



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE

)

TUESDAY, THE 1ST

JUSTICE CONWAY

)

DAY OF NOVEMBER, 2022

)

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

EXPERT APPOINTMENT RECOGNITION ORDER

THIS MOTION, made by LTL Management LLC ("**LTL**"), in its capacity as foreign representative of the estate of LTL (in such capacity, the "**Foreign Representative**"), pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**"), for an Order substantially in the form included in the Motion Record, was heard this day by video conference.

ON READING the Notice of Motion, the affidavit of John K. Kim sworn October 21, 2022, and the Fourth Report of Ernst & Young Inc. (the "**Fourth Report**"), in its capacity as information officer (the "**Information Officer**") dated October 24, 2022, each filed.

AND UPON HEARING the submissions of counsel for the Foreign Representative and counsel for the Information Officer, and such other counsel who appeared on the motion, no one

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else appearing although properly served as appears from the Affidavit of Service of Nancy Thompson sworn October 21, 2022, filed:

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record are hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

RECOGNITION OF FOREIGN ORDER

2. **THIS COURT ORDERS** that the *Order Appointing Expert Pursuant to Federal Rule of Evidence 706* (the “**Expert Appointment Order**”), a copy of which is attached as Schedule “A” hereto, of the United States Bankruptcy Court of the District of New Jersey (the “**New Jersey Bankruptcy Court**”) made in the case commenced by LTL 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 New Jersey Bankruptcy Court, is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA; provided, however, that in the event of any conflict between the terms of the Expert Appointment 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 Expert Appointment Order in Canada.

APPROVAL OF INFORMATION OFFICER'S FEES & ACTIVITIES

3. **THIS COURT ORDERS** that the First Report of the Information Officer dated February 24, 2022, the Second Report of the Information Officer dated March 3, 2022, the Third Report of the Information Officer dated May 20, 2022, and the Fourth Report, and the activities of the Information Officer referred to therein, be and are hereby approved; provided, however, that only

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the Information Officer, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

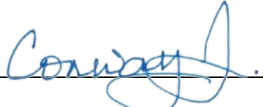
4. **THIS COURT ORDERS** that the fees and disbursements of the Information Officer and its counsel, as set out in the Fee Affidavits (as defined in the Fourth Report), are hereby approved.

GENERAL

5. **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 LTL, 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 LTL, 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 LTL, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

6. **THIS COURT ORDERS** that each of LTL, the Foreign Representative, and the Information Officer be at liberty and are 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.

7. **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” – EXPERT APPOINTMENT ORDER

[Attached]

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:

LTL MANAGEMENT, LLC,

Debtor.



Order Filed on August 15, 2022
by Clerk
U.S. Bankruptcy Court
District of New Jersey

Chapter 11

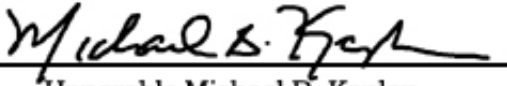
Case No.: 21-30589 (MBK)

Honorable Michael B. Kaplan

**ORDER APPOINTING EXPERT
PURSUANT TO FEDERAL RULE OF EVIDENCE 706**

The relief set forth on the following pages, numbered two (2) to seven (7), is hereby **ORDERED**.

DATED: August 15, 2022


Honorable Michael B. Kaplan
United States Bankruptcy Judge

DEBORAH LEE MANAGEMENT, LLC
Adv. Pro. No.: 21-03032 (MBK)

Caption: Order Appointing Expert Pursuant to Federal Rule of Evidence 706

WHEREAS, the Court, on its own motion, indicated an intention to appoint Kenneth R. Feinberg, Esq. as an expert (the “Court-Appointed Expert”) pursuant to Federal Rule of Evidence 706 (“Rule 706”) in connection with estimating the Debtor’s liability for present and future talc claims under section 502(c) of the Bankruptcy Code;

WHEREAS, on July 28, 2022, the Court entered the Order Identifying Proposed Court-Appointed Expert (the “Original Court-Appointed Expert Order”) [Dkt. 2791];

WHEREAS, consistent with the Original Court-Appointed Expert Order, Mr. Feinberg has consented to his appointment as an expert and indicated he is not unable to serve for any reason;

WHEREAS, this Order supplements the Original Court-Appointed Expert Order in accordance with the comments of the Court at the July 28 Hearing and input from the Debtor, the Official Committee of Talc Claims (the “TCC”), the Office of the U.S Trustee, and the Future Claims Representative (the “FCR” and, collectively with the Debtor and the TCC, the “Parties”) regarding the terms of this Order.

Now, therefore, it is hereby, **ORDERED** that:

1. Kenneth R. Feinberg, Esq., whose address is The Law Offices of Kenneth R. Feinberg PC, The Willard Office Building, 1455 Pennsylvania Avenue, N.W., Suite 390, Washington, D.C.20004-1008, is hereby appointed by the Court as an expert pursuant to Rule 706 (the “Court-Appointed Expert”) in accordance with the terms of this Order.

2. The Court-Appointed Expert shall prepare and file a Rule 706 report (the “Rule 706 Report”) estimating the volume and values of current and future ovarian and mesothelioma claims for which the Debtor may be liable, whether arising in the United States or Canada (collectively,

DEBORAH LEE MANAGEMENT, LLC

Adv. Pro. No.: 21-03032 (MBK)

Caption: Order Appointing Expert Pursuant to Federal Rule of Evidence 706

the “Talc Claims”).¹ Subject to Paragraph 4 below, the Rule 706 Report shall comply in all respects with Federal Rule of Civil Procedure 26(a)(2)(B), including, without limitation, to provide a complete statement of all opinions the Court-Appointed Expert will express regarding the Talc Claims and the basis and reasons for such opinions, and identify the facts or data considered by the Court-Appointed Expert in forming such opinions.

3. Subject to the terms of this Order and the terms of other orders of this Court, including, but not limited to, all confidentiality and privilege provisions set forth in the Agreed Protective Order Governing Confidential Information [Dkt. 948] (the “Protective Order”), the Amended Order Establishing Mediation Protocol [Dkt. 2300] (the “Mediation Protocol Order”) and herein, the following terms and guidelines shall govern the process undertaken by the Court-Appointed Expert in preparation and submission of the Rule 706 Report:

- a. The Court-Appointed Expert may, in his discretion, participate in confidential meetings with any interested party pursuant to Paragraph 4 below.
- b. The Court-Appointed Expert may, in his discretion, request informal and formal discovery from the interested parties relevant to the Court-Appointed Expert’s analysis of the volume and values of the Talc Claims.
- c. Upon completion, the Rule 706 Report shall be submitted to the Court, the Debtor, the TCC, the FCR, the U.S. Trustee and the Co-Mediators (collectively, the “Submission Parties”) and shall be filed on the docket under seal.

¹ For purposes of clarity and in response to an inquiry by counsel for the Ad Hoc Committee of States Attorney Generals with respect to talc-related claims, such “Talc Claims” to be estimated by the Court-Appointed Expert do not include the states’ consumer protection claims. The parties are urged by the Court to continue their mediation efforts with respect to such claims.

ECORC, LLC Management, LLC
Adv. Pro. No.: 21-03032 (MBK)

Caption: Order Appointing Expert Pursuant to Federal Rule of Evidence 706

- d. Once unsealed, the Rule 706 Report may be offered as evidence at any hearing in this Case, including, without limitation, any hearing contemplated in Paragraph 3(e) below, only as provided by the Federal Rules of Evidence.² Notwithstanding the Court's appointment of the Court-Appointed Expert or any professional he may retain, the right of any party to object to the admissibility of all or any of the Court-Appointed Expert's opinions, conclusions or findings set forth in the Rule 706 Report at any hearing contemplated in Paragraph 3(e) below, are preserved in all respect, as are the rights of any party to oppose such objections.
- e. Subject to the applicable rules of discovery, Rule 706(b) and any applicable orders of the Court, subsequent to the unsealing of the report, all parties in interest shall retain the right to take any discovery in connection with the Rule 706 Report, including, without limitation, obtaining the facts or data considered by the Court-Appointed Expert in forming the opinions contained in such Rule 706 Report, to cross-examine the Court-Appointed Expert, and otherwise evaluate his conclusions as part of any hearings to consider confirmation of one or more plans under section 1129 of the Bankruptcy Code or in any other contested proceeding relating to or in any way relying on or making use of the Rule 706 Report or any conclusions, findings or statements contained therein. As contemplated by Rule 706(e), nothing contained herein shall limit any party's right to use and rely upon their own experts.

² Again, for purposes of clarification and as stated by the Court as part of the July 28, 2022, bench ruling, the estimation by the Court-Appointed Expert is not intended to determine the coverage obligations of any insurers.

DOUGL. LEE MANAGEMENT, LLC
Adv. Pro. No.: 21-03032 (MBK)

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4. Confidentiality and Non-Confidential Information:

- a. All parties, including the Co-Mediators, may have confidential *ex parte* communications with the Court-Appointed Expert. Except as otherwise specifically provided herein, the content of any confidential communications shall not be disclosed to any other party, shall not be subject to discovery in this or any other proceeding, and shall not be memorialized in a written record or transcript.
- b. All parties may submit written submissions to the Court-Appointed Expert for his consideration, which submissions may contain facts or data that the parties believe the Court-Appointed Expert should consider. To the extent appropriate, the parties may designate information, facts or data in the submissions as “confidential” under the Protective Order and subject to the disclosure restrictions thereunder. Any written submissions designated as confidential may be used by the Court-Appointed Expert in the Rule 706 Report subject to redaction or other confidentiality protections in accordance with the terms of the Protective Order. Prior to the issuance of the Rule 706 Report, and upon the request of one or more parties, the Court-Appointed Expert may, in his discretion, disclose the facts or data underlying written submissions to other parties, subject to the terms of the Protective Order. After the unsealing of the Rule 706 Report, any written submissions provided to the Court-Appointed Expert shall be made available to all parties and shall be subject to discovery as provided in Paragraph 3(e) above.

Debtors: LEE Management, LLC
Adv. Pro. No.: 21-03032 (MBK)

Caption: Order Appointing Expert Pursuant to Federal Rule of Evidence 706

5. The Parties shall fully and promptly cooperate with the Court-Appointed Expert and fully and promptly comply with any reasonable discovery or other requests by the Court-Appointed Expert for information, subject in each case to applicable attorney-client and similar privileges and protections.

6. The Court shall hold a conference at the hearing scheduled for **November 16, 2022 at 10:00 a.m. ET** regarding the status of the preparation and timing of filing of the Rule 706 Report and the scheduling, if appropriate, of any mandatory mediation sessions by the Co-Mediators.

7. This Order shall not affect: (a) except as provided in Paragraphs 2 – 5 of this Order and subject to the Court’s statements on the record at the July 28 Hearing, any right of a party in interest to seek information or pursue discovery, including, without limitation, related to estimation or confirmation of any plan of reorganization, from a party-in-interest, or the right of any party to oppose such discovery; (b) any obligation of a party in interest to disclose information to the extent the information does not concern estimation of claims in this Case; or (c) subsequent to the filing and unsealing of the Court-Appointed Expert’s Rule 706 Report, the right of any party to seek relief in respect of estimation of the Debtor’s liability for talc claims, including, without limitation, a motion for approval of a specific estimation process. Nothing in this Order shall affect the requirements for obtaining approval of a plan of reorganization or a settlement under the Bankruptcy Code, including, without limitation, under sections 1123, 1125 and 1129, or the Bankruptcy Rules, including, without limitation, Rules 9014 and 9019, or any other applicable law, including, without limitation, any state public disclosure laws. For the avoidance of doubt, this Order shall not affect the rights of the FCR to serve formal or informal discovery on the Debtor or the TCC to obtain information and documents the FCR may deem necessary to assist in her future claims analysis.

DEBORAH LEE MANAGEMENT, LLC

Adv. Pro. No.: 21-03032 (MBK)

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8. The Court-Appointed Expert is authorized to retain such professionals as may be appropriate to complete the Rule 706 Report, subject to the provision of a budget to be filed with the Court. Any professional to be retained by the Court-Appointed Expert must file an affidavit (the “Affidavit”) that discloses any and all connections to potential parties in interest (“PPI”) in this Case and confirmation that a conflict search of all PPI was performed. As stated below, the Court will have no input into the professionals selected by the Court-Appointed Expert; however, the Court will allow all parties seven days after the filing of the Affidavit to file objections for the Court’s consideration.

9. Pursuant to Rule 706(c), the Court-Appointed Expert and his professionals shall receive reasonable compensation as set by the Court and consistent with the Declaration filed by the Court-Appointed Expert and the Affidavits of his professionals to be filed on the docket.

10. The Court has not directed and will not direct the Court-Appointed Expert as to the scope of information, evidence, or data he should consider or the professionals he should retain; nor will the Court discuss such matters with the Court-Appointed Expert until the issuance of the Rule 706 Report. Notwithstanding, the Court may have confidential *ex parte* communications with the Court-Appointed Expert on non-substantive matters.

11. All rights of parties in interest in connection with seeking approval of, or objecting to, a plan of reorganization or a settlement under the Bankruptcy Code or Bankruptcy Rules are preserved.

12. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

13. The Court has considered and overruled all objections filed in response to the Court’s Motion, unless otherwise addressed herein.

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC 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

**EXPERT APPOINTMENT RECOGNITION
ORDER**

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