1995 at 219-220; *see also* Poulton Rep. at § III.

19 *See, e.g.*, Zazenski 1995 at 219-220.

20 *See, e.g.*, Zazenski 1995 at 219-220; *see also* Fiume 2015 at 70S; Poulton Rep. at § III.

21 *See, e.g.*, Zazenski 1995 at 219-220; *see also* IARC 2010 Monograph at 278.

"feel" of a product.[22] Talc ores of sufficient purity to ultimately become talcum powder are not common, and so such cosmetic talc, which makes up only approximately 5% of all talc used commercially (the rest generally being referred to as "industrial talc"), is mined in only a few places.[23] Since 1946, three sources of cosmetic talc have been used by J&J or Old JJCI to manufacture talcum powder products sold in North America: the Fontana mine in the Val Germanasca region of Northern Italy, several mines in Vermont, and the Jizhua (also known as Zhizhu) mine in the Guangxi province in southern China.

B. Johnson's Baby Powder

Cosmetic talc litigation against the Debtor has focused primarily, though not exclusively, on Johnson's Baby Powder.[24] Johnson's Baby Powder is made up of over 99% cosmetic-grade talcum powder, with small amounts of additional ingredients for fragrance. Johnson's Baby Powder—advertised "for toilet and nursery"—went on the market in 1894, launching the company's baby care line of products. For over 125 years Johnson's Baby Powder has been used by hundreds of millions of consumers worldwide.

On May 19, 2020, Old JJCI announced it would permanently discontinue its line of talc-based Johnson's Baby Powder in the U.S. and Canada. The decision was based on business considerations, including misinformation about the safety of the company's talc-based Johnson's

---

22 *See, e.g.*, Zazenski 1995 at 221-224; *What is talc?*, Industrial Minerals Association - North America, *available at:* https://www.ima-na.org/page/what_is_talc.

23 *See, e.g.,* USGS Mineral Commodity Summaries 2021 ("industrial" grade talc can be found in products such as paint, paper, plastics, rubber, and roofing materials); *see also* 2/25/2019 Expert Report of Dr. Laura Webb, Ph.D. for General Causation *Daubert* Hearing in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-28 at § 4.0.

24 Certain claims have identified "Shower to Shower," a talc-based deodorizing product that was previously produced by J&J/Old JJCI before being sold to a competitor in 2012. In general, when referenced by claimants, Shower to Shower is treated interchangeably with Johnson's Baby Powder because both are cosmetic products that contain talc as a primary or major ingredient.

Baby Powder disseminated by the plaintiff bar. As stated in the press release for the announcement, the company "remains steadfastly confident in the [product's] safety[,]" but the "[d]emand for talc-based Johnson's Baby Powder in North America has been declining due in large part to changes in consumer habits and fueled by misinformation around the safety of the product and a constant barrage of litigation advertising."[25]

C. The Risk of Cancer from Talcum Powder Due to Alleged Asbestos Contamination Was First Raised and Put to Rest in the 1970s.

"Asbestos" is a term describing a group of six minerals that, under certain rare geological conditions, can form in bundles composed of long, thin, extremely flexible fibers with high tensile strength. When the six minerals form in this unique way,[26] they are "asbestiform," when they do not, they are "nonasbestiform."[27] In other words, there is an asbestiform and a (much more common) nonasbestiform version of each of the six minerals.[28] Every federal regulation or statute defines asbestos as the asbestiform variety of the six minerals.[29] The six relevant minerals come from two mineral families: "serpentine" and "amphibole."[30]

---

25 *Johnson & Johnson Consumer Health Announces Discontinuation of Talc-based Johnson's Baby Powder in U.S. and Canada*, JOHNSON & JOHNSON (May 19, 2020), *available at* https://www.jnj.com/our-company/johnson-johnson-consumer-health-announces-discontinuation-of-talc-based-johnsons-baby-powder-in-u-s-and-canada.

26 The way a mineral forms in nature is called its "habit." IARC 2010 Monograph at 277 ("[A]sbestiform describes the pattern of growth of a mineral that is referred to as a 'habit'").

27 As IARC explains, the term asbestos "describes six minerals that occur in the asbestiform habit" and only "when asbestiform, [do] they constitute asbestos." *Id.* The National Institute for Occupational Safety and Health ("NIOSH") similarly declared that "nonasbestiform minerals are not 'asbestos' or 'asbestos minerals.'" Nat'l Inst. for Occupational Health and Safety, *Asbestos Fibers and Other Elongate Mineral Particles: State of the Science and Roadmap for Research* 7-8 (2011) ("NIOSH Roadmap") at vii.

28 IARC 2010 Monograph at 277, 411-413; 40 C.F.R. § 763 Subpt. E, App. E, Table 2-1.

29 *See* 29 C.F.R. § 1910.1001(b) (OSHA); 40 C.F.R. § 763.163 (EPA); 40 C.F.R. § 61.141 (EPA); 30 C.F.R. § 56.5001(b) (MSHA); 73 Fed. Reg. 11284, 11292 (2008) (MSHA); 15 U.S.C. § 2642(3) (Toxic Substances Control Act).

30 The mineral family "amphibole" does not automatically mean "asbestos."

Mineral Family	Nonasbestiform	Asbestiform
Serpentine	Antigorite/Lizardite	Chrysotile
Amphibole	Riebeckite	Crocidolite
Amphibole	Grunerite-Cummingtonite	Amosite
Amphibole	Tremolite	Tremolite Asbestos
Amphibole	Anthophyllite	Anthophyllite Asbestos
Amphibole	Actinolite	Actinolite Asbestos

As the chart above demonstrates, the asbestiform and nonasbestiform varieties of the same mineral sometimes have similar names, and sometimes entirely different names. For example, riebeckite is the non-asbestos version of crocidolite. In contrast, there are asbestos types of tremolite, and non-asbestos types of tremolite. And, though they have the same chemical composition, the two look very different because of the different geological conditions in which they were formed[31]:

Non-Asbestiform Tremolite

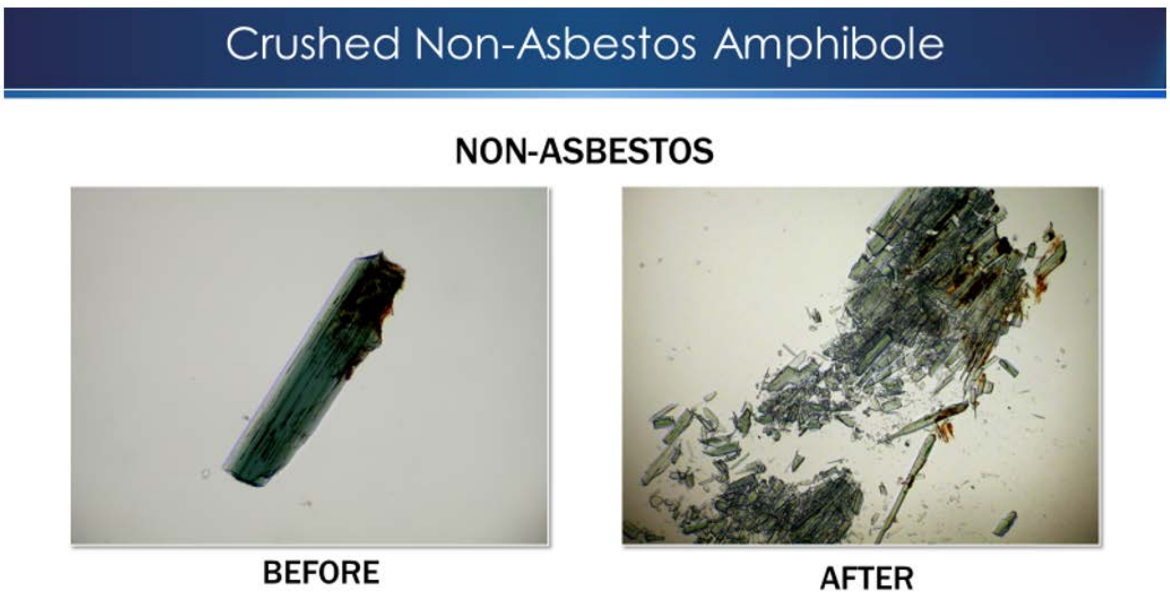
Asbestiform Tremolite

These two types of tremolite are typically distinguished by referring to the nonasbestiform variety as simply "tremolite," while referring to the asbestiform variety as "asbestiform tremolite" or "tremolite asbestos."

A "fiber" is often defined as any mineral particle that is long and thin, no matter how it

[31] Campbell, W. J., R. L. Blake, L. L. Brown, E. E. Cather, and J. J. Sjoberg. 1977. Selected Silicate Minerals and Their Asbestiform Varieties: Mineralogical Definitions and Identification-Characterization. Information Circular 8751. Washington, D.C.: U.S. Department of the Interior, U.S. Bureau of Mines Report of Investigations at 7.

formed in nature. Usually, to be a "fiber," a particle must meet certain size and shape criteria; such as a minimum length and an aspect ratio of greater than 5:1 (*i.e.*, over five times longer than it is wide).[32] These size and shape parameters are sometimes called "counting criteria." Just because a particle meets the counting criteria for a "fiber" does not mean it is "asbestos."[33] When nonasbestiform minerals are broken up, the resulting particles are often called "cleavage fragments."[34]



Cleavage fragments can at times be long and thin, and so can resemble asbestos. Those particles may also meet the size and shape criteria of a "fiber," but they are still not asbestos.[35]

---

32 *See, e.g.*, 40 C.F.R. § 763 app. A § II.A.9.

33 IARC 2010 Monograph at 277.

34 *See* U.S. Mine Safety and Health Administration ("MSHA"): Asbestos Exposure Limit. 73 Fed. Reg. 11284, 11285 (Feb. 29, 2008) ("When pressure is applied, the nonasbestiform crystals fracture into prismatic particles, which are called cleavage fragments because they result from the particle's breaking or cleavage. Cleavage fragments may be formed when nonfibrous minerals are crushed, as may occur in mining and milling operations.").

35 *See e.g.,* IARC 2010 Monograph at 277 (explaining that, "when not asbestiform, [the six minerals] are referred to as mineral fragments or cleavage fragments," which minerals "may also be elongated without being asbestiform."). The plaintiff bar is well aware of this distinction. *See e.g.,* 3/5/2019 Dr. William Longo trial testimony in *Rimondi et al. v. BASF Catalysts LLC, et al.,* (Super. Ct. N.J., Middlesex Cnty.,

Concerns over exposure to asbestos dust have been raised since at least the 1930s, but became heightened in the 1960s in light of increasing evidence of an association between asbestos exposure and lung cancer and the discovery of mesothelioma as an asbestos-related disease. Concerns that J&J's talcum powder products might be contaminated with asbestos first arose in the early 1970s.

In 1971, the head of New York City's Environmental Protection Administration, Jerome Kretchmer, asked Dr. Arthur Langer of Mt. Sinai Hospital to test various commercially available talc-based products for asbestos. Dr. Langer thereafter reported preliminary results indicating that samples from two undisclosed brands may have contained asbestos, prompting a press conference in June 1971 in which Mr. Kretchmer broadly asserted that "common talcum powder may contain potentially harmful quantities of asbestos particles" and that tests on two brands "revealed asbestos content ranging from 5 to 25 percent" and called for a federal investigation.[36]

This precipitated an approximately five-year period of public inquiry and investigation. During that period, regulators, industry representatives, and scientific experts debated the testing methods most appropriate to accurately detect the potential of asbestos in talc, and there were inconsistent, and often erroneous, reports concerning asbestos contamination of talc. Throughout that time, those reports and the asbestos-talcum powder controversy were widely publicized,

---

No. MID-2912-17-AS) at 147:23-148:2 ("You can't take pieces of the non-asbestos rock and break it up and then call it asbestos.").

36 Lawrence, S., "Talc Mnfr. Chafes at Warning", New York Post (7/30/1971), JNJ 000314584. In response to this claim, J&J publicly stated in 1971 that "[o]ur 50 years of research knowledge in this area indicates there is no asbestos in the powder made by Johnson and Johnson." 6/29/1971 Statement issued to New York Daily News and New York Post, JNJMX68_000015777.

including in outlets such as the *New York Times*[37] and the *Wall Street Journal*.[38]

On July 8, 1971, J&J met with the FDA concerning the safety of talc.[39] J&J provided the FDA with two reports from the Colorado School of Mines Research Institute ("CSM"), which included x-ray analyses of its Vermont and Italian talc products and a sample of lot "344L"—the same lot as the sample that Dr. Langer tested—as well as an additional report from a professor at Dartmouth concerning methods for analyzing talc.[40] A doctor from J&J then visited Dr. Langer in his lab, where Dr. Langer demonstrated the technique he had used to analyze talc.[41] He analyzed a sample of Johnson's Baby Powder using light microscopy, and claimed to have found some "non-plate particles," which "could be amphiboles[,] other asbestos forms, or fibrous talc."[42] The J&J doctor disagreed, believing that they were talc plate fragments.[43] Dr. Langer stated that using that technique he had estimated that Johnson's Baby Powder contained 5%

---

37 3/10/1976 The New York Times, *Asbestos Found In Ten Powders*. JNJ 000004381.

38 3/12/1973 Letter from Dr. Lewin to the Editor of the Wall Street Journal re: Asbestos Report, JNJ 000244743.

39 7/8/1971 Memorandum of Meeting between J&J and FDA re: Asbestos Particles in Talc, JNJTALC000411518-521.

40 *Id.*; 6/24/1971 CSMRI Report on Particle Size and Shape Distribution of Grantham, Italian and Vermont Talc Final Products, JNJ 000234805-812; 7/7/1971 Letter from M. Pattengill to W. Ashton re results of re x-ray analyses on Vermont talc samples, JNJTALC000291175-178. The CSM reports initially identified trace amounts of "tremolite-actinolite" and "nontalc needles" in certain of the samples. These reports were disclosed to the FDA, but CSM subsequently clarified that further testing had shown no asbestos or "asbestos-type minerals," and that the "nontalc" needles were in fact most likely rolled up plates of talc. CSM concluded that "we cannot positively identify any asbestos-type minerals in the Vermont final product samples." 8/6/1971 Letter from Colorado School of Mines to Bill Ashton Re Vermont Talc Samples, JNJTALC000091746. The Dartmouth report similarly concluded that "[n]o amphibole, garnet or asbestos impurities were observed . . . ." 6/28/1971 Dartmouth University Letter to R.N. Miller (Windsor) re X-ray and Optical Examination of Talc Products, JNJTALC000292635-640 at 5.

41 7/9/1971 Internal J&J Memorandum Summarizing J&J's July 9, 1971 Meeting with Dr. Langer, JNJTALC000298751-756.

42 *Id*. at 3-4.

43 *Id.*

"fibrotic" particles, "of which some could be 'asbestos[.]'"[44] Using electron microscopy, Dr. Langer claimed to identify certain fibers as chrysotile by their appearance.[45]

In response to a June 1971 letter from Mr. Kretchmer, and due to "differing reports" concerning potential contamination of talc with asbestos, the FDA began its own investigation.[46] On August 3, 1971, the FDA hosted a symposium titled "Asbestos and Talc," attended by over 40 scientists, physicians, and consumers.[47] Participants discussed a variety of testing instruments available to test talc for the presence of asbestos, including x-ray diffraction ("XRD"), Polarized Light Microscopy ("PLM"), and Transmission Electron Microscopy ("TEM") with selected area electron diffraction ("SAED").[48] The FDA proposed to collect and synthesize detailed procedures on analytical methodology for comment.[49] The FDA also commissioned Dr. Seymour Lewin of New York University—an internationally recognized expert on mineralogical chemistry and one of the participants in the symposium—to test various talc products for asbestos and study what testing protocols would be most effective.[50] Initially, Dr. Lewin was asked to test 100 samples of commercially available product, although that mandate was ultimately expanded to 195.[51]

---

[44] *Id.* at 4.

[45] *Id.* at 5.

[46] 8/3/1971 FDA Memorandum Regarding the Aug. 3, 1971 Symposium About Asbestos and Talc, JNJ 000086545-551.

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.*; 7/31/1973 Internal FDA Memorandum from Alfred Weissler to Robert M. Schaffner re Summary and Comments on Prof. Lewin's Analytical Results for Asbestos in Talc [Recently identified on publicly filed exhibit list in *Prudencio* as DX-17068] at 1.

[51] 7/31/1973 Internal FDA Memorandum from Alfred Weissler to Robert M. Schaffner re Summary and Comments on Prof. Lewin's Analytical Results for Asbestos in Talc [Recently identified on publicly filed exhibit list in *Prudencio* as DX-17068] at 1.

Meanwhile, J&J provided samples of its Vermont talc—including from the same 344L lot tested by Dr. Langer—to various outside experts, including CSM, Dr. Fred Pooley of the Cardiff University Department of Mineral Exploration, and McCrone Associates, Inc. ("McCrone"), which was at the time regarded as one of the leading experts in particulate testing.[52] None were able to replicate Dr. Langer's finding of asbestos.[53]

In June 1972, a *New York Times* article reported that Dr. Langer had admitted that his preliminary findings were incorrect.[54] He stated that the New York City EPA's 1971 claim that he had found "from 5 to 25 per cent asbestos fibers" in talc from J&J and another company was "absolutely untrue."[55] He clarified that further analysis found only "trace amounts,"[56] and that what "he thought to be mineral fibers turned out in later research to be talc itself."[57] A spokesperson for the FDA was also quoted as saying that tests of Johnson's Baby Powder in March 1972 had shown "no detectable content of asbestos."[58]

In August 1972, Dr. Lewin provided preliminary results from his testing of the first 100 samples to the FDA.[59] Although samples of Johnson's Baby Powder and another product—J&J's Medicated Powder—were found to be free from asbestos, Dr. Lewin claimed to have found up to

---

52 8/10/1971 Fred Pooley's Report Analyzing 10 Talc Samples, JNJ 000274547-556; 8/19/1971 McCrone Report Analyzing the Vermont #344-L Sample, JNJ 000260792-799; 8/6/1971 Letter from Colorado School of Mines to Bill Ashton Re Vermont Talc Samples, JNJTALC000091746.

53 *Id*.

54 Lichtenstein, G., *Talc Warning is Labeled False*, N.Y. Times (6/17/1972), JNJ 000244787.

55 *Id*.

56 On November 10, 1971, responding to an August 9 inquiry from J&J, Dr. Langer informed J&J that he had found "trace amounts"—less than 0.01%—of chrysotile in a talc sample of lot 344L Vermont talc. 11/10/1971 Letter from Dr. Langer to Hildick-Smith re Tenovus Samples, JNJTALC000298765-767 at 3.

57 Lichtenstein, G., *Talc Warning is Labeled False*, N.Y. Times (6/17/1972), JNJ 000244787.

58 *Id*.

59 8/3/1972 Letter from Dr. Lewin to Dr. Weissler [Recently identified on publicly filed exhibit list in *Prudencio* as DX-20118].

5% chrysotile in a sample of J&J's Shower to Shower product, which was produced from Italian talc, by x-ray diffraction.[60] J&J's own testing had found no chrysotile in Italian talc, its Shower to Shower product, or the sample studied by Dr. Lewin.[61]

In connection with a presentation before the FDA in September 1972, J&J provided the FDA with the reports it had received from Dr. Pooley, Atomic Energy Research Establishment at Harwell, the Mining Institute of Torino, Italy, Massachusetts Institute of Technology, Princeton University, McCrone, CSM, Carnegie-Mellon University, and Sperry Rand concerning Shower to Shower and the Italian talc mine from which the talc in that product was sourced.[62] The data in those reports firmly established that (i) there was no chrysotile asbestos in the Italian mine; (ii) the powder made from Italian talc has been shown to be free from chrysotile; (iii) "investigations by all available methods" failed to establish the presence of any chrysotile in Shower to Shower; and, ultimately (iv) that "Lewin's finding [was] wrong and [had] no basis in fact."[63]

Around the time of the September 1972 FDA meeting, Dr. Lewin reported updated preliminary results from his expanded testing of 195 samples.[64] In addition to his prior findings with regards to Shower to Shower, Dr. Lewin claimed to have found 2-3% chrysotile in two samples of Johnson's Baby Powder produced from Vermont talc (samples from lot "108T" and lot "109T").[65] The McCrone laboratory later determined that particles identified as chrysotile by

---

60 *Id.*

61 10/17/1972 Letter from W. Nashed to R. Schaffner re Shower-To-Shower Brand Body Powder with attachment, JNJTALC000300260-496.

62 *Id.*

63 *Id.* at 2.

64 9/26/1972 Findings on Johnson & Johnson Products from a Report by Dr. S. Lewin, JNJ 000232996-3002.

65 *Id.*

Dr. Lewin during the meeting were, in fact, calcium silicate.[66]

J&J submitted retained samples of talc from the same lots—108T and 109T—to many of the same external experts that had tested its Shower to Shower product, including McCrone, CSM, Dr. Pooley, and Professor Brown of Princeton University.[67] J&J also conducted its own testing.[68] On November 29, 1972, J&J submitted the results of those tests to the FDA, indicating that they "clearly show that the lots in question . . . contain no chrysotile asbestos."[69] Other internal and external investigators engaged by the FDA reported results that were also inconsistent with Dr. Lewin's findings.[70]

In a letter to the editor of the *Wall Street Journal* in March 1973, Dr. Lewin wrote that prior reports that he had found 2% to 3% chrysotile in J&J talc were erroneous.[71] He clarified that there was no asbestos in 9 of the 11 samples tested, and that the results for the other two samples had been "inconclusive[,]" owing to the limitations inherent in his testing methods.[72] His results, he stated, were "not seriously at variance with those reported by investigators retained by [J&J]."[73] In July 1973, Dr. Lewin made a final report to the FDA.[74] In that report, he noted that the chrysotile he had found in some commercial talc is "different in significant

66 10/9/1972 Memo from Walter McCrone to Ian Stewart re: Visit with Dr. Seymour Lewin, 10/3/1972, JNJTALC000437173-179.

67 11/29/1972 Submission by Dr. Nashed to FDA re: Johnson's Baby Powder, JNJ 000317600-658.

68 *Id.* at 65.

69 *Id.*

70 *See, e.g.*, 1/7/1976 Yates (FDA) memo to Eiermann (FDA) re: Tabulated results of DCST's Analyses for Asbestos Minerals [Recently identified on publicly filed exhibit list in *Prudencio* as DX-17113].

71 3/12/1973 Letter from Lewin to the Editor of the Wall Street Journal re Asbestos Report, JNJ 000244743.

72 *Id.*

73 *Id.*

74 7/10/1973 Memo from Prof. Seymour Lewin (NYU) to George Thompson (FDA) Final Report: Determination of Asbestos Contents of Commercial Talcum Powders [Recently identified on publicly filed exhibit list in *Prudencio* as DX-17066].

respects" from that found in nature, and that several "complicat[ing]" factors made identification and quantification of chrysotile difficult.[75] The report did not list any amount of chrysotile detected in J&J products, but also did not state "n.d." or "none detected."[76] Rather, Dr. Lewin reported a "?" as to the chrysotile content of each sample for which he had previously reported a finding of chrysotile.[77]

An FDA memorandum summarizing and commenting on Dr. Lewin's report noted significant inconsistencies between Dr. Lewin's findings and those of other laboratories consulted by the FDA (as well as those of J&J and its consultants), which the FDA found may have been caused by Dr. Lewin's expansive definition of what should be considered "chrysotile."[78] Later in 1973, again citing "poor correlation between Dr. Lewin's results and the findings of the other investigators[,]" the FDA instituted "an intensive research project to develop one or several methods of sufficient sensitivity and reliability which will permit the determination of asbestos in talc-containing products with the necessary degree of accuracy and at concentrations at which this contaminant presents the health hazard."[79]

By early January 1976, the Division of Cosmetics Technology, a former department at the FDA, had internally retested all of the samples previously tested by Dr. Lewin using either differential thermal analysis ("DTA") or optical microscopy.[80] It found no chrysotile in J&J's

---

75 *Id.* at 2.

76 *Id.*

77 *Id.* at tbl. 1.

78 7/31/1973 Internal FDA Memorandum from Alfred Weissler to Robert M. Schaffner re Summary and Comments on Prof. Lewin's Analytical Results for Asbestos in Talc [Recently identified on publicly filed exhibit list in *Prudencio* as DX-17068].

79 10/1/1973 Memo from Heinz J. Eiermann, "Summary and Comments on Analyses for Asbestos in Cosmetic Talc Products," JNJ 000247504.

80 1/7/1976 Yates (FDA) memo to Eiermann (FDA) re: Tabulated results of DCST's Analyses for Asbestos Minerals [Recently identified on publicly filed exhibit list in *Prudencio* as DX-17113].

talcum powder products.[81] Later that same year, Dr. Langer and others from the Mt. Sinai Environmental Sciences Laboratory published a study of 21 talc-based cosmetic products—including two Johnson's Baby Powder samples, one manufactured in the U.S. and one in the U.K., and one Johnson's Medicated Powder—that had been conducted as part of a study of effective techniques for measuring the presence of asbestos in talc.[82] That study used several methods to test the products, including TEM, and found no asbestos in J&J's talcum powder products.[83] A press release from Mt. Sinai at the time stated that "the most commonly used baby talc[,]" which was Johnson's Baby Powder, "has been consistently free of asbestos[,]" and that it was "the opinion of Mount Sinai's Department of Pediatrics that baby talc is a useful and safe product."[84]

D. Since the 1980s, Studies Have Failed to Demonstrate Support for Claims that Talc Causes Ovarian Cancer.

The first known study investigating a potential association between talc powder use in the female genital area and ovarian cancer was conducted by Dr. Daniel W. Cramer, who published a study in the July 15, 1982 issue of the journal *Cancer* (the "Cramer Study").[85] The Cramer Study was a "case-control" study, a type of observational study that compares persons who have

---

81 *Id.* In 1980, in a book titled "The Asbestos Particle Atlas," prepared as part of a project with the U.S. EPA concerning asbestos testing using microscopy, Dr. McCrone wrote of Dr. Lewin's work that to "the credit of the FDA, they did not push the panic button but did alert the cosmetics industry and retain[ed] additional experts to check these alarming results" and it "finally became apparent that [Dr. Lewin's] original report was grossly wrong." McCrone, W., THE ASBESTOS PARTICLE ATLAS (1980) at 3. Dr. McCrone also criticized a 1976 report from Dr. Langer at Mt. Sinai, which claimed to find asbestos in talc products (but not J&J's talcum powder products), for counting non-chrysotile, "nonfibrous" amphiboles as asbestos based on aspect ratio, a decision Dr. McCrone called "silly[.]" *Id.* at 4.

82 Rohl, A. N., et al., "Consumer Talcums and Powders: Mineral and Chemical Characterization," J. OF TOXICOL. AND ENV'T HEALTH, 2:255-284 (1976) ("Rohl 1976").

83 *Id.*

84 3/23/1976 Press Release from Dr. Thomas Chalmers, President of Mt. Sinai Medical Center, JNJ 000026953-955.

85 Daniel W. Cramer et al., *Ovarian Cancer and Talc: A Case-Control Study*, 50 CANCER 372 (1982).

experienced a particular outcome or disease (cases)—in this case ovarian cancer—with persons who have not (controls), looking back (retrospectively) and attempting to measure in each group exposures of interest and assess potential risk factors. The study involved 430 women: 215 women who were diagnosed with ovarian cancer in and around Boston between November 1978 and September 1981 and 215 women matched by age, race, and residence were interviewed to determine, *inter alia*, medical and family history, environmental exposures, and potential or definite past talc exposure by way of contraceptive practices, operations, or perineal hygiene.[86]

Because they require less time to conduct than prospective (or forward looking) observational studies, as well as allowing for analysis of multiple risk factors, case control studies often are used to generate initial hypotheses.[87] But while prospective studies may also have certain limitations, case-control studies have certain unique limitations when used to investigate hypotheses. For example, exposure data may be impaired by recall bias—the tendency of people already diagnosed with a disease to more readily recall exposure to an agent.[88] The effect of a particular risk factor may also be distorted by "confounding," which

---

86 *Id.* at 372-73.

87 *See* S. Lewallen & P. Courtright, *Epidemiology in Practice: Case-Control Studies*, 11 CMT'Y EYE HEALTH 57, 57 (1998) ("Lewallen & Courtright 1998") (Case-control studies "are comparatively quick, inexpensive, and easy. . . . Because of their efficiency, they may also be ideal for preliminary investigation of a suspected risk factor for a common condition; conclusions may be used to justify a more costly and time-consuming longitudinal study later."); Michael D. Green et al., *Reference Guide on Epidemiology*, in REFERENCE MANUAL ON SCIENTIFIC EVIDENCE 549, 560 (3rd ed. 2011) ("Green 2011") ("An advantage of the case-control study is that it usually can be completed in less time and with less expense than a cohort study.").

88 *See* Lewallen & Courtright 1998 at 58; Katie M. O'Brien et al., *Association of Powder Use in the Genital Area With Risk of Ovarian Cancer*, 323 J. AM. MED. ASS'N 49, 50 (2020) ("O'Brien 2020") ("Case-control studies have reported positive associations . . . However, these findings may be affected by recall bias, and a recent surge in talc-related lawsuits and media coverage has increased this possibility. Thus, it is crucial to evaluate the talc–ovarian cancer association using prospective data."); Berge et al., *Genital Use of Talc and Risk of Ovarian Cancer: A Meta-Analysis*, 27(3) EUR J. CANCER PREVENTION 248, 253 (2018) ("Berge 2018") ("The fact that the association between genital talc use and risk of ovarian cancer is present in case-control, but not in cohort studies, can be attributed to bias in the former type of studies."); Langseth, et al., *Perineal Use of Talc and Risk of Ovarian Cancer*, 62 J. EPIDEMIOLOGY & CMT'Y HEALTH 358, 358 (2008) ("Langseth 2008") ("Another source of recall bias could result from the fact that women with the cancer

occurs when an exposure and disease are actually both strongly associated with other factors that influence the outcome.[89]

According to the Cramer Study, the "only significant finding was an association between ovarian cancer and hygienic practices involving the use of talc on the perineum."[90] The study noted, however, that the reason for the association was unclear and called for further investigation into the ways talc might interact with known risk factors, as well as additional epidemiological study with "[m]ore precise details on the exact nature and frequency of the exposure . . . ."[91] It is important to note that "association" does not mean "causation." "[W]hether an association is causal requires an understanding of the strengths and weaknesses of the study's design and implementation, as well as a judgment about how the study findings fit with other scientific knowledge."[92]

Nonetheless, J&J/Old JJCI took the assertions made in the Cramer Study seriously, but believed that there were critical flaws in the data used to support Dr. Cramer's conclusion that there may be an association between talc and ovarian cancer. Two representatives—including Old JJCI's Medical Director—met with Dr. Cramer in Boston shortly after publication and,

---

tend to remember or over report their use of body powder. The influence of this type of recall bias cannot be ruled out.").

89 Lewallen & Courtright 1998 at 58.

90 Cramer Study at 375. About 43% of the cases indicated in their interviews that they regularly used talc either as powder on their perineum or on sanitary napkins (or both) compared to about 28% of the controls, resulting in an adjusted relative risk of 1.92 with 95% confidence limits of 1.27-2.89 compared to subjects who had neither exposure. *Id.* at 374. The study further stated "[i]t is especially notable that women who regularly had both dusted their perineum with talc and had used it on sanitary napkins had more than a three-fold increase in risk compared to women with neither exposure. Several potential biases must be considered in interpreting this association." *Id.* at 375.

91 *Id.* at 376.

92 Green 2011 at 553.

among other things, raised their concerns with Dr. Cramer's study design.[93] Dr. Cramer admitted flaws in his study, yet stood by the conclusion.[94] J&J/Old JJCI presented a critique of the Cramer Study at a 1982 meeting of the Cosmetics, Toiletries and Fragrance Association's ("CTFA") Pharmacology & Toxicology Committee, which Committee thereafter decided to engage a consulting epidemiologist to review the study and form a task force to investigate further.[95] The Cramer Study and J&J's/Old JJCI's response thereto received media attention, including an August 12, 1982 *New York Times* article.[96]

In the close to four decades between the Cramer Study in 1982 and today, at least 34 case-control studies, including Cramer (1982), have been published looking at a potential association between perineal talc use and ovarian cancer. 27 such studies were population-based, meaning the cases were selected from a defined population, such as a fixed geographic area, and the controls were healthy women randomly selected from the same population. Seven were hospital-based, meaning the controls were selected from among women referred to the same medical facility as the cases, but for reasons other than ovarian cancer, and included 4,124 total participants. In all, 17 of the 27 population-based studies reported some association, but with risk ratios ranging only from 1.2 to 1.9. Such a relative risk is considered weak by

93 Among other issues, Old JJCI raised the following with Dr. Cramer: (i) Dr. Cramer's questionnaire only asked about current usage of talc (not historical usage); and (ii) the discrepancy between the low (28%) use of talc in the perineal area by Dr. Cramer's control group and the results of market research, which showed close to 70% of the 2,214 females surveyed indicated that they had used talc, and thus reflected an issue with the representativeness of Cramer's control group. *See* 8/12/1982 Memo from Steven Phillips re "Talc and Ovarian Cancer – Site Visit with Dr. Cramer," JNJ 000029640 – 41.

94 *Id.*

95 *See* 8/20/1982 Memo from George Lee re "CTFA Pharmacology & Toxicology Committee – Ovarian Cancer and Talc," JNJ 000029639.

96 *See Talcum Company Calls Study on Cancer Link Inconclusive*, The New York Times (Aug. 12, 1982), *available at* https://www.nytimes.com/1982/08/12/business/talcum-company-calls-study-on-cancer-link-inconclusive.html.

epidemiological standards.[97] Significantly, none of the hospital-based studies, which have a reduced risk of recall bias, reported a statistically significant association.

While the case-control studies are inconsistent as to the finding of a statistically significant positive association, not one of the authors of the case-control studies that reported an "association" took the position that its findings establish causation.

In addition to the case-control studies, there have been four published cohort studies examining whether there is an association between talc exposure and ovarian cancer. Unlike case-control studies, cohort studies are prospective, in that they identify a group of healthy subjects and follow them forward in time to see how many develop the disease being studied. In total, the cohort studies followed more than 200,000 women, and **none of the studies reported an overall association between exposure to talc and ovarian cancer**.

The first published cohort study ("Gertig 2000")[98] was based on data from the Nurses' Health Study ("Nurse's Study" or "NHS"), a U.S. government-funded study that began in 1976 and followed more than 121,700 female registered nurses ages 30-55 to identify risk factors for major chronic diseases. Every two years, the women answered questions concerning their

[97] Wynder, et al., *Weak Associations in Epidemiology and Their Interpretation*, 11 PREVENTATIVE MED. 464, 465 (1982) ("Wynder 1982") ("[T]he term 'weak' refers to relative risks between 1.0 and 2.0."); Berge 2018 at 248 ("weak" association); Nat'l Cancer Inst., Ovarian, Fallopian Tube, and Primary Peritoneal Cancer Prevention (PDQ®)–Health Professional Version, *available at* https://www.cancer.gov/types/ovarian/hp/ovarian-prevention-pdq (last updated July 8, 2021) ("NCI 2021 PDQ") (NCI concluding that "[t]he weight of evidence ***does not support an association*** between perineal talc exposure and an increased risk of ovarian cancer") (emphasis added); 4/1/2014 FDA's 2014 denial of Citizen's Petition requesting warning on talcum powder products and related correspondence [Recently identified on publicly filed exhibit list in *Prudencio* at DX-17456] at 4 (discounting the case-control studies that reported a "small positive association[]" because they have confidence intervals that "are often close to 1.0"); IARC 2010 Monograph at 412 (referring to the association as "modest"); Gossett & del Carmen, *Use of Powder in the Genital Area and Ovarian Cancer Risk*, 323(1) JAMA 29, 29 (2020) ("Gossett & del Carmen 2020") (describing several case-control studies on the alleged link between ovarian cancer and perineal talc use as having "relatively small effect sizes—odds ratios (ORs) of 1.24 to 1.6.").

[98] Gertig et al., *Prospective Study of Talc Use and Ovarian Cancer*, 92 J. NAT'L CANCER INST. 249 (2000).

medical history and risk factors for a number of diseases. In 1982, they were asked about the frequency of their exposure to perineal talc. The responses to those questions were used to identify a cohort of 78,630 women analyzed in the Gertig 2000 study. The study reported "no overall association with ever talc use and epithelial ovarian cancer" and "no increase in risk of ovarian cancer with increasing frequency of use" (*i.e.*, no "dose response").[99] When the data was stratified by histologic type, "[t]here was a modest elevation in risk for ever talc use and invasive serous ovarian cancer" (although not all serous cancers),[100] but the authors concluded that the "results provide little support for any substantial association between perineal talc use and ovarian cancer risk overall[.]"[101]

The second published cohort study ("Gates 2010")[102] reported on the Nurse's Study after ten additional years of follow-up. This study was designed to specifically evaluate the risk factors for various histologic types of epithelial ovarian cancer.[103] Like the Gertig 2000 study, Gates 2010 found no overall association between talc use and ovarian cancer.[104] Moreover, Gates 2010 found no elevated risk specific to invasive serous ovarian cancer,[105] meaning that the potential association previously detected was no longer seen after an additional decade of research and the diagnosis of an additional 490 cases.

---

99 *Id.* at 249.

100 *Id.*

101 *Id.*

102 Gates et al., *Risk Factors for Epithelial Ovarian Cancer by Histologic Subtype*, 171 AM. J. EPIDEMIOLOGY 45 (2010).

103 *Id.* at 45.

104 *Id.* at 50 tbl. 4.

105 *Id.*

The third cohort study ("Houghton 2014")[106] used data from the Women's Health Initiative ("WHI") Study, which was established by the U.S. National Institutes of Health in 1991 to study the health of postmenopausal women. The portion of the study looking at talc use followed 61,576 women, 52.6% of whom said they had used talcum powder in the perineal area (some for decades), from 1993 and 2012.[107] The study found no increased risk from "any" genital use of talc, from use for 10 or more years or 20 or more years, or from use on sanitary napkins or diaphragms, and ultimately concluded that "perineal powder use does not appear to influence ovarian cancer risk."[108]

A fourth cohort study ("Gonzalez 2016")[109] looked at data from the "Sister Study," a study that enrolled 50,884 women in the U.S. and Puerto Rico who had a sister diagnosed with breast cancer, and followed 41,654 of those women for a median 6.5 years. Gonzalez 2016 found no association between the use of talc and ovarian cancer.[110] Gonzalez 2016 actually found an inverse association between talc and ovarian cancer, which would suggest that talc prevented such cancer, however that association was not statistically significant.[111]

Finally, a number of "meta-analyses" and "pooled studies"—which use statistical methods to combine, assess, and summarize results and data from multiple of the above-

---

106 Houghton et al., *Perineal Powder Use and Risk of Ovarian Cancer*, 106(9) J. NAT'L CANCER INST. 1 (2014).

107 *Id.* at 1.

108 *Id.*

109 Gonzalez et al., *Douching, Talc Use, and Risk of Ovarian Cancer*, 27(6) EPIDEMIOLOGY 797 (2016).

110 *Id.* at 797, 802.

111 *Id.* at 800. Gonzalez 2016 separately found an association between douching and ovarian cancer, and a correlation between douching and talc exposure, suggesting that douching could be a confounding factor in studies of talc and ovarian cancer risk. *Id.*

described studies—have been conducted. Those analyses have generally reported a relative risk of approximately 1.3 driven largely, if not exclusively, by the case-control studies noted above.

For instance, two recent studies that stratified their results by study type, Berge 2018 and ("Penninkilampi 2018"),[112] both found a statistically significant increase in risk suggested by the case-control studies (Berge 2018 classified that association as "weak"), but no statistically significant increased risk suggested by the cohort studies.[113] Berge 2018 noted that "studies reported during the last three decades have not been consistent" and that "[i]t remains unclear whether a statistical association exists, and, if so, whether it can be interpreted as reflecting some form of bias or a causal relationship."[114] Further, although a "small but statistically significant association" was identified, "the heterogeneity of results between case-control and cohort studies," and the weak trend in relative risk with "duration and frequency of genital talc use" "do not support a causal interpretation of the association."[115] The results of the review in Penninkilampi 2018 "indicate[d] that perineal talc use is associated with a 24%-39% increased risk of ovarian cancer."[116] The authors noted that the evidence was "suggestive"—though not dispositive—"of a causal association," despite the fact that "the results of case-control studies are

---

112 Penninkilampi et al., *Perineal Talc Use and Ovarian Cancer: A Systematic Review and Meta-Analysis*, 29 EPIDEMIOLOGY 41 (2018).

113 Berge 2018 at 251; Penninkilampi 2018 at 44.

114 Berge 2018 at 249. In addition to showing up only in "case-control studies," Berge 2018 noted that the "small but statistically significant association" was limited to the "serous histologic type" of ovarian cancer. *Id*. at 256.

115 Berge 2018 at 248, 256. Penninkilampi 2018, discussing the talc-litigation facing J&J/Old JJCI, noted that "[t]he evidence for the association between perineal talc use and ovarian cancer is based on the body of knowledge from observational studies, and most of these have been retrospective case-control studies prone to recall bias. Hence, while perineal talc use has not been shown to be safe, in a similar regard, a certain causal link between talc use and ovarian cancer has not yet been established." Penninkilampi 2018 at 42.

116 Penninkilampi 2018 at 47.

prone to recall bias, especially with intense media attention following the commencement of litigation in 2014."[117]

Most recently, a January 2020 U.S. government-funded pooled analysis published in the Journal of the American Medical Association (O'Brien 2020) reviewed the data on over 250,000 women pooled from the cohort studies—NHS (as well as a follow-up to the original NHS), the Sister Study, and the WHI. The study was led by an epidemiologist from the National Institute of Environmental Health Sciences, and was specific to the association between perineal talc use and ovarian cancer. The authors reported that "there was not a statistically significant association between use of powder in the genital area and incident ovarian cancer" and, moreover, there was no evidence of a strong ovarian cancer risk when researchers looked at women who had used talc for longer periods, or more frequently.[118]

E. Decades of Examination by Regulatory and Health Authorities Demonstrate the Safety of Johnson's Baby Powder.

Following claims in the 1970s and 1980s that talc body products purportedly contained asbestos and that talc could increase the risk of cancer, the FDA and other health authorities have repeatedly examined and weighed in on the safety of talc products.

In July 1986, the FDA responded to a Citizen Petition concerning the safety of talc submitted by a graduate student of Marine Environmental Sciences named Phillippe Douillet (the "Douillet Petition").[119] Citing studies from the 1970s that purportedly detected asbestos in

117 *Id.*

118 O'Brien 2020 at 49.

119 7/11/1986 Letter from J.W. Swanson, Acting Associate Commissioner for Regulatory Affairs, U.S. Food and Drug Administration, to P. Douillet with enclosures re: Petition Requesting that Cosmetic Talc be Labeled with and Asbestos Warning Statement, and related correspondence [Recently identified on publicly filed exhibit list in *Prudencio* as DX-17214].

commercially available cosmetic talc products and the known health risks posed by asbestos, the Douillet Petition requested that the FDA mandate that cosmetic talc product labels include information concerning asbestos content, as well as a warning of the hazardous health effects of asbestos.[120]

In its response to the Douillet Petition, the FDA explained that the agency had also been concerned about potential asbestos contamination in the early 1970s, after it "received several reports about such contamination."[121] At that time, however, the "analytical procedures" for testing talc for asbestos "were not fully developed" and "most of the analytical work was conducted without scientific agreement as to which methods" for such testing were appropriate.[122] Therefore, FDA considered "all analytical results" during that period to be of "questionable reliability."[123] The FDA's response enclosed a National Bureau of Standards Special Publication titled "Misidentification of Asbestos in Talc[,]" which raised "many questions" about the testing that had been conducted in the early 1970s.[124] The agency also noted that the asbestos paper cited in the Douillet Petition specifically was plagued by "significant errors[,]" and had been rebutted by a report from the Chief Mineralogist at the Colorado School of Mines Research Institute.[125]

---

120 11/8/1983 Letter from Philippe Douillet to U.S. Food and Drug Administration regarding Citizen's Petition and related correspondence [Recently identified on publicly filed exhibit list in *Prudencio* as DX-17185].

121 7/11/1986 Letter from J.W. Swanson, Acting Associate Commissioner for Regulatory Affairs, U.S. Food and Drug Administration, to P. Douillet with enclosures re: Petition Requesting that Cosmetic Talc be Labeled with and Asbestos Warning Statement, and related correspondence [Recently identified on publicly filed exhibit list in *Prudencio* as DX-17214] at 3.

122 *Id.*

123 *Id.*

124 *Id.*

125 *Id.* at 4.

According to the FDA's response to the Douillet Petition, the agency, in light of inconsistent reports and uncertainty surrounding talc testing in the early 1970s, had decided to release to the public the testing reports that the FDA had received, and to work with the cosmetics industry to "develop[] acceptable analytical procedures."[126] In 1976, that effort culminated in the industry's adoption of the CTFA J4-1 Method, which required that cosmetic talc be free of detectable asbestos by a combination of x-ray diffraction and, if necessary, polarized light microscopy.[127] The FDA had also, "in the latter portion of the 1970s[,]" undertaken its own surveillance testing of cosmetic talc, which, according to its own risk assessment, showed that the "risk from a worst-case estimate of exposure to asbestos from cosmetic talc would be less than the risk from environmental background levels of exposure . . . over a lifetime."[128] Consequently, the FDA determined that there was no basis to conclude that there was a health hazard attributable to asbestos in talc, and that there was no basis to require a warning label.[129]

In connection with the FDA's evaluation of the Douillet Petition, the Department of Health and Human Services' Quantitative Risk Assessment Committee performed an assessment of the risk of lung cancer, mesothelioma, and ovarian cancer to infants from potential asbestos contamination in talc. The Committee's report, dated June 6, 1985, referenced the "general

---

126 *Id.*

127 10/7/1976 CTFA Method J 4-1, Testing Monograph; Asbestiform Amphibole Minerals in Cosmetic Talc, Part I: X-ray Diffraction Method, Part II: Optical Microscopy and Dispersion-Staining Method, JNJ 000405219-228.

128 7/11/1986 Letter from J.W. Swanson, Acting Associate Commissioner for Regulatory Affairs, U.S. Food and Drug Administration, to P. Douillet with enclosures re: Petition Requesting that Cosmetic Talc be Labeled with and Asbestos Warning Statement, and related correspondence [Recently identified on publicly filed exhibit list in *Prudencio* as DX-17214] at 4.

129 *Id.*

consensus that current talc mines are virtually free of asbestos[,]" but assumed two-year exposure to talc contaminated with 0.1% asbestos.[130] The report concluded that "any hypothetical systemic added lifetime cancer risk . . . to humans due to asbestos fibers in talc (principally for babies subject to 2 years of talc dusting) appears to be less than 10-8 added lifetime risk and possibly several orders of magnitude lower risk still[.]"[131] In surveying the relevant literature relating to ovarian cancer, the report criticized the Cramer Study as "uncorrected for several likely biasing factors," and "strongly contradicted by another study showing a reduced relative risk as significant in the negative direction[.]"[132] The report concluded that "there appears to be no association between customary human talc use per se and ovarian cancer."[133]

In early 1994, the FDA, the International Society of Regulatory Toxicology & Pharmacology ("ISRTP") and the CTFA, co-sponsored a public conference titled "Talc: Consumer Uses and Health Perspectives."[134] A primary focus of the conference, which was attended by a number of experts, industry and consumer representatives, and regulatory specialists, was "the then-latest toxicological and epidemiological studies as they related to the safe uses of talc in cosmetic products."[135] Of "special interest" was a study, published the prior year by the National Toxicology Program ("NTP"),[136] on the effects of micronized talc exposure

---

130 6/6/1985 Memo from Robert Brown, et al. (Quantitative Risk Assessment Committee) to W. Gary Flamm (Dir. Office Toxicology Sciences) re Asbestos in Talc, FDA00003626-3636 [Recently identified on publicly filed exhibit list in *Prudencio* as DX-17201] at 2.

131 *Id.* at 9.

132 *Id.* at 6.

133 *Id.* at 9.

134 1/31/ 1994 - FDA Workshop on Talc: Consumer Uses and Health Perspectives, JNJTALC000019209-588.

135 Fiume 2015 at 67S.

136 The NTP is an interagency program composed of, and supported by, three government agencies within the Department of Health and Human Services: the National Center for Toxicological Research of the FDA;

on rats and mice.[137] That study had found that there was some evidence of carcinogenic activity in male rats, based on increased incidences of tumors in the adrenal glands, and clear evidence in female rats based on increased incidence of tumors in the lungs and adrenal glands.[138] The study was publicly criticized for a number of reasons, including that the study had exposed the rats to such high levels of talc that the tumor formation observed was likely caused by "dust overload," and not talc specifically.[139] Experts also reviewed the epidemiological literature related to talc and ovarian cancer, as well as whether there was a basis to believe that talc applied to the perineal region could migrate to the ovaries. Ultimately, the workshop's panel concluded that the 1993 NTP study "cannot be considered as relevant predictors of human risk[,]" and that the "epidemiological data" concerning "the proposed association of talc exposure and ovarian cancer . . . are conflicting and remain equivocal" and inadequate to "raise concern at a level sufficient to warrant regulatory or public health measures[.]"[140]

---

the National Institute of Environmental Health Sciences of the National Institutes of Health; and the National Institute for Occupational Safety and Health of the Centers for Disease Control and Prevention.

137 National Toxicology Program. Toxicology and carcinogenesis studies of talc (CAS No. 14807-96-6) in F344/N rats and B6C3F1 mice (Inhalation studies). NTP TR 421.NIH Publication No. 93-3152. 1993.

138 *Id*. There was no evidence of carcinogenic activity in male or female mice. *Id*. Notably, a follow-up study that looked at the ovaries of the rats found no evidence of talc in the ovaries and no exposure related lesions or tumors. Boorman, G., et al., *The Lack of an Ovarian Effect of Lifetime Talc Exposure in F344/N Rats and B6C3F1 Mice*, REGUL. TOXICOL. PHARMACOL., 21(2):242-3 (1995).

139 Fiume 2015 at 93S.

140 Carr CJ (Rapporteur), *Talc: consumer uses and health perspectives. Proceedings of a workshop. Bethesda, Maryland, January 31-February 1, 1994*. REGUL. TOXICOL. PHARMACOL. 1995;21(2):211-215. Talc was nominated in 2000 for review in the NTP's 10th "Report on Carcinogens" ("RoC"), a report mandated by Congress that identifies agents, substances, mixtures, or exposure circumstances (collectively referred to as "substances") that may pose a carcinogenic hazard to human health. The nomination was based in part on the results of the 1993 NTP study, and epidemiological evidence of an association with ovarian cancer. National Toxicology Program, Call for Public Comments on 8 Nominations, Proposed for Listing in or Delisting from the Report on Carcinogens, Tenth Edition. 66 Fed. Reg. 13334-13338 (March 5, 2001). Ultimately, the NTP deferred consideration in 2001 and then withdrew talc from the review in 2005 due to "considerable confusion over the mineral nature and consequences of exposure to talc, both containing asbestiform fibers and not containing asbestiform fibers," which makes it impossible "to reach definitive conclusions concerning the specific substances responsible for the range of adverse health outcomes reported." *Id*; National Toxicology Program, Report on Carcinogens; Status of Nominations to the 12th Report on Carcinogens (RoC): Request for Comments and Nominations of Scientific Experts. 70 Fed. Reg.

In November 1994, another Citizen Petition was sent to the FDA, this time by Samuel Epstein on behalf of the Cancer Prevention Coalition, a consumer advocacy group (the "First Epstein Petition").[141] The petition, citing the "large body of scientific evidence . . . on the toxicology and mineralogy of cosmetic talc products," claimed that "[t]alc is a carcinogen, with or without the presence of asbestos-like fibers" and that "frequent talcum powder application in the genital area increases a woman's risk of developing ovarian cancer."[142] It further requested that the FDA require warning labels on talcum powder products, such as "Talcum powder causes cancer in laboratory animals. Frequent talc application in the female genital area increases the risk of ovarian cancer."[143] The FDA responded on July 11, 1995 to say that "because of the limited availability of resources and other agency priorities[,]" the agency had been unable to reach a decision on the First Epstein Petition within the first 180 days after filing.[144]

In May 2008, Dr. Epstein submitted a second petition to FDA (the "Second Epstein Petition"), again requesting that the FDA immediately require that labels for cosmetic talcum powder products contain a prominent warning, such as "Frequent talc application in the female genital area is responsible for major risks of ovarian cancer."[145] The petition cited to public

60548-60554 (Oct. 18, 2005). Today, talc is not included in the RoC, which was last issued in 2016. National Toxicology Program, Substances Listed in the Fourteenth Report on Carcinogens, Report on Carcinogens, Fourteenth Edition (Nov. 3, 2016), *available at* https://ntp.niehs.nih.gov/ntp/roc/content/listed_substances_508.pdf.

141 11/17/1994 Letter from Jill Cashen, Research Associate, Cancer Prevention Coalition Petition to Comm. Kessler, FDA, Enclosing Citizen Petition Seeking Carcinogenic Labeling on all Cosmetic Talc Products [Recently identified on publicly filed exhibit list in *Prudencio* at DX-17414].

142 *Id.* at 3-4.

143 *Id.* at 2.

144 7/11/1995 Letter from John Bailey, Act. Dir. Office Cosmetics and Colors, FDA to Jill Cashen, Cancer Prevention Coalition, Docket No. 94P-0420 [Recently identified on publicly filed exhibit list in *Prudencio* at DX-17398].

145 Epstein SS. Petition Seeking a Cancer Warning on Cosmetic Talc Products (May 13, 2008), *available at* https://www.reuters.com/investigates/special-report/assets/usa-health-fda-talc/epstein-2nd-petition.pdf.

statements and studies that had been conducted since the First Epstein Petition, and that, according to the petition, "confirm[ed]" a "causal relation between genital application of talc and ovarian cancer[.]"[146]

In 2009 and 2010, while evaluating the Epstein petitions, the FDA commissioned a survey of commercially available cosmetic talcs and talc-containing products, testing samples of talc collected from various suppliers as well as products purchased in stores in Washington, D.C.[147] The FDA tested both the Chinese talc used in Old JJCI's talcum powder products, as well as off-the-shelf samples of Old JJCI's talcum powder products.[148] The survey "found no asbestos fibers or structures in any of the samples of cosmetic-grade raw material talc or cosmetic products containing talc."[149]

In 2010, the World Health Organization's International Agency for Research on Cancer ("IARC") Working Group published its Monographs on the Evaluation of Carcinogenic Risks to Humans: Carbon Black, Titanium Dioxide, and Talc, reporting on its review of the scientific literature on talc to date. IARC concluded that the evidence was "inadequate" to assess whether inhaled talc caused cancer, and thus that "inhaled talc" was not classifiable as to its carcinogenicity to humans, but found that certain case-control studies showed a "modest" increase in risk of ovarian cancer from perineal use.[150] Although the report observed that "the impact of bias and potential confounding" on the results of the retrospective case-control studies

---

146 *Id.* at 3.

147 *Talc,* U.S. Food & Drug Administration (updated Aug. 18, 2020), *available at* https://www.fda.gov/cosmetics/cosmetic-ingredients/talc.

148 *Id.*

149 *Id.* at 6.

150 IARC 2010 Monograph at 412.

"could not be ruled out[,]" and that the results of the only prospective cohort study at the time did not support an association between talc and ovarian cancer,[151] IARC concluded that perineal use of talc-based body powder was possibly carcinogenic to humans. As a result of these conclusions, IARC gave talc a "Group 2B" classification,[152] which, under the IARC classification system meant that "there is limited evidence of carcinogenicity in humans and less than sufficient evidence of carcinogenicity in experimental animals."[153]

In April 2014, the FDA, following review of the First and Second Epstein Petitions (the "Petitions"), public comments received in response to the Petitions, and "additional scientific information," denied the Petitions due to a lack of "conclusive evidence of a causal association between talc use in the perineal area and ovarian cancer" or "that asbestos contaminated talc-containing cosmetic products are currently being marketed."[154] The FDA cited its own prior testing of commercially available products for asbestos, and the prior conclusion of a panel of experts at an FDA-sponsored workshop that the 1993 NTP study (cited in both Petitions) was not relevant to human risk. And despite acknowledging IARC's 2010 conclusion that there was limited evidence for the carcinogenicity of talc applied to the perineal area, the FDA found that "[r]esults of case-control studies do not demonstrate a consistent positive association across studies . . . dose-response evidence is lacking . . . [and a] cogent biological mechanism by which

---

151 *Id.* Since the IARC 2010 Monograph was published, additional cohort studies have been published that also do not support an association between talc and ovarian cancer.

152 *Id.*

153 *Id.* at 35. There are four categories in total: Group 1 means that the "agent is carcinogenic to humans"; Group 2A means the "agent is probably carcinogenic to humans"; Group 2B means that the "agent is possibly carcinogenic to humans"; and Group 3 means the "agent is not classifiable as to its carcinogenicity to humans." *See* https://monographs.iarc.who.int/agents-classified-by-the-iarc/.

154 4/1/2014 FDA's 2014 denial of Citizen's Petition requesting warning on talcum powder products and related correspondence [Recently identified on publicly filed exhibit list in *Prudencio* at DX-17456] at 1, 3.

talc might lead to ovarian cancer is lacking[.]"[155] The FDA also noted that "the results of the Nurse's Health Study, a large prospective study, revealed no overall association with ever talc use and epithelial ovarian cancer."[156]

Following the first adverse talc-related damages award against J&J/Old JJCI in February 2016 (see discussion of *Fox* below), Old JJCI reached out to the FDA to discuss the verdict.[157] The FDA requested that Old JJCI provide it with "all safety literature and data regarding talc, including data in support of the safety of this active ingredient and data that shows potential harmful effects for this active ingredient[.]"[158] On March 17, 2016, Old JJCI responded with a comprehensive submission concerning the safety of Johnson's Baby Powder that included a summary of key published reviews of talc safety and ovarian cancer, relevant post-marketing talc safety data collected by Old JJCI (including data from its adverse event reports database), and information on talc chemistry, manufacturing, and controls.[159]

In May 2018, the FDA contacted Old JJCI to request information related to the company's methods for testing talc used in cosmetic products.[160] Specifically, the FDA requested information regarding (i) what methods Old JJCI used to detect the presence of

---

155 *Id.* at 4-5.

156 *Id.* at 5.

157 3/17/2016 letter from J. Ekuta, D.V.M., Ph.D., RAC, FRAPS (J&J) to U.S. FDA re: Response to FDA Request for Information on Talc, JNJ 000639243-450.

158 2/25/2016 email from J. Adams-King (FDA) to L. Bryant (J&J) re: Information Request: Talc, JNJ 000636960-961.

159 3/17/2016 letter from J. Ekuta, D.V.M., Ph.D., RAC, FRAPS (J&J) to U.S. FDA re: Response to FDA Request for Information on Talc, JNJ 000639243-450. The company noted that "almost all" of the safety reports to the company concerning talc had been reported by or through attorneys involved in litigation against the company since 2014, and that clinical review of those cases "did not identify data to provide evidence to indicate a causal association between product use and ovarian cancer." *Id.*

160 5/25/2018 email from J. Ekuta (J&J) to L. Katz (FDA) re: Follow-up Regarding Your Request for a Teleconference with Johnson & Johnson Consumer Inc. (JJCI) Related to the Testing Methodology for Talc, JNJTALC000880349-353.

asbestos in talc; (ii) what standards or standardization procedures the company has in place to ensure that there are no asbestos particles in talc; and (iii) what "cut-off" is used by the company, if any, if asbestos is found in talc during testing.[161]

In a written submission to the FDA dated July 25, 2018, Old JJCI set forth detailed information concerning its standards and protocols related to talc testing, the methodologies used to ensure that its talc is not contaminated with asbestos, the testing that is conducted during the manufacturing process by its suppliers, the provisions of its supplier agreements relating to conformance with its talc-related standards and protocols, and the additional testing conducted as an audit by an independent third party lab.[162]

In 2017, the FDA again started an annual survey to test cosmetic talc products for the presence of asbestos. The FDA's ongoing testing of talc-based products continued into 2018 and 2019. Initially, those tests confirmed that Johnson's Baby Powder was not contaminated with asbestos.[163] Then, in October 2019, the FDA informed Old JJCI that a laboratory contracted by the FDA had claimed to find sub-trace amounts (<0.00002%) of chrysotile asbestos in a sample of Johnson's Baby Powder obtained by the FDA from Walmart.[164] Old JJCI immediately initiated a voluntarily recall of approximately 33,000 bottles of talc that had been manufactured in the same lot as the bottle tested, and launched a thorough investigation involving teams of

---

161 *Id.*

162 7/25/2018 submission from J. Ekuta D.V.M., Ph.D., RAC, FRAPS (J&J) to U.S. FDA re: Response to FDA Request for Information on Johnson & Johnson's Testing of Cosmetic Talc, JNJTALC000880697-1978.

163 9/20/2019 Letter from L. Katz, MD, MPH (FDA), to L. Szczepaniak (J&J), JNJTALC001402492.

164 *Baby Powder Manufacturer Voluntarily Recalls Products for Asbestos*, U.S. Food & Drug Administration (Oct. 18, 2019), *available at* https://www.fda.gov/food/cfsan-constituent-updates/baby-powder-manufacturer-voluntarily-recalls-product-asbestos#:~:text=On%20October%2018%2C%202019%2C%20Johnson,of%20cosmetic%20products%20for%20asbestos).

personnel from across the company, as well as confirmatory testing of samples from the same bottle, the same lot, and surrounding lots by two third-party labs, Bureau Veritas Labs and RJ Lee.[165] Following that investigation, in December 2019, Old JJCI announced that its investigation had determined that there was no asbestos in the FDA bottle tested by AMA, eliminated the possibility that the Old JJCI talc supply chain introduced asbestos into its talc, and identified test sample contamination and/or analyst error as the most probable root causes of the FDA's initial finding.[166]

To date, the FDA has not concluded, based on its review of the scientific literature, that there is a causal relationship between talc and ovarian cancer, and has not recommended that consumers generally avoid talcum powder products. Other public health authorities that have evaluated the scientific literature relating to talc also have not concluded that the existing evidence demonstrates that perineal exposure to talc causes ovarian cancer.

F. Decades of J&J's and Old JJCI's Testing Establish the Safety of Their Products.

J&J's/Old JJCI's approach to talc testing is and has been state of the art. Not only does the company meet regulatory and industry standards, it exceeds those standards. The company's talc testing program begins with selective mining—carefully chosen and vetted sources for talc—and continues with layers of quality assurance testing at every point in the manufacturing and production chain, up to the moment of bottling.

Importantly, the company does not do this work alone. It relies on industry experts to

165 12/3/2019 Johnson & Johnson Consumer Inc. Baby Powder Lot #22318RB Full Investigation Report [Recently identified on publicly filed exhibit list in *Prudencio* as DX-18901].

166 *Id.*

ensure its testing protocols are implemented at each stage of the process with a high level of precision and integrity. Indeed, it is precisely because the company's talc sourcing and testing program exceeds industry standards that dozens of government institutions, independent laboratories, and major universities that had studied and tested J&J's/Old JJCI's talc for decades before the current wave of cosmetic talc litigation time and again declared it free from asbestos.

1. Italian Talc

The earliest cosmetic talc at issue in the recent onslaught of litigation was sourced from Italy. J&J sourced its cosmetic talc from the Fontana mine in the Val Germanasca region of Italy from at least as early as the late 1920s through the late 1960s. In the 1950s and 1960s, J&J engaged the Battelle Memorial Institute ("Battelle") to examine the Italian talc, including subjecting the talc to optical microscopy testing. That testing at times identified "tremolite" in trace quantities but never identified asbestos in the Italian talc.[167]

In 1971 and 1972, when asbestos contamination in talcum powder began to be raised publicly as a possible concern, J&J engaged an expert mineralogist, Dr. Fred Pooley, of the geology department at the University of Cardiff in Wales, to conduct detailed studies of the Italian mine as well as samples of finished J&J product dating back to 1949. These analyses were conducted using a combination of x-ray diffraction (XRD), polarized light microscopy (PLM), and transmission electron microscopy (TEM).[168] In 1972, after a year of examining the Italian mine and the samples of products made with talc from that mine, Dr. Pooley's team confirmed that there was no asbestos in the mine or in any sample of J&J product made with talc

167 *See e.g.*, 5/23/1958 Progress Report on the Physical Concentration of Talc Ores - Flotation to Johnson and Johnson JNJNL61_000001341-368.

168 10/17/1972 Letter from W. Nashed to R. Schaffner re Shower-To-Shower Brand Body Powder with attachment, JNJTALC000300260-496.

from the mine.[169] In addition to Dr. Pooley, AERE Harwell, the Mining Institute of Torino, Italy, and others also submitted reports to J&J on the Italian mine and/or tested samples of J&J talcum powder products made from Italian talc in the early 1970s.[170] J&J submitted those reports to the FDA in 1972.[171]

2. Vermont Talc

J&J began sourcing its cosmetic talc from Vermont in the mid-1960s. As with its Italian source, J&J engaged outside experts to analyze its Vermont cosmetic talc source. For example, in 1970, J&J commissioned CSM to conduct extensive core drilling and testing of the Hammondsville ore body—portions of which would be the primary source of cosmetic talc until it was exhausted as a source.[172] In 1971 and 1972, Dr. Pooley conducted a study of Vermont talc that was similar to his study of Italian talc, including by visiting the mines and testing samples of Vermont ore and talcum powder. He found that any amphiboles present in Vermont talc "were found in discrete locations and not disseminated throughout the talc ore and were not asbestiform in character," and that there were no chrysotile fibers in the talc.[173]

During this time, J&J also implemented routine testing protocols to analyze its talc for the presence of asbestos. As noted, in the 1970s, the FDA worked with the talc industry to develop what became the industry-standard method of testing for the presence of asbestos in

---

169 *Id.*

170 *Id.*

171 *Id.*

172 12/4/1970 Geological Audit for Windsor Minerals from the Colorado School of Mines Research Institute, JNJAZ55_000015127-286.

173 10/1972 F.D. Pooley, Report on the Examination of Rock Samples from the Vermont Mines and related correspondence, JNJ 000321606-654 at 48.

cosmetic talc: the two-step J4-1 standard.[174] The J4-1 standard starts with x-ray diffraction (XRD), which can determine the presence of an amphibole, but cannot confirm whether that amphibole is asbestos.[175] If XRD reveals an amphibole, the next step is polarized light microscopy (PLM).[176]

The company did not only use the J4-1 method. Beginning in the early 1970s, J&J also employed a rigorous program of routine testing that exceeded the J4-1 industry standard by also requiring testing using transmission electron microscopy (TEM), an even more powerful microscope.[177] J&J's/Old JJCI's testing required that it or its supplier take samples from every hour of every shift, of every work day, and combine them into composite samples to be tested by multiple methods.[178] The TEM analyses were performed by world renowned microscopy laboratory McCrone Labs—a lab even plaintiffs' expert Dr. William Longo called "literally the best lab in the country."[179] McCrone consistently did not find asbestos. As they reported in 1987, McCrone had "continuously monitored [the] composite samples" and concluded that the "product is free of asbestos" based on (at that time) "over 15 years of closely examining this product."[180]

---

174 10/7/1976 CTFA Method J 4-1, Testing Monograph; Asbestiform Amphibole Minerals in Cosmetic Talc, Part I: X-ray Diffraction Method, Part II: Optical Microscopy and Dispersion-Staining Method, JNJ 000405219-228.

175 *Id.*

176 *Id.*

177 2/23/1978 J&J Letter to R. Miller re Windsor Minerals and Baby Products JNJ 000237200-201 at 1 ("[W]e intend [on] continuing to surpass the industry testing as reflected by CTFA's J4-1"); 6/28/1977 J&J Memorandum re Audit Testing of Windsor 66 Talc for Asbestos, JNJ 000252225-226 (showing TEM method TM 7024 in addition to applying J4-1).

178 2/23/1978 J&J Letter to R. Miller re Windsor Minerals and Baby Products JNJ 000237200-201.

179 8/13/2014 Dr. William Longo deposition testimony in *Fishbain, et al. v. Colgate-Palmolive Co., et al.*, (Super. Ct. N.J., Middlesex Cnty., No. MID-L-5633-13-AS) at 31:22-32:7.

180 5/21/1987 McCrone Letter from Stewart to Benninger re Monitoring Windsor's talc products, JNJ 000314361.

And, as time went on, Old JJCI added more steps to its testing and quality assurance process. By the 1990s, for example, Old JJCI required suppliers to produce a Certificate of Analysis with each shipment avowing that the talc has been tested and was not found to contain asbestos.[181]

3. Chinese Talc

Between 2003 and 2020, Old JJCI used Chinese talc for its talcum powder products sold in the U.S. The Chinese talc has at all times been subjected to rigorous, routine testing to confirm the absence of asbestos, and the routine testing has not uncovered the presence of asbestos in the talc. High grade un-milled ore was shipped to Old JJCI's supplier in the U.S. accompanied by a Certificate of Analysis confirming that the milled talc from the same source that was tested in China was free of detectable asbestos.[182] Upon arrival in the U.S., a composite sample would be collected and then tested by XRD, PLM, and TEM by Old JJCI's supplier, and the milled product was eventually sent to Old JJCI's external manufacturer Pharma Tech accompanied by a Certificate of Analysis confirming conformance with Old JJCI's specifications.[183] Additionally, each quarter since 2009 RJ Lee Group was added as an independent third-party lab to audit quarterly samples of milled talcum powder by XRD, PLM, and TEM methods.[184]

III. The Plaintiff Bar's Attempt To Create a New Mass Tort in Talc

Asbestos litigation is the longest running tort in American history. It already has undergone numerous iterations and waves, first focused on companies that made and sold

---

[181] 8/21/1995 J&J Consumer Companies Worldwide Specification; Analysis of Powdered Talc for Asbestiform Minerals by Transmission Electron Microscopy, JNJ 000132581-589 (TM 7024 protocol).

[182] 12/3/2019 Investigation Report, JNJTALC001284148-6279.

[183] *Id.*

[184] *Id.*

products with substantial amounts of amphibole asbestos added as a component, like thermal insulation (the so-called "big dusties"). Then, once those companies largely sought relief in bankruptcy, plaintiffs shifted focus to secondary and tertiary defendants, such as chrysotile product manufacturers and other industrial manufacturers who may have incorporated third-party asbestos containing products in their equipment. The litigation has survived over 100 bankruptcies and spawned special dockets in nearly every state.

Yet, for law firms that derive their revenue exclusively from mesothelioma cases (and there are dozens),[185] recent trends in asbestos litigation have been concerning, if not outright threatening. As predicted by scientists in the 1990s and early 2000s, the incidence rate of mesothelioma has finally begun to flatten, if not fall.[186] And, given that the vast majority of industries in the United States stopped using asbestos by the 1980s, the number of mesothelioma claimants who can credibly allege any, let alone significant, exposure to asbestos has been steadily declining.

It is against the backdrop of this declining niche industry that J&J and Old JJCI have emerged as new prime litigation targets. Suddenly, a new white powder (not unlike asbestos itself for story telling purposes), and hope for yet another wave of the never-ending tort, materialized.

---

185 *See, e.g.*, *Asbestos Lawyers,* Mesothelioma Lawyer Center, *available at* https://www.mesotheliomalawyercenter.org/asbestos-lawyer/; *Mesothelioma and Asbestos Law Firms*, The Mesothelioma Center (Asbestos.com), *available at* https://www.asbestos.com/mesothelioma-lawyer/law-firm/; *Mesothelioma Law Firm*, Mesothelioma.com *available at* https://www.mesothelioma.com/lawyer/law-firm/ for lists of such firms, organized state by state.

186 *National Program of Cancer Registries and Surveillance, Epidemiology, and End Results (SEER) Statistical Database: NPCR and SEER Incidence – U.S. Cancer Statistics 2001–2018 Public Use Research Database, 2020 submission (2001–2018),* U.S. Department of Health and Human Services, Centers for Disease Control and Prevention and National Cancer Institute (June 2021), *available at* www.cdc.gov/cancer/uscs/public-use ("SEER Data").

A. As Traditional Asbestos Litigation Wanes for Firms that Have Profited from It for Decades, These Firms Instead Target Talc.

Prior to the 2010s, only a small number of isolated cases involving cosmetic talc had been filed against J&J or Old JJCI. These cases alleged a range of claims, including talcosis due to substantial misuse of Johnson's Baby Powder, mesothelioma, dermatitis, and rashes. Rarely was a J&J defendant seriously pursued in these cases.

Beginning in or around the early 1980s, certain J&J entities began to be named in a very small number of cases asserting allegations of respiratory injury caused by the use of Johnson's Baby Powder. The first such case that the company has located records for is *Joly v. Johnson & Johnson*, which was filed in 1982 in federal court in Louisiana and involved unspecified allegations of lung damage and respiratory problems resulting from the use of Johnson's Baby Powder. In 1983, *Gambino v. Johnson & Johnson Baby Prods. Co.* was filed, which involved allegations of talcosis, a type of pneumoconiosis caused by the excessive inhalation of talc. Of note, that case only implicated Johnson's Baby Powder, not Shower to Shower (which only began to be implicated when it became helpful for jurisdictional purposes, as described further below in the *Ingham* example). In total, there were less than a dozen additional cases naming J&J or Old JJCI and alleging injury from cosmetic talc throughout the 1980s and up to 1996. None of these cases implicated Shower to Shower.

The first case alleging mesothelioma as a result of exposure to Johnson's Baby Powder was *Howard as rep. of Cain v. A.I.I. Clubman Co.*, which was filed against Old JJCI (and other defendants) in Michigan state court in 1996. The following year, similar allegations were made in *Coker v. Bill Thames Pharmacy, Inc.*, filed in Texas state court. The J&J defendants were ultimately dismissed from these cases. Over the course of the late-1990s, 2000s, and early-2010s, various J&J entities were named in no more than a dozen additional cases alleging mesothelioma as a result of exposure to Johnson's Baby Powder.[187] None of the cases involved allegations of Shower to Shower use.

1. The *Berg* and *Fox* Cases Launch a New Cosmetic Talc Litigation Industry.

The current tidal wave of cosmetic talc litigation began after the *Berg* (2013) and *Fox* (2016) trials. *Berg v. J&J*, filed in December 2009, was the first case alleging ovarian cancer as a result of genital exposure to J&J's/Old JJCI's cosmetic talc-based products. *Berg* involved a plaintiff who developed high grade serous ovarian cancer at the age of 49. The plaintiff found her lawyer through an ovarian cancer support website as she was looking for "the cause" of her cancer. The plaintiff's lawyer, who happened to be monitoring that website, responded to Ms. Berg's post seeking answers to her questions. He informed her that he knew the cause of her cancer—even though her own gynecologic oncologist had told her that the cause was unknown. He blamed Johnson's Baby Powder and Shower to Shower and filed a complaint on her behalf shortly thereafter.

Berg was tried in federal district court in South Dakota. The jury found for the plaintiff, but awarded *no* damages. Still, the plaintiff verdict sent ripples through the plaintiff bar, setting plaintiff lawyers on the road to a new mass litigation. Following *Berg*, plaintiff lawyers launched an extensive marketing campaign to collect ovarian cancer cases. They advertised on their firm websites and through spam emails, commercials, infomercials, and social media throughout the country. Records suggest that over the next few years, plaintiff firms spent as much as $4.5 million *per month* on cosmetic talc litigation advertising.[188] The plaintiff bar's

---

[187] December 5, 2018 Affidavit of Gene Williams in *Leavitt v. Johnson & Johnson*, Case No. RG17882401, Superior Court of the State of California, Alameda County.

[188] *See, e.g.,* 10/2/2016 X Ante Report, "Talcum Powder: St. Louis Mass Tort Television Advertising Update, January-September 2016."

advertising campaign resulted in over 1,300 ovarian cancer lawsuits being filed against J&J and/or Old JJCI by the end of 2015. Indeed, in the years that followed the *Berg* verdict, tens of thousands of cases were filed all over the country, resulting in a federal multi-district litigation ("MDL") in New Jersey and multiple state consolidations.

A large number of those cases were strategically filed in state courts in the City of St. Louis, where they were bundled into multi-plaintiff cases. Plaintiffs' counsel joined multiple unrelated plaintiffs in several separate lawsuits, limiting the number of plaintiffs in each suit to avoid triggering federal class action jurisdiction, but also including in each suit at least one plaintiff from Missouri in the attempt to confer venue in the city of St. Louis, as well as at least one plaintiff from New Jersey so as to defeat federal diversity jurisdiction.

In February 2016, the first St. Louis ovarian cancer case, *Fox*, went to trial. *Fox* involved a plaintiff from the state of Alabama who had never lived in or visited the state of Missouri. The jury awarded the plaintiff $72 million dollars. While ultimately overturned on appeal, the verdict sparked even more interest on the part of plaintiff lawyers, who continued to push for trials in St. Louis. Five more cases were tried in that venue over the next year and a half, resulting in plaintiff verdicts totaling more than $235 million dollars (in addition to a defense verdict and a mistrial). All of those verdicts subsequently were reversed on appeal, but there was no turning back and no preventing the inevitable. Ultimately, as further discussed below, the 22-plaintiff *Ingham* trial was allowed to proceed in the City of St. Louis in January 2018. That trial resulted in J&J/Old JJCI receiving the fifth largest personal injury verdict in the history of the United States—a plaintiff verdict of $4.69 billion.[189]

[189] *See, e.g.*, *10 of the Largest Personal Injury Verdicts & Settlements in History*, Oasis Financial, *available at* https://www.oasisfinancial.com/largest-personal-injury-verdicts-settlements-in-history/.

Regardless of whether or not they were reversed, the large plaintiff verdicts in the ovarian cancer cases galvanized the plaintiff bar's ovarian cancer case collection frenzy, which continues to this day. As of the petition date, plaintiff lawyers had filed ovarian cancer lawsuits against J&J/Old JJCI on behalf of approximately 38,000 plaintiffs. Of course, ovarian cancer claims are only part of the story.

New filings alleging Johnson's Baby Powder as one, and then ultimately as the primary, cause of mesothelioma also skyrocketed. At the time of the *Fox* trial, there were only 6 mesothelioma cases naming J&J or Old JJCI as a defendant and alleging Johnson's Baby Powder as a cause of the plaintiff's disease. Within two months of the *Fox* trial, that number had increased to 23 mesothelioma cases. By the beginning of 2017, more than 100 mesothelioma cases had been filed naming J&J or Old JJCI as a defendant. The number of mesothelioma cases steadily grew in the years that followed. Seemingly overnight, experts who for years had every opportunity to point to cosmetic talc as a cause of mesothelioma—but never did—had a change of heart. Now, based on no new or compelling science, those same experts opined that it was allegedly sub-trace levels of asbestos in Johnson's Baby Powder that caused a plaintiff's mesothelioma.[190]

Whereas public reporting on mesothelioma filings had once shown a steady downward trend year to year from 2016 forward,[191] now, the asbestos plaintiff bar had a new source of cases to monetize and backfill the gap. While traditional mesothelioma filings have dipped by

---

[190] Mesothelioma cases predominantly have pointed to Johnson's Baby Powder as a cause of mesothelioma, but also have implicated Shower to Shower on occasion.

[191] *See National Trends in Asbestos Litigation*, KCIC (May 6, 2021), as well as *Asbestos Litigation: 2020 Year in Review*, KCIC (2021) at 3. KCIC is a third party which tracks filings on behalf of dozens of defendants in asbestos litigation and reports aggregate filing statistics on an annual basis, including at public conferences attended by plaintiffs' counsel and members of the judiciary.

100 or so new cases per year,[192] mesothelioma filings against J&J/Old JJCI have more than made up the difference with 257 cases filed in 2017, 371 cases filed in 2018, 326 cases filed in 2019, 271 cases filed in 2020, and over 120 cases filed in 2021 (to-date).

2. The Asbestos Mass Tort Bar Adjusts Its Strategy to Talc.

As cosmetic talc litigation ramped up, the plaintiff bar adjusted its strategy to ensure that this new mass tort would endure as traditional asbestos litigation began to subside. From January 2016 through September 2020, 61.5% of the mesothelioma cases filed against J&J/Old JJCI were mixed exposure cases, meaning that the J&J defendants were simply added as an additional defendant to a mesothelioma case that also alleged exposure to traditional asbestos-containing products. 71% of these mixed exposure cases were filed in Madison County, Illinois—historically, a plaintiff-favored jurisdiction for asbestos litigation where most cases end in settlement.

However, as the cosmetic talc litigation continued, plaintiffs began filing more and more "talc-only" mesothelioma cases in other jurisdictions. Over the last year, only 32% of the new mesothelioma cases filed against J&J/Old JJCI have been mixed exposure cases; meaning, the vast majority of the cosmetic talc cases filed against J&J/Old JJCI are now "talc-only" cases. The reason for this shift in filing practices is purely strategic. By focusing the case on talc-only allegations and minimizing plaintiffs' exposure to traditional asbestos products (examples of which are further described below), plaintiffs strip talc defendants like Old JJCI of alternative exposure defenses, which are key in mesothelioma cases. As a result, Old JJCI was forced to undertake extensive and expensive investigations to uncover information regarding a plaintiff's

192 *Id.*

alternative asbestos exposures. Moreover, these "talc-only" cases are perceived to be insulated from the threat that traditional asbestos companies may disappear from active tort litigation.

The following are just a few examples of the sorts of cases filed to implement the "talc-only" strategy:

- In one trial, plaintiff's counsel and experts focused their case on allegedly sub-trace levels of asbestos in Johnson's Baby Powder, despite the fact that the plaintiff had for years smoked Kent asbestos-containing cigarettes. Each Kent cigarette that the plaintiff smoked would have contained 80 billion fibers of the deadliest type of asbestos, crocidolite.

- In another trial, neither side disputed that the plaintiff had handled asbestos-containing brakes, had been present when her husband removed and sanded those brakes, and that she then laundered his asbestos-covered clothes. Plaintiff expert Dr. Longo had previously testified in traditional asbestos litigation that sanding brakes, which he alleged were designed to contain 80% asbestos, was "like hitting a pinata of dust." But now with J&J/Old JJCI as the primary litigation target, Dr. Longo downplayed the brake exposures, opining that the allegedly sub-trace levels of asbestos in Johnson's Baby Powder resulted in higher exposure levels. Ultimately, in that trial, the jury returned a verdict of $25.75 million against J&J and Old JJCI, finding that they were 67% at fault.

- One of the most frequent plaintiff causation experts in mesothelioma cases is Dr. Jacqueline Moline. In one case, Dr. Moline issued a report with her opinion that Johnson's Baby Powder caused a particular plaintiff's mesothelioma, but did not conduct the most basic of investigations, which would have revealed that the plaintiff lived, went to school, and worked 1.5 kilometers from an asbestos cement factory.

B. The Lack of Support for Ovarian Cancer Claims Caused by Talc

1. What is Ovarian Cancer?

Ovarian cancer comprises several distinct diseases, which are categorized into separate subtypes. These different types of ovarian cancer develop in different types of cells, they look different under a microscope, they involve mutations of different genes, and they have different risk factors and causes. Notably, in the largest prospective analysis of ovarian cancer risk factors ever conducted—pooling individual data for more than 1.3 million women from 21 studies—researchers who considered 14 risk factors found that "[e]ach subtype [of ovarian cancer] had a qualitatively unique pattern of associations" and that "[o]nly parity and height were associated with all subtypes."[193] This study concluded that "subtypes are indeed different diseases" with different risk factors that need to be evaluated.[194] The idea that a single commercial product, such as cosmetic talc, could cause all of these different types of ovarian cancer is nonsensical. Nevertheless, plaintiffs continue to argue that these numerous different subtypes of ovarian cancer have an identical cause.

2. Plaintiffs Cannot Reasonably Establish Causation

To prevail in a tort case, plaintiffs have to prove both general causation—whether a certain exposure (such as talcum powder) is capable of causing a disease (such as ovarian cancer or mesothelioma)—and specific causation—whether the particular exposure caused the individual plaintiff's disease.[195] Plaintiffs generally have a low hurdle to cross in establishing exposure to J&J/Old JJCI talcum powder products given the ubiquity of these products in the community.[196] Thus, in most cases, the causation debate focuses on whether the use of cosmetic talcum powder products can cause ovarian cancer.

---

193 Wentzensen et al., *Ovarian Cancer Risk Factors by Histologic Subtype: An Analysis from the Ovarian Cancer Cohort Consortium*, 34 J. CLIN. ONCOLOGY 2888, 2889-2890, 2894 (2016) ("Wentzensen 2016"); *see e.g., id.,* at 2888 (abstract) ("The heterogeneous associations of risk factors with ovarian cancer subtypes emphasize the importance of conducting etiologic studies by ovarian cancer subtypes."); Bodelon et al., *Molecular Classification of Epithelial Ovarian Cancer Based on Methylation Profiling: Evidence for Survival Heterogeneity*, 25 CLIN CANCER RES. 5937, 5937 (abstract) (2019) ("Ovarian cancer is a heterogeneous disease that can be divided into multiple subtypes with variable etiology, pathogenesis, and prognosis.").

194 Wentzensen 2016 at 2895-96.

195 *Howell v. Centric Group, LLC*, 508 Fed. Appx. 834, 836 (10th Cir. 2013) ("when such claims target allegedly toxic substances or pharmaceuticals, courts throughout the country routinely require plaintiffs to show both general and specific causation"); *see also* RESTATEMENT (THIRD) OF TORTS: PHYS. & EMOT. HARM § 28 (2010) ("The concepts of general causation and specific causation are widely accepted among courts confronting causation issues with toxic agents.").

196 *But, see,* section IV.B.4, *infra*, with respect to examples of unsubstantiated claims.

Plaintiffs' primary mechanistic theory is that talc applied to the perineum can migrate through the female reproductive tract to the ovaries, where it causes a chronic inflammatory response that leads to ovarian cancer. To explain cause and effect, plaintiffs rely on the case-control studies described previously, some of which report a positive, albeit weak, association between talc and ovarian cancer.[197] However, as noted, these studies are subject to substantial criticism for several reasons. First, half of the case-control studies fail to show a statistically significant association, rendering the totality of evidence from case-control studies inconsistent and insufficient to prove causation. Second, the case-control studies that are most supportive of plaintiffs' theory do not reflect a strong association. Third, the case-control studies relied upon by plaintiffs conflict with the findings in the four large, prospective, cohort studies that have been conducted to date, none of which shows a statistically significant overall association between talc use and ovarian cancer. Fourth, although plaintiffs claim that there is "some" evidence in the case-control studies of a dose-response, they "freely admit that the dose response data . . . are not unequivocal."[198] Finally, although plaintiffs describe a biological mechanism by which they claim that talc can reach the ovaries, that theory is unsupported by any published studies showing that talc applied externally to the genitals, as alleged by plaintiffs, can migrate to the ovaries through the female reproductive system.

3. Application of Key Bradford Hill Factors

Scientists, as well as courts, rely on a set of guidelines known as the Bradford Hill

---

[197] *See* section II.D, *supra*.

[198] 5/31/2019 Plaintiffs' Corrected Omnibus Memorandum of Law in Response and Opposition to Defendants Motion to Exclude Plaintiffs' General Causation Opinions, *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9914 (hereinafter "Pls. GC Opp.") at 161.

criteria[199] to determine whether an alleged statistically significant association between an exposure and a disease is strong enough to potentially support an inference of general causation of the disease by such exposure.[200] Epidemiological evidence, alone, can never prove specific causation.[201] Four of the Bradford Hill criteria—strength of association, consistency with other relevant knowledge, dose-response relationship, and biological plausibility—are of particular significance in assessing plaintiffs' claim that peritoneal talc exposure causes ovarian cancer, **and all weigh against plaintiffs' causation theory**.[202]

a. Strength of the Association

Strength of association refers to relative risk—"[t]he higher the relative risk, the stronger the association and the lower the chance that the effect is spurious" (non-causal or the result of confounding, biases, or other error).[203]

As noted, the Debtor is aware of 34 case-control studies—27 population-based and 7 hospital-based—assessing a relationship between talc and ovarian cancer, four cohort studies,

199 The English epidemiologist, Sir Austin Bradford Hill, published the "Bradford Hill" criteria in 1965. Sir Austin Bradford Hill, *The Environment and Disease: Association or Causation?*, 58 PROC. R. SOC. MED. 295, 296 (1965).

200 *See e.g., Jones v. Novartis Pharm. Corp*., 235 F. Supp. 3d 1244, 1274 (N.D. Ala. 2017), *aff'd in part sub nom. Jones v. Novartis Pharm. Co*., 720 Fed. Appx. 1006 (11th Cir. 2018) (unpublished) ("Numerous courts have referred to the Bradford Hill criteria as a useful tool to analyze general, rather than specific, causation."); *In re Breast Implant Litig*., 11 F. Supp. 2d 1217, 1233 n. 5 (D. Colo. 1998) ("Even if the epidemiology demonstrated that breast implants double the risk of disease . . . Plaintiffs' causation experts must still satisfy the additional Bradford–Hill criteria to establish scientific cause and effect."); *King v. Burlington N. Santa Fe Ry. Co*., 762 N.W.2d 24, 39 (Neb. 2009) ("Once an association has been found between exposure to an agent and development of a disease, researchers consider whether the association reflects a true cause-effect relationship.") (quoting Green 2011 at 597)).

201 Green 2011 at 608–09 (explaining that specific causation "is beyond the domain of the science of epidemiology").

202 The first Bradford Hill factor, temporal relationship, is not contested here. Plaintiffs routinely allege—and, typically, it is difficult to refute—exposure to talcum powder products that occurred before they developed ovarian cancer.

203 Green 2011 at 602.

and ten meta-analyses and pooled analyses (which synthesize results of available studies on this topic).[204] Plaintiffs contend that when the studies are viewed in totality, the data shows a consistent, statistically significant increased risk of developing ovarian cancer with perineal talcum powder use.

However, not one of those studies reported a statistically significant relative risk of 2.0 or more, the threshold for legal causation in many jurisdictions.[205] Biases and confounding factors may fully explain observed association when the relative risk is less than 2.0.[206] Because case-control studies are retrospective in nature and rely on subjects' recall of the extent or nature of their exposure, they are more likely than cohort studies to report a false association as a result of recall bias and confounding.

Recall bias is especially problematic when studying talc use because it is exceedingly difficult for study subjects to accurately report the extent of their use, which "require[s] subjective summarization or can be influenced by the investigator, media or similar factors."[207] Many talc studies did not blind participants to the purpose of the study; as a result participants may well have been alerted to the fact that talc was of interest and affected by that recognition.[208]

---

204 *See* section II.D, *supra*.

205 *See, e.g.*, *Magistrini v. One Hour Martinizing Dry Cleaning*, 180 F. Supp. 2d 584, 591 (D.N.J. 2002), *aff'd*, 68 F. App'x 356 (3d Cir. 2003) ("[T]he threshold for concluding that an agent was more likely than not the cause of an individual's disease is a relative risk greater than 2.0.") (citation omitted).

206 Green 2011 at 612-13 n. 193.

207 Peres et al., *Racial/ethnic differences in the epidemiology of ovarian cancer: a pooled analysis of 12 case-control studies*, INT'L J EPIDEMIOLOGY 460, 469 (2018). O'Brien 2020 states that the positive association reported in the case-controls "may be affected by recall bias," and "it is crucial to evaluate the talc-ovarian cancer association using prospective data." O'Brien 2020 at 50. Even Berge 2018, one of the meta-analyses on which plaintiffs' rely, notes that the association present in the case-control but not cohort studies, "can be attributed to bias in the former type of studies." Berge 2018 at 253.

208 2/25/2019 Expert Report of Dr. Karla Ballman, Ph.D. for General Causation *Daubert* Hearing in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-24 ("Ballman Rep.") at 7; 11/16/2018 Expert Report of Dr. Patricia G. Moorman, M.S.P.H., Ph.D. in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. &*

One study found "women with [ovarian] cancer tend to remember or overreport their use of body powder" and the "influence of this type of recall bias cannot be ruled out."[209] With respect to talc in particular, recall bias may have been increased by media coverage of the talcum powder litigation.[210] While it is impossible to measure the full extent of recall bias in the studies plaintiffs rely upon for their causation claims, recall bias is a well-recognized, inherent problem with case-control studies.[211]

The case-control studies may also be unreliable measures of association because of confounding (*i.e.* the existence of study participants who have risk factors for ovarian cancer unrelated to talc).[212] Adjusting for confounding is particularly important in the ovarian cancer context because most cases of ovarian cancer have no known cause and other risk factors can account for positive associations in observational studies.[213]

Prods. Liability Litig., (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-34 at 21-22 ("recall bias would be considered a particular threat to a study's validity" where, inter alia, "the study hypotheses are known to the study subjects or interviewers"); 11/16/2018 Expert Report of Sonal Singh, M.D., M.P.H. in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. and Prods. Liability Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-39 at 11 ("Case-control studies, by their design, are generally not blinded and are also susceptible to bias as a result.").

209 Langseth 2008 at 358.

210 In the Schildkraut case-control study published in 2016, women with ovarian cancer who were interviewed for the study after 2014 (when talc lawsuits began receiving more significant media attention) reported markedly higher talc use than those interviewed before 2014, while reported talc use for controls was essentially the same regardless of when they were interviewed. Schildkraut et al., *Association between Body Powder Use and Ovarian Cancer: The African American Cancer Epidemiology Study*, 25(10) CANCER EPIDEMIOLOGY, BIOMARKERS & PREVENTION 1411, 1413 (2016) ("Schildkraut 2016"). Schildkraut found no statistically significant association between talc use and ovarian cancer in the women who were interviewed before 2014. *Id.*

211 *See* Green 2011 at 585.

212 *See id.* at 602.

213 *See, e.g.*, 1/31/2019 Dr. Jack Siemiatycki deposition testimony in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9733-3 at 173:6-9 (agreeing that "all of the factors that might make someone susceptible to developing ovarian cancer are not currently known"); 2/25/2019 Expert Report of Dr. Kevin Holcomb, M.D., F.A.C.O.G. for General Causation *Daubert* Hearing in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liability Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-26 at 12 (explaining that unknown factors can account for associations previously attributed to different factors); 2/25/2019 Expert

Plaintiffs also rely heavily on meta-analyses and pooled studies that combine the results of several studies (often both case-control *and* cohort studies). However, meta-analyses come with their own problems and limitations. First, meta-analyses do not correct for, and may even exacerbate, issues in the underlying studies, including recall bias and confounding.[214] Second, meta-analyses combining different *types* of studies, conducted in different ways, can often lead to misleading results.[215] Many of the meta-analyses that plaintiffs rely on—including Taher (2019),[216] Penninkilampi 2018, and Berge 2018, analyze case-control *and* cohort studies together. Critics of meta-analyses warn of this type of "apples to oranges" comparison[217] and caution that "[s]ummarizing large amounts of varied information" can lead to "misleading results."[218] In sum, while meta-analyses can be a useful tool for evaluating epidemiologic data, they are limited by the quality of the underlying studies and the methodology for study inclusion.

Report of Dr. Gregory Diette, M.D., M.H.S. for General Causation *Daubert* Hearing in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liability Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-17 ("Diette Rep.") at 4 ("confounding factors are not always identifiable, even after extended study, and these and other factors can consistently drive statistical associations that are not causal in nature"). Other studies list a high BMI and douching as potential risk factors for ovarian cancer, but the vast majority of the case-control studies did not control for those characteristics. 2/25/2019 Expert Report of Dr. Christian Merlo, M.D., M.P.H. for General Causation *Daubert* Hearing in *In re Johnson & Johnson Talcum Powder Prods. Mktg. Sales Pracs. & Prods. Liability Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-12 ("Merlo Rep.") at 13. Gonzalez 2016 suggested that douching—not talc use—might account for the association observed in case-control studies. Gonzalez 2016 at 797. Gonzalez found that talc users are more likely to douche than the general population and that douching nearly doubled the risk of ovarian cancer, yet only a couple of case-control studies have adjusted for douching. *Id.*

214 Merlo Rep. at 30.

215 *See, e.g.*, Walker et al., *Meta-analysis: Its Strengths and Limitations,* 75(6) CLEV. CLINIC J. MED. 431, 433 (2008) ("Walker 2008") (explaining that when selecting studies to include in a meta-analysis, they should be "as similar as possible" because "even with careful selection, differences among studies will remain" and "when the dissimilarities are large it becomes hard to justify pooling the results to obtain a 'unified' conclusion").

216 Taher et al., *Systematic Review and Meta-Analysis of the Association between Perineal Use of Talc and Risk of Ovarian Cancer*, 29 REPROD. TOXICOL. 88 (2018).

217 Esterhuizen et al., *Con: Meta-analysis: Some Key Limitations and Potential Solutions*, 31 NEPHROL. DIAL. TRANSPLANT 882, 882-885. (2016).

218 Walker 2008 at 431. Even the authors of Berge 2018 acknowledged that the "study suffers from limitations common to meta-analyses of observational studies" including the fact that "neither the definition of the

b. Consistency with Other Relevant Knowledge

The 17 population-based case-control studies that purport to show a statistically significant association between talc and ovarian cancer are not consistent with the findings of other studies among different populations and with different study designs. As noted, not one of the seven hospital-based case-control studies (which used as controls women referred to the same medical facility for reasons other than ovarian cancer) found a statistically significant association. That is particularly important because case-control studies using hospital controls are less likely to have results distorted by recall bias than studies with population controls.[219] Additionally, the prospective cohort studies, the Nurse's Study (Gertig 2000 and Gates 2010), the Women's Health Initiative Study (Houghton 2014), and the Sister Study (Gonzalez 2016) showed no overall association between perineal talc use and ovarian cancer.

c. Dose-Response Relationship

Dose-response relationship refers to the strength of the expectation that increased exposure to a causal agent will lead to an increased incidence and/or increased severity of the disease. Dose-response has been described by some courts as the "hallmark of basic toxicology" and "the single most important factor to consider in evaluating whether an alleged exposure caused a specific adverse effect."[220]

---

exposure of interest (genital talc use) nor the strategy for adjustment of potential confounders were fully consistent across studies." Berge 2018 at 255.

219 Diette Rep. at 19.

220 *McClain v. Metabolife Int'l, Inc.*, 401 F.3d 1233, 1242 (11th Cir. 2005) (quoting David L. Eaton, *Scientific Judgement and Toxic Torts - A Primer in Toxicology for Judges and Lawyers*, 12 J. L. & POL'Y 5,11 (2003) ("Eaton 2003")). In *McClain*, the court reversed a jury verdict after concluding that the district court erroneously admitted plaintiffs' expert testimony on causation where that expert did not provide satisfactory testimony on the dose-response relationship. *See also In re Accutane Products Liab.*, 511 F. Supp. 2d 1288, 1293 (M.D. Fla. 2007) ("[d]ose is critical to any evaluation of toxicity of a drug"); *Smith v. Benjamin Moore & Co.*, 2012 WL 2914219, at *2 (Del. Super. July 18, 2012) (explaining that "[t]he Texas Supreme

Plaintiffs assert that there is evidence of a dose-response effect between talc and ovarian cancer but they "freely admit that the dose response data . . . are not unequivocal."[221] Plaintiffs only point to eight of the studies as supportive of the presence of a dose-response relationship between talc use and ovarian cancer.[222] But these studies taken as a whole do not reflect a consistent dose-response relationship between talc use and ovarian cancer, and the total body of evidence on dose response contradicts plaintiffs' findings.[223] Plaintiffs merely extract evidence of a dose response from a subset of studies (and even from subsets of data within these cherry-picked studies), even though the body of data clearly does not show a dose response.[224]

Court has noted that dose is the single most important factor to consider in evaluating whether an alleged exposure caused a specific adverse effect") (internal quotations omitted).

221 Pls. GC Opp. at 161.

222 *Id.* at 161-62 (listing Penninkilampi 2018; Berge 2018; Schildkraut 2016; Cramer et al., *The Association Between Talc Use and Ovarian Cancer: A Retrospective Case-Control Study in Two US States*, 27(3) EPIDEMIOLOGY 334 ("Cramer 2016"); Terry et al., *Genital Powder User and Risk of Ovarian Cancer: A Pooled Analysis of 8,525 Cases and 9,859 Controls*; 6(8) CANCER PREV. RES. 811 (2013); Wu et al., *Markers of Inflammation and Risk of Ovarian Cancer in Los Angeles County*, 124 INT'L J. CANCER 1409 (2009); Whittemore et al., *Personal And Environmental Characteristics Related To Epithelial Ovarian Cancer*, 128 AM. J. EPIDEMIOLOGY 1228 (1988) ("Whittemore 1988"); Rosenblatt et al., *Mineral Fiber Exposure and the Development of Ovarian Cancer*, 45(1) GYNECOLOGIC ONCOLOGY 20 (1992) ("Rosenblatt 1992")).

223 Merlo Rep. at 45 ("Almost every epidemiological study has failed to show any dose-response relationship[.]"); Diette Rep. at 27 ("[O]verall, the literature is very inconsistent with regard to dose-response, as Drs. Smith-Bindman and Moorman concede;" further noting none of the cohort studies and only a handful of case-control studies purport to have found a dose response); Ballman Rep. at 30-32 & tbls. 1 & 2 (summarizing dose-response findings from various studies, very few of which reported a dose response).

224 *Compare, e.g.*, 11/16/2018 Expert Report of Dr. Anne McTiernan, M.D., Ph.D. in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liability Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-6 ("McTiernan Rep.") at 66 ("significant" evidence of a causal relationship), and 11/16/2018 Expert Report of Dr. Jack Siemiatycki, M.Sc., Ph.D. in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liability Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-20 at 63 (referring to dose response as "an important consideration in my assessment of causality"), *with, e.g.*, 11/16/2018 Expert Report of Ellen Blair Smith, M.D. in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liability Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-15 at 20 (additional research needed to "help clarify dose response relationships"), and 11/16/2018 Expert Report of Daniel L. Clarke-Pearson, M.D. in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. and Prods. Liability Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-13 at 9 (calling for molecular research to "elucidate" dose response).

Of the subset of case-control studies that looked at dose-response, at least thirteen reported no dose-response.[225] In addition, data from the cohort studies that looked at frequency or duration of talc use found no evidence of a dose response. After an evaluation of the scientific evidence, the 2021 National Cancer Institutes' ("NCI") Physician Data Query[226] reported that a "dose response relationship was not found" and "there was no increased risk observed for increasing duration of use."[227] The IARC also noted "inconsistent" evidence of a dose response[228] and in 2014, the FDA concluded in response to the Epstein Citizen's Petitions that "dose-response evidence was lacking."[229]

d. Biological Plausibility

Biological plausibility asks whether there is a valid, scientifically plausible method through which the agent could cause the disease, in light of existing scientific knowledge about

---

225 *See* Whittemore 1988; Booth et al., *Risk factors for ovarian cancer: a case-control study*, 60(4) BR. J CANCER 592 (1989); Rosenblatt 1992; Hartge et al., *Occupation and Ovarian Cancer: A Case-Control Study in the Washington, DC, Metropolitan Area, 1978-1981*, 36(8) J OCCUP MED. 924 (1994); Chang & Risch, *Perineal talc exposure and risk of ovarian carcinoma*, 79(12) CANCER 2396 (1997); Cook et al., *Perineal Powder Exposure and the Risk of Ovarian Cancer*, 145(5) AM. J. EPIDEMIOLOGY 459, 463 (1997); Cramer et al., *Genital Talc Exposure and Risk of Ovarian Cancer*, 81(3) INT J CANCER 351 (1999); Wong et al., *Perineal talc exposure and subsequent epithelial ovarian cancer: a case-control study*, 93 OBSTET GYNECOl 372 (1999); Ness et al., *Factors Related to Inflammation of the Ovarian Epithelium and Risk of Ovarian Cancer*, 11(2) EPIDEMIOLOGY 111 (2000); Mills et al., *Perineal Talc Exposure and Epithelial Ovarian Cancer Risk in the Central Valley of California*, 112(3) INT'L J. CANCER 458 (2004); Merritt et al., *Talcum Powder, chronic pelvic inflammation and NSAIDs in relation to risk of epithelial ovarian cancer*, 122 INT'L J. CANCER 170 (2008); Rosenblatt et al., *Genital powder exposure and the risk of epithelial ovarian cancer*, 22 CANCER CAUSES CONTROL 737 (2011); Cramer 2016 at 336-37 tbl. 1.

226 According to the NCI's website, "PDQ (Physician Data Query) is NCI's comprehensive source of cancer information. It contains cancer information summaries on a wide range of cancer topics; drug information summaries on many cancer-related drugs and drug combinations; and dictionaries of general cancer terms, drug terms, and genetics terms." *See PDQ® - NCI's Comprehensive Database*, NAT'L CANCER INST., *available at* https://www.cancer.gov/publications/pdq (last updated August 11, 2021).

227 NCI 2021 PDQ.

228 IARC 2010 Monograph at 412.

229 4/1/2014 FDA's 2014 denial of Citizen's Petition requesting warning on talcum powder products and related correspondence [Recently identified on publicly filed exhibit list in *Prudencio* as DX-17456] at 4 (arguing that "dose-response ***evidence is lacking***") (emphasis added).

the mechanism by which the disease develops. One of the key scientific criteria used to "establish causation between an alleged [] exposure and a particular disease or illness" is that "[t]he chronological relationship between exposure and effect must be biologically plausible."[230]

Plaintiffs' primary theory of biological plausibility is that talc, when applied to the perineum, migrates up through the female reproductive system to the ovaries.[231] Once in the ovaries, plaintiffs claim that the talc causes chronic inflammation which then leads to ovarian cancer.

As their evidence that talc migrates through the female reproductive tract, plaintiffs cite to two types of studies: (i) experimental studies where particles placed into the genital tract migrated upward ("particle studies"), and (ii) pathological studies where researchers purported to identify talc in ovarian tissue samples of women.

Plaintiffs primarily rely on three particle studies in support of the theory that talc migrates.[232] However, none of those studies involved talc but instead involved other particles such as carbon or aluminum micro- or macro- spheres.[233] In addition, because the particles were

---

230 Eaton 2003 at 38-39.

231 Although plaintiffs' expert witnesses have proffered (as an alternative theory) inhalation as a biological mechanism for talc to reach the ovaries (the inhaled talc could enter the lymphatic system and travel to the ovaries), in the MDL, Judge Wolfson held that "[a]side from these experts claiming that the inhalation theory may be plausible, [Plaintiffs] fail to otherwise provide any scientific basis for the theory that talc somehow moves through the lymphatic system to the ovaries." *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, 509 F. Supp. 3d 116, 176 (D.N.J. 2020) (the "April 27, 2020 MDL Order"). On that basis, Judge Wolfson excluded testimony on plaintiffs' theory of inhalation as a biological mechanism. *Id.* at 177.

232 Egli and Newton, *The Transport of Carbon Particles in the Human Female Reproductive Tract*, 12 FERTILITY AND STERILITY 151 (1961) ("Egli and Newton 1961"); Venter and Iturralde, *Migration of a Particulate Radioactive Tracer from the Vagina to the Peritoneal Cavity and Ovaries*, 55 SOUTH AFRICAN MED. J. 917 (1979) ("Venter and Iturralde 1979"); Sjösten et al., *Retrograde migration of glove powder in the human female genital tract,* 19(4) HUMAN REPROD. 991 (2004) ("Sjösten 2004").

233 *See, e.g.*, Zervomanolakis et al., *Physiology of Upward Transport in the Human Female Genital Tract*, 1101 Ann. N.Y. Acad. Sci. 1, 4 (2007) (radiolabeled microspheres); Sjösten 2004 at 991 (surgical glove starch powder, presumably cornstarch); Kadanali et al., *Evaluation of active and passive transport mechanisms in genital tracts of IUD-bearing women with radionuclide hysterosalpingoscintigraphy*, 63

inserted inside women's bodies rather than dusted on the outside, they cannot provide any reliable support for the migration theory. Furthermore, many of the studies occurred in environments manipulated to encourage the movement of those particles further up the genital tract. Importantly, animal studies investigating retrograde movement—in which talc was used—did not result in evidence of migration to the ovaries.[234]

Plaintiffs also rely on four pathological studies and claim that those studies show the presence of talc and asbestos in human ovarian cells and lymph nodes.[235] The fact that talc was found in ovaries, however, says absolutely nothing about how the talc got there or where the talc came from since talc is ubiquitous and found in a number of commonly used products. The most that these publications show is that talc can be found in human ovaries or lymph nodes, but the studies do not come anywhere close to concluding that talc "applied to the perineum may be absorbed into the vagina and migrate . . . to the tubes and ovaries."[236]

CONTRACEPTION 41, 42 (2001) (radiolabeled albumin macrospheres); Kunz et al., *The Uterine Peristaltic Pump: Normal and Impeded Sperm Transport within the Female Genital Tract, in The Fate of the Male Germ Cell* 267 (Ivell & Holstein eds. 1997) (same); Iturralde & Venter, 11(4) *Hysterosalpingo-radionuclide scintigraphy (HERS),* SEM. NUCL. MED. (11)4:301-149 (1981) (radiolabeled albumin microspheres); Venter and Iturralde 1979 at 917 (same); De Boer, *Transport of Particulate Matter Through the Human Female Genital Tract*, 28 J REPROD. FERTILITY 295, 295 (1972) (colloidal carbon solution); Egli and Newton 1961 at 151 (carbon particles).

234 *See* Phillips et al., *Studies on the Absorption and Disposition of 3H-Labelled Talc in the Rat, Mouse, Guinea-Pig and Rabbit*, FD COSMET TOXICOL. 1978; 16:161-163 (intravaginal administration of talc in rabbits); Wehner AP and Weller RE, *On Talc Translocation From the Vagina to the Oviducts and Beyond*, FD CHEM TOXICOL. 1986; 24:(4):329-338 (intravaginal administration in monkeys); and Boorman GA and Seely JC, *The Lack of an Ovarian Effect of Lifetime Talc Exposure in F344/N Rats and B6C3F1 Mice*, REGUL TOXICOL PHARMACOL. 1995; 21(2): 242-3 (external vaginal exposure in rats).

235 Pls. BP Opp. at 16-18; Henderson et al., *Talc and Carcinoma of the Ovary and Cervix*, 78 J. of OBSTET. AND GYNAECOLOGY 266-268 (1971); Heller et al., *The relationship between perineal cosmetic talc usage and ovarian talc particle burden*, 174 AM. J. OBSTET. GYNECOL. 1507-1510 (1996); Heller et al., *Asbestos Exposure and Ovarian Fiber Burden*, 29 AM. J. OF INDUSTRIAL MED. 435-439 (1996); Cramer et al., *Presence of Talc in Pelvic Lymph Nodes of a Woman with Ovarian Cancer and Long-Term Genital Exposure to Cosmetic Talc*, 110(2) OBSTET. & GYNECOL. 498-99 (2007); McDonald et al., *Correlative polarizing light and scanning electron microscopy for the assessment of talc in pelvic region lymph nodes*, 43 ULTRASTRUCTURAL PATHOL. 13-27 (2019).

236 11/15/2018 Expert Report of Dr. Rebecca Smith-Bindman, M.D. in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liability Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)),

Plaintiffs further assert that once talc allegedly reaches the ovaries, it causes inflammation, which then can lead to cancer.[237] However, this theory is undermined by available scientific evidence in several respects. The theory that inflammation can cause ovarian cancer is, at best, an unsubstantiated hypothesis. Indeed, efforts to support this hypothesis have failed. For example, studies have shown that anti-inflammatory drugs do not reduce the incidence of ovarian cancer.[238] And a case study involving lesions knowns as STICs that are recognized precursors of ovarian cancer concluded that they were not associated with inflammation.[239]

Plaintiffs' theory that talc could cause cancer is also undermined by the fact that talc is not mutagenic or genotoxic—a significant problem for biological plausibility. For example, a 2009 study treated rats intravaginally and perineally with talc and observed no neoplastic change (*i.e.*, no cancer), and a 1984 study injected talc directly into the rat ovarian bursa and similarly

---

Dkt. 9740-35 at 35; *see also* McTiernan Rep. at 59 (claiming these studies "demonstrate talcum powder products can migrate from the perineal area to the ovaries and fallopian tube"). Notably, in the MDL, Judge Wolfson found that the studies relied on by plaintiffs' expert witnesses "do not directly support their theory that *externally applied* talc can migrate up the vagina to the ovaries." April 27, 2020 MDL Order at 174 (emphasis in original).

237 *See, e.g.*, Fiume 2015 at 119S (studies looking at occupational inhalational talc exposure do not show an increased risk of lung disease); Pira et al., *Mortality of Talc Miners and Millers from Val Chisone, Northern Italy: An Updated Cohort Study*, 59 J. OCCUPATIONAL AND ENV'T MED. 659 (2018) ("Pira 2018") (concluding that there was a lack of association between exposure to asbestos-free talc, lung cancer and mesothelioma in a cohort of talc miners and millers from Val Chisone, Italy); Wergeland et al., *Morbidity and Mortality in Talc-Exposed Workers*, 17 AM. J. INDUS. MED. 505 (1990) (finding no elevated incidence of lung cancer or mesothelioma in a cohort of 94 talc miners and 295 talc millers).

238 NCI 2021 PDQ at 14 (rejecting association between use of anti-inflammatory drugs and reduced risk of ovarian cancer); Bonovas et al., *Do nonsteroidal anti-inflammatory drugs affect the risk of developing ovarian cancer? A meta-analysis*, 60(2) BR J. CLIN PHARMACOL. 194, 197 (2005) (Ex. 38) (RR 0.93 (95% CI: 0.81-1.06) for aspirin use; RR 0.88 (95% CI: 0.76-1.01) for NSAID use).

239 Malmberg et al., *Serous tubal intraepithelial carcinoma, chronic fallopian tube injury, and serous carcinoma development*, 468(6) VIRCHOWS ARCH. 707, 712 (2016) (explaining that the study "aimed to see if histological signs of inflammation could be associated with ovarian carcinoma and precursor lesions" and that "no significant correlation was made between serous carcinoma and histological signs of inflammation or chronic tubal injury.").

observed no malignancies.[240]

In sum, plaintiffs' evidence suggesting a plausible biological mechanism does not show that *externally* applied talc can migrate to the ovaries. Nor does it show that, if talc could reach the ovaries, that it is capable of causing cancer. And, even if cosmetic talc could travel up the reproductive tract *and* cause cancer, logically, one would expect to see an excess of cancers in tissues closer to the opening of the reproductive tract where, theoretically, there would be a higher concentration of such cosmetic talc. But that is not the case.

4. The "Toxic Soup" Theory

In an attempt to push back against the weight of scientific evidence, plaintiff experts have expanded their speculative theories on how Johnson's Baby Powder could cause ovarian cancer. One such theory is to point to evidence allegedly showing that talcum powder products could be contaminated with asbestos, "fibrous talc," and heavy metals, also known as the "toxic soup" theory. This theory asserts that talc contains harmful contaminants including asbestos and heavy metals, any or all of which can cause ovarian cancer. Plaintiffs in these cases allege both that (i) the talc itself causes cancer and (ii) exposure to even trace amounts of its alleged constituents can increase the risk of ovarian cancer.[241]

To advance their theory that the alleged contamination of Old JJCI's talc products with asbestos can cause ovarian cancer, plaintiffs rely on the 2012 IARC Monograph (the "IARC

240 Keskin et al., *Does Long-Term Talc Exposure Have a Carcinogenic Effect on the Female Genital System of Rats? An experimental pilot study*, 280 ARCHIVES GYNECOL. OBSTET. 925 (2009); Hamilton et al., *Effects of talc on the rat ovary*, 65(1) BR. J. EXP PATHOL. 101 (1984).

241 *See, e.g.*, 11/16/2018 Expert Report of Dr. Laura M. Plunkett, Ph.D., DABT in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-27 ("Plunkett Rep.") at §§ IV, VII; 11/16/2018 Expert Report of Dr. Arch Carson, M.D., Ph.D. in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liability Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-8 ("Carson Rep.") at 3-8.

Asbestos Monograph")[242] regarding the health effects of asbestos (as well as "fibrous talc"). However, this monograph, as it relates to ovarian cancer, is premised on studies involving *occupational asbestos exposure*—women who worked directly with pure asbestos all day, every day at their jobs, for years at a time.[243] In particular, the IARC Asbestos Monograph was explicitly based "on five strongly positive cohort mortality studies of women with heavy occupational exposure to asbestos."[244] For example, one study involved women who manufactured asbestos-containing gas masks during World War II.[245] Such exposure is clearly incomparable to brief, daily applications of cosmetic talcum powder, even if one were to assume some asbestos contamination of the product (which J&J and Old JJCI have strongly denied). In addition, the occupational studies described in the IARC Asbestos Monograph primarily examined exposure to crocidolite asbestos[246]—a type of asbestos fiber that is not alleged to be a contaminant of talc. Moreover, there is no data showing that exposure to asbestos at non-occupational levels is associated with ovarian cancer. Indeed, environmental studies that have considered non-occupational exposure scenarios—*e.g.*, cohabitation with asbestos factory workers, or residency in an asbestos mining town—uniformly fail to find a statistically

---

242 *See* World Health Org., IARC, *Asbestos (Chrysotile, Amosite, Crocidolite, Tremolite, Actinolite, and Anthophyllite)*, 100C IARC Monographs 219 (2012).

243 *Id.* at 253-56.

244 *Id.* at 256.

245 Acheson et al., *Mortality of Two Groups of Women Who Manufactured Gas Masks from Chrysotile and Crocidolite Asbestos: A 40-Year Follow-Up*, 39 BR. J. INDUS. MED. 344 (1982) (cited in IARC Asbestos Monograph at 254).

246 IARC Asbestos Monograph at 253-56 (citing to Acheson 1982; Wignall & Fox, *Mortality of Female Gas Mask Assemblers*, 39 BR. J. IND. MED. 34 (1982); Reid et al., *The Mortality of Women Exposed Environmentally and Domestically to Blue Asbestos at Wittenoom, Western Australia*, 65 OCCUPATIONAL ENV'T MED. 743 (2008) ("Reid 2008"); Reid et al., *Gynecologic and Breast Cancers in Women After Exposure to Blue Asbestos in Wittenoom*, 18 CANCER EPIDEMIOLOGY BIOMARKETS PREV. 140 (2009) ("Reid 2009"); Pira et al., *Cancer Mortality in a Cohort of Asbestos Textile Workers*, 92 BR. J. CANCER 580 (2005)).

significant association with ovarian cancer.[247] Finally, the IARC Asbestos Monograph's finding of a causal association between even heavy occupational asbestos exposure and ovarian cancer has been criticized given the possibility of misclassification of peritoneal mesotheliomas as ovarian cancers, that the statistical association is "weak and inconsistent," and the fact that "there have not been reliable biological explanations *in vitro* or *in vivo* to explain the development of ovarian cancer due to asbestos."[248]

Plaintiffs further allege that Johnson's Baby Powder contains various heavy metals sometimes found in very low levels in talcum powder, including chromium, cobalt, and nickel, among others, and that such heavy metals contribute to the product's purported carcinogenicity.[249] However, not a single published study has ever connected any of these minerals to ovarian cancer.[250] Moreover, none of plaintiffs' experts can identify either (i) a level of exposure to these minerals that would be necessary to cause cancer or any other harm or (ii) the level of exposure to which women using talc in their genital area would be exposed.[251]

---

247 *See* Reid 2009 at 144 tbl. 3; Reid 2008 at 747; Ferrante et al., *Cancer Mortality and Incidence of Mesothelioma in a Cohort of Wives of Asbestos Workers in Casale Monferrato, Italy*, 115 ENV'T HEALTH PERSPECTIVES 1401, 1402 tbl. 2 (2007); *see also* IARC Asbestos Monograph at 256 (noting non-occupational studies show "non-significant, increases in . . . ovarian cancer").

248 *See* Slomowitz, et al., *Asbestos and Ovarian Cancer: Examining the Historical Evidence*, INT'L J. GYNECOL CANCER 2021; 31:122, 126-127 (noting a high rate of misclassification of disease based on available pathology); *see also* Reid A, et al., *Does Exposure to Asbestos Cause Ovarian Cancer? A Systematic Literature Review and Meta-analysis*, CANCER EPIDEMIOL BIOMARKERS PREV 2011;20:1287-1295 (reporting a decrease to an insignificant relative risk between asbestos exposure and ovarian cancer after taking misclassification of disease into account and further suggesting that "the IARC decision to determine asbestos exposure as a cause of ovarian cancer was premature and not wholly supported by the evidence.").

249 *See, e.g.*, Plunkett Rep. at §§ IV, VII; Carson Rep. at 3-8.

250 April 27, 2020 MDL Order at 172, n. 39 (discussing heavy metals and stating plaintiffs' expert Dr. Carson admitted there are "no studies linking these specific metals to ovarian cancer.").

251 *See e.g.*, 1/19/2019 Dr. Arch I. Carson deposition testimony in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9731-4 ("Carson Dep.") at 175:6-11, 176:5-10 (agreeing that he did not know the amounts of heavy metals in the products and that he did not assess a woman's exposure to heavy metals through use of talcum powder); 12/19/2018 Dr. Laura Plunkett deposition testimony in *In re Johnson & Johnson Talcum Powder Prods.*

Indeed, plaintiffs' experts have conceded that some of these so-called heavy metals are present in food, drinking water, and vitamin supplements, as minerals vital to human health.[252] And, none of plaintiffs' experts has evidence suggesting that the levels of these heavy metals are higher in talc users as compared to non-users.

Undeterred, plaintiff experts also have implicated the fragrances that make up only about 0.22% (by weight) of Johnson's Baby Powder as a potential mechanism for causing ovarian cancer.[253] But, they cannot point to a single published human study linking any of the fragrances in J&J's/Old JJCI's talc products to ovarian cancer or even that the very minimal amount of fragrances in the products is capable of causing cancer. Nevertheless, plaintiff experts—with no support whatsoever—have asserted in filings across the country that exposure to even a *single molecule* of some of the fragrances used in J&J's/Old JJCI's talc products could lead to cancer.[254] This is, of course, a shocking claim that, if true, should have led to millions of cases of cancer

Mktg., Sales Pracs. & Prods. Liab. Litig., (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9733-7 ("Plunkett Dep.") at 263:24-264:1 ("No, I have not done a – a calculation of a potential dose with perineal application for any of the heavy metals."); 2/4/2019 Dr. Daniel L. Clarke-Pearson deposition testimony in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liability Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9731-9 at 292:6-10 ("Q. How, if at all, did you factor the dose fragrances and heavy – or trace heavy metals into your analysis of the potential relationship between those compounds and ovarian cancer? A. I didn't factor in."); Plunkett Dep. at 263:12-264:3 (admitting that she had done no analysis to determine the dose of chromium a woman would be exposed to "with perineal application").

252 Carson Dep. at 169:24-170:16.

253 *See* 2/25/2019 Expert Report of Dr. Nadia Moore, Ph.D. DABT, ERT in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liability Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-18 at 70-71, n.303 (citation omitted).

254 *See e.g.*, 5/29/2019 Plaintiffs' Steering Committee's Mem. In Response and Opp'n to J&J and JJCI's Mot. to Exclude Pls' Experts' Opinions Regarding Alleged Heavy Metals and Fragrances in Johnson's Baby Powder and Shower-to-Shower, *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liability Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9885 at 60, n.222 (citing to 1/4/2019 Dr. Michael Crowley deposition testimony in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liability Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9733-11 at 131:22-132:3); *see also* 8/20/21 Pls' Combined Opp'n in Response to Defendants' Motions In Limine No. 5, *Giese v. Johnson & Johnson, et al.*, (Cir. Court, City of St. Louis, No. 1522-CC00419-02).

around the world given the widespread use of these fragrances in many other products besides talcum powder.

Multiple regulatory bodies and public health agencies have studied the well-developed body of scientific literature on whether perineal exposure to talc causes ovarian cancer but have not concluded that the scientific evidence establishes such a causal relationship.[255] In fact, each of the FDA, NCI, the American Cancer Society, NTP, IARC, and The American College of Obstetricians and Gynecologists have made public pronouncements and/or taken actions that are inconsistent with, and/or unsupportive of plaintiffs' claims that talc-based powder causes ovarian cancer.[256] Indeed, if talc use really caused ovarian cancer or mesothelioma, there would be a global epidemic of women getting such cancers. Fortunately, there is not.

5. The Ovarian Cancer MDL

Of the approximately 38,000 plaintiffs who have brought suit against J&J/Old JJCI on account of ovarian cancer claims, approximately 35,000 of those plaintiffs' suits are pending in the United States District Court for the District of New Jersey (the "MDL"). An MDL is a statutory vehicle whose purpose is "to avoid duplication of discovery, to prevent inconsistent pretrial rulings, and to conserve the resources of the parties, their counsel and the judiciary."[257]

---

255 As the sole outlier, Health Canada reached the conclusion that "[t]he available data are indicative of a causal effect." *See Screening Assessment Talc*, GOV'T OF CANADA (Apr. 22, 2021), *available at* https://www.canada.ca/en/environment-climate-change/services/evaluating-existing-substances/screening-assessment-talc.html#toc17.

256 *See* sections II.D & III B.3.c, *supra*; *see also* Am. Cancer Soc'y, *Talcum Powder and Cancer*, *available at* https://www.cancer.org/cancer/cancer-causes/talcum-powder-and-cancer.html (last updated Feb. 4, 2020) (stating that "[f]indings have been mixed" and that, while case-control studies have found small increased risk, these studies "can be biased"); *id.* ("It is not clear if consumer products containing talcum powder increase cancer risk."); Hal C. Lawrence, III, M.D., Exec. Vice President and CEO of the Am. Coll. of Obstetricians and Gynecologists, *Talc Use and Ovarian Cancer*, *available at* https://www.acog.org/news/news-releases/2017/09/talc-use-and-ovarian-cancer (Sep 11, 2017) ("There is no medical consensus that talcum powder causes ovarian cancer.").

257 *See* U.S. Judicial Panel on Multidistrict Litigation, *Overview of Panel, available at* https://www.jpml.uscourts.gov/overview-panel-0.

Typically, an MDL is created near the inception of a mass tort litigation and, because it leads the way, tends to guide and help manage efficiencies across the entire litigation. In this litigation, however, by the time the MDL was established, California and New Jersey formal state court consolidations had already been created, expert (Kemp) hearings had taken place in the New Jersey state consolidation and the court's opinion had been issued, and three trials had already occurred in St. Louis. Thus, the efficiencies expected across the litigation have not been fully realized. As a general matter, an overall lack of coordination between state court cases and the MDL has continued to this day. Furthermore, there is virtually no coordination between plaintiffs' counsel for the mesothelioma cases and those for the ovarian cancer cases, resulting in duplicity of burden and expense, particularly as it relates to discovery, including depositions of current and former employees.

Even so, J&J/Old JJCI have achieved certain key victories in the MDL. As part of its pretrial proceedings, in July 2019, the MDL court held *Daubert* hearings to determine whether certain general causation opinions of the parties' experts should be excluded for trial purposes. The court issued its decision in April 2020, leaving intact all of J&J's/Old JJCI's experts' opinions while restricting some of the plaintiffs' experts' general causation opinions.[258] While a clear referendum on certain of the flawed theories argued by plaintiff experts, these limitations on plaintiff expert opinions were not enough to prevent the MDL proceedings from continuing to move forward.

After the *Daubert* ruling, the MDL court ordered a two-stage "bellwether" process (*i.e.*, a subset of representative cases are identified for case-specific work-up and possibly trial, the

[258] *See* April 27, 2020 MDL Order.

outcomes of which can then be extrapolated across the litigation),[259] which began on June 4, 2020 with the MDL court's random selection of 1,000 cases from the 17,147 cases pending in the MDL as of May 1, 2020.[260] Those 1,000 plaintiffs were directed to provide medical records and to fill out authorizations and "Plaintiff Profile Forms," which provided certain background and medical information relevant to their cases.[261]

After selection, plaintiffs had the opportunity to have their cases removed from this case-specific evaluation by filing a statement with the court revoking waiver of their *Lexecon* rights.[262] 38 plaintiffs out of the 1,000 selected revoked waiver of *Lexecon*, thereby removing their cases from individual scrutiny. 15 additional plaintiffs did not proceed to the next stage for various reasons, including failure to submit the required documents described above. Of the remaining 947 plaintiffs, 30 plaintiffs (10 plaintiff-selected; 10 defense-selected; and 10 randomly-selected) were selected on September 18, 2020 to undergo further case-specific work-up.[263] Once selected, these 30 plaintiffs then had another opportunity to revoke waiver of *Lexecon* or dismiss their case with prejudice.[264] Cases removed from the group were replaced in the same manner in which they were originally chosen. Though none of the plaintiff-selected

---

259 Cases not selected for bellwether work-up remain inactive, ostensibly to later benefit from the bellwether analysis.

260 *See* 5/15/2020 Order in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Litig.*, (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 13317; 5/26/2020 Order in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Litig.*, (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 13428.

261 *See* 5/15/2020 Order in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Practices . & Prods. Liability Litig.,* (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 13317.

262 In *Lexecon*, the U.S. Supreme Court held that an MDL court overseeing the pretrial work-up of a transferred case has no authority to reassign the case to itself for trial. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998).

263 *See* 7/23/2020 Order in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Litig.*, (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 14108.

264 *See id.*

plaintiffs either revoked waiver of *Lexecon* or dismissed their cases,[265] 20 of the randomly-selected and defense-selected plaintiffs revoked waiver of *Lexecon* for, or dismissed their cases, thus removing those cases from individual scrutiny. This sweeping removal of cases from case-specific evaluation resulted in a seemingly endless series of case replacements.

Once the goals of the MDL ultimately have been achieved, that is, a determined amount of coordinated discovery and, potentially, completion of one or more bellwether trials, the MDL judge must seek remand of all pending cases back to the courts from which they were transferred.[266] Thus, after the MDL has disbanded, tens of thousands of cases will continue to proceed in courts across the country.

C. The Lack of Support for Mesothelioma Claims Caused by Talc

1. What is Mesothelioma?

Mesothelioma is a rare form of cancer that starts in cells in the linings of certain parts of the body. Of the over 325 million people in the United States, approximately 3,000-3,200 cases of mesothelioma develop annually.[267] Excess incidence of mesothelioma has been documented in association with certain occupations, such as those manufacturing amphibole asbestos products or working in settings with high exposures to amphibole asbestos-containing insulation.[268] Indeed, the rates of mesothelioma in the United States over time track the

---

265 One of the plaintiffs who had initially revoked waiver of *Lexecon* in the first stage withdrew the revocation in the second stage after plaintiffs had already selected her so that she could remain as one of their 10 selected plaintiffs in the second stage.

266 *See* 28 U.S. C. § 1407(a) ("Each action so transferred shall be remanded by the panel at or before the conclusion of such pretrial proceedings to the district from which it was transferred unless it shall have been previously terminated….").

267 *See, e.g.,* SEER Data.

268 *See, e.g.*, Herbert Seidman, et al., *Mortality Experience of Amosite Asbestos Factory Workers: Dose-Response Relationships 5 to 40 Years After Onset of Short-Term Work Exposure*, 10 AM. J. INDUS. MED. 479 (1986); G. Berry, et al., *Mortality from all cancers of asbestos factory workers in east London 1933-80*, 57 OCCUPATIONAL ENV'T MED. 782 (2000).

commercial use of asbestos over time.[269] As the commercial use of asbestos increased, rates of mesothelioma in men increased a few decades later (the length of time it takes mesothelioma to develop after exposure to asbestos).[270] As the commercial use of asbestos decreased, rates of mesothelioma in men decreased as well.[271]

Mesothelioma is even rarer in women than in men. Only approximately 700 mesothelioma cases occur in women each year in the United States,[272] and those rates have remained constant over time.[273] Women tend not to have the same history of occupational exposure to asbestos (*i.e.*, generally speaking, women did not make up the primary populations of workers who mined asbestos, made asbestos-containing industrial products, or worked consistently with and around such products when asbestos use was prevalent). Thus, modern science has been critical in understanding the small but constant rate of mesothelioma in women, and indeed, in the ongoing occurrence of mesothelioma more generally.

It has become increasingly clear that not all mesothelioma is caused by exposure to asbestos. Rather, like other cancers, mesothelioma can occur naturally through random genetic mutations when cells replicate.[274] A cell's random mutation leads to a genetic error, which is then propagated as that cell divides and multiplies—ultimately causing and spreading cancer.[275] Developing science increasingly is recognizing the role of genetics in the development of

---

269 Moolgavkar, et al., *Epidemiology of Mesothelioma* in ASBESTOS AND MESOTHELIOMA (Test, JR ed., 2017).

270 *Id.*

271 *Id.*

272 *See, e.g.,* SEER Data.

273 *Id.*

274 *See, e.g.*, Richard L. Attanoos, et al., *Malignant Mesothelioma and Its Non-Asbestos Causes*, 142 ARCH. PATHOL. LAB. MED. 753 (2018) ("Attanoos 2018").

275 *See, e.g.*, Tomasetti C, Li L, Vogelstein B., *Stem cell divisions, somatic mutations, cancer etiology, and cancer prevention*, SCIENCE 355(6331):1330-1334 (2017).

mesothelioma. Numerous genetic mechanisms have been implicated including germline BRCA1 associated protein-1 (BAP-1) inactivation syndrome, structural gene rearrangements in Ewing sarcoma breakpoint region 1 (EWSR1) or fused in sarcoma (FUS), and anaplastic lymphoma kinase (ALK) rearrangements.[276]

Studies show that approximately 50-75% of mesothelioma in women is naturally occurring and not a result of asbestos exposure.[277] Just last year, doctors from MD Anderson published a case series on 164 female patients with peritoneal mesothelioma (mesothelioma in the lining of the stomach). Of the 122 patients where asbestos exposure could be assessed, only 11 (9%) had a history of direct or indirect exposure to asbestos.[278] Notably, no talc use was documented among *any* of the 122 patients.[279]

Notwithstanding the well-established body of science associating mesothelioma with extensive exposure to asbestos and the developing body of science regarding naturally occurring mesothelioma, litigation alleging that sub-trace amounts of asbestos, if any, in talcum powder products caused mesothelioma is suddenly booming.

2. Plaintiffs Cannot Reasonably Establish Causation

In mesothelioma cases, there is not the same sort of debate concerning general causation as occurs in the ovarian cancer cases. The epidemiological evidence does not suggest that

---

[276] *See, e.g.,* Hung, et al., *Identification of ALK Rearrangements in Malignant Peritoneal Mesothelioma*; 4(2) JAMA ONCOLOGY, 235-254, (2018); Argani, et al., *Pediatric Mesothelioma With ALK Fusions A Molecular and Pathologic Study of 5 Cases*; 45(5) AJSP 653 (2021); Murumagi, A., *STRN-ALK rearranged pediatric malignant peritoneal mesothelioma - Functional testing of 527 cancer drugs in patient-derived cancer cells*, 14(4) TRANSLATIONAL ONCOLOGY 101027 (2021); Miyagawa, C., et al., *A Novel Malignant Peritoneal Mesothelioma with STRN Exon 2 and ALK Exon 20: A Case Report and Literature Review*, THE ONCOLOGIST, 25:1-6 (2021).

[277] Attanoos 2018; Spirtas R, Heineman EF, Bernstein L, et al., *Malignant mesothelioma: attributable risk of asbestos exposure,* OCCUPATIONAL AND ENV'T MED. 1994; 51:804-811.

[278] Malpica, et al., *Malignant Mesothelioma of the Peritoneum in Women: A Clinicopathologic Study of 164 Cases*, 45(1) AM. J. SURGICAL PATHOL. 45 (2021).

[279] *Id*. at 47.

cosmetic talc generally causes mesothelioma, and, in contrast to their assertions regarding ovarian cancer, plaintiffs largely do not claim that exposure to unadulterated talc generally causes mesothelioma. At the same time, the parties do not dispute that exposure to sufficient levels of inhaled asbestos can cause mesothelioma. Instead, the critical question for causation purposes is whether an individual plaintiff can prove that she was exposed to sufficient levels of asbestos via her use of J&J's/Old JJCI's talcum powder products to cause mesothelioma.

In all or most mesothelioma cases, plaintiffs argue that the individual plaintiff was exposed to talcum powder that contained asbestos, but often do so without physical evidence of talcum powder *actually used* by plaintiffs themselves. Without any direct evidence of exposure to asbestos-containing talcum powder, many mesothelioma plaintiffs pursue a strategy of "extrapolation." First, they attempt to prove that some talcum powder products are contaminated with "trace" amounts of asbestos. Then, plaintiffs proffer experts who purport to estimate the cumulative exposure to asbestos that they allegedly experienced as a consequence of such product usage. Plaintiffs' experts then opine that the plaintiff was exposed to a level of asbestos over time that is sufficient to have caused mesothelioma.

This approach does not provide competent evidence that J&J's/Old JJCI's talcum powder products can cause or have caused mesothelioma. As detailed in section II.F, J&J/Old JJCI have subjected the cosmetic talc to be used in their products to regular, routine testing, as well as confirmatory testing by outside experts, for decades, which testing has consistently failed to detect asbestos in their cosmetic talc. Moreover, because plaintiffs' "extrapolation" approach relies on samples of talc admittedly never used by the plaintiff herself, such tests cannot establish that any given plaintiff was exposed to any asbestos, let alone levels of asbestos sufficient to cause mesothelioma.

3. The Epidemiological Evidence Does Not Show an Association Between Use of Talcum Powder Products and Mesothelioma.

Epidemiology is considered the "gold standard" for establishing a causal association between exposure to an alleged agent and a disease. While there are a number of epidemiological studies, and quite a bit of scientific debate, concerning whether there is an association between perineal use of cosmetic talc and ovarian cancer, the Debtor is not aware of any similar studies that have examined incidence of mesothelioma in cosmetic talc users.[280]

Indeed, the few studies that do exist—albeit concerning high dose, occupational exposure to talc (*i.e.,* exposure above that of the typical user of cosmetic products)—tend to show that talc does not increase the risk of mesothelioma. For example, a 1976 study looked at mortality rates among male workers in talc mines and mills in the Germanasca and Chisone valleys in Italy between 1921 and 1950.[281] That study found no cases of mesothelioma among the workers.[282] A 1979 study looked at miners and millers in the same region but looked at workers from 1946 to 1974 and similarly found no cases of mesothelioma among the workers.[283] Three subsequent updates to the 1979 study, the most recent in 2021, confirmed that there have been no cases of

---

280 The Debtor is aware of two studies published by plaintiffs' expert witnesses that discuss patients with mesothelioma who were evaluated as part of a "medical-legal evaluation." Moline, J., et al., *Mesothelioma Associated With the Use of Cosmetic Talc*, JOEM 62:1, 11-17. (2020) ("Moline 2020"); Emory, T., et al., *Malignant mesothelioma following repeated exposures to cosmetic talc: A case series of 75 patients*; AM J INDUS. MED. (2020) ("Emory 2020"). Such case studies are not the product of impartial research by disinterested researchers and are not probative to the question at hand.

281 Giovani F. Rubino et al., *Mortality Study of Talc Miners and Millers*, 18 J OCCUPATIONAL MED. 187 (1976).

282 *Id.*

283 Giovani F. Rubino et al., *Mortality and Morbidity Among Talc Miners and Millers in Italy*, *in* DUSTS AND DISEASE, PROCEEDINGS OF THE CONFERENCE ON OCCUPATIONAL EXPOSURES TO FIBROUS AND PARTICULATE DUST AND THEIR EXTENSION INTO THE ENVIRONMENT 357-363 (Richard Lemen & John M. Dement eds., Pathotox Publisher, Inc.) (1979).

mesothelioma among the workers studied. [284] In 1979, NIOSH-Harvard published a study on the effects of occupational exposure to talc not contaminated with asbestos among 392 miners and millers in Vermont.[285] Although that study found higher mortality rates "due to non-malignant respiratory disease" among the millers (but not the miners), the study found no cases of mesothelioma.[286] A 2019 update included a review of available death certificates of the workers in an expanded version of that cohort, and attributed one death to mesothelioma.[287] The study noted the possibility that the worker—whose death certificate specifically noted exposure to asbestos—had been exposed to asbestos "in other occupations" and/or "ionizing radiation."[288] At any rate, the inclusion of that worker still did not result in a statistically significant elevated risk of mesothelioma in the cohort, and the study concluded that "there is no evidence of increased risk of respiratory cancer."[289] In 2020, a pooled cohort study of talc miners and millers in Austria, France, Italy, Norway, and Vermont found no cases of mesothelioma, concluding that "the epidemiological evidence from cosmetic talc miner/miller cohort studies does not support a hypothesis that cosmetic talc exposures are associated with increased risk of pleural mesothelioma."[290]

---

[284] Maurizio Coggiola et al., *An Update of a Mortality Study of Talc Miners and Millers in Italy*, 44 AM. J. INDUS. MED. 63 (2003); Pira 2018; Ciocan, C., et al., *Mortality in the cohort of talc miners and millers from Val Chisone, Northern Italy: 74 years of follow-up*, ENV'T RES. 203 (2021).

[285] Selevan SG, Dement JM, Wagoner JK, Froines JR. 1979a. *Mortality patterns among miners and millers of non-asbestiform talc: Preliminary report*, J. ENV'T PATHOL. 2:273–84 (1979).

[286] *Id.*

[287] Fordyce, Leonhard, Mowat & Moolgavkar, *A 37-year Update on Morality Patterns in an Expanded Cohort of Vermont Talc Miners and Millers,* 61:11 J. OCCUPATIONAL & ENV'TL MED 916 (2019).

[288] *Id.* at 922.

[289] *Id*. at 923; *see also* Fordyce, T., et al., *Response to Letter to the Editor: Misrepresentation by Egilman et al., of the Fordyce et al., (2019) Vermont Talc Miners and Millers cohort study update*, 62(1) J. OCCUPATIONAL & ENV'T MED. 19 (2020).

[290] Ierardi, MA, et al., *Absence of Mesothelioma Risk Maintained in an Expanded International Cohort of Cosmetic Talc Miners and Millers*, INHALATION TOXICOL., 32(6):257-264 (2020). Finding "no consistent

4. Plaintiffs' Non-Epidemiological Evidence Does Not Prove that Talcum Powder Products Are Contaminated With Asbestos.

Plaintiffs dismiss the lack of studies linking talc to mesothelioma, asserting instead that it "has been established epidemiologically that breathing in asbestos causes mesothelioma."[291] That assertion is only relevant if, among other things, the talcum powder products are contaminated with asbestos.

a. Dr. Longo's Testing and Testimony Do Not Prove that J&J's/Old JJCI's Talcum Powder Products Are Contaminated with Asbestos.

Plaintiffs do not contend that all talcum powder products contain asbestos. Rather, plaintiffs introduce evidence, typically through Dr. William Longo, that some products have been contaminated with asbestos.

(1) Who is Dr. William Longo?

Dr. Longo is plaintiffs' primary expert in talc litigation. Over the past 30 years, Dr. Longo has testified in 2,500 to 3,000 depositions.[292] Dr. Longo has testified at least once a week, every week, in recent years.[293] He recently testified that, 95% of the time that he is in court, Dr. Longo is testifying for plaintiffs' in asbestos litigation[294] and that 100% of his work in

---

pattern" in those studies, the IARC 2010 Monograph concluded that "there was inadequate evidence from epidemiological studies to assess whether inhaled talc not containing asbestos or asbestiform fibres [sic] causes cancer in humans." *See* IARC 2010 Monograph at 412.

291 8/9/2019 Plaintiffs' Memorandum of Law in Opposition to Defendants Motion to Set Aside Verdict or, In the Alternative, for a New Trial or Remittitur, *Olson v. Brenntag N.A., Inc*., (N.Y. Sup. Ct., No. 190328/2017 (GL)) at 24.

292 5/31/2018 Dr. William Longo trial testimony in *Brick v. Brenntag North America, Inc., et al.*, (Super. Ct. Ca., L.A. Cnty., No. JCCP 4674/BC674595) at 171:20-22.

293 10/19/2018 Dr. William Longo trial testimony in *Allen v. Brenntag North America, Inc., et al.*, (Super. Ct. Ca., Humboldt Cnty., No. DR 180132) at 3519:10-13.

294 7/23/2019 Dr. William Longo trial testimony in *Hayes v. Colgate-Palmolive Co., et al.*, (Jefferson Cir. Ct., Ky., No. 16-CI-03503) at 117:17-20.

talc litigation to-date has been on behalf of plaintiffs.[295] Indeed, Dr. Longo has testified that he believes that ***every*** plaintiffs' attorney in the country discloses him in all of their asbestos lawsuits.[296] In other words, everyone knows what Dr. Longo will say, before you even have to ask him.

Dr. Longo is the President and a 75% owner of his lab Material Analytical Services, LLC ("MAS").[297] Dr. Longo has testified that MAS has billed over $30 million for legal work on behalf of plaintiffs in the last 30-plus years[298] and that working for plaintiffs in litigation has allowed his lab to survive.[299] MAS has billed at least $2.5 million for work supporting talc litigation against J&J/Old JJCI.

However prolific his presence in the talc litigation, courts have excluded Dr. Longo's opinions on numerous occasions.[300] One court has described Dr. Longo's work as "junk science"—concluding that studying "Dr. Longo's testimony reveal[ed] it to be practiced and to

295 2/26/2019 Dr. William Longo trial testimony in *Olson et al. v. Brenntag North America, Inc., et al.,* (Supr. Ct. N.Y., N.Y. Cnty., No. 190328/2017) at 1646:24-1647:2.

296 2/7/2019 Dr. William Longo trial testimony in *Leavitt et al. v. Johnson & Johnson, et al.,* (Super. Ct. Ca., Alameda Cnty., No. RG17882401) at 179:3-7.

297 7/23/2019 Dr. William Longo trial testimony in *Hayes v. Colgate-Palmolive Co., et al.,* (Jefferson Cir. Ct., Ky., No. 16-CI-03503) at 114:14-18.

298 *Id.* at 118:6-10.

299 3/5/2019 Dr. William Longo trial testimony in *Rimondi et al. v. BASF Catalysts LLC, et al.*, (Super. Ct. N.J., Middlesex Cnty., No. MID-2912-17-AS) at 35:25-36:14.

300 *See, e.g.*, 7/23/2018 Order in *Weirick v. Brenntag N. Am., Inc.*, (Super. Ct. Ca., Alameda Cnty., No. BC656425) at 27-41; 10/1/2018 trial transcript in *Allen v. Brenntag N. Am., Inc.*, (Cal. Super. Ct., No. DR 180132) at 886:18-893:25; 7/5/2001 Order in *In re Lamar Cty. Asbestos Litig.*, (Tex. Dist. Ct., No. 2000-3559) (calling Dr. Longo's MAS tests "junk science"); *Krik v. Crane Co.*, 71 F. Supp. 3d 784, 790 (N.D. Ill. 2014); *Suoja v. Owens-Ill., Inc.*, No. 05-CV-219-BBC, 2015 WL 2341436, at *3 (W.D. Wis. May 14, 2015); *In re Welding Fume Prods. Liab. Litig.*, No. 1:03-CV-17000, 2010 WL 7699456, at *76 (N.D. Ohio June 4, 2010); *In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 80 (Bankr. W.D.N.C. 2014) (finding Dr. Longo's studies "pseudo-science at best"); *Dugas v. 3M Co.*, No. 3:14-CV-1096-J-39JBT, 2016 WL 3946802, at *6 (M.D. Fla. June 21, 2016); *Tyre v. CSC Transp., Inc.*, No. 16-2002-CA-4837, 2003 WL 26474173, at *1-4 (Fla. Cir. Ct. Sept. 24, 2003); *Ball v. Consol. Rail Corp.*, 142 Ohio App. 3d 748, 758-59, 756 N.E.2d 1280, 1288 (Ohio App. 2001); *Grigg v. Allied Packing & Supply Inc.*, No. RG12 629580, 2013 WL 8103870, at *2 (Cal. Super. Ct. Mar. 12, 2013); *In re Asbestos Pers. Injury Litig.*, No. 03-C-9600, 2009 WL 10696863, at *5 (W. Va. Cir. Ct. Feb. 20, 2009).

employ misdirection and evasiveness. It is at best disingenuous, not credible and unsupported by any respectable community of scientists."[301] Another court called his work "pseudo-science at best" and pointed out that "Dr. Longo's studies were carried out in such a way as to produce the highest results possible and to overdramatize the process."[302]

Dr. Longo also has given inaccurate testimony concerning his laboratory's history of testing cosmetic talcum powder. On at least ***ten*** occasions in cosmetic talcum powder litigation against J&J/Old JJCI, Dr. Longo testified under oath that his laboratory never tested cosmetic talcum powder for the presence of asbestos before he was retained in late 2016.[303] This testimony was incorrect. After a laborious investigation into years of deposition transcripts, defense counsel discovered that, in 2002, Dr. Longo testified in a traditional asbestos case: "[W]e have done our own studies on talc, but what I haven't been able to do is find a cosmetic where I can say, yes, that has asbestos in it."[304] He further testified that he was "very familiar" with the issue and that cosmetic talc containing asbestos was "an urban legend."[305] In short, Dr. Longo testified, "[w]e've looked. We have not found it."[306] In another transcript uncovered by defense counsel, six years before being retained in talc litigation, in 2010, Dr. Longo testified that if talc is not sourced from New York (and J&J/Old JJCI never sourced talc from New York), then "that

301 7/5/2001 Order in *In re Lamar Cty. Asbestos Litig.*, (Tex. Dist. Ct., No. 2000-3559), Ex. A at 1.

302 *In re Garlock Sealing Techs., LLC*, 504 B.R. at 80.

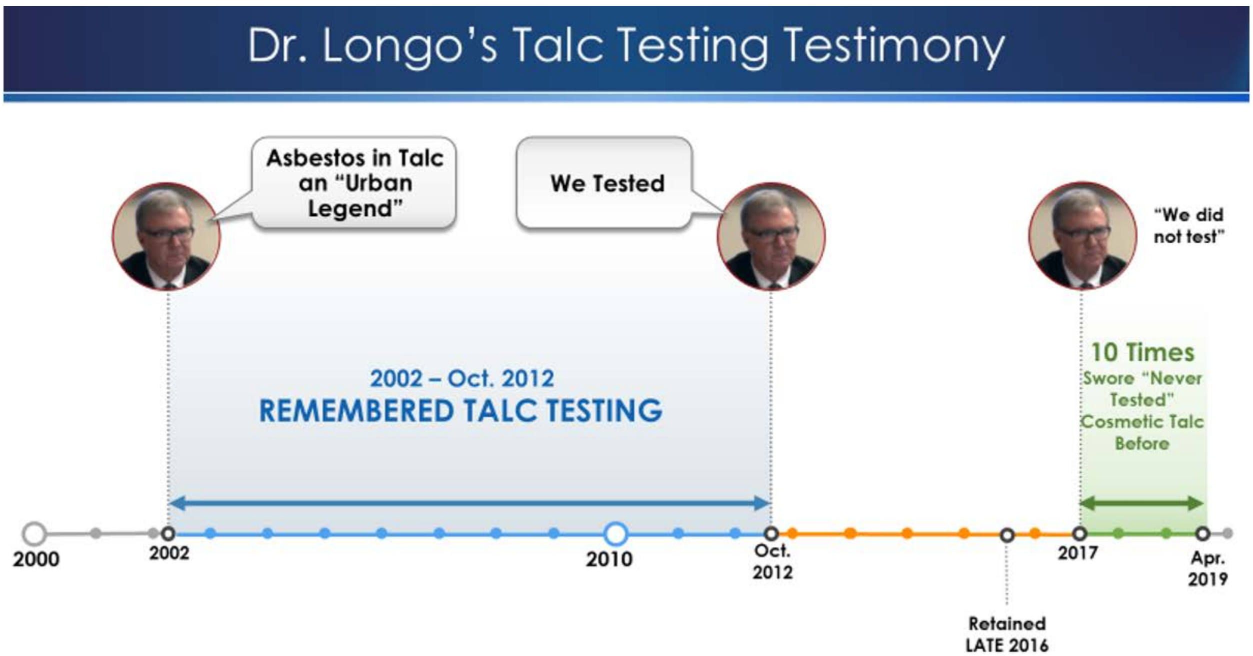
303 2/26/2019 Dr. William Longo trial testimony in *Olson et al. v. Brenntag North America, Inc., et al.*, (Supr. Ct. N.Y., N.Y. Cnty., No. 190328/2017) at 1646:6-23; 10/2/2019 Dr. William Longo trial testimony in *Crudge et al. v. Johnson & Johnson, et al.*, (Super. Ct. Ca., L.A. Cnty., No. BC685901) at 232:3-6.

304 7/18/2002 Dr. William Longo deposition testimony in *Starkweather v. ACandS, Inc., et al.*, (Mass. Super. Ct., No. 00-6030) at 155:20-23.

305 *Id.* at 155:10-17.

306 5/28/2002 Dr. William Longo deposition testimony in *Manbodh v. Hess Oil Virgin Islands Corp., et al.,* (V.I. Terr. Ct., No. 324/1997) at 106:11-19.

talc is clean,"[307] the implication being that Dr. Longo had performed some form of analysis to confirm the veracity of his testimony. And, in 2012, Dr. Longo testified that MAS had performed in-house studies assessing cosmetic talc.[308] Dr. Longo's excuse for the ten instances of incorrect testimony is that he simply "forgot" everything about the talc testing performed by his laboratory by the time that he began testifying against J&J/Old JJCI in 2017.[309] A depiction of Dr. Longo's inaccurate testimony regarding talc testing is set forth below.



(2) Dr. Longo's Allegations that J&J/Old JJCI Talcum Powder Contains Asbestos

In reports dated August 2017 and March 2018, Dr. Longo claims to have tested 32 samples of J&J/Old JJCI talcum powder products dating back to the 1950s, finding "trace"

---

307 10/29/2010 Dr. William Longo deposition testimony in *Edwards et al. v. ACandS, Inc., et al.,* (Cir. Ct. Md., Baltimore City, No. 24X08000416) at 102:19-103:11.

308 10/1/2012 Dr. William Longo deposition testimony in *Dean et al. v. ACandS, Inc., et al.*, (Cir. Ct. Md., Baltimore City, No. 24X10000415) at 37:20-38:16.

309 7/23/2019 Dr. William Longo trial testimony in *Hayes v. Colgate-Palmolive Co., et al.,* (Jefferson Cir. Ct., Ky., No. 16-CI-03503) at 125:1-5; 271:8-272:12.

amounts of asbestos in 18 of those samples (56%).[310] Subsequently, Dr. Longo claims to have tested another 72 samples—57 from J&J/Old JJCI talcum powder products, and 15 historical samples provided by Old JJCI's talc supplier, Imerys[311] that Dr. Longo claims to "represent[] talc that was used in Johnson & Johnson talc products," including talc sourced from Vermont, Italy, and Korean mines—finding "trace" asbestos in 50 (69%) of the samples.[312] Dr. Longo claims that his laboratory has "issued reports for the testing of approximately 118 containers of J&J/Old JJCI talc products (primarily Jonson's Baby Powder) that cover a span of decades," and has "identified and report on regulated asbestos in 78 of 118 containers of Johnsons' Baby Powder and Shower to Shower, or 66% of the total amount of J&J/Old JJCI talc products reported on to date."[313]

Dr. Longo's purported findings of asbestos are erroneous or otherwise unreliable. Many if not most of the 18 initial samples that tested positive came from bottles sourced from anonymous eBay sellers, purported "collectors," and the father of a lawyer representing plaintiffs.[314] Some had sat unsealed and opened, under unknown circumstances, for years or decades,[315] and contained other contaminants not found alongside talc in nature such as

---

310 *See, e.g.,* Expert Report of Dr. William Longo and Dr. Mark Rigler "Analysis of Johnson & Johnson Baby Powder and Valiant [sp] Shower to Shower Talc Products for Amphibole (Tremolite) Asbestos" (Aug. 2, 2017) ("Longo Aug. 2, 2017 Rep.").

311 In February 2019, Old JJCI's talc supplier, Imerys Talc America, Inc. and two of its affiliates, Imerys Talc Vermont, Inc. and Imerys Talc Canada, Inc. (collectively, "Imerys") filed voluntary petitions under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Imerys Bankruptcy"). Imerys has potential liability for personal injury claims arising from exposure to talc it sold to customers, including Old JJCI. The First Day Declaration contains a discussion of the Imerys Bankruptcy.

312 *See id.*

313 Declaration of William E. Longo, Ph.D., dated May 11, 2020 at 1-2.

314 *Id.*

315 *See e.g.*, 10/19/2018 Dr. William Longo trial testimony in *Allen v. Brenntag North America, Inc., et al.* (Super. Ct. Ca., Humboldt Cnty., No. DR 180132) at 3604:20-22; 2/26/2019 Dr. William Longo trial

diatomaceous earth.[316] And Dr. Longo has conceded that "the opening in a bottle gives plenty of room" for it to be contaminated with "[ambient] asbestos fiber[s]."[317] Indeed, at least one state court has excluded portions of Dr. Longo's testing on the grounds that plaintiffs failed to make an adequate "chain of custody" showing.[318]

In addition, although Dr. Longo claims to have tested J&J's/Old JJCI's talc with TEM and PLM, there are significant problems in Dr. Longo's selection and in the application of the methodologies that he claims to use. As an example, on April 27, 2020, Judge Wolfson issued a wide-ranging *Daubert* opinion in the MDL proceedings that excluded certain aspects of Dr. Longo's testing—specifically his PLM analyses—on the basis that they were not sufficiently reliable.[319]

Dr. Longo's choice to use PLM for testing talc in the MDL proceedings came as a surprise given that he has long distanced himself from that method for testing talc. Dr. Longo has never "personally analyzed a sample for the presence of asbestos using PLM."[320] As he put it: "I don't do PLM analysis."[321] Dr. Longo previously testified that "the PLM method is not

testimony in *Olson et al. v. Brenntag North America, Inc., et al.*, (Supr. Ct. N.Y., N.Y. Cnty., No. 190328/2017) at 1739:17-21.

316 4/22/2019 Dr. Matthew Sanchez trial testimony in *Olson et al. v. Brenntag North America, Inc., et al.* (Supr. Ct. N.Y., N.Y. Cnty., No. 190328/2017) at 6488:16-6491:22 (discussing identification of diatomaceous earth in container that Dr. Longo used for the "Below the Waist" study).

317 2/26/2019 Dr. William Longo trial testimony in *Olson et al. v. Brenntag North America, Inc., et al.* (Supr. Ct. N.Y., N.Y. Cnty., No. 190328/2017) at 1739:6-12.

318 *See* 7/23/2018 Order in *Weirick v. Brenntag N. Am., Inc*., (Cal. Super. Ct. L.A. Cty., No. BC656425) at 27-35.

319 April 27, 2020 MDL Order at 56-57.

320 1/25/2019 Dr. William Longo deposition testimony in *Yvette Young v. Johnson & Johnson et al.,* (Mo. Cir. Ct., St. Louis City, No. 1522-CC09728-02) at 85:18-20.

321 *Id.* at 86:5-6.

appropriate to do an evaluation for these types of products—*i.e.*, talcum powder products.[322] He has testified that "[t]he concentration is too low and you're dealing with small fibrous structures and it's going to be beyond the resolution of the PLM."[323] He has testified that, when trying to determine whether asbestos is present in talc, "TEM is the only method to determine that."[324]

Despite Dr. Longo's long history of criticizing PLM for testing talc, he had analysts at his laboratory perform PLM analyses as part of his laboratory's testing of historic containers of J&J/Old JJCI talcum powder products.[325] Dr. Longo claimed that those analyses identified ultra-trace levels of asbestos (<0.01%).[326] But this testing failed to survive a *Daubert* challenge. In excluding Dr. Longo's PLM analyses from the MDL proceedings, Judge Wolfson contrasted Dr. Longo's prior testimony about the limitations of PLM with the fact that he now purports to find asbestos at ultra-trace levels that he had previously said could not be achieved using this method.[327]

Notwithstanding the exclusion of his PLM analyses by Judge Wolfson, Dr. Longo continues to use PLM methods for testing J&J's/Old JJCI's talc.

Further, Dr. Longo has declined to disclose internal reference charts used by his analysts to determine visually how much asbestos was in a PLM sample, without which his results cannot

---

322 8/24/2018 Dr. William Longo trial testimony in *Weirick et al. v. Brenntag North America, Inc., et al.,* (Super. Ct. Ca., L.A. Cnty., No. BC656425) at 2921:25-28.

323 4/17/2018 Dr. William Longo deposition testimony in *Weirick et al. v. Brenntag North America, Inc., et al.*, (Super. Ct. Ca., L.A. Cnty., No. BC656425) at 283:5-7.

324 11/20/2017 Dr. William Longo deposition testimony in *Wittman v. Brenntag North America Inc., et al.*, (Super. Ct. Ca., L.A. Cnty., No. BC646439) at 203:12-13.

325 *See, e.g.,* Longo Aug. 2, 2017 Rep.

326 *Id.*

327 April 27, 2020 MDL Order at 54-55.

be reproduced or verified.[328] Indeed, given these critical flaws, it is unsurprising that efforts by a third-party lab engaged by Dr. Longo to verify his results found significant inconsistencies, underscoring, as Judge Wolfson held in the MDL, "the very real reliability and reproducibility issues plaguing Dr. Longo's PLM testing."[329] Dr. Longo has also used sample preparation techniques such as his "Blount PLM method"[330] which has not been validated or accepted by any regulatory organization.

J&J's/Old JJCI's experts from RJ Lee Group, including Dr. Matthew Sanchez, have used XRD, PLM, and TEM to test historic samples of talcum powder products that Dr. Longo reported testing. Dr. Sanchez has stated that he has not found asbestos in any of the containers from J&J's historic archive and has opined that the amphibole structures that Dr. Longo claims to be detecting are in actuality non-asbestiform particles.[331] In fact, when RJ Lee Group and Dr. Longo analyze the same samples, RJ Lee Group identifies amphibole minerals more often than Dr. Longo (the amphibole minerals identified by RJ Lee Group have been non-asbestiform),[332] a discrepancy that suggests that Dr. Longo's preparation techniques do not explain his anomalous "asbestos" findings because other laboratories are entirely capable of seeing the same particles that Dr. Longo is calling "asbestos."

---

328 Judge Wolfson held that "[w]ithout that information, which is internally created by [Dr. Longo's lab], reproducing Dr. Longo's test under the PLM would not be possible, and hence, the testing is unreliable." April 27, 2020 MDL Order at 155.

329 *Id*.

330 Declaration of William E. Longo, Ph.D., dated May 11, 2020 at 1-2.

331 *See e.g.*, 8/2/2021 Dr. Matthew Sanchez trial testimony in *Prudencio v. Johnson & Johnson, et al.*, (Super. Ct. Ca., Alameda Cnty., No. RG20061303) at 7938:21-7939:4.

332 *Id*.

5. Plaintiffs' Experts' Testimony, Based on Dr. Longo's Test Results and Other Purported Historical Evidence of Contamination, Does Not Prove that a Plaintiff was Exposed to Asbestos in J&J or Old JJCI Talcum Powder Products.

Dr. Longo's testing and testimony, standing alone, is insufficient to show that any particular plaintiff was exposed to asbestos in a J&J/Old JJCI talcum powder product.[333] Without evidence that an individual plaintiff actually purchased and used a contaminated talcum powder product, there is no direct evidence that plaintiff was exposed to any asbestos through such products. To fill this gap, plaintiffs in mesothelioma cases make a number of inferential leaps, typically via one or more causation experts, to extrapolate from Dr. Longo's findings of "trace" asbestos in some samples to the conclusion that a plaintiff must have been exposed to asbestos in J&J/Old JJCI talcum powder products.

First, plaintiffs' causation experts testify that mesothelioma is a "signal tumor," meaning someone with mesothelioma almost always got it from exposure to asbestos. Those experts also testify, based on a review of plaintiff's medical, occupational, and environmental history, that each plaintiff's mesothelioma was neither spontaneous nor caused by any alternative factors and they purport to "rule out" occupational and environmental asbestos exposure.[334]

---

333 Indeed, in the MDL, Judge Wolfson found that Dr. Longo's purported findings of "ultra-trace" asbestos in some (but not all) talcum powder product samples, coupled with his failure to conduct any exposure analysis, cannot support a conclusion that "[J&J's/Old JJCI's] talc products causes exposure, let alone significant exposure, to asbestos." April 27, 2020 MDL Order at 157. As a result, Dr. Longo will not be permitted to testify in the MDL to "the likelihood that talc users were exposed to 'significant' amounts of asbestos, [or] indeed, any exposure [to asbestos]" via those products. *Id.*; *see also* 7/23/2018 Order in *Weirick v. Brenntag N. Am., Inc.*, (Cal. Super. Ct. L.A. Cty., No. BC656425) at 27-35 (the California Superior Court has similarly excluded Dr. Longo's attempt to "extrapolate" from findings of "low levels" of asbestos in some talcum powder products, excluding his opinion that "individuals who used Johnson & Johnson's Baby Powder . . . would have, more likely than not, been exposed to fibrous amphibole asbestos.").

334 One of plaintiffs' experts has testified that he does not believe mesothelioma occurs spontaneously in the United States because "almost everyone in the United States has had exposure to asbestos." 3/11/2019 Dr. Murray Finkelstein trial testimony in *Olson et al. v. Brenntag North America, Inc., et al.*, (Supr. Ct. N.Y., N.Y. Cnty., No. 190328/2017) at 2796:1-19. Opinions such as these support plaintiffs' argument against spontaneous mesothelioma, but they directly undercut plaintiffs' assumption that a talc user who develops

The causation experts then rely on some combination of Dr. Longo's testing, a 1991 article claiming to find asbestos in a Sample "I" that the author later claimed was Johnson's Baby Powder,[335] and their own interpretation of historical documents that purportedly show that J&J's/Old JJCI's talc was contaminated with asbestos during the period plaintiff was using J&J/Old JJCI talcum powder products. Based on that evidence, plaintiffs' experts opine that it is highly likely that plaintiffs were exposed to significant levels of asbestos.[336]

Even assuming that Dr. Longo's findings are reliable (something the company and its own testing experts vigorously dispute), there is little credible basis to extrapolate from tests of a small number of samples of talc that a plaintiff never used (and a small handful of historical documents) to draw conclusions about the likelihood of contamination across all talcum powder products. This is particularly so in the face of the extensive routine and confirmatory testing regularly conducted by the company, its suppliers, and independent third parties over the past 50 years, which have not shown such contamination.[337]

6. Plaintiffs' Evidence is Insufficient to Show that Any Plaintiff Was Exposed to Levels of Asbestos Sufficient To Cause Mesothelioma.

Plaintiffs' causation experts for the most part acknowledge that it is not sufficient merely to show "any" exposure to asbestos to establish causation. Indeed, certain of those experts have opined that "trivial or de [minimis] exposure[s]" to asbestos are not sufficient, and that "the

---

mesothelioma must have been exposed to asbestos in talc, as opposed to the myriad other sources that account for exposure to asbestos common to almost the entire country's population.

335 Blount, *Amphibole Content of Cosmetic and Pharmaceutical Talcs*, ENV'T HEALTH PERSPECTIVES, 94:225-230 (1991).

336 For example, one expert for a number of the plaintiffs has offered the opinion, based on Dr. Longo's testing of only a small sampling of historical samples, that, if a plaintiff had purchased ten bottles of Johnson's Baby Powder, the chance that one or more would be contaminated with asbestos is "99.9%." 3/12/2019 Dr. Murray Finkelstein trial testimony in *Olson et al. v. Brenntag North America, Inc., et al.*, (Supr. Ct. N.Y., N.Y. Cnty., No. 190328/2017) at 3011:4-22.

337 *See* section II.F, *supra*.

exposure must be orders of magnitude [above] background" to be a "significant contributing factor in the development of mesothelioma."[338] But, citing testing such as that conducted by Dr. Longo, as well as the duration of a plaintiff's talc use and, through attempts to rewrite history with respect to the company's historic testing, they claim that individual plaintiffs have been exposed to sufficient quantities of asbestos to trigger the development of mesothelioma.[339]

Plaintiffs' experts attempt to justify that conclusion in various ways, including by reference to accepted ambient levels of asbestos, or occupational health standards (such as those promulgated by OSHA).[340] They also rely on documents estimating the level of asbestos a talc user is exposed to under certain conditions. Three oft-cited documents include: a study by Dr. Longo's lab, which purported to simulate the levels of asbestos exposure resulting from the below-the-waist use of Johnson's Baby Powder (known as the "Below the Waist" study)[341]; a document in which an Old JJCI toxicologist attempted to estimate the amounts of "airborne talc" and "hypothetical asbestos" a consumer might be exposed to if the talc is assumed to be contaminated with 10ppm asbestos;[342] and a 2014 study (the "<u>Gordon Study</u>"), which found that a talc-based product **<u>from a manufacturer other than J&J</u>** was "consistently contaminated

---

338 3/4/2019 Dr. Jacqueline Moline trial testimony in *Olson et al. v. Brenntag North America, Inc., et al.*, (Supr. Ct. N.Y., N.Y. Cnty., No. 190328/2017) at 2019:16-2093:8; 3/12/2019 Dr. Jacqueline Moline trial testimony in *Olson et al. v. Brenntag North America, Inc., et al.*, (Supr. Ct. N.Y., N.Y. Cnty., No. 190328/2017) at 2826:22-2827:7.

339 Plaintiffs' experts have acknowledged that "[m]esothelioma is a dose-response disease" and that "trivial or de [minimis] exposure[s]" are not sufficient to cause mesothelioma. 3/5/2019 Dr. Jacqueline Moline trial testimony in *Olson et al. v. Brenntag North America, Inc., et al.*, (Supr. Ct. N.Y., N.Y. Cnty., No. 190328/2017) at 2181:25-2182:2; 3/12/2019 Dr. Jacqueline Moline trial testimony in *Olson et al. v. Brenntag North America, Inc., et al.*, (Supr. Ct. N.Y., N.Y. Cnty., No. 190328/2017) at 2926:11-15.

340 *See, e.g.,* 7/1/2021 Dr. William Longo trial testimony in *Prudencio v. Johnson & Johnson, et al.*, (Super. Ct. Ca., Alameda Cnty., No. RG20061303) at 4776:16-4779:2.

341 1/2018, MAS Supplemental Expert Report "Below the Waist Application of Johnson & Johnson Baby Powder, Revision #2.

342 6/2011, T. McCarthy, Ph.D., DABT, Presentation Titled Adding TEM to the Global Talc Specification, JNJ 000133180.

with asbestos" and that, when the product is applied via a "shaker test" it releases asbestos fibers into the air that could be inhaled by the user.[343]

But neither reference to asbestos regulations or the above-described documents cures the critical flaw in plaintiffs' causation case, as none of those standards or documents are probative of the likely amount of exposure experienced by a plaintiff who used talcum powder products with unknown, and potentially zero, asbestos contamination. Dr. Longo's study was designed to simulate the mode and frequency of use of a particular plaintiff (based upon her deposition testimony), and not any other user.[344] He also selected a bottle of Johnson's Baby Powder from the 1950s that was an extreme outlier in terms of alleged asbestos content.[345] The hypothetical exposure calculations by Old JJCI's toxicologist assumed a product consistently contaminated with a specific amount of asbestos.[346] And the Gordon Study *did not even involve a J&J or Old*

---

343 Ronald E. Gordon, *Asbestos in commercial cosmetic talcum powder as a cause of mesothelioma in women,* 20(4) INT. J OCCUPATIONAL ENV'T HEALTH 318, 330 (2014) ("Gordon 2014").

344 1/2018, MAS Supplemental Expert Report "Below the Waist Application of Johnson & Johnson Baby Powder, Revision #2.

345 Dr. Longo claimed to have found over 50 times more asbestos in that bottle (15,100,000 str/g) than the highest concentration container for the samples that his laboratory analyzed from J&J's historic archive (268,000 str/g). *Compare* Longo Aug. 2, 2017 Rep. *with* Expert Report of Dr. William Longo and Dr. Mark Rigler "The Analysis of Johnson & Johnson's Historical Product Containers and Imerys' Historical Railroad Car Samples from the 1960's to the Early 2000's for Amphibole Asbestos, 2nd Supplemental Report" (Feb. 1, 2019).

346 Certain talc plaintiffs misrepresent Old JJCI's hypothetical exposure calculation by pointing to Dr. John Hopkins' testimony in *Olson* agreeing to the question "if there was an amount of asbestos in talc that was ten parts per million [or 0.00001% by weight], it would create a dose of asbestos between 4.5 to 9.3 fibers per cc for the adult and 0.16 to 0.18 fibers per cc in diapering a baby." 4/18/2019 Dr. John Hopkins trial testimony in *Olson et al. v. Brenntag North America, Inc., et al.*, (Supr. Ct. N.Y., N.Y. Cnty., No. 190328/2017) at 6240:25-6241:6242:1. The underlying data from these calculations shows that these numbers represent *total* fibers hypothetically respired during use, not fibers per cc. 6/2/2011 J&J Letter re Detection of Chrysotile Fiber by TEM in Magnesita Talc, JNJTALC000324172; 6/2/2011 Excel Spreadsheet re Hypothetical Serpentine, JNJ000380389. And Dr. Hopkins subsequently corrected the *Olson* testimony, specifying that the calculation was total fibers inhaled rather than fibers per cc. *See, e.g.*, 5/17/2019 Dr. John Hopkins trial testimony in *Johnson et al. v. Johnson & Johnson et al.*, (Ct. Common Pleas, S.C., Richland Cnty., No. 2018-CP-40-001781) at 1338:3-20.

JJCI talcum powder product—Rather, it used a brand of product from a different company.[347]

Extrapolating levels of exposure from testing of products a plaintiff did not use, using studies or calculations involving talc known or assumed to contain asbestos, or on products *not sold by J&J or Old JJCI*, does not show—and, in nearly all cases, there is no direct evidence—that a specific plaintiff, through their use of J&J/Old JJCI talcum powder products, was exposed to any level of asbestos, let alone sufficient levels of asbestos to cause mesothelioma. That failure of proof cannot be, or at least should not be, excused simply by the fact that the plaintiff has a disease that is associated with asbestos. More is required for causation.

7. Inability to Prove Causation from Exposure to Non-Asbestos Cleavage Fragments.

As an alternative to the asbestos-contamination theory, many plaintiffs have begun to turn to allegations that "cleavage fragments" (crushed-up pieces of non-asbestiform rock)—and even talc itself—can cause mesothelioma.[348] Plaintiffs assert that there is no "medical difference" between asbestos fibers and cleavage fragments, claiming that the latter has similar chemistry and dimensions, can be inhaled and "reach the alveoli," and therefore can cause the same diseases as asbestos.[349]

---

347 The specific product used in the Gordon Study was selected because it had the highest asbestos content out of 20 commercial talcum powder products tested in 1976 by Dr. Langer and Dr. Rohl of Mt. Sinai. Gordon 2014. Among those 20 products were J&J talcum powder products, which Dr. Langer and Dr. Rohl found not to be contaminated with asbestos. Rohl 1976. At least one court prohibited plaintiff's experts from relying on or testifying about the Gordon Study. *See* 7/23/2018 Order in *Weirick v. Brenntag N. Am., Inc.*, (Cal. Super. Ct. L.A. Cty., No. BC656425) at 27-35. That same court also excluded Dr. Longo's "exposure" opinions and testing of historical samples not used by plaintiff. *Id.*

348 *See, e.g.,* 11/1/2019 Dr. David Egilman deposition testimony in *Hagan et al. v. Johnson & Johnson et al.*, (Super. Ct. Ca., Alameda Cnty., No. RG19019699) at 63:7-64:7. Some plaintiffs go so far as to allege that asbestos and "fibrous talc" are the same chemically and morphologically, and/or that "fibrous talc," like asbestos, can cause mesothelioma. *Id.* As with cleavage fragments, plaintiffs fail to cite any reliable scientific study or data supporting the charge that "fibrous talc" causes mesothelioma.

349 *See, e.g.*, 5/25/2018 Dr. James Webber deposition testimony in *Cabibi et al. v. Johnson & Johnson et al.*, (Super. Ct. Ca., L.A. Cnty., No. BC665257) at 31:11-32:1.

As further described in section II.C above, the term "asbestos" is specific, and refers to six minerals that can form as bundles of long, thin, very flexible fibers, when those minerals present in an "asbestiform" habit. Various regulatory authorities recognize the distinction between asbestiform and non-asbestiform minerals, and have concluded that there is no evidence that non-asbestiform minerals can cause mesothelioma.[350]

For example, in 1992, OSHA performed a review of the scientific evidence to determine whether to regulate non-asbestiform minerals as asbestos.[351] That review determined that "substantial evidence is lacking to conclude that nonasbestiform tremolite, anthophyllite and actinolite present the same type or magnitude of health effect as asbestos," and that "there is insufficient health effects evidence linking exposure to nonasbestiform [tremolite, anthophyllite and actinolite] to a heightened risk of cancer.[352] NIOSH has made similar pronouncements in a comprehensive 2011 review of the data.[353] NIOSH has stated that "nonasbestiform minerals are not 'asbestos'" and that the epidemiological evidence only indicates that exposure to asbestos

350 In addition, one of the company's MDL experts on mesothelial and epithelial cell biology, toxicology, and cancer research, Dr. Brooke Mossman, has conducted *in vitro* experiments which "demonstrate that cleavage fragments do not induce oxidant production and markers of inflammation and cancer development," and has explained that animal studies have shown that asbestos fibers cause tumors while non-asbestos fragments do not. 2/25/2019 Expert Report of Dr. Brooke Taylor Mossman, MS, PHD, for General Causation *Daubert* Hearing, in *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, (D.N.J. MDL No. 16-2738 (FLW) (LHG)), Dkt. 9740-10 at 21. Ultimately, Dr. Mossman has concluded that cleavage fragments "do not cause changes important in the development of disease and do not cause mesotheliomas." 3/22/2018 Dr. Brooke Mossman trial testimony in *Lanzo et al. v. Cyprus Amax Minerals Co., et al.*, (Super. Ct. N.J., Middlesex Cnty., No. MID-7385-16-AS) at 6988:3-13. And, in 2020, the company completed a Comprehensive Review of Talc in which it reviewed "epidemiologic studies which evaluated the pulmonary effects of occupational exposure to non-asbestiform cosmetic talc," and found that, "[o]verall, data from epidemiologic studies do not support a causal association between occupational exposure to nonasbestiform or cosmetic grade talc and lung cancer." 3/17/2020 Johnson's Baby Talcum Powder: A Comprehensive Review, JNJTALC001465273-001465527.

351 Occupational Exposure to Asbestos, Tremolite, Anthophyllite and Actinolite. 57 Fed. Reg. 24311 (June 8, 1992).

352 *Id.*

353 *See* NIOSH Roadmap.

causes mesothelioma.[354] And, a 2019 study of 570 fibers found in lung tissues reiterated that "there is *no convincing evidence* for the pathogenicity of cleavage fragments."[355]

8. Expert Testimony Based on "Junk Science"

In light of the company's extensive historic testing program and the opinions of dozens of independent labs and experts, each of which have consistently failed to detect asbestos in J&J's/Old JJCI's cosmetic talc, plaintiff experts also have attempted to craft a different approach to "find" asbestos in the company's products. By confusing what is or is not asbestos, plaintiff experts now claim that they are finding "asbestos" in talcum powder even if they are not.

a. Confusing Asbestiform and Nonasbestiform Minerals

One of Dr. Longo's core tactics is to call particles "asbestos" even when they are nonasbestiform. For example, Dr. Longo will report every particle of "tremolite" as asbestos if it meets the counting criteria of a "fiber," even if that particle is not "asbestiform" and therefore not asbestos. Dr. Longo acknowledges that a "structure [that] comes from breaking apart non-asbestos" minerals does "not magically become, in fact, asbestos."[356] However, he concedes he will nevertheless "count it and report it in [his] reports as asbestos."[357] Dr. Longo has explained that his lab is "not making that decision" whether the particles that he identifies in J&J/Old JJCI talcum powder are asbestiform or not.[358] If his lab finds "a non-asbestiform amphibole cleavage

354 *Id.*

355 Roggli & Green, *Dimensions of Elongated Mineral Particles: A Study of More Than 570 Fibers From More Than 90 Cases with Implications for Pathogenicity and Classification as Asbestiform vs. Cleavage Fragments*, ULTRASTRUCT PATHOL. 1-2 (2019) (emphasis added).

356 3/5/2019 Dr. William Longo trial testimony in *Rimondi et al. v. BASF Catalysts LLC, et al.,* (Super. Ct. N.J., Middlesex Cnty., No. MID-2912-17-AS) at 141:14-17.

357 *Id*. at 149:18-20.

358 7/24/2019 Dr. William Longo hearing testimony in *In re Johnson & Johnson Powder Prods. Mktg., Sales Pracs. & Prods. Liab. Litig.*, (D.N.J. No. 16-MD-2738(FLW)(LHG)), Dkt. 11640 at 582:9-19.

fragment, he will count it as an asbestos structure."[359] In other words, while Dr. Longo acknowledges he would not "***call*** that asbestos," he still would "write down in [his] report ***asbestos*** when [identifying] what that was."[360]

Dr. Longo is not alone in this approach. Plaintiff expert Dr. Steven Compton has affirmatively testified that he will call material asbestos, even when it's not:[361]

> Q. Sir, I'd like you to assume that this is a crystal of tremolite, the kind that is not asbestos. And that when it's crushed it forms all of these shapes. . . . I'd like you to assume that this long and skinny shape here is longer than 5 microns. Has an aspect ratio of 5 to 1. You'd call that asbestos; right?
>
> A. That would be counted as an asbestos fiber, yes.
>
> Q. *Even though it's not?*
>
> A. *That's correct.*

To justify this flawed methodology, plaintiff experts sometimes claim they are simply following the protocols established by the Asbestos Hazard Emergency Response Act (AHERA) regulations. They rely on the fact that a particle meets the definition of a "fiber," even though that does not in and of itself mean it is an "asbestos fiber."[362] They ignore that, what the regulations actually state "shall be recorded on the count sheet," is not a "fiber" but an "asbestos fiber."[363] They further ignore the context of the AHERA regulations: remediation—*i.e.*, the

359 *Id.* at 579:20-580:11.

360 3/5/2019 Dr. William Longo trial testimony in *Rimondi et al. v. BASF Catalysts LLC, et al.,* (Super. Ct. N.J., Middlesex Cnty., No. MID-2912-17-AS) at 148:17-25; 149:18-20 (Dr. Longo admitting he "would count it and report it in [his] reports as asbestos.").

361 10/23/2017 Dr. Steven Compton trial testimony in *Herford et al. v. AT&T Corp., et al.*, (Super. Ct. Ca., L.A. Cnty., No. BC646315) at 934:19–935:4.

362 *See* 40 C.F.R. § 763 app. A § II.A.9.

363 *Id.* app. A § II.F.9.a (emphasis added).

process of removing asbestos from schools and other environments where it is known to be present.[364] In that situation, there is no dispute that the material being removed is asbestos. When the presence of asbestos is known and the only question is how much, there is no need to first confirm the presence of asbestos. The AHERA regulations do require confirmation that the particles are, in fact, asbestos, but that confirmation occurs at an earlier step in the analysis before the counting rules are implicated.[365]

b. Non-Existent Chrysotile

Chrysotile is a particular type of "serpentine" (as opposed to "amphibole") asbestos. Until recently, Dr. Longo had never identified chrysotile in J&J's/Old JJCI's cosmetic talc. Dr. Longo claimed that he simply never looked for it.[366] Dr. Longo *now* claims not only to find chrysotile, but to find it in nearly 100% of the cosmetic talc that he tests—a much higher rate of occurrence than for other types of asbestos that he has claimed to find.[367] To support his findings, Dr. Longo uses PLM, which, as discussed above, he has long disclaimed for testing talc. In reality, what Dr. Longo is doing is finding talc particles in the talc, and calling them asbestos.

PLM requires more subjectivity than other techniques because the mineral type is determined based on the color the particles appear under a microscope. For example, the International Standards Organization reference for chrysotile shows a largely purple particle,

364 *See, e.g.*, 15 U.S.C. § 2641(b).

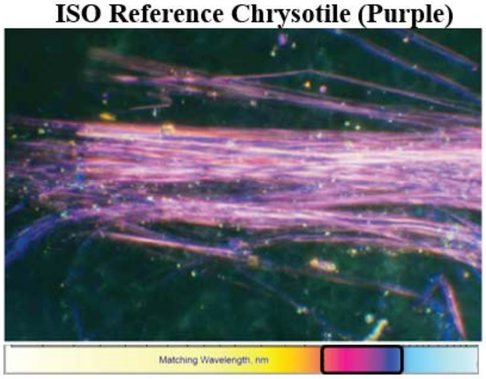
365 *See, e.g.*, 40 C.F.R. § 763.87(b) (citing Appendix E).

366 3/5/2019 Dr. William Longo trial testimony in *Rimondi et al. v. BASF Catalysts LLC, et al.,* (Super. Ct. N.J., Middlesex Cnty., No. MID-2912-17-AS) at 139:1-9; 141:2-8.

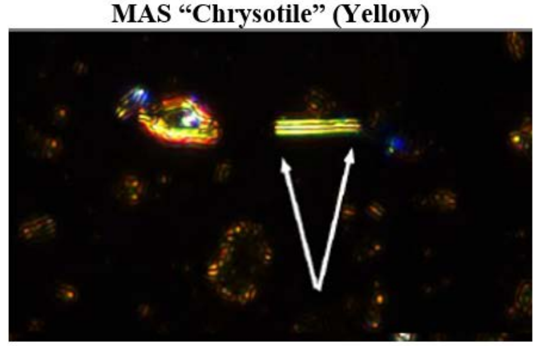
367 2/8/2021 Dr. William Longo deposition testimony in *Forrest et al. v. Johnson & Johnson et al.*, (Mo. Cir. Ct., St. Louis City, No. 1522-CC00419-02) at 138:9-139:19.

though colors can range from a deep orange to blue.[368] The "chrysotile" particles identified by Dr. Longo, however, are plainly yellow, which is the color that talc particles will appear via PLM:[369]

ISO Reference Chrysotile (Purple)



MAS "Chrysotile" (Yellow)



Even other *plaintiff experts* have agreed that Dr. Longo is identifying talc and calling it chrysotile. Plaintiff expert Mr. Lee Poye has testified, as follows:[370]

> **Q.** In your opinion, what do those photos that Dr. Longo claims is chrysotile from that -- from his PLM analysis, what are those structures?
>
> **A.** The edge of talc plates.

Dr. Longo could easily analyze these so-called chrysotile particles with TEM to conclusively prove whether or not they are chrysotile. But Dr. Longo has consistently refused to use other techniques that could confirm those opinions.[371]

---

[368] Particles are evaluated by PLM in both a "parallel" and "perpendicular" orientation, with each producing a different color. *See, e.g.*, ISO 22262-1. The colors referenced here are all for the parallel orientation.

[369] ISO 22262-1; Expert Report of Dr. William Longo "MAS Project #M71216 Two JBP, one Gold Bond Off -The-Shelf Talcum Powder Containers: Purchased from Lucky's Talcum Powder Analysis" (Apr. 13, 2021).

[370] 9/25/2020 Lee Poye deposition testimony in *McNeal, Jr. et al. v. Autozone, Inc., et al.*, (Super. Ct. Ca., L.A. Cnty., No. BC698965) at 128:20-129:6.

[371] *See, e.g.*, 1/27/2021 Dr. William Longo deposition testimony in *Johnson et al. v. Johnson & Johnson et al.*, (Super. Ct. Ca., L.A. Cnty., No. JCCP 4674 / 20STCV17335) at 81:19-82:18.

IV. Prejudicial Tactics Employed by the Plaintiff Bar in Cosmetic Talc Litigation

A. The Misinformation Campaign

In addition to evidentiary tactics discussed above, the plaintiff bar and their experts have sought to blanket the scientific literature, the media, and even U.S. Congressional and regulatory agency deliberations with misinformation about cosmetic talc.

1. Scientific Literature

Since their retention on behalf of plaintiffs in cosmetic talc litigation, many of the key expert witnesses for plaintiffs' counsel have flooded the scientific literature with articles repeating their opinions formed in (and motivated by) litigation. Often, this is used as a tool to combat motions *in limine* or *Daubert* attacks.

As one example, plaintiff expert Dr. Moline repeatedly attempted to testify at trials about 41 of her "patients" who she claims developed mesothelioma from using talc.[372] These "patients" were actually just plaintiffs from other cases in which plaintiff lawyers retained her as an expert witness.[373] Many courts excluded this testimony, generally prohibiting the parties from discussing the substance of cases other than the case at bar.[374]

Undeterred, Dr. Moline published a peer-reviewed article with a case series of "patients" (now narrowed to 33 "patients," all of whom, again, were plaintiffs in litigation) who she claimed developed mesothelioma from using cosmetic talc.[375] Unfortunately, courts have been

---

372 *See, e.g.*, 10/26/2017 Dr. Jacqueline Moline trial testimony in *Herford et al. v. AT&T Corp., et al.*, (Super. Ct. Ca., L.A. Cnty., No. BC646315) at 1542:6-27.

373 9/5/2017 Dr. Jacqueline Moline deposition testimony in *Herford et al. v. AT&T Corp., et al.*, (Super. Ct. Ca., L.A. Cnty., No. BC646315) at 30:7-8.

374 *See, e.g.*, 4/12/2019 Order in *Hayes v. Colgate-Palmolive Co., et al.*, (Jefferson Cir. Ct., Ky., No. 16-CI-003503) at 40; 2/22/2019 Order in *Pipes v. Johnson & Johnson, et al.*, (Dist. Ct., Okla. Cnty., Okla., No. CJ-2017-3487); 2/21/2018 Order in *Lanzo v. Cyprus Amax* Mineral (Super. Ct. N.J., No. MID-7385-16-AS).

375 Moline 2020.

much more hesitant to exclude a peer-reviewed article, even where the content of the article is the same material that routinely had been excluded.[376]

The article itself presents facts skewed to favor the plaintiffs' litigation positions. One key contention in the article is that, for every subject in the study, cosmetic talc was the only potential source of asbestos exposure.[377] This is inaccurate. Though Dr. Moline has refused to disclose their identities, counsel to the company has been able to identify many of the subjects in the study as plaintiffs in cosmetic talc litigation. Through those plaintiffs' disclosures and other information obtained in litigation, counsel has identified clear evidence of their other asbestos exposures.[378] Dr. Moline has admitted that she and her co-authors often did not look at any defense expert reports for the plaintiffs that they published about.[379] And, though the article was subject to peer review, those peer reviewers did not have access to the underlying information for the individual "cases."[380] They could only accept Dr. Moline's word as to the underlying facts.

Other plaintiff experts have followed suit and published an article similar to the Moline article.[381] Rather than publish actual studies relating to talc, some experts simply send letters to

---

376 *See, e.g.*, 5/18/2021 Order in *Prudencio v. Johnson & Johnson, et al.*, (Super. Ct. Ca., Alameda Cnty., No. RG20061303) (allowing plaintiff's experts to rely upon and give a "top level summary" of Dr. Moline's article).

377 Moline 2020 at 11.

378 For example, in one case that counsel was able to identify by cross-referencing information provided in the article against information in public lawsuits (Moline Case 6), the individual had a history of exposure to commercial asbestos in connection with asbestos-containing materials in his home as reported in his deposition testimony and interrogatory responses. Moreover, a review by a different plaintiffs' expert and a defense expert identified crocidolite in his tissue (a commercial type of asbestos not associated with J&J/Old JJCI talc)—contrary to Dr. Gordon's findings.

379 11/25/2019 Dr. Jacqueline Moline deposition testimony in *Wiman et al. v. Triangle Enterprises, et al.*, (Cir. Ct. Ky., No. 18-CI-00181) at 57:9-58:20; 6/11/2020 Dr. Jacqueline Moline deposition testimony in *Christina Lopez et al. v. Brenntag North America, Inc., et al.*, (Dist. Ct. Tx., Harris Cnty., No. 2017-86022-ASB) at 99:13-100:5.

380 6/11/2020 Dr. Jacqueline Moline deposition testimony in *Lopez et al. v. Brenntag North America, Inc., et al.*, (Dist. Ct. Tx., Harris Cnty., No. 2017-86022-ASB) at 82:20-84:4.

381 Emory 2020.

the editor criticizing the authors of actual studies for not sufficiently taking into account pro-plaintiff views.[382] Those letters to the editor are then cited to juries by the plaintiff expert to show the witness' supposed expertise in the talc subject matter.[383]

2. Media Campaigns

At the same time that they are litigating in court, the plaintiff bar is making their case to the potential jury pool through a variety of means, including, a steady stream of stories in widely circulated newspapers and periodicals, paid infomercials that run nightly on numerous cable channels, and one-sided press releases. These efforts typically incorporate various elements of the plaintiff bar's trial strategy.

a. National News Outlets

Since the onset of cosmetic talc litigation against J&J/Old JJCI, there have been tens of thousands of press articles concerning Johnson's Baby Powder and talc litigation. Indeed, coverage of this litigation has been relentless, by design.

Perhaps the most pernicious example of the plaintiff bar's "trial by news media" effort was an article published by Reuters in December 2018.[384] The article was one-sided and replete with inaccurate statements. Despite being provided with stacks of historic documents and hours of interviews debunking huge swaths, if not all, of its article, Reuters chose to simply ignore decades of evidence that undermined the story apparently fed to it by anonymous, plaintiff bar sources. J&J has issued subpoenas to various plaintiff firms to ascertain the information those

---

382 *See, e.g.*, Egilman DE, Madigan D, Yiman M, Tran T., *Letter to the Editor: Response to Vermont talc miners cohort study update*, 62 J. OCCUPATIONAL ENV'T MED. e17-18 (2019).

383 *See, e.g.*, 2/10/2020 Dr. Murray Finkelstein trial testimony in *Moure-Cabrera v. Johnson & Johnson et al.*, (Cir. Ct. Fl., Miami-Dade Cnty., No. 19-000727) at 1067:5-25.

384 Girion, L., *Johnson & Johnson knew for decades that asbestos lurked in its Baby Powder*, REUTERS (Dec. 14, 2018).

firms may have provided to Reuters. To-date, those firms have vigorously opposed J&J's efforts to uncover this information.

A primary theme, and the most egregious misstatement, in the Reuters article was the idea that certain documents and information were being presented to the public "for the first time." The assertion was, and is, fundamentally and demonstrably untrue. Every issue raised in the Reuters article was nothing more than a rehashing of issues, concerns, documents, and debates that were played out—publicly in many instances—throughout the 1970s and 1980s, as previously described. What's more, the documents that Reuters presented as akin to secret, smoking gun type evidence had not only been used in several trials but also published on a public website—FactsAboutTalc.com—that had gone live a month prior, in November of 2018.

Beyond this false narrative of "newly exposed" information, the following are just a few examples of (i) the overwhelming documentary and scientific proof provided to Reuters well before publication that it nonetheless chose to ignore; and (ii) information that was clearly ascertainable by fact checking, but instead was woefully distorted in the article:

- Reuters ignored the findings of the Nurses' Health Study, the Women's Health Initiative Study, and the Sister Study which, as described above, showed no overall increase in the risk of ovarian cancer by women who used talc.[385] These studies were conducted by scientists at institutions including Harvard Medical School, Harvard School of Public Health, the University of Massachusetts Amherst, and the National Institute of Environmental Health Sciences. Yet Reuters did not even mention them when describing the scientific and medical evidence available concerning the connection, if any, between talc and ovarian cancer.

- Reuters reported that there were "asbestos fibers in samples taken from [J&J's] Vermont operation" in the 1980s, but it actually cited five test results from *industrial talc* samples from a *California* mine (Red Hill) that was never used for cosmetic purposes.

[385] *See* section II.D, *supra*.

- Reuters misleadingly reported that X-ray scanning was the primary method that J&J/Old JJCI used to test its talc, and that J&J/Old JJCI only periodically tested its talc with TEM when, in fact, since the 1970s, J&J/Old JJCI have implemented a rigorous routine testing program requiring hourly sampling of its cosmetic talc production and testing composites of those samples using XRD, PLM, and TEM.[386]

- Reuters falsely reported that many internal, company documents "were shielded from public view by court orders that allowed J&J to turn over thousands of documents it designated as confidential," and claimed that the contents of these documents were reported in the article for the very first time. In fact, and as already explained, every document cited in the article had not only been listed on one or more public exhibit lists for a trial, but also posted on J&J's website www.FactsAboutTalc.com.

b. Paid Infomercials

In addition to pursuing unyielding press coverage to support their efforts, it is estimated that the plaintiff bar has spent over a hundred million dollars in advertising related to cosmetic talc litigation. This spend is on top of an estimated over $1.5 million per week spent on mesothelioma advertisements by just a handful of the asbestos law firms whose advertising spend is publicly available.[387]

386 *See* section II.F, *supra*.

387 *See* publicly available LMI Market Analysis for 2018 at 15, circulated by LMI Advertising at a 2018 industry conference.

Perhaps the most egregious examples of such advertisements are those produced by CAMG, an advertising agency that works exclusively with law firms. CAMG has produced at least 39 different advertisements concerning talcum powder, including a 30-minute infomercial that has played in markets across the U.S. on various cable channels.[388] The infomercial consists of two alternating segments. The first segment is styled like a talk show. A "Dr. Wendy Walsh" sits in an armchair with a second guest, discussing studies that allegedly link talcum powder use to ovarian cancer and mesothelioma. The second segment features a female actress, speaking directly to the camera, and referencing none other than the 2018 Reuters' article while describing several out of context documents used in that article. "Doctor" Walsh never mentions that she is not a medical doctor. Nor does the female actress (also not a qualified expert as far as the Debtor is aware) address the various information provided by J&J to Reuters that was ignored in the production of the 2018 article.

---

388 *See* https://vimeo.com/groups/624313 to access each of the versions of the talc advertisements prepared by CAMG. For an example of the infomercial specifically, *see* https://vimeo.com/groups/624313/videos/339004183.

Finally, the plaintiff bar's advertising has been strategically targeted at forums where plaintiffs are bringing suit. By way of example, as trials have approached in St. Louis, spending in that market has spiked, saturating the airwaves in the days leading up to *voir dire*.

3. Government Lobbying

Potential juries are not the only targets of the plaintiff bar's media blitz. Plaintiff lawyers also have sought the attention of Congress. On December 10, 2019, three plaintiff expert witnesses gave testimony to the House of Representative's Subcommittee on Economic and Consumer Policy of the Committee on Oversight and Reform at a hearing on "Examining Carcinogens in Talc and the Best Methods for Asbestos Detection."[389] These plaintiff experts included Dr. Longo and Dr. Moline, as well as Dr. Rod Metcalf.

At the hearing, Dr. Longo testified to Congress that testing without a "heavy liquid separation" preparation method would not be sensitive enough to routinely detect asbestos in talc.[390] His testimony defies credulity for a number of reasons. First, this technique has been known to the scientific community for decades. And, as far back as the 1970s, independent experts, including scientists at the FDA, rejected the technique for its unreliability and failure to detect the most prevalent type of asbestos—chrysotile.[391] Second, no regulatory agency

---

389 *Examining Carcinogens in Talc and the Best Methods for Asbestos Detection: Hearing Before the Subcommittee on Economic and Consumer Policy of the Committee on Oversight and Reform*, 116th Cong. 116-76 (2019) (statements of Dr. William Longo, Scientist, Materials Analytical Services, LLC and Dr. Jacqueline Moline, Physician, Feinstein Institutes for Medical Research at Northwell Health), *available at* https://www.congress.gov/event/116th-congress/house-event/LC64684/text?s=1&r=4.

390 *See id*.

391 9/6/1973 FDA Technical Plan Quarterly Project Progress Reports, Project Title: Asbestos and Other Contaminants in Talc [Recently identified on publicly filed exhibit list in *Prudencio* at DX-18188]; 9/13/1973 Memorandum Regarding Summary Papers Prepared by Professor Pooley for September 12, 1973 Meeting and 11/19/1973 Memorandum Regarding Pooley's Response to the Proposed FDA Optical Method for Detection of Asbestos in Talc - Project No. 0503.00, JNJ000264500-513.

anywhere in the world has adopted Dr. Longo's heavy liquid separation technique.[392] Third, amphibole asbestos can and has been detected in talc without using heavy liquid separation—other scientists detect the same amphibole particles as Dr. Longo, but determine the particles are not asbestos.[393] Thus, sensitivity is not the issue; rather, the issue is accurately characterizing what is being detected.[394]

Dr. Moline then testified that there are no health differences between asbestiform and non-asbestiform minerals.[395] Notably, before she was paid to testify against J&J/Old JJCI, Dr. Moline testified that the epidemiologic studies of talc miners and millers who were exposed to large quantities of talc (which would include exposure to any trace contaminants therein such as non-asbestiform minerals) did not find that the miners and millers were at increased risk of contracting asbestos-related diseases, including mesothelioma.[396] Dr. Moline has also testified in J&J/Old JJCI cases that epidemiologic studies are the gold standard for establishing causation.[397] Only after testifying against J&J/Old JJCI did Dr. Moline change her opinion and state that those studies of talc miners and millers were inadequate.

Setting aside the contrary epidemiologic evidence, Dr. Moline's testimony was simply incorrect. As discussed above, a number of well-respected regulatory authorities focused on scientific evidence-based analysis have concluded that trace amounts of non-asbestiform

---

392 10/19/2018 Dr. William Longo trial testimony in *Allen v. Brenntag North America, Inc., et al.*, (Super. Ct. Ca., Humboldt Cnty., No. DR 180132) at 3583:12-17.

393 *See* sections II.C & D discussing historic findings of "tremolite" in Italian and Vermont talc.

394 *See, e.g.*, 8/2/2021 Dr. Matthew Sanchez trial testimony in *Prudencio v. Johnson & Johnson, et al.*, (Super. Ct. Ca., Alameda Cnty., No. RG20061303) at 7948:19-7949:4.

395 *See* footnote **[394]**, *supra*.

396 2/15/2012 Dr. Jacqueline Moline trial testimony in *Thoma et al. v. A.R. Winarick, Inc., et al.*, (Super. Ct. N.J., Middlesex Cnty., No. MID-L-7891-10-AS) at 1112:10-1113:1

397 5/7/2018 Dr. Jacqueline Moline trial testimony in *Anderson et al. v. Borg-Warner Corp., et al.*, (Super. Ct. Ca., L.A. Cnty., No. BC666513) at 1283:21-25.

minerals do not present a health risk.[398] Moreover, Dr. Moline's litigation opinions, repeated as if fact to Congress, were recently thrown out by the New Jersey Superior Court, Appellate Division in *Lanzo*, precisely because they lack reliability. As further described below, the appellate court held that the admission of expert testimony that cleavage fragments that do not grow in an asbestiform habit have the same capacity to cause mesothelioma as asbestos fibers was reversible error and, as a result, granted a new trial.[399] The court further found that (i) the experts who offered this testimony, including Dr. Moline, were unable to identify a study to support their conclusions, (ii) the theory has not been subjected to peer review, and (iii) it is not widely accepted in the scientific community.[400]

Congress, however, was provided none of this context and continued its investigations and inquiries into the company based, in part, on the misinformation presented by these experts.

B. Actions in the Tort System

The plaintiff bar's trial tactics in the talc litigation have been similarly abusive.

1. Consolidation of Plaintiffs

Some of J&J's/Old JJCI's most shockingly high plaintiff verdicts have come when courts have permitted plaintiffs' counsel to consolidate multiple plaintiffs in a single case. Plaintiffs pursue consolidation because it allows them to bolster their case by stacking their allegations on top of other plaintiffs' allegations. If the jury hears the claims of multiple plaintiffs who used Johnson's Baby Powder and subsequently developed mesothelioma, the jury may well assume that the plaintiffs' allegations have merit.

---

398 *See* section III.C.7, *supra*.

399 *Lanzo v. Cyprus Amax Minerals Co.,* 467 N.J. Super. at 517-18.

400 *Id.* at 510-18.

The more dissimilar the cases, the more this effect compounds. The unique facts of each case are often critical to the company's various defenses. But, the jury may not be able to keep track of the key differences between the cases or may simply overlook them. When faced with multiple plaintiffs, juries are unable to "compartmentaliz[e] certain evidence that applies to one case but not the other."[401] The company's talc trials with a single plaintiff involve complicated scientific arguments that are difficult enough for any layperson to understand. Consolidation multiplies the scientific and factual concepts that the jury must grapple with, making the trial and the jury's determination exponentially more difficult and complex.

As a result, by trying claims together, "one plaintiff, despite a weaker case of causation, could benefit merely through association with the stronger plaintiff's case."[402] This phenomenon has a name: the "perfect plaintiff"—*i.e.*, a composite plaintiff "pieced together for litigation" based on "the most dramatic" features of each individual case.[403] Numerous jurisdictions have all but ended the practice of consolidated asbestos trials because such trials are unfair and fuel the filing of more claims.[404] Not all jurisdictions have taken such steps, and it is no coincidence that the company continues to be sued in those holdout jurisdictions.

---

401 *Minter v. Wells Fargo Bank, N.A.*, 2012 WL 1963347, at *1 (D. Md. May 30, 2012).

402 *Rubio v. Monsanto Co.*, 181 F. Supp. 3d 746, 758 (C.D. Cal. 2016).

403 *Broussard v. Meineke Discount Muffler Shops, Inc.*, 155 F.3d 331, 344 (4th Cir. 1998).

404 **Delaware:** Standing Order No. 1 at ¶ 4 *In re Asbestos Litig.*, No. 77C-ASB-2 (Del. Super Ct. New Castle County Oct 10, 2013) *available at* https://bit.ly/2BHC6q4 ("Each asbestos action filed hereafter shall consist of one plaintiff."); **Georgia:** Ga. Code Ann. § 51-14-11 (prohibiting consolidation of asbestos claims for trial absent consent unless the plaintiffs are members of the same household); **Iowa:** Iowa Code Ann. § 686B.7(4)(a) (same); **Kansas:** Kan. Stat. Ann. § 60-4902(j) (same); **Michigan.** *Prohibition on "Bundling" Cases,* Admin. Order No. 2006-6 (Mich. Aug. 9, 2006), *available on Westlaw as*: MI R ADMIN Order 2006-6 ("[N]o asbestos-related disease personal injury action shall be joined with any other such case for settlement or for any other purpose, with the exception of discovery."); **Mississippi:** (the Mississippi Supreme Court has issued a series of decisions severing joint asbestos claims) (*see Harold's Auto Parts, Inc. v. Mangialardi*, 889 So. 2d 493, 495 (Miss. 2004); *3M Co. v. Johnson*, 895 So. 2d 151, 158-60 (Miss. 2005); *Illinois Cent. R.R. Co. v. Gregory*, 912 So. 2d 829, 831 (Miss. 2005); *Amchem Prod., Inc. v. Rogers*, 912 So. 2d 853, 858 (Miss. 2005); *Albert v. Allied Glove Corp.*, 944 So. 2d 1, 3 (Miss. 2006); **Ohio:** Oh. Civ. R. 42(A)(2) (prohibiting consolidation of asbestos claims for trial absent consent

As one example, even after acknowledging that consolidation could cause "great prejudice"[405] to J&J/Old JJCI, a New Jersey trial court *sua sponte*[406] ordered the consolidation of four plaintiffs' claims into one trial.[407] The court then implemented unwarranted and uncharacteristic procedures for punitive damages. At the end of the liability phase of the trial, the court dismissed the jury who had heard the case and empaneled a new jury for the punitive damages phase.[408] The trial court then prohibited J&J/Old JJCI from presenting to the second jury any arguments concerning weaknesses in the plaintiffs' science case on the ground that those arguments were not relevant to punitive damages.[409] A jury who was required to accept without question that asbestos was present in J&J's/Old JJCI's talc products and who did not themselves previously award any damages for the alleged conduct led to a predictable result: an award of

---

unless the plaintiffs are members of the same household); **Tennessee:** Tenn. Code Ann. § 29-34-306(b) (same); **Texas:** Tex. Civ. Prac. & Rem. Code Ann. § 90.009 (for asbestos claims: "Unless all parties agree otherwise, claims relating to more than one exposed person may not be joined for a single trial."); **West Virginia:** W. Va. Code Ann. § 55-7G-8(d)(1) (prohibiting consolidation of asbestos claims for trial absent consent unless the plaintiffs are members of the same household).

405 9/28/2018 hearing transcript in *Barden, et al. v. Brenntag North America, Inc., et al.*, (Super. Ct. N.J., Middlesex Cnty., Case Nos. MID-1809-17-AS; MID-L-0932-17-AS; MID-L-7049-16-AS; MID-L-6040-17-AS) at 53:5-8.

406 Interestingly, before ordering consolidation *sua sponte*, the court rejected multiple plaintiffs' requests to consolidate. *See, e.g.,* 12/21/2018 Order in *Ruman et al. v. BASF Catalysts LLC et al.*, (Super. Ct. N.J., Middlesex Cnty., No. MID-L-02919-17-AS); 1/30/2019 Order in *Arvelo v. Asbestos Corp. LTD., et al.*, (Super. Ct. N.J., Middlesex Cnty., No. MID-L-588-17-AS).

407 2/1/2019 Order in *Barden, et al. v. Brenntag North America, Inc., et al.*, (Super. Ct. N.J., Middlesex Cnty., Case Nos. MID-1809-17-AS; MID-L-0932-17-AS; MID-L-7049-16-AS; MID-L-6040-17-AS).

408 9/11/2019 trial transcript in *Barden, et al. v. Brenntag North America, Inc., et al.*, (Super. Ct. N.J., Middlesex Cnty., Case Nos. MID-1809-17AS; MID-L-0932-17AS; MID-L-7049-16-AS; MID-L-6040-17-AS) at 77-78.

409 1/13/2020 trial transcript in *Barden, et al. v. Brenntag North America, Inc., et al.*, (Super. Ct. N.J., Middlesex Cnty., Case Nos. MID-1809-17-AS; MID-L-0932-17-AS; MID-L-7049-16-AS; MID-L-6040-17-AS) at 80:13-18.

massive punitive damages. The jury's award was $750 million (over 4 times higher than the state-law statutory maximum).[410]

2. Forum Shopping

Nowhere has consolidation had a more detrimental result than in the *Ingham* ovarian cancer case, which featured a significant case consolidation coupled with clear forum shopping. In that case, the St. Louis, Missouri, trial court permitted the consolidation of *22* plaintiffs for a single trial.[411] Plaintiffs submitted claims implicating the laws of 12 different states.[412] The court's jury instructions covered 142 pages and took over five hours to read.[413] After over 30 witnesses and a six-week trial, the jury deliberated for only eight hours. The jury found defendants J&J and Old JJCI liable for every claim.[414] The jury further awarded every plaintiff family exactly $25 million in compensatory damages despite prognoses and health outcomes ranging from individuals who had passed away from ovarian cancer to those who were in remission, including one woman who had been in remission for so many decades that she could be considered cured.[415] The total compensatory award was $550 million, with a punitive award for *$4.14 billion*.[416]

---

410 2/6/2020 Jury Verdict Sheet in *Barden, et al. v. Brenntag North America, Inc., et al.*, (Super. Ct. N.J., Middlesex Cnty., Case Nos. MID-1809-17-AS; MID-L-0932-17-AS; MID-L-7049-16-AS; MID-L-6040-17-AS).

411 *Ingham*, 608 S.W.3d at 677.

412 *Id.* at 680.

413 7/10/2018 trial transcript in *Ingham et al. v. Johnson & Johnson et al.*, (Mo. Cir. Ct., St. Louis City, No. 1522-CC10417-01) at 5891:23-25.

414 *Ingham*, 608 S.W.3d at 680.

415 *Id.* at 680-82.

416 *Id.* at 680. This punitive damages award was later reduced on appeal to approximately $1.6 billion. *Id.* at 724-25.

a. Plaintiffs Manufacture Personal Jurisdiction in Missouri

This extraordinary damages award resulted, in part, from the case being brought in plaintiffs' preferred forum of St. Louis, Missouri. Of the 22 plaintiffs, however, 17 had no meaningful connection to Missouri—they did not reside in Missouri, did not purchase any of J&J's/Old JJCI's talc products in Missouri, did not rely on Missouri advertising, and were not injured in Missouri.[417] Accordingly, the company moved to dismiss the non-Missouri plaintiffs for lack of personal jurisdiction.[418] The trial court denied the motion to dismiss.[419]

After the trial court's ruling, the Supreme Court issued its opinion in *Bristol-Myers Squibb Co. v. Superior Court*, 137 S. Ct. 1773, 1781 (2017), ruling that personal jurisdiction over one plaintiff could not establish personal jurisdiction over another plaintiff in the same case with similar claims. This decision eliminated the basis for personal jurisdiction over the non-Missouri defendants in *Ingham*. Shortly thereafter, in a similar talc case pending against the company, based on the Supreme Court's ruling in *Bristol-Myers Squibb,* a Missouri appellate court concluded that no personal jurisdiction existed over claims brought by a non-Missouri plaintiff.[420]

After those decisions, the non-Missouri plaintiffs in *Ingham* had to find a new jurisdictional hook. What occurred was a mass epiphany among the non-Missouri plaintiffs (and none of the Missouri plaintiffs). Each of the plaintiffs had previously filled out "plaintiff fact sheets" stating under oath the products that they used. None of the plaintiff fact sheets mentioned a product called Shower to Shower Shimmer Effects ("Shimmer"), a glittery body

---

417 *Id.* at 678.

418 *Id.*

419 *Id.* at 679.

420 *Estate of Fox v. Johnson & Johnson*, 539 S.W.3d 48 (Mo. App. 2017).

powder Old JJCI sold in nominal amounts between 2005 and 2010. Old JJCI contracted with Pharma Tech, a Missouri manufacturing-for-hire company, to mix and package Shimmer and to affix a label Old JJCI designed in New Jersey. After the Supreme Court's decision in *Bristol-Myers Squibb*, 15 of the 17 non-Missouri plaintiffs suddenly remembered using Shimmer. This change-of-testimony had only one purpose—to revive the plaintiffs' now defunct personal jurisdiction arguments.

Several of the 15 non-Missouri plaintiffs who now recalled using Shimmer could not say when they used it. One plaintiff testified that the idea she might have used Shimmer came to her in a dream the night before her deposition, when her lawyer mentioned the product to her. "[K]nowing my whimsical ways," she testified, "I would have bought it."[421] This plaintiff also said that she thought she would have made those purchases up to 40 years earlier, decades before Shimmer was ever sold.[422] Another plaintiff first made her claim about Shimmer use after meeting with her attorney two days before her deposition, explaining that she remembered that she "liked shiny things" around 2005.[423] Based on these new claims, the trial court found personal jurisdiction over the non-Missouri plaintiffs—even the two non-Missouri plaintiffs who never even alleged using Shimmer.[424]

---

421 6/14/2018 Donna Packard trial testimony in *Ingham et al. v. Johnson & Johnson et al.*, (Mo. Cir. Ct., St. Louis City, No. 1522-CC10417-01) at 2284-86.

422 *Id.* at 2287-88

423 2/2/2018 Monica Sweat deposition testimony in *Ingham et al. v. Johnson & Johnson et al.*, (Mo. Cir. Ct., St. Louis City, No. 1522-CC10417-01) at 77:17-78:16; 81:7-12.

424 *Ingham*, 608 S.W.3d at 693-94. The appellate court ultimately reversed the decision with respect to those two plaintiffs. *Id.*

b. Plaintiffs Maximize the Benefit of Their Preferred St. Louis Venue

In addition to manipulating personal jurisdiction to bring the case in the state of Missouri, plaintiffs manipulated the system to bring the case specifically in St. Louis.[425] The reason St. Louis is plaintiffs' preferred venue—and why they work so hard to bring so many cases there—was clear from the trial. For example, at a pre-trial hearing, plaintiffs' counsel agreed that he would not mention at trial a highly prejudicial (and irrelevant) study relating to stillborn babies; the court responded that if plaintiffs' counsel mentioned the issue, it would require a new trial.[426] Yet, during opening statements, and over J&J's/Old JJCI's objection, plaintiff's counsel told the jury: "There's a study that was done where *they took stillborn children. These are children, stillborn babies. Never had a breath. They were born dead. Okay. You got me? Born dead.* And they did a biopsy on the children and discovered . . . that these babies from the womb had asbestos in them."[427] The plain design of these repeated statements was to suggest to the jury that asbestos in the company's products had killed the babies and to link cosmetic talc products to stillborn babies—an outrageous and totally unsupported inference. The company's objection was overruled, and there were no ramifications for this misconduct.

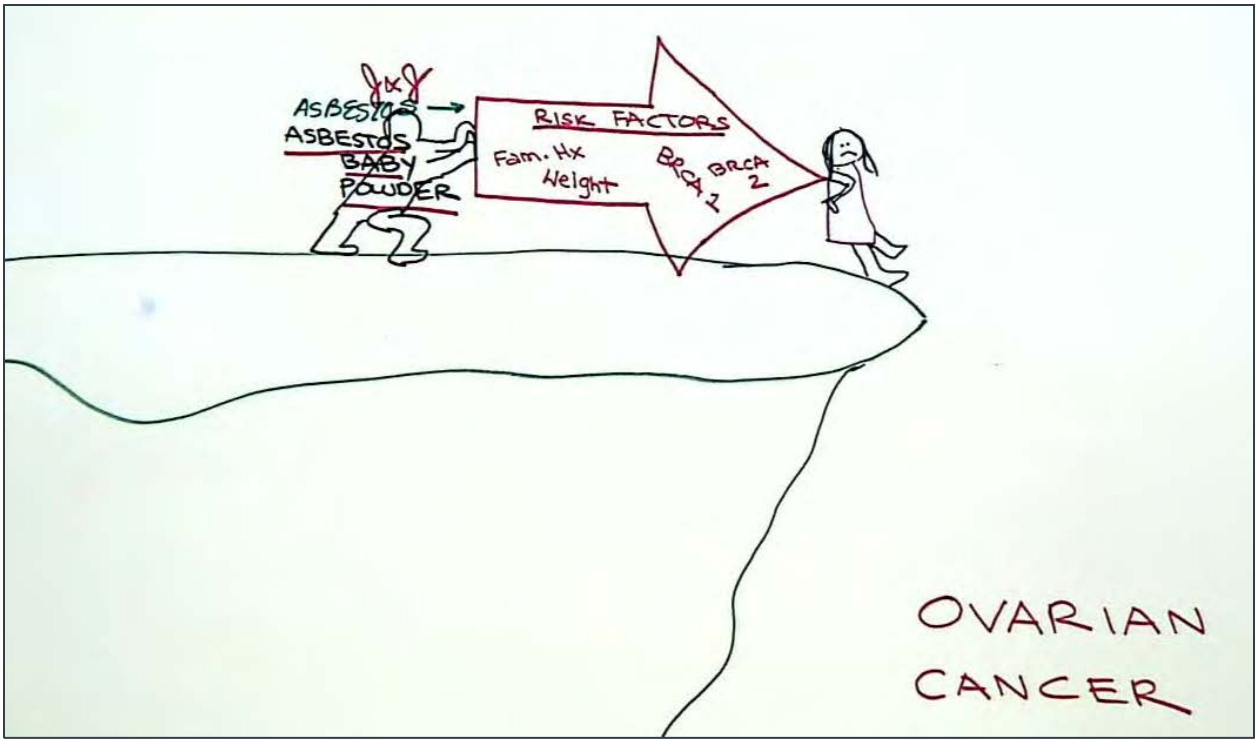
In addition, throughout trial, counsel used prejudicial demonstratives, most notably one that depicted J&J pushing a woman off a cliff into ovarian cancer:

---

425 Only one plaintiff had any connection to St. Louis. 5/15/2018 Order in *Ingham et al. v. Johnson & Johnson et al.*, (Mo. Cir. Ct., St. Louis City, No. 1522-CC10417-01).

426 5/30/2018 hearing transcript in *Ingham et al. v. Johnson & Johnson et al.*, (Mo. Cir. Ct., St. Louis City, No. 1522-CC10417-01) at 135:1-7 ("I think we all go home and have another six weeks down the road. We'd be rescheduling.").

427 6/6/2018 trial transcript in *Ingham et al. v. Johnson & Johnson et al.*, (Mo. Cir. Ct., St. Louis City, No. 1522-CC10417-01) at 803:21-804:8.



And, among many other examples of objectionable conduct, plaintiffs' counsel told the jury during closing arguments (over the company's objection) that but-for causation is "made up."[428] Counsel made this statement to the jury notwithstanding the fact that the law in Missouri is that the "'but for' test for causation is applicable in all cases" with one exception not applicable in *Ingham*.[429]

Appellate review of the *Ingham* verdict—the largest verdict in Missouri history—was shockingly limited. The Missouri Supreme Court did not even agree to hear the case.[430] Then Justices Alito and Kavanaugh recused themselves from J&J's and Old JJCI's certiorari petition to

[428] 7/11/2018 trial transcript in *Ingham et al. v. Johnson & Johnson et al.*, (Mo. Cir. Ct., St. Louis City, No. 1522-CC10417-01) at 6081.

[429] *Callahan v. Cardinal Glennon Hosp.*, 863 S.W.2d 852, 862 (Mo. banc 1993).

[430] *Ingham v. Johnson & Johnson*, SC 98674 (Nov. 3, 2020 Mo. S. Ct.).

the U.S. Supreme Court, which was denied.[431] Getting 4 votes out of 9 justices for a grant of certiorari is hard enough; 4 of 7 is considerably more difficult.

c. Other Examples of Forum Shopping

St. Louis is not the only destination for forum shopping in cosmetic talc litigation. On the mesothelioma docket, two favored jurisdictions are California and New York.

In California, living plaintiffs are granted expedited status, which means that claimants can "skip the line" with a new filing. Once a case is granted so-called "preference" status, discovery moves at a rapid pace, and cases can move from filing to trial in under a year. Moreover, as described more fully below, certain of the state courts in California (such as Alameda Co.), are known for permitting lengthy trials, which can be prejudicial for defendants.

Similarly, in New York, the New York City Asbestos Litigation ("NYCAL") uses an expedited system for cases with living plaintiffs. Further, NYCAL essentially consolidates groups of dissimilar cases for discovery and pre-trial work up and permits consolidation for trial—collectively, these case management procedures can be extremely prejudicial for defendants.

3. Extended Trials

In addition to forum shopping and consolidation, J&J and Old JJCI have been subject to a number of other litigation tactics that contribute to their ballooning defense spend and trial risk. One such tactic is the effort by plaintiffs to extend trials out as long as possible. Cosmetic talc cases can be tried in 2-3 weeks. Such trials have even been completed over 7 trial days.[432] Yet, plaintiffs' counsel have sought and courts have permitted extension of cosmetic talc trials for

---

431 *Johnson & Johnson v. Ingham*, No. 20-1223, *cert. denied* (S. Ct. June 1, 2021).

432 *Johnson v. Johnson & Johnson, et al.*, (S.C. Ct. Common Pleas 2019, No. 18-CP-40-1781).

months.[433] The plaintiff's strategy, in those circumstances, is to put on numerous and redundant expert witnesses over an extended time period. This is designed to make it difficult for a jury to conclude that all of the time spent and all of the testimony that they heard concerned a perfectly safe product.

Indeed, trial length appears to be one of the biggest factors in determining the direction and size of a verdict. For example, the average number of trial days[434] for the trials resulting in J&J/Old JJCI's 10 mesothelioma defense verdicts was 16.3 days.[435] For the mesothelioma trials resulting in 10 plaintiff verdicts, however, the average number of trial days was 30.3 days.[436] And, the longest mesothelioma trials have led to the largest verdicts, each in excess of $100 million and driven by extraordinary punitive damages awards, whereas shorter trials have had significantly smaller verdicts.[437] These longer trials also cost Old JJCI significantly more to defend and are contributing to the ballooning defense costs discussed below.

---

433 A recent trial lasted approximately two-and-a-half months. *Prudencio v. Johnson & Johnson*, (CA Sup. Ct. 2021, No. RG20061303).

434 For purposes of this analysis, "trial days" were calculated based on trial days from opening to closing statements, not counting *voir dire*.

435 *See Johnson v. Johnson & Johnson, et. al.,* (S.C. Ct. Common Pleas 2019, No. 18-CP-40-1781) (7 trial days), *Crudge* (12 trial days), *Henry et al. v. Brenntag North America, Inc., et al.*, (Super. Ct. N.J., Middlesex Cnty., No. MID-1784-17-AS) (13 trial days), *Hayes* (13 trial days), *Rimondi* (16 trial days), *Herford* (17 trial days), *Blinkinsop et al. v. Albertsons Companies, Inc., et al.*, (Super. Ct. Ca., L.A. Cnty., No. BC677764) (18 trial days), *Weirick* (20 trial days), *Allen* (23 trial days), and *Pui Fong et al. v. Johnson & Johnson et al.*, (Super. Ct. Ca., L.A. Cnty., No. BC675449) (24 trial days).

436 *See Anderson* (12 trial days), *Moure-Cabrera* (12 trial days), *Cabibi* (16 trial days), *Schmitz v. Johnson & Johnson et al.*, (Super. Ct. Ca., Alameda Cnty., No. RG18923615), (26 trial days), *Johnson v. J&J, et al.*, (Super. Ct. CA., Los Angeles Cnty., No. 4674/20STV17335) (27 trial days), *Leavitt* (34 trial days), *Lanzo* (39 trial days), *Barden* (42 trial days), *Prudencio* (45 trial days), and *Olson* (50 trial days).

437 *Compare Lanzo* (39 trial days, $117 million verdict), *Olson* (50 trial days, $325 million verdict), and *Barden* (42 trial days, $787 million verdict); *with Moure-Cabrera* (12 trial days, $9 million verdict) and *Anderson* (12 trial days, $25.7 million verdict).

4. Assertion of Unsubstantiated Claims

In their efforts to grow the cosmetic talc litigation industry, plaintiffs' counsel has amassed vast listings of individuals diagnosed with ovarian cancer or mesothelioma. These lists have been used to assert claims against Old JJCI and J&J in an effort to coerce settlement. As a plaintiff's counsel recently was forced to concede under oath, certain plaintiffs' counsel took the list and asserted claims against Old JJCI and J&J without even assessing whether the claimant had been exposed to the talc used in Johnson's Baby Powder, and in some cases, pursued such claims even though the claimant had previously alleged and recovered on a theory that the disease was exclusively attributable to other products.[438] When presented with evidence of mass assertion of claims without any due diligence by plaintiffs' counsel in the Imerys Bankruptcy, the court there excluded 15,719 votes proffered by that firm in favor of the proposed plan, since, among other things, there was no diligence by the firm that any of such voters had claims against the debtor.[439]

Indeed, in the few short years since cosmetic talc litigation started to explode, the company has discovered numerous instances of plaintiff misconduct in the form of unsubstantiated claims. The following are just some examples:

---

438 *See* 9/20/2021 telephonic hearing transcript in *In re Imerys Talc America, Inc.*, (D. Del. Bankruptcy Ct., No. 19-10289-LSS) at 52:1-56:15, 60:16-22, 63:11-64:2, 66:10-67:10, 67:22-68:19.

439 *See* Opinion at 27, *In re Imerys Talc America, Inc.*, No. 19-10289 (LSS) (Bankr. D. Del. Oct. 13, 2021), Dkt. 4239. In denying counsel's motion under Bankruptcy Rule 3018, the court concluded that "the evidence raise[d] significant questions as to whether any of Bevan & Associates' clients have a claim against any Debtor." *Id.* at 25. In particular, the court found that, "[w]hat is crystal clear is that: (i) Bevan & Associates has a database of clients built up over the past thirty years, (ii) prior to voting, Bevan & Associates performed zero diligence to discern which of its clients, if any, had been exposed to talc, much less to Debtors' talc and (iii) Bevan & Associates submitted its Master Ballot without regard to whether any of its 15,713 [sic] clients had a Talc Personal Injury Claim as required to vote on the Plan. In other words, Bevan & Associates simply printed out a list of its clients in excel spreadsheet format and slapped it behind a Master Ballot." *Id.*

In one case, plaintiff claimed he used Johnson's Baby Powder for years on himself and others. The evidence demonstrated, however, that the timeframe in which he claimed he used Johnson's Baby Powder coincided with his military service on a military base away from those family members on whom he allegedly used Johnson's Baby Powder. The company was forced to litigate and uncover the issue, ultimately resulting in the plaintiffs' dismissal of the case.

In another case, the plaintiff's wife testified that she purchased around 5,500 containers of Johnson's Baby Powder during the period from 1985 through 2017. If accurate, that would mean that the family used more than three full bottles of baby powder a week for decades. But, the records of purchase from various retailers did not add up. Extensive records of the family shopping at Costco, Albertsons, and RiteAid were located, but none of those records showed a single purchase of Johnson's Baby Powder (even though according to plaintiff's wife, those retailers would have accounted for nearly 2000 of the bottles).

Retailer records led to discovery of similar misrepresentations in another case. One plaintiff alleged that he used Johnson's Baby Powder at least 2 times per day for 52 years, going through several bottles a year. In discovery, the company received loyalty card records from the retailers where the plaintiff claimed to have purchased Johnson's Baby Powder. Those records identified extremely limited Johnson's Baby Powder purchases, contradicting the plaintiff's claimed extensive use. In addition, the plaintiff's lawyer blatantly hid expert reports unhelpful to his case. The plaintiff's experts conducted three tests of the plaintiff's tissue and did not find any asbestos. The plaintiff's counsel did not produce those reports, which were required to be disclosed both under California rules and under a deposition notice.[440] Moreover, an expert

---

440 Any writing and report that exist at the time of the expert designation must be produced with the expert designation. CCP 2034.230(b). If none exists at the time the designation is due (report not prepared yet), any discoverable expert materials are due three business days before the expert deposition. CCP 2034.415.

responsible for one of the hidden reports even went on to testify that he wasn't aware of whether he tested any tissue from the plaintiff. Plaintiffs' counsel sat silently by at the deposition as the expert provided this inaccurate and potentially perjurious testimony. Only after that deposition was the company able to discover emails demonstrating that the expert was, in fact, aware of such testing prior to testifying at the deposition.

While applying talc should take less than a minute, the plaintiff in one case testified that she would apply talc powder products for a full *20 minutes* every day after each shower. She went on to testify that her husband also applied talc products for 10-15 minutes after each shower, and that she would be present in the bathroom for his talc use just about every time. All in all, the plaintiff claimed that she would be exposed to talc for over 30 minutes nearly every day—a simply implausible claim. In addition, in the same case, the plaintiff and her estate submitted a sworn interrogatory response stating that the plaintiff was exposed to asbestos-containing friction products through her husband who owned an automobile service center. After the plaintiff's estate focused on J&J/Old JJCI and other talc defendants as the prime targets of the case, however, they claimed that, in fact, the plaintiff was never exposed to asbestos from her husband's work.

In one extraordinary case, a hospice doctor signed a death certificate stating that the cause of the plaintiff's death was "Budd–Chiari syndrome," without any mention of mesothelioma. Plaintiff's counsel later sent a letter to that doctor falsely stating that "[p]er New Mexico Law," he "must" amend the death certificate to add mesothelioma as a contributing factor to the plaintiff's death—which the doctor did in response to the letter. New Mexico law, of course, required no such thing.[441]

Plaintiffs' expert then relied on the changed death certificate in his testimony. In a deposition, the doctor testified that, based on the letter from counsel, he believed that he was legally obligated to add mesothelioma to the death certificate. To prevent their misconduct from becoming known, when asked for any communications with the doctor, the plaintiffs' counsel withheld the letter from their document production and falsely answered discovery responses stating that they had not sent the letter. The company only discovered the fraudulent behavior when they requested and received communications to plaintiff's counsel directly from the doctor.

C. Coopting State Attorneys General Actions

Plaintiffs' counsel has also undertaken a campaign to pressure state attorneys general to pursue alleged consumer class action claims against J&J and Old JJCI with the objective of using these actions to exert additional leverage and coerce resolution of their claims in the tort system. To date, two such actions have been filed in Mississippi and New Mexico. In particular, the Mississippi action highlights the plaintiff bar's cooption of these "state" actions: Mississippi's attorney general retained R. Allen Smith, Jr.—a plaintiff's attorney who has filed (and lost) numerous ovarian cancer claims against J&J/Old JJCI—and his law firm as "Special Assistant Attorneys General" to pursue the state's action against J&J/Old JJCI.[442] And while only two state attorneys general had initiated claims against the company as of the filing date, Mr. Smith and others have continued to lobby attorneys general in other states to pursue similar claims.

441 *See* New Mexico Statutes Annotated, section 24-14-25 ("A certificate or report registered under the Vital Statistics Act may be amended only in accordance with that act and regulations adopted by the department pursuant to that act to protect the integrity and accuracy of vital records and health statistics.").

442 8/22/2014 Retention Agreement between Mississippi Attorney General and R. Allen Smith, Jr.

V. J&J's and Old JJCI's Litigation Results

A. J&J and Old JJCI Ultimately Prevailed in the Majority of Cases.

Notwithstanding the broad misinformation campaigns, endless resources being poured into cosmetic talc litigation, and prejudicial litigation tactics, J&J and Old JJCI generally have had success in the cosmetic talc litigation. This has included, among others things, dismissing roughly 1,300 ovarian cancer and over 250 mesothelioma cases without payment, and achieving 16 key defense verdicts to-date (including victories as to six of the eight plaintiffs whose claims were tried to a jury verdict in 2021, alone)—clear evidence that Johnson's Baby Powder and Shower to Shower are not the cause of disease. In addition, all of the ovarian cancer plaintiff verdicts to-date have been reversed on appeal with the exception of *Ingham*, which was reversed in part and the damages award reduced.

B. J&J and Old JJCI Had Significant Success in Reversing Wrongly Decided Plaintiff Verdicts.

In addition to J&J's/Old JJCI's successes dismissing cosmetic talc cases, the company has been able to reverse many wrongly decided plaintiff verdicts on appeal. In *Lanzo*, for example, the New Jersey appellate court concluded that multiple errors by the trial court in a mesothelioma case warranted a new trial. First, the appellate court concluded that the "trial court did not perform its required gatekeeping function and mistakenly exercised its discretion by permitting [plaintiffs' expert] Webber to testify that non-asbestiform cleavage fragments can cause mesothelioma."[443] The appellate court came to the same conclusion with respect to Dr. Moline's testimony in the case.[444] The appellate court explained that "[b]ased on Webber's and Moline's improper testimony, the jury could have reached the conclusion that there was more

---

443 *Lanzo v. Cyprus Amax Minerals Co.*, 467 N.J. Super. at 511.

444 *Id.* at 513.

than one definition for asbestos, and that a public health definition included non-asbestiform tremolite, actinolite, and anthophyllite," particularly in light of "plaintiffs' counsel's repeated arguments echoing their unsupported views."[445]

The appellate court also concluded that a new trial for Old JJCI was warranted due to the trial court's adverse inference instruction regarding Old JJCI's supplier and co-defendant Imerys.[446] The trial court had told the jury that it could infer that Imerys' talc was contaminated with asbestos.[447] The problem, of course, is that Imerys talc and Old JJCI talc is the same talc, yet the court did not order separate trials for Imerys and Old JJCI. Accordingly, the appellate court properly ruled:

> We are convinced, however, that once the jury was permitted to draw an adverse inference that Imerys' talc was contaminated with asbestos, it would be difficult, if not impossible, for the jury not to make the same finding as to [Old] JJCI. We therefore conclude that the trial court erred by failing to sever the claims against [Old] JJCI and Imerys.[448]

In another example, *Echeverria*, a jury in California state court in Los Angeles awarded $417 million ($347 million in punitive damages) against J&J/Old JJCI to a plaintiff alleging that Johnson's Baby Powder caused her ovarian cancer. That verdict was set aside almost immediately when the trial court granted J&J's and Old JJCI's motions for judgment notwithstanding the verdict ("<u>JNOV</u>") and for a new trial for, among other things, lack of evidence as to both general and specific causation. In granting J&J's post-trial motion, the court stated that "[n]o published peer-reviewed articles have determined talc to cause ovarian cancer,"

---

445 *Id.* at 516.

446 *Id.* at 530.

447 *Id.*

448 *Id.*

and that there had been "a lack of any proper testimony as to specific causation."[449] The appellate court partially reversed the trial court's JNOV as to Old JJCI and ordered a new trial, but the grant of JNOV in favor of J&J on all claims was affirmed.[450] Additionally, the appellate court found no basis for an award of punitive damages against Old JJCI, explaining that it was "undisputed that there has not been direct, conclusive evidence establishing genital talc use causes ovarian cancer."[451] Rather, "[t]he evidence demonstrated it is not universally accepted in the scientific or medical community that talc is even a significant risk factor for ovarian cancer."[452]

Given the state of the scientific evidence, the court concluded that "[t]here was no substantial evidence to support a finding, by clear and convincing evidence, of despicable conduct that [Old] JJCI carried out with a willful and conscious disregard of the safety of others."[453] As of the date hereof, no new trial has been set with respect to the partial reversal of the trial court's JNOV as to Old JJCI.

C. Unpredictable and Wildly Divergent Damages Awards Remain a Constant and Overwhelming Threat in the Current Tort System.

Notwithstanding J&J and Old JJCI's significant litigation successes, *every* cosmetic talc case presents risk associated with the plaintiff bar's all-out attack. Finding a jury that has not been exposed to misinformation is nearly impossible. And, while the appellate courts have provided a significant measure of relief, appellate rulings seem to do little to dissuade the barrage

---

449 *See In re Johnson & Johnson Talcum Powder Cases*, No. BC628228, 2017 WL 4780572, at *3, *19 (Cal. Super. Ct. L.A. Cty. Oct. 20, 2017).

450 *Id.*

451 *Echeveria v. Johnson & Johnson*, 37 Cal. App. 5th 292, 333 (2019).

452 *Id.*

453 *Id.* at 335.

of litigation being brought by the plaintiff bar. As a result, the company has been subject to a number of plaintiff verdicts coupled with unpredictable and wildly divergent compensatory and punitive damages awards.

In mesothelioma cases, compensatory damages awards in single-plaintiff cases have ranged from just shy of $2.5 million to $40 million.[454] Punitive damages have ranged from $100,000 to $300 million.[455] And, the plaintiff bar's arguments for damages are only growing more outrageous. By way of example, in *Herford*, the first mesothelioma case against J&J/Old JJCI to go to jury verdict (ultimately ending in a defense verdict), plaintiff's counsel asked for roughly $23 million in compensatory damages.[456] But in *Johnson*, the most recent mesothelioma trial to go to verdict, plaintiff's counsel suggested to the jury that $8 billion was an appropriate sum to award in compensatory damages.[457]

In ovarian cancer cases, compensatory damages awards in single-plaintiff cases have ranged from $5 million to $70 million.[458] Punitive damages have ranged from $50 million to

---

454 *See* 10/12/2021 Special Verdict Form in *Johnson v. J&J, et. al*., (Super. Ct. CA., Los Angeles Cnty., No. 4674/20STCV17335); 1/21/20 Amended Judgment on Special Verdict in *Cabibi v Johnson & Johnson et al.*, (Super. Ct. Ca., L.A. Cnty., No. BC 665257). While the $40 million compensatory award ultimately was reduced to $12 million (*see* 1/21/20 Amended Judgment on Special Verdict in *Cabibi v Johnson & Johnson et al*., (Super. Ct. Ca., L.A. Cnty., No. BC 665257)), other compensatory awards of $37 million and $29 million were not subsequently reduced. *See* 6/29/18 Order in *Lanzo v. Cyprus Amex Minerals Co., Inc. et al.,* (Super Ct., N.J., Middlesex Cnty., No. L-7385-16-AS); 5/24/2019 Order in *Leavitt v. Johnson & Johnson et al*., (Super. Ct. Ca., Alameda Cnty., No. RG17882401).

455 8/26/21 Judgment on Special Verdicts in *Prudencio v. Johnson & Johnson*, (CA Sup. Ct. 2021, No. RG20061303). The $300 million award later was reduced to $105 million. 11/30/2020 Judgment in *Olson v. Brenntag North America, Inc*., (N.Y. Sup. Ct., No. 190328/2017).

456 *See* 11/13/2017 trial transcript in *Herford et al. v. AT&T Corp. et al.,* (Super. Ct. Ca., L.A. Cnty., No. BC646315) at 3663:26-3664:13, arguing for $1 million per year for each year of lost life expectancy.

457 *See* 10/6/21 trial transcript in *Johnson v. J&J, et. al.*, (Super. Ct. CA., Los Angeles Cnty., No. 4674/20STCV17335) at 10910:3-9.

458 5/2/16 Final Verdict Form in *Ristesund v. Johnson & Johnson et al*., (Cir. Ct., St. Louis City, No. 1422-CC09012-01); 8/21/17 Judgment on Special Verdict in *Echeverria v. Johnson & Johnson et al*., (Super. Ct. Ca., L.A. Cnty., No. BC628228).

$347 million.[459] And, as discussed in further detail above, compensatory and punitive damages can skyrocket in multi-plaintiff ovarian cancer cases, reaching $550 million in compensatory damages and *$4.14 billion* in punitive damages in *Ingham*.[460]

The two plaintiffs' verdicts rendered in 2021 (out of the 6 trials to verdict)—one in which the jury awarded $25 million in compensatory damages and $100,000 in punitive damages and the other in which the jury awarded roughly $2.5 million in compensatory damages and $25 million in punitive damages[461]—demonstrate the incongruous nature of the awards in cosmetic talc cases. Further, the extraordinary range in cosmetic talc verdicts underscores the inconsistency that the company has come to expect from this litigation. And, each blockbuster verdict has resulted in substantial media attention and inevitably inspired more cases to be filed. Such verdicts also are the direct result of the various, prejudicial litigation tactics employed by the plaintiff bar that continue unchecked.

D. Supreme Court Recusals Work Significant Prejudice and Deprive J&J and Old JJCI of Review of State Court Rulings On Punitive Damages.

The continued risk of unpredictable and blockbuster verdicts—as illustrated by the wildly divergent verdicts rendered in 2021 alone—brings into even sharper focus the continued prejudice suffered by J&J and Old JJCI as a result of the Supreme Court's refusal to review the *Ingham* matter, and specifically, the approximately $1.6 billion adjusted award of punitive damages.

---

459 *Id.*

460 *Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 680 (Mo. App. 2020).

461 *See* 10/12/2021 Special Verdict Form in *Johnson v. J&J, et. al.*, (Super. Ct. CA., Los Angeles Cnty., No. 4674/20STCV17335); 8/26/21 Judgment on Special Verdicts in *Prudencio v. Johnson & Johnson*, (CA Sup. Ct. 2021, No. RG20061303).

The Supreme Court has repeatedly held that the Due Process Clause imposes substantive limits on the imposition of punitive damages. *See TXO Prod. Corp. v. Alliance Resources Corp.*, 509 U.S. 443, 453-54 (1993) ("[T]he Due Process Clause of the Fourteenth Amendment imposes substantive limits beyond which penalties may not go."); *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 562 (1996) ("The Due Process Clause of the Fourteenth Amendment prohibits a State from imposing a 'grossly excessive' punishment on a tortfeasor."); *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 416 (2003) ("While States possess discretion over the imposition of punitive damages, it is well established that there are procedural and substantive constitutional limitations on these awards."). In light of this principle, courts across the country have long cautioned that "there is a risk that the defendant will be repeatedly punished for the same conduct, which could result in a punishment 'so irrational as to offend the due process clause of the Fourteenth Amendment.'" *In re Asbestos Prod. Liab. Litig. (No. VI)*, No. 02-MD-875, 2014 WL 3353044, at *13 (E.D. Pa. July 9, 2014) (quoting *Dunn v. HOVIC*, 1 F.3d 1371, 1405 (3d Cir. 1993)); *Roginsky v. Richardson-Merrell, Inc.*, 378 F.2d 832, 839 (2d Cir. 1967) ("We have the gravest difficulty in perceiving how claims for punitive damages in such a multiplicity of actions throughout the nation can be so administered as to avoid overkill"); *cf. State Farm*, 538 U.S. at 423 (expressing concern about "the possibility of multiple punitive damages awards for the same conduct"). Yet, given the lack of review in *Ingham*, punishment of the very same defendants for the same alleged conduct, at high ratios, over and over again—*i.e.,* punitive damage overkill—is precisely the reality that J&J and Old JJCI faced every trial.

Despite clear evidence that the *Ingham* jury believed that it was punishing J&J and Old JJCI for all of their alleged historical talcum powder-related conduct, not just harm visited on the specific *Ingham* plaintiffs,[462] juries across the country continue to be charged that they may consider and award such damages, and some have. This is particularly concerning where, as in the recent *Prudencio* matter, the relevant trial court granted summary judgment in favor of J&J/Old JJCI as to all of that plaintiff's fraud causes of action, citing the lack of evidence to support such claims.[463] Yet, the very same trial court allowed the jury to consider and award punitive damages which, in California where the case was tried, must be based on clear and convincing evidence of malice, oppression, or fraud. *See* Ca. Civ. Code, § 3294.[464]

Finally, punitive damages are intended as a deterrent. Such a deterrent is entirely unnecessary where Johnson's Baby Powder is no longer sold in the U.S. market.

E. The Cost of Cosmetic Talc Litigation Is Now Enormous and Continues To Grow.

Further, each and every cosmetic talc claim requires an output of defense dollars. Each and every trial requires hundreds of thousands more. The cost of this sudden onslaught of litigation has been, in a word, breathtaking.

With nearly 40,000 lawsuits filed in a matter of years, in nearly every state in the country, on both state and federal dockets, with no real coordination (despite Old JJCI's requests for the same), alleging exposure to two separate products over the course of 7 decades and implicating

---

462 Most notably, one of the Ingham jurors explained to reporters that the jury "arrive[d] at the $4.14 billion punitive damages amount" by "multipl[ying] the roughly $70 million Johnson & Johnson earned selling baby powder in a recent year by the 43 years it's been since the company claimed the baby powder did not contain asbestos." *See* https://www.stltoday.com/news/local/crime-and-courts/talc-cancer-verdict-of-billion-from-st-louis-jury-sends/article_c15e7f98-fce0-5a74-80ee-45371d5e98b1.html.

463 *See* 4/04/21 Order in *Prudencio v. Johnson & Johnson, et al.*, (Super. Ct. Ca., Alameda Cnty., No. RG20061303).

464 Allowing punitive damages where plaintiff's fraud claim was summarily disposed of is contrary to the law of California. *See e.g., Gawara v. U.S. Brass Corp.*, 63 Cal.App.4th 1341, 1362 (1998) (reversing trial court's award of punitive damages and holding that when a stand-alone fraud claim is dismissed, a punitive damage claim cannot proceed based on the fraud theory.)

multiple different disease types, the challenges of mounting an effective, uniform, and efficient defense have been staggering. As have the costs.

In just the last five years, the cost of outside counsel and related vendors to locate, review, and produce documents; field discovery requests; prepare and defend witnesses for deposition; locate and work with an extensive network of expert witnesses; file and respond to motions and other pleadings; and represent the Company in the 42 cases that have gone to trial, to-date, has grown to nearly $1 billion. Over the months prior to the petition date, Old JJCI was paying anywhere from $10 million to $20 million in defense costs on a *monthly basis*.[465]

Among other factors contributing to these phenomenal defense costs:

- J&J defendants have responded to hundreds of sets of discovery, including thousands of individual interrogatories (not counting subparts).
- J&J defendants have filed and responded to thousands of motions and other pleadings.
- In a matter of years, J&J defendants has been called on to produce over two and a half million pages of documents to over 40 separate law firms. The document collection was sourced from more than 130 individuals and nearly 100 other document sources.
- At the time of this filing, over 35 J&J or Old JJCI witnesses had been deposed in over 90 separate depositions, with 6 additional witnesses scheduled in the next month. Of the 90 depositions, 50 depositions have been person most knowledgeable/person most qualified ("PMK/PMQ") depositions addressing over 300 noticed topics. Collectively, these depositions span more than 150 days and roughly 33,000 pages of testimony.

Beyond the monetary cost, the time and expense to J&J and Old JJCI employees—from scientists and specialists to in house counsel and up through management—cannot be quantified, but has been overwhelming.

---

465 These numbers, of course, do not account for payments on account of verdicts or the modest number of settlements undertaken to-date that, collectively, add up to approximately $3.5 billion.

And, there is little doubt that cosmetic talc litigation will only continue to grow, and the extraordinary costs continue to mount. Beyond the sudden influx of ovarian cancer claims being filed, while the company disputes that its cosmetic talc products contain any asbestos, plaintiff experts estimate that the latency period for mesothelioma can be as high as 60 years—and, similarly, have begun to allege extended latency periods for ovarian cancer allegedly caused by asbestos exposure.[466] This means that, even though Old JJCI stopped selling its talc-based Johnson's Baby Powder in North America in 2020, individuals who develop mesothelioma in 2080 and beyond may still sue J&J-related defendants, potentially drawing out the litigation to the end of this century.

VI. The Debtor Currently Faces Overwhelming On-Going Litigation Claims.

A. Ovarian Cancer Claims

As a result of the onslaught of litigation, currently the Debtor is facing approximately 38,000 ovarian cancer claims. Approximately 35,000 of those plaintiffs' suits are pending in the MDL, nearly 3,300 claims are pending in multiple state court jurisdictions across the country, with roughly 2,200 of those claims consolidated in formal state court proceedings in California and in New Jersey. More than the sheer number of pending lawsuits, the acceleration of ovarian cancer claims has been staggering. In 2014, J&J/Old JJCI were served with 46 ovarian cancer complaints. In 2017—just three years later—that number was nearly 5,000. This extraordinary acceleration in ovarian cancer claims asserted against J&J/Old JJCI has shown no signs of abating. As of the petition date, J&J/Old JJCI had been served with *over 12,300* ovarian cancer complaints in just the first ten and a half months of 2021.

---

466 *See, e.g.*, Expert Report of Jaqueline Moline (November 4, 2019).

YEAR	OVARIAN CANCER COMPLAINTS	NUMBER OF PLAINTIFFS
2014	46	426
2015	131	907
2016	325	2,082
2017	4,824	6,300
2018	5,745	6,328
2019	4,425	4,727
2020	9,856	9,856
2021[467]	Over 12,300	Approximately 13,000

To put the pace of this litigation in perspective, from 2017 through 2019, the company was served on average with one or more ovarian cancer complaints *every other hour of the day, every single day of the week*. From January 2020 to the present, however, the company has been served on average with one or more ovarian cancer complaints *every hour of the day, every single day of the week*.

With roughly 21,000 new ovarian cancer diagnoses each year,[468] and little preventing the plaintiff bar from alleging that the company's products were at fault, there is no end to the claims that may be asserted against the Debtor.

B. Mesothelioma Claims

In addition, as of the petition date, there were more than 430 mesothelioma cases pending against J&J/Old JJCI nationwide, nearly all of which were pending in state court.[469] The majority of these cases (well over 250) are pending in Middlesex County Superior Court in New Jersey. However, a substantial number of cases are pending in state courts in New York, Illinois, California, Missouri, and Ohio, with the remainder of the cases pending in various state court

---

467 Numbers listed for 2021 are as of the petition date.

468 SEER Data.

469 At no time has there been more than five mesothelioma cases pending in federal courts across the country.

jurisdictions across the country.[470] The nationwide scope of the litigation further increases the costs of defense given, among other things, variable procedural and substantive law across jurisdictions. For example, prepetition, the company was regularly forced to re-litigate various evidentiary issues that had already been litigated in another jurisdiction, often resulting in different outcomes.

Though not as extreme in number as the ovarian cancer filings, mesothelioma filings against the company have trended upward over recent years—even though traditional mesothelioma filings have decreased.[471]

YEAR	MESOTHELIOMA CASE FILINGS
2017	257
2018	371
2019	326
2020	271
2021[472]	Over 120

Given that the evidence demonstrating the absence of asbestos in J&J's/Old JJCI's cosmetic talc products has not changed—and claims that talc, itself, causes mesothelioma are unsupported by science—the increase in claims against the company while overall mesothelioma claims are dropping is directly attributable to the plaintiff bar's desire to fill the gap in their claim inventories with claims against a new and solvent defendant.

VII. The Debtor's Objectives in this Chapter 11 Case

The Debtor commenced this chapter 11 case to bring about a rational resolution to the

470 At the time of filing, one or more mesothelioma cases are pending in the state courts of each of the following: Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Louisiana, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Oklahoma, Rhode Island, South Carolina, Texas, and Washington.

471 *See* section III.A.1, *supra*.

472 Case filings for 2021 are as of the petition date.

talc litigation against it in a manner beneficial to both the Debtor and any legitimate claimants. Among the Debtor's goals in this case is to establish a fully funded trust that will provide any legitimate current and future claimants with a simpler, more streamlined process to get funds in a timely manner than that currently available in the tort system. Such a trust would allow such claimants to resolve their claims through an administrative process that reduces transaction costs and spares claimants the delay, uncertainty, and stress of litigation.

The Debtor intends to pursue the following steps to achieve its goals in this case.

A. Early Case Resolution Discussions

One of the initial steps in this chapter 11 case is the appointment of an official asbestos claimants' committee (the "ACC") to represent current claimants and a future claimants' representative (the "FCR") to represent future claimants. Once the ACC and the FCR have been appointed and retained their respective professionals, the Debtor will work cooperatively with these representatives toward the goal of a consensual plan.

Both the Debtor and the claimants' representatives will need information to prepare for negotiations and move forward with the case. Therefore, the Debtor expects to engage in early discussions regarding information that the claimants' representatives will need. The Debtor will make every effort to expedite this information gathering process by, among other things, making appropriate information available to the ACC and the FCR without the need for formal discovery, but subject to an agreed-upon protective order. The Debtor also would be willing to explore mediation early in the case.

B. Liability Determination

Consistent with the Debtor's intent to move this case forward from the start, the Debtor intends to promptly ask this Court to begin the process to help determine for plan purposes any talc liability of the Debtor. The Debtor is committed to working with the other parties to manage the discovery process as efficiently as possible. In addition, at all appropriate times the Debtor will be willing to explore settlement opportunities with the ACC and the FCR.

C. Plan of Reorganization

Ultimately, the Debtor's objective is to negotiate and develop a confirmable plan of reorganization that resolves any legitimate talc claims through a trust. Achieving a confirmed plan of reorganization in this chapter 11 case would benefit all parties in interest. The Debtor would benefit from a global resolution of any talc liability in a manner that is fair and equitable. Any legitimate claimants would likewise benefit because the cost, uncertainty, and delay of litigation would be eliminated. Instead, claimants would follow streamlined trust distribution procedures that enable fair compensation payments faster and more efficiently. The Debtor will work with the ACC and the FCR to establish a process for negotiating a plan. Again, the Debtor also is willing to consider mediation if the parties are otherwise unable to reach an agreement.

Dated: [____], 2021

Respectfully submitted,

Draft

C. Richard Rayburn, Jr. (NC 6357)
John R. Miller, Jr. (NC 28689)
RAYBURN COOPER & DURHAM, P.A.
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202
Telephone: (704) 334-0891
Facsimile: (704) 377-1897
E-mail: rrayburn@rcdlaw.net
jmiller@rcdlaw.net

Gregory M. Gordon (TX Bar No. 08435300)
Dan B. Prieto (TX Bar No. 24048744)
Amanda Rush (TX Bar No. 24079422)
JONES DAY
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
E-mail: gmgordon@jonesday.com
dbprieto@jonesday.com
asrush@jonesday.com
(Admissions *pro hac vice* pending)

Brad B. Erens (IL Bar No. 06206864)
Caitlin K. Cahow (IL Bar No. 6317676)
JONES DAY
77 West Wacker
Chicago, Illinois 60601
Telephone: (312) 782-3939
Facsimile: (312) 782-8585
E-mail: bberens@jonesday.com
ccahow@jonesday.com
(Admissions *pro hac vice* pending)

PROPOSED ATTORNEYS FOR DEBTOR

Kristen R. Fournier (NY Atty. ID No. 4439857)
KING & SPALDING LLP
1185 Avenue of the Americas
34th Floor
New York, NY 10036
Telephone: (212) 556-2100
Facsimile: (212) 556-2222
E-mail: kfournier@kslaw.com
(Admission *pro hac vice* pending)

Kathleen A. Frazier (TX Bar No. 24043663)
SHOOK, HARDY & BACON L.L.P.
JPMorgan Chase Tower
600 Travis Street, Suite 3400
Houston, TX 77002
Telephone: (713) 227-8008
Facsimile: (713) 227-9508
E-mail: kfrazier@shb.com
(Admission *pro hac vice* pending)

PROPOSED SPECIAL COUNSEL FOR DEBTOR

This is **Exhibit "E"** referred to in the

Affidavit of John K. Kim

sworn before me by video conference
this 16th day of December, 2021

A Commissioner, etc.

Caitlin McIntyre, LSO #72306R

EXHIBIT "E"

SUMMARY OF FIRST DAY ORDERS

Name of Order	**Date Granted**	**Summary**
Order Establishing Certain Notice, Case Management and Administrative Procedures	11/4/2021	This order approves case management procedures, including procedures regarding omnibus hearings, filings, service, notice, and various other case management procedures.
Order (A) Authorizing the Debtor to File a List of the Top Law Firms with Talc Cases Against the Debtor in Lieu of the List of the 20 Largest Unsecured Creditors; (B) Approving Certain Notice Procedures for Talc Claimants; and (C) Approving the Form and Manner of Notice of Commencement of this Case	11/4/2021	This order authorizes the Debtor to file a list of top law firms with the most significant representation of parties with talc claims against the Debtor in lieu of a list of the 20 largest unsecured creditors; approves notice procedures that allow, among other things, materials to be delivered to claimants' counsel, rather than to the individual claimants; and approves the form and manner of the case commencement notice.
Order Authorizing the Retention and Employment of Epiq Corporate Restructuring, LLC as Claims, Noticing and Ballot Agent Professional	11/4/2021	This order authorizes the retention and employment of Epiq as Debtor's claims, noticing and ballot agent.
Order (I) Approving the Continued Use of Its Bank Account and Business Forms; (II) Granting a Waiver of the Requirements of Section 345(b) of the Bankruptcy Code; and (III) Authorizing the Debtor's Bank to Charge Certain Fees and Other Amounts	11/12/2021	This order authorizes the Debtor's continued use of its existing bank account and business forms and authorizes the Debtor to open and close bank accounts, as necessary or appropriate. This order also grants the Debtor a waiver of the requirements of section 345(b) of the US Bankruptcy to the extent the funds maintained in its bank account exceed the amount insured by the Federal Deposit Insurance Corporation or Federal Savings & Loan Insurance Corporation. Section 345(b) requires an entity with which funds are deposited to provide a bond or deposit

		of certain securities where funds are not insured or guaranteed by the United States. Lastly, this Order authorizes, but does not direct, any bank of the Debtor to honour certain transfers, provided that sufficient funds are available int eh applicable accounts to cover such transfers and charge bank fees.

This is **Exhibit “F”** referred to in the

Affidavit of John K. Kim

sworn before me by video conference
this 16th day of December, 2021

A Commissioner, etc.

Caitlin McIntyre, LSO #72306R

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re	:	Chapter 11
LTL MANAGEMENT LLC,[1]	:	Case No. 21-30589 (JCW)
Debtor.	:	
LTL MANAGEMENT LLC,	:	
Plaintiff,	:	
v.	:	Adv. Pro. No. 21-______
THOSE PARTIES LISTED ON APPENDIX A TO COMPLAINT and JOHN AND JANE DOES 1-1000,	:	
Defendants.	:	

DEBTOR'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF (I) DECLARING THAT THE AUTOMATIC STAY APPLIES TO CERTAIN ACTIONS AGAINST NON-DEBTORS OR, (II) PRELIMINARILY ENJOINING SUCH ACTIONS AND (III) GRANTING A TEMPORARY RESTRAINING ORDER PENDING A FINAL HEARING

Plaintiff LTL Management LLC, a North Carolina limited liability company and the debtor in the above-captioned chapter 11 case ("LTL" or the "Debtor"), incorporates the statements contained in (a) the *Supplemental Declaration of John K. Kim in Support of Debtor's Complaint for Declaratory and Injunctive Relief and Related Motions* (the "Supplemental Kim Declaration"), filed contemporaneously herewith, and (b) the *Declaration of John K. Kim in*

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

Support of First Day Pleadings [Dkt. 5] (the "First Day Declaration"), filed in the main docket for the Debtor's chapter 11 case (the "Chapter 11 Case"), and further states as follows:

INTRODUCTION

1. The Debtor commenced this Chapter 11 Case to equitably and permanently resolve all current and future talc-related claims against it through the consummation of a plan of reorganization that includes the establishment of a trust. The relief sought by this adversary proceeding is critical to the Debtor's ability to achieve that purpose. Without the requested declaration or injunction, claimants would be permitted to (and in fact, appear to be eager to) litigate, in other forums, the exact same talc claims that are being asserted against the Debtor in this Chapter 11 Case.

2. In this regard, the Debtor seeks a declaration that section 362(a) of the Bankruptcy Code prohibits the commencement or continuation of any action by the defendants in this adversary proceeding (collectively, the "Defendants")[2] seeking to hold (a) the former Johnson & Johnson Consumer Inc. ("Old JJCI"); (b) the Debtor's non-debtor affiliates set forth on Appendix B hereto (the "Non-Debtor Affiliates") including, without limitation, Johnson & Johnson Consumer Inc., a New Jersey company ("New JJCI") and Johnson & Johnson ("J&J"); (c) third party retailers who sold Old JJCI's talc-containing products (the "Retailers") and other third parties whom the Debtor has indemnified contractually (the "Indemnified Parties"), set

---

2 The Defendants are all plaintiffs or potential plaintiffs in lawsuits that seek to hold, or may seek to hold, one or more of the Protected Parties liable for the Debtor Talc Claims, as such terms are defined herein. These Defendants, with the exception of the John and Jane Doe Defendants, are listed in Appendix A to this Complaint. Appendix A identifies the civil action number (where available) for each lawsuit and the law firms representing each of the Defendants on account of their talc claims. The Debtor reserves the right to supplement, amend or otherwise modify Appendix A. For the avoidance of doubt, the inclusion of a talc-related claim on Appendix A is not an admission that such Defendant holds a currently pending claim against either the Debtor or the Protected Parties (as defined herein).

forth on Appendix B hereto; and (d) the insurance entities set forth on Appendix B hereto, who have issued insurance policies to which the Debtor has access for coverage for talc-related liabilities (the "Insurers" and, collectively with Old JJCI, the Non-Debtor Affiliates, the Retailers and the Indemnified Parties, the "Protected Parties")[3] liable for any Debtor Talc Claims. As used herein, "Debtor Talc Claims" means, collectively, any talc-related claims against the Debtor, including all claims relating in any way to talc or talc containing materials that were formerly asserted (or that could have been asserted) against Old JJCI[4] on any theory of liability (whether direct, derivative, joint and several, successor liability, vicarious liability, fraudulent or voidable transfer or conveyance, alter ego or otherwise). The Debtor also requests a preliminary injunction under section 105(a) of Bankruptcy Code. The injunction will enjoin the prosecution of actions outside of this Chapter 11 Case on account of the same talc claims that exist against the Debtor in this Chapter 11 Case. The Debtor also seeks a temporary restraining order, entered on limited notice, to immediately effectuate the requested declaratory and/or injunctive relief pending a final hearing.

3. The relief requested in this adversary proceeding is necessary and appropriate because the Debtor is responsible for all liability arising from the Debtor Talc Claims as a result of an internal corporate restructuring that was completed on October 12, 2021 (the "2021 Corporate Restructuring"). No Protected Party was allocated or assumed liability for any Debtor Talc Claims as part of the 2021 Corporate Restructuring. Following the 2021

---

[3] The Protected Parties, with the exception of Old JJCI, are listed on Appendix B to this Complaint. The Debtor reserves the right to seek to supplement, amend or otherwise modify the list of Protected Parties, including, in particular, to request that additional parties be included as Protected Parties.

[4] For the avoidance of doubt, Debtor Talc Claims include all talc personal injury claims and other talc-related claims allocated to the Debtor from Old JJCI in the documents implementing the 2021 Corporate Restructuring (as defined below). The Debtor Talc Claims do not include talc-related claims for which the exclusive remedy is provided under workers' compensation statutes and similar laws.

Corporate Restructuring and the commencement of this Chapter 11 Case, claimants immediately challenged the application of the automatic stay and threatened to pursue Debtor Talc Claims against the Protected Parties. Continued prosecution of Debtor Talc Claims against the Protected Parties outside of this Court would undermine the Debtor's Chapter 11 Case and the protections of the automatic stay imposed by section 362(a) of the Bankruptcy Code.

4. Contemporaneous with the filing of this Complaint, the Debtor filed a motion (the "Motion") seeking the same relief requested in this Complaint and setting forth additional grounds why the relief requested herein is warranted.[5]

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157 and 1334. This adversary proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), the Debtor consents to the entry of final orders or a final judgment by this Court in this adversary proceeding.

6. Venue is proper in this District pursuant to 28 U.S.C. § 1409.

BASIS FOR RELIEF

7. The statutory bases for the relief requested herein are sections 105(a) and 362(a) of the Bankruptcy Code.

8. The Debtor has commenced this adversary proceeding pursuant to Bankruptcy Rules 7001(7), 7001(9) and 7065.

9. The Debtor has made no prior request for the relief requested herein to this or any other court.

[5] The Debtor fully incorporates the arguments and authority contained in the Motion as if fully set forth herein.

GENERAL BACKGROUND

10. On October 14, 2021 (the "Petition Date"), the Debtor commenced the Chapter 11 Case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is continuing in possession of its property and is managing its business, as a debtor in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

THE PARTIES

11. The Debtor is a North Carolina limited liability company.

12. Each named Defendant in Appendix A is a plaintiff in a pending talc personal injury action against the Debtor and/or one or more of the Protected Parties to recover on account of Debtor Talc Claims. Absent the relief requested herein and in the Motion, the Debtor anticipates that the filing of the Chapter 11 Case will lead Defendants to pursue Debtor Talc Claims against the Protected Parties in an effort to avoid the automatic stay.

13. Each of Defendants John and Jane Does 1-1000 is a prospective plaintiff who may, at any time while the Chapter 11 Case is pending, seek to commence an action to pursue a Debtor Talc Claim against one or more of the Protected Parties.

14. The Protected Parties are (a) Old JJCI, (b) the Non-Debtor Affiliates (each of which is an "affiliate" of the Debtor, as such term is defined in section 101(2) of the Bankruptcy Code), (c) the Retailers and Indemnified Parties and (d) the Insurers.

FACTUAL BACKGROUND

The 2021 Corporate Restructuring

15. On October 12, 2021, Old JJCI implemented the 2021 Corporate Restructuring. First Day Decl. ¶ 16. The 2021 Corporate Restructuring was implemented to enable the Debtor to fully resolve talc-related claims through a chapter 11 reorganization without subjecting the entire Old JJCI enterprise to a bankruptcy proceeding. Id. ¶ 21.

16. As a result of the 2021 Corporate Restructuring, which is described in greater detail in the First Day Declaration:

a. Old JJCI ceased to exist;

b. The Debtor and New JJCI were formed;

c. The Debtor received certain of Old JJCI's assets, as set forth below, and became solely responsible for certain of its liabilities, including the Debtor Talc Claims;

d. New JJCI was allocated all other assets of Old JJCI and became solely responsible for all other liabilities of Old JJCI;

e. A funding agreement (the "Funding Agreement") was established between New JJCI, J&J and the Debtor for the purpose of ensuring that the Debtor has at least the same, if not greater, ability to pay the Debtor Talc Claims as Old JJCI had before the 2021 Corporate Restructuring;[6] and

f. The Debtor agreed to indemnify New JJCI and its affiliates for any losses it might suffer related to the Debtor Talc Claims.

Id. ¶¶ 22-23.

17. At the time of the 2021 Corporate Restructuring, the Debtor received the following assets:

a. Old JJCI's rights and interests as payee under the Funding Agreement (as discussed below, J&J and New JJCI have agreed to advance $2 billion under the Funding Agreement into a qualified settlement trust);

[6] Without any corresponding repayment obligation, the Funding Agreement obligates New JJCI and J&J, on a joint and several basis, to provide funding, up to the full value of New JJCI, to pay for costs and expenses of the Debtor incurred in the normal course of its business (a) at any time when there is no bankruptcy case and (b) during the pendency of any chapter 11 case, including the costs of administering the chapter 11 case, in both situations to the extent that any cash distributions received by the Debtor from Royalty A&M are insufficient to pay such costs and expenses. First Day Decl. ¶ 27. In addition, the Funding Agreement requires New JJCI and J&J to, up to the full value of New JJCI, fund amounts necessary (a) to satisfy the Debtor's talc-related liabilities at any time when there is no bankruptcy case and (b) in the event of a chapter 11 filing, to provide the funding for a trust, in both situations to the extent that any cash distributions received by the Debtor from Royalty A&M are insufficient to pay such costs and expenses and further, in the case of the funding of a trust, the Debtor's other assets are insufficient to provide that funding. Id.

b. A bank account and approximately $6 million in cash;

c. All contracts of Old JJCI related to its talc-related litigation, including settlement agreements, interests in qualified settlement trusts, indemnity rights, insurance coverage rights, service contracts and engagement and retention contracts, if any;

d. All equity interests in Royalty A&M LLC ("Royalty A&M"), which owns a portfolio of royalty revenue streams, including royalty revenue streams based on third-party sales of certain products, a business that is projected to generate approximately $50 million in revenue per year over the next five years and has the ability to borrow up to $50 million from J&J on terms consistent to those provided to other J&J affiliates;

e. Causes of action that relate to the assets and liabilities allocated to the Debtor;

f. Privileges that relate to the assets and liabilities allocated to the Debtor; and

g. Records that relate to the assets and liabilities allocated to the Debtor.

Id. ¶¶ 24, 26, 30.

18. In total, the Debtor's value is approximately $373.1 million, without taking into account the Funding Agreement with New JJCI and J&J. Id. ¶ 26. In addition, J&J and New JJCI have committed to fund, as early as January 31, 2022, a North Carolina trust that will constitute a "qualified settlement fund" with an aggregate amount of $2 billion for the payment of current and future talc-related claims asserted against or related to the Debtor. Id. ¶ 28.

The Debtor Talc Claims

19. Cosmetic talc litigation against the Debtor has focused primarily on JOHNSON'S® Baby Powder (hereinafter, "Johnson's Baby Powder") as a purported cause of ovarian cancer and mesothelioma. Id. ¶ 32. For over 125 years Johnson's Baby Powder has been used by hundreds of millions of consumers worldwide. Id.

20. J&J, a New Jersey company incorporated in 1887, first began selling Johnson's Baby Powder in 1894, launching its baby-care line of products. Id. ¶ 10. In 1972, J&J established a formal operating division for its baby products business, which included Johnson's Baby Powder. Id. In 1979, J&J transferred all its assets and liabilities associated with the baby products division to Old JJCI. Id.. Following this transaction, J&J no longer manufactured or sold baby products, including Johnson's Baby Powder and, instead, Old JJCI manufactured and sold Johnson's Baby Powder. Id. ¶¶ 10, 33. Old JJCI is responsible for all claims alleging that Johnson's Baby Powder and other talc-containing products cause cancer or other disease. Id. ¶¶ 9-15.

21. On May 19, 2020, Old JJCI announced it would permanently discontinue its line of talc-based Johnson's Baby Powder in the U.S. and Canada. Id. The decision was based on business considerations, including lack of sales due to misinformation about the safety of Old JJCI's talc-based Johnson's Baby Powder. Id. ¶ 33. As set forth in the Debtor's *Information Brief* filed on the Petition Date [Dkt. 3], the Debtor stands behind the safety of Johnson's Baby Powder and asserts, based on decades of internal and third party studies and testing, that it is not a cause of either ovarian cancer or mesothelioma.

22. As of the Petition Date, there were approximately 38,000 ovarian cancer cases pending against the Debtor, including approximately 35,000 cases pending in a federal multi-district litigation in New Jersey, and approximately 3,300 cases in multiple state court jurisdictions across the country. First Day Decl. ¶ 42. In addition to the ovarian claims, more than 430 mesothelioma cases were pending against the Debtor on the Petition Date. These claims, like the ovarian cancer claims, spanned the U.S. with cases pending in New Jersey, California, Illinois, Missouri, New York, and Ohio. Id. ¶ 44.

23. Even though J&J has not manufactured or sold talc-containing products since prior to 1979, in virtually every lawsuit asserting a Debtor Talc Claim, the Debtor Talc Claim is asserted against both Old JJCI and J&J. In many jurisdictions, the plaintiffs seek to hold Old JJCI and J&J jointly and severally liable for such talc claims. The plaintiffs rarely, if ever, attempt to differentiate between talc-containing products sold by J&J and talc-containing products sold by Old JJCI. Supp. Kim Decl. ¶ 6.

The Debtor's Insurance Coverage

24. The Debtor believes that it has rights to insurance coverage for its Debtor Talc Claims. First Day Decl. ¶ 46. In particular, the Debtor has access to primary and excess liability insurance policies that cover, among other things, defense and/or indemnity costs related to talc bodily injury claims, subject to the terms of the policies.[7] Id.

25. Aetna Casualty and Surety Company ("Travelers")[8] issued primary general liability policies to J&J (which policies cover the Debtor) for the period 1957 to 1980 (the "Travelers Policies"). Id. ¶ 47. The combined limits of the Travelers Policies (not accounting for deductibles or erosion/exhaustion of limits) total more than $214 million per occurrence and $263 million in the aggregate. Id. The deductibles increase over time, starting at a minimal level and increasing to $5 million per occurrence by 1977. Id. The limits of the Travelers Policies before 1973 are not eroded by defense costs; under later policies, defense costs erode limits. Id. From 1957 to 1985, Travelers also provided excess liability coverage to

---

[7] The policies that cover the Debtor were issued to J&J as the named insured. Those policies cover the period when Old JJCI was operated as a business unit of J&J, as well as during the period when Old JJCI was a subsidiary of J&J.

[8] Aetna Casualty and Surety Company is now part of Travelers Insurance Company.

J&J that covers the Debtor. The combined aggregate limits of those policies total approximately $563 million. Id. ¶ 48.

26. From 1973 to 1985, a variety of other insurers issued excess policies that cover the Debtor. Id. ¶ 49. Those insurers include subsidiaries or affiliates of the following companies: American International Group, Allstate Insurance Company, The Hartford, Home Insurance Company, Nationwide Indemnity Company and North River Insurance Company. Id. The combined limits of those excess policies total more than $1.09 billion in the aggregate. Id. Certain of the insurers that issued the above-described excess policies are insolvent (including, in particular, Home Insurance Company). Id.

27. From 1981 to 1985, American Motorists Insurance Company ("AMICO") issued primary and excess coverage that covers the Debtor (the "AMICO Policies"). Id. ¶ 50. AMICO is insolvent, having been placed into liquidation in 2013. Id. The Debtor currently believes that the applicable limits of the AMICO Polices were exhausted by payments made by AMICO on claims while it was still solvent. Id.

28. From 1973 through 1985, Middlesex Insurance Company ("Middlesex"), a captive that is a wholly-owned subsidiary of J&J, issued policies that cover J&J and the Debtor. Id. ¶ 51. Those policies insured J&J and Old JJCI for large deductibles under the Travelers Policies and the AMICO Policies. Id. From 1977 to 1985, Middlesex also issued excess insurance policies that cover J&J and Old JJCI. Id. As described in the First Day Declaration, there is a dispute between J&J, the Debtor, and Middlesex, on the one hand, and the third-party insurers (*i.e.*, insurers other than the Middlesex captive), on the other hand, regarding the applicability, extent of coverage and limits of the Middlesex policies, in particular with respect to the post-1985 Middlesex policies. Id.

29. In total, the limits of solvent primary and excess insurance policies issued to J&J by third-party insurers that potentially cover talc-related liabilities are in excess of $1.95 billion. Id. ¶ 52.

30. J&J and Old JJCI have tendered talc-related claims to the third-party insurers. To date, none of those insurers has acknowledged its coverage obligations, defended Old JJCI or J&J, paid the costs of defense, or indemnified J&J or Old JJCI for settlements or judgments. Instead, the third-party insurers have asserted various coverage defenses. Id. ¶ 53.

31. In May 2019, certain of the Debtor's third-party insurers filed a lawsuit against Old JJCI, J&J and Middlesex in the Superior Court of Middlesex County (Docket No. MID-L-003563-19) (the "New Jersey Coverage Action"), seeking a declaratory judgment regarding the parties' respective obligations under the plaintiff insurers' policies. The insurer plaintiffs filed a Second Amended Complaint on June 22, 2020. On July 31, 2020, J&J, Old JJCI, and Middlesex filed answers to the Second Amended Complaint, and asserted counterclaims and cross-claims against certain defendants. Travelers and certain other insurers filed cross-claims against J&J, Old JJCI, and Middlesex to which J&J, Old JJCI, and Middlesex responded later in 2020. The New Jersey Coverage Action remains pending. Id. at 54.

The Debtor's Retailers and Other Indemnified Parties

32. Old JJCI had relationships with various Retailers, who sold Old JJCI's talc-containing products. Some of the Retailers have contractual indemnities with the Debtor related to the sale of Old JJCI's talc-containing products. Supp. Kim Decl. ¶ 8. In addition, to the extent a Retailer is held liable for a claim arising out of the products manufactured and/or sold by Old JJCI, and not by independent actions of the Retailers (i.e., such that those claims are Debtor Talc Claims), the Debtor likely as an obligation to indemnify the Retailers under certain

state laws. Id. Claims asserted against the Retailers for their sale of Old JJCI products are virtually identical to the claims asserted against Old JJCI. Id.

33. Old JJCI would periodically accept from the Retailers tenders of talc-related claims related to the sale of its products. Id. ¶ 9. When a Retailer was sued on a Debtor Talc Claim, the Retailer would notify Old JJCI by submitting a tender request. Id. Old JJCI would then determine whether to accept the Retailer's tender of its defense and indemnify the Retailer pursuant to a tender agreement (each, a "Tender Agreement"). Since 2018, Old JJCI has indemnified and agreed to assume the defense of nearly 600 talc-related claims against the Retailers pursuant to Tender Agreements. Of those tendered claims, about 450 were pending as of the Petition Date. Id.

34. In addition, Old JJCI agreed to indemnify certain other transaction counterparties for liability arising from Debtor Talc Claims, including Pharma Tech Industries, Inc. and Valeant Pharmaceuticals International, Inc. (now known as Bausch Health Companies Inc.). Id. ¶ 11. Claims against the Indemnified Parties are generally identical to and based on the claims against Old JJCI.

The Debtor's Decision to File for Chapter 11 Reorganization

35. As of the Petition Date, tens of thousands of talc-related lawsuits are pending in jurisdictions throughout the United States. See First Day Decl. ¶ 42. Absent its bankruptcy filing, the Debtor expects that thousands of additional ovarian cancer and mesothelioma cases would have been filed against it for decades to come. Id. ¶ 45.

36. As noted, prior to the Petition Date, Old JJCI and J&J asserted that there was no scientific or other proof that Johnson's Baby Powder either contained asbestos or was a cause of ovarian cancer or mesothelioma. As a result, Old JJCI and J&J had various successes in cosmetic talc litigation, including, among others things, dismissing roughly 1,300 ovarian cancer

and over 250 mesothelioma cases without payment, and achieving 16 key defense verdicts. Id. ¶ 38. Old JJCI also succeeded in obtaining reversal of many plaintiff verdicts on appeal. Id. Despite these results, and the lack of proof that its product was unsafe, Old JJCI was also subject to a number of plaintiff verdicts involving unpredictable and wildly divergent compensatory and punitive damages awards. Id. In addition, prior to the commencement of this case, Old JJCI had incurred nearly $1 billion in defending a tidal wave of personal-injury lawsuits relating to alleged talc exposure, nearly all of which was spent in only the last five years. Id. ¶ 40. In the months prior to the Petition Date, Old JJCI was paying anywhere from $10 million to $20 million monthly in defense costs. Id. And, cosmetic talc litigation against the Debtor was anticipated to grow for decades more, as were the extraordinary costs of resolving tens of thousands of expected claims. Id. ¶ 41.

37. The status quo was untenable given the cost, burden, uncertainty and anticipated duration of the cosmetic talc litigation. The only available option to appropriately assess, resolve, and administer the current and future talc-related claims in an efficient and equitable manner is the Chapter 11 Case. Id. ¶ 58.

THE NEED FOR THE REQUESTED RELIEF

38. The Debtor commenced the Chapter 11 Case to equitably and permanently resolve all current and future talc-related claims against it through the consummation of a plan of reorganization that includes the establishment of a trust The declaratory and injunctive relief sought by this adversary proceeding (and the related Motion) is critical to the Debtor's ability to achieve that purpose.

39. Following the Petition Date, the Debtor filed notices of suggestion of bankruptcy (the "Bankruptcy Notices") on the dockets of pending talc-related cases against the Debtor and/or J&J (Old JJCI ceased to exist as result of the 2021 Corporate Restructuring). The

Bankruptcy Notices informed the applicable courts and the parties about the commencement of the Chapter 11 Case and the application of the automatic stay to the assertion of the Debtor Talc Claims against the Protected Parties. In an apparent coordinated effort to resist the automatic stay, counsel representing thousands of talc-related plaintiffs then informed the relevant courts and the Debtor in writing that they challenge the application of the automatic stay and intend to pursue the Debtor Talc Claims against the Protected Parties.

40. As demonstrated by the threatened violations of the automatic stay, and in the absence of the relief requested by this Complaint and the Motion, the Debtor believes that:

a. Many Defendants who already have asserted Debtor Talc Claims against the Protected Parties will contend that the automatic stay applies only to the Debtor and will attempt to continue prosecuting such claims against Old JJCI, New JJCI, J&J and the other Protected Parties outside of the Chapter 11 Case;

b. Many Defendants who have sued only the Debtor will seek to amend their complaints to name one or more of the Protected Parties and prosecute Debtor Talc Claims against those Protected Parties outside of the Chapter 11 Case;

c. Any Defendants who have pending motions to amend their complaints to add certain of the Protected Parties will continue to pursue those amendments in an effort to proceed with litigation against the Protected Parties outside of the Chapter 11 Case; and

d. Defendants John and Jane Does 1-1000 will file Debtor Talc Claims against the Protected Parties, particularly Old JJCI and New JJCI, but not the Debtor.

See Supp. Kim. Decl. ¶ 15.

41. All Debtor Talc Claims asserted against the Protected Parties allegedly arose from the manufacture and/or sale of talc products by Old JJCI or J&J.[9] First Day Decl. ¶¶ 31-32. As discussed in the First Day Declaration, in 1979 Old JJCI assumed all if J&J's

[9] Certain talc claimants have asserted claims against the Retailers on account of their previous sale of talc-containing products manufactured by Old JJCI.

liabilities associated with baby products, including Johnson's Baby Powder. Id. ¶ 10. Now, the Debtor is responsible for all of these potential liabilities. Id. ¶ 24. Accordingly, all such claims are either claims against the Debtor or claims that are tantamount to claims against the Debtor. Permitting the Defendants to continue or commence the Debtor Talc Claims against the Protected Parties while the Debtor simultaneously works to reorganize by resolving the same claims in the Chapter 11 Case pursuant to the Bankruptcy Code would (a) defeat the purpose of the Chapter 11 Case, (b) result in irreparable harm to the Debtor's estate, (c) undermine and circumvent the purposes and spirit of the automatic stay and (d) divert the Debtor from its reorganization efforts.

NATURE OF RELIEF REQUESTED

42. To guard against the severe and irreparable harm that the Debtor would suffer in the event that Defendants are permitted to continue or commence Debtor Talc Claims against the Protected Parties (on any theory of liability) during the Debtor's Chapter 11 Case, the Debtor seeks: (a) a declaration that, while the Chapter 11 Case remains pending, the commencement or continued prosecution of any Debtor Talc Claims against any Protected Party constitutes a violation of the automatic stay imposed by section 362 of the Bankruptcy Code; or (b) a preliminary injunction prohibiting the Defendants from commencing or continuing to prosecute any Debtor Talc Claims against any Protected Party while the Chapter 11 Case remains pending.[10] The Debtor also seeks a temporary restraining order, issued on limited

---

10 This injunction would include, without limitation: (a) the pursuit of discovery from the Protected Parties or their officers, directors, employees or agents; (b) the enforcement of any discovery order against the Protected Parties; (c) further motions practice related to the foregoing; and (d) any collection activity on account of a Debtor Talc Claim against any Protected Party or its officers, directors, employees or agents or its respective assets.

notice, that prohibits the Defendants from filing or continuing to prosecute any Debtor Talc Claims against any Protected Party pending a final hearing on the merits.

Count I: Declaratory Relief
Pursuant to Section 362 of the Bankruptcy Code

43. The Debtor incorporates by reference paragraphs 1 through 42 as if fully set forth herein.

44. Section 362(a)(1) of the Bankruptcy Code prohibits the "commencement or continuation . . . of a judicial . . . proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. § 362(a)(1).

45. The continuation and commencement of Debtor Talc Claims against Old JJCI, which are unequivocally efforts to recover on claims against the Debtor, are automatically stayed. As described above, Old JJCI no longer exists, and the Debtor is responsible for the Debtor Talc Claims. Thus, the commencement or continuation of the Debtor Talc Claims against Old JJCI can have only one purpose: the ultimate liquidation and recovery of claims against the Debtor. And, because the Debtor Talc Claims allege liabilities arising out of Old JJCI's actions years before the Petition Date, such claims are expressly enjoined by the automatic stay.

46. Likewise, the continuation and commencement of Debtor Talc Claims against J&J are automatically stayed. All of J&J's liabilities associated with Johnson's Baby Powder and other talc-containing products were transferred to Old JJCI when it assumed those liabilities in 1979. Thus, the pursuit of the Debtor Talc Claims against J&J is an effort to liquidate and recover claims against the Debtor.

47. Additionally, Fourth Circuit precedent recognizes that the automatic stay imposed by section 362(a)(1) extends of its own force to enjoin actions against parties who share such an identity of interests with the debtor in respect to those actions that the debtor is, in effect, the real-party defendant. Here, the Protected Parties share such an identity of interests with the Debtor that the Debtor, in effect, would be the real-party defendant in Debtor Talc Claims brought against Protected Parties. Litigating, settling or attempting to establish the value of the Debtor Talc Claims against the Protected Parties would liquidate claims against the Debtor, including by triggering existing indemnification and similar obligations of the Debtor to such entities. Such litigation also creates risks of binding the Debtor through *res judicata* and collateral estoppel, and creating an evidentiary record that prejudices the Debtor. Moreover, all liability for the Debtor Talc Claims was exclusively allocated to the Debtor through the 2021 Corporate Restructuring. Because the Debtor is the real-party defendant in any suit seeking to liquidate and recover on account of a Debtor Talc Claim, section 362(a)(1) stays such actions.

48. Section 362(a)(3) of the Bankruptcy Code operates automatically to stay, among other actions, "the commencement or continuation . . . of a . . . proceeding against the debtor . . . to obtain possession of . . . or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). The section 362(a)(3) stay applies here in two ways.

49. First, section 362(a)(3) bars Defendants from bringing actions against the Insurers and J&J based on the Debtor Talc Claims because the right to insurance coverage is property of the estate and such actions could result in depletion of an estate asset. Here, insurance is potentially available to both the Debtor and J&J under various insurance policies for talc-related claims. If a Debtor Talc Claim is prosecuted against J&J, J&J may seek coverage under these shared insurance policies to satisfy any judgment, thereby reducing the coverage

available to the Debtor's estate. Such a depletion of an estate asset violates the automatic stay and, therefore, Debtor Talc Claims against the Insurers and J&J are stayed pursuant to section 362(a)(3).

50. Second, because attempts by Defendants to pursue Debtor Talc Claims against Protected Parties—which likely would be based on theories of alter ego, successor liability and/or fraudulent transfer—would constitute property of the Debtor's estate, section 362(a)(3) operates to stay such actions. First Day Decl. ¶ 62.

51. Accordingly, and in line with Fourth Circuit precedent with respect to the application of the automatic stay, the declaratory relief the Debtor seeks in this Complaint and in the Motion is necessary and appropriate to protect the integrity of the automatic stay and the bankruptcy proceeding.

WHEREFORE, the Debtor respectfully requests that this Court: (a) after notice and a hearing, enter an order and judgment declaring that the commencement or continued prosecution of Debtor Talc Claims against one or more Protected Parties while the Chapter 11 Case remains pending violates the automatic stay imposed by section 362(a) of the Bankruptcy Code and (b) grant such other and further relief as the Court may deem proper.

Count II: Preliminary Injunctive Relief,
Pursuant to Sections 105 and 362 of the Bankruptcy Code

52. The Debtor incorporates by reference paragraphs 1 through 51 as if fully set forth herein.

53. Section 105(a) of the Bankruptcy Code authorizes and empowers this Court to issue any orders that will further the purposes and goals of the Bankruptcy Code, assist in the orderly and effective administration of the Chapter 11 Case, aid in the preservation of

the assets of the Debtor's estate and aid in the formulation and confirmation of a chapter 11 plan that maximizes recovery to all of the Debtor's creditors.[11]

54. Pursuant to sections 105(a) and 362 of the Bankruptcy Code, this Court may enjoin creditor actions against third parties where necessary to prevent an adverse impact on the Debtor's estate or to assure the orderly administration of the Debtor's chapter 11 estate and proceedings, including by fully effectuating the protections of the automatic stay. An injunction is appropriate in this case to prohibit the Defendants from filing or continuing to prosecute any Debtor Talc Claims against the Protected Parties while the Chapter 11 Case remains pending. Further, such an injunction is critical to the Debtor's ability to achieve the purposes for which it commenced its reorganization case.

55. In the Fourth Circuit, courts considering the propriety of an injunction under section 105(a) apply the traditional four-factor test for injunctions, as tailored to the unique circumstances of bankruptcy. In bankruptcy, these four factors are: (a) the debtor's reasonable likelihood of successful reorganization; (b) the imminent risk of irreparable harm to the debtor's estate in the absence of an injunction; (c) the balance of harms between the debtor and its creditors and (d) whether the public interest weighs in favor of an injunction.

56. While courts typically consider all four factors, the Fourth Circuit has made very clear that the critical, if not decisive, issue in whether a section 105(a) injunction is warranted is whether and to what extent the non-debtor litigation interferes with the debtor's reorganization efforts. Here, the interference with the Debtor's reorganization is sufficiently

---

11 Section 105(a) of the Bankruptcy Code provides, in relevant part, that the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

decisive to grant the injunction without applying the four-factor test. In any case, as set forth below, the injunction is appropriate under the four-factor test as well.

57. The Debtor is likely to prevail on the merits of its Complaint under Fourth Circuit standards. First, the Debtor's prospects for a successful reorganization are strong. The Debtor has entered bankruptcy in good faith and in an effort to permanently, fully and equitably resolve current and future Debtor Talc Claims through the establishment of a trust. The Debtor also has sufficient assets to fund the Chapter 11 Case and a trust in the amount required by a confirmed plan of reorganization.

58. Further, the failure to grant the requested injunction would irreparably harm the Debtor's reorganization efforts and defeat the purpose of the Chapter 11 Case. Absent the requested injunction, the Defendants would seek to liquidate the exact same talc claims that exist against the Debtor in this Chapter 11 Case through piecemeal litigation against the Protected Parties outside of the Chapter 11 Case in the tort system. Permitting claimants to seek to indirectly establish claims against the Debtor through actions against third parties with indemnity rights would prevent the Debtor from establishing a trust to consolidate and collectively resolve all talc claims against the Debtor—current and future—through the Chapter 11 Case. This non-bankruptcy litigation, if not stayed, would undermine (or eliminate) the parties' and the Court's ability to achieve confirmation of a plan that treats all talc claimants fairly and equitably.

59. An additional risk of continued litigation of Debtor Talc Claims against the Protected Parties is that the resolution of claims and issues in such litigation could bind the Debtor under the doctrines of collateral estoppel and *res judicata*. Litigation of the Debtor Talc Claims against the Protected Parties also creates a substantial risk that talc claimants will use

statements, testimony and other evidence generated in those proceedings to try to establish the Debtor Talc Claims against the Debtor. Supp. Kim Decl. ¶ 17. To avoid these types of risks, the Debtor would be compelled to actively participate in litigation of the Debtor Talc Claims in the tort system. This would undermine the automatic stay.

60. The balance of the harms weighs heavily in favor of an injunction because prosecution of the Debtor Talc Claims against the Protected Parties in the tort system would cause irreparable harm to the Debtor and its estate. Prosecution of Debtor Talc Claims outside of this Court may liquidate claims against the Debtor and bind the Debtor with respect to rulings, judgments and evidentiary records established in those cases. It would also compromise the protections of the automatic stay. In short, the entire purpose of the Chapter 11 Case would be thwarted. Failure to issue an injunction also may prejudice certain Defendants by leading to different recoveries among similarly situated claimants depending on whether they recover through the tort system or a future, court-approved trust.

61. On the other hand, the harm, if any, that issuing an injunction might cause the Defendants is minimal, to the extent it would exist at all. The issuance of an injunction will not permanently deprive the Defendants of an opportunity to pursue the Debtor Talc Claims. Instead, it will merely halt those alleged claims, giving the Debtor time to reach consensus on a plan of reorganization. Moreover, mere delay to the Defendants does not outweigh the irreparable harm to the debtor's estate.

62. The Defendants also cannot establish harm based on the speculation that an injunction could affect the ultimate payment for their claims. In total, the Debtor's value is approximately $373.1 million, without taking into account insurance rights and the Funding Agreement with New JJCI and J&J. First Day Decl. ¶ 26. Among other things, the Funding

Agreement will ensure funding for a trust in the amount required by a confirmed plan of reorganization, to the extent the Debtor's other assets (including insurance) are insufficient to fund the trust. In addition, New JJCI and J&J have agreed to deposit an aggregate amount of $2 billion into a "qualified settlement fund" for the payment of current and future talc-related claims asserted against or related to the Debtor.

63. Finally, the public interest weighs in favor of an injunction. There is a strong public interest in a successful chapter 11 reorganization, and injunctive relief is critical to the Debtor's reorganization efforts. It also is in the public interest to promote justice in the court system by resolving all Debtor Talc Claims in an equitable manner. This result is not possible if piecemeal litigation of the Debtor Talc Claims in the tort system circumvents the bankruptcy process. For that reason, a successful reorganization under chapter 11—and an injunction that makes such reorganization possible—particularly serve the public interest in the talc context because they allow for the resolution of thousands of claims in a uniform and equitable manner.

64. Accordingly, an injunction barring the Defendants from commencing or continuing any Debtor Talc Claims against one or more Protected Parties while the Chapter 11 Case remains pending is appropriate and essential to the orderly and effective administration of the Debtor's estate. Good cause exists for the entry of injunctive relief pursuant to sections 105(a) and 362(a) of the Bankruptcy Code and Bankruptcy Rule 7065.

WHEREFORE, the Debtor respectfully requests that this Court: (a) after notice and a hearing, issue a preliminary injunction pursuant to sections 105 and 362 of the Bankruptcy Code prohibiting the filing or continued prosecution of Debtor Talc Claims against the Protected

Parties while the Chapter 11 Case remains pending and (b) grant such other and further relief as the Court may deem proper.

Count III: Application for Temporary Restraining Order

65. The Debtor incorporates by reference paragraphs 1 through 64 as if fully set forth herein.

66. To preserve the effectiveness of the automatic stay until this Court has the opportunity to hold a final hearing on the Debtor's request for declaratory and/or injunctive relief, and to prevent the foregoing harmful effects upon the Debtor's estate, the Debtor requests that, with limited notice, the Court issue a temporary restraining order prohibiting and enjoining the Defendants from filing or continuing to prosecute Debtor Talc Claims against the Protected Parties until this Court has issued a final ruling on the merits.

67. The issuance of a temporary restraining order is warranted for the reasons already set forth herein and as more fully set forth in the Motion. In addition, it is appropriate for the Court to grant the temporary restraining order with limited notice to the Defendants. The Debtor cannot realistically provide effective notice to the many named plaintiffs who have sued or may sue the Protected Parties in the short period of time in which this Court's action is needed. Further, Defendants John and Jane Does 1-1000 are putative plaintiffs for future talc actions against the Protected Parties and are unknown at this time.

WHEREFORE, the Debtor respectfully requests that this Court enter a temporary restraining order: (a) prohibiting the Defendants from filing or continuing to prosecute any Debtor Talc Claims against the Protected Parties until the Court decides whether to grant the Debtor's request in this Complaint and the Motion for declaratory and/or injunctive relief; and (b) granting such other and further relief as the Court may deem just and proper.

Dated: October 21, 2021
Charlotte, North Carolina

Respectfully submitted,

/s/ John R. Miller, Jr.
C. Richard Rayburn, Jr. (NC 6357)
John R. Miller, Jr. (NC 28689)
Matthew L. Tomsic (NC 52431)
RAYBURN COOPER & DURHAM, P.A.
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202
Telephone: (704) 334-0891
Facsimile: (704) 377-1897
E-mail: rrayburn@rcdlaw.net
jmiller@rcdlaw.net
mtomsic@rcdlaw.net

Gregory M. Gordon (TX Bar No. 08435300)
Dan B. Prieto (TX Bar No. 24048744)
Amanda Rush (TX Bar No. 24079422)
JONES DAY
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
E-mail: gmgordon@jonesday.com
dbprieto@jonesday.com
pmgreen@jonesday.com
asrush@jonesday.com
(Admitted *pro hac vice*)

Brad B. Erens (IL Bar No. 06206864)
JONES DAY
77 West Wacker
Chicago, Illinois 60601
Telephone: (312) 782-3939
Facsimile: (312) 782-8585
E-mail: bberens@jonesday.com
(Admitted *pro hac vice*)

PROPOSED ATTORNEYS FOR DEBTOR

APPENDIX A

List of Defendants and Their Counsel

Appendix A
List of Defendants and Their Counsel

Claimant Name	State Filed	Docket Number	Plaintiff Counsel
BONDURANT, LYNDA	NJ - USDC for the District of New Jersey	3:19-cv-14366	ALLAN BERGER AND ASSOCIATES
BUBRIG, REBA	NJ - USDC for the District of New Jersey	3:21-cv-11386	ALLAN BERGER AND ASSOCIATES
HOLLAND, LOIS	NJ - USDC for the District of New Jersey	3:19-cv-14372	ALLAN BERGER AND ASSOCIATES
LEONARD, PHYLLIS	NJ - USDC for the District of New Jersey	3:20-cv-06131	ALLAN BERGER AND ASSOCIATES
TRIPP, ARLENE	NJ - USDC for the District of New Jersey	3:19-cv-17898	ALLAN BERGER AND ASSOCIATES
WILLIAMS, SHARON	NJ - USDC for the District of New Jersey	3:19-cv-15810	ALLAN BERGER AND ASSOCIATES
DRENGACS, TERESA	NJ - USDC for the District of New Jersey	3:19-cv-17797	ALLEN & NOLTE PLLC
SIMPSON, CYNTHIA	NJ - USDC for the District of New Jersey	3:19-cv-17425	ALLEN & NOLTE PLLC
MANLA, JOSEPHINE	NJ - Superior Court - Atlantic County	ATL-L-003351-20	ALOIA LAW FIRM LLC
BELLANTIS, CATHERINE	NJ - USDC for the District of New Jersey	3:20-cv-09238	ANAPOL WEISS
BERNOUDY, LAURA	NJ - USDC for the District of New Jersey	3:20-cv-15545	ANAPOL WEISS
CAMPBELL, TASHIA	NJ - USDC for the District of New Jersey	3:20-cv-15544	ANAPOL WEISS
GREENE, CAROL	NJ - USDC for the District of New Jersey	3:20-cv-09260	ANAPOL WEISS
HUSETH, SANDRA	NJ - Superior Court - Atlantic County	ATL-L-1341-17	ANAPOL WEISS
KAMINSKY, DOROTHY	NJ - USDC for the District of New Jersey	3:19-cv-21750	ANAPOL WEISS
MCNEAL, PATRICIA	NJ - USDC for the District of New Jersey	3:20-cv-15610	ANAPOL WEISS
MENDES, HOLLY	NJ - USDC for the District of New Jersey	3:20-cv-15536	ANAPOL WEISS
MILLIS, JOAN	NJ - USDC for the District of New Jersey	3:18-cv-06079	ANAPOL WEISS
ONOPA, JOAN	NJ - USDC for the District of New Jersey	3:17-cv-04012	ANAPOL WEISS
OYLER, LISA	NJ - USDC for the District of New Jersey	3:20-cv-13681	ANAPOL WEISS
PATTON, MARCELLA	NJ - USDC for the District of New Jersey	3:17-cv-07926	ANAPOL WEISS
SNEDEN, CATHERINE	NJ - USDC for the District of New Jersey	3:20-cv-15541	ANAPOL WEISS
CARPENTER, ROSEMARY	NJ - USDC for the District of New Jersey	3:19-cv-19786	ANDREWS THORNTON HIGGINS RAZMARA, LLP
KUREH, MAHA	CA - Superior Court - Los Angeles County	BC628713	ANDREWS THORNTON HIGGINS RAZMARA, LLP
SILVA, KAMALA	CA - Superior Court - Los Angeles County	BC635962	ANDREWS THORNTON HIGGINS RAZMARA, LLP
BARRAS, MARGARET	NJ - USDC for the District of New Jersey	3:18-cv-15967	ANDRUS WAGSTAFF, P.C
BELIZEARD, VALLERIE	NJ - USDC for the District of New Jersey	3:21-cv-04595	ANDRUS WAGSTAFF, P.C
BLASINI, NYDIA	NJ - USDC for the District of New Jersey	3:21-cv-16715	ANDRUS WAGSTAFF, P.C
BOWERS, CATHERINE	NJ - USDC for the District of New Jersey	3:20-cv-14545	ANDRUS WAGSTAFF, P.C
BOYLAN, STEPHANIE	NJ - USDC for the District of New Jersey	3:21-cv-04461	ANDRUS WAGSTAFF, P.C
BURKE, LORA	NJ - USDC for the District of New Jersey	3:21-cv-04591	ANDRUS WAGSTAFF, P.C
CAMPBELL, DORA	NJ - USDC for the District of New Jersey	3:19-cv-00655	ANDRUS WAGSTAFF, P.C
CHARLES, NORALEE	NJ - USDC for the District of New Jersey	3:21-cv-16416	ANDRUS WAGSTAFF, P.C
CHRISTIAN, NANETTE	NJ - USDC for the District of New Jersey	3:20-cv-18847	ANDRUS WAGSTAFF, P.C
DANIEL, SUSAN	NJ - USDC for the District of New Jersey	3:20-cv-18876	ANDRUS WAGSTAFF, P.C
DAVIS, RUTHANNE	NJ - USDC for the District of New Jersey	3:18-cv-00498	ANDRUS WAGSTAFF, P.C
EDWARDS, LATASHA	NJ - USDC for the District of New Jersey	3:20-cv-14184	ANDRUS WAGSTAFF, P.C
ELMORE, DESIREE	NJ - USDC for the District of New Jersey	3:21-cv-14467	ANDRUS WAGSTAFF, P.C
HAACK, PATRICIA	NJ - USDC for the District of New Jersey	3:21-cv-13695	ANDRUS WAGSTAFF, P.C
HERRERA, DELILAH	NJ - USDC for the District of New Jersey	3:21-cv-14291	ANDRUS WAGSTAFF, P.C
HORNE, EMILY	NJ - USDC for the District of New Jersey	3:17-cv-12625	ANDRUS WAGSTAFF, P.C
HUBBARD, GEMMA	NJ - USDC for the District of New Jersey	3:20-cv-18842	ANDRUS WAGSTAFF, P.C
JONES, MARGARET	IL - Circuit Court - Cook County	2021L003098	ANDRUS WAGSTAFF, P.C
LAFOND, VERBENIA	NJ - USDC for the District of New Jersey	3:21-cv-03558	ANDRUS WAGSTAFF, P.C
LAND, JENNA	NJ - USDC for the District of New Jersey	3:18-cv-01902	ANDRUS WAGSTAFF, P.C
LEE, JILL	NJ - USDC for the District of New Jersey	3:20-cv-14669	ANDRUS WAGSTAFF, P.C
LISTON, MARY	NJ - USDC for the District of New Jersey	3:19-cv-14590	ANDRUS WAGSTAFF, P.C
LYONS, JESSICA	NJ - USDC for the District of New Jersey	3:21-cv-04538	ANDRUS WAGSTAFF, P.C
MARTIN, JULIA	NJ - USDC for the District of New Jersey	3:17-cv-12630	ANDRUS WAGSTAFF, P.C
MAY, PENNY	NJ - USDC for the District of New Jersey	3:18-cv-00251	ANDRUS WAGSTAFF, P.C
MCKENZIE, KATHY	NJ - USDC for the District of New Jersey	3:17-cv-12633	ANDRUS WAGSTAFF, P.C
NICHOLSON, SANDRA	NJ - USDC for the District of New Jersey	3:21-cv-15449	ANDRUS WAGSTAFF, P.C
OLSON, VANESSA	NJ - USDC for the District of New Jersey	3:20-cv-14188	ANDRUS WAGSTAFF, P.C
PLAISANCE, MARY	NJ - USDC for the District of New Jersey	3:20-cv-14547	ANDRUS WAGSTAFF, P.C
PLUNKETT, SHARI	NJ - USDC for the District of New Jersey	3:19-cv-07718	ANDRUS WAGSTAFF, P.C
RENTERIA, LETITIA	NJ - USDC for the District of New Jersey	3:21-cv-15482	ANDRUS WAGSTAFF, P.C
RICHARDSON, VICTORIA	NJ - USDC for the District of New Jersey	3:17-cv-12634	ANDRUS WAGSTAFF, P.C
SIMS, EMMA	NJ - USDC for the District of New Jersey	3:21-cv-14204	ANDRUS WAGSTAFF, P.C
VINCENT, LETHA	NJ - USDC for the District of New Jersey	3:20-cv-14567	ANDRUS WAGSTAFF, P.C
WALLACE, CYNTHIA	NJ - USDC for the District of New Jersey	3:21-cv-07777	ANDRUS WAGSTAFF, P.C
WEAVER, EBONI	NJ - USDC for the District of New Jersey	3:17-cv-12635	ANDRUS WAGSTAFF, P.C
WEBER, PATRICIA	NJ - USDC for the District of New Jersey	3:17-cv-12636	ANDRUS WAGSTAFF, P.C
WELLS, SHANNON	NJ - USDC for the District of New Jersey	3:21-cv-16110	ANDRUS WAGSTAFF, P.C
WHITE, MONICA	NJ - USDC for the District of New Jersey	3:21-cv-14296	ANDRUS WAGSTAFF, P.C
WILLIS, TAMARA	NJ - USDC for the District of New Jersey	3:18-cv-01324	ANDRUS WAGSTAFF, P.C
YATES, JAIME	NJ - USDC for the District of New Jersey	3:19-cv-13974	ANDRUS WAGSTAFF, P.C
ABERCROMBIE, BETTY	NJ - USDC for the District of New Jersey	3:21-cv-10399	ARNOLD & ITKIN LLP
ABNEY, SHAMAE	NJ - USDC for the District of New Jersey	3:20-cv-19449	ARNOLD & ITKIN LLP
ACHENBACH, DORIS	NJ - USDC for the District of New Jersey	3:18-cv-11789	ARNOLD & ITKIN LLP
ACOSTA, WENDY	NJ - USDC for the District of New Jersey	3:21-cv-00812	ARNOLD & ITKIN LLP
ADAMS, ANGELA	NJ - USDC for the District of New Jersey	3:20-cv-15656	ARNOLD & ITKIN LLP
ADAMS, PRISCILLA	NJ - USDC for the District of New Jersey	3:20-cv-05974	ARNOLD & ITKIN LLP
AKERS, DEBRA	NJ - USDC for the District of New Jersey	3:20-cv-19725	ARNOLD & ITKIN LLP

Claimant Name	State Filed	Docket Number	Plaintiff Counsel
FORREST, SANDY	NJ - USDC for the District of New Jersey	3:20-cv-04967	GRANT & EISENHOFER P. A.
FORD, THELMA	NJ - USDC for the District of New Jersey	3:17-cv-13068	GREER, RUSSELL, DENT & LEATHERS, P.A
DI SANTO, DIANE	CANADA - Court of the Queen's Bench of Alberta Judicial District of Calgary	1901-11748	GUARDIAN LAW GROUP, LLP
BLALOCK, CHRISTINE	NJ - USDC for the District of New Jersey	3:19-cv-08704	GUILLORY & MCCALL, L.L.C
SPENNY, GLADYS	NJ - USDC for the District of New Jersey	3:16-cv-07884	GUSTAFON GLUEK
WOODS, PAMELA	NJ - USDC for the District of New Jersey	3:16-cv-07664	GUSTAFON GLUEK
DRAWENEK, LYNNE	NJ - USDC for the District of New Jersey	3:18-cv-13075	HABUSH HABUSH & ROTTIER SC
GULCZYNSKI, LYNESE	NJ - USDC for the District of New Jersey	3:18-cv-13076	HABUSH HABUSH & ROTTIER SC
HABECK, MARILYN	NJ - USDC for the District of New Jersey	3:18-cv-12038	HABUSH HABUSH & ROTTIER SC
HARVILL, TAMMY	NJ - USDC for the District of New Jersey	3:18-cv-12039	HABUSH HABUSH & ROTTIER SC
HUGUS, CHARLENE	NJ - USDC for the District of New Jersey	3:18-cv-12041	HABUSH HABUSH & ROTTIER SC
JOHNSON, MAUREEN	NJ - USDC for the District of New Jersey	3:18-cv-13078	HABUSH HABUSH & ROTTIER SC
KLUG, NOEL	NJ - USDC for the District of New Jersey	3:18-cv-13079	HABUSH HABUSH & ROTTIER SC
PAPA, VICTORIA	NJ - USDC for the District of New Jersey	3:17-cv-02666	HABUSH HABUSH & ROTTIER SC
PHALEN, SUSAN	NJ - USDC for the District of New Jersey	3:17-cv-13104	HABUSH HABUSH & ROTTIER SC
SCHUBERT, KAREN	NJ - USDC for the District of New Jersey	3:18-cv-12047	HABUSH HABUSH & ROTTIER SC
SKONORD, CYNTHIA	NJ - USDC for the District of New Jersey	3:17-cv-07571	HABUSH HABUSH & ROTTIER SC
SLEIK-LINDAHL, SALLY	NJ - USDC for the District of New Jersey	3:18-cv-12049	HABUSH HABUSH & ROTTIER SC
WALLACE, RENEE	NJ - USDC for the District of New Jersey	3:17-cv-01509	HABUSH HABUSH & ROTTIER SC
RIVERA, JASMINE	NJ - USDC for the District of New Jersey	3:19-cv-16317	HACH ROSE SCHIRRIPA & CHEVERIE LLP
LEAF, MAUREEN	NJ - USDC for the District of New Jersey	3:19-cv-02179	HAFELI STARAN & CHRIST , P.C.
RUDNICK, RHONDA	NJ - USDC for the District of New Jersey	3:17-cv-01853	HAFELI STARAN & CHRIST , P.C.
CRENSHAW, SHIRLEY	NJ - USDC for the District of New Jersey	3:20-cv-11070	HAFELI STARAN & CHRIST, P. C.
MURRAY, BESSIE BLAND	NJ - USDC for the District of New Jersey	3:20-cv-13465	HAFELI STARAN & CHRIST, P. C.
ASSATOURIANS, CRISTINA	CA - Superior Court - Los Angeles County	BC641346	HAFFNER LAW PC
PORTER, ECHANNA	NJ - USDC for the District of New Jersey	3:20-cv-13176	HAFFNER LAW PC
BURR, JACQUELYNN	NJ - USDC for the District of New Jersey	3:21-cv-09989	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
DAVIS, BARBARA	NJ - USDC for the District of New Jersey	3:21-cv-10298	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
DREILING, RAMONA	NJ - USDC for the District of New Jersey	3:21-cv-10958	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
GODWIN, TINA	NJ - USDC for the District of New Jersey	3:21-cv-10619	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
GOTEL, TORY	NJ - USDC for the District of New Jersey	3:21-cv-09993	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
GREENE, LEITHA	NJ - USDC for the District of New Jersey	3:21-cv-10377	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
HAWKINS, ARBUNEY	NJ - USDC for the District of New Jersey	3:21-cv-10096	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
HAYNES, PEGGY	NJ - USDC for the District of New Jersey	3:21-cv-10387	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
JACKS, MELISSA	NJ - USDC for the District of New Jersey	3:21-cv-10552	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
KITTRELL, TERRI	NJ - USDC for the District of New Jersey	3:21-cv-10193	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
LONG, DEBRAQIRS	NJ - USDC for the District of New Jersey	3:21-cv-10071	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
MARTUSCELLI, MARILYN	NJ - USDC for the District of New Jersey	3:21-cv-10165	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
MILES, PINNIE	NJ - USDC for the District of New Jersey	3:21-cv-10078	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
RICHARDSON, SYLVIA	NJ - USDC for the District of New Jersey	3:21-cv-10090	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
SANTOS, GENOVEVA	NJ - USDC for the District of New Jersey	3:21-cv-10285	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
SAUNDERS, PAULA	NJ - USDC for the District of New Jersey	3:21-cv-10157	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
SOWL, MARY	NJ - USDC for the District of New Jersey	3:21-cv-10281	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
STEELE, DIONNE	NJ - USDC for the District of New Jersey	3:21-cv-10161	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
TART, TANSHA	NJ - USDC for the District of New Jersey	3:21-cv-10289	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
TREETER, DEBRA	NJ - USDC for the District of New Jersey	3:21-cv-10353	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
WODARSKI, ROSALIND	NJ - USDC for the District of New Jersey	3:21-cv-10357	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
WOODFORD, PATRICIA	NJ - USDC for the District of New Jersey	3:21-cv-09995	HAIR SHUNNARAH TRIAL ATTORNEYS LLC
CLAVETTE, GUILDA	NJ - USDC for the District of New Jersey	3:18-cv-01462	HANNON LAW FIRM, LLC
HAILEY, DEBORAH	NJ - USDC for the District of New Jersey	3:19-cv-14744	HANNON LAW FIRM, LLC
LEE, AMANDA	CANADA - B.C. Supreme Court - Vancouver	VLC-S-S-2011369	HARPER GREY LLP
MARCENGILL, JAMIE	GA - State Court of Gwinnett County	19-C-05049-S2	HARRIS LOWRY MANTON LLP
ROBERTS, BETTY	GA - State Court of Gwinnett County	19-C-09697-S5	HARRIS LOWRY MANTON LLP
ADAMS, DARLENE	NJ - USDC for the District of New Jersey	3:17-cv-08500	HARRISON DAVIS STEAKLEY MORRISON JONES, PC
BALDWIN, JAMIE	NJ - USDC for the District of New Jersey	3:17-cv-08504	HARRISON DAVIS STEAKLEY MORRISON JONES, PC
BENNETT, JAMIE	NJ - USDC for the District of New Jersey	3:17-cv-08474	HARRISON DAVIS STEAKLEY MORRISON JONES, PC
BRAMMER, JOYCE	NJ - USDC for the District of New Jersey	3:18-cv-00017	HARRISON DAVIS STEAKLEY MORRISON JONES, PC
BROOKS, EVELYN	NJ - USDC for the District of New Jersey	3:17-cv-08498	HARRISON DAVIS STEAKLEY MORRISON JONES, PC
CLARK, IDA	NJ - USDC for the District of New Jersey	3:17-cv-11652	HARRISON DAVIS STEAKLEY MORRISON JONES, PC
HILL, DORIS	NJ - USDC for the District of New Jersey	3:17-cv-11658	HARRISON DAVIS STEAKLEY MORRISON JONES, PC
MALLARD, LOLA	NJ - USDC for the District of New Jersey	3:18-cv-12359	HARRISON DAVIS STEAKLEY MORRISON JONES, PC
MASSAGEE, BONNIE	NJ - USDC for the District of New Jersey	3:17-cv-08479	HARRISON DAVIS STEAKLEY MORRISON JONES, PC
MOORE, NORMA	NJ - USDC for the District of New Jersey	3:17-cv-11656	HARRISON DAVIS STEAKLEY MORRISON JONES, PC
SCHELLINGER, GAIL	NJ - USDC for the District of New Jersey	3:17-cv-08502	HARRISON DAVIS STEAKLEY MORRISON JONES, PC
WINTERS, RITA	NJ - USDC for the District of New Jersey	3:18-cv-01271	HARRISON DAVIS STEAKLEY MORRISON JONES, PC
EISMAN, GESELE	NJ - USDC for the District of New Jersey	3:20-cv-05834	HARRY I. KATZ, PC

Claimant Name	State Filed	Docket Number	Plaintiff Counsel
SCHLITTER, ELEANORE	NJ - USDC for the District of New Jersey	3:21-cv-11105	MELANIE H MUHLSTOCK/PARKER WAICHMAN LLP
SHEPHERD, KATHY	NJ - USDC for the District of New Jersey	3:21-cv-11308	MELANIE H MUHLSTOCK/PARKER WAICHMAN LLP
SMEDLEY, DONNA	NJ - USDC for the District of New Jersey	3:21-cv-10909	MELANIE H MUHLSTOCK/PARKER WAICHMAN LLP
SMELLIE, JOAN	NJ - USDC for the District of New Jersey	3:21-cv-11055	MELANIE H MUHLSTOCK/PARKER WAICHMAN LLP
STARUCH, MARGARET	NJ - USDC for the District of New Jersey	3:21-cv-11389	MELANIE H MUHLSTOCK/PARKER WAICHMAN LLP
TENNEFELD, DANA	NJ - USDC for the District of New Jersey	3:19-cv-18483	MELANIE H MUHLSTOCK/PARKER WAICHMAN LLP
TOWNS, LUCILLE	NJ - USDC for the District of New Jersey	3:19-cv-15594	MELANIE H MUHLSTOCK/PARKER WAICHMAN LLP
TRAYLOR, SUSAN	NJ - USDC for the District of New Jersey	3:21-cv-11200	MELANIE H MUHLSTOCK/PARKER WAICHMAN LLP
WILLIAMS, TAMMY	NJ - USDC for the District of New Jersey	3:19-cv-15328	MELANIE H MUHLSTOCK/PARKER WAICHMAN LLP
WINSLOW, KARI	NJ - USDC for the District of New Jersey	3:19-cv-15323	MELANIE H MUHLSTOCK/PARKER WAICHMAN LLP
WRIGHT-BRANTLEY, ANGELA	NJ - USDC for the District of New Jersey	3:20-cv-03245	MELANIE H MUHLSTOCK/PARKER WAICHMAN LLP
ZARKIN, PATTI	NJ - USDC for the District of New Jersey	3:21-cv-11056	MELANIE H MUHLSTOCK/PARKER WAICHMAN LLP
PEROUTKA, DIANE	IL - Circuit Court - Madison County	17-L-1589	MENGES LAW
GUERRA, MARIA	CANADA - Ontario Superior Court of Justice	179011	MERCHANT LAW GROUP LLP
JENKS, LEANN	CANADA - Ontario Superior Court of Justice	179011	MERCHANT LAW GROUP LLP
KRAMAR, ROSEMARY	CANADA - Superior Court, District of Montreal	500-06-000787-164	MERCHANT LAW GROUP LLP
WILLIAMSON, LINDA	CANADA - Ontario Superior Court of Justice	179011	MERCHANT LAW GROUP LLP
FINLEY, MELANIE	NJ - USDC for the District of New Jersey	3:17-cv-02391	MERSON LAW PLLC
ALLEN, ARNELLIA	NJ - USDC for the District of New Jersey	3:19-cv-19022	MESHBESHER & SPENCE, LTD.
ANDREWS, BETH	NJ - USDC for the District of New Jersey	3:20-cv-15198	MESHBESHER & SPENCE, LTD.
HAUGENE, SANDRA	NJ - USDC for the District of New Jersey	3:20-cv-14633	MESHBESHER & SPENCE, LTD.
JANZEN, MELISSA	NJ - USDC for the District of New Jersey	3:20-cv-15191	MESHBESHER & SPENCE, LTD.
MACMULLEN, DIANE	NJ - USDC for the District of New Jersey	3:19-cv-13920	MESHBESHER & SPENCE, LTD.
MALESKI, RENE	NJ - USDC for the District of New Jersey	3:18-cv-01678	MESHBESHER & SPENCE, LTD.
MOSCHOGIANIS, NANCY	NJ - USDC for the District of New Jersey	3:19-cv-19240	MESHBESHER & SPENCE, LTD.
ROBERTS, DEBBRA	NJ - USDC for the District of New Jersey	3:19-cv-13925	MESHBESHER & SPENCE, LTD.
RUTTEN, BRENDA	NJ - USDC for the District of New Jersey	3:19-cv-13933	MESHBESHER & SPENCE, LTD.
VANNETT, JO	NJ - USDC for the District of New Jersey	3:20-cv-08347	MESHBESHER & SPENCE, LTD.
DRUEDING, KRISTEN	NJ - Superior Court - Atlantic County	ATL-L-000888-21	MESSA & ASSOCIATES, P.C.
KRAMER, ROBERTA	NJ - Superior Court - Atlantic County	ATL-L-216-18	MESSA & ASSOCIATES, P.C.
PELULLO, BARBARA	NJ - Superior Court - Atlantic County	ATL-L-000972-21	MESSA & ASSOCIATES, P.C.
SCHMITT, ALLISON	NJ - USDC for the District of New Jersey	3:17-cv-12869	MESSA & ASSOCIATES, P.C.
SOSTRE, RITA	NJ - USDC for the District of New Jersey	3:19-cv-19540	MESSA & ASSOCIATES, P.C.
ABBEDUTO, MAUREEN	IL - Circuit Court - Cook County	2017-L-003007	MEYERS & FLOWERS, LLC
BENNETT, CAROLYN	IL - Circuit Court - Cook County	2017-L-003006	MEYERS & FLOWERS, LLC
BIRCH, KIERSTEN	IL - Circuit Court - Cook County	2021L000547	MEYERS & FLOWERS, LLC
BROWN, EDNA	IL - Circuit Court - Cook County	2017-L-003010	MEYERS & FLOWERS, LLC
HALL, PAULA	IL - Circuit Court - Cook County	2020-L003319	MEYERS & FLOWERS, LLC
KING, LATONIA	IL - Circuit Court - Cook County	2021L000545	MEYERS & FLOWERS, LLC
KNIGHT, KIMBERLY	IL - Circuit Court - Cook County	2017-L-003009	MEYERS & FLOWERS, LLC
MARIN, GRACIELA	IL - Circuit Court - Cook County	2021L000544	MEYERS & FLOWERS, LLC
RISLEY, HOPE	IL - Circuit Court - Cook County	2020L006924	MEYERS & FLOWERS, LLC
SUMMERS, CAROL	IL - Circuit Court - Cook County	2020-L-1314	MEYERS & FLOWERS, LLC
MARTINEZ, LILLIAN	NJ - USDC for the District of New Jersey	3:19-cv-08750	MICHAEL DAVID LAW
BELLANGER, CRYSTAL	NJ - USDC for the District of New Jersey	3:16-cv-09500	MICHAEL HINGLE & ASSOCIATES, LLC
BEZUE, MASHANDER	NJ - USDC for the District of New Jersey	3:16-cv-09564	MICHAEL HINGLE & ASSOCIATES, LLC
BROWN, BRENDA	NJ - USDC for the District of New Jersey	3:16-cv-09508	MICHAEL HINGLE & ASSOCIATES, LLC
BYRD, DARLENE	NJ - USDC for the District of New Jersey	3:16-cv-09513	MICHAEL HINGLE & ASSOCIATES, LLC
ELLIOTT, GWENDOLYN	NJ - USDC for the District of New Jersey	3:16-cv-09514	MICHAEL HINGLE & ASSOCIATES, LLC
HARRIS, RUTH	NJ - USDC for the District of New Jersey	3:16-cv-09522	MICHAEL HINGLE & ASSOCIATES, LLC
JONES-WILDER, RITA	NJ - USDC for the District of New Jersey	3:16-cv-09571	MICHAEL HINGLE & ASSOCIATES, LLC
MONTZ, CAROL	NJ - USDC for the District of New Jersey	3:16-cv-09523	MICHAEL HINGLE & ASSOCIATES, LLC
SISSAC, VILMA	NJ - USDC for the District of New Jersey	3:16-cv-09524	MICHAEL HINGLE & ASSOCIATES, LLC
DIVJAK, ELSIE	NJ - USDC for the District of New Jersey	3:18-cv-02706	MICHAEL S. WERNER, PARKER WAICHMAN LLP
GOSS, NICOLE	NJ - USDC for the District of New Jersey	3:17-cv-05824	MICHAEL S. WERNER, PARKER WAICHMAN LLP
JOSEPH, BRENDA	NJ - USDC for the District of New Jersey	3:17-cv-05848	MICHAEL S. WERNER, PARKER WAICHMAN LLP
KOEHLER, LENORE	NJ - USDC for the District of New Jersey	3:17-cv-01666	MICHAEL S. WERNER, PARKER WAICHMAN LLP
LUNA, EDITH	NJ - USDC for the District of New Jersey	3:17-cv-05777	MICHAEL S. WERNER, PARKER WAICHMAN LLP

Claimant Name	State Filed	Docket Number	Plaintiff Counsel
WILSON, SARA	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
WILSON, SONIA	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
WINCHESTER, KRIS	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
WINTER, CAROL	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
WOELFEL, MARY	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
WOODRUFF, GRACE	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
WRAY, ANITA	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
WRIGHT, JANET	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
WRIGHT, KATIE	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
WYATT, ROBIN	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
WYLIE, JUDITH	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
YARBROUGH, KATHERINE	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
YARBROUGH, RUBY	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
YINGLING, MELODY	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
YOCOM, LISA	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
YORK, NICHOLE	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
YOUNG, PORSCHIA	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
YOUNG, SUZANNE	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
ZAREMBA, JOYCE	NJ - USDC for the District of New Jersey	3:21-cv-13445	ROBINSON, CALCAGNIE, ROBINSON, SHAPIRO, DAVIS, INC.
BERNIER, THERESE	CANADA - Ontario Superior Court of Justice	CV-16-553046	ROCHON GENOVA LLP
FAROOQI-WILLISON, SHAEDA	CANADA - Ontario Superior Court of Justice	CV-16-553046	ROCHON GENOVA LLP
HEATON, JANET	CANADA - Ontario Superior Court of Justice	CV-16-553046	ROCHON GENOVA LLP
STRATHDEE, CINDY	CANADA - Ontario Superior Court of Justice	CV-16-553046	ROCHON GENOVA LLP
CHIRA, MILLICENT	NJ - USDC for the District of New Jersey	3:18-cv-14684	RODAL LAW, P.A.
MANNINO, KATHLEEN	NJ - USDC for the District of New Jersey	3:20-cv-01991	RODAL LAW, P.A.
ABAGNALE, LINDA	NJ - Superior Court - Atlantic County	ATL-L-002151-19	ROSS FELLER CASEY, LLP
ANDERSEN, CHARLOTTE	NJ - USDC for the District of New Jersey	3:17-cv-09434	ROSS FELLER CASEY, LLP
ANDERSON, BARBARA	NJ - USDC for the District of New Jersey	3:18-cv-04364	ROSS FELLER CASEY, LLP
ANDERSON, LATOSHA	NJ - USDC for the District of New Jersey	3:17-cv-04308	ROSS FELLER CASEY, LLP
ARMSTRONG, SHIRLEY	NJ - USDC for the District of New Jersey	3:18-cv-04365	ROSS FELLER CASEY, LLP
AVEY, KATHLEEN	NJ - USDC for the District of New Jersey	3:18-cv-16355	ROSS FELLER CASEY, LLP
AVEYARD, GEORGIANNA	NJ - USDC for the District of New Jersey	3:19-cv-14369	ROSS FELLER CASEY, LLP
BAKUS, REBECCA	CA - Superior Court - Los Angeles County	BC699682	ROSS FELLER CASEY, LLP
BASS, PAULA	NJ - USDC for the District of New Jersey	3:19-cv-00915	ROSS FELLER CASEY, LLP
BECKREST, KAREN	NJ - USDC for the District of New Jersey	3:18-cv-02086	ROSS FELLER CASEY, LLP
BERNARDI, MAUREEN	PA - Lackawanna County Court of Common Pleas	2020 cv 4922	ROSS FELLER CASEY, LLP
BISCOTTO, MIA	NJ - USDC for the District of New Jersey	3:18-cv-14790	ROSS FELLER CASEY, LLP
BOYLE, ELIZABETH	NJ - Superior Court - Atlantic County	ATL-L-002917-20	ROSS FELLER CASEY, LLP
BRAMAN, ELIZABETH	NJ - USDC for the District of New Jersey	3:18-cv-07661	ROSS FELLER CASEY, LLP
BROWN, JACQUELYN	CA - Superior Court - Los Angeles County	BC688134	ROSS FELLER CASEY, LLP
BURCIAR, ROSELYN	NJ - Superior Court - Atlantic County	ATL-L-146-18	ROSS FELLER CASEY, LLP
CALIGIURI, NANCY	NJ - USDC for the District of New Jersey	3:19-cv-15521	ROSS FELLER CASEY, LLP
CALLAHAN, JANICE	PA - Lackawanna County Court of Common Pleas	2017-05897	ROSS FELLER CASEY, LLP
CANTLEY, LINDA	CA - Superior Court - Los Angeles County	JCCP4872	ROSS FELLER CASEY, LLP
CHATFIELD, CANDIDA	NJ - USDC for the District of New Jersey	3:19-cv-08630	ROSS FELLER CASEY, LLP
CHAVEZ, MARIAN	NJ - USDC for the District of New Jersey	3:17-cv-13352	ROSS FELLER CASEY, LLP
CLARK, LAURA	NJ - USDC for the District of New Jersey	3:19-cv-08055	ROSS FELLER CASEY, LLP
COCCO, PATRICIA	NJ - USDC for the District of New Jersey	3:20-cv-09533	ROSS FELLER CASEY, LLP
COY, DENISE	NJ - USDC for the District of New Jersey	3:18-cv-08645	ROSS FELLER CASEY, LLP
CRISP-SILVA, CHANDRA	NJ - USDC for the District of New Jersey	3:17-cv-12229	ROSS FELLER CASEY, LLP
CURRY, SAUNDRA	NJ - USDC for the District of New Jersey	3:17-cv-04307	ROSS FELLER CASEY, LLP
CYMBALUK, LOUISE	NJ - Superior Court - Atlantic County	ATL-L-002483-18	ROSS FELLER CASEY, LLP
DALTON, CONNIE	NJ - USDC for the District of New Jersey	3:17-cv-09074	ROSS FELLER CASEY, LLP
DAVELLA, THERESA	NJ - USDC for the District of New Jersey	3:20-cv-13904	ROSS FELLER CASEY, LLP
DAZEY, KELLY	NJ - USDC for the District of New Jersey	3:17-cv-07723	ROSS FELLER CASEY, LLP

Claimant Name	State Filed	Docket Number	Plaintiff Counsel
WILLIAMS, JEAN	NJ - Superior Court - Atlantic County	ATL-L-003062-21	WEITZ & LUXENBERG
WILLIAMS, LAURA	NJ - Superior Court - Atlantic County	ATL-L-003092-21	WEITZ & LUXENBERG
WILLIAMS, SHIRLEY AND WILLIAMS, GEORGE	NJ - Superior Court - Middlesex County	MID-L-003872-21	WEITZ & LUXENBERG
WILLIS, RELINDA	NJ - Superior Court - Atlantic County	ATL-L-002926-21	WEITZ & LUXENBERG
WILSON, STEPHEN EST OF VIRGINIA M WILSON	NJ - Superior Court - Middlesex County	MID-L-06292-18AS	WEITZ & LUXENBERG
WINDISCH, ROSEMARIE	NJ - Superior Court - Middlesex County	MID-L-004480-20	WEITZ & LUXENBERG
WISNIEWSKI, SONIA	NJ - Superior Court - Middlesex County	MID-L-002224-21	WEITZ & LUXENBERG
WITTER, JOANNE S AND WITTER, TERRY	NJ - Superior Court - Middlesex County	MID-L-003895-20AS	WEITZ & LUXENBERG
WOODY, ANGEL	NJ - Superior Court - Atlantic County	ATL-L-002925-21	WEITZ & LUXENBERG
YOUNG, DENISE	NJ - Superior Court - Middlesex County	MID-L-02313-18AS	WEITZ & LUXENBERG
YOUNG, SABRINA	NJ - Superior Court - Atlantic County	ATL-L-002924-21	WEITZ & LUXENBERG
FISHER, SYLVIA	NJ - USDC for the District of New Jersey	3:17-cv-01050	WEITZ & LUXENBERG, P.C.
GAINER, BARBARA	NJ - USDC for the District of New Jersey	3:21-cv-15039	WEITZ & LUXENBERG, P.C.
HARRIS, CHRISTY	NJ - USDC for the District of New Jersey	3:21-cv-15215	WEITZ & LUXENBERG, P.C.
LAFONTANT, MARIE	NJ - USDC for the District of New Jersey	3:17-cv-01051	WEITZ & LUXENBERG, P.C.
RESNIK, AMY	NY - Supreme Court - New York County	190071/2021	WEITZ & LUXENBERG, P.C.
SMITH, WINDY	NJ - USDC for the District of New Jersey	3:21-cv-15219	WEITZ & LUXENBERG, P.C.
ALLGIER, KATHRYN	NJ - USDC for the District of New Jersey	3:20-cv-13453	WEXLER WALLACE LLP
BAILEY, SELENA	NJ - USDC for the District of New Jersey	3:19-cv-13373	WEXLER WALLACE LLP
BLODGETT, JUDITH	NJ - USDC for the District of New Jersey	3:18-cv-15577	WEXLER WALLACE LLP
CARNLEY, ROSARIO	NJ - USDC for the District of New Jersey	3:20-cv-09665	WEXLER WALLACE LLP
CASTELLI, DEBORAH	NJ - USDC for the District of New Jersey	3:20-cv-07580	WEXLER WALLACE LLP
CONDON, SHARI	NJ - USDC for the District of New Jersey	3:19-cv-19073	WEXLER WALLACE LLP
CREWS, SAMANTHA	NJ - USDC for the District of New Jersey	3:18-cv-03031	WEXLER WALLACE LLP
DOHERTY, JESSICA	NJ - USDC for the District of New Jersey	3:21-cv-03246	WEXLER WALLACE LLP
DOMAGALLA, ROBIN	NJ - USDC for the District of New Jersey	3:19-cv-14580	WEXLER WALLACE LLP
ETTANNANI, ROSALIE	NJ - USDC for the District of New Jersey	3:19-cv-13180	WEXLER WALLACE LLP
FAGAN, JOYCE	NJ - USDC for the District of New Jersey	3:19-cv-04417	WEXLER WALLACE LLP
FOX, MELINDA	NJ - USDC for the District of New Jersey	3:19-cv-16198	WEXLER WALLACE LLP
FULEP, KAREN	NJ - USDC for the District of New Jersey	3:21-cv-11186	WEXLER WALLACE LLP
FUNT, CAROLINE	NJ - USDC for the District of New Jersey	3:20-cv-02180	WEXLER WALLACE LLP
GALPIN, JANE	NJ - USDC for the District of New Jersey	3:18-cv-16705	WEXLER WALLACE LLP
GAUTHIER, CAROLYN	NJ - USDC for the District of New Jersey	3:17-cv-10786	WEXLER WALLACE LLP
GUDZ, PATRICIA	NJ - USDC for the District of New Jersey	3:21-cv-11181	WEXLER WALLACE LLP
GUSTIN, ANGELA	NJ - USDC for the District of New Jersey	3:19-cv-18534	WEXLER WALLACE LLP
HURLEY, PATRICIA	NJ - USDC for the District of New Jersey	3:20-cv-09678	WEXLER WALLACE LLP
JONES, EILEEN	NJ - USDC for the District of New Jersey	3:21-cv-11179	WEXLER WALLACE LLP
JOUNAKOS, EVELYN	NJ - USDC for the District of New Jersey	3:18-cv-14493	WEXLER WALLACE LLP
KATZ, GEORGIA	NJ - USDC for the District of New Jersey	3:19-cv-18324	WEXLER WALLACE LLP
KENNEY-CHAPMAN, RENE	NJ - USDC for the District of New Jersey	3:18-cv-03029	WEXLER WALLACE LLP
KINTZEL, DAWN	NJ - USDC for the District of New Jersey	3:20-cv-02942	WEXLER WALLACE LLP
KURTH, SUSAN	NJ - USDC for the District of New Jersey	3:19-cv-21270	WEXLER WALLACE LLP
LEONARD, MARIE	NJ - USDC for the District of New Jersey	3:19-cv-20941	WEXLER WALLACE LLP
LONG, DONNA	NJ - USDC for the District of New Jersey	3:19-cv-20939	WEXLER WALLACE LLP
LUCIA, MELISSA	NJ - USDC for the District of New Jersey	3:20-cv-03506	WEXLER WALLACE LLP
MERSON, DAWN	NJ - USDC for the District of New Jersey	3:20-cv-02181	WEXLER WALLACE LLP
MILLER, DOROTHY	NJ - USDC for the District of New Jersey	3:20-cv-14910	WEXLER WALLACE LLP
OVERDAHL, NANCY	NJ - USDC for the District of New Jersey	3:18-cv-03034	WEXLER WALLACE LLP
SANCHEZ, GENA	NJ - USDC for the District of New Jersey	3:21-cv-03242	WEXLER WALLACE LLP
SHANNON, SUSAN	NJ - USDC for the District of New Jersey	3:19-cv-13026	WEXLER WALLACE LLP
SKINNER, CATHY	NJ - USDC for the District of New Jersey	3:20-cv-14904	WEXLER WALLACE LLP
SOKOLOW, PEARL	NJ - USDC for the District of New Jersey	3:19-cv-13177	WEXLER WALLACE LLP
SURBER, BARBARA	NJ - USDC for the District of New Jersey	3:18-cv-04818	WEXLER WALLACE LLP
THOMAS, JOANN	NJ - USDC for the District of New Jersey	3:18-cv-00248	WEXLER WALLACE LLP
THOMPSON, DEBRA	NJ - USDC for the District of New Jersey	3:19-cv-20936	WEXLER WALLACE LLP
VARNER, SUE	NJ - USDC for the District of New Jersey	3:20-cv-13456	WEXLER WALLACE LLP
AGUILAR, MELISSA; ROBB,MARY	NJ - USDC for the District of New Jersey	3:16-cv-06608	WHITE & WEDDLE, P.C.
BUHL, GARRETT	NJ - Superior Court - Middlesex County	MID-L-01792-16AS	WILENTZ, GOLDMAN & SPITZER, P.A.
BLACK, LAVINIA	NJ - Superior Court - Atlantic County	ATL-L-2056-17	WILENTZ, GOLDMAN, & SPITZER, P.A.
DICHIARA, KIMBERLY	NJ - Superior Court - Atlantic County	ATL-L-000516-21	WILENTZ, GOLDMAN, & SPITZER, P.A.
LINN, JOANN	NJ - Superior Court - Atlantic County	ATL-L-003051-18	WILENTZ, GOLDMAN, & SPITZER, P.A.
PINIZZOTTO, DIANE	NJ - Superior Court - Atlantic County	ATL-L-1873-17	WILENTZ, GOLDMAN, & SPITZER, P.A.
POKRYSKA, ALEXANDRA	NJ - Superior Court - Atlantic County	ATL-L-205-17	WILENTZ, GOLDMAN, & SPITZER, P.A.
RICHARDS, ROCHELLE	NJ - USDC for the District of New Jersey	3:16-cv-06661	WILENTZ, GOLDMAN, & SPITZER, P.A.
SHEA, DOLORES	NJ - Superior Court - Atlantic County	ATL-L-1872-17	WILENTZ, GOLDMAN, & SPITZER, P.A.
SMITH, BARBARA	NJ - USDC for the District of New Jersey	3:18-cv-02181	WILENTZ, GOLDMAN, & SPITZER, P.A.
VANBRUNT, CYNTHIA	NJ - Superior Court - Atlantic County	ATL-L-1874-17	WILENTZ, GOLDMAN, & SPITZER, P.A.
VIX, RAECHELLE	NJ - USDC for the District of New Jersey	3:17-cv-01621	WILENTZ, GOLDMAN, & SPITZER, P.A.
BERNIER, THERESE	CANADA - Ontario Superior Court of Justice	CV-16-553046	WILL DAVIDSON LLP
FAROOQI-WILLISON, SHAEDA	CANADA - Ontario Superior Court of Justice	CV-16-553046	WILL DAVIDSON LLP
HEATON, JANET	CANADA - Ontario Superior Court of Justice	CV-16-553046	WILL DAVIDSON LLP
STRATHDEE, CINDY	CANADA - Ontario Superior Court of Justice	CV-16-553046	WILL DAVIDSON LLP
MCGILL, PHYLLIS	NJ - USDC for the District of New Jersey	3:21-cv-14476	WILLIAM D. BRANDT, P.C.

APPENDIX B

List of Protected Parties

Non-Debtor Affiliates

3Dintegrated ApS
Acclarent, Inc.
Actelion Ltd
Actelion Manufacturing GmbH
Actelion Pharmaceuticals Australia
Pty. Limited
Actelion Pharmaceuticals Korea Ltd.
Actelion Pharmaceuticals Ltd
Actelion Pharmaceuticals Mexico
S.A. De C.V.
Actelion Pharmaceuticals Trading
(Shanghai) Co., Ltd.
Actelion Pharmaceuticals UK Limited
Actelion Pharmaceuticals US, Inc.
Actelion Registration Limited
Actelion Treasury Unlimited Company
Akros Medical, Inc.
Albany Street LLC
ALZA Corporation
Alza Land Management, Inc.
AMO (Hangzhou) Co., Ltd.
AMO (Shanghai) Medical Devices
Trading Co., Ltd.
AMO ASIA LIMITED
AMO Australia Pty Limited
AMO Canada Company
AMO Denmark ApS
AMO Development, LLC
AMO France
AMO Germany GmbH
AMO Groningen B.V.
AMO International Holdings
AMO Ireland
AMO Ireland Finance Unlimited Company
AMO Italy SRL
AMO Japan K.K.
AMO Manufacturing Spain S.L.
AMO Manufacturing USA, LLC
AMO Netherlands BV
AMO Nominee Holdings, LLC
AMO Norway AS
AMO Puerto Rico Manufacturing, Inc.
AMO Sales and Service, Inc.
AMO Singapore Pte. Ltd.

AMO Spain Holdings, LLC
AMO Switzerland GmbH
AMO U.K. Holdings, LLC
AMO United Kingdom, Ltd.
AMO Uppsala AB
AMO US Holdings, Inc.
AMO USA Sales Holdings, Inc.
AMO USA, LLC
Animas Diabetes Care, LLC
Animas LLC
Animas Technologies LLC
AorTx, Inc.
Apsis
Aragon Pharmaceuticals, Inc.
Asia Pacific Holdings, LLC
Atrionix, Inc.
AUB Holdings LLC
Auris Health, Inc.
Backsvalan 2 Aktiebolag
Backsvalan 6 Handelsbolag
Beijing Dabao Cosmetics Co., Ltd.
BeneVir BioPharm, Inc.
Berna Rhein B.V.
BioMedical Enterprises, Inc.
Biosense Webster (Israel) Ltd.
Biosense Webster, Inc.
C Consumer Products Denmark ApS
Calibra Medical LLC
Campus-Foyer Apotheke GmbH
Carlo Erba OTC S.r.l.
Centocor Biologics, LLC
Centocor Research & Development, Inc.
ChromaGenics B.V.
Ci:Labo Customer Marketing Co., Ltd.
Ci:z. Labo Co., Ltd.
Cilag AG
Cilag GmbH International
Cilag Holding AG
Cilag Holding Treasury Unlimited Company
Cilag-Biotech, S.L.
CNA Development GmbH
Codman & Shurtleff, Inc.
Coherex Medical, Inc.
ColBar LifeScience Ltd.
Company Store.com, Inc.
Cordis de Mexico, S.A. de C.V.

Cordis International Corporation
Corimmun GmbH
CoTherix Inc.
CSATS, Inc.
Darlain Trading S.A.
Debs-Vogue Corporation
(Proprietary) Limited
DePuy France
DePuy Hellas SA
DePuy International Limited
DePuy Ireland Unlimited Company
DePuy Mexico, S.A. de C.V.
DePuy Mitek, LLC
DePuy Orthopaedics, Inc.
DePuy Products, Inc.
DePuy Spine, LLC
DePuy Synthes Gorgan Limited
DePuy Synthes Institute, LLC
DePuy Synthes Leto SARL
DePuy Synthes Products, Inc.
DePuy Synthes Sales, Inc.
DePuy Synthes, Inc.
Dr. Ci:Labo Co., Ltd.
DR. CI:LABO COMPANY LIMITED
Dutch Holding LLC
ECL7, LLC
EES Holdings de Mexico,
S. de R.L. de C.V.
EES, S.A. de C.V.
EIT Emerging Implant Technologies GmbH
Ethicon Biosurgery Ireland
Ethicon Endo-Surgery (Europe) GmbH
Ethicon Endo-Surgery, Inc.
Ethicon Endo-Surgery, LLC
Ethicon Holding Sarl
Ethicon Ireland Unlimited Company
Ethicon LLC
Ethicon PR Holdings Unlimited Company
Ethicon Sarl
Ethicon US, LLC
Ethicon Women's Health & Urology Sarl
Ethicon, Inc.
Ethnor (Proprietary) Limited
Ethnor del Istmo S.A.
Ethnor Farmaceutica, S.A.
Ethnor Guatemala, Sociedad Anomina

Finsbury (Development) Limited
Finsbury (Instruments) Limited
Finsbury Medical Limited
Finsbury Orthopaedics International Limited
Finsbury Orthopaedics Limited
FMS Future Medical System SA
GH Biotech Holdings Limited
Global Investment Participation B.V.
GMED Healthcare BV
Guangzhou Bioseal Biotech Co., Ltd.
Hansen Medical Deutschland GmbH
Hansen Medical International, Inc.
Hansen Medical UK Limited
Hansen Medical, Inc.
Healthcare Services (Shanghai) Ltd.
I.D. Acquisition Corp.
Innomedic Gesellschaft für innovative
Medizintechnik und Informatik mbH
Innovalens B.V.
Innovative Surgical Solutions, LLC
J & J Company West Africa Limited
J&J Pension Trustees Limited
J.C. General Services BV
Janssen Alzheimer Immunotherapy
(Holding) Limited
Janssen Biologics (Ireland) Limited
Janssen Biologics B.V.
Janssen BioPharma, Inc.
Janssen Biotech, Inc.
Janssen Cilag Farmaceutica S.A.
Janssen Cilag S.p.A.
Janssen Cilag SPA
Janssen Cilag, C.A.
Janssen de Mexico, S. de R.L. de C.V.
Janssen Development Finance
Unlimited Company
Janssen Diagnostics, LLC
Janssen Egypt LLC
Janssen Farmaceutica Portugal Lda
Janssen Global Services, LLC
Janssen Group Holdings Limited
Janssen Holding GmbH
Janssen Inc.
Janssen Irish Finance Company UC
Janssen Korea Ltd.
Janssen Oncology, Inc.

Janssen Ortho LLC
Janssen Pharmaceutica
(Proprietary) Limited
Janssen Pharmaceutica NV
Janssen Pharmaceutica S.A.
Janssen Pharmaceutical
Janssen Pharmaceutical K.K.
Janssen Pharmaceutical Sciences
Unlimited Company
Janssen Pharmaceuticals, Inc.
Janssen Products, LP
Janssen R&D Ireland
Janssen Research & Development, LLC
Janssen Sciences Ireland
Unlimited Company
Janssen Scientific Affairs, LLC
Janssen Supply Group, LLC
Janssen Vaccines & Prevention B.V.
Janssen Vaccines Corp.
Janssen-Cilag
Janssen-Cilag (New Zealand) Limited
Janssen-Cilag A/S
Janssen-Cilag AG
Janssen-Cilag Aktiebolag
Janssen-Cilag AS
Janssen-Cilag B.V.
Janssen-Cilag de Mexico S. de R.L. de C.V.
Janssen-Cilag Farmaceutica Lda.
Janssen-Cilag Farmaceutica Ltda.
Janssen-Cilag GmbH
Janssen-Cilag International NV
Janssen-Cilag Kft.
Janssen-Cilag Limited
Janssen-Cilag Limited
Janssen-Cilag Manufacturing, LLC
Janssen-Cilag NV
Janssen-Cilag OY
Janssen-Cilag Pharma GmbH
Janssen-Cilag Pharmaceutical S.A.C.I.
Janssen-Cilag Polska, Sp. z o.o.
Janssen-Cilag Pty Ltd
Janssen-Cilag S.A.
Janssen-Cilag s.r.o.
Janssen-Cilag, S.A.
Janssen-Cilag, S.A. de C.V.
Janssen-Pharma, S.L.

J-C Health Care Ltd.
Jevco Holding, Inc.
JJ Surgical Vision Spain, S.L.
JJC Acquisition Company B.V.
JJHC, LLC
JJSV Belgium BV
JJSV Manufacturing Malaysia SDN. BHD.
JJSV Norden AB
JJSV Produtos Oticos Ltda.
JNJ Global Business Services s.r.o.
JNJ Holding EMEA B.V.
JNJ International Investment LLC
JNJ Irish Investments ULC
Johnson & Johnson
Johnson & Johnson - Societa' Per Azioni
Johnson & Johnson (Angola), Limitada
Johnson & Johnson (China) Investment Ltd.
Johnson & Johnson (Egypt) S.A.E.
Johnson & Johnson (Hong Kong) Limited
Johnson & Johnson (Ireland) Limited
Johnson & Johnson (Jamaica) Limited
Johnson & Johnson (Kenya) Limited
Johnson & Johnson (Middle East) Inc.
Johnson & Johnson (Mozambique), Limitada
Johnson & Johnson (Namibia) (Proprietary) Limited
Johnson & Johnson (New Zealand) Limited
Johnson & Johnson (Philippines), Inc.
Johnson & Johnson (Private) Limited
Johnson & Johnson (Thailand) Ltd.
Johnson & Johnson (Trinidad) Limited
Johnson & Johnson (Vietnam) Co., Ltd
Johnson & Johnson AB
Johnson & Johnson AG
Johnson & Johnson Belgium Finance Company BV
Johnson & Johnson Bulgaria EOOD
Johnson & Johnson China Ltd.
Johnson & Johnson Consumer (Hong Kong) Limited
Johnson & Johnson Consumer (Thailand) Limited
Johnson & Johnson Consumer B.V.
Johnson & Johnson Consumer Holdings France

Johnson & Johnson Consumer Inc.
Johnson & Johnson Consumer NV
Johnson & Johnson Consumer
Saudi Arabia Limited
Johnson & Johnson Consumer Services
EAME Ltd.
Johnson & Johnson d.o.o.
Johnson & Johnson de Argentina
S.A.C. e. I.
Johnson & Johnson de Chile Limitada
Johnson & Johnson de Chile S.A.
Johnson & Johnson de Colombia S.A.
Johnson & Johnson de Costa Rica, S.A.
Johnson & Johnson de Mexico, S.A. de C.V.
Johnson & Johnson de Uruguay S.A.
Johnson & Johnson de Venezuela, S.A.
Johnson & Johnson del Ecuador, S.A.
Johnson & Johnson Del Paraguay, S.A.
Johnson & Johnson del Peru S.A.
Johnson & Johnson do Brasil Industria E
Comercio de Produtos Para Saude Ltda.
Johnson & Johnson Dominicana, S.A.S.
Johnson & Johnson Enterprise
Innovation Inc.
Johnson & Johnson European
Treasury Company
Johnson & Johnson Finance Corporation
Johnson & Johnson Finance Limited
Johnson & Johnson Financial
Services GmbH
Johnson & Johnson for Export and
Import LLC
Johnson & Johnson Foundation Scotland
(NON-PROFIT)
Johnson & Johnson Gateway, LLC
Johnson & Johnson Gesellschaft m.b.H.
Johnson & Johnson GmbH
Johnson & Johnson Guatemala, S.A.
Johnson & Johnson Health and
Wellness Solutions, Inc.
Johnson & Johnson Health Care
Systems Inc.
Johnson & Johnson Hellas Commercial and
Industrial S.A.
Johnson & Johnson Hellas Consumer
Products Commercial Societe Anonyme

Johnson & Johnson Hemisferica S.A.
Johnson & Johnson Holding GmbH
Johnson & Johnson Holdings K.K.
Johnson & Johnson Inc.
Johnson & Johnson Industrial Ltda.
Johnson & Johnson Innovation - JJDC, Inc.
Johnson & Johnson Innovation Limited
Johnson & Johnson Innovation LLC
Johnson & Johnson International
Johnson & Johnson International (Singapore) Pte. Ltd.
Johnson & Johnson International Financial Services Company
Johnson & Johnson Japan Inc.
Johnson & Johnson K.K.
Johnson & Johnson Kft.
Johnson & Johnson Korea Ltd.
Johnson & Johnson Korea Selling & Distribution LLC
Johnson & Johnson Limitada
Johnson & Johnson Limited
Johnson & Johnson LLC
Johnson & Johnson Luxembourg Finance Company Sarl
Johnson & Johnson Management Limited
Johnson & Johnson Medical (China) Ltd.
Johnson & Johnson Medical (Proprietary) Ltd
Johnson & Johnson Medical (Shanghai) Ltd.
Johnson & Johnson Medical (Suzhou) Ltd.
Johnson & Johnson Medical B.V.
Johnson & Johnson Medical Devices & Diagnostics Group - Latin America, L.L.C.
Johnson & Johnson Medical GmbH
Johnson & Johnson Medical Korea Ltd.
Johnson & Johnson Medical Limited
Johnson & Johnson Medical Mexico, S.A. de C.V.
Johnson & Johnson Medical NV
Johnson & Johnson Medical Products GmbH
Johnson & Johnson Medical Pty Ltd
Johnson & Johnson Medical S.A.
Johnson & Johnson Medical S.p.A.
Johnson & Johnson Medical SAS

Johnson & Johnson Medical
Saudi Arabia Limited
Johnson & Johnson Medical Servicios
Profesionales S. de R.L. de C.V.
Johnson & Johnson Medical Taiwan Ltd.
Johnson & Johnson Medical, S.C.S.
Johnson & Johnson Medikal Sanayi ve
Ticaret Limited Sirketi
Johnson & Johnson Middle East FZ-LLC
Johnson & Johnson Morocco
Societe Anonyme
Johnson & Johnson Nordic AB
Johnson & Johnson Pacific Pty Limited
Johnson & Johnson Pakistan
(Private) Limited
Johnson & Johnson Panama, S.A.
Johnson & Johnson Personal Care
(Chile) S.A.
Johnson & Johnson Poland Sp. z o.o.
Johnson & Johnson Private Limited
Johnson & Johnson Pte. Ltd.
Johnson & Johnson Pty. Limited
Johnson & Johnson Research Pty Ltd
Johnson & Johnson Romania S.R.L.
Johnson & Johnson S.E. d.o.o.
Johnson & Johnson S.E., Inc.
Johnson & Johnson Sante Beaute France
Johnson & Johnson SDN. BHD.
Johnson & Johnson Services, Inc.
Johnson & Johnson Servicios Corporativos,
S. de R.L. de C.V.
Johnson & Johnson Surgical Vision India
Private Limited
Johnson & Johnson Surgical Vision, Inc.
Johnson & Johnson Taiwan Ltd.
Johnson & Johnson UK Treasury
Company Limited
Johnson & Johnson Ukraine LLC
Johnson & Johnson Urban Renewal
Associates
Johnson & Johnson Vision Care
(Shanghai) Ltd.
Johnson & Johnson Vision Care Ireland
Unlimited Company
Johnson & Johnson Vision Care, Inc.
Johnson & Johnson, S.A.

Johnson & Johnson, S.A. de C.V.
Johnson & Johnson, s.r.o.
Johnson & Johnson, s.r.o.
Johnson and Johnson (Proprietary) Limited
Johnson and Johnson Sihhi Malzeme Sanayi
Ve Ticaret Limited Sirketi
JOM Pharmaceutical Services, Inc.
La Concha Land Investment Corporation
Latam International Investment Company
Unlimited Company
Lifescan
McNeil AB
McNeil Consumer Pharmaceuticals Co.
McNeil Denmark ApS
McNeil Healthcare (Ireland) Limited
McNeil Healthcare (UK) Limited
McNeil Healthcare LLC
McNeil Iberica S.L.U.
McNeil LA LLC
McNEIL MMP, LLC
McNeil Nutritionals, LLC
McNeil Panama, LLC
McNeil Products Limited
McNeil Sweden AB
MDS Co. Ltd.
Medical Device Business Services, Inc.
Medical Devices & Diagnostics Global
Services, LLC
Medical Devices International LLC
Medical Industrial do Brasil Ltda.
Medos International Sarl
Medos Sarl
MegaDyne Medical Products, Inc.
Menlo Care De Mexico, S.A. de C.V.
Mentor B.V.
Mentor Deutschland GmbH
Mentor Medical Systems B.V.
Mentor Partnership Holding
Company I, LLC
Mentor Texas GP LLC
Mentor Texas L.P.
Mentor Worldwide LLC
Micrus Endovascular LLC
Middlesex Assurance Company Limited
Momenta Ireland Limited
Momenta Pharmaceuticals, Inc.

NeoStrata Company, Inc.
NeoStrata UG (haftungsbeschränkt)
Netherlands Holding Company
Neuravi Inc.
Neuravi Limited
NeuWave Medical, Inc.
Novira Therapeutics, LLC
NuVera Medical, Inc.
Obtech Medical Mexico, S.A. de C.V.
OBTECH Medical Sarl
OGX Beauty AU Pty Ltd
OGX Beauty Limited
OMJ Holding GmbH
OMJ Ireland Unlimited Company
OMJ Pharmaceuticals, Inc.
Omrix Biopharmaceuticals Ltd.
Omrix Biopharmaceuticals NV
Omrix Biopharmaceuticals, Inc.
Ortho Biologics LLC
Ortho Biotech Holding LLC
Ortho-McNeil Pharmaceutical, LLC
Orthotaxy
Patriot Pharmaceuticals, LLC
Peninsula Pharmaceuticals, LLC
Penta Pty. Limited
Percivia LLC
Perouse Plastie
Pharmadirect Ltd.
Pharmedica Laboratories (Proprietary) Limited
PMC Holdings G.K.
Princeton Laboratories, Inc.
Productos de Cuidado Personal y de La Salud de Bolivia S.R.L.
Proleader S.A.
PT Integrated Healthcare Indonesia
PT. Johnson & Johnson Indonesia
Pulsar Vascular, Inc.
Regency Urban Renewal Associates
RespiVert Ltd.
RoC International
Royalty A&M LLC
Rutan Realty LLC
Scios LLC
Sedona Enterprise Co., Ltd.
Sedona Singapore International Pte. Ltd.

Sedona Thai International Co., Ltd.
Serhum S.A. de C.V.
Shanghai Elsker For Mother & Baby Co., Ltd
Shanghai Johnson & Johnson Ltd.
Shanghai Johnson & Johnson Pharmaceuticals Ltd.
Sightbox, LLC
Sodiac ESV
Spectrum Vision Limited Liability Company
Spectrum Vision Limited Liability Company
Spectrum Vision Limited Liability Partnership
Spine Solutions GmbH
SterilMed, Inc.
Sterilmed, Inc.
Surgical Process Institute Deutschland GmbH
Synthes Costa Rica S.C.R., Limitada
SYNTHES GmbH
Synthes GmbH
Synthes Holding AG
Synthes Holding Limited
SYNTHES Medical Immobilien GmbH
Synthes Medical Surgical Equipment & Instruments Trading LLC
Synthes Produktions GmbH
Synthes Proprietary Limited
Synthes S.M.P., S. de R.L. de C.V.
Synthes Tuttlingen GmbH
Synthes USA Products, LLC
Synthes USA, LLC
Synthes, Inc.
TARIS Biomedical LLC
TearScience, Inc.
The Anspach Effort, LLC
The Vision Care Institute, LLC
Tibotec, LLC
Torax Medical, Inc.
TriStrata, Incorporated
UAB "Johnson & Johnson"
Vania Expansion
Verb Surgical Inc.
Vision Care Finance Unlimited Company
Vogue International LLC
Vogue International Trading, Inc.
WH4110 Development Company, L.L.C.

Xian Janssen Pharmaceutical Ltd.
XO1 Limited
Zarbee's, Inc.

Retailers and Indemnified Parties

7-Eleven
7-Eleven, Inc.
Acme Markets, Inc.
Ahold Delhaize USA, Inc.
Albertsons Companies, Inc.
Alpha Beta Company
Associated Wholesaler Grocers, Inc.
Bartell Drug Company
Bashas', Inc.
Bausch Health US, LLC
Bausch Health Americas, Inc.
Bausch Health Companies Inc.
BCW LLC
Best Market of Astoria, Inc.
BI-LO, LLC
Bi-Mart Corporation
C&S Wholesale Grocers
C&S Wholesale Grocers, Inc.
Classic Pharmacy, Inc.
Cosentino Enterprises, Inc.
Cosentino Group, Inc.
Cosentino Price Chopper
Cosentino's Food Stores
Costco Wholesale Corporation
CVS Health Corporation
CVS Pharmacy, Inc.
Demoulas Super Markets, Inc.
Dierbergs Markets, Inc.
Discount Drug Mart, Inc.
Dollar Tree Stores, Inc.
DRI I, Inc.
Duane Reade, Inc.
Eckerd Corporation of Florida, Inc.
Family Dollar Stores
Fleming Companies, Inc.
Food 4 Less of California
Food 4 Less of Southern California, Inc.
Foodland
Foodland Super Market, LTD
Foot Locker Specialties, Inc., individually and as successor-in-interest to F.W. Woolworth Co.

Foot Locker Specialty, Inc.
Foot Locker, Inc./Woolworth Corporation
Four B Corporation d/b/a Balls Food Stores
Fred Meyer Stores, Inc.
Fruth Pharmacy, Inc.
Gerlands Food Fair, LLC
Gerlands, LLC
Gerlands, LLC/Lewis Food Town, Inc.
Giant Eagle, Inc.
Giant Food of Maryland, LLC
Giant Food Stores, LLC
Grocery Outlet Holding Corporation
Grocery Outlet Inc.
Grocery Outlet, Inc.
HAC, Inc.
H-E-B, LP
Hughes Markets, Inc.
Hy-Vee, Inc.
Jewel Food Stores
Jewel Osco
Jewel Osco Southwest
K&B Corporation
K&B Louisiana Corporation
Kings Park Slope, Inc.
Kings Pharmacy
Kings Pharmacy Holdings, LLC
Kings Third Ave. Pharmacy, Inc.
Knorr Street ShopRite, Inc.
La Luz Market, LTD. Co.
Lewis Food Town, Inc.
Longs Drug Stores California, L.L.C
Longs Drug Stores of Southern California, L.L.C.
Longs Drug Stores, L.L.C.
Lucky Stores, Inc.
Marc Glassman Inc.
Marc Glassman, Inc. d/b/a Marc's Store & Pharmacy
MBF Healthcare Holdings, Inc.
MBF Healthcare Management, LLC
Meijer, Inc.
MMG Equity Partners
Navarro Discount Pharmacies No. 5, LLC
Navarro Discount Pharmacies, LLC
Owens & Minor Distribution, Inc.
Owens & Minor, Inc.
Piggly Wiggly Carolina Co.
Piggly Wiggly Carolina Co., Inc.

Piggly Wiggly Companies, Inc.
Piggly Wiggly, LLC
Piggly Wiggly, LLC (subsidiary of C&S Wholesale Grocers)
PTI
PTI Royston LLC, a Georgia Limited Liability Co., d/b/a Pharma Tech Industries
PTI Union, LLC d/b/a Pharma Tech Industries
Publix Super Markets, Inc.
Raley's
Ralphs Grocery Company
Randall's Food & Drug LP
Randall's Food Markets, Inc.
Rite Aid
Rite Aid Corporation
Rite Aid Hdqtrs. Corp.
Rite Aid of New York City, Inc.
Rite Aid of New York, Inc.
Rite Aid of Pennsylvania, Inc.
Rite Aid of South Carolina, Inc.
Rouse's Enterprises, L.L.C.
Rouse's Enterprises, L.L.C. d/b/a Rouses Market
Safeway Inc.
Save Mart Supermarkets, Inc.
Save Mart Supermarkets, Inc./Lucky Stores
Schnuck Markets
Schnuck Markets, Inc.
Sedano's Market, Inc.
Shanti Pharmacy Corp.
Shaw's Supermarkets, Inc.
Shop-Rite Supermarkets, Inc. a/k/a Shop Rite of Knorr Street
Smith Food and Drug Center, Inc.
Southeastern Grocers, Inc.
Star Markets Company, Inc.
Stater Bros. Markets
Super Center Concepts, Inc. d/b/a Superior Grocers
Superior Grocers
SuperValu, Inc.
T. Levy Associates, d/b/a Beauty Land Enterprises
T. Levy Associates, Inc. d/b/a Beauty Land Enterprises/Beautyland
Target Corporation
The Bartell Drug Company
The Kroger Company
The Stop & Shop Supermarket Company LLC
The Vons Companies, Inc.
Thrifty Payless, Inc.
Thrifty White Drug
Tops Holding, LLC

Valeant Pharmaceuticals International
Valeant Pharmaceuticals International, Inc.
Valeant Pharmaceuticals North America LLC
Wakefern Food Corp.
Walgreen Co.
Walgreen Eastern Co., Inc.
Walgreen Pharmacy Strategies, LLC
Walgreens Boots Alliance, Inc.
Walmart Inc.
Wegmans Food Markets, Inc.
Winn-Dixie Stores, Inc.
Woolworth Corporation

Insurers
A.G. Securitas
ACE Property & Casualty Insurance Company
Aetna Casualty and Surety Company
Affiliated FM Ins. Company
AIG Europe S.A.
AIG Property and Casualty Company
AIU Ins. Company
Allianz Ins. Company
Allianz Global Risks US Insurance Company
Allstate Insurance Company
American Centennial Ins. Company
American Motorists Ins. Company
American Re-Insurance Company
Arrowood Indemnity Company
ASR Schadeverzekering N.V.
Assurances Generales De France
Assurantiekantoor VanWijk & Co.
Atlanta International Insurance Company
Birmingham Fire Ins. Company of Pennsylvania
Central National Ins. Company of Omaha
Century Indemnity Company
Champion Dyeing Allocation Year
Chubb
City Ins. Company
Colonia Versicherungs AG, Koln
Continental Insurance Company
Darag Deutsche Versicherungs-Und Rückversicherungs-AG
Drake Ins. Company of New York

Employers Ins. Company of Wausau
Employers Ins. of Wausau
Employers Mutual Casualty Company
Eurinco Allgemeine
Versicherungs AG, Dusseldorf
Everest Reinsurance Company
Fireman's Fund Ins. Company
First State Ins. Company
GAP
Gibraltar Casualty Company
Granite State Ins. Company
Great American
Great Northern Ins. Company
Great Southwest Fire Ins. Company
Groupe Drouot
Harbor Ins. Company
Hartford Accident and Indemnity Company
Home Ins. Company
Ideal Mutual Ins. Company
Industrial Indemnity Company
Ins. Company of North America
Ins. Company of the State of Pennsylvania
Ins. Corporation of Singapore Limited
Integrity Ins. Company
International Ins. Company
International Surplus Lines Ins. Company
Lexington Ins. Company
London Guarantee and Accident
Company of N.Y.
L'Union Atlantique S.A. d'Assurances
Mead Reinsurance Corporation
Middlesex Assurance Company
Midland Ins. Company
Midstates Reinsurance Corp.
Mission Ins. Company
Mission National Ins. Company
Munich Reinsurance America, Inc.
Mutual Fire, Marine, & Inland Ins.
Company
N.V. De Ark
N.V. Rotterdamse Assurantiekas
N.V. Schadeverzekeringsmaatschappij
Maas Lloyd
National Casualty Company
National Union Fire Ins. Company of
Pittsburgh, PA

Nationwide
New Hampshire Ins. Company
North River Ins. Company
Northbrook Excess and Surplus
Ins. Company
Northeastern Fire Ins. Company
of Pennsylvania
Pacific Employers Ins. Company
ProSight
Prudential Reinsurance Company
Puritan Insurance Company
Republic Indemnity Company of America
Republic Ins. Company
Republic Western Ins. Company
Repwest Insurance Company
Resolute Management Inc.
Rheinland Versicherungen
Rheinland Verzekeringen
Riverstone Insurers
Royal Belge I.R., S.A. d'Assurances
Royal Indemnity Company
Royal Ins. Company
Safety Mutual Casualty Corporation
Safety National Casualty Corporation
Seguros La Republica SA
Sentry Insurance A Mutual Company
Southern American Ins. Company
Starr Indemnity & Liability Company
TIG Insurance Company
Transamerica Premier Insurance Company
Transit Casualty Company
Travelers Casualty and Surety Company
UAP
Union Atlantique d'Assurances S.A.
Union Indemnity Ins. Company
of New York
Westchester Fire Insurance Company
Westport Insurance Corporation
XL Ins. Company

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re	Chapter 11
LTL MANAGEMENT LLC,[1]	Case No. 21-30589 (JCW)
Debtor.	
LTL MANAGEMENT LLC,	
Plaintiff,	
v.	Adv. Pro. No. 21-03032 (JCW)
THOSE PARTIES LISTED ON APPENDIX A TO COMPLAINT and JOHN AND JANE DOES 1-1000,	
Defendants.	

NOTICE OF FILING AMENDED APPENDIX A TO THE DEBTOR'S COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On October 21, 2021, LTL Management LLC, the debtor in the above-captioned chapter 11 case (the "Debtor") and the plaintiff in the above-captioned adversary proceeding (the "Adversary Proceeding"), filed the *Debtor's Complaint For Declaratory and Injunctive Relief (I) Declaring That the Automatic Stay Applies to Certain Actions Against Non-Debtors or, (II) Preliminarily Enjoining Such Actions and (III) Granting a Temporary Restraining Order Pending a Final Hearing* [Adv. Pro. Dkt. 1] (the "Complaint")

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

and the *Debtor's Motion For an Order (I) Declaring That the Automatic Stay Applies to Certain Actions Against Non-Debtors or (II) Preliminarily Enjoining Such Actions and (III) Granting a Temporary Restraining Order Pending a Final Hearing* [Adv. Pro. Dkt. 2] (the "PI Motion") in the Adversary Proceeding.

2. Appendix A to the Complaint and the PI Motion identifies the Defendants,[2] with the exception of the John and Jane Doe Defendants, and includes, among other things, the civil action number (where available) for each lawsuit and the law firms representing each of the Defendants on account of their talc claims.[3]

3. Pursuant to the Complaint and the PI Motion, the Debtor reserved the right to supplement, amend or otherwise modify Appendix A. (Compl. ¶ 2, n. 2; PI Mot, at 1, n. 1).

4. The Debtor hereby files an amended Appendix A, attached hereto as Exhibit 1, to the Complaint and the PI Motion. Appendix A has been amended to correct certain items and include subsequently-filed cases as of October 28, 2021.

---

2 Capitalized terms not defined herein have the meaning given to them in the Complaint or the PI Motion as applicable.

3 For the avoidance of doubt, the inclusion of a talc-related claim on Appendix A is not an admission that such Defendant holds a currently pending claim against either the Debtor or a Protected Party.

Dated: November 3, 2021
Charlotte, North Carolina

Respectfully submitted,

/s/ John R. Miller, Jr.

C. Richard Rayburn, Jr. (NC 6357)
John R. Miller, Jr. (NC 28689)
Matthew L. Tomsic (NC 52431)
RAYBURN COOPER & DURHAM, P.A.
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202
Telephone: (704) 334-0891
Facsimile: (704) 377-1897
E-mail: rrayburn@rcdlaw.net
jmiller@rcdlaw.net
mtomsic@rcdlaw.net

Gregory M. Gordon (TX Bar No. 08435300)
Dan B. Prieto (TX Bar No. 24048744)
Amanda Rush (TX Bar No. 24079422)
JONES DAY
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
E-mail: gmgordon@jonesday.com
dbprieto@jonesday.com
asrush@jonesday.com
(Admitted *pro hac vice*)

Brad B. Erens (IL Bar No. 06206864)
JONES DAY
77 West Wacker
Chicago, Illinois 60601
Telephone: (312) 782-3939
Facsimile: (312) 782-8585
E-mail: bberens@jonesday.com
(Admitted *pro hac vice*)

PROPOSED ATTORNEYS FOR DEBTOR

EXHIBIT 1

Amended Appendix A

* Underlined entries are amendments to Appendix A. All other records are additions.

Claimant Name	State Filed	Docket Number	Plaintiff Counsel
KNAPP, DAVID AND KNAP, KAY	NY - Supreme Court - NYCAL	190282/2016	MEIROWITZ & WASSERBERG, LLP
KNOPPS, SANDRA	NY - Supreme Court - NYCAL	190265/2019	MEIROWITZ & WASSERBERG, LLP
MATE, JOZSEFNE	NY - Supreme Court - NYCAL	190110/2017	MEIROWITZ & WASSERBERG, LLP
MEDRANO, IRMA	NY - Supreme Court - NYCAL	190055/2018	MEIROWITZ & WASSERBERG, LLP
MORALES, MARLENE M & EST OF OSCAR MORAL	NY - Supreme Court - NYCAL	190430/2018	MEIROWITZ & WASSERBERG, LLP
MURRAY, LOUIS J	NY - Supreme Court - NYCAL	190059/2018	MEIROWITZ & WASSERBERG, LLP
NOVELLINO, PETER & EST OF KAREN NOVELLIN	NY - Supreme Court - NYCAL	190266/2019	MEIROWITZ & WASSERBERG, LLP
OTERO, LILY I & EST OF JOSEPH ARROYO	NY - Supreme Court - NYCAL	190063/2018	MEIROWITZ & WASSERBERG, LLP
PICHARDO, HUMBERTO	NY - Supreme Court - NYCAL	190151/2018	MEIROWITZ & WASSERBERG, LLP
PITTAWAY, COLIN & EST OF FRANCES PITTAWA	NY - Supreme Court - NYCAL	190161/2019	MEIROWITZ & WASSERBERG, LLP
PURDY, JEROME & EST OF DANIELLE PURDY	NY - Supreme Court - NYCAL	190335/2018	MEIROWITZ & WASSERBERG, LLP
QAMARUDDIN, ASLAM & QAMARUDDIN, SALMA	NY - Supreme Court - NYCAL	190287/2019	MEIROWITZ & WASSERBERG, LLP
RICALDI, FLORENCIA & RICALDI, HIBERMAN	NY - Supreme Court - NYCAL	190218/2019	MEIROWITZ & WASSERBERG, LLP
ROBINS, JERRY	NY - Supreme Court - NYCAL	190264/2019	MEIROWITZ & WASSERBERG, LLP
ROSENBLUM, LINDA & EST OF BARRY G ROSENB	NY - Supreme Court - NYCAL	190361/2018	MEIROWITZ & WASSERBERG, LLP
RUNNELS, MICHAEL W & EST OF JIMMY RUNNEL	NY - Supreme Court - NYCAL	190379/2018	MEIROWITZ & WASSERBERG, LLP
SAUNDERS, DIANA	NY - Supreme Court - NYCAL	190363/2016	MEIROWITZ & WASSERBERG, LLP
SCHAPS, SCOTT	NY - Supreme Court - NYCAL	190198/2017	MEIROWITZ & WASSERBERG, LLP
SIMON, SUSAN & EST OF DANIEL SIMON	NY - Supreme Court - NYCAL	190252/2017	MEIROWITZ & WASSERBERG, LLP
SMILEY, RAMONA & EST OF RONNIE J SMILEY	NY - Supreme Court - NYCAL	190323/2019	MEIROWITZ & WASSERBERG, LLP
SPENCER, TODD & BHARAMI, MIRIAM	NY - Supreme Court - NYCAL	190025/2019	MEIROWITZ & WASSERBERG, LLP
STODOLAK, DAVID D	NY - Supreme Court - NYCAL	190253/2017	MEIROWITZ & WASSERBERG, LLP
TORRES, MAXIMO	NY - Supreme Court - NYCAL	190343/2017	MEIROWITZ & WASSERBERG, LLP
WALBERG, SUSAN A. & WALLBERG, ALEXANDER	NY - Supreme Court - NYCAL	190335/2016	MEIROWITZ & WASSERBERG, LLP
WARREN, CAROL & EST OF RICKY HALLETT	NY - Supreme Court - NYCAL	190141/2018	MEIROWITZ & WASSERBERG, LLP
WILLIAMS, DIANNA L	NY - Supreme Court - NYCAL	190364/2016	MEIROWITZ & WASSERBERG, LLP
YELDA, SAUDIKA	NY - Supreme Court - NYCAL	190247/2017	MEIROWITZ & WASSERBERG, LLP
GUERRA, MARIA	**CANADA - British Columbia Superior Court of Justice**	179011	MERCHANT LAW GROUP LLP
BROOKS, DENISE	IL - Circuit Court - Cook County	2017L011567	MEYERS & FLOWERS, LLC
PAGE, DIANE	NJ - USDC for the District of New Jersey	3:21-cv-19006	MORGAN & MORGAN
BURKAT, MARGARET	NJ - Superior Court - Atlantic County	ATL-L-003399-21	MOTLEY RICE NEW JERSEY LLC
ADAMSON, LINDA	NJ - USDC for the District of New Jersey	3:21-cv-18805	MOTLEY RICE, LLC
BROWN, DEBORAH	NJ - USDC for the District of New Jersey	3:21-cv-18728	MOTLEY RICE, LLC
CURTIS, ESTHER	NJ - USDC for the District of New Jersey	3:21-cv-18824	MOTLEY RICE, LLC
GARCIA, HILDA	NJ - USDC for the District of New Jersey	3:21-cv-18802	MOTLEY RICE, LLC
HENSLEY, DEBORAH	NJ - USDC for the District of New Jersey	3:21-cv-18811	MOTLEY RICE, LLC
HOWELL, LORRIE	NJ - USDC for the District of New Jersey	3:21-cv-18809	MOTLEY RICE, LLC
JAMES, KATHRYN	NJ - USDC for the District of New Jersey	3:21-cv-18803	MOTLEY RICE, LLC
JUSTICE, PATRICIA	NJ - USDC for the District of New Jersey	3:21-cv-18782	MOTLEY RICE, LLC
KIRSHNER, LILIANA	NJ - USDC for the District of New Jersey	3:21-cv-18780	MOTLEY RICE, LLC
NICHOLAS, LEANN	NJ - USDC for the District of New Jersey	3:21-cv-18712	MOTLEY RICE, LLC
RUSSELL, RALENE	NJ - USDC for the District of New Jersey	3:21-cv-18783	MOTLEY RICE, LLC
SKERMAN, ANNA	NJ - USDC for the District of New Jersey	3:21-cv-18725	MOTLEY RICE, LLC
TOOMEY, CAROL	NJ - USDC for the District of New Jersey	3:21-cv-18735	MOTLEY RICE, LLC
A. WILSON, MEL	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
ADAMS, JACKIE	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
AHRENS, BRENDA	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
ALEGANDRA-DOMINGUEZ, SINDY	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
ARIAS-ARAGON, JESUS	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
BEILKE, SUSAN	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
BELLE-ROBINSON, CRYSTAL	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
BLASIOL, VICTOR	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
BOEHME, WYNONIA	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
BONAMO, DORIAN	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
BRYSON, ANN	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
BURNETT, TYLER	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
C. PENA, JORGE	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
CABRAL, JOAN	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
CANFIELD, FERN	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
CANNON, ANNE	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
CARPENTER, BRYAN	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
CARTER, KELLY	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
CATILLER, BARBARA	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
CHILARSKI, MICHAEL	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
CIANCIOLA, ESTHER	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
COATS, ROBERT	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK
COCKERHAM, BRENDA	IL - Circuit Court - Madison County	21-L-1291	NAPOLI SHKOLNIK

This is **Exhibit "G"** referred to in the

Affidavit of John K. Kim

sworn before me by video conference
this 16th day of December, 2021

A Commissioner, etc.

Caitlin McIntyre, LSO #72306R

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

In re	Chapter 11
LTL MANAGEMENT LLC,[1]	Case No. 21-30589 (JCW)
Debtor.	
LTL MANAGEMENT LLC,	
Plaintiff,	
v.	Adv. Pro. No. 21-03032 (JCW)
THOSE PARTIES LISTED ON APPENDIX A TO COMPLAINT and JOHN AND JANE DOES 1-1000,	
Defendants.	

**DEBTOR'S MOTION FOR AN ORDER
(I) DECLARING THAT THE AUTOMATIC STAY
APPLIES TO CERTAIN ACTIONS AGAINST NON-DEBTORS OR
(II) PRELIMINARILY ENJOINING SUCH ACTIONS AND (III) GRANTING
A TEMPORARY RESTRAINING ORDER PENDING A FINAL HEARING**

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

Page

Page

Page

NAI-1520834353

Page

Page

Page

STATUTES

Page

NATURE OF PROCEEDING

Pursuant to Rules 7001(7), 7001(9) and 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") Plaintiff LTL Management LLC, a North Carolina limited liability company and the debtor in the above-captioned chapter 11 case ("LTL" or the "Debtor"), seeks a declaration that section 362(a) of the Bankruptcy Code prohibits the commencement or continuation of certain actions against the Protected Parties (as defined below) while the Debtor's chapter 11 case (the "Chapter 11 Case") remains pending. The Debtor also requests a preliminary injunction under section 105(a) of the Bankruptcy Code. The injunction will enjoin the prosecution of actions outside of the Chapter 11 Case on account of the same talc claims that exist against the Debtor in the Chapter 11 Case.

The defendants in this adversary proceeding (collectively, the "Defendants") sought to be enjoined are all named plaintiffs in the talc-related lawsuits against the Debtor or for which the Debtor is responsible or alleged responsible listed on Appendix A to the Complaint, as well as John and Jane Does 1-1000.[1] The Defendants would be enjoined from prosecuting actions outside of the Chapter 11 Case seeking to hold the following entities liable for talc claims against the Debtor in the Chapter 11 Case: (i) affiliates of the Debtor; (ii) third party retailers or transaction parties; and (iii) insurers of the Debtor, in each case as a result of the Debtor's indemnification or alleged indemnification of such entities for talc claims against the Debtor, and

---

[1] Appendix A identifies the civil action number (where available) for each lawsuit and the law firms representing each of the Defendants on account of their talc claims. The Debtor reserves the right to supplement, amend or otherwise modify Appendix A. For the avoidance of doubt, the inclusion of a talc-related claim on Appendix A is not an admission that such Defendant holds a currently pending claim against either the Debtor or the Protected Parties (as defined herein).

for the several other reasons set forth in this Motion. More specifically, the entities that the Defendants would be enjoined from pursuing (collectively, the "Protected Parties") are:[2]

a) former Johnson & Johnson Consumer Inc. ("Old JJCI"), an entity that no longer exists and whose talc-related liability was allocated to the Debtor;

b) the Debtor's non-debtor affiliates set forth on Appendix B to the Complaint (the "Non-Debtor Affiliates") including, without limitation, Johnson & Johnson Consumer Inc., a New Jersey company ("New JJCI");

c) third party retailers who sold Old JJCI's talc-containing products (the "Retailers") and other third parties whom the Debtor has indemnified contractually (the "Indemnified Parties"), on Appendix B to the Complaint; and

d) insurance entities set forth on Appendix B to the Complaint, who have issued insurance policies to which the Debtor has access for coverage for talc-related liabilities (the "Insurers").

The Debtor seeks a declaration that section 362(a) of the Bankruptcy Code prohibits the commencement or continuation of any action seeking to hold a Protected Party liable on account of any "Debtor Talc Claim" while the Chapter 11 Case remains pending. "Debtor Talc Claims" means, collectively, any talc-related claim against the Debtor, including all claims relating in any way to talc or talc-containing materials that formerly were asserted against (or that could have been asserted against) Old JJCI[3] on any theory of liability (whether

---

[2] The Protected Parties are listed on Appendix B to the Complaint. The Debtor reserves the right to seek to supplement, amend or otherwise modify the list of Protected Parties, including, in particular, to request that additional parties be included as Protected Parties.

[3] For the avoidance of doubt, Debtor Talc Claims include all talc personal injury claims and other talc-related claims allocated to the Debtor from Old JJCI in the documents implementing the 2021 Corporate

direct, derivative, joint and several, successor liability, vicarious liability, fraudulent or voidable transfer or conveyance, alter ego or otherwise).

The Defendants would be enjoined from prosecuting any such action against the Protected Parties on account of any Debtor Talc Claim. The Debtor also seeks a temporary restraining order, entered on limited notice, to immediately effectuate the requested declaratory or injunctive relief pending a final hearing on this Motion.

Along with this Motion, the Debtor has filed the *Complaint for Declaratory and Injunctive Relief (I) Declaring That the Automatic Stay Applies to Certain Actions Against Non-Debtors or (II) Preliminary Enjoining Such Actions and (III) Granting a Temporary Restraining Order Pending a Final Hearing* (the "Complaint") that initiated this adversary proceeding. In support of this Motion, the Debtor incorporates: (a) the *Supplemental Declaration of John K. Kim in Support of Debtor's Complaint for Declaratory and Injunctive Relief and Related Motions* (the "Supplemental Kim Declaration"), filed contemporaneously herewith; and (b) the *Declaration of John K. Kim in Support of First Day Pleadings* [Dkt. 5] (the "First Day Declaration"), filed in the Chapter 11 Case, and further states as follows:

JURISDICTION AND VENUE

This Court has subject matter jurisdiction over this adversary proceeding and this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Pursuant to Bankruptcy Rule 7008, the Debtor consents to the entry of final orders or a final judgment by this Court in this adversary proceeding. Venue is proper in this District pursuant to 28 U.S.C. § 1409.

Restructuring (as defined herein). The Debtor Talc Claims do not include talc-related claims for which the exclusive remedy is provided under workers' compensation statutes and similar laws.

SUMMARY OF ARGUMENT

The Debtor commenced the Chapter 11 Case to equitably and permanently resolve all current and future talc-related claims against it through the consummation of a plan of reorganization that includes the establishment of a trust. The relief sought by this adversary proceeding is critical to the Debtor's ability to achieve that purpose. Without the requested declaration or injunction, claimants would be permitted to (and in fact, appear to be eager to) litigate, in other forums, the exact same talc claims that are being asserted against the Debtor in the Chapter 11 Case.

The Debtor became responsible for all liability arising from the Debtor Talc Claims as a result of an internal corporate restructuring that was completed on October 12, 2021 (the "2021 Corporate Restructuring"). No Protected Party was allocated or assumed liability for any Debtor Talc Claims as part of the 2021 Corporate Restructuring. Following the 2021 Corporate Restructuring and the commencement of the Chapter 11 Case, claimants immediately challenged the application of the automatic stay and threatened to pursue their talc claims against the Protected Parties.

All Debtor Talc Claims asserted against the Protected Parties allegedly arose from the manufacture and/or sale of talc-containing products by Old JJCI or J&J ("Johnson & Johnson").[4] First Day Decl. ¶ 31-32. As discussed in the First Day Declaration, in 1979 Old JJCI assumed all of J&J's liabilities associated with baby products, including Johnson's Baby Powder. Id. ¶ 10. Now, the Debtor is responsible for all of these potential talc-related liabilities. Id. ¶ 24. Accordingly, all such claims are either claims against the Debtor or claims that are

[4] Certain talc claimants have asserted claims against the Retailers on account of their previous sale of talc-containing products manufactured by Old JJCI.

tantamount to claims against the Debtor. Permitting the Defendants to continue or commence the Debtor Talc Claims against the Protected Parties while the Debtor simultaneously works to reorganize by resolving the same claims in its Chapter 11 Case pursuant to the Bankruptcy Code would (a) defeat the purpose of the Debtor's bankruptcy case, (b) result in irreparable harm to the Debtor's estate, (c) undermine and circumvent the purposes and spirit of the automatic stay and (d) divert the Debtor from its reorganization efforts.

Section 362(a) Automatically Stays Prosecution of the Debtor Talc Claims

The Debtor Talc Claims against the Protected Parties are automatically stayed under section 362 of the Bankruptcy Code. This is because either the Protected Parties share such an identity of interest with the Debtor that the Debtor is, in effect, the real-party defendant, or the claims are property of the Debtor's estate. See Aldrich Pump LLC v. Those Parties to Actions Listed on Appendix A to Complaint (In re Aldrich Pump LLC), 2021 WL 3729335, at *30-32 (Bankr. W.D.N.C. Aug. 23, 2021); DBMP LLC v. Those Parties Listed on Appendix A to Complaint (In re DBMP LLC), 2021 WL 3552350, at *27-28 (Bankr. W.D.N.C. Aug. 11, 2021). In addition, the commencement or continuation of the Debtor Talc Claims against Old JJCI or J&J is for the purpose of liquidating and recovering claims against the Debtor. Thus, such an action is expressly enjoined by section 362(a)(1) because it constitutes an "action or proceeding against the debtor" to recover a prepetition claim. Moreover, actions that seek to recover against the Insurers are subject to the automatic stay under section 362(a)(3) because the Debtor's right to coverage under policies issued by the Insurers is property of the estate that would be depleted. Furthermore, allowing Debtor Talc Claims against J&J would reduce insurance proceeds available to the Debtor because J&J and the Debtor are covered by the same policies for such claims.

The Court Has Authority to Enjoin the Debtor Talc Claims Under Section 105(a)

Courts consistently have exercised their injunctive powers under section 105(a) of the Bankruptcy Code to enjoin claimants from continuing or commencing actions against non-debtor affiliates and other third parties in mass-tort bankruptcies. See In re Purdue Pharma L.P., No. 19-23689, Adv. No. 19-08289 [Adv. Dkt. 291] (Bankr. S.D.N.Y. Sept. 21, 2021). Indeed, to the Debtor's knowledge, no court has declined to enter such an injunction. This includes bankruptcy courts in this District, most recently in the Aldrich Pump and DBMP proceedings. See Aldrich Pump, 2021 WL 3729335; DBMP, 2021 WL 3552350.

Courts considering the propriety of an injunction under section 105(a) often apply the traditional four-pronged test for injunctions, as tailored to the unique circumstances of bankruptcy. In bankruptcy, these four elements are: (a) the debtor's reasonable likelihood of a successful reorganization; (b) the imminent risk of irreparable harm to the debtor's estate in the absence of an injunction; (c) the balance of harms between the debtor and its creditors and (d) whether the public interest weighs in favor of an injunction. Each element is satisfied here.

The Debtor's Successful Reorganization Is Likely

The Debtor's prospects for a successful reorganization are strong. The Debtor filed bankruptcy in good faith to pursue an equitable resolution of tens of thousands of talc claims. The Debtor has sufficient resources to fund the costs of the Chapter 11 Case and fund a substantial trust with sufficient resources to equitably and finally resolve their talc liabilities. The Debtor also is committed to engaging with claimant representatives and key stakeholders to consensually resolve the Chapter 11 Case.

Enjoining the Debtor Talc Claims against the Protected Parties is fully consistent with, and necessary for the Debtor to pursue, the ultimate objective of a successful reorganization: a complete, permanent and equitable resolution of all current and future Debtor Talc Claims.

The Debtor Will Be Irreparably Harmed Absent Injunctive Relief

Without the requested injunction, the Debtor's reorganizational efforts would be irreparably harmed and the Debtor would be deprived of the "breathing spell" afforded by the automatic stay.[5] In fact, due to the assumption of J&J's talc liabilities and contractual and common-law indemnification obligations, the prosecution of Debtor Talc Claims against the Protected Parties, particularly J&J and New JJCI, would amount to continued prosecution of those claims against the Debtor in the tort system. In addition, such litigation against J&J would deplete the Debtor's available insurance coverage for the Debtor Talc Claims.

Furthermore, there is a risk that the resolution of claims and issues in the litigation of Debtor Talc Claims against the Protected Parties could bind the Debtor under the doctrines of collateral estoppel and res judicata. Litigation of the Debtor Talc Claims against the Protected Parties also creates a substantial risk that talc claimants will use statements, testimony and other evidence generated in those proceedings to try to establish the Debtor's liability for talc-related claims. To avoid these types of risks, the Debtor would be compelled to actively participate in litigation of the Debtor Talc Claims in the tort system, thereby undermining the automatic stay and diverting the attention of key personnel who would otherwise be assisting the Debtor in achieving its restructuring goals from the reorganization process.

---

5 See H.R. Rep. No. 95–595, 95th Cong. 1st Sess. 340–342 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 54-55 (1978), reprinted in 1978 U.S.C.C.A.N. 5787, 5840–41 ("The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors . . . [and] permits the debtor to attempt a repayment or reorganization plan . . . ."); see also In re Bestwall LLC, 606 B.R. 243, 256 (Bankr. W.D.N.C. 2019) (LTB) ("[T]he litigation of Bestwall Asbestos Claims could force the Debtor to defend its interest in such litigation, thereby defeating the 'breathing spell' intended by the automatic stay.").

The Balance of Harms Weighs in Favor of a Preliminary Injunction

The balance of the harms also weighs heavily in favor of an injunction. As explained, continued prosecution of the Debtor Talc Claims against the Protected Parties would cause irreparable harm to the Debtor and its estate by, among other means, undermining the very goal of the Chapter 11 Case and requiring the Debtor to actively participate in litigation pending throughout the country while simultaneously seeking to resolve the same claims before this Court. The Debtor, however, is not the only party that would be harmed. Failure to issue an injunction may prejudice certain Defendants by leading to different recoveries among similarly situated claimants depending on whether they recover through the tort system or through a future, court-approved trust. See In re Federal-Mogul Glob., Inc., 684 F.3d 355, 362 (3d Cir. 2012) (noting that bankruptcy "trusts appear to have fulfilled Congress's expectation that they would serve the interests of both current and future asbestos claimants and corporations saddled with asbestos liability"); In re Purdue Pharma L.P., 619 B.R. 38, 45 (S.D.N.Y. 2020) (noting that the bankruptcy court granted a preliminary injunction in part because "the broad injunction was necessary to preserve 'any reasonable prospect of success' for a future reorganization plan," which was premised on a settlement with claimants and establishment of a trust).

Any harm that issuing an injunction might cause the Defendants is substantially less. Claimants may have already received, or could receive, compensation from other sources during the pendency of the Chapter 11 Case. Further, as noted, a trust that ultimately is established by a confirmed plan of reorganization in the Chapter 11 Case would allow for more efficient recoveries for the Defendants than generally are possible in the tort system.

Nor can the Defendants demonstrate any harm based on the speculation that an injunction will create risk for the ultimate payment for their claims. In total, the Debtor's value is approximately $373.1 million, not taking into account insurance rights as well as the funding agreement the Debtor has with New JJCI and J&J (discussed below). First Day Decl. ¶ 26. Under the funding agreement, New JJCI and J&J are contractually obligated to, among other things: (a) fund, on a joint and several basis, up to the full value of New JJCI, the costs of the Chapter 11 Case, to the extent that any cash distributions from the Debtor's operating subsidiary, Royalty A&M LLC ("Royalty A&M"), are insufficient; and (b) provide funding, up to the full value of New JJCI, for a trust or trusts in the full amount required by a confirmed plan of reorganization, to the extent that cash distributions from Royalty A&M and the Debtor's other assets are insufficient to pay such amounts. Id. ¶ 27. In either case, the funding agreement imposes no repayment obligation on the Debtor; it is not a loan. Id. In addition, J&J and New JJCI have committed to fund an aggregate amount of $2 billion into a "qualified settlement fund" for the payment of current and future talc-related claims asserted against or related to the Debtor. Id. ¶ 28.

Public Interest Supports a Preliminary Injunction

Finally, the public interest weighs in favor of an injunction. There is a strong public interest in a successful chapter 11 reorganization, and injunctive relief is critical to the Debtor's reorganization efforts. It also is in the public interest to promote justice in the court system. In the Debtor's case, this can only be achieved by resolving all Debtor Talc Claims in an equitable manner in one forum. This result is not possible if piecemeal litigation of the Debtor Talc Claims in the tort system is allowed to circumvent the bankruptcy process. In addition to avoiding piecemeal litigation, the injunction would amplify the collective process endemic to the negotiation of a successful plan of reorganization, which presents a unique opportunity to finally resolve thousands of talc-related claims. For these reasons, a successful reorganization under chapter 11 — and an injunction that makes such reorganization possible —serves the public interest by allowing for the resolution of thousands of claims in a uniform and equitable manner.

A Temporary Restraining Order Is Necessary to Effectuate Immediate Relief

To avoid the immediate and irreversible harm that would occur absent the requested injunction, the Debtor requests that the Court issue a temporary restraining order on limited notice pending a final hearing on the merits. Almost immediately after the Petition Date, counsel for numerous plaintiffs stated their intent to assert Debtor Talc Claims against the Protected Parties, including J&J, Old JJCI and Retailers. Permitting plaintiffs to pursue the Protected Parties threatens to harm the Debtor's interests by fixing claims against the estate or otherwise binding the Debtor with respect to talc claims against it. Without immediate injunctive relief, the Debtor will be compelled to pull key estate resources away from its reorganization efforts to focus on that ongoing litigation, hampering the Debtor's reorganization from the outset.

FACTUAL BACKGROUND

On October 14, 2021 (the "Petition Date"), the Debtor commenced the Chapter 11 Case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is continuing in possession of its property and is managing its business, as a debtor in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

Corporate History

On October 12, 2021, Old JJCI implemented the 2021 Corporate Restructuring as described below. First Day Decl. ¶ 16. As a result of that restructuring, Old JJCI ceased to exist and two new entities were created: (a) the Debtor, which was initially formed as a Texas limited liability company and then converted into a North Carolina limited liability company; and (b) a second entity, which was initially formed as a Texas limited liability company and then merged into a New Jersey corporation that was its direct parent (as well as the direct parent of the

Debtor), whereupon this entity changed its name to "Johnson & Johnson Consumer Inc." ("New JJCI"). Id.

New JJCI manufactures and sells a broad range of products used in the baby care, beauty, oral care, wound care and women's health-care fields, as well as over-the-counter pharmaceutical products. Id. ¶ 19. The Debtor's ultimate parent company, J&J, is a holding company that through its operating subsidiaries conducts business in virtually all countries in the world, focused primarily on products related to human health and well-being. Id.

The 2021 Corporate Restructuring

Old JJCI and its affiliates have engaged in multiple restructurings through the years to achieve business and operational objectives. Id. ¶ 20. The 2021 Corporate Restructuring was implemented to enable the Debtor to fully resolve talc-related claims through a chapter 11 reorganization without subjecting the entire Old JJCI enterprise to a bankruptcy proceeding. Id. ¶ 21.

As a result of the 2021 Corporate Restructuring, which is described in greater detail in the First Day Declaration:

a. Old JJCI ceased to exist;

b. The Debtor, as well as New JJCI, were formed;

c. The Debtor received certain of Old JJCI's assets, as set forth below, and became solely responsible for certain of its liabilities, including Old JJCI's liabilities arising from talc-related claims against it (other than claims for which the exclusive remedy is provided under a workers' compensation statute or similar laws);

d. New JJCI was allocated all other assets of Old JJCI and became solely responsible for all other liabilities of Old JJCI;

e. A funding agreement (the "Funding Agreement") was established between New JJCI, J&J and the Debtor for the purpose of ensuring that the Debtor has at least the same, if not greater, ability to pay the Debtor Talc Claims against it as Old JJCI had before the 2021 Corporate Restructuring;[6] and

f. The Debtor agreed to indemnify New JJCI and its affiliates for any losses it might suffer related to the Debtor Talc Claims.

Id. ¶¶ 22-23.

At the time of the 2021 Corporate Restructuring, the Debtor received the following assets:

a. Old JJCI's rights and interests as payee under the Funding Agreement (as discussed below, J&J and New JJCI have agreed to advance $2 billion under the Funding Agreement into a qualified settlement trust);

b. A bank account and approximately $6 million in cash;

c. All contracts of Old JJCI related to its talc-related litigation, including settlement agreements, interests in qualified settlement trusts, indemnity rights, insurance coverage rights, service contracts and engagement and retention contracts, if any;

d. All equity interests in Royalty A&M, which owns a portfolio of royalty revenue streams, including royalty revenue streams based on third-party sales of certain products, a business that is projected to generate approximately $50 million in revenue per year over the next five years and has the ability to borrow up to $50 million from J&J on terms consistent to those provided to other J&J affiliates;

---

[6] Without any corresponding repayment obligation, the Funding Agreement obligates New JJCI and J&J, on a joint and several basis, to provide funding, up to the full value of New JJCI, to pay for costs and expenses of the Debtor incurred in the normal course of its business (a) at any time when there is no bankruptcy case and (b) during the pendency of any chapter 11 case, including the costs of administering the chapter 11 case, in both situations to the extent that any cash distributions received by the Debtor from Royalty A&M are insufficient to pay such costs and expenses. First Day Decl. ¶ 27. In addition, the Funding Agreement requires New JJCI and J&J to, up to the full value of New JJCI, fund amounts necessary (a) to satisfy the Debtor's talc-related liabilities at any time when there is no bankruptcy case and (b) in the event of a chapter 11 filing, to provide the funding for a trust, in both situations to the extent that any cash distributions received by the Debtor from Royalty A&M are insufficient to pay such costs and expenses and further, in the case of the funding of a trust, the Debtor's other assets are insufficient to provide that funding. Id.

e. Causes of action that relate to the assets and liabilities allocated to the Debtor;

f. Privileges that relate to the assets and liabilities allocated to the Debtor; and

g. Records that relate to the assets and liabilities allocated to the Debtor.

Id. ¶¶ 24, 26, 30.

In total, the Debtor's value is approximately $373.1 million, without taking into account the Funding Agreement with New JJCI and J&J. Id. ¶ 26. In addition, J&J and New JJCI have committed to fund as early as January 31, 2022 a North Carolina trust that will constitute a "qualified settlement fund" with an aggregate amount of $2 billion for the payment of current and future talc-related claims asserted against or related to the Debtor. Id. ¶ 28.

The Debtor Talc Claims

Cosmetic talc litigation against the Debtor has focused primarily on JOHNSON'S® Baby Powder (hereinafter, "Johnson's Baby Powder") as a purported cause of ovarian cancer and mesothelioma. Id. ¶ 32. For over 125 years Johnson's Baby Powder has been used by hundreds of millions of consumers worldwide. Id.

J&J, a New Jersey company incorporated in 1887, first began selling Johnson's Baby Powder in 1894, launching its baby-care line of products. Id. ¶ 10. In 1972, J&J established a formal operating division for its baby products business, which included Johnson's Baby Powder. Id. In 1979, J&J transferred all its assets and liabilities associated with the baby products division to Old JJCI. Id. Following this transaction, J&J no longer manufactured or sold baby products, including Johnson's Baby Powder and, instead, Old JJCI manufactured and sold Johnson's Baby Powder. Id. ¶¶ 10, 33. Old JJCI is responsible for all claims alleging that

Johnson's Baby Powder and other talc-containing products cause cancer or other disease. Id. ¶¶ 9-15.

On May 19, 2020, Old JJCI announced it would permanently discontinue its line of talc-based Johnson's Baby Powder in the U.S. and Canada. Id. The decision was based on business considerations, including lack of sales due to misinformation about the safety of Old JJCI's talc-based Johnson's Baby Powder. Id. ¶ 33. As set forth in the Debtor's *Information Brief* filed on the Petition Date [Dkt. 3], the Debtor stands behind the safety of Johnson's Baby Powder and asserts, based on decades of internal and third party studies and testing, that it is not a cause of either ovarian cancer or mesothelioma.

As of the Petition Date, there were approximately 38,000 ovarian cancer cases pending against the Debtor, including approximately 35,000 cases pending in the federal multi-district litigation in New Jersey (the ("MDL"), and approximately 3,300 cases in multiple state court jurisdictions across the country. Id. ¶ 42. In addition to the ovarian claims, more than 430 mesothelioma cases were pending against the Debtor on the Petition Date. These claims, like the ovarian cancer claims, spanned the U.S. with cases pending in New Jersey, California, Illinois, Missouri, New York and Ohio.

Even though J&J has not manufactured or sold talc-containing products for over 40 years, the Debtor Talc Claims are asserted in virtually every case against both the Debtor and J&J. In many jurisdictions, the plaintiffs seek to hold the Debtor and J&J jointly and severally liable for the Debtor Talc Claims.

The Debtor's Insurance Coverage

The Debtor believes that it has rights to insurance coverage for its Debtor Talc Claims. Id. ¶ 46. In particular, the Debtor has access to primary and excess liability insurance policies that cover, among other things, defense and/or indemnity costs related to talc bodily injury claims, subject to the terms of the policies.[7] Id.

Aetna Casualty and Surety Company ("Travelers")[8] issued primary general liability policies to J&J (which policies cover the Debtor) for the period 1957 to 1980 (the "Travelers Policies"). Id. ¶ 47. The combined limits of the Travelers Policies (not accounting for deductibles or erosion/exhaustion of limits) total more than $214 million per occurrence and $263 million in the aggregate. Id. The deductibles increase over time, starting at a minimal level and increasing to $5 million per occurrence by 1977. Id. The limits of the Travelers Policies before 1973 are not eroded by defense costs; under later policies, defense costs erode limits. Id. From 1957 to 1985, Travelers also provided excess liability coverage to J&J that covers the Debtor. The combined aggregate limits of those policies total approximately $563 million. Id. ¶ 48.

From 1973 to 1985, a variety of other insurers issued excess policies that cover the Debtor. Id. ¶ 49. Those insurers include subsidiaries or affiliates of the following companies: American International Group, Allstate Insurance Company, The Hartford, Home Insurance Company, Nationwide Indemnity Company and North River Insurance Company. Id. The combined limits of those excess policies total more than $1.09 billion in the aggregate. Id. Certain of the insurers that issued the above-described excess policies are insolvent (including, in particular, Home Insurance Company). Id.

---

7 The policies that cover the Debtor were issued to J&J as the named insured. Those policies cover the period when Old JJCI was operated as a business unit of J&J, as well as during the period when Old JJCI was a subsidiary of J&J.

8 Aetna Casualty and Surety Company is now part of Travelers Insurance Company.

From 1981 to 1985, American Motorists Insurance Company ("AMICO") issued primary and excess coverage that covers the Debtor (the "AMICO Policies"). Id. ¶ 50. AMICO is insolvent, having been placed into liquidation in 2013. Id. The Debtor currently believes that the applicable limits of the AMICO Polices were exhausted by payments made by AMICO on claims while it was still solvent. Id.

From 1973 through 1985, Middlesex Insurance Company ("Middlesex"), a captive insurance company that is a wholly-owned subsidiary of J&J, issued policies that cover J&J and the Debtor. Id. ¶ 51. Those policies insured J&J and Old JJCI for large deductibles under the Travelers Policies and the AMICO Policies. Id. From 1977 to 1985, Middlesex also issued excess insurance policies that cover J&J and Old JJCI. Id. As described in the First Day Declaration, there is a dispute between J&J, the Debtor, and Middlesex, on the one hand, and the third-party insurers (i.e., insurers other than the Middlesex captive), on the other hand, regarding the applicability, extent of coverage and limits of the Middlesex policies, in particular with respect to the post-1985 Middlesex policies. Id.

In total, the limits of solvent primary and excess insurance policies issued to J&J by third-party insurers that potentially cover talc-related liabilities are in excess of $1.95 billion. Id. ¶ 52.

J&J and Old JJCI have tendered talc-related claims to the third-party insurers. To date, none of those insurers has acknowledged its coverage obligations, defended Old JJCI or J&J, paid the costs of defense, or indemnified J&J or Old JJCI for settlements or judgments. Instead, the third-party insurers have asserted various coverage defenses. Id. ¶ 53.

In May 2019, certain of the Debtor's third-party insurers filed a lawsuit against Old JJCI, J&J and Middlesex in the Superior Court of Middlesex County (Docket No. MID-L-

003563-19) (the "New Jersey Coverage Action"), seeking a declaratory judgment regarding the parties' respective obligations under the plaintiff insurers' policies. The insurer plaintiffs filed a Second Amended Complaint on June 22, 2020. On July 31, 2020, J&J, Old JJCI, and Middlesex filed answers to the Second Amended Complaint, and asserted counterclaims and cross-claims against certain defendants. Travelers and certain other insurers filed cross-claims against J&J, Old JJCI, and Middlesex to which J&J, Old JJCI, and Middlesex responded later in 2020. The New Jersey Coverage Action remains pending. Id. at ¶ 54.

The Debtor's Retailers and Other Indemnified Parties

Old JJCI had relationships with various Retailers, who sold Old JJCI's talc-containing products. Some of the Retailers have contractual indemnities with the Debtor related to the sale of Old JJCI's talc-containing products. Supp. Kim Decl. ¶ 8. In addition, to the extent a Retailer is held liable for a claim arising out of the products manufactured and/or sold by Old JJCI, and not by independent actions of the Retailers (i.e., such that those claims are Debtor Talc Claims), the Debtor likely has an obligation to indemnify the Retailers under certain state law.[9] Id.

Old JJCI would periodically accept from Retailers tenders of talc-related claims related to the sale of its products. Id. ¶ 10. When a Retailer was sued on a Debtor Talc Claim,

---

[9] See, e.g., Restatement (Second) of Torts § 886B (Am. Law Inst., 1979) (establishing obligation to indemnify party that is held vicariously liable for the conduct of the indemnitor); Restatement (Third) of Torts § 22 (Am. Law Inst., 2000) (same, and also expressly establishing a right to recover indemnity where indemnitee was held liable only as the seller of a product supplied to the indemnitee by the indemnitor); see also Promaulayko v. Johns Manville Sales Corp., 562 A.2d 202, 206 (N.J. 1989) (recognizing "claims for common-law indemnification [for asbestos-related tort claims] by one party in the chain of distribution against a party higher up the chain" in New Jersey and other states); Fireside Motors, Inc. v. Nissan Motor Corp. in U.S.A., 479 N.E.2d 1386, 1389 (Mass. 1985) ("[T]he retailer may recover in indemnity against the manufacturer."); Tex. Civ. Prac. & Rem. Code Ann. § 82.002 ("A manufacturer shall indemnify and hold harmless a seller against loss arising out of a products liability action, except for any loss caused by the seller's negligence, intentional misconduct, or other act or omission…"); Ariz. Rev. Stat. Ann. § 12-684; Ark. Code Ann. § 16-116-207; Iowa Code Ann. § 613.18.

the Retailer would notified Old JJCI by submitting a tender request. Id. Old JJCI would then determine whether to accept the Retailer's tender of its defense and indemnified the Retailer pursuant to a tender agreement (each, a "Tender Agreement"). Since 2018, Old JJCI has indemnified and agreed to assume the defense of nearly 600 talc-related claims against the Retailers pursuant to Tender Agreements. Id. Of those tendered claims, about 450 were pending as of the Petition Date. Id.

In addition, Old JJCI agreed to indemnify certain other transaction counterparties for liability arising from Debtor Talc Claims, including Pharma Tech Industries, Inc. and Valeant Pharmaceuticals International, Inc. (now known as Bausch Health Companies Inc.). Id. ¶ 11.

The Debtor's Decision to File for Chapter 11 Reorganization

As of the Petition Date, tens of thousands of talc-related lawsuits are pending in jurisdictions throughout the United States. See First Day Decl. ¶ 42. Absent its bankruptcy filing, the Debtor expects that thousands of additional ovarian cancer and mesothelioma cases would have been filed against it for decades to come. Id. ¶ 45.

As noted, prior to the Petition Date, Old JJCI and J&J asserted that there was no scientific or other proof that Johnson's Baby Powder either contained asbestos or was a cause of ovarian cancer or mesothelioma. As a result, Old JJCI and J&J had various successes in cosmetic talc litigation, including, among others things, dismissing roughly 1,300 ovarian cancer and over 250 mesothelioma cases without payment, and achieving 16 key defense verdicts. Id. ¶ 38. Old JJCI also succeeded in obtaining reversal of many plaintiff verdicts on appeal. Id. Despite these results, and the lack of proof that its product was unsafe, Old JJCI was also subject to a number of plaintiff verdicts involving unpredictable and wildly divergent compensatory and punitive damages awards. Id. In addition, prior to the commencement of this case, Old JJCI had incurred nearly $1 billion in defending a tidal wave of personal-injury lawsuits relating to alleged talc exposure, nearly all of which was spent in only the last five years. Id. ¶ 40. In the months prior to the Petition Date, Old JJCI was paying anywhere from $10 million to $20 million monthly in defense costs. Id. And, cosmetic talc litigation against the Debtor was anticipated to grow for decades more, as were the extraordinary costs of resolving tens of thousands of expected claims. Id. ¶ 41.

The status quo was untenable given the cost, burden, uncertainty and anticipated duration of the cosmetic talc litigation. The only available option to appropriately assess, resolve and administer the current and future talc-related claims in an efficient and equitable manner is the Chapter 11 Case. Id. ¶ 58.

The Defendants' Statements Threatening Violations of the Automatic Stay

Following the Petition Date, the Debtor filed notices of suggestion of bankruptcy (the "Bankruptcy Notices") on the dockets of pending talc-related cases against the Debtor and/or J&J (Old JJCI ceased to exist as result of the 2021 Corporate Restructuring). The Bankruptcy Notices informed the applicable courts and the parties about the commencement of the Chapter 11 Case and the application of the automatic stay to the assertion of the Debtor Talc Claims against the Debtor, J&J and other parties.

In an apparent coordinated effort to resist the automatic stay, counsel representing thousands of talc-related plaintiffs then informed the relevant courts and the Debtor in writing that they challenge the application of the automatic stay and intend to pursue the Debtor Talc Claims against J&J, Old JJCI and/or related parties. A representative sample of these communications offered by the Plaintiffs' leadership in a coordinated proceeding in California:

> The Plaintiffs' Leadership opposes any effort to stay these proceedings sought by [J&J, Old JJCI] or any other related entities. The law does not provide for an automatic stay of cases against non-debtors. The Plaintiffs' Leadership will be filing an

> opposition to any stay filed and will request an opportunity to be heard on this issue if it should arise.

Virtually identical statements have been filed in the MDL, as referenced above, and the multicounty litigation pending in New Jersey as well as in lawsuits in New York, Georgia and Florida. The judge presiding over the MDL has asked for submissions by the parties by the end of this week regarding whether the stay applies to non-debtor parties. The counsel in these proceedings represent more than 35,000 claims against the Debtor and J&J.

ARGUMENT

I. THE COURT HAS SUBJECT MATTER JURISDICTION.

Section 1334(b) of title 28 of the United States Code identifies three types of proceedings over which this Court has jurisdiction — (1) those "arising under title 11," (2) those "arising in" a case under title 11 and (3) those "related to" a case under title 11. 11 U.S.C. § 1334(b). The classification of a proceeding under section 1334 depends on the connection of the proceeding to the underlying bankruptcy case. "Arising under" jurisdiction "describe[s] those proceedings that involve a cause of action created or determined by a statutory provision of title 11." Wood v. Wood (In re Wood), 825 F.2d 90, 96 (5th Cir. 1987). "Arising in" jurisdiction is "not based on any right expressly created by title 11, but nevertheless, would have no existence outside of the bankruptcy." Id. at 97; Grausz v. Englander, 321 F.3d 467, 471 (4th Cir. 2003).

This Court has "arising under" jurisdiction to determine that section 362(a) of the Bankruptcy Code prohibits the commencement or continuation of Debtor Talc Claims against the Protected Parties while the Chapter 11 Case remains pending. A bankruptcy court has jurisdiction for matters "arising under" provisions of the Bankruptcy Code such as section 362.

See e.g., A.H. Robins Co. v. Piccinin, 788 F.2d 994, 999-1000 (4th Cir. 1986); In re Brier Creek Corp. Ctr. Assocs. Ltd., 486 B.R. 681, 685 (Bankr. E.D.N.C. 2013).

The request for a preliminary injunction "arises in" the Chapter 11 Case because it "would have no existence outside of the bankruptcy." Bergstrom v. Dalkon Shield Claimants Tr. (In re A.H. Robins Co.), 86 F.3d 364, 372 (4th Cir. 1996). Section 105(a) of the Bankruptcy Code empowers a bankruptcy court to "enjoin parties other than the bankruptcy from commencing or continuing litigation" during the bankruptcy case where such litigation will undermine the debtor's reorganization. Robins, 788 F.2d at 1002 (internal quotations omitted). An injunction to protect the very integrity of the bankruptcy case obviously would not exist but for the bankruptcy case itself. As such, "the debtors would not be entitled to a § 105 injunction *but for the existence of their bankruptcy cases*." Brier Creek, 486 B.R. at 685 (emphasis added); see also In re Lyondell Chem. Co., 402 B.R. 571, 586 (Bankr. S.D.N.Y. 2009) (same; also finding "arising under" jurisdiction). And "common sense indicates that, if the Court has subject matter jurisdiction over a proceeding to determine the applicability of the automatic stay, then it has jurisdiction over a related motion for preliminary injunctive relief." Brier Creek, 486 B.R. at 685 (quoting FPSDA II, LLC v. Larin, No. 10-75439, 2013 WL 6681794, at *5 (Bankr. E.D.N.Y. Dec. 21, 2012)).

II. THE AUTOMATIC STAY PROHIBITS PROSECUTION OF DEBTOR TALC CLAIMS AGAINST THE PROTECTED PARTIES.

The automatic stay provided by section 362(a) of the Bankruptcy Code allows "the bankruptcy court to centralize all disputes concerning property of the debtor's estate in bankruptcy court so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas." Shugrue v. Air Line Pilots Ass'n, Int'l (In re Ionosphere Clubs, Inc.), 922 F.2d 984, 989 (2d Cir. 1990); Aldrich Pump, 2021 WL 3729335, at *30 (ruling that claims against third parties which "necessarily result in the liquidation and recovery of claims against the Debtors outside of the bankruptcy case" are barred by the automatic stay); see also 11 U.S.C. § 362(a). Fourth Circuit precedent recognizes that the automatic stay of section 362(a) may apply of its own force to prohibit the prosecution of Debtor Talc Claims against the Protected Parties. Indeed, this Court has recently ruled that the automatic stay applies to actions against non-debtor parties under similar circumstances. See Aldrich Pump, 2021 WL 3729335, at *31-32; DBMP, 2021 WL 3552350, at *28 (same). Thus, the Debtor requests a declaration that section 362(a) of the Bankruptcy Code prohibits the commencement or continuation of Debtor Talc Claims against the Protected Parties while the Debtor's Chapter 11 Case remains pending.

A. Actions Seeking to Hold Protected Parties Liable for Debtor Talc Claims Are Stayed Pursuant to Section 362(a)(1).

Section 362(a)(1) of the Bankruptcy Code prohibits the "commencement or continuation . . . of a judicial . . . action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title." 11 U.S.C. § 362(a)(1).

As explained above, Old JJCI no longer exists, and the Debtor is responsible for the Debtor Talc Claims. Thus, the commencement or continuation of the Debtor Talc Claims against Old JJCI can have only one purpose: the ultimate liquidation and recovery of claims against the Debtor. And, because the Debtor Talc Claims allege liabilities arising out of Old JJCI's actions years before the Petition Date, any action against Old JJCI to recover such claims is expressly enjoined by section 362(a)(1) because it constitutes an "action or proceeding against the debtor" to recover a prepetition claim. See In re Heating Oil Partners, No. 3:08-CV-1976 CSH, 2009 WL 5110838, at *6–7 (D. Conn. Dec. 17, 2009) (holding that a default judgment entered as to a predecessor entity of the debtor was automatically stayed upon the successor entity's chapter 11 filing and void ab initio), aff'd sub nom. In re Heating Oil Partners, LP, 422 F. App'x 15 (2d Cir. 2011).

Likewise, as explained above, all of J&J's liabilities associated with Johnson's Baby Powder and other talc-containing products were transferred to Old JJCI when it assumed those liabilities in 1979. Thus, the pursuit of the Debtor Talc Claims against J&J is an effort to liquidate and recover claims for liabilities that were transferred to the Debtor's predecessor in 1979 and are now liabilities of the Debtor. In re Colonial Realty Co., 980 F.2d 125, 131-32 (2d Cir. 1992 (actions "to recover a claim against the debtor" as provided in section 362(a)(1) "must encompass cases in which the debtor is not a defendant; it would otherwise be totally duplicative of the former category and pure surplusage"); Queenie, Ltd. v. Nygard Int'l, 321 F.3d 282, 287 (2d Cir. 2003) (automatic stay may apply to non-debtors, specifically where there is a claim to establish an obligation of which the debtor is a guarantor) (citing McCartney v. Integra National Bank North, 106 F.3d 506, 510-11 (3d Cir. 1997)).

In addition, Fourth Circuit precedent recognizes that the automatic stay imposed by section 362(a)(1) extends of its own force to enjoin actions against parties who share such an identity of interests with the debtor in respect to those actions that the debtor is, in effect, the real-party defendant. Actions against the Retailers and Indemnified Parties, including New JJCI and J&J, are stayed because, given the Debtor's responsibility for claims asserted against the Retailers and the Indemnified Parties, including New JJCI or J&J, "there is such identity" with the Debtor that it "may be said to be the real party defendant." See Robins, 788 F.2d at 999; see also McCartney v. Integra Nat'l Bank N., 106 F.3d 506, 510–11 (3d Cir. 1997) (concluding that the automatic stay enjoined an action against non-debtor third party where the debtor "was, in essence, the real party in interest" in the pursuit of a deficiency judgment against the third party); Brier Creek, 486 B.R. at 689-92.

The Fourth Circuit in Robins described a type of situation that would cause such an identity of interests:

> An illustration of such a situation would be a suit against a third-party who is entitled to absolute indemnity by the debtor on account of any judgment that might result against them in the case.

Robins, 788 F.2d at 999. Indeed, the court continued, "[t]o refuse application of the statutory stay in that case would defeat the very purpose and intent of the statute." Id.; see id. (quoting In re Metal Ctr., 31 B.R. 458, 462 (D. Conn. 1983) ("Clearly the debtor's protection must be extended to enjoin litigation against others if the result would be binding upon the debtor's estate.")); Edwards v. McElliotts Trucking, LLC, No. 3:16-1879, 2017 WL 5559921, at *3 (S.D. W. Va. Nov. 17, 2017) (finding that indemnification arrangement between the debtor and non-debtor defendants made action against non-debtor defendants subject to the automatic stay imposed by section 362(a)(1)); In re W.R. Grace & Co., Case No. 01-01139 (JKF), 2004 WL 954772, at *4 (Bankr. D. Del. Apr. 29, 2004) (applying automatic stay to litigation between two non-debtor parties where one of the parties was entitled to contractual indemnity from the debtor on account of such claims and amending preliminary injunction order to include such action). "Identity of interests" also occurs where adjudication of the claims against non-debtors "raises collateral estoppel and *res judicata* issues for the debtor." Aldrich Pump, 2021 WL 3729335, at *31.

This Court recently held on similar facts that the automatic stay applied to stay actions where the debtor was the real-party defendant and litigating the mass tort claims against third parties, which included non-debtor affiliates, would effectively liquidate claims against the debtor. Aldrich Pump, 2021 WL 3729335, at *31; DBMP, 2021 WL 3552350, at *27.

Here, as in Robins, and more recently in DBMP and Aldrich Pump, the Protected Parties share an identity of interest with the Debtor in respect of the Debtor Talc Claims such that the Debtor is the real-party defendant in the Debtor Talc Claims brought against the Protected Parties. As discussed above, litigating, settling or attempting to establish the value the Debtor Talc Claims against the non-debtor affiliate would liquidate claims against the Debtor, including by triggering existing indemnification and similar obligations of the Debtor to such entities. Such litigation also creates risks of binding the Debtor through res judicata and collateral estoppel, and creating an evidentiary record that prejudices the Debtor. Because the Debtor is the real-party defendant in any suit seeking to liquidate and recover on account of a Debtor Talc Claim, section 362(a)(1) stays such actions

B. Insurance Policies Are Estate Assets and Therefore Suits That Would Deplete Those Policies Are Automatically Stayed.

Section 362(a)(3) bars plaintiffs from bringing suits, both against the Debtor's Insurers and J&J, that would deplete the Debtor's insurance on account of Debtor Talc Claims because the right to insurance coverage is property of the estate. See Aldrich Pump, 2021 WL

3729335, at *33 ("[S]ection 362(a)(3) bars plaintiffs from bringing actions against the Debtors' Insurers on account of Aldrich/Murray Asbestos Claims because the insurance coverage is also property of the estate."); see also Robins, 788 F.2d at 1001 (agreeing with "the weight of authority" that insurance contracts are property of the estate and that "[a]ccordingly actions 'related to' the bankruptcy proceedings against the insurer . . . are to be stayed under section 362(a)(3)"); In re Johns-Manville Corp., 40 B.R. 219, 231 (S.D.N.Y. 1984) ("determin[ing] that Manville's insurance is property of the estate under the Code and that actions by third parties against the bankrupt's insurers are automatically stayed upon the filing of the petition").

J&J and the Debtor are both covered for talc-related claims under various shared insurance policies. The right to coverage under these insurance policies is property of the Debtor's estate, and prosecution of a claim against J&J, a co-insured party, would deplete proceeds available to the Debtor, thereby reducing assets available to the bankruptcy estate. See, e.g., In re Quigley Co., Inc., 676 F.3d 45, 53-54, 58 (2d Cir. 2012) ("[W]here litigation of the [lawsuits against non-debtor] would almost certainly result in the drawing down of insurance policies that are part of the bankruptcy estate of [debtor], the exercise of bankruptcy jurisdiction to enjoin these suits was appropriate."); Robins, 788 F.2d at 1008 (sustaining injunction and transfer of claims against non-debtors in part because such claims, if successful, would reduce insurance funds available to debtor's estate); In re Montreal Me. & Atl. Ry., Ltd., No. 1:13-MC-00184-NT, 2014 WL 1155419, at *10 (D. Me. Mar. 21, 2014) (finding jurisdiction and transferring non-debtors' cases based on shared insurance); Raudonis, as trustee for the Raudonis 2016 Revocable Trust v. RealtyShares, Inc., 507 F.Supp 378, 384 (D. Mass. 2020) ("Because courts generally recognize insurance policy as 'property' under 11 U.S.C. § 541(a)(1) – and thus find such policies subject to an automatic stay pursuant to 11 U.S.C. § 362(a)(3) – the defendants' shared insurance contract arguably sweeps [co-insureds] into the reach of the automatic stay."); In re Metro Mortg. & Secs. Co., 325 B.R. 851 (Bankr. E.D. Wash. 2005) (holding that shared insurance policies and their proceeds were property of the debtors' estates and were protected by automatic stay).

Here, insurance is potentially available to both the Debtor and J&J under various insurance policies for talc-related claims. If a Debtor Talc Claim is prosecuted against J&J, J&J may seek coverage under these shared insurance policies to satisfy any judgment, thereby reducing the coverage available to the Debtor's estate. Such a depletion of an estate asset violates the automatic stay and, therefore, Debtor Talc Claims against the Insurers and J&J are stayed pursuant to section 362(a)(3).

C. Actions Seeking to Hold Protected Parties Liable for the Debtor Talc Claims Based on "Derivative Liability" Are Property of the Debtor's Estate and Automatically Stayed.

Section 541 of the Bankruptcy Code establishes that the filing of a bankruptcy case creates an "estate." 11 U.S.C. § 541(a). That estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case," wherever located and by whomever held. Id. § 541(a)(1). Thus, the estate "includes legal causes of action the debtor had against others at the commencement of the bankruptcy case." Baillie Lumber Co. v. Thompson (In re Icarus Holding, LLC), 391 F.3d 1315, 1319 (11th Cir. 2004). See Steyr-Daimler-Puch of Am. Corp. v. Pappas, 852 F.2d 132, 135 (4th Cir. 1988) (creditor's alter ego claim against debtor's principal and affiliate was cause of action that debtor could assert under state law and thus was "'property of the estate' within the meaning of § 541(a)(1)").

Section 362(a) of the Bankruptcy Code states that the filing of a bankruptcy petition "operates as a stay, applicable to all entities, of . . . (3) any act . . . to exercise control over property of the estate; . . ." 11 U.S.C. § 362(a). Accordingly, when claims against a non-debtor "are property of the estate under section 541(a), any similar extraneous lawsuits brought by individual creditors will be subject to the automatic stay provision of 11 U.S.C. § 362(a)(3)." Baillie Lumber, 391 F.3d at 1319. As the Fourth Circuit explained in Steyr:

> Since the alter ego claim against Pappas and Hawk U.S.A. is "property of the estate" within the meaning of § 541(a)(1), certain conclusions follow. First, the automatic stay applies. Moreover, because the claim is property of the estate, the trustee is given full authority over it. Thus, before . . . a creditor may pursue a claim, there must be a judicial determination that the trustee in bankruptcy has abandoned the claim. Without such a determination, a creditor seeking to pursue a claim cannot maintain it.

852 F.2d at 136 (citations omitted). "Thus," as Judge Mullen has observed, "in the Fourth Circuit the rule is settled that Code § 362(a)(3) stays automatically—without a restraining order—a creditor's claim against a third-party that the debtor can assert for the benefit of the estate." Litchfield Co. of S.C. Ltd. P'ship v. Anchor Bank (In re Litchfield Co. of S.C. Ltd. P'ship), 135 B.R. 797, 803 n.4 (W.D.N.C. 1992).

To determine whether a creditor's claim against a non-debtor constitutes an act to exercise control over property of the estate, a court must answer two inquiries: (a) whether "the debtor could have asserted the claim on his own behalf under state law" and (b) whether the individual creditor's claim against the non-debtor is a "general claim" available to the debtor's other creditors. Harrison v. Soroof Int'l, Inc., 320 F. Supp. 3d 602, 613 (D. Del. 2018); see Baillie Lumber, 391 F.3d at 1321. Those answers here establish that any fraudulent transfer, alter ego and, successor liability or similar "derivative" claims that might be alleged by the Defendants against the Debtor's non-debtor affiliates seek to exercise control over property of the Debtor's estate and are thus stayed by section 362(a)(3). Aldrich Pump, 2021 WL 3729335, at *36 ("The law in the Fourth Circuit is that certain theories of recovery . . . are property of the debtor's estate. These include alter ego and successor liability theories of recovery."). While it is not entirely clear whether the Defendants are asserting or will assert such "derivative claims" against the Debtor's non-debtor affiliates, given the Defendants' broad statements to date that they intend to continue to pursue these entities for talc-related claims notwithstanding the Debtor's chapter 11 filing, it is appropriate for this Court to confirm for the benefit of the Debtor, and as a clear direction to the Defendants, that any such actions would be barred by the automatic stay.

1. The Debtor Had Standing Under State Law To Assert Alter Ego and Successor Liability Claims at the Time It Commenced The Chapter 11 Case

(a) The Debtor's Standing To Bring Alter Ego and Successor Liability Claims Under State Law

Whether a debtor had standing to assert a cause of action against another at the time it filed its bankruptcy case is a question of state law. Mitchell v. Greenberg (In re Creative Entm't, Inc.), No. 00-3114, 2003 Bankr. LEXIS 2468, *6 n.5 (Bankr. W.D.N.C. May 28, 2003); see also Alvarez v. Ward, 2011 WL 7025906 at *3 (W.D.N.C. Oct. 17, 2011); In re Midstate Mills, Inc., No. 13-50033, 2015 WL 5475295, at *6 (Bankr. W.D.N.C. Sept. 15, 2015). As the court observed in Holcomb v. Pilot Freight Carriers, Inc., 120 B.R. 35 (M.D.N.C. 1990), the Fourth Circuit, along with many other circuits, "has determined that whether a bankruptcy trustee alone has a right to bring alter ego claims, on behalf of unsecured creditors and the debtor corporation, is a matter which ultimately depends on whether the relevant state law provides that such actions belong to the corporation and creditors in general." Id. at 38.

To determine which state law is the "relevant state law" for this inquiry, courts use the choice-of-law rules of the forum state in which the bankruptcy case was filed. See Butler v. Enhanced Equity Fund II, LP (In re Am. Ambulette & Ambulance Serv. Inc.), 560 B.R. 256, 262 & 269 (Bankr. E.D.N.C. 2016). Accord M-Tek Kiosk, Inc. v. Clayton, No. 1:15CV886, 2016 WL 2997505 at *5 (M.D.N.C. May 23, 2016) (it is settled in the Fourth Circuit "that a bankruptcy court faced with the issue of which substantive law to apply to a claim . . . applies the choice of law rules of the forum state") (citation omitted). Because it is the forum state here, North Carolina's choice-of-law rules determine which state law governs whether the Debtor had standing to assert alter ego and successor liability claims at the time the bankruptcy case was filed. The choice-of-law rules "vary depending on the character of the claim at hand, i.e., whether the claim relates to torts, contracts, property, etc., or whether it is procedural as opposed to substantive in nature." Butler, 560 B.R. at 262.

With respect to alter ego claims, North Carolina (like most jurisdictions) applies the "internal affairs doctrine," which applies the law of the state in which the debtor is incorporated. See Butler, 560 B.R. at 269-70 (citing Dassault Falcon Jet Corp. v. Oberflex, Inc., 909 F. Supp. 345, 348-49 (M.D.N.C. 1995)). See generally M-Tek, 2016 WL 2997505 at *5 (Delaware law governed debtor's right to bring claim against alter ego because forum state's choice-of-law rules apply "internal affairs doctrine" to such claims and debtor was Delaware corporation). Here, the Debtor was a North Carolina limited liability company when it commenced its chapter 11 case. Thus, North Carolina law governs whether it had standing at that time to pierce its own corporate veils to assert alter ego claims.[10]

[10] At the time of the 2021 Corporate Restructuring when it was formed, the Debtor was a Texas limited liability company. In addition, during the 2021 Corporate Restructuring, Old JJCI (which was formerly a New Jersey corporation) became an entity formed under Texas law. See First Day Decl. ¶ 16. Thus, it is conceivable that a claimant might contend that, under the "internal affairs doctrine," Texas (or even New Jersey) law instead governs whether the Debtor had the right to assert the alleged alter ego claim when this bankruptcy case was commenced, depending on what facts are alleged to support the claim and when the claim allegedly arose. See Keene, 164 B.R. 844, 847 n.3 (Bankr. S.D.N.Y 1994).

As detailed below, the law of Texas and New Jersey is identical to North Carolina law as to whether a corporation has a right to pierce its own veil to sue an alleged alter ego in order to hold it responsible for the corporation's debts. Accordingly, this Court does not need to resolve that particular choice-of-law question to determine whether a Defendant's assertion of such an alter ego claim is barred by the automatic

(b) The Debtor Had Standing Under North Carolina Law To Pierce its Corporate Veil and Seek Recovery from an Alter Ego

Courts that have examined the issue have held that North Carolina law empowers a corporation to seek to pierce its corporate veil to sue an alleged alter ego for the purpose of holding it responsible for the corporation's debts. See Alvarez v. Ward, No. 1:11CV03, 2012 WL 113567, at *4 n.5 (W.D.N.C. Jan. 13, 2012); Alvarez v. Ward, 2011 WL 7025906 at *3; Holcomb, 120 B.R. at 41-42; Midstate Mills, 2015 WL 5475295 at *7; Mitchell, 2003 Bankr. LEXIS 2468 at *26-28. Those decisions all followed the Fourth Circuit's decision in Steyr.

In Steyr, the Fourth Circuit held that a debtor corporation had the right under Virginia law to bring an alter ego claim against its principal and an affiliate, and that the claim became property of the estate when the corporation filed its chapter 7 case. 852 F.2d at 136. The court reasoned that "[u]nder Virginia law, a corporation has an equitable interest in the assets of an alter ego because the corporation and the alter ego are 'one and the same.'" Id. (quoting Pepper v. Dixie Splint Coal Co., 165 Va. 179, 181 S.E. 406 (1935)). The Fourth Circuit in Steyr held that section 541(a) "brings the right of [the debtor corporation] to proceed against its alter ego and claim its equitable interest in assets of the alter ego into the bankruptcy estate," id., endorsing the Fifth Circuit's analysis of the same question under Texas law in S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc. (In re S.I. Acquisition, Inc.), 817 F.2d 1142, 1152-53 (5th Cir. 1987).

---

stay. See Tronox, 855 F.3d at 104 & n.25 ("we need not resolve the parties' dispute concerning which state's law governs" because, under either Pennsylvania or Delaware law, alter ego claims were estate property "to the extent the claims qualify as 'general'"). In re Emoral Inc., 740 F.3d 875, 879 n.2 (3d Cir. 2014) (whether debtor had right to bring successor liability claim was governed by either New Jersey or New York law, and "the two states' relevant applicable legal standards are identical, rendering a choice-of-law analysis unnecessary"); Sterne Agee Grp., Inc. v. Robinson (In re Anderson & Strudwick, Inc.), No. 14-03175, 2015 WL 1651146, at *6 n.4 (Bankr. E.D. Va. April 8, 2015) (same for New York and Virginia successor liability law, which are "'essentially the same'").

In analyzing Texas law on this issue, the Fifth Circuit in S.I. Acquisition concluded:

> Not surprisingly, we have found no Texas law suggesting that a corporation could or could not itself bring an alter ego claim. Even so, we note that the predominate policy of Texas alter ego law is that the control entity that has misused the corporate form will be held accountable for the corporation's obligations. [Citation omitted]; see also Valdes [v. Leisure Resource Group, Inc., 810 F.2d 1345, 1353 (5th Cir. 1987)] (alter ego doctrine applies to hold dominant entity responsible for subservient company's debt since dominant entity was responsible for creating the debts). Since the corporation has an independent existence at law, we do not believe it is inconsistent in light of the above policy to say that a corporation may pierce its own corporate veil and hold accountable those who have misused the corporation in order to meet its corporate obligations.

817 F.2d at 1152. In reaching that conclusion, the Fifth Circuit found persuasive Judge Jones' explanation in In re Western World Funding, Inc., 52 B.R. 743 (Bankr. D. Nev. 1985), that "[t]he corporation may be thought of as a separate legal entity which 'has an interest of its own in assuring that it can meet its responsibility to its creditors,' [citation omitted] while at the same time allowing it to argue that it should be deemed to be identical to its alleged alter ego for purposes of paying those creditors. " Id. at 784.

In Holcomb, Judge Bullock adopted Magistrate Judge Eliason's extensive review of North Carolina law governing alter ego claims. 120 B.R. at 38-42. Based on that review, Magistrate Judge Eliason rejected the argument that North Carolina law was "radically different" from the Nevada law applied by Judge Jones in Western World Funding and the Virginia law applied by the Fourth Circuit in Steyr. 120 B.R. at 39-40. Instead, he found:

> Having completed this examination of North Carolina law, the Court finds it to be entirely consistent with the Fourth Circuit's requirement in Steyr that a corporation may be said to have an equitable interest in the assets of an alter ego when they are one and the same. Steyr, 852 F.2d at 136. Thus, in North Carolina, alter ego claims, which are based on factors which establish that

> the controlled corporation and the alter ego have the same identity, belong to the bankruptcy estate and must be prosecuted by the trustee.

Id. at 41-42. Magistrate Judge Howell reached the very same conclusion in Alvarez:

> North Carolina law, like Virginia law, treats a corporation and its alter-ego as "one and the same . . . ." Fischer Inv. Capital, Inc. v. Catawba Dev., Corp., 689 S.E.2d 143, 147 (N.C. Ct. App. 2009) (quoting Strategic Outsourcing, Inc. v. Stacks, 625 S.E.2d 800, 804 (N.C. Ct. App. 2006)). Consistent with the Fourth Circuit's holding in [Steyr], a corporation has an interest in the assets of its alter ego, and, thus, an alter ego claim is the property of the estate for purposes of Section 541(a)(1).

2011 WL 7025906 at *3 (citing Steyr, 852 F.2d at 136, and Holcomb, 120 B.R. at 41-42). Relying on Holcomb and Alvarez, the bankruptcy court in this District has repeatedly held that a corporation has the right to sue an alleged alter ego under North Carolina law and that such claim becomes property of the estate when the corporation files a bankruptcy case. Midstate Mills, 2015 WL 5475295 at *7; Mitchell, 2003 Bankr. LEXIS 2468 at *26-28.

To the extent that a party might assert instead that Texas or New Jersey law governs whether the Debtor has standing to bring an alter ego claim against a Protected Party, courts applying the law from both states have reached the same conclusion. See S.I. Acquisition, 817 F.2d at 1153 (corporation had right under Texas law to bring alter ego claim, which became property of estate when corporation filed bankruptcy case); Tsai v. Bldgs. by Jamie, Inc. (In re Bldgs. by Jamie, Inc.), 230 B.R. 36, 43 (Bankr. D.N.J. 1998) (corporation can sue alter ego under New Jersey law, noting "majority of courts in other jurisdictions that have addressed the issue of authority to pursue an alter ego action on behalf of a corporate debtor have also held that the trustee has standing" to assert such claim).

(c) The Debtor Also Had Standing To Bring Successor Liability Claims

As is the case in most states, the general rule is, "'where one company sells or otherwise transfers all its assets to another company, the latter is not liable for the debts and liabilities of the transferor.' City of Richmond v. Madison Mgmt. Grp., Inc., 918 F.2d 438, 450 (4th Cir. 1990) (quoting 15 W. Fletcher, Cyclopedia of the Law of Private Corporations, § 7122, at 188 (rev. perm. ed. 1983))." Leonard v. Bed, Bath & Beyond, Inc., No.5:15-CV-00284, 2016 WL 158587, at *2 (E.D.N.C. Jan. 8, 2016). Most states recognize four exceptions to the general rule:

> (1) where there is an express or implied agreement by the purchasing corporation to assume the debt or liability; (2) where the transfer amounts to a de facto merger of the two corporations; (3) where the transfer of assets was done for the purpose of defrauding the corporation's creditors; or (4) where the purchasing corporation is a "mere continuation" of the selling corporation in that the purchasing corporation has some of the same shareholders, directors, and officers.

Leonard, 2016 WL 158587 at *3 (citing G.P. Publ'ns, Inc. v. Quebecor Printing-St. Paul, Inc., 481 S.E.2d 674, 679 (N.C. Ct. App. 1997) (citing Budd Tire Corp. v. Pierce Tire Co., 370 S.E.2d 267, 269 (N.C. Ct. App. 1988))).

In Mitchell, this Court noted that whether state law allows a corporation (or its receiver) to recover on a claim against an alleged successor under one of these exceptions "is apparently a question of first impression under North Carolina law." 2003 Bankr. LEXIS 2468 at *28-29. Finding that "[s]uch a claim is substantially similar to an alter ego claim because it seeks to recover assets of a corporation and to make these available to satisfy creditor claims," the Court held that the debtor could assert a successor liability claim under North Carolina law and that the claim became property of the estate under section 541(a) when the corporation's chapter 7 case was commenced. Id. (citing Keene, 164 B.R. at 853).

As was this Court's reasoning in Mitchell, Judge Bernstein's reasoning in Keene was based on the finding that "[t]he principles relating to successor tort liability, and the results which they are designed to achieve, are similar to piercing the corporate veil." 164 B.R. at 852. Applying New York law on successor liability that was the same as the North Carolina law detailed in Leonard, id., Judge Bernstein declared that the automatic stay barred the asbestos claimants from pursuing their actions against the debtor's affiliates on successor liability claims, explaining that "the remedy against a successor corporation for the tort liability of the predecessor is, like the piercing remedy, an equitable means of expanding the assets available to satisfy creditor claims" and that, for "the same reasons stated with respect to the piercing claims, claims based upon successor liability should be asserted by the trustee on behalf of all creditors." Id. at 853.

The Third Circuit reached the same conclusion in In re Emoral Inc., 740 F.3d 875 (3d Cir. 2014). In that case, the debtor manufactured a chemical used in food flavoring that gave rise to personal injury claims. After it sold operating assets to a transferee, the debtor filed its bankruptcy case, and the trustee for the debtor's estate entered into a settlement with the transferee in which the trustee released it from claims that "are property of the" debtor's estate. The personal injury claimants then sued the transferee in state court, alleging that the transferee was a "mere continuation" of the debtor and thus subject to their successor liability claims.

When the bankruptcy court denied the transferee's motion to enforce the order approving its settlement with the trustee, the district court reversed and the Third Circuit affirmed the district court's reversal. The Third Circuit, relying on Keene and cases finding that a corporation had standing under state law to assert alter ego claims, held that the personal injury claimants' successor liability claims against the transferee were property of the estate under the state law of both New York and New Jersey and were thus settled and released by the trustee. 740 F.3d at 880-82 and n.3. The court noted that, while that result might seem odd at first, it nonetheless makes perfect sense:

> As we observed in *Phar–Mor*, so, too, here it "may seem strange" to hold that a cause of action for successor liability against Aaroma is property of Emoral's bankruptcy estate. As a practical matter, it is difficult to imagine a factual scenario in which a solvent Emoral, outside of the bankruptcy context, would or could bring a claim for successor liability against Aaroma. [Citation omitted.] Just as the purpose behind piercing the corporate veil, however, the purpose of successor liability is to promote equity and avoid unfairness, and it is not incompatible with that purpose for a trustee, on behalf of a debtor corporation, to pursue that claim.

Id. at 881.

The Second Circuit, in Tronox, reached the same conclusion as this Court in Mitchell and the courts in Keene and Emoral, holding that the alter ego and the successor liability claims of 4,300 toxic tort claimants against a non-debtor transferee were property of the debtor's estate under both Pennsylvania and Delaware law. 855 F.3d at 104 (citing Rosener v. Majestic Mgmt., Inc. (In re OODC, LLC), 321 B.R. 128, 136-37 (Bankr. D. Del. 2005) (allowing trustee to bring successor liability and alter ego claims under Delaware law)); see also Sterne Agee Grp., Inc. v. Robinson (In re Anderson & Strudwick, Inc.), No. 14-32679-KLP, 2015 WL 1651146, at *5 (Bankr. E.D. Va. Apr. 8, 2015) (holding Virginia law allows corporation to recover against its alleged successor based on both Steyr and the "weight of authority outside this Circuit" that "supports the conclusion that a successor liability claim constitutes property of the bankruptcy estate under Bankruptcy Code § 541(a)(1)").

2. Any Alleged Alter Ego and Successor Liability Claims Are Based on Facts and Legal Theories that Are Generally Available to Other Creditors of the Debtor

State law affords an individual creditor the right in some circumstances to recover a claim against an entity from a third party based on alter ego and successor liability theories. But once that entity files for bankruptcy, the creditor's pursuit of the claim against the third party is automatically stayed by section 362(a)(3) if it constitutes an act "to exercise control over" the same or similar claim that state law affords to the debtor to assert generally on behalf of its creditors. When the individual creditor's claim against the third party is based on facts and legal theories "generally available" to the debtor's other creditors, the stay applies because the individual creditor's pursuit of the claim interferes with, and thus constitutes an act "to exercise control over," the same or similar claim that is property of the estate. Accordingly, to avoid the automatic stay, the individual creditor's claim against the third party must be based on facts and legal theories of liability that are "personal" and "unique" to that creditor. Emoral, 740 F.3d at 880; Baillie Lumber, 391 F.3d at 1321.

In undertaking this inquiry, the Court "should be focused on [the creditor]'s alter ego claim itself—not [the creditor]'s underlying claim" against the debtor. Harrison, 320 F. Supp. 3d at 619. "The case law demonstrates that an alter ego or successorship claim is personal, and thus can be asserted by an individual creditor, only if the conduct that supports the claim is the same conduct that directly harmed the creditor in the underlying cause of action." Labarbera v. United Crane & Rigging Servs, Inc., No 08-CV-3274, 2011 WL 1303146 at *7 (E.D.N.Y. March 2, 2011).

Any alter ego or successor liability claims that the Defendants attempt to assert against the Non-Debtor Affiliates are "general," not "personal," because the facts and legal theories on which the alleged liability of the affiliate is based have nothing to do with the conduct that gave rise to the claimants' talc-related claim against the Debtor. Here, as in Emoral, if claimants were in fact harmed by the restructuring (they were not), all creditors would benefit if the successor liability claims were successful:

> To determine whether the Diacetyl Plaintiffs' cause of action against Aaroma constitutes property of Emoral's bankruptcy estate, we must examine the nature of the cause of action itself. While the Diacetyl Plaintiffs focus on the individualized nature of their personal injury claims against *Emoral*, we cannot ignore the fact, and fact it be, the their only theory of liability as against *Aaroma*, a third party that is not alleged to have caused any direct injury to the Diacetyl Plaintiffs, is that, as a matter of state law, Aaroma constitutes a "mere continuation" of Emoral such that it has also succeeded to all of Emoral's liabilities. . . .
>
> The Diacetyl Plaintiffs fail to demonstrate how any of the factual allegations that would establish their cause of action based on successor liability are unique to them as compared to other creditors of Emoral. Likewise, they fail to demonstrate how recovery on their successor liability cause of action would not benefit all creditors of Emoral given that Aaroma, as a mere continuation of Emoral, would succeed to all of Emoral's liabilities. . . .
>
> . . . Therefore, the District Court appropriately classified the cause of action as a generalized claim constituting property of the estate.

740 F.3d at 879-81. Accord Tronox, 855 F.3d at 103 (agreeing with Emoral holding that personal injury claimants' successor liability claim was "general" rather than "individualized," observing: "That the plaintiffs in Emoral had an underlying harm specific to them did not put the claims automatically outside the estate. Indeed, every creditor in bankruptcy has an individual claim (set forth in a proof of claim) against the debtor, whether it be in tort (as here), contract, or otherwise.").

The Second Circuit's analysis of the issue in Tronox is instructive here. In that case, the court emphasized the "critical distinction between the underlying tort claim against" the debtors and the alter ego and successor liability claims against the newly-created transferee that received assets from the debtors' predecessors. 855 F.3d at 107. In holding that the court below had "correctly classified the [tort claimants'] claims as generalized, derivative claims comprising estate property," the Second Circuit explained that

> establishing the former [the underlying tort claim] would benefit only [the tort claimants] as individual creditors, whereas the latter—that New Kerr-McGee is the alter ego of the relevant Tronox debtors and should therefore be charged with all its liabilities—would benefit all creditors of the Tronox debtors generally. See Emoral, 740 F.3d at 880. The facts necessary to prove that the Tronox debtors committed the underlying torts may be particular to the [tort claimants], but the facts necessary to impute that liability to New Kerr-McGee "would be . . . generally available to any creditor, and recovery would serve to increase the pool of assets available to all creditors."

Tronox, 855 F.3d at 107 (quoting Emoral, 740 F.3d at 881).

The court in Tronox emphasized that, "[i]n distinguishing derivative claims from particularized claims exclusive to individual creditors, labels are not conclusive, since plaintiffs often try, but are not permitted, to plead around a bankruptcy." 855 F.3d at 100. "In other words," the court explained, "we are wary of putting form over substance. Thus, we 'inquire into the factual origins of the injury and, more importantly, into the nature of the legal claims asserted.'" Id. (citations omitted).

Judge Mullen made the same point almost thirty years ago, in Litchfield Co. of S.C. Ltd. P'ship v. Anchor Bank (In re Litchfield Co. of S.C. Ltd. P'ship), 135 B.R. 797 (W.D.N.C. 1992). In that case, a creditor bank filed a state court action against the general partners of a debtor limited partnership, based on state law that permitted creditors to hold general partners liable for the partnership's debts. In the bankruptcy court, Judge Wooten, applying the Fourth Circuit's decision in Steyr, held that the bank's continued prosecution of its state court action violated the automatic stay imposed by section 362(a)(3) because, "under

South Carolina law, the debtor was empowered to compel its general partners to pay the debts of the debtor partnership and that, under Code § 541(a), this power became property of the estate upon the filing of the debtor's bankruptcy case." Id. at 802. In affirming Judge Wooten's holding on appeal, Judge Mullen rejected the bank's argument "that its right[] to proceed against" the general partners "is separate and legally distinct from the right of the debtor to compel its general partners to pay the debts of the debtor partnership." Id. at 804. Judge Mullen explained:

> While it is true that the appellant's right to proceed against the general partners is not identical to the debtor's rights under South Carolina law, *nevertheless, proceeding against the general partners would necessarily impair the debtor's exercise of its right to compel its general partners to pay its debts, thus interfering with property of the estate*. . . . The bankruptcy court's application of the rule set forth by the Fourth Circuit in [Steyr] to the defendant's action against the Partners is not only consistent with, but necessary to promote, the fundamental bankruptcy principle of preserving property of the estate to ensure a ratable distribution to creditors.

Id. (emphasis added).

Seven years later, the Fourth Circuit, in Nat'l Am. Ins. Co. v. Ruppert Landscaping Co., Inc., 187 F.3d 439 (4th Cir. 1999), relied on Judge Mullen's decision in Litchfield in making this same fundamental point. In that case, sureties filed an involuntary petition against the debtor. After the case became a chapter 7 proceeding and a trustee was appointed, the sureties sued a transferee of some of the debtor's assets in district court, alleging successor liability and conspiracy counts. The court affirmed judgment against the sureties for lack of standing, finding their claims to be "similar in object and purpose" to claims the trustee should bring on behalf of all creditors:

> The bankruptcy court noted that the trustee has a potential fraudulent conveyance action to challenge the legality of the

> transaction between [the debtor and the transferee]. See 11 U.S.C. § 548. All of the Sureties' claims have this same focus. To make out their successor liability claim the Sureties rely heavily on exposing the [debtor/transferee] transaction to be fraudulent in fact. . . . Although the Sureties' claims and the trustee's fraudulent conveyance claim do not contain identical elements, they all share this same underlying focus. [Citing Litchfield.] *The Sureties' causes of action are thus so similar in object and purpose to claims the trustee could bring in bankruptcy court that the Sureties lack standing to pursue these claims in district court. . . .*
>
> It is clear that the trustee should have the first crack at challenging the [debtor/transferee] transaction—the trustee's role is to bring suits such as these on behalf of all creditors. [Citing Steyr.]

187 F.3d at 441 (emphasis added). Accord Alvarez, 2012 WL 113567 at *5 (applying National American. Insurance in holding that creditors' alter ego and breach of fiduciary duty claims were automatically stayed by section 362(a)(3)); Sterne Agee Group, 2015 WL 1651146 at *7 (applying National American Insurance in holding that creditors' successor liability claims were property of debtor's estate to be pursued by trustee).

As the Fourth Circuit emphasized in National American Insurance, "[t]o allow selected creditors to artfully plead their way out of bankruptcy court would unravel the bankruptcy process and undermine an ordered distribution of the bankruptcy estate." 187 F.3d at 142 (citing Litchfield). Enforcing the automatic stay to prevent individual creditors from pursuing liability claims against non-debtors based on alter ego or successor liability theories is essential to provide the estate with control over the res available for distribution to all claimants. As the Second Circuit pointed out in Tronox, preserving the estate's control over such claims not only ensures a fair distribution of the res, but also promotes the efficient resolution of those causes of action, which are part of the res:

> The whole point of channeling claims through bankruptcy is to avoid creditors getting ahead of others in line of preference and to promote an equitable distribution of debtor assets. [Citation

> omitted.] That is why, after a company files for bankruptcy, creditors lack standing to assert claims that are estate property. Instead, the trustee is conferred the right to recover for derivative, generalized claims; only the estate is charged with ensuring equitable distribution of estate assets and preventing individual creditors from pursuing their own interests and thus diminishing the res available to the rest of the creditors. Even more, it encourages, as it did here, orderly settlement—an interest not taken lightly.

855 F.3d at 106.

In this regard, it is noteworthy that, in several prior mass tort bankruptcy cases—including two in this Court—an official committee of creditors requested a bankruptcy court order affording it standing to bring—*as the representative of the estate and on behalf and for the benefit of that estate*—similar claims to impose liability, based on alter ego and successor liability theories, on non-debtor entities that were involved in pre-petition corporate transactions with the debtor.[11] As this Court is aware, the official committee of asbestos creditors in the DBMP case also recently sought (and was granted) such standing.

---

[11] In In re Garlock Sealing Techs., LLC, No. 10-31607 [Dkt. 2150] (Bankr. W.D.N.C. 2010), the asbestos claimants' committee sought "Leave to Control and Prosecute Certain Claims as Estate Representatives" in order to challenge certain pre-bankruptcy restructuring transactions between one of the debtors and its affiliates. The committee's proposed complaint on behalf of the estate included (in addition to counts for breach of fiduciary duty, conspiracy and fraudulent conveyances) a count XVII ("Successor Liability") and a count XVIII ("Piercing the Corporate Veil"). Id. The debtors moved for authorization to enter into tolling agreements preserving such claims but delaying their prosecution. [Dkt. 2194]. After a hearing on both motions, the court approved the debor's entry into the proposed tolling agreements [Dkt. 2281] and denied the committee's motion. [Dkt. 2292].

In In re Kaiser Gypsum Co., Inc., No. 16-31602 [Dkt. 1009] (Bankr. W.D.N.C. 2016), the unsecured creditors' committee moved for standing to prosecute, on behalf of the estates, certain claims against non-debtor affiliates, including those for fraudulent conveyance, alter ego and successor liability. At a hearing, the court denied the standing motion and instead granted the debtors authority to enter into tolling agreements to preserve the alleged claims. [Dkt. 1154].

In In re Specialty Prods. Holding Corp., No. 10-11780 [Dkt. 1799] (Bankr. D. Del. 2010), the asbestos claimants' committee sought standing to prosecute, on behalf of the estates, claims against non-debtor affiliates—including alter ego and fraudulent conveyance claims—related to the debtors' pre-petition reorganization. While the court granted the committee standing to sue on behalf of the estates [Dkt. 4318], the committee never actually filed a complaint against the debtors' affiliates.

The bottom line is that the Defendants here are in the same position as were the individual creditors in S.I. Acquisition, and Steyr, the bank in Litchfield, the former employees in Holcomb, the sureties in National American Insurance, the purchasers of empty lots in Alvarez, the retired partners in Coudert, the asbestos claimants in Keene, the diacetyl claimants in Emoral, and the toxic tort claimants in Tronox. Their successor liability and alter ego claims against the Non-Debtor Affiliates are based on facts and theories generally available to the Debtor's other creditors and are therefore automatically stayed by section 362(a)(3) because they are acts to exercise control over property of the Debtor's estate.

D. The Defendants' Fraudulent Transfer Claims Are Estate Property

Any fraudulent conveyance claims asserted by the Defendants in their lawsuits are property of the Debtor's estate. Section 541(a)(7) of the Bankruptcy Code states that the debtor's estate is also comprised of "[a]ny interest in property that the estate acquires after the commencement of case." 11 U.S.C. § 541(a)(7) (emphasis added). Section 544(b) of the Bankruptcy Code authorizes the trustee, after the bankruptcy case is filed, to bring on behalf of the estate the same fraudulent conveyance actions that individual creditors could bring under state law prior to the filing of the bankruptcy case. Because the trustee's claims under section 544(b) must be brought on behalf of the estate, those claims constitute property in which the estate acquires an interest "after the commencement of the case" and are therefore property of the debtor's estate under section 541(a)(7). As Judge Mullen has observed, "in the Fourth Circuit the rule is settled that Code § 362(a)(3) stays automatically—without a restraining order—a creditor's claim against a third-party that the debtor can assert for the benefit of the estate" and this rule "has been embraced by other courts" to include "actions to recover fraudulent transfers." Litchfield, 135 B.R. at 803 n.4.[12]

III. THE COURT SHOULD EXERCISE ITS AUTHORITY UNDER SECTION 105(A) TO ENJOIN THE CONTINUATION OR COMMENCEMENT OF THE DEBTOR TALC CLAIMS AGAINST THE PROTECTED PARTIES.

A. The Court Has Authority to Enjoin the Pursuit of Debtor Talc Claims Against the Protected Parties.

Section 105(a) of the Bankruptcy Code provides that the Court "may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). This includes "ample power to enjoin actions excepted from the automatic stay which might interfere in the rehabilitative process" of a bankruptcy case. In re Johns-Manville Corp., 26 B.R. 420, 425, 436 (Bankr. S.D.N.Y. 1983) (citing 2 COLLIER ON BANKRUPTCY § 362.05 (15th Ed.)), aff'd 40 B.R. 219 (S.D.N.Y. 1984), and appeal allowed, decision vacated in part on other grounds, 41 B.R. 926 (S.D.N.Y. 1984).

Under section 105(a), courts have broad authority "to enjoin parties other than the bankrupt from commencing or continuing litigation." Robins, 788 F.2d at 1002 (quoting In re Otero Mills, Inc., 25 B.R. 1018, 1020 (D.N.M. 1982)).[13] An injunction as to third-party litigation is appropriate where, among other things, the "failure to enjoin would [a]ffect the bankruptcy estate and would adversely or detrimentally influence and pressure the debtor

---

12 Moreover, courts uniformly hold that, once the bankruptcy case is filed, [s]ection 544 transfers the right to recover fraudulent transfers from individual creditors to the bankruptcy trustee (or the debtor in possession) acting as a fiduciary on behalf of all creditors," and as a result, "[t]he trustee has the exclusive right to bring a fraudulent conveyance action during the pendency of the bankruptcy proceedings." Guttman, 458 B.R. at 258-59. See Nat'l Am. Ins. Co. v. Ruppert Landscaping Co., 187 F.3d 439, 441 (4th Cir. 1999) ("In fact, this circuit has explicitly held that until there is an 'abandonment' by the trustee of his [potential fraudulent conveyance action] the individual creditor has no standing to pursue it."); M-Tek, 2016 WL 2997505 at *8.

13 This authority is bolstered by the inherent power of all courts "under their general equity powers and in the efficient management of [their] dockets to grant" appropriate injunctive relief. Robins, 788 F.2d at 1003 (internal quotation omitted).

through the third party." Id. at 1003 (internal citation omitted).[14] In such cases, an injunction allows the debtor to receive the benefits of the automatic stay imposed by section 362 of the Bankruptcy Code, which aims to:

> protect the debtor from an uncontrollable scramble for its assets in a number of uncoordinated proceedings in different courts, to preclude one creditor from pursuing a remedy to the disadvantage of other creditors, and to provide the debtor and its executives with a reasonable respite from protracted litigation, during which they may have an opportunity to formulate a plan of reorganization for the debtor.

Robins, 788 F.2d at 998.

Acting under the broad authority granted by section 105(a), courts have consistently stayed claims against non-debtor entities, including a debtor's affiliates, both in mass tort and non-mass tort bankruptcies, to maintain the integrity of the debtor's estate and fully effectuate the protections of the automatic stay.[15] In fact, to the Debtor's knowledge, every court that has addressed the issue in the context of mass tort claims of a debtor asserted against non-debtor affiliates or insurers—including bankruptcy courts in this District (most recently in Aldrich, DBMP and Bestwall)—has recognized that such claims threaten the debtor's prospects

---

14 See also In re Calpine Corp., 365 B.R. 401, 409 (S.D.N.Y. 2007) (holding that court may issue a "preliminary injunction in the bankruptcy context where the action to be enjoined is one that threatens the reorganization process") (internal quotation omitted); In re Lazarus Burman Assocs., 161 B.R. 891, 897 (Bankr. E.D.N.Y. 1993) ("When an action by a creditor of a debtor against a non-debtor third party threatens a debtor's reorganization, the creditor's action may be enjoined pursuant to section 105(a).").

15 As to non-asbestos mass tort bankruptcies, see In re Purdue Pharma L.P., No. 19-23649, Adv. No. 19-08289 [Adv. Dkt. 82] (Bankr. S.D.N.Y. Oct. 11, 2019) aff'd 619 B.R. 38 (S.D.N.Y. 2020); In re USA Gymnastics, No. 18-09108, Adv. No. 19-50075 [Adv. Dkt. 71] (Bankr. S.D. Ind. Apr. 22, 2019); In re TK Holdings Inc., Case No. 17-50880, Adv. No. 17-50880 [Adv. Dkt. 63] (Bankr. D. Del. Aug. 22, 2017); In re Lyondell Chem. Co., 402 B.R. 571 (Bankr. S.D.N.Y. 2009); Robins, 788 F.2d at 999-1000. As to non-mass tort bankruptcies, see In re Am. Film Techs., Inc., 175 B.R. 847, 855 (Bankr. D. Del. 1994) (staying claims against a debtor's directors); In re Family Health Servs., Inc., 105 B.R. 937, 942–43 (Bankr. C.D. Cal. 1989) (staying claims by certain health care providers against members and enrollees of a debtor HMO); In re Heron, Burchette, Ruckert & Rothwell, 148 B.R. 660, 690 (Bankr. D.D.C. 1992) (finding that injunction of suits against non-debtor partners should issue); In re Myerson & Kuhn, 121 B.R. 145, 160 (Bankr. S.D.N.Y. 1990) (enjoining suits against non-debtor partners).

for reorganization and has implemented a section 105(a) injunction. See, e.g., Bestwall, 606 B.R. at 254 ("Injunctions of the type requested by the Debtor have previously and uniformly been issued in numerous [] asbestos-related cases") (enjoining asbestos-related actions against non-debtor affiliates); In re Aldrich Pump LLC, No. 20-30608 (JCW), Adv. No. 20-03041 (JCW) (Bankr. W.D.N.C. Aug. 23, 2021) (staying asbestos-related actions against non-debtor affiliates, insurers, and indemnified parties); In re DBMP LLC, No. 20-30080 (JCW), Adv. No. 20-03004 (JCW) (Bankr. W.D.N.C. Aug. 10, 2021) (staying asbestos-related actions against non-debtor affiliates and distributors); In re Kaiser Gypsum Co., Inc., No. 16-31602 (JCW), Adv. No. 16-03313, at 3–4 (JCW) (Bankr. W.D.N.C. Nov. 4, 2016) (staying asbestos-related actions against debtors' third party insurer and non-debtor affiliates); In re Garlock Sealing Techs. LLC, No. 10-31607 (JCW), Adv. No. 10-03145, at 2–3 (JCW) (Bankr. W.D.N.C. June 7, 2010) (staying asbestos-related actions against non-debtor affiliates).[16] Such relief is critical for a debtor to equitably resolve all current and future talc claims against it under the Bankruptcy Code.

---

16 See also In re Leslie Controls, Inc., No. 10-12199 (CSS), Adv. No. 10-51394, at 4–5 (CSS) (Bankr. D. Del. July 14, 2010) (staying asbestos-related actions against current and former affiliates); In re Specialty Prods. Holding Corp., No. 10-11780 (KJC), Adv. No. 10-51085, at 3–5 (KJC) (Bankr. D. Del. June 4, 2010) (staying asbestos-related actions against non-debtor parent company and other affiliates); In re W.R. Grace & Co., 386 B.R. 17, 34 (Bankr D. Del. 2008) (enjoining actions against a third party railroad that transported the debtor's asbestos-containing products); In re Quigley Co., Inc., No. 04-15739 (PCB), Adv. No. 04-04262, at 4–5 (PCB) (Bankr. S.D.N.Y. Dec. 17, 2004) (enjoining the continuation of asbestos lawsuits against the parent corporation of the debtor); In re Mid Valley, Inc., No. 03-35592 (JKF), Adv. No. 03-3296 (JKF) (Bankr. W.D. Pa. Dec. 17, 2003); In re Combustion Eng'g, Inc., No. 03-10495 (JKF), Adv. No. 03-50839 (JKF) (Bankr. D. Del. Mar. 7, 2003) (order enjoining asbestos litigation against certain non-debtor affiliates); In re ACandS, Inc., No. 02-12687 (PJW), Adv. No. 02-5581 (PJW) (Bankr. D. Del. Sept. 27, 2002); In re G-I Holdings, Inc., No. 01-30135 (RG), Adv. No. 01-3013 (RG) (Bankr. D.N.J. Feb. 22, 2002); In re Harbison-Walker Refractories Co., No. 02-21627 (JKF), Adv. No. 02-02080 (Bankr. W.D. Pa. Feb. 14, 2002) (enjoining asbestos lawsuits against the former owner of the debtor); In re N. Am. Refractories Co., No. 02-20198 (JKF), Adv. No. 02-2004 (JKF) Bankr. W.D. Pa. Jan. 4, 2002) (TRO); In re W.R. Grace & Co., No. 01-01139 (KJC), Adv. No. 01-00771, at 36 (KJC) (Bankr. D. Del. May 3, 2001) (order expanding preliminary injunction to enjoin asbestos suits against non-debtor subsidiaries);In re The Babcock & Wilcox Co., No. 00-10992 (JAB), Adv. No. 00-1029 (JAB) (Bankr. E.D. La. Apr. 17, 2000); and In re Pittsburgh Corning Corp., No. 00-22876 (JKF), Adv. No. 00-2161 (JKF) (Bankr. W.D. Pa. Apr. 16, 2000).

B. The Preliminary Injunction Factors All Support Enjoining the Pursuit of Debtor Talc Claims Against the Protected Parties.

Courts considering the propriety of an injunction under section 105(a) typically apply the traditional four-pronged test for injunctions. See, e.g., Robins, 788 F.2d at 1008 (noting that the district court had applied the test for a grant of preliminary injunctive relief previously articulated by the Fourth Circuit, and upholding the grant of a preliminary injunction).[17] The four elements, as tailored to a bankruptcy case, are:

1. The debtor's reasonable likelihood of a successful reorganization;
2. The imminent risk of irreparable harm to the debtor's estate in the absence of an injunction;
3. The balance of harms between the debtor and its creditors; and
4. Whether the public interest weighs in favor of an injunction.

Bestwall, 606 B.R. at 253; accord Unsecured Creditors' Comm. v. DeLorean (In re DeLorean Motor Co.), 755 F.2d 1223, 1228 (6th Cir. 1985); Excel Innovations, 502 F.3d at 1095–1100; In re Lyondell Chem. Co., 402 B.R. 571, 588–89 (Bankr. S.D.N.Y. 2009).[18] Under this test, each factor must be satisfied. Bestwall, 606 B.R. at 253 (citing Pashby v. Delia, 709 F.3d 307, 320 (4th Cir. 2013)).

---

17 See also Real Truth About Obama, Inc. v. Fed. Election Comm'n, 575 F.3d 342, 346–47 (4th Cir. 2009), vacated on other grounds, 176 L. Ed. 2d 764 (2010) (adopting the preliminary injunction standard set forth in Winter v. Nat'l Res. Def. Council, Inc., 555 U.S. 7, 20 (2008), which requires a plaintiff to "'establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest'"); Solidus Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations, Inc.), 502 F.3d 1086, 1094 (9th Cir. 2007) (holding that traditional preliminary injunction standard applies to section 105(a) injunctions and stating that "[t]he majority of circuits that have reviewed injunctions staying actions against non-debtors have applied the usual preliminary injunction standard") (internal citations omitted); In re W.R. Grace & Co., 412 B.R. 657, 665 (D. Del. 2009) (applying four-factor preliminary injunction test in an asbestos section 524(g) case); Bestwall, 606 B.R. at 253–58 (same).

18 See also In re Chicora Life Ctr., LC, 553 B.R. 61, 64 (Bankr. D.S.C. 2016) (applying four-factor test in granting an injunction as to suits against debtor's manager for guaranty obligations); In re Fisher, 80 B.R. 58, 60 (Bankr. M.D.N.C. 1987) (applying four-factor test in denying a motion to enjoin enforcement of state foreclosure action against individual debtor).

While courts typically consider all four elements, "the Fourth Circuit has made very clear that the critical, *if not decisive*, issue [in whether a section 105(a) injunction is warranted] is whether and to what extent the non-debtor litigation interferes with the debtors' reorganization efforts." Brier Creek, 486 B.R. at 694 (emphasis added) (citing Robins, 788 F.2d at 1003-09; Kreisler v. Goldberg (In re Kreisler), 478 F.2d 209, 215 (4th Cir. 2007)). The Fourth Circuit has repeatedly upheld preliminary injunctions where non-debtor litigation could interfere with the debtor's reorganization efforts and, as such, has not held that application of the four-pronged test is necessary where such interference exists. See Brier Creek, 486 B.R. at 694-95 (discussing Fourth Circuit precedent).[19] Here, the interference with the Debtor's reorganization is sufficiently decisive to grant the injunction without applying the four-pronged test. In any case, as set forth below, the injunction is appropriate under the four-pronged test as well.

1. The Debtor's Successful Reorganization Is Likely.

In bankruptcy proceedings, "success on the merits is to be evaluated in terms of the likelihood of a successful reorganization." Bestwall, 606 B.R. at 254 (quoting Sudbury, Inc.

[19] In re Brier Creek also summarized authority from other jurisdictions indicating that courts need not necessarily apply the traditional four-pronged test for preliminary injunctions. See 486 B.R. at 694 n.11 ("Fisher v. Apostolou, 155 F.3d 876, 882 (7th Cir. 1998) (holding that the a bankruptcy court can enjoin proceedings in other courts when it is satisfied that such proceedings would defeat or impair its jurisdiction over the case before it' and 'the court does not need to demonstrate an inadequate remedy at law or irreparable harm'); Lentz v. Cahaba Disaster Relief, LLC (In re CDP Corp.), 462 B.R. 615, 629 n.27 (Bankr. S.D. Miss. 2011) (stating that the injunction standard is adapted to the bankruptcy context and that 'some courts reformulate, relax or even eliminate some of the traditional elements') (quotations omitted); BUKE, LLC v. Eastburg (In re Eastburg), 440 B.R. 864, 871-72 (Bankr. D.N.M. 2010) (collecting cases where courts have modified the injunction standard for the bankruptcy context); LTV Steel Co. v. Bd. Of Educ. (In re Chateaugay Corp. Reomar, Inc.), 93 B.R. 26, 29 (S.D.N.Y. 1988) ('The usual grounds for injunctive relief such as irreparable injury need not be shown in a proceeding for an injunction under section 105(a).'); 2 Alan N. Resnick & Henry J. Sommer, Collier on Bankruptcy ¶ 105.03[2] (16th ed. rev. 2012) ('Many courts reformulate the generic preliminary injunction standard to fit the particular needs of bankruptcy generally and the language of section 105 specifically. Sometimes, these opinions focus exclusively on the need for an injunction to achieve reorganization or some other bankruptcy goal[.]').").

v. Escott, 140 B.R. 461, 466 (Bankr. N.D. Ohio 1992)).[20] This is not intended to be a particularly high standard where, as here, the attempted reorganization has just begun. See id.; see also In re Eagle-Picher Indus., Inc., 963 F.2d 855, 860 (6th Cir. 1992) ("In view of the bankruptcy court's protection of [the debtor's] reorganization efforts, it is implicit in its decision that it believed [the debtor] had some realistic possibility of successfully reorganizing under Chapter 11."). Indeed, "at the early stages" of bankruptcy proceedings, the court "must make at least a rebuttable presumption that the [debtors] have made a good faith filing and are making a good faith effort to reorganize." In re Gathering Rest., Inc., 79 B.R. 992, 1001 (Bankr. N.D. Ind. 1986); accord Bestwall, 606 B.R. at 254 (quoting Gathering, 79 B.R. at 1001).[21]

Here, the Debtor's prospects for a successful reorganization are strong. The Debtor has entered bankruptcy in good faith and in an effort to permanently, fully and equitably resolve current and future Debtor Talc Claims through the establishment of a trust. As courts have consistently recognized, the bankruptcy court is the most logical and best positioned forum for the resolution of mass tort liability. See In re Fed-Mogul Glob., Inc., 684 F.3d 355, 359 (3d Cir. 2012) ("Bankruptcy has proven an attractive alternative to the tort system for corporations [facing mass tort claims] because it permits a global resolution and discharge of current and future liability, while claimants' interests are protected by the bankruptcy court's power to use future earnings to compensate similarly situated tort claimants equitably."); S. Elizabeth Gibson, *Judicial Management of Mass Tort Bankruptcy Cases*, Federal Judicial

---

20 See also Chicora Life Ctr., 553 B.R. at 66; Brier Creek, 486 B.R. at 696.

21 See also In re Hillsborough Holdings Corp., 123 B.R. 1004, 1015 (Bankr. M.D. Fla. 1990) (finding that until it can be determined that debtors "are not viable business entities incapable of achieving a successful reorganization," it "would be premature to conclude . . . that this reorganization process is doomed and that there is no legal justification for granting the injunctive relief sought"); Dore & Assocs. Contracting, Inc. v. Am. Druggists' Ins. Co., 54 B.R. 353, 359 (Bankr. W.D. Wis. 1985) ("In the early stages of bankruptcy when it is uncertain if reorganization is feasible or not the bankruptcy court must have broader latitude in determining whether to grant injunctive relief.").

Center, at 1 (2005), https://www.fjc.gov/sites/default/files/2012/GibsJudi.pdf (noting that "bankruptcy courts have become a forum for companies seeking the resolution of pending and threatened mass tort litigation" and that, as of the publication date, "over seventy companies, motivated primarily by their desire to reach a final resolution of their mass tort liabilities, have sought bankruptcy protection").

The Debtor's aggregate value (not including insurance assets) is approximately $373.1 million and, to the extent its assets, including insurance, are insufficient, it has access to additional funds through the Funding Agreement. First Day Decl. ¶ 26. In addition, J&J and New JJCI have agreed to deposit $2 billion into a "qualified settlement fund" for the payment of current and future talc-related claims asserted against or related to the Debtor. Id. ¶ 28. The Debtor submits it will have sufficient assets to fund the Chapter 11 Case and a trust in the amount required by a confirmed plan of reorganization and there can be no dispute that the Debtor has the wherewithal to reorganize.

The Debtor also has favorable prospects for resolving the Debtor Talc Claims through a plan of reorganization that conforms with the requirements of the Bankruptcy Code. A number of similarly situated companies have successfully used bankruptcy to resolve mass tort claims, and the Debtor is committed to equitably resolving the Debtor Talc Claims. The Debtor seeks to engage in good faith negotiations to reach a consensual resolution of the Chapter 11 Case with representatives for current and future claimants as soon as they are in a position to begin discussions. Id. ¶ 60.

In short, the Debtor is likely to successfully reorganize through a plan of reorganization confirmed in accordance with the Bankruptcy Code. Accordingly, the Debtor's prospects for successfully reorganizing strongly weigh in favor of the requested injunction.

2. Failure to Enjoin Litigation of Debtor Talc Claims Would Irreparably Harm the Debtor.

The Debtor and its estate will be irreparably harmed in several ways if the requested injunction is not issued. As described above, the Debtor filed the Chapter 11 Case to obtain a complete and equitable resolution of all current and future Debtor Talc Claims against it—an option that is not available in the tort system or anywhere else. As this Court recently indicated, it would defeat the purpose of the Chapter 11 Case if those claims continue to be prosecuted in the tort system, notwithstanding the Debtor's bankruptcy case. See Aldrich Pump, 2021 WL 3729335, at *36 ("[P]rosecution of those same claims outside of this case would almost certainly end the Debtors' reorganization efforts").

(a) The Debtor's Indemnification Obligations.

The Debtor has various indemnification or alleged indemnification obligations to the Protected Parties. First, the Debtor has contractual obligations to indemnify the Non-Debtor Affiliates pursuant to a merger support agreement in the event those companies are held liable for any Debtor Talc Claims. Second, the Debtor has, or is alleged to have, contractual indemnification obligations with, or other obligations to, the Retailers and Indemnified Parties relating to products sold by or otherwise associated with the Debtor and/or prior corporate transactions in which, in connection with the sale by a Debtor's predecessor of certain assets, the Debtor's predecessor undertook a contractual obligation to the buyer to indemnify it (or otherwise assume legal responsibility).

As an initial matter, continued prosecution of Debtor Talc Claims against the Protected Parties would irreparably harm the Debtor because the Debtor has indemnity obligations that could make judgments against certain Protected Parties on those claims tantamount to judgments against the Debtor.[22] In particular, the Debtor has an express contractual obligation to indemnify New JJCI and J&J in the event that either entity is held liable for any Debtor Talc Claims.[23]

These indemnification obligations render the Debtor the real-party defendant in any suit against New JJCI, J&J or other Protected Parties. Continued litigation of those suits, therefore, would effectively eliminate the protections of the automatic stay. See Robins, 788 F.2d at 999 (noting obligation to indemnify between the debtor and non-debtor is the typical situation that gives rise to "such identity between [them]" as to make an injunction appropriate); 1008 (finding "no difficulty in sustaining the grant of a preliminary injunction" that enjoined tort system plaintiffs from proceeding against the debtor's co-defendants, which included its insurer); Bestwall, 606 B.R. at 255 ("[A]n injunction is warranted because contractual and common law indemnification obligations would make the Debtor the real party in interest in any suit against New GP or other Protected Parties and effectively eliminate the protections of the automatic stay.); Manville, 26 B.R. at 436 (enjoining "any proceeding against Manville's insurers based on the alleged liability of Manville [or] its affiliates.").[24]

Absent the requested injunction, the Defendants could seek to liquidate the exact same talc claims that exist against the Debtor in the Chapter 11 Case through piecemeal litigation

---

22 Of course, because Old JJCI no longer exists and the Debtor is solely responsible for any Debtor Talc Claims, a judgment against Old JJCI for Debtor Talc Claims would necessarily constitute a judgment against the Debtor.

23 Although the Funding Agreement with New JJCI and J&J serves as a backstop to ensure that the Debtor's ability to pay the Debtor Talc Claims has not been diminished as compared to that of Old JJCI, the New JJCI and J&J indemnity claims nonetheless would affect the estate because the Debtor's assets must be used first to fund a trust to pay these claims under a plan of reorganization.

24 See also In re W.R. Grace & Co., No. 01-01139, 2004 WL 954772, at *4 (Bankr. D. Del. Apr. 29, 2004) (granting section 105 injunction due to indemnification obligations); Family Health Servs., 105 B.R. at 942-43 (same); In re Lomas Fin. Corp., 117 B.R. 64, 68 (S.D.N.Y. 1990) (affirming grant of preliminary injunction due to indemnification obligations).

against the Protected Parties outside of the Chapter 11 Case in the tort system. Moreover, permitting claimants to seek to indirectly establish claims against the Debtor through actions against third parties with indemnity rights would prevent the Debtor from establishing a trust to consolidate and collectively resolve all talc claims against the Debtor—current and future—through the Chapter 11 Case. This non-bankruptcy litigation, if not stayed, would undermine (or eliminate) the parties' and the Court's ability to achieve confirmation of a plan that treats all talc claimants fairly and equitably.

(b) Findings and Judgments in Litigation of Debtor Talc Claims Against the Protected Parties Might Bind the Debtor.

In addition to the risk of indirectly fixing Debtor Talc Claims against the Debtor through indemnity liability, the Debtor faces the risk that state court findings and judgments on the Debtor Talc Claims against the Protected Parties could bind the Debtor and effectively establish Debtor Talc Claims against it, including through the doctrines of res judicata and collateral estoppel.[25] This risk is underscored by the fact that collateral estoppel has been applied offensively by litigants who were not parties to the prior litigation. See, e.g., Parklane Hosiery Co. v. Shore, 439 U.S. 322, 331 (1979) (allowing offensive use of collateral estoppel to prevent a corporation from defending against the stockholder class action of plaintiffs who were not parties to prior SEC litigation against the corporation). Talc claimants who have never before litigated their claims against the Debtor, or against the Protected Parties, might seek to establish

25 Res judicata bars claims where the following elements are met: (1) the previous suit resulted in a final judgment on the merits; (2) the same cause of action is involved; and (3) both the party asserting res judicata and the party against whom res judicata is asserted were either parties or stand in privity with parties. Williams v. Peabody, 719 S.E.2d 88, 92 (N.C. Ct. App. 2011) (citing State ex rel. Tucker v. Frinzi, 474 S.E.2d 127, 128 (N.C. 1996)). Similarly, collateral estoppel bars the re-litigation of issues where (1) the earlier suit resulted in a final judgment on the merits; (2) the issue in question was identical to an issue actually litigated and necessary to the judgment; and (3) both the party asserting collateral estoppel and the party against whom collateral estoppel is asserted were either parties to the earlier suit or were in privity with parties. Id.

liability against the Debtor simply by pointing to a prior judgment on a Debtor Talc Claim against a Protected Party.[26]

Under these circumstances, the Debtor could not stand idly by as liability is effectively established against it by Defendants in collateral proceedings. Rather, the Debtor would be required to actively involve itself in, and defend the litigation, of Debtor Talc Claims against the Protected Parties, even as it attempts simultaneously to move forward with its goal of reorganizing to address these very same claims.

Courts consistently have concluded that the risks of collateral estoppel and res judicata warrant a stay of third-party litigation that would thwart the purposes of the automatic stay. Bestwall, 606 B.R. at 256 (determining that the risks posed by the doctrines of res judicata and collateral estoppel, among other factors, warrant a preliminary injunction of litigation against non-debtor affiliates); Sudbury, 140 B.R. at 463 (granting injunctive relief after finding that debtor's liability "may be determined on collateral estoppel principles [by fact determinations reached on the same fact issues] in Plaintiffs' actions" against non-debtors); Manville, 26 B.R. at 429 (concluding that the risk of collateral estoppel would irreparably injure the estate and, thus, issuance of a stay of claims against non-debtors was warranted); In re Am. Film Techs., Inc., 175 B.R. at 850–55 (staying claims against debtor's directors and holding that a potential finding of liability against such directors would be based on acts undertaken by directors as agents of the debtor and therefore would expose the debtor to the risk of being collaterally estopped from denying liability for the directors' actions).

---

26 Plaintiffs have sued J&J and certain of its officers and directors in United States District Court in the District of New Jersey, alleging securities violations based on a failure to disclose the purported dangers associated with Johnson's Baby Powder and other talc-containing products. Because the lawsuit raises issues about the safety of Old JJCI's products, which issues are central to this Chapter 11 Case, the Debtor may seek to enjoin the action pursuant to a separate complaint.

The same concerns warrant a stay in this case. If allowed to pursue the Debtor Talc Claims against the Protected Parties, the Defendants would litigate the same key facts—involving the same products, the same time periods, and the same alleged injuries—related to the talc liabilities of Old JJCI that are at issue with respect to the Debtor Talc Claims asserted against the Debtor. Supp. Kim Decl. ¶ 17. Accordingly, any rulings or findings regarding the Debtor Talc Claims asserted against the Protected Parties may bind the Debtor with respect to those same claims. This would frustrate the Debtor's efforts to resolve the Debtor Talc Claims in the Chapter 11 Case, and would undermine the effect of the automatic stay.

Beyond the potential consequences of collateral estoppel and *res judicata*, litigation of the Debtor Talc Claims against the Protected Parties would allow parties to use statements, testimony and other evidence generated in those proceedings to try to establish Debtor Talc Claims against the Debtor. Id.

The burden of protecting against evidentiary prejudice was part of the justification for granting the injunctive relief both in Bestwall and Manville. See Bestwall, 606 B.R. at 256 ("Litigation of the Bestwall Asbestos Claims against the Protected Parties will create the additional risk that statement, testimony, and other evidence generated in proceedings against the Protected Parties will be used to try to establish Bestwall Asbestos Claims against the Debtor."). The Manville court there explained the danger as follows:

> [O]nce a witness has testified to a fact, or what sounds like a fact, that witness may be confronted with his prior testimony under oath in a future proceeding directly involving Manville, whether or not Manville was a party to the record on which the initial testimony was taken. Once an admission against interest is made, under oath or otherwise, by the agent of a party, that admission stands for all time. No matter what [Manville's co-defendant] may stipulate, the thousands of other claimants and cross-

> claimants who are after Manville's assets, would be entitled to use the product of such discovery.

In re Johns-Manville Corp., 40 B.R. at 225; see also W.R. Grace & Co., 386 B.R. at 34 (granting injunction based, among other things, on the possibility that "record taint" in actions against non-debtors would compel the debtors' participation and impair the reorganization effort).

The Debtor may be compelled to defend its interest in pending litigation against the Protected Parties to prevent such harm to its estate, thereby defeating the "breathing spell" intended by the automatic stay. Supp. Kim Decl. ¶ 18. These are consequences that the Debtor should not be required to suffer or be compelled to protect against.

3. The Irreparable Harm that the Debtor Would Suffer in the Absence of an Injunction Substantially Outweighs Any Prejudice to the Defendants.

As described above, the Debtor would suffer substantial and irreversible harm if injunctive relief is not granted. Prosecution of Debtor Talc Claims outside of this Court may liquidate claims against the Debtor and bind the Debtor with respect to rulings, judgments and evidentiary records established in those cases. It would also compromise the protections of the automatic stay. In short, the entire purpose of the Chapter 11 Case would be thwarted. See Bestwall, 606 B.R. at 257 ("The very purpose of the Debtor's Chapter 11 case would be defeated if litigation of the Bestwall Asbestos Claims against the Protected Parties is permitted."). One of the overriding goals of the bankruptcy process is to ensure that all similarly situated claims are evaluated and treated in a uniform manner. That goal would be compromised if claimants could seek to liquidate and collect Debtor Talc Claims outside of the Chapter 11 Case.

Talc claimants also may be prejudiced if the Court does not issue an injunction. Through litigation against the Protected Parties, holders of current Debtor Talc Claims could receive recoveries on those claims that differ from the recoveries that would be realized by other current or future claimants through a court-approved trust. Further, litigation, particularly personal injury litigation, generally requires extensive discovery, involves numerous parties and presents complicated questions of causation. Such litigation is rarely efficient and often goes on for many years. By contrast, a trust established by the Debtor in the Chapter 11 Case would "provide all claimants—including future claimants who have yet to institute litigation—with an efficient means through which to equitably resolve their claims." Bestwall, 606 B.R. at 257.[27] Continued prosecution of claims against the Protected Parties would thwart the Debtor's ability to resolve its talc liabilities through a bankruptcy trust, eliminating any possibility of a more efficient means of recovery to current and future talc claimants.

In contrast, the prejudice caused to the Defendants by an injunction would be minimal, to the extent it would exist at all.[28] The issuance of an injunction will not permanently deprive the Defendants of an opportunity to pursue the Debtor Talc Claims. Instead, it will merely halt those alleged claims, giving the Debtor time to reach consensus on a plan of reorganization. Thus, the requested injunction will do nothing more than place claimants that seek to litigate the Debtor Talc Claims outside of this Court in their appropriate position: alongside all other claimants who, through court-appointed representatives, are working with the

27 See In re Federal-Mogul Glob., Inc., 684 F.3d 355, 362 (3d Cir. 2012) ("Furthermore, the trusts appear to have fulfilled Congress's expectation that they would serve the interests of both current and future asbestos claimants and corporations saddled with asbestos liability. In particular, observers have noted the trusts' effectiveness in remedying some of the intractable pathologies of asbestos litigation, especially given the continued lack of a viable alternative providing a just and comprehensive resolution. Empirical research suggests the trusts considerably reduce transaction costs and attorneys' fees over comparable rates in the tort system.") (citing studies).

28 As explained above, litigation of the Debtor Talc Claims is already stayed pursuant to sections 362(a)(1) and 362(a)(3) of the Bankruptcy Code. Because of this, the requested injunction does not affect, much less harm, the Defendants asserting such claims, except as contemplated by the Bankruptcy Code.

Debtor to establish a trust that equitably treats and pays all current and future Debtor Talc Claims.[29]

Even if this Court assumes that an injunction might cause delay for some Defendants, "it is well established that mere delay is insufficient to prevent the issuance of an injunction." Bestwall, 606 B.R. at 257; see also In re United Health Care Org., 210 B.R. 228, 234 (S.D.N.Y. 1997) (finding that delay to the enjoined party from pursuing remedies was heavily outweighed by potential harm to reorganization efforts).[30] Otherwise, an injunction could never be issued, as an injunction by definition involves delay. Further, "the harm from any delay to some Defendants is far outweighed by the greater harm that failure to issue the injunction would cause the Debtor's reorganization efforts. The entire purpose of this proceeding would be defeated absent the requested injunction." Bestwall, 606 B.R. at 257.

Finally, the Defendants cannot establish harm based on speculation that an injunction could affect the ultimate payment of their claims. As set forth above, the Debtor's value is approximately $373.1 million in addition to insurance rights and the Funding Agreement with New JJCI and J&J. First Day Decl. ¶ 26. Among other things, the Funding Agreement will ensure funding for a trust in the amount required by a confirmed plan of reorganization, to the extent the Debtor's other assets (including insurance) are insufficient to fund the trust. In

29 See Sudbury, 140 B.R. at 464–65; see also In re Combustion Eng'g, Inc., 391 F.3d 190, 234 (3d Cir. 2004) (The "unique funding mechanism [available under section 524(g)] makes it possible for future asbestos claimants to obtain substantially similar recoveries as current claimants in a manner consistent with due process.").

30 See also W.R. Grace & Co., 386 B.R. at 35 (finding that delay of compensation for asbestos claimants and potential loss of witness testimony did not outweigh potential harm to reorganization efforts); In re Lazarus Burman Assocs., 161 B.R. at 901 (concluding that delay was not sufficient harm to justify denial of injunction because "[t]he preliminary injunction will not invalidate the rights of [the creditor]" but rather "will merely delay the enforcement of those rights"); In re Am. Film Techs., Inc., 175 B.R. at 849 (defendants are "not being asked to forego [their] prosecution against the individual defendants, only to delay it"); In re PTI Holding Corp., 346 B.R. 820, 831–32 (Bankr. D. Nev. 2006) (holding that delay of pursuit of guaranty did not constitute sufficient harm to justify denial of injunction).

addition, New JJCI and J&J have agreed to deposit an aggregate amount of $2 billion into a "qualified settlement fund" for the payment of current and future talc-related claims asserted against or related to the Debtor. Thus, the balance of harms clearly weighs in the Debtor's favor.

4. Injunctive Relief Will Further the Public Interest by Ensuring the Debtor's Successful Reorganization and Equitable Treatment of Defendants.

Courts consistently have recognized the public interest in a successful reorganization. See, e.g., United States v. Whiting Pools, Inc., 462 U.S. 198, 204 (1983); Sudbury, 140 B.R. at 465. As one bankruptcy judge observed: "[P]romoting a successful reorganization is one of the most important public interests." In re Gander Partners LLC, 432 B.R 781, 789 (Bankr. N.D. Ill. 2010) (quoting In re Integrated Health Servs., Inc., 281 B.R. 231, 239 (Bankr. D. Del. 2002)); see also Manville, 26 B.R. at 428 ("[T]he goal of removing all obstacles to plan formulation [is] eminently praiseworthy and [this court] supports every lawful effort to foster this goal while protecting the due process rights of all constituencies.").

A successful reorganization particularly serves the public interest in the mass tort context, where "completing the reorganization process . . . [will] resolv[e] thousands of claims in a uniform and equitable manner." W.R. Grace & Co., 386 B.R. at 36 (extending injunction to cover a non-debtor affiliate railroad that transported products of the debtor). It is in the public interest that "the bankruptcy process [is] utilized to the fullest extent" to resolve claims against the Debtor—a result made possible by a comprehensive injunction. Id.

It also is in the public interest to promote justice in the court system through the equitable treatment of all holders of current and future Debtor Talc Claims. Inconsistent judgments are not a desirable means of resolving a dispute with nationwide implications. In re Dow Corning I, 211 B.R. at 588 ("[I]t is anything but just when presenting the identical proofs, one plaintiff suffering nearly identical injuries or illness[] wins a multimillion dollar verdict against a defendant while another takes nothing."). The Debtor respectfully submits that an equitable outcome can only be achieved in this Court, by utilizing bankruptcy-specific tools geared towards encouraging efficient and fair resolution of liabilities. See In re Congoleum Corp., 362 B.R. 198, 201 (Bankr. D.N.J. 2007) ("Section 524 was created to provide a comprehensive resolution to asbestos liabilities both present and future."). Allowing the Debtor Talc Claims to proceed in the tort system, however, would undermine public interests by allowing for different recoveries for similarly situated claimants.

Further, permitting Debtor Talc Claims to continue against the Protected Parties would jeopardize the very purpose of the Debtor's Chapter 11 Case. Without the requested relief, the Debtor would not benefit from a reprieve of litigation to focus on its reorganization. Undermining the Chapter 11 Case in this way also undermines the public interest. The Debtor and the Protected Parties are not seeking to "escape" any talc liabilities through the injunctive relief requested herein or through the Chapter 11 Case. They fully understand that all liability arising out of the Debtor Talc Claims will be "resolved and channeled only if [the Debtor] succeeds in confirming a plan of reorganization that contains a channeling injunction that extends to the Protected Parties." Bestwall, 606 B.R. at 258. The Court and parties in interest, however, will be unable to comprehensively and equitably resolve all Debtor Talc Claims in the Chapter 11 Case without the requested injunctive relief.

As described above, each of the four factors clearly weighs in favor of this Court issuing a preliminary injunction prohibiting the Defendants from commencing or prosecuting Debtor Talc Claims against the Protected Parties.

IV. THE COURT SHOULD GRANT A TEMPORARY RESTRAINING ORDER TO EFFECTUATE THE RELIEF SOUGHT BY THE DEBTOR PENDING A FINAL HEARING.

The Debtor requests that this Court immediately, and with limited notice, enter a temporary restraining order to preserve the effectiveness of the automatic stay until this Court has the opportunity to hold a final hearing on the merits. The Court has authority to issue a temporary restraining order pursuant to Rule 65(b) of the Federal Rules of Civil Procedure (the "Civil Rules"), which is made applicable to this adversary proceeding by Bankruptcy Rule 7065. Civil Rule 65(b) provides:

> The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if: (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (B) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b).[31] A temporary restraining order is properly granted where it is necessary to prevent immediate and irreparable injury pending a hearing upon a motion for an injunction. 13 Moore's Federal Practice § 65.36 (2019).

The facts presented here satisfy the requirements for a temporary restraining order. Almost immediately after the Petition Date, counsel for numerous plaintiffs stated their intent to assert Debtor Talc Claims against the Protected Parties, including J&J, Old JJCI and Retailers. Permitting plaintiffs to pursue the Protected Parties threatens to harm the Debtor's interests by fixing claims against the estate or otherwise binding the Debtor with respect to talc claims against it. Supp. Kim Decl. ¶ 17. Without immediate injunctive relief, the Debtor will be

[31] Although Civil Rule 65(c) requires the posting of a bond as a prerequisite to a preliminary injunction, Bankruptcy Rule 7065 exempts an application made by a debtor, trustee or debtor in possession from the bond requirement. Fed. R. Bankr. P. 7065.

compelled to pull key estate resources away from its reorganization efforts to focus on that ongoing litigation, hampering the Debtor's reorganization from the outset. A denial of the Debtor's request for a temporary restraining order pending a final hearing on the Debtor's request for declaratory and/or injunctive relief would cause the very harm that the Debtor seeks to prevent by the Motion and the Complaint.

As described above, the commencement or continued prosecution of the Debtor Talc Claims against the Protected Parties risks significant, immediate and irreversible harm to the Debtor and its estate. The Debtor will be compelled to actively monitor, participate in and defend the currently pending and threatened Debtor Talc Claims, notwithstanding the automatic stay, to limit the risks they pose to the estate. On a daily basis, obligations arise and deadlines are imposed in those cases that already have been filed, including in connection with depositions, court appearances and discovery requests. Id. ¶ 18. Addressing these matters will require the time and attention of key Debtor personnel, diverting estate resources away from reorganization efforts. These negative effects on the Debtor's estate will only compound as new Debtor Talc Claims are filed against the Protected Parties. Id. ¶ 19.

It is appropriate for the Court to grant the relief requested by this Motion with limited notice to the Defendants. The Debtor cannot realistically provide effective notice to the many named plaintiffs who have sued or may sue the Protected Parties in the short period of time in which this Court's action is needed. Moreover, notice of this Motion and the Complaint may further exacerbate the very rush-to-the-courthouse created by the notice of the bankruptcy filing, which a temporary restraining order is necessary to further prevent. Id. ¶ 20; In re Vuitton et fils S.A., 606 F.2d 1, 5 (2d Cir. 1979) (notice of temporary restraining order action not required when notice would defeat purposes of the action); see also Am. Can Co. v. Mansukhani, 742 F.2d 314, 322 (7th Cir. 1984) (citing with approval Vuitton, 606 F.2d at 5). Further, Defendants John and Jane Does 1-1000 are putative plaintiffs for future talc actions against the Protected Parties and are unknown at this time. The Debtor's sole means of notifying these plaintiffs is through publication. First Tech. Safety Sys., Inc. v. Depinet, 11 F.3d 641, 650 (6th Cir. 1993) ("The normal circumstance for which the district court would be justified in proceeding *ex parte* is where notice to the adverse party is impossible, as in the cases where the adverse party is unknown or is unable to be found."). Supp. Kim Decl. ¶ 20.

Bankruptcy courts in similar mass tort chapter 11 cases—including bankruptcy courts in this District—have issued temporary restraining orders enjoining litigation as to third parties to avoid any immediate and irreparable harm to the debtor or its estate. See, e.g., In re Aldrich Pump LLC, No. 20-30608 (JCW), Adv. Pro. 20-3041 (JCW) (Bankr. W.D.N.C. June 25, 2020); In re DBMP LLC, No. 20-30080 (JCW), Adv. Pro. No. 20-3004 (JCW) (Bankr. Jan. 29, 2020); In re Bestwall LLC, No. 17-31795 (LTB), Adv. No. 17-03105 (LTB) (Bankr. W.D.N.C. Nov. 8, 2017); In re Kaiser Gypsum Co., No. 16-31602 (JCW), Adv. No. 16-03313 (JCW) (Bankr. W.D.N.C. Oct. 7, 2016); In re Garlock Sealing Techs., LLC, No. 10-31607 (JCW), Adv. No. 10-03145 (JCW) (Bankr. W.D.N.C. June 7, 2010).[32] Under the circumstances here, as in these other cases, immediate injunctive relief is required to safeguard the Debtor's prospects for a successful reorganization.

Although temporary restraining orders generally are limited to 14 days, before that period expires and for good cause, this Court may extend its order for an additional 14 days. Fed. R. Civ. P. 65(b)(2). The Debtor requests that the Court (a) for good cause, enter a

---

32 See also In re Leslie Controls, Inc., No. 10-12199, Adv. No. 10-51394 (Bankr. D. Del. July 14, 2010); In re Specialty Prods. Holding Corp., No. 10-11780, Adv. No. 10-51085 (Bankr. D. Del. June 4, 2010); In re N. Am. Refractories Co., No. 02-20198, Adv. No. 02-02004 (Bankr. W.D. P.A. Jan. 4, 2002); In re G-I Holdings Inc., No. 01-30135, Adv. No. 01-03013 (Bankr. D.N.J. Jan. 19, 2001).

temporary restraining order extending for the maximum period allowed under Civil Rule 65 — 28 days; and (b) set a hearing on this Motion on or before that date. This will allow more parties in interest to participate in the hearing on the requested relief. Granting such relief also will conserve time and resources for the Court and the Debtor's estate.

CONCLUSION

For the reasons discussed above, the Debtor requests that the Court enter an order declaring that the filing or continued prosecution of the Debtor Talc Claims against any of the Protected Parties while the Chapter 11 Case remains pending violates the automatic stay. The Debtor also respectfully requests that the Court enter an order preliminarily enjoining the filing or continued prosecution of Debtor Talc Claims (on any theory of liability) against any of the Protected Parties while the Debtor's Chapter 11 Case remains pending.[33] A proposed form of order granting the Debtor's request for injunctive or declaratory relief is attached hereto as Exhibit A.

Further, the Debtor respectfully requests that the Court enter an order, substantially in the form attached hereto as Exhibit B, temporarily restraining the Defendants from filing or continuing to prosecute any Debtor Talc Claim against any of the Protected Parties until the Court has had an opportunity to hold a final hearing on the merits.

---

33 This injunction would include, without limitation: (a) the pursuit of discovery from the Protected Parties or their officers, directors, employees or agents; (b) the enforcement of any discovery order against the Protected Parties; (c) further motions practice related to the foregoing and (d) any collection activity on account of a Debtor Talc Claim against any Protected Party or its officers, directors, employees or agents or its respective assets.

Dated: October 21, 2021
Charlotte, North Carolina

Respectfully submitted,

/s/ John R. Miller, Jr.

C. Richard Rayburn, Jr. (NC 6357)
John R. Miller, Jr. (NC 28689)
Matthew L. Tomsic (NC 52431)
RAYBURN COOPER & DURHAM, P.A.
227 West Trade Street, Suite 1200
Charlotte, North Carolina 28202
Telephone: (704) 334-0891
Facsimile: (704) 377-1897
E-mail: rrayburn@rcdlaw.net
jmiller@rcdlaw.net
mtomsic@rcdlaw.net

Gregory M. Gordon (TX Bar No. 08435300)
Dan B. Prieto (TX Bar No. 24048744)
Amanda Rush (TX Bar No. 24079422)
JONES DAY
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
E-mail: gmgordon@jonesday.com
dbprieto@jonesday.com
asrush@jonesday.com
(Admitted *pro hac vice*)

Brad B. Erens (IL Bar No. 06206864)
JONES DAY
77 West Wacker
Chicago, Illinois 60601
Telephone: (312) 782-3939
Facsimile: (312) 782-8585
E-mail: bberens@jonesday.com
(Admitted *pro hac vice*)

PROPOSED ATTORNEYS FOR DEBTOR

CERTIFICATE OF MOVANT'S ATTORNEY PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 65(b)(1)(B) AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 7065

Pursuant to Federal Rule of Civil Procedure 65(b)(1)(B) and Federal Rule of Bankruptcy Procedure 7065, I hereby certify as counsel for movant herein that, for the reasons stated in this Motion and the *Supplemental Declaration of John K. Kim in Support of Debtor's Complaint for Declaratory and Injunctive Relief and Related Motions*, notice should not be required. However, the Debtor will cause copies of this Motion and other papers filed in this adversary proceeding concurrently herewith, except as otherwise set forth in an order entered by this Court, to be sent via e-mail, facsimile, hand delivery or overnight carrier as soon as practicable to known, existing counsel for the Defendants in their respective underlying talc lawsuits, as set forth on Appendix A to the Complaint.

/s/ John R. Miller, Jr.
John R. Miller, Jr.

This is **Exhibit "H"** referred to in the

Affidavit of John K. Kim

sworn before me by video conference
this 16th day of December, 2021

A Commissioner, etc.

Caitlin McIntyre, LSO #72306R

FILED & JUDGMENT ENTERED
Steven T. Salata

November 15 2021

Clerk, U.S. Bankruptcy Court
Western District of North Carolina

J. Craig Whitley
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re	Chapter 11
LTL MANAGEMENT LLC,[1]	Case No. 21-30589 (JCW)
Debtor.	
LTL MANAGEMENT LLC,	
Plaintiff,	
v.	Adv. Pro. No. 21-03032 (JCW)
THOSE PARTIES LISTED ON APPENDIX A TO COMPLAINT and JOHN AND JANE DOES 1-1000,	
Defendants.	

ORDER GRANTING THE DEBTOR'S
REQUEST FOR PRELIMINARY INJUNCTIVE RELIEF

This matter coming before the Court on the *Complaint for Declaratory and Injunctive Relief (I) Declaring That the Automatic Stay Applies to Certain Actions Against*

1 The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

Non-Debtors or (II) Preliminarily Enjoining Such Actions and (III) Granting a Temporary Restraining Order Pending a Final Hearing (the "Complaint") and the *Debtor's Motion for an Order (I) Declaring that the Automatic Stay Applies to Certain Actions Against Non-Debtors or (II) Preliminarily Enjoining Such Actions and (III) Granting a Temporary Restraining Order Pending a Final Hearing* (the "Motion"),[2] both filed by the above-captioned plaintiff and debtor (the "Debtor"); the Court having reviewed and considered (a) the Complaint, (b) the Motion, together with any responses or answers to the Motion or the Complaint, (c) the evidence submitted by the parties and admitted at the hearing held on November 4 and 5, 2021 (the "Hearing"), including declarations, testimony and exhibits filed with the Court or presented at the Hearing; and having heard the arguments of counsel at the Hearing, and having made oral rulings on November 10, 2021, which are incorporated herein as if fully set forth, the Court finds and concludes as follows:

Background, Jurisdiction and Venue

A. For purposes of this Order only, the term "Enjoined Talc Claims" shall mean, collectively, any talc-related claims against the Debtor, including all claims relating in any way to talc or talc-containing materials that formerly were asserted against (or that could have been asserted against) the former Johnson & Johnson Consumer Inc. ("Old JJCI") on any theory of liability (whether direct, derivative, joint and several, successor liability, vicarious liability, fraudulent or voidable transfer or conveyance, alter ego or otherwise). For the avoidance of doubt, Enjoined Talc Claims include, without limitation, all talc personal injury claims and other talc-related claims allocated to the Debtor from Old JJCI in the documents implementing the

[2] Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

2021 Corporate Restructuring. The Enjoined Talc Claims do not include talc-related claims for which the exclusive remedy is provided under workers' compensation statutes and similar laws.

B. The Plaintiff in this adversary proceeding is Debtor LTL Management LLC. The Defendants in this adversary proceeding are those parties listed on Appendix A to the Complaint, as amended [Adv. Pro. Dkt. 60], as well as John and Jane Does 1-1000. The Defendants listed on Appendix A are all named plaintiffs in talc-related lawsuits against the Debtor (or for which the Debtor is responsible or alleged responsible) as of the Petition Date who sought to hold, or may seek to hold, the Protected Parties liable for the Enjoined Talc Claims. The Protected Parties are listed in Appendix B to the Complaint, which is also attached to this Order. Defendants John and Jane Does 1-1000 are prospective plaintiffs who may at any time while the above-captioned chapter 11 case is pending seek to hold the Protected Parties liable for the Enjoined Talc Claims.

C. The Debtor seeks, pursuant to sections 105 and 362 of the Bankruptcy Code, an order prohibiting the Defendants from continuing or commencing against any of the Protected Parties any action or claim asserting, on any theory of liability (whether direct, derivative, joint and several, successor liability, vicarious liability, fraudulent or voidable transfer or conveyance, alter ego or otherwise), any Enjoined Talc Claims.

D. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Pursuant to Bankruptcy Rule 7008, the Debtor has consented to the entry of final orders or a final judgment by this Court in this adversary proceeding although other parties have not consented. Venue for this matter is proper in this District pursuant to 28 U.S.C. § 1409.

Request for Declaratory Relief

E. For the avoidance of doubt, all of the Court's findings and conclusions herein are without prejudice, as set forth in the record, to (i) any further finding by a subsequent court with jurisdiction over this proceeding (the "Presiding Court") that there are direct claims against any of the Protected Parties, other than the Debtor and Old JJCI, which should not be stayed or enjoined, and (ii) the right of any party to challenge on any basis the corporate transactions that created the Debtor.

F. The Court finds and concludes that Enjoined Talc Claims by the Defendants against Old JJCI are actions that are "against the debtor" or that seek to "recover a claim against the debtor" within the meaning of section 362(a)(1) of the Bankruptcy Code.

G. The Court further finds and concludes that Enjoined Talc Claims against Protected Parties asserting fraudulent transfer or voidable transfer or conveyance claims, or alter ego, successor liability, vicarious liability or other theories of recovery through which Defendants would seek to assert Enjoined Talc Claims against a Protected Party, and actions against the Insurers on account of Enjoined Talc Claims, constitute property of the Debtor's estate within the meaning of section 362(a)(3) of the Bankruptcy Code.

H. The Court further finds and concludes that Enjoined Talc Claims by the Defendants against the Protected Parties are inherently intertwined with talc-related claims against the Debtor. Therefore, application or extension of the automatic stay of section 362 of the Bankruptcy Code to Enjoined Talc Claims by the Defendants against the Protected Parties is warranted because those actions or claims are "against the debtor" or seek "to recover a claim against the debtor" within the meaning of section 362(a)(l) of the Bankruptcy Code.

I. The legal and factual bases set forth in the Complaint, the Motion, and the evidence and argument presented at the Hearing establish just cause for the relief granted herein.

Request for Preliminary Injunction

J. The Court finds that the Debtor has satisfied the four-prong test for the issuance of a preliminary injunction applied in the Fourth Circuit.

K. *Likelihood of Success on the Merits.* There is a reasonable likelihood that the Debtor will succeed on the merits by successfully reorganizing in chapter 11, including by confirming a plan that will establish a trust pursuant to sections 105 and/or 524(g) of the Bankruptcy Code to resolve the Debtor Talc Claims. The Debtor maintains that it has filed its chapter 11 case (the "Chapter 11 Case") in good faith, and it intends to engage in good-faith negotiations with representatives for current and future claimants regarding a plan of reorganization. The Debtor has sufficient resources to fund the costs of the Chapter 11 Case and implement a plan of reorganization that includes a trust pursuant to sections 105 and/or 524(g).

L. *Irreparable Injury.* Failure to enjoin prosecution of the Debtor Talc Claims in the tort system would cause irreparable injury to the Debtor and defeat the purpose of the Chapter 11 Case. Without the injunctive relief sought herein, the Debtor would suffer the following irreparable harm:

i) Recoveries against the Protected Parties could trigger the Debtor's indemnification obligations, reduce available insurance, and have the effect of fixing talc-related claims against the Debtor outside of the Chapter 11 Case;

ii) Under the doctrines of collateral estoppel and res judicata, the resolution of issues in litigation of Debtor Talc Claims against New JJCI, J&J or other Protected Parties could bind the Debtor;

iii) Statements, testimony and other evidence generated in litigation of Debtor Talc Claims against the

Protected Parties could be used to try to establish the Debtor's own liability for the exact same talc-related claims; and

iv) As a result of the foregoing, the Debtor would be compelled to actively monitor, participate in and defend litigation of Debtor Talc Claims against the Protected Parties, and key personnel would be diverted from assisting the Debtor in achieving its reorganization goals.

M. *Balance of the Harms.* The balance of harms supports granting the preliminary injunction on account of the following factors:

i) The purpose of the Debtor's Chapter 11 Case would be defeated if the litigation of Debtor Talc Claims were allowed to proceed against the Protected Parties;

ii) Failure to grant injunctive relief would cause irreparable harm to the Debtor and its estate, as described in paragraph K, above;

iii) An injunction will not necessarily harm the Defendants or their efforts to obtain compensation for their claims.

a) First, nothing about the injunction in this case would prohibit the Defendants from continuing to proceed against, and collecting from, any other alleged tortfeasors in state court (other than the Protected Parties); and

b) In addition, the injunction will ensure that the benefits of a complete and equitable resolution of talc-related claims against the Debtor flow to all claimants. Ultimately, the Chapter 11 Case should provide both existing and future claimants with an efficient and expedited means by which to address their claims through a trust; and

iv) Delay, in and of itself, is insufficient to overcome irreparable harm caused to the Debtor and its estate.

N. *Public Interest.* The public interest lies with the Debtor completing its reorganization process and resolving the Debtor Talc Claims in a uniform and equitable manner.

Based on these findings and conclusions and the findings and conclusions of the Court set forth on the record at the Hearing, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a preliminary basis to the extent set forth herein.

2. The Defendants are prohibited and enjoined, pursuant to sections 105 and 362 of the Bankruptcy Code, from commencing or continuing to prosecute any Enjoined Talc Claim against any of the Protected Parties, on any theory of liability, whether direct, derivative, joint and several, successor liability, vicarious liability, fraudulent or voidable transfer or conveyance, alter ego or otherwise, for the period this Order is effective pursuant to paragraph 4, below. This injunction includes, without limitation: (a) the pursuit of discovery from the Protected Parties or their officers, directors, employees or agents; (b) the enforcement of any discovery order against the Protected Parties; (c) further motions practice related to the foregoing; and (d) any collection activity on account of an Enjoined Talc Claim against any Protected Party or its officers, directors, employees or agents or its respective assets.

3. In addition, and without limiting the foregoing, the Court finds and declares that the commencement or continued prosecution of any Enjoined Talc Claim by any Defendant against any of the Protected Parties, including the actions listed in the last sentence of paragraph 2, above, would violate the automatic stay imposed by sections 362(a)(l) and 362(a)(3) of the Bankruptcy Code and therefore are prohibited for the period this Order is effective pursuant to paragraph 4 below.

4. This Order is not intended to bind a subsequent Presiding Court. The injunction and the Court's interim stay ruling herein shall expire on the date that is 60 days after

the entry of this Order (the "Termination Date"), unless modified or extended by an order of the Presiding Court.

5. This Order is entered without prejudice to and nothing in this Order shall in any way limit any: (i) statutory committee appointed in this chapter 11 case; or (ii) party-in-interest to this chapter 11 case from: (x) seeking or obtaining discovery under Rules 2004 and 9014 of the Federal Rules of Bankruptcy Procedure and such other portions of the Federal Rules of Civil Procedure that the Presiding Court directs against any entity including the Debtor and the Protected Parties, or any entity, including the Debtor or any Protected Party, from objecting to such efforts; (y) seeking and obtaining standing to pursue any estate cause of action against any person or entity, including any Protected Party; or (z) seeking to lift, modify or terminate the stay or this injunction upon a request to the Presiding Court. This Order is entered without prejudice to the Debtor's right to request that the Presiding Court extend this Order to include other entities or persons not previously identified in Appendix A or Appendix B to the Complaint. In the event that the Debtor seeks to supplement either Appendix A or Appendix B, the Debtor shall file with the Presiding Court and serve a notice, together with a proposed order, setting forth any such modifications to Appendix A or Appendix B. The burden of proof for any modification of Appendix A or Appendix B is not affected by this Order. Parties shall have 14 days from the date of service of the notice to object to the modification(s) to Appendix A or Appendix B, and the Debtor shall have 7 days from the service of such objection to file and serve a response. Absent a timely objection, the Debtor's proposed modifications to Appendix A or Appendix B shall be approved by order of the Presiding Court without the necessity of a hearing. For the avoidance of doubt, the inclusion of a talc-related claim on Appendix A is not an

admission that such Defendant holds a currently pending claim against either the Debtor or the Protected Parties.

6. Notwithstanding anything to the contrary in this Order, Imerys Talc America, Inc. and its affiliates (collectively, the "Imerys Entities") or Cyprus Mines Corporation and its affiliates (collectively, the "Cyprus Entities") are not Defendants in this proceeding. The relief granted herein shall not apply to the Imerys Entities or the Cyprus Entities, and the findings of fact and conclusions of law set forth in this Order shall not bind the Imerys Entities or the Cyprus Entities. The right of the Debtor to seek to enjoin the Imerys Entities or the Cyprus Entities, and the right of the Imerys Entities or Cyprus Entities to oppose such relief, are hereby preserved in all respects.

7. Notwithstanding anything to the contrary in this Order, governmental units (as defined under section 101 of the Bankruptcy Code) are not Defendants in this proceeding. The relief granted herein, including any relief granted under this Order under section 105 of the Bankruptcy Code, shall not apply to restrict or enlarge the rights of the Debtor or any governmental unit under applicable bankruptcy law and all such rights are hereby preserved.

8. Any party subject to this Order may seek relief from any of the provisions of this Order for cause shown. This Order is without prejudice to the Debtor's or others' rights to seek relief pursuant to section 362 of the Bankruptcy Code.

9. Notwithstanding anything to the contrary in this Order, any party asserting Enjoined Talc Claims, without leave of the Presiding Court, may take reasonable steps to perpetuate the testimony of any person subject to this Order who is not expected to survive the duration of this Order or who otherwise is expected to be unable to provide testimony if such testimony is not perpetuated during the duration of this Order. Notice shall be provided to the

Debtor by notifying counsel for the Debtor of the perpetuation of such testimony. The Debtor shall have the right to object to the notice on any grounds it would have if it were a party to the underlying proceeding and not subject to the terms of this preliminary injunction, and the Debtor may raise any such objection with the Presiding Court, except that the Debtor, Old JJCI and J&J waive objecting to the use of such testimony based on lack of notice or lack of opportunity to cross-examine. The use of such testimony in any appropriate jurisdiction shall be subject to the applicable procedural and evidentiary rules of such jurisdiction. All parties reserve and do not waive any and all objections with respect to such testimony. Defendants or other individuals asserting Enjoined Talc Claims may not seek to perpetuate the testimony of representatives, including directors, officers, employees and agents of the Debtor or the Protected Parties without the consent of the Debtor or an order of the Presiding Court. Notwithstanding the forgoing, parties in lawsuits pending in the MDL who wish to perpetuate the testimony of any person subject to this Order who is not expected to survive the duration of this Order or who otherwise is expected to be unable to provide testimony if it is not perpetuated during the duration of this Order shall comply with the process outlined in the In Extremis Deposition Protocol entered on January 23, 2017 in the MDL.

10. Pursuant to Bankruptcy Rule 7065, the Debtor is relieved from posting any security in connection with this Order pursuant to Civil Rule 65(c).

11. The deadline to file any answer to the Complaint is tolled indefinitely subject to an order of the Presiding Court.

12. This Order shall be immediately effective and enforceable upon its entry.

13. In accordance with section 108(c) of the Bankruptcy Code, this Order shall toll, as of November 10, 2021, any applicable non-bankruptcy law, any order entered in a

non-bankruptcy proceeding, or any agreement that fixes a period under which an enjoined Defendant is required to commence or continue a civil action in a court other than this Court or the Presiding Court on any Debtor Talc Claim asserted against the Debtor or any of the Protected Parties until the later of: (a) the end of such period, including any suspension of such period occurring on or after the commencement of the case; or (b) 30 days after the termination or expiration of the preliminary injunction issued by this Order.

14. The automatic stay shall no longer be lifted as provided in paragraph 9 of the *Order Regarding Debtor's Motions for an Order (I) Declaring the Automatic Stay Applies to Certain Actions Against Non-Debtors or (II) Preliminarily Enjoining Such Actions, and (III) Granting a Temporary Restraining Order Pending a Final Hearing* [Adv. Pro. Dkt. 28], and instead shall be lifted solely to permit the applicable Defendants to proceed with and complete the following appeals, in each of which surety bonds have been issued in connection with the appeal: (a) Leavitt: (b) Olson; (c) Schmitz; (d) Barden (as to Barden, Etheridge, McNeill and Ronning); (e) Soskin; and (f) Prudencio.

15. The personal injury claims (including pain and suffering damages) of the plaintiff in the Vanklive lawsuit shall be preserved even if the plaintiff subsequently dies (with no impairment of such plaintiff's personal injury damages, including pain and suffering damages). The Debtor, JJCI, and J&J specifically consent and agree to this provision.

16. The Debtor shall cause a copy of this Order to be served via e-mail, facsimile, hand delivery or overnight carrier on counsel for the known Defendants within three business days of its entry on the Court's docket.

17. This Order shall be promptly filed in the Clerk of Court's office and entered into the record.

18. The Presiding Court shall have exclusive jurisdiction over this Order and any and all matters arising from or relating to the implementation, interpretation or enforcement of this Order.

This Order has been signed electronically.
The Judge's signature and Court's seal appear
at the top of the Order.

United States Bankruptcy Court

This is **Exhibit "I"** referred to in the

Affidavit of John K. Kim

sworn before me by video conference
this 16th day of December, 2021

A Commissioner, etc.

Caitlin McIntyre, LSO #72306R

FILED & JUDGMENT ENTERED
Steven T. Salata

November 16 2021

Clerk, U.S. Bankruptcy Court
Western District of North Carolina

J. Craig Whitley
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re:	)	
	)	
LTL Management LLC,	)	Case No. 21-30589
	)	Chapter 11
Debtor.	)	
	)	

ORDER TRANSFERRING CASE TO THE DISTRICT OF NEW JERSEY

THIS MATTER is before the Court on the Motion of the Bankruptcy Administrator to Transfer Venue of Bankruptcy Case Pursuant to 28 U.S.C. § 1412 and Fed. R. Bankr. P. 1014(a)(1) in the Interest of Justice or for the Convenience of Parties (the "BA's Motion"), the Court's October 26, 2021, Order to Appear and Show Cause Why Venue Should Not Be Transferred to Another District (the "Show Cause Order"), and similar motions to transfer venue filed by certain law firms on behalf of ovarian and mesothelioma cancer claimants. For the reasons set forth below, the Court orders the transfer of venue to the District of New Jersey.

Background and Procedural History

The Debtor commenced this Chapter 11 case on October 14, 2020. Just two days before filing this case, the Debtor was first created through a corporate restructuring. As a result of this restructuring, the former Johnson & Johnson Consumer Inc. ("Old JJCI"), a subsidiary of Johnson & Johnson ("J&J"), ceased to exist and two new corporate entitles were created. The first is the Debtor, which initially was formed as a Texas limited liability company, and then converted into a North Carolina limited liability company. The second entity was also initially formed as a Texas limited liability company, but then it was merged into J&J and changed its name to Johnson & Johnson Consumer Inc. ("New JJCI"). The Debtor maintains this restructuring was undertaken to enable the Debtor to fully resolve talc-related claims through a chapter 11 reorganization without subjecting the entire J&J enterprise to a bankruptcy proceeding.

Through the restructuring, the Debtor received certain limited assets from Old JJCI, together with all of Old JJCI's liabilities arising from talc-related claims. Among the limited assets the Debtor owns are a bank account containing approximately $6 million in cash, Old JJCI's rights as payee under a funding agreement, and membership interests in Royalty A&M, a North Carolina limited liability company formed just prior to the Debtor. The Debtor also has access to various insurance receivables that potentially cover talc-related liabilities.

The Debtor operates out of New Jersey. In its voluntary petition, the Debtor lists its principal place of business and mailing address as 501 George St., New Brunswick, NJ 08933. The employees of the Debtor are all employees of Johnson & Johnson Services, Inc. ("JJS"), a New Jersey corporation, that have been seconded to the Debtor. These employees all continue to work in New Jersey. JJS further provides the Debtor with, among other things, accounting services, human resources, tax support, and most notably, office space and other facilities located in New Jersey. The Debtor's assets involve no operation of a business in North Carolina.

The Debtor's only liabilities are Old JJCI's liabilities arising from talc-related claims. As of the petition date, approximately 38,000 ovarian cancer cases were pending against the Debtor as well as J&J, including approximately 35,000 cases pending in a federal multi-district litigation (the "MDL") in front of the Honorable Freda L. Wolfson. In re: Johnson & Johnson Talcum Power Products Marketing, Sales Practices and Products Liability Litigation, Case MDL No. 2738, in the U.S. District Court for the District of New Jersey, Case No. 16-02738. In addition to the ovarian claims, more than 430 mesothelioma cases were pending against the Debtor as of the petition date across the U.S., with cases pending in New Jersey, California, Illinois, Missouri, New York, Ohio and others.

Other interested parties in this case are currently involved in pending proceedings with the Debtor's ultimate parent, J&J, and Old JJCI. Certain of the Debtor's third-party insurers filed a lawsuit against Old JJCI and J&J in the New Jersey Superior Court of Middlesex County in May 2019 (Docket No. MID-L-003563-19) (the "New Jersey Coverage Action"). The insurers seek declaratory judgment regarding their respective obligations under each of their insurance policies. Moreover, Imerys Talc America Inc., and its affiliates ("Imerys") and Cyprus Mines Corporation ("Cyprus") are in separate, factually intertwined bankruptcy cases currently pending in the District of Delaware. Imerys and Cyprus each filed adversary proceedings against Old JJCI and J&J in their respective bankruptcy cases seeking declaratory judgments related to indemnity.

The Bankruptcy Administrator ("BA") filed her Motion to transfer this case to the District of New Jersey on October 25, 2021. The Court, considering the apparent lack of a connection to this judicial district as well as its own judicial resources, entered the Show Cause Order on October 26, 2021, requiring the Debtor to appear on November 10, 2021, and show cause why this case should not be transferred to a different venue. The Show Cause Order permitted other parties to file their own motions and responses and set a hearing on November 10, 2021.

Other law firms and interested parties filed motions seeking to transfer venue to either the District of New Jersey or the District of Delaware. The Debtor filed an objection on November 5, 2021, seeking to keep venue in this district. On November 8, 2021, the BA docketed a letter from the Official Committee of the Talc Claimants (the "TCC"). The letter informed the Court that the committee unanimously supports the transfer of venue to the District of New Jersey.[1]

Attorneys for the Debtor and J&J; attorneys for the Plaintiffs' Steering Committee (the "PSC") in the MDL, certain talc claimants and their law firms, certain insurers of the Debtor, Imerys, and Cyprus; and the BA were among the parties who appeared at the November 10 hearing. At that hearing, the BA argued in favor of transferring the case to the District of New Jersey. The PSC, certain mesothelioma claimants, and certain ovarian cancer claimants joined in her argument. Two law firms on behalf of certain claimants argued in favor of transferring the case to the District of Delaware. Notably, the attorney for Imerys took no position as to whether the case should be

[1] The TCC could not retain counsel in time to respond to the Show Cause Order.

transferred but argued against transferring the case to Delaware. The Debtor continued to oppose any transfer of the case.

Discussion

Venue is proper for a bankruptcy case in any judicial district where the Debtor's "domicile, residence, principal place of business . . . or principal assets" have been located for "a longer portion" of the 180 days prior to the petition date. 28 U.S.C. § 1408(1). Venue is proper in this judicial district since the Debtor was a North Carolina entity on the filing date, if only for two days. Even if venue is proper, the court may transfer venue to another district "in the interest of justice or for the convenience of the parties." 28 U.S.C. § 1412.[2] "The moving party bears the burden of showing by a preponderance of the evidence that either the interests of justice or the convenience of the parties would be served by a transfer of the case." In re Grand Dakota Partners, LLC, 573 B.R. 197, 201 (Bankr. W.D.N.C. 2017) (citing In re Lakota Canyon Ranch Dev., LLC, No. 11-03739-8, 2011 WL 5909630, at *2–3 (Bankr. E.D.N.C. June 21, 2011)). Ultimately, the decision to transfer venue is within the sound discretion of the court based on "a case-by-case analysis of the facts underlying each particular case." Grand Dakota Partners, LCC, 573 B.R. at 201 (citation omitted). "Substantial weight and deference" is given to a debtor's choice of forum. In re Bestwall LLC, 605 B.R. 43, 51 (Bankr. W.D.N.C. 2019). As a result, a court does not lightly transfer venue, and it is highly unusual to do so; however, this case is highly unusual. Both the convenience of the parties and the interests of justice warrant transfer of this case to the District of New Jersey.

I. Convenience of the Parties

In determining whether to transfer venue for the convenience of the parties, courts use six factors: "(1) the proximity of creditors of every kind to the court; (2) the proximity of the Debtor to the court; (3) the proximity of the witnesses necessary to the administration of the estate; (4) the location of the assets; (5) the economic administration of the estate; and (6) the necessity for ancillary administration if a liquidation should occur." Id. at 53 (quoting Lakota Canyon Ranch

[2] Made applicable by Fed. R. Bankr. P. 1014(a)(1).

Dev., LLC, 2011 WL 5909630, at *3). The economic administration of the estate is given the most weight in determining whether to transfer venue. See Bestwall LLC, 605 B.R. at 53.

Here, the first and fifth factors both weigh in favor of transferring this case to the District of New Jersey. Substantial litigation in another district supports the transfer of the case to that district. See In re Asset Resol. LLC, No. 09-16142 (AJG), 2009 WL 4505944, at *3 (Bankr. S.D.N.Y. Nov. 24, 2009) ("For purposes of efficiency and judicial economy, the substantial learning curve that the Nevada courts have already developed in presiding over these on-going disputes . . . weighs in favor of transferring venue to Nevada."). The overwhelming number of ovarian cancer cases against the Debtor—approximately 35,000 of approximately 38,000—are pending in the MDL in New Jersey. Plaintiffs in the MDL are not necessarily located in New Jersey, but the United States Judicial Panel on Multidistrict Litigation (the "Panel") chose the District of New Jersey as the appropriate venue. The Panel did this at the request of Old JJCI and J&J. The presiding judge, Judge Wolfson, the attorneys in the MDL, and other interested parties have now devoted significant time and resources over the past five years litigating in this forum.

The Debtor asserts that the MDL does not alter the fact that the claimants reside in states throughout the country, and, ultimately, most of these cases will be resolved in each plaintiff's home state. This assertion ignores that to date, the cases are still currently pending in New Jersey, and the plaintiffs and their professionals are accustomed to appearing in New Jersey, making this venue preferrable to the vast majority of the creditors. The Panel chose New Jersey as the forum for the MDL because it was convenient and accessible for all the parties involved.

Furthermore, the MDL presents a unique opportunity to help work towards an estimation of present and future claims that could take place in any future bankruptcy proceeding. Talc claims, unlike asbestos claims, are a relatively new type of claim in this country. The verdict and settlement history only goes back a few years as opposed to decades. As a result, any estimation proceeding that could take place in a bankruptcy lacks a litigation history to help accurately estimate what is already tens of thousands of claims. Absent a bankruptcy, upon completion of the MDL's pre-trial process, six cases would be tried before the rest of the cases are sent back to their respective courts. Although far from a final ruling in other courts, those cases could serve as a template for other courts to help efficiently try their cases and could help resolve important issues. To date, the MDL has resolved important issues and gained an understanding of potential liability, causation, defenses, and settlement discussions. Although presently stayed, the MDL should be accounted for during the bankruptcy case and, it could even be joined with the bankruptcy case to help efficiently resolve thousands of talc related claims and aid in any future estimation proceeding. Therefore, the administration of this estate is best served by transferring this case to the District of New Jersey.

The District of New Jersey is convenient for other interested parties as well. Cyprus and Imerys are involved in bankruptcy proceedings in Delaware, a state that borders New Jersey. Furthermore, the New Jersey Coverage Action, which impacts certain insurance companies with an interest in this case, remains pending in Middlesex County, New Jersey.

The second, third, and fourth factors all further weigh in favor of transferring this case to the District of New Jersey based on the Debtor's continuing connections to that district. A New Jersey address is listed as the Debtor's headquarters and as the Debtor's mailing address. The employees seconded to the Debtor, and most of the potential witnesses for the Debtor, including the Debtor's Chief Legal Officer, continue to work in New Jersey. New JJCI and J&J are also headquartered in New Jersey. In contrast to New Jersey, the Debtor's connections to North Carolina are limited. The only physical asset located in North Carolina is a bank account with $6 million. The Debtor owns an interest in a North Carolina limited liability company, Royalty A&M, but this asset is intangible and was formed on the eve of the bankruptcy case. Royalty A&M, along with all the Debtor's assets, were all set up primarily for the purpose of filing bankruptcy in this district, and the assets are not involved in any further business in North Carolina.

In arguing against a transfer of venue, the Debtor primarily cites to two prior rulings of this Court—Bestwall and Kaiser. Bestwall LLC, 605 B.R. 43; In re Kaiser Gypsum Co., Inc., No. 16-31602 (Bankr. W.D.N.C. Jan. 30, 2017) (Order Denying Motion of Certain Kaiser Gypsum Claimants to Transfer Chapter 11 Cases to the United States District Court for the Western District of Washington), ECF No. 348. Both cases are distinguishable. In Kaiser, the movants sought to transfer the case to the District of Washington. Kaiser Gypsum was a wholly owned subsidiary of

HPCI that became a Washington corporation in or about 1965. Kaiser existed solely to manage its legacy asbestos and environmental liabilities and had no material assets, active employees, or ongoing business operations. In 2016, Kaiser Gypsum reincorporated in North Carolina and filed for bankruptcy. We held that no other potential venue was inherently more favorable. Kaiser Order at 3. Kaiser's listed address was in Texas, its parent was domiciled in Arizona, and all the interested parties and claimants were scattered throughout the country.

Here, there is a venue preferrable to all parties. The Debtor's parent company and key witnesses are located in New Jersey, and most of the interested parties and claimants are currently involved in proceedings pending in the District of New Jersey.

The facts in Bestwall closely track this case but are still distinguishable. Like the Debtor in this case, Bestwall was first created through a Texas divisional merger and incorporated in North Carolina shortly before filing for bankruptuptcy. In Bestwall, The Official Committee of Asbestos Claimants (the "ACC") sought transfer to the District of Delaware. Bestwall LLC, 605 B.R. at 53. None of Bestwall's representatives were located in Delaware, and the majority of the creditors were not clustered around Delaware. Id. In addition, Bestwall's headquarters and its predecessor were headquartered in Atlanta, Georgia, a city closer to this district than to Delaware. Id. Thus, Judge Beyer could not conclude a transfer of venue was appropriate. Id. Here, in contrast to Bestwall, most of the parties have strong connections to New Jersey, and it is the most convenient venue.

There is another important difference between this case and Bestwall. In Bestwall, the debtor first filed the case in November 2017, the ACC filed its motion to transfer venue in August 2018. The Court heard arguments in November 2018 and January 2019 and entered its final order denying the ACC's motion in July 2019. Nearly two years passed from the filing of the case to the order denying the venue transfer. In the meantime, the Court invested significant time in the case. Transferring the case would have meant additional costs for a new judge incurred in connection with learning the facts and relevant law of the case. This case is less than a month old, and the additional learning curve costs for a new judge are not as great.

The Debtor references three other mass tort cases all currently pending in this district: In re DBMP LLC, No. 20-30080 (Bankr. W.D.N.C. filed Jan. 23, 2020); In re Aldrich Pump LLC, No. 20-30608 (Bankr. W.D.N.C. filed June 18, 2020); and In re Murray Boiler LLC, No. 20-306069 (Bankr. W.D.N.C. filed June 18, 2020). However, no party filed a motion to transfer venue in these cases. In DBMP, that lack of a motion was likely due to the same circumstances existent in Bestwall. DBMP's predecessor existed in Pennsylvania, its ultimate parent resided in Paris, France, and the claimants were located throughout the country. As to Aldrich and Murray, the debtors' predecessors were headquartered in Davidson, North Carolina, which is in this judicial district. This is was the most appropriate venue for those cases. Therefore, all the prior mass tort cases the Debtor cites as support for denying a motion to transfer venue are factually distinct.

In summary, the Debtor's strong connections to New Jersey; New Jersey's proximity to relevant witnesses, creditors and other interested parties; and the MDL's potential to aid in any possible administration of the estate support transferring venue to the District of New Jersey for the convenience of the parties.

II. Interest of Justice

The interest of justice standard is "a broad and flexible standard that is applied based on the facts and circumstances of each case." In re Enron Corp., 284 B.R. 376, 403 (Bankr. S.D.N.Y. 2002). In evaluating the interest of justice, courts consider whether transferring venue promotes "the efficient administration of the bankruptcy estate, judicial economy, timeliness and fairness." Bestwall LLC, 605 B.R. at 51 (quoting In re Manville Forest Prods. Corp., 896 F.2d 1384, 1391 (2d Cir. 1990)). "As a practical matter . . . if the convenience of the parties and witnesses will be served by transfer, it usually follows that justice will also be served by transfer." Grand Dakota Partners, LLC, 573 B.R. at 205 (quoting In re Pinehaven Assoc., 132 B.R. 982, 990 (Bankr. E.D.N.Y. 1991)). Here, as previously laid out, the convenience of the parties is served by a transfer of venue to the District of New Jersey.

Whether the Debtor is forum shopping is also a consideration. See In re Patriot Coal Corp., 482 B.R. 718, 743 (Bankr. S.D.N.Y. 2012). In Patriot Coal Corp., the debtor created two new entities and incorporated them in the State of New York just weeks prior to the petition date, allowing 97 other affiliates across the country to file for bankruptcy in the Southern District of New York pursuant to 28 U.S.C. § 1408(2). Id. at 726–28. The court held that:

> Notwithstanding the absence of bad faith on the part of the Debtors and the deference to which the Debtors' venue choice is entitled . . . the Debtors' purposeful creation of the venue-predicate affiliates in New York on the eve of filing must be considered in the "interest of justice" analysis set forth in section 1412.

Id. at 743. The court in Patriot Coal further stated that it could not "allow the Debtors' venue choice to stand, as to do so would elevate form over substance in [a] way that would be an affront to the purpose of the bankruptcy venue statute and the integrity of the bankruptcy system." Id. at 744.

This case is analogous to Patriot Coal, although instead of using of using a subsidiary to serve as the lead filer, the Debtor's predecessor underwent a Texas divisive merger, resulting in the formation of the Debtor. Upon creation, the Debtor immediately converted its state of incorporation to North Carolina—a stratagem known as the "Texas Two Step"—as a predicate to venue in this District. As in Patriot Coal, this stratagem achieved literal compliance with section 1408, and no party has presented evidence of a bad faith filing.[3] However, the Debtor's undertaking "created facts in order to satisfy the statute." Id. at 746.

The Debtor contends that this case is distinguishable from Patriot Coal since, in this case, the Debtor is not a shell company and has substantial assets. The Debtor may have assets, but they were all created to effectuate a bankruptcy filing and have no other business purpose. The Debtor compares these cases to Bestwall and Kaiser, but as previously noted, these cases are different, particularly considering the Debtor only existed two days in North Carolina before filing bankruptcy. Such a short existence indicates that the Debtor subjected itself to the laws of North Carolina purely for the purpose of filing bankruptcy. Setting up a company with the sole intent of filing bankruptcy in a certain district cannot be "the thing which the [venue] statute intended." Id. at 745. Even without any evidence of bad faith, courts are not required to "condone every strategy devised by clever lawyers to outsmart statutory purpose." Patriot Coal Corp., 482 B.R. at 745.

---

[3] To date, no party has filed a motion to dismiss. Thus, the court has never weighed in as to whether this case is a bad faith filing.

Here, the Debtor is trying to manufacture venue and is attempting to outsmart the purpose of the statute. In response to this argument, the Debtor contends that the claimants are forum shopping themselves. The Debtor attests that the claimants are only seeking transfer of this case to, according to the Debtor's belief of the claimant's perception, a circuit with a more friendly dismissal standard. Any forum shopping by the parties weighs against them both in looking at the factors, but in this case, the Debtor is not just forum shopping; the Debtor is manufacturing forum and creating a venue to file bankruptcy. Thus, the purposeful creation of venue, although not dispositive by itself, must be considered in the interest of justice analysis. The more dispositive factor, however, remains that that there is a more appropriate venue for the administration of the estate.

The Debtor further argues that for the benefit of all parties and in the interest of justice, this case should remain in this district given this Court's experience with mass tort cases and divisional mergers. It is not an accident that this Court has this experience. Rather, the Debtor's actions indicate a preference to file bankruptcy in this district, likely due to the Fourth Circuit's two-prong dismissal standard[4] and Judge Hodges's estimation ruling in the Garlock case. See In re Garlock Sealing Techs., LLC., et al., 504 B.R. 71 (Bankr. W.D.N.C. 2014).

This case mirrors four other bankruptcy cases filed in this district: Bestwall, DBMP, Aldrich Pump, and Murray Boiler. In each of these cases, a corporation with substantial asbestos liability hired the law firm of Jones Day, the corporation used the "Texas Two Step" to create a North Carolina entity with limited assets and all or most of its predecessors' asbestos liability, and the North Carolina entity filed for bankruptcy in this district shortly after its creation. See In re DBMP LLC, No. 20-30080, 2021 WL 3552350, at *16 (Bankr. W.D.N.C. Aug. 11, 2021). The first time any debtor in the country used this procedure was in Bestwall in 2017. Thereafter, every debtor using the Texas Two Step filed for bankruptcy in this district. As a result, any superior experience and purported expertise this Court may possess as to divisional mergers exists only because it is the only court that has ever seen these issues.

[4] In the Fourth Circuit, a court can dismiss a Chapter 11 filing as a bad faith filing when the bankruptcy reorganization is both (i) objectively futile *and* (ii) filed in subjective bad faith. Carolin Corp. v. Miller, 886 F.2d 693, 700-01 (4th Cir. 1989).

There is no reason this Court should be the only bankruptcy court to have the opportunity to weigh in on these novel legal issues, especially considering that the "Texas Two Step" tactic is being employed by national corporations and impacts tens of thousands of present and future claimants across the country. Moreover, the New Jersey Bankruptcy Court has significant mass tort experience, having sat on at least two cases—In re Congoleum Corp., case no. 20-18488 filed in 2007 and In re G-I Holdings, Inc., case no. 01-30135 filed in 2001. Both of the judges who presided over those cases still sit on that bench.

Finally, this Court must consider its own docket as it affects judicial economy when evaluating whether to transfer venue. There are currently five mass tort bankruptcy cases pending in this district, including the four involving the "Texas Two Step." This is a two-judge district with limited resources to devote to these highly complex cases. It is possible to augment judicial resources using a visiting judge, but that judge would likely be assigned over one of these asbestos cases. Thus, any efficiencies in keeping this case here in light of this court's experience would be lost. Therefore, this case may as well be heard in the more appropriate venue.

In sum, transferring this case to the District of New Jersey is in the interest of justice and will promote an effective administration of the estate, fairness, and judicial economy.

CONCLUSION

In conclusion, pursuant to 28 U.S.C. § 1412 and Fed. R. Bankr. P 1014(a), for the convenience of the parties and in the interest of justice, this Court transfers this case to the U.S. District Court for the District of New Jersey, potentially to be referenced to the Bankruptcy Court, should that Court deem it appropriate.

SO ORDERED.

This Order has been signed electronically. The Judge's signature and Court's seal appear at the top of the Order.

United States Bankruptcy Court

UNITED STATES BANKRUPTCY COURT
Western District of North Carolina
Charlotte Division

Case No. 21−30589
Chapter 11

In Re: Debtor(s) (name(s) used in the last 8 years, including married, maiden, trade, and address):
LTL Management LLC
fka Chenango One LLC
501 George Street
New Brunswick, NJ 08933
Social Security No.:
Debtor EIN:
87−3056622

COURT'S NOTICE OF TRANSFER OF CASE

NOTICE IS HEREBY GIVEN that an Order transferring this case was entered on November 16, 2021..

NOTICE IS FURTHER GIVEN that this case is transferred to the Bankruptcy Court for the District of New Jersey.

Dated: November 16, 2021

Steven T. Salata
Clerk of Court

Electronically filed and signed (11/16/21)

This is **Exhibit "J"** referred to in the

Affidavit of John K. Kim

sworn before me by video conference
this 16th day of December, 2021

A Commissioner, etc.

Caitlin McIntyre, LSO #72306R

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

WOLLMUTH MAHER & DEUTSCH LLP
Paul R. DeFilippo, Esq.
500 Fifth Avenue
New York, New York 10110
Telephone: (212) 382-3300
Facsimile: (212) 382-0050
pdefilippo@wmd-law.com

JONES DAY
Gregory M. Gordon, Esq.
Brad B. Erens, Esq.
Dan B. Prieto, Esq.
Amanda Rush, Esq.
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
gmgordon@jonesday.com
bberens@jonesday.com
dbprieto@jonesday.com
asrush@jonesday.com
(Admissions *pro hac vice* pending)

PROPOSED ATTORNEYS FOR DEBTOR

In re: LTL MANAGEMENT LLC,[1] Debtor.	Chapter 11 Case No.: 21-30589 (MBK) Judge: Michael B. Kaplan **Hearing Date and Time:** December 15, 2021, at 10:00 a.m.

NOTICE OF DEBTOR'S MOTION PURSUANT TO 11 U.S.C. § 1505 FOR AN ORDER AUTHORIZING IT TO ACT AS FOREIGN REPRESENTATIVE ON BEHALF OF THE DEBTOR'S ESTATE

PLEASE TAKE NOTICE that, on December 15, 2021 at 10:00 a.m. (prevailing Eastern Time) or as soon thereafter as counsel may be heard, LTL Management LLC, the above-captioned debtor (the "Debtor") by and through its proposed counsel, shall move before the Honorable Michael B. Kaplan, United States Bankruptcy Judge, at the United States Bankruptcy

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

Court, Clarkson S. Fisher U.S. Courthouse, 402 East State Street, Trenton, New Jersey 08608, for an order, pursuant to 11 U.S.C. § 1505, authorizing the Debtor to act as a foreign representative on behalf of the Debtor's estate (the "Motion").

PLEASE TAKE FURTHER NOTICE that, in support of the Motion, the Debtor will rely upon the certification and memorandum of law submitted herewith pursuant to D.N.J. LBR 9013-1(a).

PLEASE TAKE FURTHER NOTICE that, pursuant to the Court's direction at the status conference held on November 22, 2021, responsive papers, if any, must be filed with the Clerk of the Bankruptcy Court, Clarkson S. Fisher Courthouse, 402 East State Street, Trenton, New Jersey 08608, and served upon the Debtor's undersigned counsel on or before December 8, 2021.

PLEASE TAKE FURTHER NOTICE that, unless an objection is timely filed and served, the Motion will be deemed uncontested in accordance with D.N.J. LBR 9013-3(d) and the relief may be granted without a hearing.

Dated: November 24, 2021

WOLLMUTH MAHER & DEUTSCH LLP

/s/ Paul R. DeFilippo

Paul R. DeFilippo, Esq.
500 Fifth Avenue
New York, New York 10110
Telephone: (212) 382-3300
Facsimile: (212) 382-0050
pdefilippo@wmd-law.com

JONES DAY
Gregory M. Gordon, Esq.
Brad B. Erens, Esq.
Dan B. Prieto, Esq.
Amanda Rush, Esq.
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
gmgordon@jonesday.com
bberens@jonesday.com
dbprieto@jonesday.com
asrush@jonesday.com
(Admissions *pro hac vice* pending)

PROPOSED ATTORNEYS FOR DEBTOR

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

WOLLMUTH MAHER & DEUTSCH LLP
Paul R. DeFilippo, Esq.
500 Fifth Avenue
New York, New York 10110
Telephone: (212) 382-3300
Facsimile: (212) 382-0050
pdefilippo@wmd-law.com

JONES DAY
Gregory M. Gordon, Esq.
Brad B. Erens, Esq.
Dan B. Prieto, Esq.
Amanda Rush, Esq.
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
gmgordon@jonesday.com
bberens@jonesday.com
dbprieto@jonesday.com
asrush@jonesday.com
(Admissions *pro hac vice* pending)

PROPOSED ATTORNEYS FOR DEBTOR

In re: LTL MANAGEMENT LLC,[1] Debtor.	Chapter 11 Case No.: 21-30589 (MBK) Judge: Michael B. Kaplan **Hearing Date and Time:** December 15, 2021, at 10:00 a.m.

DEBTOR'S MEMORANDUM OF LAW IN SUPPORT OF MOTION PURSUANT TO 11 U.S.C. § 1505 FOR AN ORDER AUTHORIZING IT TO ACT AS FOREIGN REPRESENTATIVE ON BEHALF OF THE DEBTOR'S ESTATE

The above-captioned debtor (the "Debtor") moves the Court for the entry of an order authorizing it to act as the foreign representative on behalf of the Debtor's estate in any judicial or other proceedings in Canada. In support of this Motion, the Debtor incorporates by reference the *Certification of John K. Kim in Support of Debtor's Motion Pursuant to 11 U.S.C.*

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

§ 1505 for an Order Authorizing It to Act as Foreign Representative on Behalf of the Debtor's Estate (the "Kim Certification"), and respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief requested herein are sections 105, 1107 and 1505 of the Bankruptcy Code.

Background

General Background

3. On October 14, 2021 (the "Petition Date"), the Debtor commenced this reorganization case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of North Carolina (the "NC Bankruptcy Court"). On November 16, 2021, the NC Bankruptcy Court entered an order [Dkt. 416] transferring the case to the District of New Jersey, which referred the case to this Court. The Debtor is authorized to continue to manage its property and operate its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. The Debtor is a North Carolina limited liability company. It is the direct parent of Royalty A&M LLC, a North Carolina limited liability company, which manages a portfolio of royalty revenue streams, including some based on third party sales of certain products, and will seek opportunities to acquire or finance additional royalty revenue streams. As of the Petition Date, the Debtor was a defendant in thousands of lawsuits asserting personal injuries allegedly caused by alleged exposure to talc-containing products.

5. A comprehensive description of the Debtor, its history, its assets and liabilities and the events leading to the commencement of this chapter 11 case can be found in the declaration of John K. Kim [Dkt. 5] (the "First Day Declaration"), which was filed on the Petition Date. In addition to the First Day Declaration, the Debtor has filed an Informational Brief [Dkt. 3] to provide additional information about its talc litigation, related costs and plans to address these matters in this chapter 11 case (the "Chapter 11 Case").

6. On November 8, 2021, the NC Bankruptcy Court entered an order [Dkt. 355] appointing an official committee of talc claimants (the "Talc Committee") in the Chapter 11 Case.

7. On November 10, 2021, the NC Bankruptcy Court entered an interim order [Adv. Pro. Dkt. 102] (the "PI Order") declaring that the automatic stay applies to prohibit, and preliminarily enjoining, the commencement or continuation of Enjoined Talc Claims[2] against certain protected parties, which include Old JJCI, the Debtor's non-debtor affiliates, certain indemnified parties and certain insurers (collectively, the "Protected Parties") through January 14, 2021, subject to modification or extension by an order of this Court.

The Canadian Actions

8. The Debtor's predecessor, Old JJCI, and certain of the Protected Parties, including Johnson & Johnson, Johnson & Johnson Inc. ("J&J Canada") and Valeant

[2] "Enjoined Talc Claims" are defined as any talc-related claims against the Debtor, including all claims relating in any way to talc or talc-containing materials that formerly were asserted against (or that could have been asserted against) the former Johnson & Johnson Consumer Inc. ("Old JJCI") on any theory of liability (whether direct, derivative, joint and several, successor liability, vicarious liability, fraudulent or voidable transfer or conveyance, alter ego or otherwise). PI Order ¶ A. Enjoined Talc Claims include, without limitation, all talc personal injury claims and other talc-related claims allocated to the Debtor from Old JJCI in the documents implementing the restructuring that led to the formation of the Debtor. Id. The Enjoined Talc Claims do not include talc-related claims for which the exclusive remedy is provided under workers' compensation statutes and similar laws. Id.

Pharmaceuticals International, Inc., now Bausch Health Companies Inc. (together, "Bausch"), are named defendants in one certified class action, three proposed class actions and one individual action in four Canadian provinces (Alberta, British Columbia, Ontario and Quebec) (collectively, the "Canadian Actions"). See Kim Certification at ¶ 9 (describing the Canadian Actions).

9. The certified class action and the proposed class actions commenced in Alberta, British Columbia, Ontario and Quebec are brought on behalf of classes (or proposed classes) of Canadian individuals who allege injury or damages arising from the use or purchase of talc-containing products manufactured, marketed and/or sold by Old JJCI, Johnson & Johnson, J&J Canada and/or Bausch. See id.

10. The individual action was commenced in British Columbia by an individual who alleges injury arising from the use of talc-containing products manufactured and/or sold by Old JJCI, Johnson & Johnson and/or J&J Canada. See id.

Relief Requested

11. Pursuant to section 1505 of the Bankruptcy Code, the Debtor requests that it be authorized to act as the Foreign Representative (as defined below) on behalf of the Debtor's estate in any judicial or other proceedings in Canada. The Debtor further requests that, as the Foreign Representative, it be expressly authorized to (a) seek recognition of this Chapter 11 Case in Canada, (b) request that the Canadian Court (as defined below) grant comity to the Foreign Representative and the Chapter 11 Case, (c) seek any other appropriate relief from the Canadian Court that is just and proper in furtherance of the protection of the Debtor's estate and (d) consistent with any orders of the Canadian Court, retain and compensate Canadian

professionals on behalf of the Foreign Representative, and pay the costs of the Court-appointed information officer and its counsel, each without further order of this Court.

Appointment as Foreign Representative and Canadian Proceeding

12. The claims at issue in each of the Canadian Actions are Enjoined Talc Claims. Pursuant to the terms of the PI Order, the Debtor has the right to request that this Court extend the PI Order to include other entities or persons, including the plaintiffs in the Canadian Actions, not previously identified in the complaint. PI Order ¶ 5. To ensure that the Chapter 11 Case, the automatic stay of section 362 of the Bankruptcy Code, the PI Order and other orders of the Court are recognized and enforced in Canada, the Debtor seeks appointment as the "foreign representative"[3] on behalf of the Debtor's estate (the "Foreign Representative") in Canada.

13. Upon appointment as the Foreign Representative, the Debtor intends to seek ancillary relief in Canada on behalf of the Debtor's estate pursuant to the Companies' Creditors Arrangement Act (Canada), R.S.C. 1985, c. C-36 as amended (the "CCAA") in the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court"). In the ancillary proceeding (the "Canadian Proceeding"), the Debtor (as Foreign Representative) would request that the Canadian Court recognize the Chapter 11 Case as a "foreign main proceeding" under the applicable provisions of the CCAA in order to, among other things, ensure that the protections of the automatic stay and the PI Order are enforced with respect to the Canadian Actions and so that

---

[3] A "foreign representative" is defined in section 45(1) of the CCAA to mean:

> a person or body, including one appointed on an interim basis, who is authorized, in a foreign proceeding respect of a debtor company, to
>
> > (a) monitor the debtor company's business and financial affairs for the purpose of reorganization; or
> >
> > (b) act as a representative in respect of the foreign proceeding.

such ancillary relief that the Canadian Court may otherwise consider appropriate can be obtained.[4]

14. To commence the Canadian Proceeding, the Debtor requires authority to act as the Foreign Representative. Specifically, section 46 of the CCAA provides:

> **Application for recognition of a foreign proceeding**. A foreign representative may apply to the court for recognition of the foreign proceeding in respect of which he or she is a foreign representative.
>
> **Documents that must accompany application**. . . . the application must be accompanied by . . . (b) a certified copy of the instrument, however designated, authorizing the foreign representative to act in that capacity or a certificate from the foreign court affirming the foreign representative's authority to act in that capacity . . . .

CCAA, R.S.C., Ch. C-36, § 46 (1985) (Can.).

15. An order of this Court authorizing the Debtor to act as the Foreign Representative with respect to the Chapter 11 Case in the Canadian Proceeding would satisfy the requirements of sections 45(1) and 46 of the CCAA and enable the Debtor to seek recognition as the Foreign Representative. The Debtor therefore requests entry of the proposed order appointing it as the Foreign Representative of the Debtor's estate in Canada.

Basis for Relief Requested

16. Although the provisions of chapter 15 of the Bankruptcy Code generally do not apply to other chapters of the Bankruptcy Code, pursuant to section 103(k)(1) of the

[4] The Debtor intends to propose that Ernst & Young Inc. be appointed by the Canadian Court as information officer in the Canadian Proceeding (the "Information Officer"). The Information Officer will serve as an officer of the Canadian Court and report to the Canadian Court from time to time (including at the hearing on the initial application) on the status of the Chapter 11 Case, the proposed restructuring of the Debtor, the Canadian Proceeding and any other information that may be material to the Canadian Court. The specific duties of the Information Order will be set out in an order of the Canadian Court. The Information Officer, its counsel and counsel to the Foreign Representative will be compensated by the Debtor in accordance with the terms of an order of the Canadian Court.

Bankruptcy Code, section 1505 of the Bankruptcy Code applies to any case under the Bankruptcy Code. Specifically, section 103(k)(1) of the Bankruptcy Code provides that:

> Chapter 15 applies only in a case under such chapter, except that—
> (1) sections 1505, 1513, and 1514 apply in all cases under this title.

11 U.S.C. § 103(k)(1).

17. Section 1505 of the Bankruptcy Code provides that:

> A **trustee or another entity** (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

11 U.S.C. § 1505 (emphasis added).

18. Further, section 1107 of the Bankruptcy Code provides, in relevant part:

> (a) Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a **debtor in possession shall have all the rights**, other than the rights to compensation under section 330 of this title, and powers, and shall perform all the functions and duties . . . **of a trustee** serving in a case under this chapter.

11 U.S.C. § 1107(a) (emphases added).

19. Although the Debtor respectfully submits that sections 1107 and 1505 of the Bankruptcy Code confer upon the Debtor, as a debtor in possession, sufficient rights, powers and duties to act as the Foreign Representative of the Debtor's estate, to avoid any doubt regarding this authority and to comply with any applicable requirements of sections 45(1) and 46 of the CCAA, the Debtor seeks entry of an order, pursuant to section 1505 of the Bankruptcy Code, authorizing the Debtor to act as the Foreign Representative of the Debtor's estate in the Canadian Proceeding.

20. This relief will allow coordination of the Chapter 11 Case and the Canadian Proceeding, and provide an effective mechanism to protect and maximize the value of the Debtor's assets and estate. In addition, because Old JJCI and certain of the Protected Parties are defendants in the Canadian Actions, it is critical that the automatic stay and the PI Order be enforced and recognized in Canada. Absent recognition, the Canadian Actions may be able to proceed, resulting in unequal treatment between American and Canadian plaintiffs, because plaintiffs in the United States are currently stayed and/or enjoined as a result of the Chapter 11 Case and the PI Order.

21. Courts in the Third Circuit as well as in other districts have routinely granted similar relief to that requested herein. See, e.g., In re Mallinckrodt plc, No. 20-12522 (JTD) (Bankr. D. Del. Oct. 14, 2020); In re Skillsoft Corp., No. 20-11532 (MFW) (Bankr. D. Del. Jun. 16, 2020); In re Imerys Talc America, Inc., No. 19-10289 (LSS) (Bankr. D. Del. Feb. 14, 2019); In re TK Holdings Inc., No. 17-11375 (BLS) (Bankr. D. Del. June 27, 2017); In re LATAM Airlines Group S.A., No. 20-11254 (JLG) (Bankr. S.D.N.Y. May 28, 2020); In re Purdue Pharma L.P., No. 19-23649 (RDD) (Bankr. S.D.N.Y. Sept. 18, 2019); In re Aeropostale, Inc., No. 16-11275 (SHL) (Bankr. S.D.N.Y. May 6, 2016); In re Payless Holdings LLC, No. 17-42267 (KAS) (Bankr. E.D. Mo. Apr. 5, 2017); In re CJ Holding Co., No. 16-33590 (DRJ) (Bankr. S.D. Tex. July 21, 2016); In re Ultra Petroleum Corp., No. 16-32202 (MI) (Bankr. S.D. Tex. May 3, 2016).

22. Accordingly, the Debtor submits that the relief requested herein is necessary and appropriate and should be granted in all respects.

<u>Notice</u>

23. Consistent with the *Order Establishing Certain Notice, Case Management and Administrative Procedures* [Dkt. 322] (the "<u>Case Management Order</u>"), notice of this Motion has been provided to: (a) the Office of the United States Trustee for the District of New Jersey; (b) proposed counsel to the Talc Committee; (c) counsel to the Debtor's non debtor affiliates, Johnson & Johnson Consumer Inc. and Johnson & Johnson; and (d) the other parties on the Service List established by the Case Management Order. Based on the nature of the relief requested herein, the Debtor respectfully submits that no further notice is required.

<u>No Prior Request</u>

24. No prior request for the relief sought in this Motion has been made to this or any other court in connection with the Chapter 11 Case.

WHEREFORE, the Debtor respectfully requests that the Court enter an order: (a) authorizing the Debtor to act as the Foreign Representative on behalf of the Debtor's estate in Canada; and (b) granting such other and further relief to the Debtor as the Court may deem just and proper.

Dated: November 24, 2021

WOLLMUTH MAHER & DEUTSCH LLP

/s/ Paul R. DeFilippo
Paul R. DeFilippo, Esq.
500 Fifth Avenue
New York, New York 10110
Telephone: (212) 382-3300
Facsimile: (212) 382-0050
pdefilippo@wmd-law.com

JONES DAY
Gregory M. Gordon, Esq.
Brad B. Erens, Esq.
Dan B. Prieto, Esq.
Amanda Rush, Esq.
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
gmgordon@jonesday.com
bberens@jonesday.com
dbprieto@jonesday.com
asrush@jonesday.com
(Admissions *pro hac vice* pending)

PROPOSED ATTORNEYS FOR DEBTOR

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

WOLLMUTH MAHER & DEUTSCH LLP
Paul R. DeFilippo, Esq.
500 Fifth Avenue
New York, New York 10110
Telephone: (212) 382-3300
Facsimile: (212) 382-0050
pdefilippo@wmd-law.com

JONES DAY
Gregory M. Gordon, Esq.
Brad B. Erens, Esq.
Dan B. Prieto, Esq.
Amanda Rush, Esq.
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
gmgordon@jonesday.com
bberens@jonesday.com
dbprieto@jonesday.com
asrush@jonesday.com
(Admissions *pro hac vice* pending)

PROPOSED ATTORNEYS FOR DEBTOR

In re: LTL MANAGEMENT LLC,[1] Debtor.	Chapter 11 Case No.: 21-30589 (MBK) Judge: Michael B. Kaplan **Hearing Date and Time:** December 15, 2021, at 10:00 a.m.

CERTIFICATION OF JOHN K. KIM IN SUPPORT OF DEBTOR'S MOTION PURSUANT TO 11 U.S.C. § 1505 FOR AN ORDER AUTHORIZING IT TO ACT AS FOREIGN REPRESENTATIVE ON BEHALF OF THE DEBTOR'S ESTATE

I, John K. Kim, pursuant to 28 U.S.C. § 1746, being of full age, certify as follows:

1. I am the Chief Legal Officer of LTL Management LLC, a North Carolina limited liability company (the "Debtor") and the debtor in the above-captioned chapter 11 case. I have held this position with the Debtor since its formation on October 12, 2021. I submit this

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

Certification in support of the *Debtor's Motion Pursuant to 11 U.S.C. § 1505 for an Order Authorizing It to Act as Foreign Representative on Behalf of the Debtor's Estate* (the "Motion").[2]

2. I am employed by Johnson & Johnson Services, Inc., a non-debtor affiliate of the Debtor and a subsidiary of the Debtor's ultimate non-debtor parent company, Johnson & Johnson, and seconded to the Debtor. Prior to my role as Chief Legal Officer of the Debtor, I was Johnson & Johnson's Assistant General Counsel, Practice Group Lead for the Product Liability Litigation Group. In that role, I was responsible for product liability litigation globally, including in Canada. I began my employment with Johnson & Johnson and its affiliates in 2001 as a Senior Counsel in the Litigation Group.

3. On the Petition Date, I submitted a declaration describing the Debtor, its history, its assets and liabilities and the events leading to the commencement of this Chapter 11 Case, which I incorporate herein by reference. See *Declaration of John K. Kim in Support of First Day Pleadings* [Dkt. 5].

4. The Debtor commenced the Chapter 11 Case to negotiate, obtain approval of and ultimately consummate a plan of reorganization that will, among other things, establish and fund a trust to resolve and pay current and future talc-related claims arising from products manufactured and/or sold by Old JJCI, or for which Old JJCI may otherwise have had legal responsibility.

5. In the Chapter 11 Case, the Debtor seeks a declaratory judgment that the automatic stay applies to, and/or a preliminary injunction enjoining, talc-related claims against

2 Capitalized terms used herein but not defined shall have the meaning set forth in the Motion.

Old JJCI, the Debtor's non-debtor affiliates, certain indemnified parties and certain insurers (collectively, the "Protected Parties"). See *Debtor's Emergency Motion to Enforce the Automatic Stay Against Talc Claimants Who Seek to Pursue Their Claims Against the Debtor and its Non-Debtor Affiliates* [Dkt. 44]; *Debtor's Motion for an Order (I) Declaring that the Automatic Stay Applies to Certain Actions Against Non-Debtors or (II) Preliminarily Enjoining Such Actions and (III) Granting a Temporary Restraining Order Pending a Final Hearing* [Adv. Pro. Dkt. 2]; *Debtor's Omnibus Reply in Support of (I) Motion to Enforce the Automatic Stay and (II) Motion for an Order (A) Declaring that the Automatic Stay Applies to Certain Actions Against Non-Debtors or (B) Preliminarily Enjoining Such Actions and (C) Granting a Temporary Restraining Order Pending a Final Hearing* [Adv. Pro. Dkt. 58].

6. On November 10, 2021, the NC Bankruptcy Court entered an interim order [Adv. Pro. Dkt. 102] (the "PI Order") declaring that the automatic stay applies to prohibit, and preliminarily enjoining, the commencement or continuation of Enjoined Talc Claims[3] against the Protected Parties through January 14, 2021, subject to modification or extension by an order of this Court.

7. As noted above, the Protected Parties include the Debtor's non-debtor affiliates, including Johnson & Johnson Inc. ("J&J Canada"). J&J Canada is a federal

[3] "Enjoined Talc Claims" are defined as any talc-related claims against the Debtor, including all claims relating in any way to talc or talc-containing materials that formerly were asserted against (or that could have been asserted against) the Old JJCI on any theory of liability (whether direct, derivative, joint and several, successor liability, vicarious liability, fraudulent or voidable transfer or conveyance, alter ego or otherwise). PI Order ¶ A. Enjoined Talc Claims include, without limitation, all talc personal injury claims and other talc-related claims allocated to the Debtor from Old JJCI in the documents implementing the restructuring that led to the formation of the Debtor. Id. The Enjoined Talc Claims do not include talc-related claims for which the exclusive remedy is provided under workers' compensation statutes and similar laws. Id.

corporation incorporated under the laws of Canada. Its principal place of business is currently in Markham, Ontario.

8. Old JJCI, Johnson & Johnson, J&J Canada and Valeant Pharmaceuticals International, Inc., now Bausch Health Companies Inc. (together, "Bausch"), are named co-defendants in certain talc-related actions that have been commenced in Canada (the "Canadian Actions").

9. The Canadian Actions, which are described in more detail in the chart below, include (a) a certified class action, (b) three proposed class actions and (c) an individual action. The certified class action and proposed class actions were commenced in Alberta, British Columbia, Ontario and Quebec, and are collectively brought on behalf of classes (or proposed classes) of Canadian individuals who allege injury or damages arising from the use or purchase of talc-containing products manufactured, marketed and/or sold by Old JJCI, Johnson & Johnson, J&J Canada and/or Bausch. The individual action was commenced in British Columbia by an individual who alleges injury arising from the use of talc-containing products manufactured and/or sold by Old JJCI, Johnson & Johnson and/or J&J Canada.

Date, Jurisdiction and Case Number	**Type of Proceeding and Status**	**Plaintiff(s)**	**Defendants**
March 24, 2016 **British Columbia (New Westminster), No. 179011**	Class certification application dismissed against Valeant and adjourned with leave to amend and file additional evidence as against J&J Group entities.	Linda Williamson	Johnson & Johnson, Johnson & Johnson Consumer Companies Inc., Johnson & Johnson, Inc. and Valeant Pharmaceuticals International

Date, Jurisdiction and Case Number	Type of Proceeding and Status	Plaintiff(s)	Defendants
April 12, 2016 **Quebec (Montreal), No. 500-06-000787-164**	Authorized (certified) as class action.	Rosemary Kramar	Johnson & Johnson, Johnson & Johnson Consumer Inc., Johnson & Johnson Inc., and Valeant Pharmaceuticals International Inc.
May 18, 2016 **Ontario (Toronto), CV-16-553046**	Proposed class action (certification motion has not been heard or decided).	Cindy Lou Strathdee, Mario Nunziato, Matthew Strathdee, Shaeda Begum Farroqi-Willison, Gerald Douglas Willison, Theres Bernier, by her estate representative Marilyne Bernier, Marilyne Bernier, Janet Heaton and Barry Heaton	Johnson & Johnson Inc., Johnson & Johnson, and Johnson & Johnson Consumer Companies Inc.
August 22, 2019 **Alberta (Calgary), No. 1901-11748**	Proposed class action (currently inactive).	Diane DiSanto	Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., and Johnson & Johnson Inc.
October 26, 2020 **British Columbia (Vancouver Registry), VLC-S-S-2011369**	Individual action (at pleadings stage).	Amanda Lorraine Lee	Johnson & Johnson, Johnson & Johnson Consumer Companies Inc., Johnson & Johnson Inc.

10. As set forth in the above chart, although the Debtor is not, itself, a named defendant in any of the Canadian Actions, Old JJCI is a named defendant in all of the Canadian Actions. In addition, the other defendants in the Canadian Actions are all Protected Parties under the PI Order.

11. The Debtor requires Canadian recognition of the Chapter 11 Case in order to enforce the PI Order and the automatic stay in Canada and other ancillary relief that may be available from the Canadian Court. Absent recognition, the Canadian Actions may continue to proceed, resulting in unequal treatment between American and Canadian plaintiffs, as plaintiffs in the United States are currently stayed and/or enjoined as a result of the Chapter 11 Case and the PI Order.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Dated: November 24, 2021

/s/ John K. Kim
John K. Kim

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

WOLLMUTH MAHER & DEUTSCH LLP
Paul R. DeFilippo, Esq.
500 Fifth Avenue
New York, New York 10110
Telephone: (212) 382-3300
Facsimile: (212) 382-0050
pdefilippo@wmd-law.com

JONES DAY
Gregory M. Gordon, Esq.
Brad B. Erens, Esq.
Dan B. Prieto, Esq.
Amanda Rush, Esq.
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
gmgordon@jonesday.com
bberens@jonesday.com
dbprieto@jonesday.com
asrush@jonesday.com
(Admissions *pro hac vice* pending)

PROPOSED ATTORNEYS FOR DEBTOR

In re: LTL MANAGEMENT LLC,[1] Debtor.	Chapter 11 Case No.: 21-30589 Judge: Michael B. Kaplan **Hearing Date and Time:** December 15, 2021, at 10:00 a.m.

ORDER AUTHORIZING THE DEBTOR TO ACT AS FOREIGN REPRESENTATIVE ON BEHALF OF THE DEBTOR'S ESTATE

The relief set forth on the following pages, numbered two (2) through three (3), are hereby **ORDERED**.

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

(Page 2)
Debtor: LTL Management LLC
Case No. 21-30589-MBK
Caption: Order Authorizing the Debtor Pursuant to 11 U.S.C. § 1505 to Act as Foreign Representative on Behalf of the Debtor's Estate

Upon the motion (the "Motion"),[2] of LTL Management LLC (the "Debtor"), the debtor in the above-captioned case, for an order (this "Order") authorizing the Debtor to act as the Foreign Representative on behalf of the Debtor's estate in any judicial or other proceedings in Canada, and this Court having jurisdiction over the matter pursuant to 28 U.S.C. §§ 157(b) and 1334; and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion being good and sufficient; and upon consideration of the Motion, the Kim Certification and any response filed thereto; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor's estate, its creditors and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

2. The Debtor is authorized, pursuant to section 1505 of the Bankruptcy Code, to act as the Foreign Representative on behalf of the Debtor's estate in any judicial or other proceedings in Canada and shall be authorized and have the power to act in any way permitted by applicable foreign law, including, but not limited to (a) seeking recognition of the Chapter 11 Case in the Canadian Proceeding, (b) requesting that the Canadian Court grant comity to the Foreign Representative and the Chapter 11 Case, (c) seeking any other appropriate

[2] Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

(Page 3)
Debtor: LTL Management LLC
Case No. 21-30589-MBK
Caption: Order Authorizing the Debtor Pursuant to 11 U.S.C. § 1505 to Act as Foreign Representative on Behalf of the Debtor's Estate

relief from the Canadian Court that the Debtor deems just and proper in the furtherance of the protection of the Debtor's estate; and (d) consistent with any orders of the Canadian Court, retaining and compensating Canadian professionals on behalf of the Foreign Representative, and paying the costs of the Court-appointed information officer and its counsel, each without further order of this Court.

3. This Court requests the aid and assistance of the Canadian Court to recognize the Chapter 11 Case as a "foreign main proceeding" and the Debtor as a "foreign representative" pursuant to the CCAA, and to recognize and give full force and effect in all provinces and territories of Canada to this Order.

4. The Debtor is hereby authorized to take all actions it deems necessary to effectuate the relief granted in this Order.

5. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

This is **Exhibit "K"** referred to in the

Affidavit of John K. Kim

sworn before me by video conference
this 16th day of December, 2021

A Commissioner, etc.

Caitlin McIntyre, LSO #72306R

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

WOLLMUTH MAHER & DEUTSCH LLP
Paul R. DeFilippo, Esq.
500 Fifth Avenue
New York, New York 10110
Telephone: (212) 382-3300
Facsimile: (212) 382-0050
pdefilippo@wmd-law.com

JONES DAY
Gregory M. Gordon, Esq.
Brad B. Erens, Esq.
Dan B. Prieto, Esq.
Amanda Rush, Esq.
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
gmgordon@jonesday.com
bberens@jonesday.com
dbprieto@jonesday.com
asrush@jonesday.com
(Admitted *pro hac vice*)

PROPOSED ATTORNEYS FOR DEBTOR

In re: LTL MANAGEMENT LLC,[1] Debtor.	Chapter 11 Case No.: 21-30589 Judge: Michael B. Kaplan **Hearing Date and Time:** December 15, 2021, at 10:00 a.m.

ORDER AUTHORIZING THE DEBTOR TO ACT AS FOREIGN REPRESENTATIVE ON BEHALF OF THE DEBTOR'S ESTATE

The relief set forth on the following pages, numbered two (2) through four (4), are hereby **ORDERED**.

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

(Page 2)
Debtor: LTL Management LLC
Case No. 21-30589-MBK
Caption: Order Authorizing the Debtor Pursuant to 11 U.S.C. § 1505 to Act as Foreign Representative on Behalf of the Debtor's Estate

Upon the motion (the "Motion"),[1] of LTL Management LLC (the "Debtor"), the debtor in the above-captioned case, for an order (this "Order") authorizing the Debtor to act as the Foreign Representative on behalf of the Debtor's estate in any judicial or other proceedings in Canada, and this Court having jurisdiction over the matter pursuant to 28 U.S.C. §§ 157(b) and 1334; and venue being proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion being good and sufficient; and upon consideration of the Motion, the Kim Certification and any response filed thereto; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor's estate, its creditors and other parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and any objections to the requested relief having been withdrawn or overruled on the merits; and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent provided herein.

2. The Debtor is authorized, pursuant to section 1505 of the Bankruptcy Code, to act as the Foreign Representative on behalf of the Debtor's estate in any judicial or other proceedings in Canada and shall be authorized and have the power to act in any way permitted by applicable foreign law, including, but not limited to (a) seeking recognition of the Chapter 11 Case in the Canadian Proceeding, (b) requesting that the Canadian Court grant comity to the Foreign Representative and the Chapter 11 Case, (c) seeking any other appropriate

[1] Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

relief from the Canadian Court that the Debtor deems just and proper in the furtherance of the protection of the Debtor's estate; and (d) consistent with any orders of the Canadian Court, paying the costs of the Court-appointed information officer and its counsel, each without further order of this Court.

3. To the extent the Debtor seeks the retention of any professionals to represent it as the Foreign Representative, the Debtor will be required to file retention applications in this bankruptcy case pursuant to section 327 of the Bankruptcy Code. In addition, any professionals retained by the Debtor as the Foreign Representative will be required to file monthly, interim and final fee requests for allowance of compensation and reimbursement of expenses pursuant to the procedures set forth in sections 330 and 331 of the Bankruptcy Code, applicable Bankruptcy Rules and the Local Bankruptcy Rules, the Compensation Guidelines and any other such procedures as may be fixed by order of this Court. Further, any professionals retained by the Debtor as the Foreign Representative that are law firms shall make a reasonable effort to comply with the Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. Section 330 by Attorneys in Larger Chapter 11 Cases, effective as of November 1, 2013, concerning any monthly, interim and final fee requests for allowance of compensation and reimbursement of expenses to be filed in this case. All professionals retained by the Debtor as the Foreign Representative that are law firms shall provide any and all monthly, interim and final fee applications in "LEDES" format to the United States Trustee.

4. This Court requests the aid and assistance of the Canadian Court to recognize the Chapter 11 Case as a "foreign main proceeding" and the Debtor as a "foreign representative" pursuant to the CCAA, and to recognize and give full force and effect in all provinces and territories of Canada to this Order.

5. The Debtor is hereby authorized to take all actions it deems necessary to effectuate the relief granted in this Order.

6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation and/or enforcement of this Order.

This is **Exhibit "L"** referred to in the

Affidavit of John K. Kim

sworn before me by video conference
this 16th day of December, 2021

A Commissioner, etc.

Caitlin McIntyre, LSO #72306R

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF LTL MANAGEMENT LLC

APPLICATION OF LTL MANAGEMENT LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

CONSENT

ERNST & YOUNG INC. hereby consents to act as Information Officer in the above-captioned proceeding in accordance with the terms of an order substantially in the form attached to the draft application record.

DATED at Toronto, this 3rd day of December, 2021.

ERNST & YOUNG INC.

Per:

Name: Alexander Morrison and Stuart Clark

Title: Senior Vice Presidents

I have authority to bind the company

Court File No.:

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

CONSENT TO ACT

Cassels Brock & Blackwell LLP
2100 Scotia Plaza
40 King Street West
Toronto, ON M5H 3C2

Shayne Kukulowicz LSO #: 30729S
Tel: 416.860.6463
skukulowicz@cassels.com

Natalie Levine LSO #: 64908K
Tel: 416.860.6568
nlevine@cassels.com

Lawyers for the Proposed Information Officer

Court File No.: CV-21-00673856-00CL

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

AFFIDAVIT OF JOHN K. KIM
Sworn December 16, 2021

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Gordon McKee (LSO#: 28557R)
gordon.mckee@blakes.com

Linc Rogers (LSO#: 43562N)
linc.rogers@blakes.com

Caitlin McIntyre (LSO#: 72306R)
Tel: 416.863.4174
Fax: 416.863.2653
caitlin.mcintyre@blakes.com

Lawyers for LTL Management LLC, in its capacity as Foreign Representative

TAB 3

Court File No. CV-21-00673856-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	FRIDAY, THE 17TH
	)	
JUSTICE PATTILLO	)	DAY OF DECEMBER, 2021

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

APPLICATION OF LTL MANAGEMENT LLC
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

INITIAL RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made by LTL Management LLC (the "**Debtor**"), in its capacity as the foreign representative (in such capacity, the "**Foreign Representative**") of the Debtor, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form included in the Application Record, was heard this day by video conference.

ON READING the Notice of Application and the affidavit of John K. Kim sworn December 16, 2021, filed, and upon being provided with copies of the documents required by section 46 of the CCAA,

AND UPON BEING ADVISED by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) is being sought,

AND UPON HEARING the submissions of counsel for the Foreign Representative and counsel for Ernst & Young Inc., in its capacity as proposed information officer (the "**Information Officer**"), counsel for the Official Committee of Talc Claimants (the "**Official Committee**"), no one else appearing although properly served as appears from the Affidavit of Service of Caitlin McIntyre sworn December 16, 2021, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

FOREIGN REPRESENTATIVE

2. **THIS COURT ORDERS AND DECLARES** that the Foreign Representative is the "foreign representative", as defined in section 45 of the CCAA, of the Debtor in respect of the case commenced by the Debtor in the United States Bankruptcy Court of North Carolina – Western District pursuant to chapter 11 of title 11 of the United States Bankruptcy Code which has been transferred to the United States Bankruptcy Court of the District of New Jersey (the "**Foreign Proceeding**").

CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING

3. **THIS COURT DECLARES** that the centre of its main interests for the Debtor is the United States of America and that the Foreign Proceeding is hereby recognized as a "foreign main proceeding" as defined in section 45 of the CCAA.

STAY OF PROCEEDINGS

4. **THIS COURT ORDERS** that until otherwise ordered by this Court:

(a) all proceedings taken or that might be taken against the Debtor under the

Bankruptcy and Insolvency Act or the *Winding-up and Restructuring Act* are stayed;

(b) further proceedings in any action, suit or proceeding against the Debtor are restrained; and

(c) the commencement of any action, suit or proceeding against the Debtor is prohibited.

NO SALE OF PROPERTY

5. **THIS COURT ORDERS** that, except with leave of this Court, the Debtor is prohibited from selling or otherwise disposing of:

(a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and

(b) any of its other property in Canada.

GENERAL

6. **THIS COURT ORDERS** that the Foreign Representative shall not be required to publish notice pursuant to Section 53(b) of the CCAA in any newspaper in Canada.

7. **THIS COURT ORDERS AND DECLARES** that this Order shall be effective as of 12:01 a.m. on the date of this Order.

8. **THIS COURT ORDERS** that each of the Foreign Representative and the Information Officer shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist the Debtor and the Foreign Representative and their respective counsel and agents in

carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtor, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtor, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that this Court is seized of these proceedings and any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Foreign Representative and its counsel, the Information Officer and its counsel, and to any other party or parties likely to be affected by the Order sought, or upon such other notice, if any, as this Court may order.

Court File No.: CV-21-00673856-00CL

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

INITIAL RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Gordon McKee (LSO#: 28557R)
gordon.mckee@blakes.com

Linc Rogers (LSO#: 43562N)
linc.rogers@blakes.com

Caitlin McIntyre (LSO#: 72306R)
Tel: 416.863.4174
Fax: 416.863.2653
caitlin.mcintyre@blakes.com

Lawyers for LTL Management LLC, in its capacity as Foreign Representative

TAB 4

~~Approved by CLUC on October 2, 2012~~

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE ~~———~~MR.	)	~~WEEKDAY~~FRIDAY, THE ~~#~~ 17TH
	)	
JUSTICE ~~———~~PATTILLO	)	DAY OF ~~MONTH~~DECEMBER, ~~20YR~~2021

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

AND IN THE MATTER OF ~~THE [LIST DEBTOR NAMES](the "Debtors")~~LTL MANAGEMENT LLC

APPLICATION OF ~~[NAME OF FOREIGN REPRESENTATIVE]~~LTL MANAGEMENT LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

INITIAL RECOGNITION ORDER
(FOREIGN MAIN~~[1]~~ PROCEEDING)

THIS APPLICATION,~~[2]~~ made by ~~[NAME OF FOREIGN REPRESENTATIVE]~~LTL Management LLC (the "**Debtor**"), in its capacity as the foreign representative (in such capacity, the "**Foreign Representative**") of the ~~Debtors~~Debtor, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form ~~enclosed~~included in the Application Record, was heard this day ~~at 330 University Avenue, Toronto, Ontario~~by video conference.

ON READING the Notice of Application~~,~~ and the affidavit of ~~[NAME]~~John K. Kim sworn ~~[DATE], [the preliminary report of [NAME]~~December 16, 2021, ~~in its capacity as~~

~~[1] Under section 47 the Canadian Court must be satisfied that the application for the recognition of a foreign proceeding relates to a foreign proceeding and that the applicant is a foreign representative in respect of that foreign proceeding, and then determine if the foreign proceeding is a foreign "main" or a foreign "non-main" proceeding. If the Canadian Court recognizes a foreign proceeding as a "main" proceeding, then section 48 of the CCAA provides that the Court must grant certain relief, subject to any terms and conditions it considers appropriate. The provisions of this model Order are minimal, and based on the mandatory relief set out in section 48 of the CCAA with respect to a foreign main proceeding. As noted below, supplemental and other relief is set out in the model Supplemental Order (Foreign Main Proceeding).~~

~~[2] Part IV of the CCAA governs cross-border insolvencies.~~

~~proposed information officer (the "Proposed Information Officer") dated [DATE], each~~ filed, and upon being provided with copies of the documents required by ~~s.~~section 46 of the CCAA,

AND UPON BEING ADVISED by counsel for the Foreign Representative that in addition to this Initial Recognition Order, a Supplemental Order (Foreign Main Proceeding) ~~[will be/~~is being~~]~~ sought,[3]

AND UPON HEARING the submissions of counsel for the Foreign Representative~~, [~~ and counsel for Ernst & Young Inc., in its capacity as proposed information officer (the ~~Proposed~~ "**Information Officer**"),~~]~~ counsel for ~~[OTHER PARTIES]~~the Official Committee of Talc Claimants (the "**Official Committee**"), ~~and upon being advised that no other persons were~~no one else appearing although properly served ~~with~~as appears from the ~~Notice~~Affidavit of ~~Application~~Service of Caitlin McIntyre sworn December 16, 2021, filed:[4]

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated[5] so that this Application is properly returnable today and hereby dispenses with further service thereof.

FOREIGN REPRESENTATIVE

2. **THIS COURT ORDERS AND DECLARES** that the Foreign Representative is the "foreign representative", as defined in section 45 of the CCAA, of the ~~Debtors~~Debtor in respect of ~~[DESCRIBE FOREIGN PROCEEDING]~~the case commenced by the Debtor in the United States Bankruptcy Court of North Carolina – Western District pursuant to chapter 11 of title 11

~~[3] In addition to the mandatory relief contained in this Order pursuant to section 48 of the CCAA, certain discretionary relief may be granted by the Court pursuant to section 49 of the CCAA. Examples of such discretionary relief are contained in a model Supplemental Order (Foreign Main Proceeding), also available on the Commercial List website.~~

~~[4] Revise to be consistent with the service recital in the Supplemental Order, if it is being sought concurrently.~~

~~[5] If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in the appropriate circumstances.~~

of the United States Bankruptcy Code which has been transferred to the United States Bankruptcy Court of the District of New Jersey (the "**Foreign Proceeding**").

CENTRE OF MAIN INTEREST AND RECOGNITION OF FOREIGN PROCEEDING

3. **THIS COURT DECLARES** that the centre of its main interests for ~~each of~~ the ~~Debtors~~Debtor is ~~[FILING JURISDICTION FOR FOREIGN PROCEEDING],~~[6]the United States of America and that the Foreign Proceeding is hereby recognized as a "foreign main proceeding"~~[7]~~ as defined in section 45 of the CCAA.

STAY OF PROCEEDINGS[8]

4. **THIS COURT ORDERS** that until otherwise ordered by this Court:

(a) all proceedings taken or that might be taken against ~~any~~the Debtor under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act* are stayed;

(b) further proceedings in any action, suit or proceeding against ~~any~~the Debtor are restrained; and

(c) the commencement of any action, suit or proceeding against ~~any~~the Debtor is prohibited.

NO SALE OF PROPERTY[9]

5. **THIS COURT ORDERS** that, except with leave of this Court, ~~each of~~ the ~~Debtors~~Debtor is prohibited from selling or otherwise disposing of:

(a) outside the ordinary course of its business, any of its property in Canada that relates to the business; and

(b) any of its other property in Canada.

[6] ~~A "foreign main proceeding" as defined in section 45 of the CCAA is "a foreign proceeding in a jurisdiction where the debtor company has the centre of its main interests". Accordingly, the Court must make this determination in concluding that the proceeding being recognized is a foreign main proceeding. This determination should be made for each individual Debtor.~~

[7] ~~A separate model order is being developed with respect to foreign non-main proceedings.~~

[8] ~~The provisions of this paragraph 4 are based on section 48 of the CCAA. More comprehensive stay provisions are found in the model Supplemental Order (Foreign Main Proceeding).~~

[9] ~~Based on section 48(d) of the CCAA.~~

GENERAL

6. **THIS COURT ORDERS** that ~~[without delay][within [NUMBER] days from the date of this Order, or as soon as practicable thereafter][10],~~ the Foreign Representative shall ~~cause to~~not be ~~published a~~required to publish notice ~~substantially in the form attached to this Order as Schedule [*],[11] once a week for two consecutive weeks, in [NAME OF NEWSPAPER(S)].[12]~~pursuant to Section 53(b) of the CCAA in any newspaper in Canada.

7. **THIS COURT ORDERS AND DECLARES** that this Order shall be effective as of 12:01 a.m. on the date of this Order.

8. **THIS COURT ORDERS** that each of the Foreign Representative and the Information Officer shall be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order

9. ~~7.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist the ~~Debtors~~Debtor and the Foreign Representative and their respective counsel and agents in carrying out the terms of this Order.

~~[10] Section 53 of the CCAA requires publication "without delay after the order is made". The alternative language, above, may provide more certainty as to when that publication must take place.~~

~~[11] The notice must contain information prescribed under the CCAA (section 53(b)).~~

~~[12] Section 53(b) of the CCAA requires that the Foreign Representative publish, unless otherwise directed by the Court, notice of the Recognition Order once a week for two consecutive weeks, in one or more newspapers in Canada specified by the Court. In addition, the Foreign Representative has ongoing reporting obligations pursuant to section 53(a) of the CCAA.~~

~~8.~~ ~~THIS COURT ORDERS AND DECLARES that [the Interim Initial Order made on [DATE] shall be of no further force and effect once this Order becomes effective, and that] this Order shall be effective as of [TIME]~~[13] ~~on the date of this Order[, provided that nothing herein shall invalidate any action taken in compliance with such Interim Initial Order prior to the effective time of this Order.]~~[14] All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtor, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtor, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

10. ~~9.~~ **THIS COURT ORDERS** that this Court is seized of these proceedings and any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the ~~Debtors and the~~ Foreign Representative and ~~their respective~~its counsel, the Information Officer and its counsel, and to any other party or parties likely to be affected by the ~~order~~Order sought, or upon such other notice, if any, as this Court may order.

~~[ATTACH APPROPRIATE SCHEDULE(S)]~~

[13] ~~This time should be after the effective time that the Foreign Representative was appointed in the Foreign Proceeding.~~
[14] ~~If an Interim Initial Order was not made, references to an Interim Initial Order should be removed from this paragraph.~~

Court File No.:

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

INITIAL RECOGNITION ORDER
(FOREIGN MAIN PROCEEDING)

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Gordon McKee (LSO#: 28557R)
gordon.mckee@blakes.com

Linc Rogers (LSO#: 43562N)
linc.rogers@blakes.com

Caitlin McIntyre (LSO#: 72306R)
Tel: 416.863.4174
Fax: 416.863.2653
caitlin.mcintyre@blakes.com

Lawyers for LTL Management, LLC, in its capacity as Foreign Representative

Document comparison by Workshare 10.0 on Thursday, December 16, 2021 11:50:32 AM

Input:	
Document 1 ID	PowerDocs://TOR_2024/13117755/1
Description	TOR_2024-#13117755-v1-Model_Order_-_Initial_Recognition_Order_(Downloaded_December_3,_2021)
Document 2 ID	PowerDocs://TOR_2528/24241184/3
Description	TOR_2528-#24241184-v3-Draft_Initial_Recognition_Order
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	79
Deletions	118
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	201

TAB 5

Court File No. CV-21-00673856-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.	)	FRIDAY, THE 17TH
	)	
JUSTICE PATTILLO	)	DAY OF DECEMBER, 2021

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

APPLICATION OF LTL MANAGEMENT LLC
UNDER SECTION 46 OF THE
COMPANIES' CREDITORS ARRANGEMENT ACT

SUPPLEMENTAL ORDER
(FOREIGN MAIN PROCEEDING)

THIS APPLICATION, made by LTL Management LLC (the "**Debtor**"), in its capacity as the foreign representative (in such capacity, the "**Foreign Representative**") of the Debtor, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in the form included in the Application Record, was heard this day by video conference.

ON READING the Notice of Application and the affidavit of John K. Kim sworn December 16, 2021, filed, and upon being provided with copies of the documents required by section 46 of the CCAA,

AND UPON HEARING the submissions of counsel for the Foreign Representative and counsel for Ernst & Young Inc., in its capacity as proposed information officer (the "**Information Officer**"), counsel for the Official Committee of Talc Claimants (the "**Official Committee**"), no one else appearing although properly served as appears from the Affidavit of Service of Caitlin McIntyre sworn December 16, 2021, filed, and on reading the consent of the proposed Information Officer to act as the information officer, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

INITIAL RECOGNITION ORDER

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated December 17, 2021 (the "**Recognition Order**").

3. **THIS COURT ORDERS** that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

RECOGNITION OF FOREIGN ORDERS

4. **THIS COURT ORDERS** that the following order of the United States Bankruptcy Court for the Western District of North Carolina made in the Foreign Proceeding is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

   (a) *Order Granting the Debtor's Request for Preliminary Injunctive Relief* (the "**US Preliminary Injunction**"), a copy of which is attached as Schedule "A" hereto, provided, however, that in the event of any conflict between the terms of the US Preliminary Injunction and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to the applicability of the US Preliminary Injunction in Canada and with respect to Property (defined below) in Canada.

5. **THIS COURT ORDERS** that the following order of the United States Bankruptcy Court of the District of New Jersey (the "**New Jersey Bankruptcy Court**") made in the Foreign Proceeding is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

(a) *Order Authorizing LTL Management LLC to Act as Foreign Representative Pursuant to Section 1505 of the Bankruptcy Code* (the "**Foreign Representative Order**") a copy of which is attached Schedule "B" hereto,

provided, however, that in the event of any conflict between the terms of the Foreign Representative Order and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to the applicability of the Foreign Representative Order in Canada and with respect to Property in Canada.

APPOINTMENT OF INFORMATION OFFICER

6. **THIS COURT ORDERS** that the Information Officer is hereby appointed as an officer of this Court, with the powers and duties set out herein and in any other Order made in these proceedings.

ADDITIONAL PROVISIONS RE: US PRELIMINARY INJUNCTION

7. **THIS COURT ORDERS** that in connection with the recognition of the US Preliminary Injunction, the Enjoined Talc Claims[1] set out in Schedule "C" hereto are hereby stayed as to the Defendants (as defined in the US Preliminary Injunction), including in respect of Johnson & Johnson Consumer Inc. (including all former names and corporate predecessors, including Johnson & Johnson Consumer Companies, Inc.), Johnson & Johnson, Johnson & Johnson Inc., Valeant Pharmaceuticals International, Inc. and Bausch Health Companies Inc. until the expiry of the US Preliminary Injunction, by its terms, unless extended by further order of the New Jersey Bankruptcy Court or the United States District Court for the District of New Jersey.

8. **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded to the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

OTHER PROVISIONS RELATING TO INFORMATION OFFICER

9. **THIS COURT ORDERS** that the Information Officer:

   (a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;

---

[1] "Enjoined Talc Claims" means, collectively, any talc-related claims against the Debtor, including all claims relating in any way to talc or talc containing materials that were formerly asserted (or that could have been asserted) against Old JJCI on any theory of liability.

(b) shall consult with and respond to reasonable inquiries or information requests made by the Official Committee, subject to the protections in favour of the Information Officer set out in paragraph 12 of this Order;

(c) shall report to this Court periodically with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the business of the Debtor (the "**Business**") or its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**") or such other matters as may be relevant to the proceedings herein;

(d) shall have full and complete access to the Property, including the books, records, data, including in electronic form, and other financial documents of the Debtor, to the extent that is necessary to perform its duties arising under this Order; and

(e) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

10. **THIS COURT ORDERS** that the Debtor and the Foreign Representative shall (i) advise the Information Officer of all material steps taken by the Debtor or the Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-operate fully with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

11. **THIS COURT ORDERS** that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management

of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

12. **THIS COURT ORDERS** that the Information Officer may provide any creditor of the Debtor with information provided by the Debtor in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the Debtor is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the Debtor may agree.

13. **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be paid by the Debtor their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The Debtor is hereby authorized and directed to pay or cause the payment of the accounts of the Information Officer and counsel for the Information Officer forthwith upon receipt. In addition, the Debtor is hereby authorized to pay the Information Officer and counsel to the Information Officer retainers in the amounts of $75,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

14. **THIS COURT ORDERS** that the Information Officer and its legal counsel shall pass their accounts from time to time and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

SERVICE AND NOTICE

15. **THIS COURT ORDERS** that that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a case website shall be established in accordance with the Guide with the following URL: www.ey.com/ca/ltlmanagement (the "**Case Website**").

16. **THIS COURT ORDERS** that the Information Officer (i) shall post on the Case Website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

17. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide is not practicable, the Debtor, the Foreign Representative and the Information Officer are at liberty to serve or distribute this Order, any other materials and orders in these

proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

18. **THIS COURT ORDERS** that the Foreign Representative, the Information Officer and their respective counsel are at liberty to serve or distribute this Order, the Recognition Order, any other materials and Orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

19. **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

20. **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of the Debtor, the Business or the Property.

21. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, to give effect to this Order and to assist the Debtor, the Foreign Representative, the Information Officer and their respective

counsel and agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtor, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtor, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

22. **THIS COURT ORDERS** that each of the Debtor, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

23. **THIS COURT ORDERS** that the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network and adopted by this Court and attached as Schedule “D” hereto are hereby adopted by this Court for the purposes of these recognition proceedings.

24. **THIS COURT ORDERS** that this Court is seized of these proceedings and any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Foreign Representative and its counsel, the Information Officer and its counsel, and to any other party or parties likely to be affected by the Order sought, or upon such other notice, if any, as this Court may order.

25. **THIS COURT ORDERS AND DECLARES** that this Order shall be effective as of 12:01 a.m. on the date of this Order.

SCHEDULE "A" – US PRELIMINARY INJUNCTION ORDER

[Attached]

SCHEDULE "B" – FOREIGN REPRESENTATIVE ORDER

[Attached]

SCHEDULE "C" - CANADIAN LITIGATION

Date, Jurisdiction and Case Number	Plaintiff(s)	Defendants
March 24, 2016 **British Columbia (New Westminster), No. 179011**	Linda Williamson	Johnson & Johnson, Johnson & Johnson Consumer Companies Inc., Johnson & Johnson, Inc. and Valeant Pharmaceuticals International
April 12, 2016 **Quebec (Montreal), No. 500-06-000787-164**	Rosemary Kramar	Johnson & Johnson, Johnson & Johnson Consumer Inc., Johnson & Johnson Inc., and Valeant Pharmaceuticals International Inc.
May 18, 2016 **Ontario (Toronto), CV-16-553046**	Cindy Lou Strathdee, Mario Nunziato, Matthew Strathdee, Shaeda Begum Farroqi-Willison, Gerald Douglas Willison, Theres Bernier, by her estate representative Marilyne Bernier, Marilyne Bernier, Janet Heaton and Barry Heaton	Johnson & Johnson Inc., Johnson & Johnson, and Johnson & Johnson Consumer Companies Inc.
August 22, 2019 **Alberta (Calgary), No. 1901-11748**	Diane DiSanto	Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., and Johnson & Johnson Inc.
October 26, 2020 **British Columbia (Vancouver Registry), VLC-S-S-2011369**	Amanda Lorraine Lee	Johnson & Johnson, Johnson & Johnson Consumer Companies Inc., Johnson & Johnson Inc.

SCHEDULE "D" – JIN GUIDELINES

[Attached]

GUIDELINES FOR COMMUNICATION AND COOPERATION BETWEEN COURTS IN CROSS-BORDER INSOLVENCY MATTERS

INTRODUCTION

A. The overarching objective of these Guidelines is to improve in the interests of all stakeholders the efficiency and effectiveness of cross-border proceedings relating to insolvency or adjustment of debt opened in more than one jurisdiction ("Parallel Proceedings") by enhancing coordination and cooperation amongst courts under whose supervision such proceedings are being conducted. These Guidelines represent best practice for dealing with Parallel Proceedings.

B. In all Parallel Proceedings, these Guidelines should be considered at the earliest practicable opportunity.

C. In particular, these Guidelines aim to promote:

(i) the efficient and timely coordination and administration of Parallel Proceedings;

(ii) the administration of Parallel Proceedings with a view to ensuring relevant stakeholders' interests are respected;

(iii) the identification, preservation, and maximisation of the value of the debtor's assets, including the debtor's business;

(iv) the management of the debtor's estate in ways that are proportionate to the amount of money involved, the nature of the case, the complexity of the issues, the number of creditors, and the number of jurisdictions involved in Parallel Proceedings;

(v) the sharing of information in order to reduce costs; and

(vi) the avoidance or minimisation of litigation, costs, and inconvenience to the parties[1] in Parallel Proceedings.

D. These Guidelines should be implemented in each jurisdiction in such manner as the jurisdiction deems fit[2].

E. These Guidelines are not intended to be exhaustive and in each case consideration ought to be given to the special requirements in that case.

F. Courts should consider in all cases involving Parallel Proceedings whether and how to implement these Guidelines. Courts should encourage and where necessary direct, if they have the power to do so, the parties to make the necessary applications to the court to facilitate such implementation by a protocol or order derived from these Guidelines, and encourage them to act so as to promote the objectives and aims of these Guidelines wherever possible.

[1] The term "parties" when used in these Guidelines shall be interpreted broadly.
[2] Possible modalities for the implementation of these Guidelines include practice directions and commercial guides.

ADOPTION & INTERPRETATION

Guideline 1: In furtherance of paragraph F above, the courts should encourage administrators in Parallel Proceedings to cooperate in all aspects of the case, including the necessity of notifying the courts at the earliest practicable opportunity of issues present and potential that may (a) affect those proceedings; and (b) benefit from communication and coordination between the courts. For the purpose of these Guidelines, "administrator" includes a liquidator, trustee, judicial manager, administrator in administration proceedings, debtor-in-possession in a reorganisation or scheme of arrangement, or any fiduciary of the estate or person appointed by the court.

Guideline 2: Where a court intends to apply these Guidelines (whether in whole or in part and with or without modification) in particular Parallel Proceedings, it will need to do so by a protocol or an order[3], following an application by the parties or pursuant to a direction of the court if the court has the power to do so.

Guideline 3: Such protocol or order should promote the efficient and timely administration of Parallel Proceedings. It should address the coordination of requests for court approvals of related decisions and actions when required and communication with creditors and other parties. To the extent possible, it should also provide for timesaving procedures to avoid unnecessary and costly court hearings and other proceedings.

Guideline 4: These Guidelines when implemented are not intended to:

(i) interfere with or derogate from the jurisdiction or the exercise of jurisdiction by a court in any proceedings including its authority or supervision over an administrator in those proceedings;

(ii) interfere with or derogate from the rules or ethical principles by which an administrator is bound according to any applicable law and professional rules;

(iii) prevent a court from refusing to take an action that would be manifestly contrary to the public policy of the jurisdiction; or

(iv) confer or change jurisdiction, alter substantive rights, interfere with any function or duty arising out of any applicable law, or encroach upon any applicable law.

Guideline 5: For the avoidance of doubt, a protocol or order under these Guidelines is procedural in nature. It should not constitute a limitation on or waiver by the court of any powers, responsibilities, or authority or a substantive determination of any matter in controversy before the court or before the other court or a waiver by any of the parties of any of their substantive rights and claims.

Guideline 6: In the interpretation of these Guidelines or any protocol or order under these Guidelines, due regard shall be given to their international origin and to the need to promote good faith and uniformity in their application.

[3] In the normal case, the parties will agree on a protocol derived from these Guidelines and obtain the approval of each court in which the protocol is to apply.

COMMUNICATION BETWEEN COURTS

Guideline 7: A court may receive communications from a foreign court and may respond directly to them. Such communications may occur for the purpose of the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to any joint hearing where Annex A is applicable. Such communications may take place through the following methods or such other method as may be agreed by the two courts in a specific case:

(i) Sending or transmitting copies of formal orders, judgments, opinions, reasons for decision, endorsements, transcripts of proceedings or other documents directly to the other court and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.

(ii) Directing counsel to transmit or deliver copies of documents, pleadings, affidavits, briefs or other documents that are filed or to be filed with the court to the other court in such fashion as may be appropriate and providing advance notice to counsel for affected parties in such manner as the court considers appropriate.

(iii) Participating in two-way communications with the other court, in which case Guideline 8 should be considered.

Guideline 8: In the event of communications between courts, unless otherwise directed by any court involved in the communications whether on an *ex parte* basis or otherwise, or permitted by a protocol, the following shall apply:

(i) In the normal case, parties may be present.

(ii) If the parties are entitled to be present, advance notice of the communications shall be given to all parties in accordance with the rules of procedure applicable in each of the courts to be involved in the communications and the communications between the courts shall be recorded and may be transcribed. A written transcript may be prepared from a recording of the communications that, with the approval of each court involved in the communications, may be treated as the official transcript of the communications.

(iii) Copies of any recording of the communications, of any transcript of the communications prepared pursuant to any direction of any court involved in the communications, and of any official transcript prepared from a recording may be filed as part of the record in the proceedings and made available to the parties and subject to such directions as to confidentiality as any court may consider appropriate.

(iv) The time and place for communications between the courts shall be as directed by the courts. Personnel other than judges in each court may communicate with each other to establish appropriate arrangements for the communications without the presence of the parties.

Guideline 9: A court may direct that notice of its proceedings be given to parties in proceedings in another jurisdiction. All notices, applications, motions, and other materials served for purposes of the proceedings before the court may be ordered to be provided to such other parties by making such materials available electronically in a publicly accessible system or by facsimile transmission, certified or registered mail or delivery by courier, or in such other manner as may be directed by the court in accordance with the procedures applicable in the court.

APPEARANCE IN COURT

Guideline 10: A court may authorise a party, or an appropriate person, to appear before and be heard by a foreign court, subject to approval of the foreign court to such appearance.

Guideline 11: If permitted by its law and otherwise appropriate, a court may authorise a party to a foreign proceeding, or an appropriate person, to appear and be heard by it without thereby becoming subject to its jurisdiction.

CONSEQUENTIAL PROVISIONS

Guideline 12: A court shall, except on proper objection on valid grounds and then only to the extent of such objection, recognise and accept as authentic the provisions of statutes, statutory or administrative regulations, and rules of court of general application applicable to the proceedings in other jurisdictions without further proof. For the avoidance of doubt, such recognition and acceptance does not constitute recognition or acceptance of their legal effect or implications.

Guideline 13: A court shall, except upon proper objection on valid grounds and then only to the extent of such objection, accept that orders made in the proceedings in other jurisdictions were duly and properly made or entered on their respective dates and accept that such orders require no further proof for purposes of the proceedings before it, subject to its law and all such proper reservations as in the opinion of the court are appropriate regarding proceedings by way of appeal or review that are actually pending in respect of any such orders. Notice of any amendments, modifications, extensions, or appellate decisions with respect to such orders shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

Guideline 14: A protocol or order made by a court under these Guidelines is subject to such amendments, modifications, and extensions as may be considered appropriate by the court, and to reflect the changes and developments from time to time in any Parallel Proceedings. Notice of such amendments, modifications, or extensions shall be made to the other court(s) involved in Parallel Proceedings, as soon as it is practicable to do so.

ANNEX A (JOINT HEARINGS)

Annex A to these Guidelines relates to guidelines on the conduct of joint hearings. Annex A shall be applicable to, and shall form a part of these Guidelines, with respect to courts that may signify their assent to Annex A from time to time. Parties are encouraged to address the matters set out in Annex A in a protocol or order.

ANNEX A: JOINT HEARINGS

A court may conduct a joint hearing with another court. In connection with any such joint hearing, the following shall apply, or where relevant, be considered for inclusion in a protocol or order:

(i) The implementation of this Annex shall not divest nor diminish any court's respective independent jurisdiction over the subject matter of proceedings. By implementing this Annex, neither a court nor any party shall be deemed to have approved or engaged in any infringement on the sovereignty of the other jurisdiction.

(ii) Each court shall have sole and exclusive jurisdiction and power over the conduct of its own proceedings and the hearing and determination of matters arising in its proceedings.

(iii) Each court should be able simultaneously to hear the proceedings in the other court. Consideration should be given as to how to provide the best audio-visual access possible.

(iv) Consideration should be given to coordination of the process and format for submissions and evidence filed or to be filed in each court.

(v) A court may make an order permitting foreign counsel or any party in another jurisdiction to appear and be heard by it. If such an order is made, consideration needs to be given as to whether foreign counsel or any party would be submitting to the jurisdiction of the relevant court and/or its professional regulations.

(vi) A court should be entitled to communicate with the other court in advance of a joint hearing, with or without counsel being present, to establish the procedures for the orderly making of submissions and rendering of decisions by the courts, and to coordinate and resolve any procedural, administrative or preliminary matters relating to the joint hearing.

(vii) A court, subsequent to the joint hearing, should be entitled to communicate with the other court, with or without counsel present, for the purpose of determining outstanding issues. Consideration should be given as to whether the issues include procedural and/or substantive matters. Consideration should also be given as to whether some or all of such communications should be recorded and preserved.

Court File No.: CV-21-00673856-00CL

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

SUPPLEMENTAL ORDER
(FOREIGN MAIN PROCEEDING)

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Gordon McKee (LSO#: 28557R)
gordon.mckee@blakes.com

Linc Rogers (LSO#: 43562N)
linc.rogers@blakes.com

Caitlin McIntyre (LSO#: 72306R)
Tel: 416.863.4174
Fax: 416.863.2653
caitlin.mcintyre@blakes.com

Lawyers for LTL Management LLC, in its capacity as Foreign Representative

TAB 6

~~Revised: January 21, 2014~~

Court File No. ~~———~~CV-21-00673856-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE ~~———~~MR.	)	~~WEEKDAY~~FRIDAY, THE ~~#~~ 17TH
	)	
JUSTICE ~~———~~PATTILLO	)	DAY OF ~~MONTH~~DECEMBER, ~~20YR~~2021

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

AND IN THE MATTER OF ~~THE [LIST DEBTOR NAMES](the "Debtors")~~LTL MANAGEMENT LLC

APPLICATION OF ~~[NAME OF FOREIGN REPRESENTATIVE]~~LTL MANAGEMENT LLC UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*

SUPPLEMENTAL ORDER~~[1]~~
(FOREIGN MAIN~~[2]~~ PROCEEDING)

THIS APPLICATION, made by ~~[NAME OF FOREIGN REPRESENTATIVE]~~LTL Management LLC (the "**Debtor**"), in its capacity as the foreign representative (in such capacity, the "**Foreign Representative**") of the ~~Debtors~~Debtor, pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") for an Order substantially in

~~[1] As noted in several footnotes in this model order, practice under Part IV of the CCAA is still developing, and as certain issues are determined by Canadian courts, this model order will be amended to reflect the development of the law in this area.~~

~~[2] If the Canadian Court has recognized a foreign proceeding as a "main" proceeding, then section 48 of the CCAA provides that the Court must grant certain relief, subject to any terms and conditions it considers appropriate. The provisions of the model Initial Recognition Order (Foreign Main Proceeding) fulfill the mandatory requirements of section 48 with respect to a foreign main proceeding. Section 49 of the CCAA also allows the Court to make any order that it considers appropriate for the protection of the debtor company's property or the interests of a creditor or creditors. This Supplemental Order contains discretionary relief that might be granted by the Court in the appropriate circumstances. The Model Order Subcommittee has attempted to make the provisions of this model Order consistent with similar provisions in other model Orders. Supplemental relief (whether contained in this Order or in subsequent Orders) may also include provisions dealing with the sale of assets, the recognition of critical vendors, a claims process, or any number of other matters, or may recognize foreign orders or laws granting such relief.~~

the form ~~enclosed~~included in the Application Record, was heard this day ~~at 330 University Avenue, Toronto, Ontario~~by video conference.

ON READING the Notice of Application~~,~~ and the affidavit of ~~[NAME]~~John K. Kim sworn ~~[DATE], [the preliminary report of [NAME], in its capacity as proposed information officer dated [DATE]]~~December 16, 2021, filed, and ~~on~~upon being ~~advised that the secured creditors who are likely to be affected~~provided with copies of the documents required by section 46 of the ~~charges created herein were given notice, and on hearing~~CCAA,

AND UPON HEARING the submissions of counsel for the Foreign Representative~~, [~~ and counsel for ~~the proposed information officer~~Ernst & Young Inc., in its capacity as proposed information officer (the "**Information Officer**"),~~]~~ counsel for ~~[OTHER PARTIES]~~the Official Committee of Talc Claimants (the "**Official Committee**"), no one else appearing ~~for [NAME]~~[3] although ~~duly~~properly served as appears from the ~~affidavit~~Affidavit of ~~service~~Service of ~~[NAME]~~Caitlin McIntyre sworn ~~[DATE]~~December 16, 2021, filed, and on reading the consent of ~~[NAME OF PROPOSED INFORMATION OFFICER]~~the proposed Information Officer to act as the information officer, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application Record is hereby abridged and validated[4] so that this Application is properly returnable today and hereby dispenses with further service thereof.

~~[3] Include names of secured creditors or other persons who must be served before certain relief in this model Order may be granted. See, for example, CCAA Sections 11.2(1) and 11.52(1).~~

~~[4] If service is effected in a manner other than as authorized by the Ontario *Rules of Civil Procedure*, an order validating irregular service is required pursuant to Rule 16.08 of the *Rules of Civil Procedure* and may be granted in the appropriate circumstances.~~

INITIAL RECOGNITION ORDER

2. **THIS COURT ORDERS** that any capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Initial Recognition Order (Foreign Main Proceeding) dated ~~[DATE]~~December 17, 2021 (the "**Recognition Order**").

3. **THIS COURT ORDERS** that the provisions of this Supplemental Order shall be interpreted in a manner complementary and supplementary to the provisions of the Recognition Order, provided that in the event of a conflict between the provisions of this Supplemental Order and the provisions of the Recognition Order, the provisions of the Recognition Order shall govern.

RECOGNITION OF FOREIGN ORDERS~~[5]~~

4. **THIS COURT ORDERS** that the following ~~orders (collectively,~~order of the ~~"Foreign Orders") of [NAME OF FOREIGN COURT]~~United States Bankruptcy Court for the Western District of North Carolina made in the Foreign Proceeding ~~are~~is hereby recognized and given full force and effect~~[6]~~ in all provinces and territories of Canada pursuant to ~~Section~~section 49 of the CCAA:

(a) ~~[list Foreign Orders, or portions of Foreign Orders, copies~~*Order Granting the Debtor's Request for Preliminary Injunctive Relief* (the "**US Preliminary**

~~[5] This model Order adopts an approach that might be applicable to some foreign proceedings, but not others. For example, U.S. proceedings will typically generate court orders that will be brought to the Canadian Courts for recognition. Other jurisdictions may have statutory or regulatory rights (rather than court orders) that need to be recognized in Canada.~~

~~[6] Section 50 of the CCAA provides that an order made under Part IV of the CCAA may be made on any terms and conditions that the Court considers appropriate in the circumstances. Such terms and conditions would presumably need to be consistent with the orders or laws applicable to the foreign proceeding, subject to (i) the limitations imposed by section 48(2) (an order made under section 48(1) must be consistent with any order made under the CCAA), and (ii) the limitations imposed in section 61 (which provides that the Court may apply legal or equitable rules that are not inconsistent with the CCAA, and further that the Court may refuse to do something that would be contrary to public policy). All of the Foreign Orders should be reviewed by counsel with these issues in mind, and the Court may require confirmation from counsel that there is nothing in the Foreign Orders that is inconsistent with the CCAA or that would raise the public policy exception referenced in section 61 of the CCAA.~~

Injunction"), a copy of which ~~should be attached as schedules to this Order],~~is attached as Schedule "A~~ to this Order~~" hereto,

provided, however, that in the event of any conflict between the terms of the ~~Foreign Orders~~US Preliminary Injunction and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to the applicability of the US Preliminary Injunction in Canada and with respect to Property (~~as~~ defined below) in Canada.

5. **THIS COURT ORDERS** that the following order of the United States Bankruptcy Court of the District of New Jersey (the "**New Jersey Bankruptcy Court**") made in the Foreign Proceeding is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA:

(a) *Order Authorizing LTL Management LLC to Act as Foreign Representative Pursuant to Section 1505 of the Bankruptcy Code* (the "**Foreign Representative Order**") a copy of which is attached Schedule "B" hereto,

provided, however, that in the event of any conflict between the terms of the Foreign Representative Order and the Orders of this Court made in the within proceedings, the Orders of this Court shall govern with respect to the applicability of the Foreign Representative Order in Canada and with respect to Property in Canada.

APPOINTMENT OF INFORMATION OFFICER~~[7]~~

6. ~~**5.**~~ **THIS COURT ORDERS** that ~~[NAME OF INFORMATION OFFICER] (~~the ~~"~~Information Officer~~")~~ is hereby appointed as an officer of this Court, with the powers and duties set out herein and in any other Order made in these proceedings.

~~[7] The appointment of an Information Officer is not required by the CCAA, and is in the discretion of the Court. Information Officers are normally trustees licensed under the *Bankruptcy and Insolvency Act*.~~

~~**NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY**[8]~~

~~**6.** THIS COURT ORDERS that until such date as this Court may order (the "Stay Period") no proceeding or enforcement process in any court or tribunal in Canada (each, a "Proceeding") shall be commenced or continued against or in respect of the Debtors or affecting their business (the "Business") or their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "Property"), except with leave of this Court,[9] and any and all Proceedings currently under way against or in respect of any of the Debtors or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.~~

~~**NO EXERCISE OF RIGHTS OR REMEDIES**~~

~~**7.** THIS COURT ORDERS that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "Persons" and each being a "Person") against or in respect of the Debtors [or the Foreign Representative], or affecting the Business or the Property, are hereby stayed and suspended except with leave of this Court, provided that nothing in this Order shall (i) prevent the assertion of or the exercise of rights and remedies outside of Canada, (ii) empower any of the Debtors to carry on any business in Canada which that Debtor is not lawfully entitled to carry on, (iii) [affect such investigations or Proceedings by a regulatory body as are permitted by section 11.1 of the CCAA,] (iv) prevent the filing of any registration to preserve or perfect a security interest, or (v) prevent the registration of a claim for lien.~~

~~[8] The Model Order Subcommittee notes that a "Non-Derogation of Rights" section (found, for example, in the Model Initial CCAA Order) has not been included in this model Order. In a 'full' CCAA proceeding, which would typically include a stay of proceedings made under section 11.02 of the CCAA, a number of actions or steps cannot be stayed, or the stay is subject to certain limits and restrictions. See, for example, CCAA Sections 11.01, 11.04, 11.06, 11.07, 11.08, and 11.1(2). However, in a Part IV proceeding, section 48 of the CCAA (rather than section 11.02 of the CCAA) is being relied upon when a stay of proceedings is being sought, and despite the wording of section 48(2) and section 61, it is not clear if the restrictions applicable to a section 11.02 stay of proceedings are also applicable to a section 48 stay of proceedings, or would restrict the recognition of foreign proceedings or foreign orders that include a stay of proceedings broader than permitted in a section 11.02 stay of proceedings. These issues remain open for determination by Canadian courts.~~

~~[9] Where the Court considers it to be appropriate, it may authorize other Persons, including a Court-appointed Information Officer, to provide consent to any Proceeding. This same comment applies in paragraphs 6 through 11 of this Order.~~

~~**NO INTERFERENCE WITH RIGHTS**~~

~~**8.** THIS COURT ORDERS that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Debtors and affecting the Business in Canada, except with leave of this Court.~~

ADDITIONAL ~~PROTECTIONS~~PROVISIONS RE: US PRELIMINARY INJUNCTION

~~**9.** THIS COURT ORDERS that during the Stay Period, all Persons having oral or written agreements with the Debtors or statutory or regulatory mandates for the supply of goods and/or services in Canada, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services provided in respect of the Property or Business of the Debtors, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Debtors, and that the Debtors shall be entitled to the continued use in Canada of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names.~~[10]

~~10. [THIS COURT ORDERS that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Debtors with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Debtors whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations.]~~[11]

~~[10] Section 11.01 of the CCAA provides that no order made under section 11 or 11.02 has the effect of (a) prohibiting a person from requiring immediate payment for good, services, etc. provided after the order is made, or (b) requiring the further advance of money or credit. It is unclear whether these provisions also apply to an order made pursuant to section 48 of the CCAA. Please see the discussion in footnote 8 above.~~

~~[11] Counsel should specifically address with the Court whether this provision is appropriate in the context of this Order.~~

7. **THIS COURT ORDERS** that in connection with the recognition of the US Preliminary Injunction, the Enjoined Talc Claims[1] set out in Schedule "C" hereto are hereby stayed as to the Defendants (as defined in the US Preliminary Injunction), including in respect of Johnson & Johnson Consumer Inc. (including all former names and corporate predecessors, including Johnson & Johnson Consumer Companies, Inc.), Johnson & Johnson, Johnson & Johnson Inc., Valeant Pharmaceuticals International, Inc. and Bausch Health Companies Inc. until the expiry of the US Preliminary Injunction, by its terms, unless extended by further order of the New Jersey Bankruptcy Court or the United States District Court for the District of New Jersey.

8. ~~11.~~ **THIS COURT ORDERS** that no Proceeding shall be commenced or continued against or in respect of the Information Officer, except with leave of this Court. In addition to the rights and protections afforded to the Information Officer herein, or as an officer of this Court, the Information Officer shall have the benefit of all of the rights and protections afforded to a Monitor under the CCAA~~,~~ and shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part.

OTHER PROVISIONS RELATING TO INFORMATION OFFICER

9. ~~12.~~ **THIS COURT ORDERS** that the Information Officer:

(a) is hereby authorized to provide such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;

[1] "Enjoined Talc Claims" means, collectively, any talc-related claims against the Debtor, including all claims relating in any way to talc or talc containing materials that were formerly asserted (or that could have been asserted) against Old JJCI on any theory of liability.

(b) shall consult with and respond to reasonable inquiries or information requests made by the Official Committee, subject to the protections in favour of the Information Officer set out in paragraph 12 of this Order;

(c) shall report to this Court ~~at least once every [three] months~~periodically with respect to the status of these proceedings and the status of the Foreign Proceedings, which reports may include information relating to the business of the Debtor (the "**Business**") or its current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the "**Property**~~, the Business,~~") or such other matters as may be relevant to the proceedings herein;

~~(c) in addition to the periodic reports referred to in paragraph 12(b) above, the Information Officer may report to this Court at such other times and intervals as the Information Officer may deem appropriate with respect to any of the matters referred to in paragraph 12(b) above;~~

(d) shall have full and complete access to the Property, including the ~~premises,~~ books, records, data, including ~~data~~ in electronic form, and other financial documents of the ~~Debtors~~Debtor, to the extent that is necessary to perform its duties arising under this Order; and

(e) shall be at liberty to engage independent legal counsel or such other persons as the Information Officer deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order.

10. ~~13.~~ **THIS COURT ORDERS** that the ~~Debtors~~Debtor and the Foreign Representative shall (i) advise the Information Officer of all material steps taken by the ~~Debtors~~Debtor or the Foreign Representative in these proceedings or in the Foreign Proceedings, (ii) co-operate fully

with the Information Officer in the exercise of its powers and discharge of its obligations, and (iii) provide the Information Officer with the assistance that is necessary to enable the Information Officer to adequately carry out its functions.

11. ~~14.~~ **THIS COURT ORDERS** that the Information Officer shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

12. ~~15.~~ **THIS COURT ORDERS** that the Information Officer ~~(i) shall post on its website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.~~

~~16. THIS COURT ORDERS that the Information Officer~~ may provide any creditor of ~~a~~the Debtor with information provided by the ~~Debtors~~Debtor in response to reasonable requests for information made in writing by such creditor addressed to the Information Officer. The Information Officer shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Information Officer has been advised by the ~~Debtors~~Debtor is privileged or confidential, the Information Officer shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Information Officer, the Foreign Representative and the ~~relevant Debtors~~Debtor may agree.

13. ~~17.~~ **THIS COURT ORDERS** that the Information Officer and counsel to the Information Officer shall be paid by the ~~Debtors~~Debtor their reasonable fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts. The ~~Debtors are~~Debtor is hereby authorized and directed to pay or cause the payment

of ~~the~~ the accounts of the Information Officer and counsel for the Information Officer ~~on a [TIME INTERVAL] basis and, in~~forthwith upon receipt. In addition, the ~~Debtors are~~Debtor is hereby authorized to pay ~~to~~ the Information Officer and counsel to the Information Officer~~,~~ retainers in the ~~amount[s]~~amounts of $~~[AMOUNT OR AMOUNTS] [, respectively,]~~75,000, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

14. ~~18.~~ **THIS COURT ORDERS** that the Information Officer and its legal counsel shall pass their accounts from time to time~~,~~ and for this purpose the accounts of the Information Officer and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice, and the accounts of the Information Officer and its counsel shall not be subject to approval in the Foreign Proceeding.

~~19. THIS COURT ORDERS that the Information Officer and counsel to the Information Officer, if any, shall be entitled to the benefit of and are hereby granted a charge (the "Administration Charge") on the Property in Canada, which charge shall not exceed an aggregate amount of $[AMOUNT], as security for their professional fees and disbursements incurred in respect of these proceedings, both before and after the making of this Order. The Administration Charge shall have the priority set out in paragraphs **[21]** and **[23]** hereof.~~

~~INTERIM FINANCING~~~~[12]~~

~~**20.** THIS COURT ORDERS that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the "DIP Lender's Charge") on the Property in Canada, which DIP Lender's Charge shall be consistent with the liens and charges created by the [DESCRIBE DIP LOAN ORDER MADE IN THE FOREIGN PROCEEDING], provided however that the DIP Lender's Charge (i) shall not secure an obligation that exists before this Order is made,[13] and (ii)~~

~~[12] Optional – if there is a DIP Lender which takes security over assets in Canada or in respect of Canadian Debtors. If more comprehensive interim financing provisions are required, please refer to the model CCAA Initial Order for sample provisions.~~

~~[13] This restriction appears in the interim financing provisions found in section 11.2(1) of the CCAA. It is unclear if this prohibits the recognition of a foreign order that creates a DIP Lender's Charge securing pre-filing obligations.~~

~~with respect to the Property in Canada, shall have the priority set out in paragraphs **[21]** and **[23]** hereof, and further provided that the DIP Lender's Charge shall not be enforced except with leave of this Court.~~

~~VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER~~

~~**21.** THIS COURT ORDERS that the priorities of the Administration Charge and the DIP Lender's Charge, as among them, shall be as follows:~~[14]

~~First – Administration Charge (to the maximum amount of $[AMOUNT]); and~~

~~Second – DIP Lender's Charge.~~

~~22. THIS COURT ORDERS that the filing, registration or perfection of the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect the Charges.~~

~~23. THIS COURT ORDERS that each of the Administration Charge and the DIP Lender's Charge (all as constituted and defined herein) shall constitute a charge on the Property in Canada and such Charges shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person.~~

~~24. THIS COURT ORDERS that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtors shall not grant any Encumbrances over any Property in Canada that rank in priority to, or *pari passu* with, the Administration Charge or the DIP Lender's Charge, unless the Debtors also obtain the prior written consent of the Information Officer and the DIP Lender.~~

[14] ~~The ranking of these Charges is for illustration purposes only, and is not meant to be determinative. This ranking may be subject to negotiation, and should be tailored to the circumstances of the case before the Court. Similarly, the quantum and caps applicable to the Charges should be considered in each case. Please also note that the CCAA now permits Charges in favour of critical suppliers and others, which should also be incorporated into this Order (and the rankings, above), where appropriate.~~

~~25. THIS COURT ORDERS that the Administration Charge and the DIP Lender's Charge shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") shall not otherwise be limited or impaired in any way by (i) the pendency of these proceedings and the declarations of insolvency made herein; (ii) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (iii) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (iv) the provisions of any federal or provincial statutes; or (v) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds any Debtor, and notwithstanding any provision to the contrary in any Agreement:~~

~~(a) the creation of the Charges shall not create or be deemed to constitute a breach by a Debtor of any Agreement to which it is a party;~~

~~(b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the creation of the Charges; and~~

~~(c) the payments made by the Debtors to the Chargees pursuant to this Order, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.~~

~~26. THIS COURT ORDERS that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Debtor's interest in such real property leases.~~

SERVICE AND NOTICE

15. ~~**27.**~~ **THIS COURT ORDERS** that that the E-Service ~~Protocol~~Guide of the Commercial List (the "~~**Protocol**~~**Guide**") is approved and adopted by reference herein and, in this proceeding,

the service of documents made in accordance with the ~~Protocol~~Guide (which can be found on the Commercial List website at ~~http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/~~https://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the ~~Protocol~~Guide, service of documents in accordance with the ~~Protocol~~Guide will be effective on transmission. This Court further orders that a ~~Case Website~~case website shall be established in accordance with the ~~Protocol~~Guide with the following URL ~~'<@>'~~: www.ey.com/ca/ltlmanagement (the "**Case Website**").

16. ~~28.~~ **THIS COURT ORDERS** that the Information Officer (i) shall post on the Case Website all Orders of this Court made in these proceedings, all reports of the Information Officer filed herein, and such other materials as this Court may order from time to time, and (ii) may post on its website any other materials that the Information Officer deems appropriate.

17. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the ~~Protocol~~Guide is not practicable, the ~~Debtors~~Debtor, the Foreign Representative and the Information Officer are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the ~~Debtors~~Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the ~~applicable~~ Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business

day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

18. **THIS COURT ORDERS** that the Foreign Representative, the Information Officer and their respective counsel are at liberty to serve or distribute this Order, the Recognition Order, any other materials and Orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor's creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

GENERAL

19. ~~**29.**~~ **THIS COURT ORDERS** that the Information Officer may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

20. ~~30.~~ **THIS COURT ORDERS** that nothing in this Order shall prevent the Information Officer from acting as an interim receiver, a receiver, a receiver and manager, a monitor, a proposal trustee, or a trustee in bankruptcy of ~~any~~the Debtor, the Business or the Property.

21. ~~31.~~ **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada~~ or in the [JURISDICTION OF THE FOREIGN PROCEEDING]~~, to give effect to this Order and to assist the ~~Debtors~~Debtor, the Foreign Representative, the Information Officer~~,~~ and their respective counsel and agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the ~~Debtors~~Debtor, the Foreign Representative, and the Information Officer, the

latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the ~~Debtors~~Debtor, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

22. ~~32.~~ **THIS COURT ORDERS** that each of the ~~Debtors~~Debtor, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

23. ~~33.~~ **THIS COURT ORDERS** that the Guidelines for ~~Court-to-Court Communications~~Communication and Cooperation between Courts in Cross-Border ~~Cases developed by the American Law Institute~~Insolvency Matters issued by the Judicial Insolvency Network and adopted by this Court and attached as Schedule ~~[*]~~"D" hereto ~~is~~are hereby adopted by this Court for the purposes of these recognition proceedings.

24. ~~34.~~ **THIS COURT ORDERS** that this Court is seized of these proceedings and any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the ~~Debtors, the~~ Foreign Representative and its counsel, the Information Officer and ~~their respective~~its counsel, and to any other party or parties likely to be affected by the ~~order~~Order sought, or upon such other notice, if any, as this Court may order.

25. ~~35.~~ **THIS COURT ORDERS AND DECLARES** that this Order shall be effective as of ~~[TIME]~~12:01 a.m. on the date of this Order.~~[15]~~

~~[15] The time referenced in this Order should be the same time as the time referenced in the Recognition Order, if the two Orders are made on the same date. In the absence of such a provision, Rule 59.01 of the Ontario *Rules of Civil Procedure* appears to indicate that an Order is effective as of 12:01 a.m. on the date of the Order (Rule 59.01 provides that "An order is effective from the date on which it is made, unless it provides otherwise").~~

~~[ATTACH APPROPRIATE SCHEDULES]~~

SCHEDULE "A"– US PRELIMINARY INJUNCTION ORDER

[Attached]

SCHEDULE "B"– FOREIGN REPRESENTATIVE ORDER

[Attached]

SCHEDULE "C"- CANADIAN LITIGATION

Date, Jurisdiction and Case Number	**Plaintiff(s)**	**Defendants**
March 24, 2016 **British Columbia (New Westminster), No. 179011**	Linda Williamson	Johnson & Johnson, Johnson & Johnson Consumer Companies Inc., Johnson & Johnson, Inc. and Valeant Pharmaceuticals International
April 12, 2016 **Quebec (Montreal), No. 500-06-000787-164**	Rosemary Kramar	Johnson & Johnson, Johnson & Johnson Consumer Inc., Johnson & Johnson Inc., and Valeant Pharmaceuticals International Inc.
May 18, 2016 **Ontario (Toronto), CV-16-553046**	Cindy Lou Strathdee, Mario Nunziato, Matthew Strathdee, Shaeda Begum Farroqi-Willison, Gerald Douglas Willison, Theres Bernier, by her estate representative Marilyne Bernier, Marilyne Bernier, Janet Heaton and Barry Heaton	Johnson & Johnson Inc., Johnson & Johnson, and Johnson & Johnson Consumer Companies Inc.
August 22, 2019 **Alberta (Calgary), No. 1901-11748**	Diane DiSanto	Johnson & Johnson, Johnson & Johnson Consumer Companies, Inc., and Johnson & Johnson Inc.
October 26, 2020 **British Columbia (Vancouver Registry), VLC-S-S-2011369**	Amanda Lorraine Lee	Johnson & Johnson, Johnson & Johnson Consumer Companies Inc., Johnson & Johnson Inc.

SCHEDULE "D"– JIN GUIDELINES

[Attached]

Court File No.: CV-21-00673856-00CL

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

SUPPLEMENTAL ORDER
(FOREIGN MAIN PROCEEDING)

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Gordon McKee (LSO#: 28557R)
gordon.mckee@blakes.com

Linc Rogers (LSO#: 43562N)
linc.rogers@blakes.com

Caitlin McIntyre (LSO#: 72306R)
Tel: 416.863.4174
Fax: 416.863.2653
caitlin.mcintyre@blakes.com

Lawyers for LTL Management LLC, in its capacity as Foreign Representative

Document comparison by Workshare 10.0 on Thursday, December 16, 2021 8:12:51 PM

Input:	
Document 1 ID	PowerDocs://TOR_2024/13117756/1
Description	TOR_2024-#13117756-v1-Model_Order_-_Supplemental_Order_(downloaded_December_3,_2021)
Document 2 ID	PowerDocs://TOR_2528/24241286/5
Description	TOR_2528-#24241286-v5-Draft_Initial_Supplemental_Recognition_Order_
Rendering set	Standard

Legend:	
Insertion	
~~Deletion~~	
~~Moved from~~	
Moved to	
Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:

	Count
Insertions	208
Deletions	180
Moved from	4
Moved to	4
Style change	0
Format changed	0
Total changes	396

Court File No.: CV-21-00673856-00CL

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

APPLICATION RECORD
(Initial Recognition Order – Foreign Main Proceeding)
Returnable December 17, 2021

BLAKE, CASSELS & GRAYDON LLP
Barristers and Solicitors
199 Bay Street
Suite 4000, Commerce Court West
Toronto, Ontario M5L 1A9

Gordon McKee (LSO#: 28557R)
gordon.mckee@blakes.com

Linc Rogers (LSO#: 43562N)
linc.rogers@blakes.com

Caitlin McIntyre (LSO#: 72306R)
Tel: 416.863.4174
Fax: 416.863.2653
caitlin.mcintyre@blakes.com

Lawyers for LTL Management LLC, in its capacity as Foreign Representative