

**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

**FIRST REPORT OF THE INFORMATION OFFICER
April 21, 2023**

OVERVIEW

1. On April 4, 2023, LTL Management LLC (the “**Debtor**”) filed a petition in the United States Bankruptcy Court for the District of New Jersey (the “**New Jersey Bankruptcy Court**”) seeking relief under title 11 of chapter 11 of the United States Code (the “**Bankruptcy Code**”). The Debtor’s case (the “**2023 Chapter 11 Proceeding**”) has been assigned to Judge Michael B. Kaplan.
2. The 2023 Chapter 11 Proceeding is the Debtor’s second filing under the Bankruptcy Code. The Debtor’s prior filing under the Bankruptcy Code (the “**2021 Chapter 11 Proceeding**”)¹ was dismissed by an order of the New Jersey Bankruptcy Court on April 4, 2023 (the “**Dismissal**”).

¹ Pursuant to an application served by the Debtor under Part IV of the *Companies' Creditors Arrangement Act* (“**CCAA**”) on December 16, 2021, the 2021 Chapter 11 Proceeding was recognized as a “foreign main proceeding” by an order of the Ontario Superior Court of Justice (Commercial List) (the “**CCAA Court**”) on December 17, 2021 (the “**2021 Recognition Proceeding**”).

Order”) after significant litigation and an order of the United States Third Circuit Court of Appeals issued on January 30, 2023.²

3. On April 13, 2023, the CCAA Court issued the Initial Recognition Order (as defined below), recognizing the 2023 Chapter 11 Proceeding as a “foreign main proceeding” and commencing this recognition proceeding before the CCAA Court (the “**2023 Recognition Proceeding**”).
4. On April 18, 2023, the New Jersey Bankruptcy Court held a hearing on, among other things, the Injunction Motion (as defined below). On April 20, 2023, the New Jersey Bankruptcy Court delivered a decision from the bench on the Injunction Motion that provided for a limited injunction, with a written order to be settled by the parties (the “**2023 Preliminary Injunction Order**”).

PURPOSE

5. The purpose of this First Report (the “**First Report**”) of Ernst & Young Inc. in its capacity as information officer (the “**Information Officer**”) is to provide information to the CCAA Court and Canadian stakeholders with respect to:
 - i) the proceeding before the New Jersey Bankruptcy Court and the Injunction Motion;
 - ii) the status of talc litigation claims filed in Canada; and
 - iii) the status of this 2023 Recognition Proceeding and anticipated next steps.

TERMS OF REFERENCE

6. In preparing this First Report and making the comments herein, the Information Officer has relied solely on information and documents provided by the Debtor and its Canadian and U.S. legal counsel and publicly available information such as court documents and press releases (collectively, the “**Information**”).
7. The Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Information Officer has not

² The history of the 2021 Chapter 11 Proceeding is complex and described in detail in the reports filed by Ernst & Young Inc. in its capacity as information officer in the related CCAA recognition proceeding, accessible here: <https://documentcentre.ey.com/#/detail-engmt?eid=479>.

audited, or otherwise attempted to verify the accuracy or completeness of such information in a manner that would wholly or partially comply with Generally Accepted Assurance Standards (“GAAS”) pursuant to the *Chartered Professional Accountants Canada Handbook* and, accordingly, the Information Officer expresses no opinion or other form of assurance contemplated under GAAS in respect of the Information.

8. Unless otherwise indicated, the Information Officer’s understanding of factual matters expressed in this First Report concerning the Debtor and its businesses is based on the Information, and not independent factual determinations made by the Information Officer.

STATUS OF THE PROCEEDINGS

9. On April 5, 2023, the New Jersey Bankruptcy Court issued an order granting the Debtor a temporary restraining order (as amended on April 6, 7 and 10, the “**2023 TRO**”) on an *ex parte* basis, enjoining talc personal injury claims against the Debtor, its affiliates and certain indemnified parties, referred to as “Protected Parties” (as defined in the 2023 TRO).
10. On April 12, 2023, the New Jersey Bankruptcy Court entered an order authorizing the Debtor to act as foreign representative (in such capacity, the “**2023 Foreign Representative Order**”) on behalf of its estate.
11. On April 13, 2023, pursuant to an application served by the Debtor under Part IV of the CCAA on April 12, 2023, the CCAA Court issued two orders pursuant to Part IV of the CCAA:
 - i) the Initial Recognition Order (Foreign Main Proceeding) (the “**Initial Recognition Order**”), which, *inter alia*, recognizes the Debtor as the “foreign representative” and the 2023 Chapter 11 Proceeding as a “foreign main proceeding”, as defined in section 45 of the CCAA, and stays all proceedings in Canada against the Debtor; and
 - ii) the Supplemental Order (Foreign Main Proceeding) (the “**2023 Supplemental Recognition Order**”), which, *inter alia*, recognizes the 2023 TRO and the Foreign Representative Order, gives the 2023 TRO and the 2023 Foreign Representative Order full force and effect in all provinces and territories in Canada pursuant to section 49 of the CCAA, and appoints the Information Officer in the 2023 Recognition Proceeding.

12. On April 18, 2023, the New Jersey Bankruptcy Court conducted a hearing in respect of certain matters, including the hearing in respect of a motion brought by the Debtor for an order, among other things: (i) declaring that the automatic stay applied or extended to certain actions against Protected Parties³ and (ii) preliminary enjoining such actions (the “**Injunction Motion**”).
13. On April 20, 2023, the New Jersey Bankruptcy Court granted the 2023 Preliminary Injunction Order, in an oral ruling from the bench, with a written order to follow. The Information Officer understands that the stay in respect of LTL remains in place and is unaffected by the New Jersey Bankruptcy Court’s ruling on the Injunction Motion. Based on the Information Officer’s review of the transcript of the hearing and its conversations with LTL’s counsel, the New Jersey Bankruptcy Court’s ruling, among other things, dissolves the 2023 TRO and replaces it with a limited temporary injunction in favour of the Protected Parties, which will be revisited on June 15, 2023 (the “**Temporary Injunction**”). The Temporary Injunction, among other things, permits claimants to file new talc-related claims against the Protected Parties and to advance discovery in respect of talc claims, but prohibits claimants from commencing or continuing any trial against the Protected Parties. Plaintiffs who elect not to commence a claim at this time will have the limitations period tolled while the Temporary Injunction is in place.
14. The New Jersey Bankruptcy Court requested that the Debtor work with the Official Committee of Talc Claimants (the “**TCC**”) to settle a version of the 2023 Preliminary Injunction Order by no later than the end of the day on Monday, April 24, 2023. At the time of this First Report, the terms of the formal 2023 Preliminary Injunction Order have not been settled among the parties and the formal 2023 Preliminary Injunction Order has not been entered by the New Jersey Bankruptcy Court.
15. The Information Officer has been informed by the Debtor that, in light of the delay in the issuance of a written version of the 2023 Preliminary Injunction Order and the inability of the

³ Pursuant to a Notice of Filing of Supplemented Appendices to Debtor’s Verified Complaint for Declaration and Injunctive Relief filed by the Debtor on April 17, 2023, the Debtor has sought to add certain additional entities to those parties listed as “Protected Parties” in the 2023 TRO.

Canadian parties to review the terms thereof, the Debtor is seeking an order of this CCAA Court extending the effect of the 2023 TRO to May 3, 2023 to give the Canadian stakeholders time to review the form of 2023 Preliminary Injunction Order, once finalized.

CANADIAN TALC LITIGATION UPDATE

16. In Canada, as of the commencement of the 2021 Chapter 11 Proceeding, there were five (5) talc-related proceedings commenced against the entity formerly known as Johnson & Johnson Consumer Inc., Johnson & Johnson Inc. (a Canadian subsidiary), and other parties. Counsel in each of the actions, including each of the proposed class actions and the certified class action in Quebec, were served with notice of the 2021 Recognition Proceeding and the 2023 Recognition Proceeding.
17. In March 2022, and while the 2021 Chapter 11 Proceeding and the 2021 Recognition Proceeding were ongoing, the Debtor became aware of twelve (12) additional statements of claim issued in Ontario against certain of the Protected Parties (the “**Post-Filing Claims**”). In February 2023, the Debtor advised the Information Officer that on January 26 and 27, 2023, approximately twenty-five (25) notices of civil claim were issued in British Columbia in respect of talc claims against certain of the Protected Parties. In both instances, the Information Officer contacted the plaintiffs’ counsel and advised that, pursuant to a March 7, 2022 order of this CCAA Court in the 2021 Recognition Proceeding (the “**Extended Injunction Recognition Order**”), the CCAA Court had recognized the injunction granted by the New Jersey Bankruptcy Court and that no further action could be taken regarding the claims.
18. Between April 13, 2023 and April 21, 2023, the Debtor advised the Information Officer that between May 6, 2022 and April 5, 2023, forty-six (46) additional claims had been issued in Ontario by the same plaintiffs’ counsel that had issued the Post-Filing Claims (the “**Additional Post-Filing Claims**”), but which were only served recently. The Information Officer again wrote to plaintiffs’ counsel to advise that filing the claims did not comply with the Extended Injunction Recognition Order and the 2023 Supplemental Recognition Order, as applicable.

19. On April 19, 2023, the Information Officer had a telephone call with Russell Howe of Preszler Injury Lawyers regarding the issuance of the Additional Post-Filing Claims. Mr. Howe advised that he had filed the claims out of a concern regarding the limitation period and mistakenly believed he could serve such claims as a result of the termination of the 2021 Recognition Proceeding. Mr. Howe has confirmed in writing that he will cease issuing talc claims against the protected parties until the court clarifies the matter further.

RECOMMENDATION

20. The Debtor is seeking a short extension of the terms of the 2023 TRO to May 3, 2023 to allow the parties in Canada time to understand the implications of the 2023 Preliminary Injunction Order. The Information Officer does not believe that any Canadian party would be prejudiced by this limited extension.

21. The Information Officer is of the view that all the parties should have the opportunity to review the 2023 Preliminary Injunction Order and consider the implications thereof. At that point, the Information Officer will be in a better position to make a further recommendation to this CCAA Court regarding the next steps in the 2023 Recognition Proceeding.

All of which is respectfully submitted this 21st day of April, 2023.

ERNST & YOUNG INC.

**Solely In its capacity as Information Officer of
LTL Management LLC, and not in its personal capacity**

Per:



Alex Morrison
Senior Vice President

Per:



Stuart Clinton
Senior Vice President

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Proceeding Commenced at Toronto

**FIRST REPORT OF THE INFORMATION
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