

**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

**MOTION RECORD
(Amending Stay Period)
Returnable April 24, 2023**

April 21, 2023

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TO: SERVICE LIST

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

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

SERVICE LIST
(As at April 11, 2023)

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**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

MOTION RECORD

I N D E X

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TAB 1

Court File No. CV-23-00697824-00CL

**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
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**NOTICE OF MOTION
(Returnable April 24, 2023)**

LTL Management LLC (the “**Debtor**”), in its capacity as foreign representative of its estate (in such capacity, the “**Foreign Representative**”), will make a motion to the Court on Thursday, April 24, 2023, at 4:30 p.m., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- ☐ In writing under subrule 37.12.1(1) because it is (*insert one of* on consent, unopposed *or* made without notice);
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location:

Join Zoom Meeting

<https://ca01web.zoom.us/j/65979875939?pwd=VVRJZHVVVRWQ1cGdkRERtTGpRajNFUT09#success>

Meeting ID: 659 7987 5939

Passcode: 897894

Please advise if you plan to attend the motion by emailing Alexia Parente at alexia.parente@blakes.com.

THE MOTION IS FOR:

1. An Order substantially in the form located at Tab 3 to the Debtor's Motion Record:
 - (a) abridging the time for, and validating service of, the Notice of Motion and the Motion Record;
 - (b) amending the stay period referenced in paragraph 7 of the supplemental recognition order dated April 13, 2023, granted in these proceedings (the "**2023 Supplemental Recognition Order**"), to delete the reference to "April 24, 2023" and replace it with "May 3, 2023"; and
 - (c) such further and other relief as counsel may request and this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:**Background**

1. On April 4, 2023, the Debtor commenced a case (the "**2023 Chapter 11 Proceeding**") by filing a voluntary a petition for relief under title 11 of chapter 11 ("**Chapter 11**") of the United States Code with the United States Bankruptcy Court for the District of New Jersey (the "**New Jersey Bankruptcy Court**").
2. The 2023 Chapter 11 Proceeding is the Debtor's second filing under Chapter 11. The Debtor's prior filing under Chapter 11 (the "**2021 Chapter 11 Proceeding**")¹ was dismissed by the New Jersey Bankruptcy Court on April 4, 2023 (the "**Dismissal Order**").
3. On April 10, 2023, the New Jersey Bankruptcy Court entered a third amended temporary restraining order (the "**2023 TRO**") on an *ex parte* basis, enjoining talc personal injury claims

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) on December 17, 2021 (the "**2021 CCAA Recognition Proceeding**").

against the Debtor, its affiliates and certain indemnified parties, referred to as the “Protected Parties” (as defined in the 2023 TRO).

4. Pursuant to the 2023 TRO, all plaintiffs, including plaintiffs who have commenced talc lawsuits in Canada, are prohibited from continuing or commencing any action or claim against the Protected Parties. The 2023 TRO was effective for 28 days from the date of its entry, expiring May 8, 2023.

5. The first day hearings for the 2023 Chapter 11 Proceeding commenced on April 11, 2023. On April 12, 2023, the New Jersey Bankruptcy Court granted a variety of administrative orders, *inter alia*, an order authorizing the Debtor to act as Foreign Representative (in such capacity, the “**Foreign Representative Order**”) on behalf of its estate.

The 2023 CCAA Recognition Proceeding

6. On April 13, 2023, the Foreign Representative sought and obtained, among other things:
- (a) an order recognizing the Dismissal Order and terminating the 2021 CCAA Recognition Proceeding;
 - (b) 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
 - (c) the 2023 Supplemental Recognition Order which, *inter alia*, recognizes the 2023 TRO and the Foreign Representative Order, gives the 2023 TRO and the Foreign Representative Order full force and effect in all provinces and territories in Canada pursuant to section 49 of the CCAA, and appoints Ernst & Young Inc. as information officer (the “**Information Officer**”).

The 2023 Preliminary Injunction Order

7. On April 18, 2023, the New Jersey Bankruptcy Court conducted a hearing on the Debtor's motion for an order, among other things: (i) declaring that the automatic stay applied or extended to certain actions against the Protected Parties, and (ii) preliminary enjoining such actions for the duration of the 2023 Chapter 11 Proceeding.

8. On April 20, 2023, the New Jersey Bankruptcy Court delivered a ruling from the bench granting a limited preliminary injunction which, among other things, (i) continued the stay against the Debtor, (ii) permitted the filing of new claims against the Protected Parties other than the Debtor and other pre-trial matters, and (iii) prohibited new and existing trials from being commenced or continued against the Protected Parties. The "bench order" is subject to a final form of order to be settled by the parties (the "**2023 Preliminary Injunction Order**") to be entered by the New Jersey Bankruptcy Court.

9. The New Jersey Bankruptcy Court also held that the 2023 TRO should be dissolved and replaced with a more limited preliminary injunction in the form of the 2023 Preliminary Injunction Order.

10. As of the date hereof, the final form of the 2023 Preliminary Injunction Order has not been settled by parties or entered by the New Jersey Bankruptcy Court.

Relief Requested

11. Currently, the stay authorized under the 2023 is effective in Canada until the later of (i) the expiry of the 2023 TRO, by its terms, unless extended by further order of the New Jersey Bankruptcy Court, or (ii) April 24, 2023.

12. In order to preserve the status quo and maintain stability in Canada while these administrative matters are being addressed in the United States, the Foreign Representative is requesting a short extension of the stay granted by this Court, by amending paragraph 7 of the

2023 Supplemental Recognition Order to delete “April 24, 2023” and replace with “until May 3, 2023.”

13. Assuming the 2023 Preliminary Injunction Order is settled on or about April 24, 2023, this short extension should give the Foreign Representative and the Information Officer sufficient time to review the 2023 Preliminary Injunction Order and prepare and serve supplementary materials. The Foreign Representative is also of the view this time window should afford stakeholders sufficient time to review and consider the 2023 Preliminary Injunction Order.

14. The Foreign Representative, in consultation with the Information Officer, does not believe that any Canadian party would be prejudiced by this limited extension.

15. The Foreign Representative intends to return to this Court as soon as practicable to seek recognition of the 2023 Preliminary Injunction Order once the form is settled by the parties and entered by the New Jersey Bankruptcy Court.

16. 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.

Applicable acts, regulations and rules:

- (a) The provisions of the CCAA and the statutory, inherent and equitable jurisdiction of this Honourable Court;
- (b) Rules 1.04, 1.05, 3.02, 16, 37 and 39 of the *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194, as amended; and
- (c) Such further acts, regulations and rules as counsel for the Foreign Representative may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. Affidavit of John K. Kim sworn April 12, 2023, filed;
2. Affidavit of John K. Kim sworn April 21, 2023, and the exhibits thereto, filed;
3. The first report of the Information Officer dated April 21, 2023, to be filed; and
4. such further and other evidence and material as counsel for the Foreign Representative may advise and his Honourable Court may permit.

April 21, 2023

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Lawyers for the Foreign Representative

TO: SERVICE LIST

Court File No.: CV-23-00697824-00CL

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

NOTICE OF MOTION

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TAB 2

Court File No. CV-23-00697824-00CL

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
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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 April 21, 2023)

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**"), an affiliate of LTL Management LLC ("**LTL**" or the "**Debtor**") and a subsidiary of the Debtor's ultimate parent company, Johnson & Johnson ("**J&J**"). I have been seconded to LTL by J&J Services 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. Accordingly, 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 affidavit 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.

4. I swear this affidavit (the "**Second Kim Affidavit**") in support of the motion brought by the Debtor, in its capacity as foreign representative of its estate (in such capacity, the "**Foreign Representative**") pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 185, c. C-36, as amended (the "**CCAA**"), seeking to maintain the stay authorized by the 2023 TRO (as defined below) until May 3, 2023. The interim relief is requested because the form of 2023 Preliminary Injunction Order (as defined below) has not yet been settled and entered by the New Jersey Bankruptcy Court.

I. BACKGROUND

5. On April 4, 2023, the New Jersey Bankruptcy Court entered an order (the "**Dismissal Order**") dismissing the Debtor's prior Chapter 11 proceeding, referred to as the 2021 Chapter 11 Proceeding. On the same day, the Debtor filed for protection under Chapter 11 for a second time (the "**2023 Chapter 11 Proceeding**") by filing a voluntary petition for relief with the New Jersey Bankruptcy Court ("**2023 Petition**").

6. The corporate and procedural history of the 2021 Chapter 11 Proceeding is summarized in my affidavit sworn on April 12, 2023 (the "**Initial Kim Affidavit**") and filed in this proceeding. Capitalized terms set out above have the meaning ascribed to them in the Initial Kim Affidavit. A copy of the Initial Kim Affidavit, without Exhibits, is attached hereto as Exhibit "A".

7. Concurrently with the filing of the 2023 Chapter 11 Proceeding, the Debtor filed a complaint commencing an adversary proceeding against the plaintiffs in pending talc-related lawsuits against Protected Parties which include Old JJCI, J&J, J&J Canada and Holdco (the “**2023 Complaint**”).¹

8. The purpose of the 2023 Complaint was to obtain (a) a declaration that the automatic stay in place in respect of the Debtor by virtue of filing the 2023 Petition also applies to stay the commencement or continuation of Debtor Talc Claims against the Protected Parties; (b) a preliminary injunction enjoining the prosecution of such actions; and (c) an *ex parte* temporary restraining order in respect of such actions pending a final hearing on the 2023 Preliminary Injunction Order.

9. On April 10, 2023, the New Jersey Bankruptcy Court entered a third amended temporary restraining order (the “**2023 TRO**”)² that enjoined the Debtor Talc Claims against the Protected Parties. Pursuant to the 2023 TRO, all plaintiffs, including plaintiffs in the Canadian Actions, are prohibited from continuing or commencing any such action or claim against the Protected Parties. The 2023 TRO was to be effective for 28 days from the date of its entry and was thus scheduled to expire on May 8, 2023, unless earlier dissolved by order of the New Jersey Bankruptcy Court.

10. The first day hearings for the 2023 Chapter 11 Proceeding commenced on April 11, 2023. On April 11, 2023, counsel to certain plaintiffs made submissions in favour of filing the 2023 Petition while others opposed the filing and requested that the New Jersey Bankruptcy Court *sua*

¹ Protected Parties are defined in detail in the 2023 Complaint, a copy of which is attached as Exhibit “I” to the Initial Kim Affidavit.

² A copy of the 2023 TRO is attached as Exhibit “D” to the Initial Kim Affidavit.

sponte dismiss the 2023 Chapter 11 Proceeding. The New Jersey Bankruptcy Court declined to dismiss the 2023 Chapter 11 Proceeding and granted a variety of administrative orders, among other things, the 2023 Foreign Representative Order, authorizing the Debtor to act as foreign representative on behalf of the Debtor's estate for the purpose of seeking recognition of the 2023 Chapter 11 Proceeding in Canada.

II. THE 2023 CCAA RECOGNITION PROCEEDING

11. On April 13, 2023, the Foreign Representative sought and obtained, among other things:

- (a) an order recognizing the Dismissal Order and terminating the 2021 CCAA Recognition Proceeding;
- (b) the Initial Recognition Order granting recognition of the 2023 Chapter 11 Proceeding as a "foreign main proceeding"; and
- (c) the 2023 Supplemental Recognition Order granting various supplemental relief in respect of the 2023 Chapter 11 Proceeding, including:
 - i. recognizing and giving full force and effect in all provinces and territories of Canada to the 2023 TRO and 2023 Foreign Representative Order; and
 - ii. appointing E&Y as the Information Officer in connection with the 2023 CCAA Recognition Proceeding.

12. The Initial Kim Affidavit was sworn in support of both the Termination Motion and the 2023 Recognition Application.

III. THE 2023 PRELIMINARY INJUNCTION ORDER

13. On April 18, 2023, the New Jersey Bankruptcy Court conducted a hearing (the “**April 18 Hearing**”) on the Debtor’s motion for an order granting the relief being sought in the 2023 Complaint with respect to the Protected Parties for the duration of the 2023 Chapter 11 Proceeding. The Debtor made submissions in support of relief sought, including:

- (a) there is a reasonable likelihood that the Debtor will succeed on the merits by successfully reorganizing through the 2023 Chapter 11 Proceeding, including by confirming a plan that will establish a trust to resolve the Debtor Talc Claims.
- (b) the Debtor has addressed the good faith concerns that were previously raised in the 2021 Chapter 11 Proceeding;
- (c) failure to enjoin the prosecution of the Debtor Talc Claims in the tort system would cause irreparable injury to the Debtor, which is ultimately responsible for such Debtor Talc Claims through indemnification obligations, and defeat the purpose of the 2023 Chapter 11 Proceeding;
- (d) the balance of harms supports granting the requested injunctive relief; and
- (e) the public interest lies with the Debtor completing its reorganization process and resolving the Debtor Talc Claims in a uniform and equitable manner.

A copy of the Debtor’s motion in connection with the April 18 Hearing is attached hereto as Exhibit “**B**”.

14. The April 18 Hearing proceeded for over nine hours and the Debtor's motion for the requested preliminary injunction was met with significant opposition. After reviewing declarations and supplementary materials submitted by the relevant parties in connection with the Debtor's motion, Judge Kaplan reserved his ruling on the motion for April 20, 2023. Accordingly, the 2023 TRO was not dissolved on April 18, 2023, and remained in effect following the April 18 Hearing.

15. On April 20, 2023, Judge Kaplan read his ruling on the Debtor's motion into the record. Judge Kaplan's key findings can be summarized as follows:

- (a) the 2023 TRO currently in place should be dissolved and replaced with a more limited preliminary injunction;
- (b) Following Judge Kaplan's ruling:
 - i. the commencement or continuation of new and existing trials against the Protected Parties for the Debtor Talc Claims will remain prohibited;
 - ii. the stay of the Debtor Talc Claims against the Debtor is continued;
 - iii. the filing of new Debtor Talc Claims against the Protected Parties, other than the Debtor, is permitted;
 - iv. any ongoing discovery or other pre-trial matters is permitted;
 - v. so that the limitation period for unfiled claims can be tolled, the automatic stay remains in effect for unfiled claims unless, the claimant, through counsel, notifies the debtor in writing of his, her or their interests and intent to proceed with the filing of a complaint (the

purpose of his language is “to ensure that such claimants who wish to defer filing a complaint and paying the necessary filing fees while the bankruptcy case unfolds are not placed in a position of having to file and incur that expense”); and

- vi. the preliminary injunction be effective for the period through and including June 15, 2023, at which date the New Jersey Bankruptcy Court will revisit the matter.

Copies of the transcripts for the April 18 Hearing and Judge Kaplan’s ruling dated April 20, 2023 are attached hereto as Exhibits “C” and “D”, respectively. Judge Kaplan concluded with the hearing by indicating the ruling was “...so ordered from the bench subject to the terms of a more formal order to be entered at a later date...”

16. At the time of swearing this Second Kim Affidavit, the terms of the form of order with respect to the preliminary injunction (the “**2023 Preliminary Injunction Order**”) have not been settled. I understand that a form of the 2023 Preliminary Injunction Order is expected to be settled by the parties by April 24, 2023, at which time it will be entered by the New Jersey Bankruptcy Court and become effective.

IV. RELIEF REQUESTED

17. The Foreign Representative intends to return to this Court as soon as practicable to seek recognition of the 2023 Preliminary Injunction Order once a form is settled by the parties and entered by the New Jersey Bankruptcy Court.

18. Even if the form of the 2023 Preliminary Injunction Order is settled prior the Foreign Representative's hearing before this Court scheduled for April 24, 2023, the Foreign Representative, in consultation with the Information Officer, believes Canadian stakeholders may not have a reasonable opportunity to review and confirm the 2023 Preliminary Injunction Order.

19. In order to preserve the status quo and maintain stability in Canada while these administrative matters are being addressed in the United States, the Foreign Representative is requesting a short extension of the stay granted by this Court in connection with the recognition of the 2023 TRO, until May 3, 2023, subject to further Order of this Court.

20. Assuming the 2023 Preliminary Injunction Order is settled on or about April 24, 2023, this short extension should give the Foreign Representative and the Information Officer sufficient time to review the 2023 Preliminary Injunction Order and prepare and serve supplementary materials. The Foreign Representative is also of the view that this time window should afford stakeholders sufficient time to review and consider the 2023 Preliminary Injunction Order.

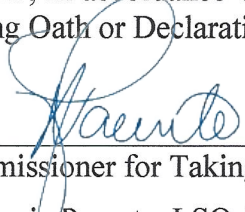
21. The Foreign Representative's rationale for seeking recognition of the 2023 Preliminary Injunction Order is set out in previous materials filed with this Court, including this affidavit. Accordingly, the Foreign Representative intends to file only brief supplementary material in connection with the motion to recognize the 2023 Preliminary Injunction Order.

V. CONCLUSION

22. The fundamental purpose of the 2023 Chapter 11 Proceeding is to implement a global resolution of the Debtor's talc-related claims.

23. Preserving the status quo until May 3, 2023 or further Order of this Court, by permitting the stay to continue in favour of the Protected Parties until such time will maintain the status quo and facilitate the Debtor's progression towards a plan of reorganization.

SWORN remotely by John K. Kim at the City of Princeton in the State of New Jersey, before me at the City of Toronto, in the Province of Ontario, on April 21, 2023, in accordance with O.Reg.431/20, Administering Oath or Declaration Remotely.



Commissioner for Taking Affidavits

Alexia Parente, LSO #81927G

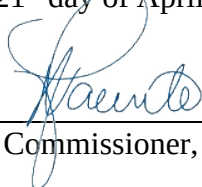


JOHN K. KIM

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

Affidavit of John K. Kim

sworn before me by video conference
this 21st day of April, 2023



A Commissioner, etc.

Alexia Parente, LSO #81927G

Court File No. CV-23-00697824-00CL

**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 April 12, 2023)

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**"), an affiliate of LTL Management LLC ("**LTL**" or the "**Debtor**") and a subsidiary of the Debtor's ultimate parent company, Johnson & Johnson ("**J&J**"). I have been seconded to LTL by J&J Services 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. Accordingly, 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 Affidavit 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.

I. OVERVIEW

4. As discussed in more detail below, on October 14, 2021, the Debtor commenced a case (the **"2021 Chapter 11 Proceeding"**) under chapter 11 (**"Chapter 11"**) of title 11 of the United States Code. On December 17, 2021, pursuant to the 2021 Initial Recognition Order (as defined below), the 2021 Chapter 11 Proceeding were recognized as a foreign main proceeding (the **"2021 CCAA Recognition Proceeding"**) pursuant to Part IV of the *Companies' Creditors Arrangement Act* (Canada) (**"CCAA"**) by the Ontario Superior Court of Justice (Commercial List) (the **"CCAA Court"**).

5. The 2021 Initial Recognition Order was granted pursuant to an application brought by the Debtor in its capacity as foreign representative on behalf of LTL's estate (in such capacity, the **"2021 Foreign Representative"**). Ernst & Young Inc. (**"E&Y"**) was appointed as information officer in the 2021 CCAA Recognition Proceeding (in such capacity, the **"2021 Information Officer"**) pursuant to the 2021 Supplemental Order (as defined below).

6. On April 4, 2023, the United States Bankruptcy Court for the District of New Jersey (the **"New Jersey Bankruptcy Court"**) entered an order dismissing the 2021 Chapter 11 Proceeding (the **"Dismissal Order"**). A copy of the Dismissal Order is attached hereto as **Exhibit "A"**.

7. On April 13, 2023, the 2021 Foreign Representative will bring a motion before the CCAA

Court (the “**Termination Motion**”) seeking an order, among other things, recognizing the Dismissal Order and terminating the 2021 CCAA Recognition Proceeding. I am not aware of any other foreign insolvency proceedings in respect of the Debtor.

8. On April 4, 2023, LTL filed for protection under Chapter 11 for a second time (the “**2023 Chapter 11 Proceeding**”) by filing a voluntary petition for relief with the New Jersey Bankruptcy Court. A certified copy of the petition filed on April 4, 2023, is attached hereto as **Exhibit “B”**.

9. Similar to the 2021 Chapter 11 Proceeding, the stated purpose of the 2023 Chapter 11 Proceeding is to fully, equitably, and efficiently resolve all current and future talc-related claims against the Debtor. Further, this filing is supported by law firms on behalf of tens of thousands of claimants.

10. On April 4, 2023, I submitted a declaration (the “**2023 First Day Declaration**”) in the 2023 Chapter 11 Proceeding, which provides further background on the Debtor and outlines the various types of relief sought from the New Jersey Bankruptcy Court in connection with the first day motions, which were heard on April 11, 2023. A copy of my 2023 First Day Declaration, without exhibits, is attached hereto as **Exhibit “C”**.

11. On April 10, 2023, the New Jersey Bankruptcy Court entered a third amended temporary restraining order (the “**2023 TRO**”) that enjoin talc personal injury claims against the Protected Parties (as defined below). A copy of the entered 2023 TRO is attached hereto as **Exhibit “D”**.

12. On April 12, 2023, the New Jersey Bankruptcy Court entered an order (the “**2023 Foreign Representative Order**”) in connection with the 2023 Chapter 11 Proceeding authorizing the Debtor to act as foreign representative (in such capacity, the “**2023 Foreign Representative**”) on

behalf of its estate. A copy of the 2023 Foreign Representative Order is attached hereto as **Exhibit “E”**.

13. The 2023 Foreign Representative seeks recognition of the 2023 Chapter 11 Proceeding in Canada (the “**2023 CCAA Recognition Proceeding**”) in order to, among other things: (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.

14. Accordingly, I swear this affidavit in support of:

(a) the Termination Motion; and

(b) the application (the “**2023 Recognition Application**”) by the 2023 Foreign Representative under Part IV of the CCAA seeking:

1. an order granting recognition of the 2023 Chapter 11 Proceeding as a “foreign main proceeding”; and
2. an order granting various supplemental relief in respect of the 2023 Chapter 11 Proceeding (the “**2023 Supplemental Recognition Order**”), including:
 - i. recognizing and giving full force and effect in all provinces and territories of Canada to the 2023 TRO and 2023 Foreign Representative Order; and
 - ii. appointing E&Y as information officer in connection with the 2023 CCAA Recognition Proceeding.

15. An identical copy of this Affidavit is included in the motion record in support of the Termination Motion and the application record in support of the 2023 Recognition Application.

16. All currency references are to USD unless otherwise stated.

II. BACKGROUND

17. The corporate history of the Debtor is set out in detail in the 2023 First Day Declaration. The procedural background of the 2021 CCAA Recognition Proceeding, is set out in detail in the reports of the 2021 Information Officer, dated February 24, 2022, March 3, 2022, May 20, 2022, October 24, 2022, February 16, 2023 (the “**Fifth Report**”), March 27, 2023 (the “**Sixth Report**” and collectively, the “**2021 Information Officer Reports**”).¹ Copies of the 2021 Information Officer Reports as well as other pleadings filed and orders issued in the 2021 CCAA Recognition Proceeding may be found on the website maintained by the 2021 Information Officer: <https://documentcentre.ey.com/#/detail-engmt?eid=479>. Set out below is a summary of the more detailed discussion in the documents referred to above.

(i) *Johnson & Johnson Group of Companies*

18. As noted above, the Debtor 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 135 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.

¹ I understand the 2021 Information Officer will also be filing its seventh report in connection with the Termination Motion and the 2023 Recognition Application.

19. 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.

20. J&J Canada, like the Debtor, is a subsidiary of J&J. 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 discussed below.

21. J&J Canada is not named in any of the US talc litigation.

22. Attached hereto as Exhibit “**F**” is a copy of the simplified organizational chart illustrating the corporate relationship between J&J, the Debtor and J&J Canada.

(ii) Corporate History of LTL

23. The Debtor is an indirect subsidiary of J&J and 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. 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**”).

24. J&J first began selling JOHNSON’S® Baby Powder (“**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, including Johnson's Baby Powder. In 1979, J&J executed a transaction transferring all 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. J&J no longer manufactured or sold baby products, such as Johnson's Baby Powder, after this transaction.

25. 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.

(iii) US Talc Litigation

26. As of the filing of the 2021 Chapter 11 Proceeding, there were almost 40,000 plaintiffs asserting talc-related claims against the Debtor or other members of the J&J Group. These talc-related claims allege that Johnson's Baby Powder and, in some cases, a product called "Shower to Shower", cause ovarian cancer and mesothelioma. Given the alleged latency period for the injuries at issue in these claims, it could be many years before the number of claims would level off or decrease. The Debtor is of the view that these claims have no valid scientific basis.

27. Old JJCI and J&J were successful in having approximately 1,500 cases dismissed in the U.S. without payment and obtained 16 defense verdicts. All ovarian cancer plaintiff verdicts to date have been reversed on appeal with the exception of a case in St. Louis, Missouri ("**Ingham**"). Although the verdict in Ingham was reversed in part and reduced, total damages in the amount of approximately \$2.243 billion were awarded. Notwithstanding Old JJCI's record at trial, Old JJCI had incurred settlement costs and jury verdicts of approximately \$3.5 billion in the five years prior

to the 2021 Chapter 11 Proceeding.

(iv) Canadian Talc Litigation

28. 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., now Bausch Health Companies Inc. (“**Bausch**”)², are named co-defendants (collectively, the “**Canadian Co-Defendants**”) in one or more proceedings commenced in Canada (collectively, the “**Canadian Actions**”). The Canadian Actions consist of a certified class action, three proposed class actions and one individual action in four provinces (Alberta, British Columbia, Ontario and Quebec) as well as certain individual actions commenced in violation of the stay of proceedings granted in connection with the 2021 CCAA Recognition Proceeding.

29. 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 the Canadian Co-Defendants. The individual action was commenced in British Columbia prior to the 2021 Chapter 11 Proceeding by an individual who likewise alleges injury arising from the use of talc-containing products manufactured or sold by the Canadian Co-Defendants.

30. Although subject to a stay of proceedings arising from the recognition of the 2021 Chapter

² In 2012, Old JJCI sold the assets and liabilities related to certain products, including the Shower to Shower products, to Valeant Pharmaceuticals International, Inc. Thereafter, in 2019, Old JJCI and Valeant (now known as Bausch Health Companies Inc.) entered into an indemnification agreement. Pursuant to that indemnification agreement, Old JJCI agreed to indemnify Valeant for any liability arising from Shower to Shower products and for certain other regulatory actions arising out of the manufacture, use or sale of Shower to Shower products, as set forth more fully in the agreement.

11 Proceeding in Canada in December 2021, 12 additional Ontario-based Canadian claims were served in March 2022 and 26 additional British Columbia-based claims were filed in January and February 2023. Seven additional Ontario-based claims were filed in May 2022, one additional Ontario-based claim was filed in August 2022, and 10 additional Ontario-based talc claims were filed on January 30, 2023 and February 1, 2023. All of these actions were in violation of the stay of proceedings.

31. All such post-filing claims were filed by a single law firm, Preszler Injury Lawyers. The 2021 Information Officer wrote to the Ontario-based partner responsible for these matters in March 2022 and the British Columbia-based partner in February 2023, to advise them that such claims were filed and/or served in violation of the stay of proceedings. In its Fifth and Sixth Reports, the 2021 Information Officer also cautioned parties on the Service List about commencing claims in violation of the stay of proceedings. Preszler Injury Lawyers is on the Service List for the 2021 CCAA Recognition Proceeding.

32. No cases have proceeded to trial in connection with the Canadian Actions.

33. A summary of the Canadian Actions is attached hereto as Exhibit “G”.

(v) 2021 Corporate Restructuring

34. On October 12, 2021, Old JJCI engaged in a series of transactions (the “**2021 Corporate Restructuring**”) through which it ceased to exist, and two new companies, LTL and Johnson & Johnson Consumer Inc. (as it was then, “**New JJCI**”), were ultimately formed.

35. 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. At the time of the 2021 Corporate Restructuring, other companies, including Bestwall LLC, DBMP LLC, Aldrich Pump LLC and Murray Boiler LLC, had undertaken similar restructuring efforts to resolve current and future tort claims in Chapter 11 proceedings, through a divisional merger under Texas law.

36. 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 previously held against Old JJCI. New JJCI held all other assets previously held by Old JJCI and was solely responsible for all other liabilities previously held by Old JJCI. New JJCI was the direct parent of the Debtor.

37. The stated purpose for the 2021 Corporate Restructuring was to create a new entity, i.e., LTL, that would file for Chapter 11 protection to seek a resolution of all talc liabilities pursuant to a plan of reorganization, without involving thousands of unrelated parties (including employees, creditors and contract counterparties).

(vi) Management and Control

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

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

40. 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.

41. Pursuant to the Services Agreement, J&J Services 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.

42. 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. All such employees are based in the United States.

43. The Debtor's only asset in Canada is a retainer held by its legal counsel.

(vii) 2021 Funding Agreement

44. The 2021 Corporate Restructuring was designed to ensure that the Debtor had 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 Old JJCI's rights under a funding agreement (the "**2021 Funding Agreement**").

45. The 2021 Funding Agreement imposed no repayment obligation on the Debtor. Together with the \$6 million in cash it received for its bank account after the divisional merger, the Debtor's value was approximately \$373.1 million, not including the 2021 Funding Agreement with New JJCI and J&J.

46. Following the 2021 Corporate Restructuring, the Debtor commenced the 2021 Chapter 11

Proceeding and, subsequently, the 2021 CCAA Recognition Proceeding.

III. THE 2021 CHAPTER 11 CASE & 2021 CCAA RECOGNITION PROCEEDING

47. As noted above, the procedural history of the 2021 Chapter 11 Proceeding and the 2021 CCAA Recognition Proceeding leading up to the issuance of the Dismissal Order, is summarized in the Sixth Report and is also set out below, for ease of reference:

48. October 14, 2021: the Debtor commenced the 2021 Chapter 11 Proceeding by filing a voluntary petition for Chapter 11 relief in the United States Bankruptcy Court for the Western District of North Carolina (the “**North Carolina Bankruptcy Court**”).

49. October 20 and 22, 2021: Following the first day hearings, the North Carolina Bankruptcy Court granted certain administrative orders and a temporary restraining order that enjoined talc claims solely against the Debtor and Old JJCI.

50. November 15, 2021: The North Carolina Bankruptcy Court entered an order: (i) declaring that the automatic stay applies to prohibit; and (ii) preliminarily enjoining the commencement or continuation of, Enjoined Talc Claims³ against certain “Protected Parties”, as set out in that order, for 60 days (i.e., until January 14, 2022), subject to modification or extension by an order of any court (the “**2021 U.S. Preliminary Injunction Order**”). The Protected Parties included: (a) the

³ “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 (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 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.

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.

51. On that same day, the North Carolina Bankruptcy Court made a ruling (reflected in an order dated November 16, 2021) transferring the 2021 Chapter 11 Proceeding to the New Jersey Bankruptcy Court.

52. December 1, 2021: the Official Committee of Talc Claimants ("**TCC**") filed a motion to dismiss the 2021 Chapter 11 Proceeding, which was followed by similar motions and joinders from other parties representing individual plaintiffs (collectively, the "**Motions to Dismiss**"). The Motions to Dismiss asserted, among other things, that the 2021 Chapter 11 Proceeding was not filed in good faith and that the plaintiffs should be permitted to pursue their claims against the Debtor and its non-debtor affiliates in the tort system.

53. December 15, 2021: the New Jersey Bankruptcy Court entered an order authorizing the Debtor to act as the 2021 Foreign Representative on behalf of its estate (the "**2021 Foreign Representative Order**").

54. December 16, 2021: the 2021 Foreign Representative served an application pursuant to Part IV of the CCAA to have the 2021 Chapter 11 Proceeding recognized by the CCAA Court as a foreign main proceeding (i.e., the 2021 CCAA Recognition Proceeding).

55. December 17, 2021: the CCAA Court issued two orders pursuant to Part IV of the CCAA:

- (i) an initial recognition order (Foreign Main Proceeding), which, *inter alia*,

recognized the Debtor as the “foreign representative” (i.e., the 2021 Foreign Representative) and the 2021 Chapter 11 Proceeding as a “foreign main proceeding”, as defined in section 45 of the CCAA, and stayed all proceedings in Canada against the Debtor (the “**2021 Initial Recognition Order**”); and

- (ii) a supplemental order (Foreign Main Proceeding) which, *inter alia*, recognized the 2021 U.S. Preliminary Injunction Order and the 2021 Foreign Representative Order, gave the 2021 U.S. Preliminary Injunction Order and the 2021 Foreign Representative Order full force and effect in all provinces and territories in Canada pursuant to section 49 of the CCAA, and appointed E&Y as the 2021 Information Officer in the 2021 CCAA Recognition Proceeding (the “**2021 Supplemental Order**”).

56. January 15, 2022: the New Jersey Bankruptcy Court entered an order, among other things, extending the terms of the 2021 U.S. Preliminary Injunction Order to February 28, 2022.

57. February 14 to 18, 2022: the New Jersey Bankruptcy Court conducted a hearing of the Motions to Dismiss and the motion for an order to extend the 2021 U.S. Preliminary Injunction Order (the “**Extended Injunction Order**”) for the duration of the 2021 Chapter 11 Proceeding.

58. February 25, 2022: the New Jersey Bankruptcy Court released two opinions, denying the Motions to Dismiss (the “**Dismissal Opinion**”) and granting the Extended Injunction (the “**Extended Injunction Opinion**”).

59. February 25, 2022: Justice Conway of the CCAA Court granted an extension of the stay of proceedings set out in the 2021 Supplemental Order to March 8, 2022, to allow all parties in

Canada the opportunity to review and consider the impact of the Dismissal Opinion and the Extended Injunction Opinion.

60. March 4, 2022: The Extended Injunction Order was entered by the New Jersey Bankruptcy Court.

61. March 7, 2022: On a motion by the 2021 Foreign Representative, Justice Wilton-Siegel of the CCAA Court granted an order which, among other things, recognized the Extended Injunction Order and gave the Extended Injunction Order full force and effect in all provinces and territories in Canada pursuant to section 49 of the CCAA (the “**Extended Injunction Recognition Order**”). The Extended Injunction Recognition Order, in addition to recognizing the Extended Injunction Order, stayed the Enjoined Talc Claims in Canada “until the expiry of the Extended Injunction Order by its terms” unless further modified by the applicable U.S. courts.

62. March 18, 2022: The New Jersey Bankruptcy Court entered an Order Establishing Mediation Protocol (which was amended by a subsequent order on May 16, 2022).

63. August 15, 2022: The New Jersey Bankruptcy Court entered an order (the “**Expert Appointment Order**”) appointing Kenneth R. Feinberg, Esq. as the “Court Expert” to prepare and file a report containing his opinions on the estimation of the current and future talc claims in both the US and Canada.

64. November 1, 2022: On a motion brought by the 2021 Foreign Representative, the CCAA Court issued an order recognizing the Expert Appointment Order.

IV. THE THIRD CIRCUIT OPINION

65. As described in detail in the Fifth Report, certain talc claimants appealed the Dismissal Opinion and the Extended Injunction Opinion, and the related orders (the “**Appealing Parties**”), through a procedure that allowed for an expedited appeal to the United States Court of Appeals for the Third Circuit (the “**Third Circuit**”) (bypassing a lower court). The timeline is set out below:

66. May 11, 2022: the Third Circuit entered an order granting the petitions for permission to appeal directly to the Third Circuit.

67. September 19, 2022: the Third Circuit, with a panel comprised of 3 judges heard the appeals of the Dismissal Opinion and the Extended Injunction Opinion.

68. January 30, 2023: the Third Circuit issued an opinion: (a) directing the dismissal of the 2021 Chapter 11 Proceeding (the “**Third Circuit Opinion**”) and (b) finding that the dismissal of the 2021 Chapter 11 Proceeding would annul the litigation stay and render review of the Extended Injunction Opinion moot. A copy of the Third Circuit Opinion is attached hereto as **Exhibit “H”**.

69. Although the Third Circuit panel recognized that the Debtor “inherited massive liabilities” and faced tens of thousands of future claims, it concluded that the 2021 Chapter 11 Proceeding was not filed in good faith because the Debtor’s financial distress in the moment in time before filing was not sufficiently “immediate” or “imminent”.

70. The Third Circuit panel focused in particular on the Debtor’s right to seek funding from J&J as a co-obligor under the 2021 Funding Agreement, which the Third Circuit found “most important”, because it granted the Debtor direct access to J&J’s exceptionally strong balance sheet. Based on its finding that the Debtor was not in financial distress just prior to the time it filed for

protection under Chapter 11 and its view that the absence of financial distress alone forecloses commencement of Chapter 11 proceedings as an option for resolving massive liabilities, the Third Circuit determined that the filing was not made in good faith and directed the New Jersey Bankruptcy Court to dismiss the 2021 Chapter 11 Proceeding.

71. February 13, 2023: the Debtor filed a petition for rehearing and rehearing *en banc* with the Third Circuit (the “**Rehearing Petition**”). *En banc* refers to a special procedure where all judges of a particular court hear a case. It is typically used when a court believes that the matters are especially complex or important.

72. February 23, 2023: the Third Circuit entered an order directing the Appealing Parties to file responses to the Rehearing Petition within the following fourteen days.

73. March 22, 2023: the Third Circuit entered an order denying the Rehearing Petition.

74. March 23, 2023: the Debtor filed a motion with the Third Circuit seeking to stay the issuance of its “mandate” and advising that LTL intended to seek *certiorari* of the Third Circuit Opinion to the United States Supreme Court (the “**Mandate Stay Motion**”). In the United States, a mandate is a formal order issued by an appellate court that directs a lower court to carry out a specific action. The mandate is the final decision of the appellate court and generally follows the court’s decision on appeal.

75. March 31, 2023: the Third Circuit denied the Mandate Stay Motion and issued its mandate directing the New Jersey Bankruptcy Court to dismiss the 2021 Chapter 11 Proceeding.

76. April 4, 2023: the New Jersey Bankruptcy Court entered the Dismissal Order. The Dismissal Order provided that upon the Debtor filing a notice with the New Jersey Bankruptcy

Court indicating that it will not pursue appeals of the “Third Circuit Judgement⁴,” Third Circuit Opinion or the Dismissal Order, the TCC shall be automatically dissolved, and all members and professionals retained by the TCC shall be discharged from all duties and obligations related to the TCC.

77. The Debtor filed the requisite notice on April 4, 2023 indicating it would not pursue such appeals and the TCC was accordingly dissolved.

V. THE 2023 CHAPTER 11 PROCEEDING

(i) *Plan Support Agreements*

78. In December 2022, New JJCI changed its name to Johnson & Johnson Holdco (NA) Inc., a New Jersey Corporation (“**Holdco**”). In early January 2023, Holdco transferred its consumer business assets to its parent entity. Holdco is the direct parent of the Debtor, and the Debtor remains the direct parent of Royalty A&M LLC (“**Royalty A&M**”). Holdco is a holding company with ownership interests in various subsidiaries.

79. Following the Third Circuit Opinion, the Debtor, J&J, Holdco, and various US based plaintiff law firms, with the assistance of the court-appointed mediators, negotiated an agreement in respect of a plan of reorganization that would fully resolve all the Debtor’s liability for talc-related claims. That agreement has been memorialized in a series of plan support agreements (collectively, the “**Plan Support Agreements**”).

⁴ As defined in the Dismissal Order: on January 30, 2023, a panel of the Third Circuit entered a judgment providing that “the order of the Bankruptcy Court entered March 2, 2022 is reversed and the case is remanded with the instruction to dismiss Appellee’s Chapter 11 petition” and further ordering that “[t]he order of the Bankruptcy Court entered March 4, 2022 is vacated as moot.”

80. The Plan Support Agreements provide, among other things, that the Debtor, J&J and Holdco will use commercially reasonable efforts to negotiate, finalize and file with the New Jersey Bankruptcy Court by May 14, 2023, or as soon thereafter as feasible, a plan of reorganization that provides for the establishment of a trust funded, over 25 years, in the amount of \$8.9 billion on a net present value basis (the “**Trust**”).

81. The Plan Support Agreements represent significant progress towards a consensual resolution of the Debtor’s current and future talc claims. The Debtor believes the terms of the plan contemplated by the Plan Support Agreements are equitable and in the best interests of all parties, including current and future talc claimants. Although there is significant work to be done, with a number of parties, the Debtor will use commercially reasonable best efforts to finalize to file a plan contemplated by the Plan Support Agreements by May 14, 2023.

(ii) 2023 Funding Agreement

82. The Debtor, J&J and Holdco have entered into new financing arrangements.

83. These new arrangements, among other things, (a) address the guidance provided by the Third Circuit Opinion, (b) facilitate confirmation and consummation of a plan of reorganization containing the terms supported by thousands of claimants whose counsel have executed and delivered the Plan Support Agreements and (c) do not adversely affect the interests of talc claimants.

84. The new arrangements include terminating the 2021 Funding Agreement and entering into a new funding agreement between the Debtor and Holdco (the “**2023 Funding Agreement**”), and a separate support agreement between the Debtor, Holdco and J&J (the “**J&J Support Agreement**”).

85. The 2023 Funding Agreement is similar in many respects to the 2021 Funding Agreement:

- (a) it imposes no repayment obligation on the Debtor; and
- (b) it obligates Holdco to provide funding to the Debtor to pay for costs and expenses of the Debtor incurred in the normal course of its business to the extent that any cash distributions received by the Debtor from Royalty A&M are insufficient to pay those costs and expenses.

86. In addition, the 2023 Funding Agreement requires Holdco: (i) to fund amounts necessary to satisfy the Debtor's talc-related liabilities at any time when there is no bankruptcy case; and (ii) in the event of a Chapter 11 filing, to fund the 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 in the case of funding the Trust, the Debtor's other assets are insufficient to provide that funding. Accordingly, the Debtor believes that the new financing arrangements do not harm talc claimants.

(iii) J&J Support Agreement

87. The J&J Support Agreement is subject to the approval of the New Jersey Bankruptcy Court and is operative only in the 2023 Chapter 11 Proceeding. It obligates J&J to fund the Trust in the event Holdco fails to provide the funding. In return, Holdco is obligated to reimburse J&J for any amounts it pays to the Trust on Holdco's behalf, and any amounts that are not reimbursed by Holdco will be deemed to be financed with a loan from J&J to Holdco.

88. The Debtor is obligated to use commercially reasonable efforts to obtain the final approval of the New Jersey Bankruptcy Court of the J&J Support Agreement and to cause a plan of

reorganization pursuant to the Plan Support Agreements to become effective as soon as reasonably practicable. The Debtor intends to file a motion seeking approval of the J&J Support Agreement in the 2023 Chapter 11 Proceeding in the near term. The Debtor has the right to enforce J&J's obligation under the J&J Support Agreement.

(iv) Addressing the Third Circuit Opinion

89. The Debtor believes that these new financing arrangements resolve the concerns that led the Third Circuit to conclude that the 2021 Chapter 11 Proceeding had to be dismissed. In conducting its good faith inquiry, the Third Circuit determined that the focus should be on the Debtor rather than Old JJCI, notwithstanding that the 2021 Corporate Restructuring and the commencement of the 2021 Chapter 11 Proceeding were both part of a single integrated transaction. Moreover, the Third Circuit made clear that the relevant timeframe to assess whether a filing is made in good faith is the period of time just before the filing occurs.

90. As described above, J&J's balance sheet and liquidity are no longer available to the Debtor outside of Chapter 11, including in the moment in time prior to the filing of the 2023 Chapter 11 Proceeding. J&J's support, which was always intended to facilitate, not frustrate, a Chapter 11 filing by the Debtor now serves its intended purpose, and addresses the concerns of the Third Circuit Opinion.

91. Just as the New Jersey Bankruptcy Court found that Old JJCI was in financial distress at the hearing on the Motions to Dismiss, the Debtor's financial distress, like that of Old JJCI, is imminent and immediate and, in the Debtor's view, satisfies the good faith standard as described in the Third Circuit Opinion.

92. The Debtor believes it is not balance sheet insolvent under applicable US law. Just prior to the time it filed its petition to commence the 2023 Chapter 11 Proceeding, however, the Debtor faced a looming liquidity crisis. As a result, the Debtor was in financial distress as described by the Third Circuit in its Dismissal Opinion.

93. The Debtor continues to believe that a Chapter 11 filing is the best and only alternative to fully, equitably and efficiently resolve talc-related claims and it believes that this second Chapter 11 filing, a corresponding recognition in Canada, and the proposed plan are in the best interests of all parties, including all current and future talc claimants.

(v) The TRO

94. On April 4, 2023, the Debtor filed a complaint commencing an adversary proceeding against the plaintiffs in pending talc-related lawsuits against Old JJCI, J&J and Holdco (the “**2023 Complaint**”). The purpose of the 2023 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 to stay the commencement or continuation of talc-related claims against the Protected Parties, including but not limited to, Old JJCI, J&J, Holdco, and J&J Canada; (b) a preliminary injunction enjoining such actions; and (c) the 2023 TRO in respect of such actions pending a final hearing. A copy of the 2023 Complaint is attached hereto as **Exhibit “I”**.

95. As noted above, the New Jersey Bankruptcy Court issued the 2023 TRO on April 10, 2023. A prior version of the 2023 TRO was entered on April 5, 2023. The New Jersey Bankruptcy Court subsequently amended this prior version on April 6, April 7, and April 10, 2023. The first two amendments were technical in nature; however, the third amendment clarified the that the tolling

of the statutes of limitation provided for in the 2023 TRO extended to the Debtor Talc Claims⁵ against any Protected Party as opposed to only the Debtor or Old JJCI.

96. In support of the entry of the 2023 TRO, the Debtor argued that the requested relief was both appropriate and necessary. It was the Debtor's position before the New Jersey Bankruptcy Court that to permit the commencement or continuation of the Debtor Talc Claims against the Protected Parties while the Debtor simultaneously works to reorganize by resolving the same claims in its 2023 Chapter 11 Proceeding would: (i) defeat the purpose of the 2023 Chapter 11 Proceeding; (ii) 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.

97. The 2023 TRO is effective for 28 days from the entry of the 2023 TRO. Pursuant to the 2023 TRO, the New Jersey Bankruptcy Court scheduled a hearing on April 18, 2023 at 10:00 a.m. Eastern Time, on the Debtor's request for an order granting the injunctive relief being sought in the 2023 Complaint with respect to the Protected Parties (the "**2023 Extended Injunction Order**") for the duration of the 2023 Chapter 11 Proceeding.

(vi) The First Day Hearing and 2023 Foreign Representative Order

98. The first day hearings for the 2023 Chapter 11 Proceeding were held on April 11, 2023 ("**2023 First Day Hearings**"). At the 2023 First Day Hearings counsel to certain plaintiffs made submissions in favour of filing the 2023 Chapter 11 Proceeding while others strongly opposed the

⁵ "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. The Debtor Talc Claims do not include talc-related claims for which the exclusive remedy is provided under workers' compensation statutes and similar laws.

filing and requested that the New Jersey Bankruptcy Court sua sponte dismiss the 2023 Chapter 11 Proceeding. The New Jersey Bankruptcy Court declined to do so and granted a variety of administrative orders as well as the 2023 Foreign Representative Order. The New Jersey Bankruptcy Court did not appoint mediators or a future claimants' representative in respect of the 2023 Chapter 11 Proceeding, but, indicated it would consider those matters at a hearing scheduled for May 3, 2023.

VI. RECOGNITION OF 2023 CHAPTER 11 CASE AND RELATED ORDERS

99. The Debtor requests Canadian recognition of the 2023 Chapter 11 Proceeding as a “foreign main proceeding” and related relief, including a stay of proceedings.

100. This CCAA Court has previously granted orders in the form of the 2021 Initial Recognition Order and 2021 Supplemental Order in the 2021 CCAA Recognition Proceeding. As set out in the endorsement of Justice Pattillo dated December 17, 2021 (the “**2021 Recognition Endorsement**”), the 2021 Chapter 11 Proceeding was a foreign main proceeding, and the 2021 Foreign Representative met the definition of “foreign representative” in section 45 of the CCAA. A copy of the 2021 Recognition Endorsement is attached hereto as **Exhibit “J”**.

101. In addition to seeking recognition of the 2023 Chapter 11 Proceeding as a foreign-main proceeding, the 2023 Foreign Representative is seeking, among other things, recognition and enforcement of the 2023 TRO in Canada.

102. 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 2023 Chapter 11 Proceeding in

respect of the Debtor does not adequately protect the Debtor's estate. Absent recognition of the 2023 TRO 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 2023 Chapter 11 Proceeding and the TRO. The list of the Canadian Actions attached as Schedule "C" to the 2023 Supplemental Recognition Order is slightly different than those claims identified in Appendix "A" to the 2023 Complaint. After filing of the 2023 Complaint, as described above, certain claims were filed in Canada, subsequent to the entry of the 2023 TRO.

103. It is for this reason - to bring symmetry between the two neighbouring jurisdictions - that the 2023 Foreign Representative seeks the commencement of these proceedings and the recognition of the TRO.

104. The 2023 Foreign Representative intends to come back to the CCAA Court immediately following April 18, 2023 to seek recognition of the 2023 Extended Injunction Order, if granted by the New Jersey Bankruptcy Court.

105. Although the 2023 TRO expires on April 18, 2023, the 2023 Foreign Representative is requesting that the CCAA Court exercise its autonomous jurisdiction to the extend the effect of the 2023 TRO with respect to Protected Parties in Canada until April 24, 2023. This is simply a logistical matter. If the New Jersey Bankruptcy Court grants the 2023 Extended Injunction Order on April 18, 2023, the 2023 Foreign Representative will need a short window following entry of the Extended Injunction Order, to finalize and serve motion materials seeking to have the Extended Injunction Order recognized. The Foreign Representative wishes to ensure the stay remains in effect during the service window. The relief is consistent with the relief granted in respect of the recognition of 2021 Extended Injunction Order.

VII. INFORMATION OFFICER

106. Pursuant to the 2021 Supplemental Order, E&Y was appointed as the 2021 Information Officer with respect to the 2021 Chapter 11 Proceeding. The 2023 Foreign Representative is also requesting that the Court appoint E&Y as the information officer in connection with the 2023 Chapter 11 Proceeding to ensure that the CCAA Court is kept apprised of the status of the 2023 Chapter 11 Proceeding. E&Y is an independent third-party licensed insolvency professional which: (a) is already familiar with both the 2021 Chapter 11 Proceeding and the 2021 CCAA Recognition Proceeding, and (b) will be able to assist in providing information to and responding to inquiries from interested parties in Canada.

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

VIII. NOTICE

108. On April 10, 2023, counsel to the 2021 Foreign Representative sent an advance notice e-mail to the Service List in the 2021 CCAA Recognition Proceeding, advising parties of the intention to bring the Termination Motion and the 2023 Recognition Application on April 13, 2023. Parties were advised that formal materials could not be served until after the anticipated 2023 Foreign Representative Order was entered by the New Jersey Bankruptcy Court, anticipated at the time to be on April 11, 2023. A copy of the e-mail message is attached hereto as **Exhibit "L"**.

109. Pursuant to the 2021 Recognition Endorsement, Justice Pattillo required that the Debtor publish notice in accordance with the requirement under section 53(b) of the CCAA, in newspapers

with the largest circulation in Vancouver, Toronto, and Montreal.

110. As part of the 2023 Supplemental Recognition Order, the 2023 Foreign Representative is requesting that the proposed Information Officer be relieved of the obligation to publish notice of these proceedings pursuant to section 53 of the CCAA. A service list has already been established in connection with the 2021 CCAA Recognition Proceeding and the proposed Information Officer intends to use that service list going forward.

111. Additionally, all documents related to the 2023 Chapter 11 Proceeding 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 proposed Information Officer at the following URL: www.ey.com/ca/ltlmanagement.

IX. CONCLUSION

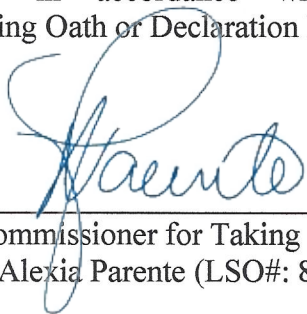
112. The 2023 Chapter 11 Proceeding presents the only alternative for the Debtor to resolve the current and future talc-related claims it faces on an equitable and permanent basis. Recognition of the 2023 Chapter 11 Proceeding in Canada is a vital step in the Debtor achieving a permanent and complete resolution of its liabilities.

113. Similarly, absent recognition of the 2023 TRO, the Canadian Actions may continue to progress, serving as a distraction and demand on the Debtor's resources for the duration of the 2023 Chapter 11 Proceeding.

114. Recognition of the 2023 Chapter 11 Proceeding 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 2023 Foreign Representative intends to return to the CCAA 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 Toronto, in the Province of Ontario, on April 12, 2023, in accordance with O.Reg.431/20, Administering Oath or Declaration Remotely. }



Commissioner for Taking Affidavits
Alexia Parente (LSO#: 81927G)



JOHN K. KIM

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 April 12, 2023

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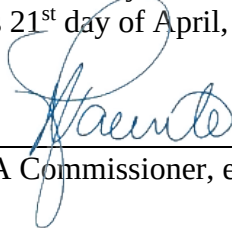
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Lawyers for the Foreign Representative

This is **Exhibit “B”** referred to in the

Affidavit of John K. Kim

sworn before me by video conference
this 21st day of April, 2023



A Commissioner, etc.

Alexia Parente, LSO #81927G

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

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PROPOSED ATTORNEYS FOR DEBTOR

In re:

LTL MANAGEMENT LLC,¹

Debtor.

LTL MANAGEMENT LLC,
Plaintiff,

v.

THOSE PARTIES LISTED ON APPENDIX A TO
COMPLAINT and JOHN AND JANE DOES 1-1000,
Defendants

Chapter 11

Case No.: 23-12825 (MBK)

Judge: Michael B. Kaplan

Adv. No.: 23-01092 (MBK)

Hearing Date and Time:
April __, 2023 at __

**DEBTOR'S MOTION FOR AN ORDER (I) DECLARING THAT
THE AUTOMATIC STAY APPLIES OR EXTENDS TO CERTAIN
ACTIONS AGAINST NON-DEBTORS, (II) PRELIMINARILY ENJOINING
SUCH ACTIONS, AND (III) GRANTING A TEMPORARY RESTRAINING
ORDER EX PARTE PENDING A HEARING ON A PRELIMINARY INJUNCTION**

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.

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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 (the “Debtor”), seeks a declaration that section 362(a) of the Bankruptcy Code applies or extends to prohibit 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 Debtor seeks immediate emergency relief in the form of a temporary restraining order, which the Debtor requests be issued on an ex parte basis pending a hearing on whether to enter a preliminary injunction, for the reasons set forth below.

The defendants sought to be enjoined by this adversary proceeding (collectively, the “Defendants”) are all named plaintiffs in talc-related lawsuits against the Debtor or for which the Debtor is responsible or alleged to be responsible. The Defendants, who are identified on Appendix A to the Complaint, as well as John and Jane Does 1-1000,¹ would be enjoined from prosecuting actions outside of the Chapter 11 Case that seek to hold the following entities (collectively, the “Protected Parties”) liable for talc claims against the Debtor in the Chapter 11 Case: (i) certain affiliates of the Debtor; and (ii) third-party retailers or transaction parties, in

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).

each case as a result of the Debtor's indemnification of such entities for talc claims against the Debtor, and for the several other reasons set forth in this Motion. More specifically, 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) Johnson & Johnson Inc. ("J&J Canada"), a federal corporation incorporated under the laws of Canada;
- c) Johnson & Johnson Holdco (NA) Inc., a New Jersey company ("Holdco");³
- d) Johnson & Johnson ("J&J"); and
- e) third-party retailers who sold Old JJCI's talc-containing products (the "Retailers") and other third parties whom Old JJCI and now the Debtor has indemnified contractually (the "Indemnified Parties"), identified on Appendix B to the Complaint.

The Debtor seeks a declaration that section 362(a) of the Bankruptcy Code applies or extends to prohibit 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 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).⁴

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 Holdco was formerly known as Johnson & Johnson Consumer Inc.

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 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.

The Debtor also seeks an injunction enjoining the Defendants from prosecuting any such action against the Protected Parties on account of any Debtor Talc Claim. In addition, the Debtor requests that the Court enter a temporary restraining order, on an ex parte basis, 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 *Debtor's Verified Complaint for Declaratory and Injunctive Relief (I) Declaring That the Automatic Stay Applies or Extends to Certain Actions Against Non-Debtors, (II) Preliminarily Enjoining Such Actions, and (III) Granting a Temporary Restraining Order Ex Parte Pending a Hearing On a Preliminary Injunction* (the "Complaint") that initiated this adversary proceeding. In support of this Motion, the Debtor incorporates the following declarations and all exhibits thereto: (i) the *Declaration of John K. Kim in Support of First Day Pleadings* [Dkt. 4 in Case No. 23-12825] (the "First Day Declaration"), filed in the Chapter 11 Case; and (ii) the *Declaration of Daniel J. Merrett in Support of Debtor's Complaint for Declaratory and Injunctive Relief and Related Motion* (the "Counsel Declaration"), filed contemporaneously herewith.⁵ The Debtor 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

⁵ The Counsel Declaration incorporates as exhibits relevant portions of the record regarding the Debtor's request in the 2021 Chapter 11 Case (as defined herein) whereby the Debtor sought substantially the same relief requested in this adversary proceeding, including: (i) declarations of certain witnesses, including the *Declaration of John K. Kim in Support of First Day Pleadings* filed in the 2021 Chapter 11 Case [Dkt. 5 in Case No. 21-30589] (the "2021 First Day Declaration"); (ii) transcripts of the hearings in the Chapter 11 Case regarding such relief (together, the "PI Hearings"); and (iii) certain exhibits that were admitted into evidence at the PI Hearings. Except as otherwise stated, any reference in this Motion to an exhibit signifies the applicable exhibit to the Counsel Declaration.

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.

SUMMARY OF ARGUMENT

This Court, on a full evidentiary record, ruled in the 2021 Chapter 11 Case (as defined herein) that all litigation in respect of talc claims against the Protected Parties was stayed by section 362(a) and preliminary enjoined under section 105(a). See LTL Mgmt. LLC v. Those Parties Listed on Appendix A to Complaint (In re LTL Mgmt. LLC), 638 B.R. 291, 308-11 (Bankr. D.N.J. 2022) (the “PI Opinion”) mooted by In re LTL Mgmt. LLC, 58 F.4th 738 (3d. Cir. 2023).

Significant developments lead the Debtor to commence this Chapter 11 Case shortly after dismissal of the 2021 Chapter 11 Case. Most notably, the Debtor has obtained the support of various plaintiff law firms and over 60,000 claimants—including ovarian cancer and mesothelioma claimants—on the material terms of a plan of reorganization. And each of those claimants has agreed not to oppose the relief requested by this Motion. The Debtor has also entered into new arrangements with its affiliates to, among other things, (i) address the concerns raised by the Third Circuit in its dismissal opinion and (ii) facilitate confirmation and consummation of a plan containing the terms supported by thousands of claimants. But the material facts are otherwise the same as they were in connection with the Debtor’s motion filed in the 2021 Chapter 11 Case to extend the stay to, and preliminary enjoin, talc claims, including the (i) identity of interests among the Debtor and the Protected Parties concerning the Debtor Talc Claims, (ii) the Debtor’s corporate history and structure, (iii) the nature of the Debtor Talc Claims and (iv) the irreparable harm that the Debtor would suffer if this Court does not enjoin the Debtor Talc Claims during the pendency of this Chapter 11 Case. For the same reasons that

this Court granted the Debtor's prior request, this Court should grant the relief requested by this Motion.

As of the filing of the 2021 Chapter 11 Case, the Debtor was besieged by talc claims premised on the false allegation that JOHNSON'S® Baby Powder (hereinafter, "Johnson's Baby Powder") contained asbestos and caused cancer. See First Day Decl. ¶ 35. Notwithstanding that these claims have no valid scientific basis, a few blockbuster plaintiff verdicts in plaintiff-friendly jurisdictions fueled a boom in talc claims, causing Old JJCI to incur astronomical costs: nearly \$1 billion in defense costs on account of cosmetic talc litigation, most of which has been spent in only the five years immediately before the filing of the 2021 Chapter 11 Case; and over \$3.5 billion in indemnity payments, primarily over the same time period. Id. Although Old JJCI prevailed against most claims, including securing unanimous defense verdicts in six of the eight claims tried to verdict during the 12 months prior to the 2021 Chapter 11 Case, the costs of this litigation and the intermittent outsized plaintiff verdicts made the litigation of these cases in the tort system for the next 50 years or more (as claimants seek to do) untenable, unsustainable, and inequitable. Id. ¶ 36.

Halting the litigation is critical to the Debtor's reorganization. Without it, talc claimants would be permitted to restart litigation or file new lawsuits, in each case in other forums, asserting the exact same talc claims the Debtor is seeking to resolve in this Chapter 11 Case pursuant to the terms set forth in plan support agreements. Id. ¶ 109. And that litigation will proceed in literally tens of thousands of individual actions across the country. See Id. ¶ 42-43. This litigation resurgence "would undoubtedly interfere with, and almost surely end, the Debtor's reorganization effort. With thousands of claims and proceedings spread out across the country, it would be all but impossible to negotiate or confirm a Section 524(g), or any other,

plan.” DBMP LLC v. Those Parties Listed on Appendix A to Complaint (In re DBMP LLC), 2021 WL 3552350, at *43 (Bankr. W.D.N.C. Aug. 11, 2021). That, of course, is why every court asked to enjoin such piecemeal litigation to permit a debtor to pursue a full resolution of its mass tort claims has done so. See infra § III.A.

To allow these tens of thousands of pending tort claims to proceed outside of chapter 11 would—given the Debtor’s indemnification obligations to J&J, Holdco and other Protected Parties—effectively lift section 362’s automatic stay of litigation against the Debtor, the real party in interest. See First Day Declaration ¶ 109; see also Ex. 43 (2021 First Day Decl.) ¶ 18. At the same time, it would usurp this Court’s ability to preside over this case and to consider and approve any resolution of the claims proposed herein.⁶ This unprecedented result would, contrary to Third Circuit precedent, defeat the purpose of this case. See McCartney v. Integra Nat’l. Bank N., 106 F.3d 506, 511 (3d Cir. 1997) (one purpose of section 362 is “to centralize all prebankruptcy civil claims against a debtor in the bankruptcy court”); see also A.H. Robins Co., Inc. v. Piccinin (In re A.H. Robins Co., Inc.), 788 F.2d 994, 999 (4th Cir. 1986) (“To refuse application of the statutory stay in that case would defeat the very purpose and intent of the statute.”).

Unusual circumstances exist that justify an extension of the automatic stay as a result of the identity of interests between the Debtor and each of the Protected Parties, together with the adverse impact of continued litigation on the Debtor’s estate and reorganization efforts. There is an identity of interests between the Debtor and Old JJCI because Old JJCI no longer exists and all of its talc liabilities were allocated to the Debtor in the 2021 Corporate

⁶ See In re Brier Creek Corp. Ctr. Assocs. Ltd., 486 B.R. 681, 697 (Bankr. E.D.N.C. 2013) (“Many courts have also stayed non-debtor litigation when such litigation would impair the court’s jurisdiction over the bankruptcy case or an adversary proceeding pending before the court.”) (citing cases).

Restructuring (as defined herein). First Day Decl. ¶ 23. And there is an identity of interests between the Debtor and each of the other Protected Parties because, among other reasons, the Debtor is actually or allegedly contractually obligated to indemnify each of them for any talc liabilities. Id. ¶ 107. Moreover, the Debtor Talc Claims asserted against the Protected Parties involve “the same products, same time periods, same alleged injuries, and same evidence as claims against Debtor.” PI Op., 638 B.R. at 306.

Continued litigation of the Debtor Talc Claims would also have an adverse impact on the Debtor’s estate. The prosecution of the Debtor Talc Claims against the Protected Parties, including J&J, would, among other things: (i) liquidate contractual indemnification claims against the Debtor outside of chapter 11; (ii) effectively seek to collect on claims against the Debtor; (iii) deplete available insurance coverage; (iv) interfere with negotiation and mediation efforts; (v) eliminate the protections of the automatic stay; and (vi) imperil the Debtor’s reorganization. See PI Op., 638 B.R. at 307 (“continued litigation against the Protected Parties would liquidate pending tort claims, as well as indemnification claims, against Debtor outside of chapter 11 and potentially deplete available insurance coverage – frustrating the purpose of the automatic stay”).

This Motion also satisfies each of four factors that bankruptcy courts typically consider in reviewing a request to enjoin litigation against non-debtors. The first—likelihood of success—is satisfied because the Debtor unquestionably has the financial capacity to implement a plan of reorganization on the terms agreed with the supporting claimants, and it is prepared promptly to continue negotiations to resolve this case. See First Day Decl. ¶¶ 7, 80. The Debtor believes that its entry into new financing arrangements resolves the concerns that led the Third Circuit to conclude that the Debtor’s first chapter 11 case had to be dismissed. It further believes

that there should be no legitimate dispute that this Chapter 11 Case satisfies the good-faith-filing standard as articulated by the Third Circuit in its dismissal opinion. Id. ¶¶ 8, 82. In addition, the Debtor now has the support of thousands of talc claimants for this Chapter 11 Case and the terms of a potential plan of reorganization. Id. ¶ 7. And the Debtor has sufficient resources to fund the costs of this Chapter 11 Case and a plan of reorganization on the terms agreed to in the plan support agreements to equitably and finally resolve its talc liabilities. Id. ¶ 80. The Debtor is committed to building on the substantial progress made to date and continuing to engage with claimant representatives and key stakeholders to obtain further support for a plan that contains the terms set forth in the plan support agreements. Id. ¶¶ 7, 74. Thus, the Debtor’s prospects for a successful reorganization are strong.

The second factor—irreparable harm—is met because the very purpose of this Chapter 11 Case would be defeated in the absence of the requested injunction. It is beyond dispute that a preliminary injunction is critical to the fundamental purpose of the case—to obtain confirmation of a plan of reorganization that will achieve an equitable, final, and full resolution of the Debtor’s talc liabilities. Id. ¶ 109; see also PI. Op. 638 B.R. at 320-21.

The third—the balance of harms—weighs decidedly in favor of a preliminary injunction because it will preserve the Debtor’s opportunity to pursue a successful reorganization. At the same time, halting the pursuit of the Debtor Talc Claims outside this Court will not materially harm the Defendants. See PI. Op. 638 B.R. at 321. Indeed, based on the historical pace of resolution of these claims, it would take decades to resolve them in the tort system. See First Day Decl. ¶ 36. And, in the majority of cases, the Defendants would receive no recovery. Id. In contrast, a bankruptcy trust will provide those claimants with “a far simpler and streamlined process than currently available in the tort system.” PI Op., 638 B.R. at 321.

The fourth factor—public interest—also supports granting this Motion. Not only will the requested injunction help foster a successful chapter 11 reorganization here, which is always in the public interest, it will—in stark contrast to the lottery-like results in the tort system—do so by fostering a rational, equitable resolution of the Debtor Talc Claims. See id. at 322 (“[T]his Court holds no doubts that claim resolution through the bankruptcy process is in the public interest.”).

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 an ex parte basis pending a final hearing on the merits. Ex parte relief is appropriate given the exigent circumstances, the Court’s familiarity with the Debtor and the material facts underlying this Motion, and that the Court previously granted similar relief in the 2021 Chapter 11 Case.

Throughout the 2021 Chapter 11 Case, plaintiffs’ counsel repeatedly stated their desire to assert, or sought relief from the stay to assert, the Debtor Talc Claims against the Protected Parties following dismissal of the case. In one particular case, Hernandez-Valadez v. Johnson & Johnson, et al., Case No. 22CV012759 (the “Valadez Case”), the claimant obtained relief from the automatic stay to pursue his claim after the Third Circuit’s dismissal opinion on January 30, 2023. A trial is scheduled to begin in the Valadez Case later this month, and the propriety of the filing of the 2021 Chapter 11 Case will be a centerpiece of the arguments. In preparation for trial, the claimant is seeking significant discovery from the Debtor and J&J. Id. The imminent trial in the Valadez Case, and any similar proceeding targeting Protected Parties while this Chapter 11 Case is pending, risks impeding the Debtor’s efforts to gain further support for a chapter 11 plan, harming the Debtor’s interests by potentially liquidating claims against the estate or otherwise binding the Debtor with respect to talc claims against it. Id.

Moreover, without immediate injunctive relief, the Debtor will be compelled to divert key estate resources away from its reorganization efforts to focus on that ongoing litigation, jeopardizing the successful resolution of this Chapter 11 Case. Id.

FACTUAL BACKGROUND⁷

On the date hereof (the “Petition Date”), the Debtor commenced this 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.

I. THE DEBTOR’S HISTORY AND CORPORATE STRUCTURE

A. The Debtor’s Predecessors and Related Restructurings

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. First Day Decl. ¶ 12.

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. ¶ 13. In 1972, J&J established a formal operating division for its baby products business, which included Johnson’s Baby Powder. Id.

1. J&J Adopts Decentralization Policy

In the 1970s, J&J adopted a policy to decentralize its operations as a part of a growth and innovation strategy. Id. ¶ 14; see also Ex. 42.1 (Hr’g Tr., Nov. 4, 2021, Kim Direct) at 97:14-21. As a part of this decentralization policy, J&J converted into a holding company, and certain J&J subsidiaries accepted all assets and operational responsibilities, and assumed all

⁷ The Court’s findings of fact issued in the PI Opinion are incorporated herein.

liabilities associated with, designated operating divisions of J&J. See Ex. 42.1 (Hr’g Tr., Nov. 4, 2021, Kim Direct) at 98:3-13. The purpose of the decentralization policy was to drive creativity and productivity by giving each company autonomy to make decisions without unnecessary constraints. Ex. 1 (1981 Annual Report, 401 and 404). J&J’s public SEC disclosures,⁸ and Board meeting minutes, emphasize the importance of J&J’s decentralization strategy and philosophy to its businesses. Ex. 7 (Board of Directors Meeting Minutes, dated Dec. 12, 1978) at 6-7.

2. Old JJCI’s Responsibility For All Liabilities Associated With Johnson’s Baby Powder

Consistent with J&J’s policy of decentralizing its businesses, on December 12, 1978, J&J’s Board of Directors approved the transfer of all assets and liabilities of the Baby Products division, including those associated with Johnson’s Baby Powder, to J&J Baby Products. First Day Decl. ¶ 14. This was part of a larger restructuring of J&J that included the transfer of assets and liabilities of seven principal operating divisions to wholly owned subsidiaries:

[T]he incorporation of seven principal operating divisions of Johnson & Johnson effective January 1, 1979 as wholly-owned subsidiaries . . . will be accomplished by a transfer of assets from the divisions to the corporations respectively which **will also assume the liabilities of the divisions respectively . . . In keeping with Johnson & Johnson’s long standing policy of decentralization of corporate business, and in light of substantial potential state tax savings, as well as additional legal considerations, the matter has**

⁸ E.g., Ex. 2 (Debtor’s PI Hr’g Ex. 66, J&J 10-K, dated Dec. 30, 1979), at 3 (“Johnson & Johnson is organized on the principles of decentralized management and conducts its business through operating subsidiaries which are themselves, for the most part, integral, autonomous operations.”); Ex. 3 (Debtor’s PI Hr’g Ex. 65, J&J 10-K, dated Jan. 2, 1977), at 3; Ex. 4 (Debtor’s PI Hr’g Ex. 67, 1986 Johnson & Johnson Annual Report), at 5 “... this growth will continue into the future if we adhere to our basic philosophies: continue our unique form of decentralization”) (emphasis added); Ex. 5 (Debtor’s PI Hr’g Ex. 68, Johnson & Johnson 10-K, dated Jan. 1, 1978), at 3; Ex. 6 (Debtor’s PI Hr’g Ex. 69, Johnson & Johnson 10-K, dated Dec. 31, 1978), at 3.

been approved by the Executive Committee in June 1978 and reported to the Board on July 1978.

Id.; Ex. 7 (Debtor's PI Hr'g Ex. 6, Dec. 12, 1978 Board of Directors Meeting Minutes) at 6-7 (emphasis added).

Subsequently, to effectuate the transaction, J&J and J&J Baby Products entered into an *Agreement for Transfer of Assets and Bill of Sale*, effective January 1, 1979 (the "1979 Agreement"), pursuant to which J&J transferred all assets and liabilities associated with the Baby Products division to J&J Baby Products:

WHEREAS, J&J has a number of operating divisions conducting various lines of business; and

WHEREAS, one of these operating divisions is named the JOHNSON & JOHNSON BABY PRODUCTS COMPANY Division (sometimes hereinafter called the "BABY Division"); and

WHEREAS, the Subsidiary corporation, is wholly-owned by J&J and J&J is desirous of **transferring to this Subsidiary all assets and liabilities** which are now allocated to the BABY Division on the books or records of Johnson & Johnson; . . .

Ex. 8 (Debtor's PI Hr'g Ex. 2, 1979 Agreement) at 1 (emphasis added); accord id. §1 ("J&J . . . does grant, bargain, sell, assign, alien, remise, release, convey, transfer, set over and confirm, **unto the Subsidiary, its successors and assigns**, forever, all the **businesses**, franchises, properties and assets . . . which are now allocated on its books or records of J&J to its Baby Division . . .") (emphasis added).

The 1979 Agreement provides that J&J Baby Products assumed all liabilities of every kind and description associated with the Baby Products division and indemnified J&J for such liabilities:

. . . Subsidiary agrees to **assume . . . all the indebtedness, liabilities and obligations of every kind and description which are allocated on the books or records of J&J as pertaining to its BABY Division** and the Subsidiary hereby covenants and agrees

with J&J that the **Subsidiary will forever . . . indemnify and save harmless J&J against all the indebtedness, liabilities and obligations aforesaid hereby assumed**

. . .the covenants and agreements herein contained shall inure to the benefit of and shall bind the respective parties hereto and their respective successors and assigns.

Id. §1 (emphasis added). The assumed liabilities included contingent and future product liability claims. Ex. 47 (Hr’g Tr., Nov. 10, 2021) at 138:15-19. The 1979 Agreement also provided J&J Baby Products with an irrevocable power of attorney to substitute itself “**for J&J and in its [J&J’s] name and stead . . . on behalf of and for the benefit of the Subsidiary**” to, among other things, “**defend and compromise any and all actions**, suits or proceedings in respect of any said Properties” – defined as the Baby Products division’s “businesses, franchises, properties and asset”. Ex. 8 (Debtor’s Hr’g Ex. 2) § 2 (emphasis added).

Following the 1979 Agreement, J&J no longer manufactured or sold baby products, including Johnson’s Baby Powder. First Day Decl. ¶ 14. Thus, in 1979, J&J Baby Products became the real party in interest for all actions, suits or proceedings relating to the talc previously sold by J&J or in any way arising out of the talc business that was being transferred.

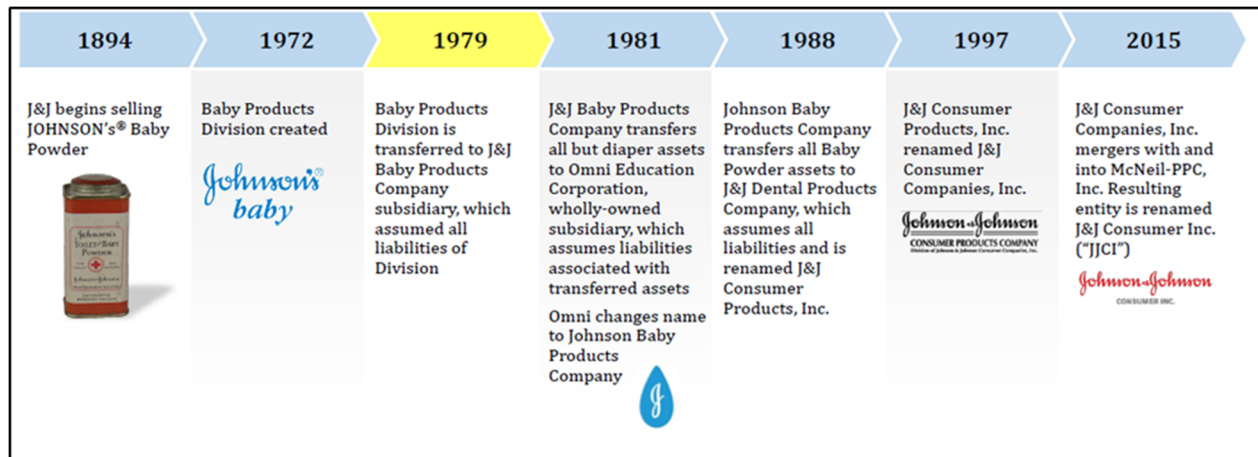
In 1981, J&J Baby Products transferred all of its assets, except those assets allocated to its diaper programs, to Omni Education Corporation (“Omni”), a wholly owned subsidiary of J&J Baby Products. First Day Decl. ¶ 15; Ex. 9 (Debtor’s PI Hr’g Ex. 52, Johnson & Johnson Baby Products Company Action Authorized by Unanimous Consent, dated July 21, 1981) at 2. In turn, Omni assumed all liabilities of J&J Baby Products, except those liabilities related to its diaper program, and agreed to indemnify J&J Baby Products against all assumed liabilities. First Day Decl. ¶ 15. Immediately following the transaction, J&J Baby Products merged into Personal Products Company, with J&J Baby Products as the surviving corporation

but renamed Personal Products Company, and Omni changed its name to Johnson & Johnson Baby Products Company. Id.

In 1988, Johnson & Johnson Baby Products Company transferred all of its assets in respect of its baby products business to Johnson & Johnson Dental Products Company, which assumed all of the liabilities of, and agreed to indemnify, Johnson & Johnson Baby Products Company and was renamed Johnson & Johnson Consumer Products, Inc. Id. ¶ 16; Ex. 10 (Debtor's PI Hr'g Ex. 54, Agreement for Transfer of Assets and Bill of Sale, dated Jan. 3, 1988).

In 1997, Johnson & Johnson Consumer Products, Inc. changed its name to Johnson and Johnson Consumer Companies, Inc. ("J&J Consumer Companies"). First Day Decl. ¶ 17; Ex. 11 (Debtor's PI Hr'g Ex. 55, Certificate of Incorporation, dated July 1, 1997). 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. (which, including all former names and historical forms, was Old JJCI). First Day Decl. ¶ 18; Exs. 12-14 (Debtor's PI Hr'g Exs. 57-59, Certificates of Merger, dated Nov. 2, 1998, June 15, 2015, and June 25, 2015, respectively).

The timeline below reflects these intercompany transactions that resulted in Old JJCI becoming responsible for all claims alleging that Johnson's Baby Powder causes cancer or other diseases:



3. Old JJCI's Responsibility For All Liabilities Associated with Shower to Shower

Similar to Johnson's Baby Powder, Old JJCI became responsible for all claims alleging that Shower to Shower products, which contained talc, causes cancer or other diseases. First Day Decl. ¶ 20. Prior to the institution of the 1970s decentralization policy, Shower to Shower products were marketed by a division of J&J, the Johnson & Johnson Domestic Operating Company division. *Id.* Consistent with J&J's decentralization efforts and its transition to a holding company, effective January 1, 1978, J&J transferred all assets and liabilities related to Shower to Shower products to Personal Products Company, a wholly owned subsidiary of J&J, and Personal Products Company thereafter assumed operational responsibility for the Shower to Shower products. *Id.*; Ex. 15 (Debtor's PI Hr'g Ex. 51). This transaction was discussed in an internal Personal Products Company letter dated October 31, 1977:

As we discussed, **Personal Products Company will take full responsibility for SHOWER TO SHOWER*** on January 1, 1978. During January, I will take the necessary steps to register with FDA and our Consumer Affairs Department will be taking over the complaint handling.

Id. (emphasis added). Contemporaneous public filings by J&J confirm that Personal Products Company in fact took responsibility for the Shower to Shower product line.⁹ Likewise, internal accounting records for year-end December 31, 1978 show that expenses associated with the Shower to Shower product line were recorded on the books of the Personal Products Company. Ex. 27 (2021 Second Supp. Kim Decl., Ex. P)].

The operational responsibilities, liabilities, and assets related to Shower to Shower products were transferred from Personal Products Company to Johnson & Johnson Baby Products Company by early 1987. First Day Decl. ¶ 21; compare Ex. 16 (Debtor's PI Hr'g Ex. 70, excerpt from J&J 1985 Annual Report) (identifying Shower to Shower as a product of Personal Products Company) with Ex. 17 (Debtor's PI Hr'g Ex. 71, excerpt from J&J 1986 Annual Report) (identifying Shower to Shower as a product of Johnson & Johnson Baby Product Company); First Day Decl. ¶ 21.

In 2012, Old JJCI sold the assets and liabilities related to certain products, including the Shower to Shower products, to Valeant Pharmaceuticals International, Inc. ("Valeant"). First Day Decl. ¶ 22. Thereafter, in 2019, Old JJCI and Valeant (now known as Bausch Health Companies Inc. ("Bausch")) entered into an indemnification agreement. Id. Pursuant to that indemnification agreement, Old JJCI agreed to indemnify Valeant for any liability arising from Shower to Shower products and for certain other regulatory actions arising out of the manufacture, use, or sale of Shower to Shower products, as set forth more fully in the agreement. Id.

⁹ Compare Ex. 3 (Debtor's PI Hr'g Ex. 65, J&J 10-K, for the FYE Jan. 2, 1977) (not identifying Shower to Shower as a product of Personal Products Company) with Ex. 5 (Debtor's PI Hr'g Ex. 68, J&J 10-K, for the FYE Jan. 1, 1978) (identifying Shower to Shower as a product of Personal Products Company) and Ex. 2 (Debtor's PI Hr'g Ex. 66, J&J 10-K, for the FYE Dec. 30, 1979) (identifying Shower to Shower as a product of Personal Products Company); Ex. 42.1 (Hr'g Tr., Nov. 4, 2021, Kim Direct) at 130:6-131:6.

At all times after 1978, all Shower to Shower liabilities—including costs for talc-related litigation claims—were ultimately charged to Personal Products Company, Johnson & Johnson Baby Products Company, or Old JJCI. Ex. 42.2 (Hr’g Tr., Nov. 5, 2021, Kim Redirect) at 341:1-10.

4. Financial Course of Performance for Payment of Talc Liabilities

Prior to the 2021 Corporate Restructuring (as described below), except where insurance coverage was available to pay talc-related costs, all costs associated with litigation concerning any talc products—including defense costs, settlements and any verdict amounts—were borne by Old JJCI. Ex. 42.1 (Hr’g Tr., Nov. 4, 2021, Kim Direct) at 121:15-19; Ex. 46 (Debtor’s PI Hr’g Ex. 50, Lisman Decl.) ¶¶ 8-12. J&J and Old JJCI used an integrated, centralized cash management system to collect, manage, and disburse funds. Id. Pursuant to company policy, cash collected by Old JJCI was generally swept to J&J’s concentration account on a daily basis. Id. ¶ 8. For administrative convenience and pursuant to company policy, J&J initially paid costs associated with litigation concerning talc products from its concentration account and then charged 100% of those costs to Old JJCI through intercompany charges. Id.

These intercompany charges are reflected on Old JJCI’s general ledger. Id. ¶ 9. Since 2007, Old JJCI had used SAP accounting software to maintain its general ledger electronically. Id. Old JJCI’s debit entries in its general ledger from 2007 to the present confirm that Old JJCI had been charged through intercompany payables all defense costs and any settlement or verdict amounts related to litigation concerning talc products. Id. J&J reports its financial statements on a consolidated basis with all of its subsidiaries. Id. ¶ 12. J&J’s consolidated financial statements reflected a reserve for defense and indemnity costs for Old JJCI associated with personal injury claims related to talc. Id. Although the reserve is reported on a consolidated basis, it is allocated by segment, as required by Generally Accepted

Accounting Principles and SEC reporting requirements. Id. The talc-related reserve in J&J's consolidated financial statements is allocated to the consumer segment, which included Old JJCI. Id.

5. The 2021 Corporate Restructuring

In 2021, Old JJCI implemented a corporate restructuring (the "2021 Corporate Restructuring"), which was completed on October 12, 2021. First Day Decl. ¶ 23; Ex. 40 (2021 Funding Agreement, dated as of October 12, 2021) at 1. As a result of that restructuring: Old JJCI ceased to exist and two new entities were created: (i) the Debtor, which was initially formed as a Texas limited liability company and then converted into a North Carolina limited liability company; and (ii) Holdco, 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"). First Day Decl. ¶ 23. In the 2021 Corporate Restructuring, the Debtor was allocated certain of Old JJCI's assets and became solely responsible for the talc-related liabilities of Old JJCI, and New JJCI was allocated all other assets of Old JJCI and became solely responsible for all other liabilities of Old JJCI. Id.

Old JJCI implemented the 2021 Corporate Restructuring to facilitate a chapter 11 filing by the Debtor that would permit the Debtor to fully resolve current and future talc-related claims through a plan of reorganization without subjecting the entire Old JJCI enterprise to a bankruptcy proceeding. Id. ¶ 24.

6. New JJCI/ Holdco

New JJCI operated its business following the 2021 Corporate Restructuring. Id. ¶ 25. This included the manufacture and sale of 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 (collectively, the “Consumer Business”). Id. In December 2022, New JCI changed its name to Johnson & Johnson Holdco (NA) Inc. (Holdco), and in early January 2023, Holdco transferred its Consumer Business assets to its parent entity. Id.

Holdco 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. Holdco is a holding company with ownership interests in various subsidiaries. Id. ¶ 26. The most substantial of Holdco’s ownership interests are held through its wholly owned subsidiary Apsis SAS (France) (“Apsis”). Apsis owns (through its wholly owned subsidiary Johnson & Johnson Holding GmbH (Germany)) a 36.1% ownership interest in GH Biotech Holdings Limited (Ireland) (“GH Biotech”). Id. GH Biotech holds ownership interests, either directly or through wholly owned subsidiaries, in four entities, Janssen Sciences Ireland Unlimited Company, Janssen Irish Finance Unlimited Company, C Consumer Products Denmark ApS, and Impulse Dynamics (71% interest). Id. Apsis also owns, either directly or indirectly, interests in various limited risk distributors (which distribute J&J products in foreign countries), a German-based subsidiary that manufactures 3D-printed titanium interbody implants for spinal fusion surgery, and various other subsidiaries. Id.¹⁰

As of the Petition Date, Holdco has access to approximately \$400 million in cash through J&J’s cash management system. Id. ¶ 27.

7. The Debtor

The Debtor was formed to manage and defend thousands of talc-related claims and to oversee the operations of its subsidiary, Royalty A&M. Id. ¶ 28. Royalty A&M owns a portfolio of royalty revenue streams, including royalty revenue streams based on third-party sales

¹⁰ A chart depicting the Debtor’s corporate structure is attached as Annex B to the First Day Declaration.

of CLOROX®, ECOLAB®, ESSITY®, LACTAID®, MYLANTA® / MYLICON®, ROGAINE®, SPARTAN® and TENA® products. Id. It reviews royalty monetization opportunities in the healthcare industry and seeks to grow its business by financing and/or reinvesting the income from the 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. Id. In June 2022, Royalty A&M entered into a royalty purchase agreement whereby it acquired rights to certain royalty streams from a third-party. Id.

The Debtor also has cash, interests as payee under the 2023 Funding Agreement (as defined herein), and certain insurance coverage rights described below. Id. ¶ 29.

8. J&J

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. ¶ 30. J&J is a global innovator and leader in public health and has been at the forefront of healthcare innovation for over 130 years. Id. That innovation includes novel oncology, immunology and vaccine products, including its COVID-19 vaccine that it developed and supplied at non-profit pricing. Id.

9. Previous Financing Arrangements

As described above, Old JJCI and its affiliates engaged in multiple restructurings through the years, including the 2021 Corporate Restructuring. Id. ¶ 31. The 2021 Corporate Restructuring was effectuated through a series of steps, which are described in detail in the 2021 First Day Declaration. Id.; see also Ex. 43 (2021 First Day Decl.) ¶¶ 22-27. A key component of the 2021 Corporate Restructuring was a funding agreement between the Debtor, on the one hand, and J&J and New JJCI on the other (the "2021 Funding Agreement"). First Day Decl. ¶ 31.

The primary purpose of the 2021 Funding Agreement was to facilitate the resolution of talc-related claims through a chapter 11 filing by the Debtor. Id. The 2021 Funding Agreement obligated New JJCI and J&J, on a joint and several basis, to provide funding, up to the full value of New JJCI, for, among other things, (i) the administrative costs of the Debtor's chapter 11 case and (ii) a trust that would satisfy current and future talc claims, in both situations to the extent that any cash distributions received by the Debtor from Royalty A&M were insufficient to pay such costs and further, in the case of the funding of a trust, the Debtor's other assets are insufficient to provide that funding. Id.

In connection with the 2021 Funding Agreement, New JJCI and J&J entered into a commitment and loan agreement, dated October 12, 2021, pursuant to which New JJCI and J&J agreed that: (i) New JJCI would be the primary obligor under the 2021 Funding Agreement; (ii) upon the request of New JJCI, J&J would make revolving credit loans to New JJCI, with the proceeds of the loans to be used by New JJCI solely to satisfy its obligations under the 2021 Funding Agreement; and (iii) if New JJCI failed to make any payment to the Debtor required by the 2021 Funding Agreement, and instead J&J made such payment under the 2021 Funding Agreement, New JJCI would reimburse J&J for that payment and, if it failed to do so, the amount New JJCI owed would be deemed to be financed with a loan from J&J. Id. ¶ 32.

10. Other Agreements

To ensure that the Debtor had access to services it needs to effectively operate its business, in connection with the 2021 Corporate Restructuring, the Debtor entered into a services agreement and a secondment agreement with Johnson & Johnson Services, Inc. ("J&J Services"). Id. ¶ 33; see also Ex. 43 (2021 First Day Decl.) ¶¶ 29-30. In addition, Royalty A&M entered into similar agreements with J&J Services and the Debtor, respectively, and an intercompany loan facility agreement with J&J. First Day Decl. ¶ 33; Ex. 43 (2021 First Day

Decl.) ¶ 30. As a result of these agreements, the Debtor and Royalty A&M have been able to operate their respective businesses efficiently and effectively. First Day Decl. ¶ 33.

II. EVENTS LEADING TO THE COMMENCEMENT OF THIS CASE

A. The Debtor Talc Claims

Cosmetic talc litigation against the Debtor has focused primarily on Johnson's Baby Powder as a purported cause of ovarian cancer and mesothelioma. Ex. 43 (2021 First Day Decl.) ¶ 32. For over 125 years Johnson's Baby Powder has been used by hundreds of millions of consumers worldwide. Id. 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. ¶ 33. 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.

Before 2010, there were few lawsuits alleging claims related to Johnson's Baby Powder or Shower to Shower. See Ex. 43 (2021 First Day Decl.) ¶¶ 34. Claims started to increase after the jury in a 2013 talc-related ovarian cancer case, Berg,¹¹ found for the plaintiff but awarded no damages. Id. ¶ 35; *Informational Brief of LTL Management LLC*, [Dkt. 3 in Case No. 21-30589], at 47; Ex. 42.1 (Hr'g Tr., Nov. 4, 2021, Kim Direct) at 120:12-121:1. In 2014, Old JJCI was served with 46 ovarian cancer complaints. Ex. 43 (2021 First Day Decl.) ¶ 43. In 2017, that number was nearly 5,000. Id.

As of the filing of the 2021 Chapter 11 Case, there were almost 40,000 plaintiffs asserting ovarian-cancer claims against the Debtor, including almost 36,000 plaintiffs with claims pending in a federal multi-district litigation in New Jersey (the "MDL"), and more than

¹¹ Berg v. Johnson & Johnson, 940 F.Supp.2d 983, 993 (D.S.D. 2013).

3,800 plaintiffs with claims in multiple state court jurisdictions across the country. First Day Decl. ¶ 42. These claims were all stayed during the pendency of the 2021 Chapter 11 Case. Id.

Approximately 470 mesothelioma cases were also pending against the Debtor as of the filing of the 2021 Chapter 11 Case. Id. ¶ 44. These claims, like the ovarian cancer claims, spanned the U.S. with cases pending in New Jersey, California, Illinois, Missouri, New York, and Ohio and were stayed during the pendency of the 2021 Chapter 11 Case. Id.

In addition to the thousands of talc claims pending in the United States as of the 2021 Chapter 11 Case, Old JJCI, J&J, J&J Canada and 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). Id. ¶ 37. 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, J&J, J&J Canada or Bausch. Id. The individual action was commenced in British Columbia by an individual who likewise alleges injury arising from the use of talc-containing products manufactured or sold by Old JJCI, J&J or J&J Canada. Id. Although subject to a stay of proceedings arising from the recognition of the 2021 Chapter 11 Case in Canada in December 2021, 12 additional Ontario-based Canadian claims were served in March 2022, and 26 additional British Columbia-based claims were filed in January and February 2023. Id.

Due to the long alleged latency periods for mesothelioma and ovarian cancer, cosmetic talc litigation against the Debtor is anticipated to continue for decades more, as are the extraordinary costs of defending and resolving the tens of thousands of expected claims.

Plaintiff experts estimate that the latency period for mesothelioma can run as long as 60 years and have begun to allege extended latency periods for ovarian cancer allegedly caused by asbestos exposure. First Day Decl. ¶ 41. As a result, although 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. Id.

1. Talc-Related Claims against the Debtor and J&J Are the Same

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. Ex. 42.1 (Hr'g Tr., Nov. 4, 2021, Kim Direct) at 134:21-139:11. In many jurisdictions, the plaintiffs seek to hold the Debtor and J&J jointly and severally liable for the Debtor Talc Claims. The plaintiffs rarely, if ever, attempt to differentiate between talc-containing products sold by J&J and Old JJCI. Ex. 42.1 (Hr'g Tr., Nov. 4, 2021, Kim Direct) at 134:5-18; Ex. 44 (2021 Supp. Kim Decl.) ¶ 6.

For example, in the MDL pending in the District Court of New Jersey, the alleged claims against J&J and Old JJCI are all identical—based on same products, same defect, and same alleged harm. Id. The MDL plaintiffs allege that they were diagnosed with various forms of cancer caused by Johnson's Baby Powder and Shower to Shower, which are defined in the operative complaint (the "MDL Complaint") as the "PRODUCTS":

2. Plaintiffs were diagnosed with various forms of cancer of the female reproductive system, including epithelial ovarian cancer, fallopian tube cancer, and primary peritoneal cancer, which were directly and proximately caused by their regular and prolonged exposure to talcum powder contained in the PRODUCTS. ...

Ex. 18 (Debtor's PI Hr'g Ex. 20, In re Johnson & Johnson Talcum Powder Prod. Mktg., Sales Pracs., & Prod. Liab. Litig., No. 3:16-MD-02738-FLW-LHG (D.N.J. Dec. 12, 2020)); Ex. 42.1

(Hr’g Tr., Nov. 4, 2021, Kim Direct) at 134:21-137:3 (“they’ve now clumped together Johnson’s Baby Powder and Shower to Shower and treat them for the purposes of the complaint as, as the same product....”).

The MDL plaintiffs make no effort to differentiate between J&J and Old JJCI and instead refer throughout the MDL Complaint to two separate entities collectively as “Johnson & Johnson Defendants”:

3. Defendant, Johnson & Johnson, is a New Jersey corporation with its principal place of business at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. Johnson & Johnson may be served with process by serving its registered agent at One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933. . . .

8. Defendant Johnson & Johnson Consumer Inc. is and has been at all relevant times a wholly-owned subsidiary of Defendant Johnson & Johnson, under the complete dominion of and control of Defendant Johnson & Johnson. Hereinafter, unless otherwise delineated, these two entities together shall be referred to as the “Johnson & Johnson Defendants.”

Ex. 18 (Debtor’s PI Hr’g Ex. 20; Ex. 42.1 (Hr’g Tr., Nov. 4, 2021, Kim Direct) at 138:10-139:11.

The mesothelioma cases are pled and prosecuted in a similar manner. In a case tried to verdict in the Superior Court for the State of California, County of Los Angeles, the plaintiffs lumped J&J and Old JJCI together, asserting collectively against them the same claim based on the same product, the same defect, and the same alleged harm:

5	DEFENDANT	ALTERNATE ENTITY
22	JOHNSON & JOHNSON CONSUMER,	JOHNSON & JOHNSON
23	INC.	

18(a). “Defendants, their ‘alternate entities’, and each of them, suppressed from all consumers, including Plaintiffs . . . , medical and

scientific information concerning the health hazards associated with inhalation of asbestos, including the substantial risk of injury or death therefrom . . .”

18(d). **“Defendants, their ‘alternate entities’, and each of them,** failed to warn Plaintiffs ... and others of the nature of Defendants’ Products which were dangerous when breathed . . .”

Ex. 19 (Debtor’s PI Hr’g Ex. 22, Anderson et al. v. Borg Warner Corp. et al., No. BC666513, (Jun. 27, 2017) (emphasis added)) at 6, 10-12.

This pattern of filing identical claims against J&J and Old JJCI is seen starkly by comparing two complaints—one filed before the 2021 Chapter 11 Case and one filed after.

Compare Ex. 20 (Debtor’s PI Hr’g Ex. 86, Richards, et al. v. Johnson & Johnson, et al., No. 21-2-10988-4, Superior Court of the State of Washington in and for the County of King (Aug. 18, 2021)) with Ex. 21 (Debtor’s PI Hr’g Ex. 26, McBride et al. v American International Industries, Inc., et al., No. 49D13-2110-MI-034781, Marion County Superior Court for the State of Indiana (Oct. 15, 2021)). In both the Richards and McBride complaints, the plaintiffs allege, among other things, that false representations were made regarding the asbestos content of their cosmetic talc products, including Johnson’s Baby Powder. Compare Ex. 20 (Debtor’s PI Hr’g Ex. 86) ¶¶ 9, 35, 42 with Ex. 21 (Debtor’s PI Hr’g Ex. 26) ¶¶ 15, 41, 48. The only difference is that in Richards the defendants are both J&J and Old JJCI, whereas in McBride the only named defendant is J&J. Id.; Ex. 42.2 (Hr’g Tr., Nov. 5, 2021, Kim Redirect) at 324:13-328:21.

Courts presiding over Debtor Talc Claims have likewise treated both J&J and Old JJCI as the same for evidentiary purposes. For example, after the commencement of the 2021 Chapter 11 Case but before the North Carolina Bankruptcy Court’s preliminary injunction ruling, a court in South Carolina ruled that the filing of the Chapter 11 Case did not impact in any way the evidence that could be presented at trial, holding that all evidence would be received regardless of whether it was against J&J or Old JJCI:

I tell you one thing, . . ., if you think anybody in any of these cases is going to allow the stay against liability on behalf of Old Johnson & Johnson Consumer Inc. to somehow affect the evidence that is going to be received, whether that evidence was from Johnson & Johnson, Old Johnson or New Johnson, that is a very different kettle of fish, and I can tell you right now, that is not going to happen in this case as far as I'm concerned.

Ex. 22 (Debtor's PI Hr'g Ex. 27, Hood, et al. v. Acme et al., No. 2020-CP10-03946, County of Charleston for the State of South Carolina (Oct. 28, 2021)) at 58; Ex. 42.1 (Hr'g Tr., Nov. 4, 2021, Kim Direct) at 142:17-144:9. A California state court ruled similarly. Id. at 144:10-145:1 (testifying that court in Vanklive v. Johnson & Johnson, No. RC20062734, Superior Court of California, Alameda County, denied request to limit evidence to focus only on J&J); see also Ex. 23 (Debtor's PI Hr'g Ex. 25, Vanklive v. Johnson & Johnson, No. RC20062734, Superior Court of California, Alameda County, Hearing Transcripts) at 2834.

2. Health and Medical Safety Decisions Were Made By Old JJCI

Old JJCI was responsible for making all health and safety *decisions* relating to its operations, while J&J was responsible for establishing health and safety *policy*. Ex. 42.2 (Hr'g Tr., Nov. 5, 2021, Kuffner Direct) at 374:13-376:8 ("I have ultimate responsibility for the safety of the products within [Old JJCI]. That lies with me."); Ex. 24 (Debtor's PI Hr'g Ex. 81, J&J Medical Safety Standard, dated Jan. 1, 2014)] at 1 ("Each sector within Johnson & Johnson ... shall establish policies and process that adhere to the ... Safety Standard").

This has been confirmed by the Chief Medical Officer of J&J, Dr. Joanne Waldstreicher, who has testified in the talc products liability litigation that decisions about the safety of talc products were made by the safety and medical officers at Old JJCI, not those at J&J. Ex. 25 (2021 Second Supp. Kim Decl., Ex. B) (excerpts of Waldstreicher testimony from Ingham v. Johnson & Johnson, No. 1522-CC10417, Circuit Court of the City of St. Louis, State of Missouri, Dep. Tr., April 19, 2017, at 14:15-15:9; 60:15-62:1; 92:5-94:7; 102:5-103:6; 168:2-

168:17; 171:7-172:17; 182:6-182:18; 192:3-192:11; 212:21-213:11, and Leavitt v. Johnson & Johnson, RGI 7882401, Superior Court of California, County of Alameda, Dep. Tr., Sept. 14, 2018, at 131:8-133:9). Dr. Waldstreicher further testified that Old JJCI's safety officers were responsible for reviewing and approving J&J's public statements about the safety of talc products before the statements were released to the public. Id. Likewise, the Chief Safety Officer of Old JJCI, Dr. Susan Nicholson, has testified that she was responsible for the medical oversight of the consumer products, including Johnson's Baby Powder, and that her team evaluated the safety of any product Old JJCI made. Ex. 26 (2021 Second Supp. Kim Decl., Ex. C) (excerpts of Nicholson testimony from Prudencio v. Johnson & Johnson, RG20061303, Superior Court of the State of California, County of Alameda, Dep. Tr., 706:14-707:23, Jun. 4, 2021).¹²

B. The Debtor's Insurance Coverage

The Debtor believes that it has insurance coverage for its Debtor Talc Claims. First Day Decl. ¶ 45. The Debtor has access to primary and excess liability insurance policies that cover, among other things, defense or indemnity costs related to talc bodily injury claims, subject to the terms of the policies.¹³ Id.; see Ex. 29 (Debtor's PI Hr'g Ex. 8, FRE 1006 Insurance Coverage Evidence Summary). All of these insurance policies provide that J&J and all its subsidiaries and affiliates are named insureds, and many also include Retailers as insureds. Ex. 42.1 (Hr'g Tr., Nov. 4, 2021, Kim Direct) at 146:22-153:14; Exs. 29, 28, 30, 31

¹² The Debtor's corporate representative, John Kim, also testified that JJCI was responsible for the safety of Johnson's Baby Powder. Ex. 42.2 (Hr'g Tr., Nov. 5, 2021, Kim Redirect) at 322:9-324:9.

¹³ 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. Ex. 42.1 (Hr'g Tr., Nov. 4, 2021, Kim Direct) at 148:1-17; see, e.g., Ex. 28 (Debtor's PI Hr'g Ex. 11, Aetna Insurance Agreement 38 XN 07 SCA), at 9.

(Debtor's PI Hr'g Exs. 8, 11, 12, 14). In addition, the policies contain annual aggregate limits shared by all of the named insureds. Id.

Aetna Casualty and Surety Company ("Travelers")¹⁴ issued primary general liability policies to J&J (which policies cover the Debtor) for the period from 1957 to 1980 (the "Travelers Policies"). Ex. 43 (2021 First Day Decl.) ¶ 47; see, e.g., Ex. 32 (Debtor's PI Hr'g Ex. 10, Aetna Insurance Agreement, #38 AL 12880 SR(Y)_1-1-1967 to 1-1-1970). 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. Ex. 43 (2021 First Day Decl.) ¶ 47; Ex. 29 (Debtor's PI Hr'g Ex. 8). The deductibles increase over time, starting at a minimal level and increasing to \$5 million per occurrence by 1977. Ex. 43 (2021 First Day Decl.) ¶ 47; see, e.g., Ex. 31 (Debtor's PI Hr'g Ex. 14, Aetna Insurance Agreement, Aetna Primary 38 PK 15 SCA)].

The limits of the Travelers Policies before 1973 are not eroded by defense costs; under later policies, defense costs erode limits. Ex. 43 (2021 First Day Decl.) ¶ 47; see, e.g., Ex. 32 (Debtor's PI Hr'g Ex. 10). From 1957 to 1985, Travelers also provided excess liability coverage to J&J that covers the Debtor. See, e.g., Ex. 28 (Debtor's PI Hr'g Ex. 11, Aetna Insurance Agreement, 38 XN 07 SCA). The combined aggregate limits of those policies total approximately \$563 million. Ex. 43 (2021 First Day Decl.) ¶ 48; see Ex. 29 (Debtor's PI Hr'g Ex. 8).

From 1973 to 1985, a variety of other insurers issued excess policies that cover the Debtor. Ex. 43 (2021 First Day Decl.) ¶ 49; see Ex. 29 (Debtor's PI Hr'g Ex. 8). Those insurers include subsidiaries or affiliates of the following companies: American International

¹⁴ Aetna Casualty and Surety Company is now part of Travelers Insurance Company.

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). Ex. 43 (2021 First Day Decl.) ¶ 49.

From 1981 to 1985, American Motorists Insurance Company (“AMICO”) issued primary and excess coverage that covers the Debtor (the “AMICO Policies”). Ex. 43 (2021 First Day Decl.) ¶ 50; see Ex. 29 (Debtor’s PI Hr’g Ex. 8). AMICO is insolvent, having been placed into liquidation in 2013. Ex. 43 (2021 First Day Decl.) ¶ 50. The Debtor currently believes that the applicable limits of the AMICO Policies 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. 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.

First Day Decl. ¶ 46. The annual limits for these policies are aggregated. Ex. 42.1 (Hr’g Tr., Nov. 4, 2021, Kim Direct) at 148:18-150:1.

Prior to the 2021 Chapter 11 Case, J&J and Old JJCI tendered talc-related claims to the third-party insurers. First Day Decl. ¶ 47. Since then, 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. Id. Instead, the third-party insurers have asserted various coverage defenses. Id.

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 (Case No. MID-L-003563-19) (the “NJ Coverage Action”), seeking a declaratory judgment regarding the parties’ respective obligations under the plaintiff insurers’ policies. Id. ¶ 48. The insurer plaintiffs filed a Second Amended Complaint on June 22, 2020. Id. 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. Id. 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. Id.

In the 2021 Chapter 11 Case, certain insurers filed motions to lift the automatic stay to permit the NJ Coverage Action to proceed. Id. ¶ 49. This Court denied those motions but permitted certain third-party discovery to occur. Id. The NJ Coverage Action remains pending. Id.

C. The Debtor’s Retailers and Other Indemnified Parties

Old JJCI had relationships with various Retailers, who sold Old JJCI’s talc-containing products. Id. ¶ 51. Old JJCI agreed to indemnify the Retailers for claims related to the sale of Old JJCI’s talc-containing products, and these contractual indemnities were

allocated to the Debtor in the 2021 Corporate Restructuring. Id.; see, e.g., Ex. 33 (Debtor's PI Hr'g Ex. 15, 1989 Agreement with Safeway for indemnification); Ex. 34 (Debtor's PI Hr'g Ex. 16, 2020 Agreement with HEB for indemnification). 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), certain state laws could require the Debtor to indemnify the Retailers.¹⁵ First Day Decl. ¶ 50.

Claims asserted against the Retailers for their sale of Old JJCI products are virtually identical to the claims asserted against Old JJCI. First Day Decl. ¶ 51. These claims against Retailers generally serve to defeat removal to federal court based on diversity jurisdiction, and the Retailers are often dismissed before trial without payment. Id.

Old JJCI would periodically accept from the Retailers tenders of talc-related claims related to the sale of its products. Id. ¶ 52; Ex. 35 (Excerpts from Debtor's PI Hr'g Ex. 17, FRE 1006 Tender Agreement Evidence Summary); see, e.g., Ex. 36 (Debtor's PI Hr'g Ex. 18, Tender Agreement wherein Johnson & Johnson Consumer Inc. agrees to tender defense and indemnify Safeway for claims by Abbott, Richard, dated May 13, 2019); Ex. 37 (Debtor's PI Hr'g Ex. 19, Tender Agreement wherein Johnson & Johnson Consumer Inc. agrees to tender defense and indemnify Albertson for claims by Lane, Ardys, dated October 8, 2018). When a

¹⁵ 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.

Retailer was sued on a Debtor Talc Claim, the Retailer would notify Old JJCI by submitting a tender request. First Day Decl. ¶ 52. 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"). Id. Since the commencement of the talc-related litigation, Old JJCI has agreed to indemnify and assume the defense of nearly 790 talc-related claims against the Retailers pursuant to Tender Agreements. Id.

Old JJCI agreed to indemnify certain other transaction counterparties for liability arising from Debtor Talc Claims. Id. ¶ 53. For example, in 2005, Old JJCI entered into an asset purchase agreement with Pharma Tech Industries, Inc. ("PTI") and subsequently PTI Royston, LLC) pursuant to which Old JJCI sold a manufacturing plant (where various products, including certain talc-containing products, were bottled) to PTI, which continued to operate the facility and manufacture certain talc products until early 2020. Id.; see Ex. 39 (PI Hr'g Ex. 36, Asset Purchase Agreement, dated April 4, 2005). In connection with the asset sale, Old JJCI and PTI entered into a manufacturing and supply agreement, which was subsequently amended and restated. First Day Decl. ¶ 53. Under the manufacturing and supply agreement, Old JJCI agreed to indemnify, and has indemnified, PTI and its affiliates for certain claims related to talc products. Id. The claims against PTI are generally identical to and based on the claims against Old JJCI. Id.

Further, pursuant to an indemnification agreement, Old JJCI agreed to indemnify Valeant (now Bausch) and its affiliates (including Bausch Health Americas, Inc. f/k/a Valeant Pharmaceuticals International and Bausch Health US, LLC f/k/a Valeant Pharmaceuticals North America LLC f/k/a Valeant Pharmaceuticals North America) for personal injury and products liability actions arising from alleged exposure to "Shower to Shower" products and for certain

other regulatory actions arising out of the manufacture, use or sale of “Shower to Shower” products, as set forth more fully in the agreement.¹⁶ Id. ¶ 54; see Ex. 38 (Debtor’s PI Hr’g Ex. 41, Indemnification Agreement). The claims against Valeant (now Bausch) are generally identical to the claims asserted against Old JJCI. First Day Decl. ¶ 54.

D. Cosmetic Talc Litigation and Its Associated Costs and Burdens

Before the 2021 Petition Date, Old JJCI and J&J defended the talc-related claims on the basis, among other things, that there is no scientific or other proof that Johnson’s Baby Powder either contained asbestos or was a cause of ovarian cancer or mesothelioma. Old JJCI and J&J had multiple successes in the cosmetic talc litigation, including, among others things, securing dismissals of roughly 1,300 ovarian cancer and over 250 mesothelioma cases without payment, and trying 16 cases to defense verdicts. Ex. 43 (2021 First Day Decl.) ¶ 38. Old JJCI was also successful on appeal, obtaining reversal of numerous plaintiff verdicts. Id. Despite these results, and the lack of credible proof that its product was unsafe, Old JJCI nonetheless suffered a number of plaintiff verdicts involving unpredictable and wildly divergent compensatory and punitive damages awards. Id.

The most egregious example is the Ingham¹⁷ verdict, which was the fifth largest personal injury verdict in the history of the United States. Although the verdict in that case was reversed in part and reduced, the total damages award was still \$2.243 billion for 22 plaintiffs (which were improperly consolidated). Id. ¶ 39. Notably, each plaintiff received the exact same compensatory damage award, \$25 million, regardless of the alleged product used (Shower to

¹⁶ Upon information and belief, “Shower to Shower” products sold in the U.S. and Canada no longer include talc. First Day Decl. n.9. Like Johnson’s Baby Powder, Johnson’s Medicated Powder sold in the U.S. and Canada no longer contains talc as of 2020. Id.

¹⁷ Ingham v. Johnson & Johnson, 608 S.W.3d 663, 680 (Mo. App. 2020).

Shower or Johnson's Baby Powder) and the duration of use (e.g., 60 years or five years).

Ex. 42.2 (Hr'g Tr., Nov. 5, 2021, Kim Redirect) at 336:17-339:17.

Before the commencement of the 2021 Chapter 11 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 the last five years. Ex. 43 (2021 First Day Decl.) ¶ 40. In the months prior to the 2021 Chapter 11 Case, Old JJCI was paying anywhere from \$10 million to \$20 million monthly in defense costs. Id. On top of these costs, Old JJCI paid approximately \$3.5 billion in indemnity in connection with settlements and verdicts. Id. And, cosmetic talc litigation against the Debtor was anticipated to continue and grow for decades more, as were the extraordinary costs of resolving tens of thousands of expected claims. Id. ¶ 41.

E. The 2021 Chapter 11 Case

1. Bankruptcy Court Proceedings

The Debtor commenced a chapter 11 case, No. 21 30589 (Bankr. D.N.J.) (the "2021 Chapter 11 Case") by filing a voluntary petition for relief [Dkt. 1 in Case No. 21-30589] under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of North Carolina (the "North Carolina Bankruptcy Court"). The Debtor also commenced an adversary proceeding against talc claimants seeking (i) a declaration that the automatic stay applied to and (ii) a preliminary injunction enjoining, claims against the Debtor's affiliates, including J&J and New JJCI, as well as the Debtor's insurers and third-party retailers and other indemnified parties, a group referred to as the "Protected Parties." See No. 21-03032, Dkts. 1, 2.¹⁸ After discovery and a two-day evidentiary hearing, on November 15, 2021, the

¹⁸ Certain entities, including all insurers and all affiliates other than Old JJCI, J&J, Holdco and JJI, that were defined as "Protected Parties" in the 2021 Chapter 11 Case are excluded from the definition of Protected Parties for purposes of the relief requested by this adversary proceeding.

North Carolina Bankruptcy Court entered an order [Dkt. 102 in Adv. Pro. No. 21-03032] determining that the automatic stay applied to, and also preliminarily enjoining, the commencement or continuation of talc claims against the Protected Parties for 60 days (i.e., until January 14, 2022), subject to modification or extension by this Court.

On November 16, 2021, the North Carolina Bankruptcy Court entered an order [Dkt. 416 in Case No. 21-3059] transferring the 2021 Chapter 11 Case to the District of New Jersey, which referred the case to this Court.

After transfer, the official committee of talc claimants and two plaintiff law firms [No. 21-30589, Dkts. 632, 766, 1003] moved to dismiss the 2021 Chapter 11 Case as a bad-faith filing. On February 25, 2022, following months of discovery and a five-day trial to address the motions to dismiss and the Debtor's adversary proceeding to enjoin the talc claims, this Court issued an opinion denying the motions to dismiss. In re LTL Mgmt. LLC, 637 B.R. 396 (Bankr. D.N.J. 2022) rev'd and remanded by In re LTL Mgmt. LLC, 58 F.4th 738 (3d. Cir. 2023) (the "Dismissal Opinion").¹⁹ That same day, the Court issued the PI Opinion.²⁰

The TCC and two plaintiff law firms, on behalf of talc claimants they represented, filed notices of appeal of the Dismissal Opinion and the PI Opinion. They also filed motions requesting that this Court certify its orders for direct appeal to the Third Circuit. On April 4, 2022, this Court granted the petitions for direct appeal to the Third Circuit [Dkt. 1955 in Case No. 21-30589; Dkt. 231 in Adv. Pro. No. 21-3032]. Thereafter, the Third Circuit granted the petitions for direct appeal, and the appellants' motion to consolidate their appeals and to expedite

¹⁹ On March 2, 2022, the Court entered an order denying the motions to dismiss [Dkt. 1603 in Case No. 21-30589] (the "Dismissal Order").

²⁰ On March 4, 2022, the Court entered the *Order (I) Declaring That Automatic Stay Applies to Certain Actions Against Non-Debtors and (II) Preliminarily Enjoining Certain Actions* [Dkt. 187 in Adv. Pro. No. 21-3032] (the "PI Order").

the case. The parties fully briefed the issues and argued the matters before the Third Circuit on September 19, 2022.

2. Third Circuit Panel Opinion Dismissing the 2021 Chapter 11 Case

On January 30, 2023, a panel of the Third Circuit issued an opinion directing this Court to dismiss the 2021 Chapter 11 Case after finding that it was not filed in good faith. See In re LTL Mgmt., LLC, 58 F.4th 738 (3d Cir. 2023) (the “Third Circuit Opinion”). Although the Third Circuit panel recognized that the Debtor “inherited massive liabilities” and faced “thousands” of future claims (Third Cir. Op., 762-63), it concluded that the Debtor was not in financial distress before the filing. Third Cir. Op., 762-63. The Third Circuit did not reach the merits of the appeal of the PI Order and PI Opinion, finding only that dismissal of the 2021 Chapter 11 Case “annuls the litigation stay order by the Court and makes moot the need to decide that issue.” Id.

On February 13, 2023, the Debtor filed a petition for rehearing and rehearing en banc with the Third Circuit. See In re LTL Mgmt. LLC, No. 22-2003 (3d Cir. Feb. 13, 2023), Dkt. 153. On February 23, 2023, the Third Circuit entered an order directing appellants to file responses to the petition for rehearing. Id. at Dkt. 163. Several responses were filed. On March 22, 2023, the Third Circuit entered an order denying the Debtor’s petition for rehearing. That same day, the Debtor filed a motion seeking a stay of the Third Circuit’s mandate pending appeal to the United States Supreme Court. The Third Circuit entered an order denying the stay motion on March 31, 2023 and, on the same day, issued its mandate directing this Court to dismiss the 2021 Chapter 11 Case on April 4, 2023. See Dkt. 3938 in Case No. 21-30589.

F. Plan Support Agreements

Throughout the 2021 Chapter 11 Case, the Debtor participated in court ordered mediation with the Debtor's key constituencies to negotiate a potential consensual resolution of the case. First Day Decl. ¶ 71. Despite a multitude of discussions with various parties and the efforts of the mediators, no agreement was reached prior to the Third Circuit's decision to dismiss the 2021 Chapter 11 Case. Id.

Following that ruling, however, and with the assistance of the mediators and the encouragement of this Court, negotiations continued between the Debtor and J&J, and various plaintiff law firms and the Future Claimants' Representative. Id. ¶ 72. Those negotiations ultimately culminated in an agreement with thousands of claimants on a broad outline of terms for a plan of reorganization, including financial terms, that, if confirmed and consummated, would fully resolve all the Debtor's liability for talc-related claims. Id. That agreement has been memorialized in a series of plan support agreements (collectively, the "Plan Support Agreements") that have been executed and delivered by counsel on behalf of over 60,000 claimants, and signed by the Debtor, Holdco and J&J. Id.²¹

The Plan Support Agreements provide, among other things, that the Debtor, J&J, Holdco and the claimants will work together to finalize, file and seek confirmation of a plan of reorganization that provides for the establishment of a trust funded in the amount of \$8.9 billion on a net present value basis. Id. at 73. The Plan Support Agreements further provide that a plan containing the terms to which the parties have agreed must be filed by May 14, 2023 or as soon thereafter as is feasible. Id.

²¹ A copy of a form of Plan Support Agreement (without exhibits) is attached as Annex C to the First Day Declaration.

While there are additional issues that the parties will need to address, the Plan Support Agreements represent significant progress towards a consensual resolution of this Chapter 11 Case. Id. at 74. The terms of the plan contemplated by the Plan Support Agreements are equitable and in the best interests of all parties, including current and future talc claimants. Id. Indeed, the proposed settlement amount of \$8.9 billion by the Debtor and J&J would be the largest settlement amount in any asbestos bankruptcy case and one of the largest settlements of personal injury claims in history. Id.

G. The Decision to File This Case

The filing of this second chapter 11 case has the support of thousands of claimants. That support is evidenced by their entry into the Plan Support Agreements. First Day Decl. ¶ 75. The filing of the Chapter 11 Case also has the continuing support of Holdco and J&J who have agreed to enter into new financing arrangements with the Debtor that facilitate the confirmation and consummation of a plan of reorganization containing the terms described in the Plan Support Agreements. Id. ¶ 76.

In view of the substantial support of talc claimants, Holdco and J&J for both the filing of this case and the material terms of a plan, and taking into account the excessive cost, burden, uncertainty and anticipated decades-long duration of the cosmetic talc litigation, the Debtor determined that the filing of a second chapter 11 case in this Court was prudent, necessary and in the best interests of all constituents. Id. ¶ 77. The Debtor continues to believe, as do Holdco and J&J, that chapter 11 proceedings are the only method through which the Debtor and talc claimants can fully, equitably and permanently resolve all current and future talc-related claims. Id.

1. Termination of 2021 Funding Agreement and Entry Into New Agreements

The Third Circuit found that the Debtor was not in financial distress as a result of its rights under the 2021 Funding Agreement. Id. ¶ 78. That determination defeated the fundamental purpose of the 2021 Funding Agreement, which purpose was to facilitate the Debtor's goal of resolving all current and future talc claims pursuant to section 524(g) of the Bankruptcy Code. Id. The Third Circuit determined it had the exact opposite effect; i.e., that it required dismissal of the 2021 Chapter 11 Case. Id. As a result, the Debtor believes there was a material risk that the 2021 Funding Agreement was no longer enforceable because it had become void or voidable. Id. To eliminate that risk and secure funding terms consistent with the terms set forth in the Plan Support Agreements, the Debtor, J&J and Holdco have entered into new financing arrangements. Id. These new arrangements, among other things, (i) address the guidance provided by the Third Circuit in its dismissal opinion, (ii) facilitate confirmation and consummation of a plan of reorganization containing the terms supported by thousands of claimants whose counsel have executed and delivered the Plan Support Agreements, and (iii) do not adversely affect the interests of talc claimants. Id.

The Debtor, J&J, and Holdco effectuated these new financing arrangements by entering into three new agreements. Id. ¶ 79. The Debtor, J&J, and Holdco entered into a termination and substitution agreement (the "T&S Agreement") by which the 2021 Funding Agreement and a related intercompany loan were terminated, and the parties, in substitution therefor, agreed to enter into two new agreements. Id. Simultaneously with their entry into the T&S Agreement, the Debtor, J&J, and Holdco then entered into these two new agreements: Holdco and the Debtor entered into a new funding agreement (the "2023 Funding Agreement")

and the Debtor, Holdco and J&J entered into a separate support agreement (the “J&J Support Agreement”). Id.²²

The 2023 Funding Agreement is similar to the 2021 Funding Agreement. Id.

¶ 80. It imposes no repayment obligation on the Debtor and is not a loan. Id. It obligates Holdco to provide funding to the Debtor to pay for costs and expenses of the Debtor incurred in the normal course of its business (i) at any time when there is no bankruptcy case and (ii) during the pendency of any chapter 11 case filed by the Debtor, 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 those costs and expenses. Id. In addition, the 2023 Funding Agreement requires Holdco to fund amounts necessary (i) to satisfy the Debtor’s talc-related liabilities at any time when there is no bankruptcy case and (ii) in the event of a chapter 11 filing by the Debtor, to provide the funding for a trust created pursuant to a plan of reorganization for the Debtor that contains the terms agreed to in the Plan Support Agreement, as such terms may be amended or supplemented with the consent of the parties, 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.

The J&J Support Agreement is subject to the approval of the Court and is operative only in the chapter 11 case. Id. ¶ 81. It obligates J&J to provide the trust funding Holdco is required to provide under the 2023 Funding Agreement but only if Holdco fails to

²² Copies of the T&S Agreement, the 2023 Funding Agreement and the J&J Support Agreement are attached to the First Day Declaration as Annexes D, E and F, respectively. The summaries herein of the terms of the T&S Agreement, the 2023 Funding Agreement and the J&J Support Agreement are provided for the convenience of the Court and parties in interest and are qualified in all respects by the terms of such agreements.

provide the funding. Id. In return, Holdco is obligated to reimburse J&J for any amounts it pays to the trust on Holdco's behalf, and any amounts that are not reimbursed by Holdco will be deemed to be financed with a loan from J&J to Holdco. Id. The Debtor is obligated to use commercially reasonable efforts to obtain final Court approval of the J&J Support Agreement and to cause a plan of reorganization containing the terms reflected in the Plan Support Agreements to become effective, in both cases as soon as reasonably practicable. Id. The Debtor has the right to enforce J&J's obligation under the J&J Support Agreement. Id.

These new financing arrangements resolve the concerns that led the Third Circuit to conclude that the 2021 Chapter 11 Case should be dismissed. In conducting its good faith inquiry, the Third Circuit determined that the focus should be on the Debtor rather than Old JJCI, notwithstanding that the corporate restructuring undertaken in 2021 and the bankruptcy filing were both part of a single integrated transaction. Third Cir. Op., 757-58. Moreover, the Third Circuit made clear that the relevant timeframe to assess whether a filing is made in good faith is the period of time just before the filing occurs. Id. at 754, 759. Under the new financing arrangements, J&J's support is only available in bankruptcy and only if approved by this Court. J&J is not a co-obligor under the 2023 Funding Agreement; it is not even a party to that agreement. And, under the separate J&J Support Agreement, J&J's obligation to pay arises only if Holdco fails to fund a trust established under a plan of reorganization that contains the terms set forth in the plan support agreements. As a result, J&J's balance sheet and liquidity were no longer available to the Debtor before the filing of this second chapter 11 case. J&J's support, which was always intended to facilitate, not frustrate, a bankruptcy filing by the Debtor now serves its intended purpose.

Holdco is the sole obligor under the 2023 Funding Agreement. As noted above, it transferred its consumer health business, which represented a substantial portion of its assets,²³ in early January 2023. This Court previously found that Old JJCI was in financial distress based on a myriad of evidence submitted at the hearing on the motions to dismiss the Debtor's prior case. That evidence included the actual and projected costs of the talc litigation, the risk of lottery-like verdicts, the anticipated duration of the litigation, the plaintiffs' increasing settlement demands in the tort system, the claimants' assertions in the Debtor's prior case regarding the magnitude of the Debtor's aggregate liability, the multitude of state attorneys general investigations and lawsuits, the Canadian class action lawsuits, indemnification claims from talc suppliers, the securities action and Congressional investigations. And the financial distress caused by this massive, nationwide litigation manifested itself in the performance of J&J's Consumer Health division, of which Old JJCI was a primary part. That division's performance swung from a \$2.1 billion profit to a \$1.1 billion loss based solely on the costs of the talc litigation.

Since then, Holdco has transferred its consumer health business. As a result, not only was J&J's balance sheet not available to the Debtor before this bankruptcy, but Holdco's assets, which were available, no longer include the consumer health business. The Debtor's financial condition before this filing is sufficiently distressed to satisfy the standard established by the Third Circuit.

Nonetheless, the Debtor's new financing arrangements do not harm talc claimants. *Id.* ¶ 84. This is so because (i) the 2023 Funding Agreement is available to fund a trust consistent with the terms of the Plan Support Agreements and pay expenses incurred in this

²³ Holdco continues to hold interests in various subsidiaries.

bankruptcy case and (ii) subject to this Court’s approval, J&J’s support is available in this case to provide a backstop to Holdco to ensure it can meet its trust funding obligation. Id. The Debtor has the financial support it needs to implement the plan outlined in the Plan Support Agreements. Id.

Bankruptcy is the only forum where the Debtor and the claimants can fully, equitably and permanently resolve all talc-related claims. Id. ¶ 85. This second chapter 11 filing and the proposed plan are in the best interests of all parties, including the Debtor and all current and future talc claimants. Id. And the temporary stay and injunction of talc litigation that this Motion requests are critical to that outcome.

ARGUMENT

The Court has recognized that “ample authority exists to conclude that § 362(a), § 105(a), or a court’s inherent powers can each serve as independent bases for extension of a stay to non-debtor third parties.” PI Op., 638 B.R. at 300; see also Robins, 788 F.2d at 1001–04 (cited with approval in McCartney, 106 F.3d 506) (stating that a bankruptcy court may stay nondebtor lawsuits under (i) section 362(a)(1), (ii) section 362(a)(3); (iii) section 105(a) or (iv) pursuant to “the inherent power of courts under their general equity powers and in the efficient management of the dockets to grant relief”) (quoting Williford v. Armstrong World Indus., Inc., 715 F.2d 124, 127 (4th Cir. 1983)); see also Oberg v. Aetna (In re A.H. Robins Co. Inc.), 828 F.2d 1023, 1024 (4th Cir. 1987) (clarifying that the Fourth Circuit held in Robins “that the district court had four independent grounds on which it could stay the plaintiffs’ suit against [the nondebtor third party].”).

Nevertheless, because several courts in this circuit still view the available bases for a bankruptcy court’s authority to stay or enjoin actions against third parties as an open issue, in the 2021 Chapter 11 Case, this Court uniformly applied a three-step inquiry used in several

cases out of the Eastern District of Pennsylvania to determine whether a stay or injunction was appropriate. See PI Op., 638 at 301; see also LTL Mgmt. LLC v. San Diego Cnty. Emps. Ret. Ass’n (In re LTL Mgmt. LLC), 640 B.R. 322, 331 (Bankr. D.N.J. 2022) (the “Securities Claim PI Opinion”); LTL Mgmt. LLC v. State of NM (In re LTL Mgmt. LLC), 645, B.R. 59, 67 (Bankr. D.N.J. 2022) (the “State AG PI Op.”). That inquiry asks whether the Court: (i) has jurisdiction to issue the injunction; (ii) may extend the automatic stay under section 362(a) to the non-debtors; and (iii) may properly exercise its discretion in issuing the injunction. See In re Phila. Newspapers, LLC, 423 B.R. 98, 102 (E.D. Pa. 2010) (citing In re Phila. Newspapers, LLC, 407 B.R. 606, 611 (E.D. Pa. 2009)). Each of those factors is satisfied here.

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). Proceedings arising under and arising in a chapter 11 case are considered “core” proceedings, whereas proceedings related to a chapter 11 case are considered “non-core.” In re E. Orange Gen. Hosp., Inc., 587 B.R. 53, 71 (D.N.J. 2018) (citing In re Resorts Int’l, Inc., 372 F.3d 154, 162 (3d Cir. 2004)). A bankruptcy court has jurisdiction to enjoin third-party litigation such as that at issue here under *at least* one of those three bases. Indeed, courts routinely grant preliminary injunctions relating to a debtor’s mass tort liabilities.²⁴ This includes cases in which the court expressly found it had jurisdiction over such third-party claims.²⁵ This

²⁴ 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, and collecting cases).

²⁵ See, e.g., DBMP, 2021 WL 3552350, at *18-21 (rejecting challenges to the court’s subject-matter jurisdiction and enjoining asbestos-related claims against non-debtor affiliates); Bestwall, 606 B.R. at 249 (same); In re Specialty Prods. Holding Corp., No. 10-11780, Adv. Pro. No. 10-51085, at 2 [Dkt. 72]

Court, too, has repeatedly found that a motion to extend the automatic stay and an injunction to non-debtor third parties is a “core” proceeding and held that it has jurisdiction over such motions.²⁶

A. The Court Has “Arising Under” Jurisdiction to Grant Relief that Ensures the Effectiveness of the Automatic Stay.

First, a proceeding “aris[es] under” the Bankruptcy Code if it “invokes a substantive right created by the Bankruptcy Code.”²⁷ As recognized by this Court in the PI Opinion, the Debtor’s request for declaratory relief aims to confirm or extend the scope of the automatic stay, “a substantive right under the Bankruptcy Code.” See PI Op., 638 B.R. at 302; see also Roggio v. Roggio (In re Roggio), 612 B.R. 655, 660 (Bankr. M.D. Pa. 2020) (the automatic stay is “a substantive right provided by the Bankruptcy Code” and “one of the fundamental protections provided to debtors when they file for bankruptcy”).²⁸ That should be conclusive for this proceeding. See, e.g., FPSDA II, 2012 WL 6681794, at *5 (“[S]ince the Bankruptcy Code both imposes the automatic stay and provides the Debtors and the Court with the means to invoke it and to implement its protections, it is manifest that any proceeding to determine the scope and applicability of the automatic stay ‘arises under’ the Bankruptcy

(Bankr. D. Del. Oct. 13, 2010) (the bankruptcy court had jurisdiction to rule on the debtors’ motion to clarify the scope of the injunction); W.R. Grace & Co. v. Chakarian (In re W.R. Grace & Co.), 386 B.R. 17, 28-30 (Bankr. D. Del. 2008) (rejecting challenges to the court’s subject-matter jurisdiction and extending the automatic stay to enjoin third-party actions); see also In re Garlock Sealing Techs. LLC, No. 10-31607, Adv. Pro. No. 10-03145, at 6 [Dkt. 14] (Bankr. W.D.N.C. June 21, 2010) (after debtor addressed jurisdiction, finding jurisdiction and granting a preliminary injunction).

²⁶ See PI Op., 638 B.R. at 302-03; State AG PI Op., 645 B.R. at 69; Securities Claim PI Op., 640 B.R. at 332.

²⁷ Stoe v. Flaherty, 436 F.3d 209, 216 (3d Cir. 2006) (“A case ‘arises under’ title 11 ‘if it invokes a substantive right provided by title 11.’”) (quoting Torkelsen v. Maggio (In re Guild & Gallery Plus), 72 F.3d 1171, 1178 (3d Cir. 1996)); FPSDA II, LLC v. Larin (In re FPSDA I, LLC), No. 10-75439, Adv. No. 12-08032, 2012 WL 6681794, at *4 (Bankr. E.D.N.Y. Dec. 21, 2012), as corrected (Dec. 26, 2012) (“A case ‘arising under’ the Bankruptcy Code is one that ‘invokes a substantive right’ created by the Bankruptcy Code.”) (citing Atamian v. U.S. Dept. of Educ. (In re Atamian), 368 B.R. 375, 379 (Bankr. D. Del. 2007)), aff’d, No. ADV A-06-50435, 2008 WL 853462 (D. Del. Mar. 31, 2008), aff’d, 300 F. App’x 175 (3d Cir. 2008)).

²⁸ See also Robins, 788 F.2d at 999-1000; Brier Creek, 486 B.R. at 685.

Code”); Brier Creek, 486 B.R. at 685 (“arising under” jurisdiction existed over motion in which debtor sought declaratory relief or, in the alternative, a section 105(a) injunction, “in that it specifically requested an order confirming that the stay under § 362(a)(1) applies to” the third-party action against non-debtor guarantor).

The Court also has “arising under” jurisdiction because the Debtor’s request for the section 105(a) injunction is necessary to ensure and preserve the integrity of the automatic stay. The Debtor Talc Claims against the Protected Parties “are really claims against the debtor and therefore impair the automatic stay.” Chase Manhattan Bank (N.A.) v. Third Eighty-Ninth Assocs., 138 B.R. 144, 147 (S.D.N.Y. 1992); see also McCartney, 106 F.3d at 510–11 (concluding that the automatic stay enjoined an action against nondebtor third party where the debtor “was, in essence, the real party in interest” in the pursuit of a deficiency judgment against the third party). Given this close link between the injunction sought and the substantive right in the automatic stay, “common sense indicates that, if the Court has subject matter jurisdiction over a proceeding to determine the applicability of the automatic stay,” as it plainly does, “then it has jurisdiction over a related motion for preliminary injunctive relief,” in the same proceeding.²⁹

B. The Court Has “Arising In” Jurisdiction to Grant Relief That Would Have No Existence Outside of Bankruptcy.

The Court independently has “arising in” jurisdiction because the Debtor’s request for an extension of the automatic stay of section 362(a) and injunctive relief under section 105(a) is unique to bankruptcy. A proceeding “arises in” a bankruptcy case when it would “have no existence outside of the bankruptcy.”³⁰ And a claim for such a stay and

²⁹ FPSDA I, LLC, 2012 WL 6681794, at *5 (finding “arising under” and “related to” jurisdiction).

³⁰ In re G-I Holdings, Inc., 580 B.R. 388, 415 (Bankr. D.N.J. 2018) (citing Stoe v. Flaherty, 436 F.3d 209, 261 (3d Cir. 2006)); accord In re Seven Fields Dev. Corp., 505 F.3d 237, 260 (3d Cir. 2007).

injunction, tied to and lasting only during a bankruptcy case, arises only in bankruptcy cases because such relief necessarily “encompass[es] matters concerning the administration of the estate.”³¹ At least three courts, in three circuits, across several decades, have recognized this logic.³² This Court further reinforced this reasoning in its PI Opinion. See PI Op. 638 B.R. at 302-03 (noting that the [automatic stay and preliminary injunction proceeding] could arise only in the context of a bankruptcy case and determining that “it is a core proceeding over which this Court can exercise jurisdiction.”); see also Securities Claim PI Op., 640 B.R. at 332; State AG PI Op., 645 B.R. at 70.

C. The Court Has “Related to” Jurisdiction Over Third-Party Claims, Including Direct Claims, Against the Protected Parties.

The Court “at a minimum, [has] ‘related to’ jurisdiction.”³³ The bar for “related to” jurisdiction is intentionally low. The Court has “related to” jurisdiction over third-party claims against non-debtors when “the outcome of that proceeding could *conceivably* have *any effect* on the estate being administered in bankruptcy.”³⁴ Under this standard, jurisdiction is

³¹ See In re Elsinore Shore Assocs., 91 B.R. 238, 255 (Bankr. D.N.J. 1988) (citing In re Johns-Manville Corp., 801 F.2d 60, 63 (2d Cir. 1986)); see also In re Monroe Well Serv., Inc., 67 B.R. 746, 754 (Bankr. E.D. Pa. 1986); In re G-I Holdings, Inc., 327 B.R. 730, 734 (Bankr. D.N.J. 2005) (exercising core jurisdiction over a motion for a preliminary injunction).

³² See Monroe Well Serv., 67 B.R. at 753 n.9 (Bankr. E.D. Pa. 1986) (finding “arising in” jurisdiction over a request for a section 105(a) injunction of third-party action against non-debtor; favorably cited in Celotex Corp. v. Edwards, 514 U.S. 300, 311 n.8 (1995)); Lyondell Chem. Co. v. CenterPoint Energy Gas Servs. Inc. (In re Lyondell Chem. Co.), 402 B.R. 571, 586 (Bankr. S.D.N.Y. 2009) (same; also finding “arising under” jurisdiction); Brier Creek, 486 B.R. at 684 (finding “arising in” jurisdiction over a request for a section 105(a) injunction of third-party action against non-debtor).

³³ Chakarian, 386 B.R. at 25-30; accord Celotex, 514 U.S. at 309-311, 311 n.8 (a section 105(a) injunction issued to augment the automatic stay was “at least a question ‘related to’ Celotex’s bankruptcy”).

³⁴ Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984); see In re W.R. Grace & Co., 900 F.3d 126, 139 (3d Cir. 2018) (citing Pacor); Gerard v. W.R. Grace & Co. (In re W.R. Grace & Co.), 115 F. App’x 565, 567–68 (3d Cir. 2004) (finding that an adversary proceeding to modify an injunction already entered by the bankruptcy court pursuant to section 105 “was assuredly ‘related to’ the case, and, further, it definitely ‘arose under’ the bankruptcy proceeding (and was perhaps even a ‘core’ proceeding)”; In re Phila. Newspapers, LLC, 407 B.R. 606, 615 (E.D. Pa. 2009) (upholding the bankruptcy court’s exercise of related to jurisdiction to enjoin state court actions against non-debtors, even absent contractual indemnification obligations).

straightforward.

Litigation of the Debtor Talc Claims against the Protected Parties outside of this Court would *at least* “conceivably have [an] effect” on the Debtor’s estate and reorganization. As this Court has already found, those claims are the *exact same claims* the Debtor seeks to resolve through reorganization in bankruptcy. As explained herein, in accordance with Texas law, any liability associated with those claims is the responsibility of the Debtor. Moreover, the Debtor has indemnification obligations to J&J, Holdco, the Retailers and the Indemnified Parties. And the Debtor shares insurance coverage with J&J and the Retailers, who are named as insureds under many of the policies.³⁵ Any party pursuing the Debtor Talc Claims against another entity is seeking to establish through third-party litigation a claim against the Debtor. Third-party litigation involving these claims could at least “conceivably” affect the Debtor’s estate (and, in fact, would materially and adversely impact this case). See PI Op., 638 B.R. at 303 (“[C]ontinued litigation of talc claims against the Protected Parties has a “conceivable effect” on the bankruptcy estate because it effectively seeks to collect and liquidate claims against Debtor and could deplete available insurance coverage.”); see also Bestwall, 606 B.R. at 249-51 (confirming court’s jurisdiction over third-party claims that assert the same liabilities as the debtor sought to reorganize in bankruptcy).

“[C]ourts have made clear that this standard [for “related to” jurisdiction] applies whether any claims against a third party are alleged to be ‘direct’ or ‘derivative.’” Bestwall, 606

³⁵ All of the pre-1986 occurrence-based insurance policies provide insurance shared by the Debtor and J&J. Ex. 43 (2021 First Day Decl.) ¶¶ 46-54. In addition, the Retailers are identified as insureds in many of the pre-1986 insurance policies. See Ex. 42.1 (Hr’g Tr., Nov. 4, 2021, Kim Direct) at 146:22-153:14; Exs. 29, 28, 30, 31 (Debtor’s PI Hr’g Exs. 8, 11, 12, 14). The relevant provisions generally provide coverage to vendors with respect to bodily injury arising out of the distribution or sale in the regular course of the vendor’s business of the named insured’s products, subject to certain exclusions. Ex. 42.1 (Hr’g Tr., Nov. 4, 2021, Kim Direct) at 146:22-153:14. The only relevant exclusion is where the vendor is alleged to repackage J&J or Old JJCI’s products, or where the vendor made a physical or chemical change to the product. Id.

B.R. at 249 (citing Pfizer Inc. v. Angelos (In re Quigley Co., Inc.), 676 F.3d 45, 56-57 (2d Cir. 2012)).³⁶ A proceeding “need not necessarily be against the debtor or against the debtor’s property” to confer jurisdiction. Pacor, 743 F.2d at 994. Rather, “[a]n action is related to bankruptcy if the outcome could alter the debtor’s rights, liabilities, options, or freedom of action (either positively or negatively) and which *in any way impacts upon the handling and administration of the bankrupt estate.*” Id.³⁷ Bankruptcy courts regularly exercise broad authority over claims against nondebtor entities, including nondebtor affiliates, both in mass-tort³⁸ and non-mass-tort bankruptcies,³⁹ to fully effectuate the automatic stay’s protections

³⁶ See Mallinckrodt PLC v. Conn. (In re Mallinckrodt PLC), No. 20-408, 2021 WL 523625, at *2-3 (D. Del. Feb. 11, 2021) (holding that even if non-debtors had independent liability the court had “related to” jurisdiction to issue preliminary injunction enjoining claims against them); In re SunEdison, Inc., 576 B.R. 453, 462 (Bankr. S.D.N.Y. 2017) (“Where a third-party claim may give rise to a potential indemnification or contribution claim against the estate, the third-party claim will have a conceivable effect on the estate, and accordingly, the [c]ourt has the jurisdiction to enjoin it.”).

³⁷ Robins, 788 F.2d at 1002 n.11 (“The accepted definition of the “related to” [jurisdiction] . . . is that declared in Pacor”); see also Lindsey v. O’Brien, Tanski, Tanzer and Young Health Care Providers of Conn. (In re Dow Corning Corp.), 86 F.3d 482, 491 (6th Cir. 1996), as amended on denial of reh’g and reh’g en banc (June 3, 1996) (“Bankruptcy jurisdiction will exist so long as it is possible that a proceeding may impact on ‘the debtor’s rights, liabilities, options, or freedom of action’ or the ‘handling and administration of the bankrupt estate.’”); Kocher v. Dow Chem. Co., 132 F.3d 1225, 1231 (8th Cir. 1997) (holding that the district court had “related to” jurisdiction over plaintiff’s product liability claims against debtor’s non-debtor co-defendants because the co-defendants had potential indemnification claims against the debtor and therefore “it is at least arguable that [the plaintiff’s] claims against [the co-defendants] conceivably could affect [the debtor’s] bankruptcy estate”); see also Mine Mgmt. Inc. v. Wolfe (In re Mountain Laurel Res. Co.), 210 F.3d 361 (4th Cir. 2000) (“A.H. Robins makes clear that a bankruptcy court has the authority under § 105(a) to enjoin suits against a third-party where the third-party could seek indemnification from the estate or where a judgment against the third-party may raise issues of collateral estoppel with respect to suits against the estate.”).

³⁸ See, e.g., Order Granting in Part Mot. for Prelim. Inj., In re Purdue Pharms. L.P., No. 19-08289-shl (Bankr. S.D.N.Y. Oct. 11, 2019) [Dkt. 82], aff’d 619 B.R. 38 (S.D.N.Y. 2020); Order Enjoining Continued Prosecution of Certain Pre-Petition Lawsuits, In re USA Gymnastics, No. 19-50075 (Bankr. S.D. Ind. Apr. 22, 2019), [Dkt. 71]; Order Granting in Part and Denying in Part Debtors’ Mot. for Prelim. Inj., In re TK Holdings Inc., No. 17-50880-BLS [Dkt. 63] (Bankr. D. Del. Aug. 22, 2017); Lyondell Chem. Co., 402 B.R. 571; Robins, 788 F.2d at 999-1000.

³⁹ See, e.g., 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, 942-943 (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 nondebtor partners should issue); In re Myerson & Kuhn, 121 B.R. 145, 160 (Bankr. S.D.N.Y. 1990) (enjoining suits against nondebtor partners).

and maintain the integrity of the Debtor's estate. In the 2021 Bankruptcy Case, this Court found three times that it had, at a minimum, such "related to" jurisdiction over motions to extend the automatic stay or authorize a preliminary injunction to protect non-debtors. See PI Op., 638 B.R. at 303; Securities Claim PI Op., 640 B.R. at 333-34; State AG PI Op., 645 B.R. at 75.

Continued litigation of Talc Claims against non-debtors threatens to create an evidentiary record and to potentially determine issues that could materially affect the value of the Talc Claims pending against the Debtor and impact negotiations regarding a proposed plan of reorganization containing the terms in the Plan Support Agreements. Thus, the continuation of Talc Claims while the Chapter 11 Case is ongoing jeopardizes the Debtor's legal interests and rights in a way that impacts the administration and handling of its bankruptcy estate, including claims resolution and mediation. In assessing the potential impact on the Debtor, the *potential* harms to the Debtor of continued litigation against a non-debtor weigh in favor of finding that the Court has "related to" jurisdiction to enjoin claims against non-debtors. As detailed below, the adjudication of the claims against non-debtors *could conceivably* impact the resolution of Talc Claims in the Debtor's bankruptcy case, and *at least raises the possibility* of collateral estoppel, res judicata and record-taint concerns. See In re Winstar Commc'ns, Inc., 554 F.3d 382, 405 (3d Cir. 2009) (a bankruptcy court has "related to" jurisdiction if "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy"); see generally Chakarian, 386 B.R. at 35 (citing Grace, 115 Fed. Appx. 565) (applying "broader view of potential impact on the debtor" which takes into account the "risks of collateral estoppel and record taint."). Moreover, any judicial determination regarding issues that underly the Talc Claims could impact the availability of insurance coverage to the Debtor and could also affect damage awards for which the Debtor is liable. See, e.g., Dow Corning, 86 F.3d at 494 (unfiled

and contingent indemnification claims against the debtor arising from third-party litigation against nondebtors “unquestionably could ripen into fixed claims,” which “suffices to establish a conceivable impact on the estate”). And the potential impact of continued Talc Claim litigation would require the Debtor to monitor the cases, diverting resources and attention away from the Debtor’s reorganization efforts. As a result, this Court clearly has “related to” jurisdiction.

II. THE AUTOMATIC STAY APPLIES OR EXTENDS TO PROHIBIT PROSECUTION OF DEBTOR TALC CLAIMS AGAINST THE PROTECTED PARTIES.

The automatic stay provided by section 362(a) of the Bankruptcy Code “is intended to ‘allow the bankruptcy court to centralize all disputes concerning property of the debtor’s estate so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas.’” In re Manley Toys Ltd., No. 16-15374 (JNP), 2020 WL 1580244, at *7 (Bankr. D.N.J. Mar. 31, 2020) (quoting S.E.C. v. Brennan, 230 F.3d 65, 70 (2d Cir. 2000)); see also In re Denby-Peterson, 941 F.3d 115,122 (3d Cir. 2019) (the automatic stay protects the debtor by “giving the debtor a respite from creditors and a chance to attempt a repayment or reorganization plan” and “creditors by preventing particular creditors from acting unilaterally in self-interest to obtain payment from a debtor to the detriment of other creditors.”); McCartney, 106 F.3d at 511 (one purpose of section 362 is “to centralize all prebankruptcy civil claims against a debtor in the bankruptcy court”).⁴⁰

A. Section 362(a)(1) Applies or Extends to Stay the Debtor Talc Claims

Although “the clear language of section 362(a)(1) stays actions only against ‘a debtor,’” courts in this circuit and elsewhere recognize that section 362(a)’s protections extend to

⁴⁰ See also 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).

nondebtor defendants in “unusual circumstances,” including if an identity of interests exists between the debtor and the third-party defendant or “where stay protection is essential to the debtor’s efforts of reorganization.”⁴¹ McCartney, 106 F.3d at 509-10 (citations omitted); see also Belcufine v. Aloe, 112 F.3d 633, 637 n.5 (3d Cir. 1997) (citing McCartney and stating that the rationale for applying the automatic stay to nondebtors first articulated in Robins has been adopted in the Third Circuit); Phila. Newspapers, 407 B.R. at 616 (explaining that unusual circumstances exist where: “(i) the non-debtor and debtor enjoy such an identity of interests that the suit of the non-debtor is essentially a suit against the debtor; or (ii) the third-party action will have an adverse impact on the debtor’s ability to accomplish reorganization”).⁴²

1. An Identity of Interests Exists Between the Debtor and the Protected Parties.

An identity of interests “arises when there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor.” Robins, 788 F.2d at 999; accord McCartney, 106 F.3d at 510–11 (concluding that the automatic stay extended to enjoin an action against a non-debtor third party where the debtor

⁴¹ See also Kaiser Group Int’l, Inc. v. Kaiser Aluminium and Chem. Corp. (In re Kaiser Aluminum Corp., Inc.), 315 B.R. 655, 658 (D. Del. 2004) (“The protection of the automatic stay extends to any action or proceeding against an interest of the debtor. The scope of this protection is not determined solely by whom a party chose to name in the proceeding, but rather, by who is the party with a real interest in the litigation.”); Maaco Enters., Inc. v. Corrao, No. Civ. A. No. 91-3325, 1991 WL 255132, at *2 (E.D. Pa. Nov. 25, 1991) (“The automatic stay provision applies to suits against non-debtor defendants who are related to the debtor and to suits the resolution of which may have a significant impact on the debtor.”); accord Queenie v. Nygard Int’l, 321 F.3d 282, 288 (2d Cir. 2003) (automatic stay applied to nondebtor third-party corporation “because it is wholly owned by [debtor], and adjudication of a claim against the corporation will have an immediate adverse economic impact on [debtor]”); FDIC v. Hirsch (In re Colonial Realty Co.), 980 F.2d 125, 131-32 (2d Cir. 1992) (automatic stay applied to nondebtor third party who was recipient of property that was allegedly fraudulent transferred from debtors).

⁴² See also Ritchie Cap. Mgmt., L.L.C. v. Jeffries, 653 F.3d 755, 762 (8th Cir. 2011) (acknowledging that bankruptcy court can stay cases against nondebtors in unusual circumstances); Reliant Energy Servs., Inc. v. Enron Canada Corp., 349 F.3d 816, 825 (5th Cir. 2003) (same); Robins, 828 F.2d at 1024 (automatic stay applied to nondebtor third-party insurer of debtor).

“was, in essence, the real party in interest” in the pursuit of a deficiency judgment against the third party).

“[T]he nondebtor Protected Parties and Debtor enjoy such an identity of interests that a lawsuit asserting talc-related claims against the Protected Parties is essentially a suit against the Debtor.” PI Op., 638 B.R. at 305. Old JJCI, for its part, no longer exists, and responsibility for Debtor Talc Claims asserted against Old JJCI was allocated to the Debtor pursuant to the 2021 Corporate Restructuring. See supra, § I.A.5. Thus, the commencement or continuation of the Debtor Talc Claims against Old JJCI—all of which allege liabilities arising out of Old JJCI’s actions years before the Petition Date—can have only one purpose: the ultimate liquidation and recovery of claims against the Debtor to recover a prepetition claim. Likewise, all of J&J’s liabilities associated with Johnson’s Baby Powder or Shower to Shower were transferred to Old JJCI, as explained above. See supra, § I.A.1-2. The pursuit of the Debtor Talc Claims against J&J, therefore, is an effort to liquidate and recover prepetition claims for liabilities that were transferred to the Debtor’s predecessor decades ago and are now liabilities of the Debtor. See id.

The Debtor’s indemnification obligations also give rise to an identity of interests with the Retailers and Indemnified Parties, including Holdco and J&J, because the Debtor is ultimately responsible for those Debtor Talc Claims. In Robins, the Fourth Circuit described one situation that would give rise to an identity of interests as “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.”⁴³ Robins, 788 F.2d at 999. Indeed, the court continued, “[t]o refuse

⁴³ The Court previously found in the PI Opinion that the Fourth Circuit’s reference to “absolute indemnity” in Robins did not create a requirement that any indemnity obligation be automatic. See PI Op., 638 B.R. at 312 (citing cases where the prospect or potential for indemnification was held to warrant application of the stay).

application of the statutory stay in that case would defeat the very purpose and intent of the statute.” Id.⁴⁴

Courts in the Third Circuit have also found an identity of interest between a debtor and a non-debtor where the debtor’s conduct or product was “at the core of the issues raised” in actions against the non-debtor. See Chakarian, 386 B.R. at 30-31.⁴⁵ At their core, all of the Debtor Talc Claims arise out of alleged harm caused by Johnson’s Baby Powder and other talc-containing products for which the Debtor is responsible as a result of the 2021 Corporate Restructuring. See PI Op., 638 B.R. at 306 (finding that “the corporate transactions and indemnity agreements [] left Debtor ultimately responsible for talc-related liabilities”); id. (finding that the Debtor Talc Claims involve “the same products, same time periods, same alleged injuries, and same evidence as claims against Debtor”); id. at 311 (finding same as to Retailers); see also Chakarian, 386 B.R. at 36 (stating that non-debtor alleged that the debtors’

⁴⁴ See also 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).

⁴⁵ See also TK Holdings Inc., Adv. Pro. No. 17-50880 (Bankr. D. Del. July 13, 2017) [Dkt. 64] (the “Takata PI Ruling”) (finding an identity of interest between the debtors and the non-debtors, even though plaintiffs alleged they asserted direct claims against the non-debtors, because the basis for all the claims was the “delivery and installation of a defective part manufactured by the debtors” and the debtors owed indemnification obligations to the non-debtors); Singer Co. B.V. v. Groz Beckert KG (In re Singer Co. N.V.), 2000 WL 33716976, at *3 (Bankr. S.D.N.Y. Nov. 3, 2000) (finding that action against non-debtor defendant was inextricably intertwined with the debtors given that non-debtor was merely a distributor of the debtors and the core of the action was for patent infringement based on the debtors’ product); Am. Film Techs., 175 B.R. at 849-50 (finding identity of interest in part because counts against non-debtors and debtors necessarily involved the same subject matter and would involve facts identical to each other); In re Ms. Kipps, Inc., 34 B.R. 91, 93 (Bankr. S.D.N.Y. 1983) (finding that automatic stay extended to non-debtor principal of the debtor given that action against non-debtor was inextricably intertwined with claim against and liability of the debtor and was premised on “one wrong, one injury and one recovery”).

actions were the cause of plaintiffs' injuries); Takata PI Ruling 14:7-15:4 (finding that basis for claims was the delivery and installation of a defective part manufactured by debtors).

An identity of interests may exist regardless of whether the Protected Parties have independent liability. The Debtor Talc Claims do not distinguish between the actions of the Debtor or the Protected Parties but instead seek recoveries for the same alleged conduct under the same or similar theories. In that respect, this case is comparable to Chakarian, where the debtor's alleged conduct predominated the claims against the non-debtors, and the court found it appropriate to enjoin such claims based on an identity of interest.⁴⁶ And this case is also consistent with other cases where courts have found that even allegedly direct claims against non-debtors do not cut off an identity of interests between the debtor and the non-debtors.⁴⁷

The identity of interests among the Debtor and the other Protected Parties is further evidenced by the identity of claims at issue. Continued prosecution of the Debtor Talc Claims against the Protected Parties—even if such claims were allegedly for the Protected Parties' independent conduct—would involve litigation of the same key facts: the same

⁴⁶ See Chakarian, 386 B.R. at 30-36 (rejecting argument that the test for identity of interest could not be satisfied where the non-debtor was allegedly independently liable and preliminarily enjoining actions against non-debtor railroad company because the debtors' actions were alleged to be the proximate cause of the plaintiffs' injuries, *i.e.*, the debtors' operations and conduct were at the "core of the issues" raised in the actions against the non-debtor, and the debtors were obligated to indemnify the non-debtor).

⁴⁷ See, e.g., Mallinckrodt, 2021 WL 523625 at **3, 6 (stating that a holding that the non-debtors could have independent liability would not preclude or estop the bankruptcy court's conclusions that the claims are "inextricably intertwined" for purposes of issuing a preliminary injunction); Purdue Pharm., 619 B.R. at 45, 53 (recognizing identity of factual interest in allegations against non-debtor and debtors and the fact that objectors would rely on the same facts to prove the claims against the non-debtor as against the debtors); Purdue Pharm. L.P. v. Mass. (In re Purdue Pharm. L.P.), No. 19-23649 [Dkt. 87] (Bankr. S.D.N.Y. Oct. 11, 2019) (stating that even if "a claim against a third party is independent or not derivative of the debtors, it still may be enjoined under proper circumstances."); Takata PI Ruling 15:5-16 (rejecting contention that non-debtors "inability to be indemnified for their own negligent or wrongful acts" vitiated the identity of interest created by contractual indemnity obligations of the debtors and finding that all the claims against the non-debtors revolved around the acts and omissions of the debtors); see also W.R. Grace & Co., 2004 WL 954772 at **2-3 (finding that there was an identity of interest between the debtor and the non-debtor owner of property that was previously owned by the debtor in litigation between two non-debtors given entitlement to contractual indemnity).

products, time periods and alleged injuries, related to the talc liabilities of Old JJCI, and would effectively seek to adjudicate the very same claims at issue in this Chapter 11 Case. See PI Op., 638 B.R. at 305-06 (“I believe there is, in effect, an identity of interest within the meaning of the Robins case and that, notwithstanding the potential that some of the claims may be direct, almost all of them, if not all of them, relate to the debtor’s operations.”) (quoting Hr’g Tr., 141:8-12, Nov. 10, 2021); id. at 311 (noting that “the claims against the Retailers involve the same products, the same time period, the same alleged defect, and the same alleged harm as the claims against Debtor”); see also Belcufine v. Aloe, 112 F.3d 633, 637 n. 5 (3d Cir. 1997) (adopting the reasoning in Robins that “an identity between the debtor and the individual officers [existed and] that allowing the suit to proceed against the officers would, in effect, be allowing the suit to proceed against the bankrupt debtor”); McCartney, 106 F.3d at 510–11 (describing and applying the Robins principle).

2. Stay Protection Is Essential to Protect the Debtor’s Reorganization Efforts.

“[A] critical factor in deciding whether to extend the stay is the potential adverse impact on a debtor’s estate and prospect of reorganization.” PI Op., 638 B.R. 306. In the 2021 Chapter 11 Case, both this Court and the North Carolina Bankruptcy Court found that, without stay protection “it is difficult to envision how a successful reorganization can be achieved in this case.” PI Op., 638 B.R. at 304-05 (“We’re not going to have a bankruptcy case of any sort if everybody can go sue J&J and assert the same claims that they would be asserting there.”) (quoting Hr’g Tr., 142:15-17, Nov. 10, 2021). The circumstances that led the Court to conclude in the 2021 Chapter 11 Case that “the talc claims have an undeniable impact on Debtor’s estate” have not changed. Id. at 307. Stay protection is essential with respect to the Debtor Talc Claims to avoid liquidation of claims outside the Chapter 11 Case, the potential preclusive or prejudicial

impact of such litigation and to avoid depleting the Debtor's resources to the detriment of its estate.

(a) Liquidation of Claims Against the Debtor's Estate Outside This Chapter 11 Case

Absent a stay of litigation, “uncontrollable” and “uncoordinated proceedings in different courts” will resume, Robins, 788 F.2d at 998, which eventually will lead to the liquidation of Debtor Talc Claims against Protected Parties for which the Debtor ultimately is liable. Whether such claims are the responsibility of the Debtor directly—by virtue of the allocation of those liabilities to the Debtor from Old JJCI—or indirectly through the Debtor's actual or alleged indemnification obligations, “the continued litigation against the Protected Parties would liquidate [these claims] against Debtor outside of chapter 11 and potentially deplete available insurance coverage—frustrating the purpose of the automatic stay.” PI Op., 638 B.R. at 307.

Under the circumstances of this Chapter 11 Case, many facts establishing an identity of interests between the Debtor and the Protected Parties also illustrate the impact on the Debtor's estate that would be caused by continued litigation of Debtor Talc Claims against Protected Parties. Because the talc claimants assert the same claims arising from “the same products, same time periods, same alleged injuries, and same evidence” against the Protected Parties, the liquidation of any such claim against any Protected Party will affect the assertion of that same claim against the Debtor. The Debtor's estate thus typically has dual interests in the outcome of the litigation of Debtor Talc Claims against Protected Parties: because the same claim for the same liability is asserted against the Debtor, as successor to Old JJCI; and because the Debtor, as indemnitor, may ultimately be liable for any judgment against the Protected Party.

Permitting claimants to continue seeking to indirectly liquidate claims against the Debtor through actions against third parties with indemnity rights would also “impair mediation efforts and negotiations within this bankruptcy and would complicate estimation hearings, with multiple uncoordinated hearings nationwide.” *Id.* The successful outcome of this Chapter 11 Case depends upon the Debtor’s ability to obtain additional support for a plan of reorganization that contains the terms in the Plan Support Agreements to establish a trust that will resolve all current and future talc claims against the Debtor. Any individual talc claimant’s simultaneous effort to fix its claims in another jurisdiction against related parties would undermine (or defeat) this goal and the ability of the Debtor and claimants who have signed Plan Support Agreements to achieve confirmation of a plan that treats all talc claimants fairly and equitably.

(b) Risks of Res Judicata, Collateral Estoppel and Evidentiary Prejudice

Litigation of Debtor Talc Claims outside of this Chapter 11 Case also gives rise to the risk of res judicata, collateral estoppel and evidentiary prejudice. The Debtor is not required to establish definitively the preclusive or evidentiary harm it will suffer. Rather, “employ[ing] a broader view of the potential impact on the debtor,” PI Op., 638 B.R. at 314, “it suffices to acknowledge that there *exists a risk* that [such doctrines] could adversely impact Debtor in future litigation.” *Id.* at 316 (emphasis in original) (citing Grace, 115 F. App’x 565 (3d Cir. 2004) (holding that risk of future preclusive consequences was enough to weigh in favor of extending the stay)); see also Securities Claim PI Op., 640 B.R. at 337-38 (the Court “must give great weight to the injury to protect against, as contrasted to the certainty of the threat”) (citing In re Lyondell Chem. Co., 402 B.R. 571, 591 (Bankr. S.D.N.Y. 2009). This burden is satisfied here, and there remains “no reason to deviate from the prudent course navigated by the Third Circuit in [Grace].” PI Op., 638 B.R. at 314.

Res judicata bars relitigation in a subsequent action by the parties—or any of their privies—of claims and defenses that were brought—or that could have been brought—in the prior action. See PI Op., 638 B.R. at 316 (citing Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc., 206 L. Ed. 2d 893, 140 S. Ct. 1589, 1594 (2020)). Any number of relationships may give rise to privity for purposes of claim preclusion. A risk of preclusion may exist, for example, between a corporation and its successor, Russell v. SunAmerica Sec., Inc., 962 F.2d 1169, 1175–1176 (5th Cir. 1992), or between an indemnitor and indemnitee, FTC v. Garvey, 383 F.3d 891, 898–899 (9th Cir. 2004). As a result, unless Debtor Talc Claims are stayed, the risk exists that plaintiffs may attempt to bar the Debtor from raising defenses to Debtor Talc Claims that were not raised by Protected Parties in ongoing litigation outside of this Chapter 11 Case causing an obvious prejudicial impact to the Debtor.

Collateral estoppel—or issue preclusion—bars the re-litigation of issues where “(1) the identical issue was previously adjudicated; (2) the issue was actually litigated; (3) the previous determination was necessary to the decision; and (4) the party being precluded from relitigating the issue was fully represented in the prior action.” U.S. v. 5 Unlabeled Boxes, 572 F.3d 169, 173 (3d Cir. 2009) (quoting Jean Alexander Cosmetics, Inc. v. L’Oreal USA, Inc., 458 F.3d 244, 249 (3d Cir. 2006)). Importantly, nonmutual 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); see also Jean Alexander Cosmetics, 458 F.3d 244, 248-49 (discussing nonmutual offensive use of collateral estoppel). A clear risk therefore exists that talc claimants who have never before litigated their claims against the

Debtor, or against the Protected Parties, could seek to bar the Debtor's defenses by pointing to a prior judgment on a Debtor Talc Claim against a Protected Party.

Courts consistently have concluded that the risks of collateral estoppel and res judicata warrant a stay of third-party litigation that could undermine the purposes of the automatic stay. See, e.g., 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); Am. Film Techs., 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); 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).

Beyond formal preclusion doctrines, litigation of the Debtor Talc Claims against the Protected Parties could allow parties to use statements, testimony and other evidence elicited or adduced in those proceedings to try to establish the Debtor's liability for Debtor Talc Claims. As one court put it, "once 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" involving the debtor regardless of whether the debtor "was a party to the record on which the initial testimony was taken." Johns-Manville, 40 B.R. at 225. The same concern arises for other evidence: "Once an admission against interest is made, under oath or otherwise, by the agent of a party,

that admission stands for all time.” Id. Regardless of what the parties to the other proceeding might “stipulate, the thousands of other claimants and cross-claimants who are after [the debtor’s] assets, would be entitled to use the product of such discovery.” Id.; see also 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.”); Chakarian, 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); Union Tr. Phila., LLC v. Singer Equip. Co. (In re Union Tr. Phila., LLC), 460 B.R. 644, 657 (E.D. Pa. 2011) (in subsequent suits, debtor could be bound by “critical factual and legal issues” determined in the proceedings against non-debtor).

The Court previously recognized that “[b]ecause the talc-related claims against the Debtor and the Protected Parties implicate the same product, the same time period, the same alleged defect and the same alleged harm, it is possible that the evidentiary record developed in continued litigation against the Protected Parties could prejudice Debtor” PI Op., 638 B.R. at 317. The circumstances here regarding the risks of res judicata, collateral estoppel and record taint are no different from those the Court previously considered. Unless the litigation of Debtor Talc Claims against the Protected Parties is stayed, the Debtor may be compelled to defend its interests in pending litigation against the Protected Parties to prevent such harm to its estate, thereby defeating the “breathing spell” intended by the automatic stay. First Day Decl. ¶ 109. These are consequences that the Debtor should not be required to suffer or be compelled to

protect against, and the extent of this risk should not be “tested at the debtor’s peril.” Grace, 115 F. App’x at 570.

(c) Potential Diversion of Resources and Disruption of Funding

Courts routinely find that the potential diversion of estate resources to monitor or participate in external litigation justifies an extension of the automatic stay. See Chakarian, 386 B.R. at 31-32 (finding that actions against non-debtor directly impacted the estate due to the overlap of issues, contractual indemnity and the implication of the debtors’ insurance, which would all necessitate the debtors’ involvement and divert resources to attend to the claims rather than the reorganization); Takata PI Ruling 19:5-23:5 (finding that continued prosecution of the state and individual actions against non-debtors would adversely impact the debtors’ efforts to reorganize given need of all stakeholders to focus on reorganization process); Phila. Newspapers, 407 B.R. at 616 (finding that the diversion of resources caused by action against non-debtors arising from a series of allegedly false and misleading newspaper and internet articles and certain non-debtors “bad acts” would impact the debtors’ ability to engage in a timely and effective reorganization).

If litigation of Debtor Talc Claims continues outside this Chapter 11 Case, the Debtor will be distracted from its reorganization efforts by its need to monitor or participate in litigation because of the identity of claims being liquidated and issues being determined in the tort system, as well as the Debtor’s indemnification obligations, the potential effects of res judicata, collateral estoppel or record taint. Moreover, funds and resources necessary for the Debtor’s reorganization efforts may be diverted by any judgments entered by depleting insurance proceeds available to the Debtor under shared insurance policies or potentially the funding available under the Amended Funding Agreement. See, e.g., Inj. Pursuant to §§ 105(a) and 362(a) and Fed. Rule of Bankruptcy Procedure 7065, In re Quigley Co., Inc., No. 04-15739,

Adv. No. 04-04262 [Dkt. 122] (Bankr. S.D.N.Y. Dec. 17, 2004) at 3-4 (finding that continued prosecution of any and all asbestos claims against non-debtor parent, whether allegedly direct or derivative, would deplete shared insurance policies and funds in an insurance trust to the detriment of the debtor's estate).

This Court previously considered all of these circumstances, finding that “unusual circumstances” exist justifying an extension of the automatic stay of section 362(a)(1) of the Bankruptcy Code because of the existence of an identity of interests between the Debtor and the Protected Parties and the impact that continued litigation of the Debtor Talc Claims would have on the Debtor's reorganization efforts. PI Op., 638 B.R. at 305-07. These unusual circumstances have not changed, and the Court should declare once again that the stay extends to the Protected Parties.

B. Suits That Would Deplete Insurance Policies Are Automatically Stayed Because the Policies Are Property of the Debtor's Estate.

Section 362(a)(3) bars plaintiffs from bringing suits against J&J or the Retailers 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 PI Op., 638 B.R. at 317 (“It has long been the rule in this Circuit that insurance policies are considered part of the property of a bankruptcy estate.”) (citing ACandS, Inc. v. Travelers Cas. & Sur. Co., 435 F.3d 252, 260 (3d Cir. 2006)); see also Robins, 788 F.2d at 1001 (agreeing with “the weight of authority” that insurance contracts are property of the estate”); In re W.R. Grace & Co., 475 B.R. 34, 149 (D. Del. 2012), aff'd sub nom. In re WR Grace & Co., 729 F.3d 332 (3d Cir. 2013) (insurance policies constitute “valuable property of a debtor, . . . therefore ‘[a]ny action in which the judgment may diminish this ‘important asset’ is unquestionably subject to [the § 362(a)] stay[.]’”) (quoting Robins, 788 F.2d at 1001); 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”); Maertín v. Armstrong World Indus., Inc., 241 F. Supp. 2d 434, 446 (D.N.J. 2002) (insurance policies and proceeds of policies are property of the estate).

J&J and the Debtor are both covered for talc-related claims under various shared insurance policies. See supra, § II.B. The Retailers are named as insureds in many such policies. Id. The right to coverage under these insurance policies is property of the Debtor’s estate, and prosecution of a claim against J&J or the Retailers, each of which is 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).⁴⁸

Here, insurance is potentially available to the Debtor, J&J and the Retailers under various insurance policies for talc-related claims, and “it is unquestionable that shared policies exist.” See PI Op., 638 B.R. at 318. Further, “the insurance policies have not yet been exhausted because only payments made by the policyholder’s insurers erode or exhaust the limits of the policies,” and “nearly the entire policy coverage of \$2 billion is potentially still available

⁴⁸ See also 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 [sic] 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).

to Debtor and J&J. Id. If a Debtor Talc Claim is prosecuted against J&J or the Retailers, J&J or the Retailers 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 J&J and the Retailers are stayed pursuant to section 362(a)(3).

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)); see In re VistaCare Grp., LLC, 678 F.3d 218, 231 n.11 (3d Cir. 2012) (“Bankruptcy courts have broad powers (in addition to 11 U.S.C. § 362) to protect the property of the estate. For example, under 11 U.S.C. § 105(a), a bankruptcy court may issue injunctive relief.”). An injunction as to third-party litigation is appropriate where, among other things, “the third-party action will have an adverse

impact on the debtor's ability to accomplish reorganization." See Chakarian, 386 B.R. at 30;⁴⁹ Phila. Newspapers, 407 B.R. at 616-17; Robins, 788 F.2d at 1003 (enjoining litigation against a third party where "failure to enjoin would [a]ffect the bankruptcy estate and would adversely or detrimentally influence and pressure the debtor through the third party" (citation omitted)).⁵⁰

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; see also In re W.R. Grace & Co., 475 B.R. 34, 147 (D. Del. 2012) (quoting Robins).⁵¹

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

⁴⁹ See also Grace, 115 F. App'x at 570 ("The standard for the grant of a stay is generally whether the litigation 'could interfere with the reorganization of the debtor,' or 'would interfere with, deplete or adversely affect property of [the] estates or which would frustrate the statutory scheme of chapter 11 or diminish [the debtor's] ability to formulate a plan of reorganization.'") (internal citations omitted).

⁵⁰ 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).").

⁵¹ 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); see also T&E Indus., Inc. v. Safety Light Corp., 680 F. Supp. 696, 705 (D. N.J. 1988) (reasoning that federal courts do not need statutory authorization to grant injunctive relief, and "absent the clearest command to the contrary from Congress, federal courts retain their equitable power to issue injunctions in suits over which they have jurisdiction") (quoting Califano v. Yamasaki, 442 U.S. 682, 705 (1985)).

effectuate the protections of the automatic stay.⁵² In fact, to the Debtor's knowledge, virtually every court that has addressed the issue in the context of mass tort claims of a debtor asserted against non-debtor affiliates has recognized that such claims threaten the debtor's prospects for reorganization and has implemented a section 105(a) injunction.⁵³ See PI Op., 638 B.R. at 320-21 (issuing preliminary injunction in favor of non-debtor affiliates, insurers, retailers and indemnified parties and noting that "continued litigation will have an adverse impact on the bankruptcy estate, will hinder, reorganization efforts, and will serve as a constant drain on resources and time"); 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 G-I Holdings, Inc., No. 01-30135 (RG), Adv. No. 01-3013 (RG) (Bankr. D.N.J. Feb. 22, 2002) (issuing preliminary injunction in favor of a non-debtor subsidiary of the debtor, and enjoining the filing or prosecution of asbestos claims against non-debtor subsidiary); 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

⁵² As to non-asbestos mass tort bankruptcies, see In re Purdue Pharms L.P., No. 19-23649, Adv. No. 19-08289 [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 [Dkt. 71] (Bankr. S.D. Ind. Apr. 22, 2019); In re TK Holdings Inc., Case No. 17-50880, Adv. No. 17-50880 [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).

⁵³ A notable outlier is the recent decision of the United States Bankruptcy Court for the Southern District of Indiana in In re Aearo Techs. LLC, 642 B.R. 891 (Bankr. S.D. Ind. 2022). But that case is highly distinguishable because it relies on controlling interpretations of law in the Seventh Circuit that are inapplicable here. In particular, the court ruled that Seventh Circuit authority did not permit extensions of the automatic stay of section 362(a)(1), as expressly permitted by McCartney and Robins. Id. at 905. Moreover, the court found that it lacked even related to subject matter jurisdiction with respect to the proceeding under the Seventh Circuit's "more constrained approach to 'related to' jurisdiction," which the bankruptcy court was required to interpret "narrowly." Id. at 909.

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); Chakarian, 386 B.R. at 34 (enjoining actions against a third-party railroad that transported the debtor’s asbestos-containing products).⁵⁴ Such relief is critical for a debtor to equitably resolve all current and future talc claims against it under the Bankruptcy Code.

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, as modified for the bankruptcy context. See In re G-I Holdings, Inc., 420 B.R. 216, 281 (D.N.J. 2009) (stating the standard for the issuance of an injunction in the bankruptcy context); Phila. Newspapers, 407 B.R. at 616–17 (citing Tenaflly Eruv Ass’n, Inc. v. Borough of Tenaflly, 309 F.3d 144, 157 (3d Cir. 2002))

⁵⁴ See also 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); 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 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); In re Pittsburgh Corning Corp., No. 00-22876 (JKF), Adv. No. 00-2161 (JKF) (Bankr. W.D. Pa. Apr. 16, 2000).

(explaining the elements of the Third Circuit test for a preliminary injunction in the bankruptcy context).⁵⁵ 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.

G-I Holdings, 420 B.R. at 281; see also Bestwall, 606 B.R. at 253.

Under the Third Circuit test, the proponent of an injunction “must meet the threshold for the first two ‘most critical’ factors.” See Reilly v. City of Harrisburg, 858 F.3d 173, 179 (3d Cir. 2017) (the movant “must demonstrate that it can win on the merits . . . and that it is more likely than not to suffer irreparable harm in the absence of preliminary relief”); Phila. Newspapers, 407 B.R. at 616–17 (applying the Reilly test in the bankruptcy context). Once the movant establishes the first two elements, the court will balance those with the second two elements to determine whether an injunction is warranted. See PI Op., 638 B.R. at 320 (“the Court determines whether the first two threshold prongs are established, and if so, only then does it proceed to consider the third and fourth factors.”) (internal citation omitted); see also Reilly, 858 F.3d at 179 (stating that “if these gateway factors are met” a court will consider them in conjunction with the remaining two factors of the test). The Debtor, therefore, must establish that its reorganization is likely to be successful and that irreparable harm to the reorganization

⁵⁵ See also 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).

effort will result in the absence of the injunction.⁵⁶ This second element is particularly important, because courts generally look to the impact a request for injunctive relief will have on a successful reorganization when determining whether to grant the request. See In re Irish Bank Resolution Corp. Ltd., 2019 WL 4740249, at *5 (D. Del. Sept. 27, 2019) (quoting Grace, 115 Fed. Appx. at 570) (explaining that “[t]he standard for the grant of a stay is generally whether the litigation could interfere with the reorganization of the debtor.”).⁵⁷

Here, as set forth below, the Debtor has satisfied the threshold showing because (i) its prospects for a successful reorganization are strong and (ii) the requested injunction is necessary to achieve the reorganizational goals of this Chapter 11 Case. In addition, as set forth below, the injunction is appropriate when considering all four prongs of the test.⁵⁸

1. The Debtor’s Successful Reorganization Is Likely.

“In the bankruptcy context, reasonable likelihood of success is equivalent to the debtor’s ability to successfully reorganize.” PI Op., 638 B.R. at 320 (citing Phila. Newspapers, 407 B.R. at 617); see In re G-I Holdings Inc., 420 B.R. at 281 (evaluating the “reasonable likelihood of a successful plan of reorganization”); Chakarian, 386 B.R. at 33 (Bankr. D. Del.

⁵⁶ See Reilly, 858 F.3d at 179 (“How strong a claim on the merits is enough depends on the balance of the harms: the more net harm an injunction can prevent, the weaker the plaintiff’s claim on the merits can be while still supporting some preliminary relief.”) (citation omitted).

⁵⁷ See also Brier Creek, 486 B.R. at 694 (“[T]he Fourth Circuit has made very clear that the critical, if not decisive, issue over whether injunctive relief should be granted is whether and to what extent the non-debtor litigation interferes with the debtors’ reorganization efforts) (citing Robins, 788 F.2d at 1003-09); Kreiser v. Goldberg (In re Kreiser), 478 F.2d 209, 215 (4th Cir. 2007)) (same).

⁵⁸ In some instances, both prior and subsequent to Reilly, courts in the Third Circuit nonetheless considered all four factors together. See, e.g., G-I Holdings, Inc., 420 B.R. at 281 (decided prior to Reilly and seemingly requiring the proponent of the injunction to establish each prong of the test). Post-Reilly, courts have not uniformly applied the preliminary injunction test. Compare In EHT US1, Inc., 2021 WL 3828556, at *1 (Bankr. D. Del. 2021) (decided post-Reilly and finding that the party seeking the injunction must establish the first two prongs of the preliminary injunction test, after which the court will go on to consider the second two prongs) with True Health Diagnostics LLC v. Azar (In re THG Holdings LLC), 604 B.R. 154, 162 (Bankr. D. Del. 2019) (referencing, without elaboration, a “four-part test for issuing a preliminary injunction”).

2008) (citing Solidus Networks, Inc. v. Excel Innovations, Inc. (In re Excel Innovations, Inc.), 502 F.3d 1086, 1096 (9th Cir. 2007) (in determining the likelihood of success on the merits, “a bankruptcy court must consider whether the debtor has a reasonable likelihood of a successful reorganization”)); Bestwall, 606 B.R. at 254 (quoting Sudbury, Inc. v. Escott, 140 B.R. 461, 466 (Bankr. N.D. Ohio 1992)).⁵⁹

This is not intended to be a particularly high standard. See Bestwall, 606 B.R. at 254; Excel Innovations, 502 F.3d at 1097 (“[I]t is not a high burden to show a reasonable likelihood of success in reorganization”); see also Phila. Newspapers, 407 B.R. at 617 (noting the speculative nature of the inquiry into the likelihood of a successful reorganization in the early stages of a case); 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).⁶⁰ In short, “[t]o demonstrate a reasonable likelihood of success, a movant need only show the prospect or

⁵⁹ See also Chicora Life Ctr., 553 B.R. at 66; Brier Creek, 486 B.R. at 696.

⁶⁰ 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.”).

possibility that he or she will succeed, and need not prove same with certainty.” PI Op., 638 B.R. at 320; Securities Claim PI Op., 640 B.R. at 335-36.

Here, the Debtor’s prospects for a successful reorganization are strong.

The Debtor has addressed the concerns raised by the Third Circuit and has entered bankruptcy in good faith and in an effort to permanently, fully and equitably resolve current and future Debtor Talc Claims through confirmation of a plan of reorganization. The Debtor has already entered into the Plan Support Agreements with thousands of claimants on the material terms of a plan of reorganization. As courts have consistently recognized, the bankruptcy court is the most logical and best positioned forum for the resolution of mass tort liability. See PI Op., 638 B.R.

at 321-22; accord In re Federal-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 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 submits it has sufficient assets to fund both this Chapter 11 Case and a trust in the amount set forth in the Plan Support Agreements. As of the Petition Date, the Debtor owns a portfolio of royalty revenue streams and other assets, including insurance

coverage rights, and, to the extent its assets are insufficient, it will have access to additional funds through the 2023 Funding Agreement and J&J Support Agreement. First Day Decl. ¶¶ 29-30. Thus there can be no reasonable 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 already has the support of over 60,000 talc claimants for the terms of a proposed plan and will continue to pursue additional support for the plan from its key constituencies. Id. ¶¶ 63, 71; see also PI Op., 638 B.R. at 320 (finding the Debtor had made a sufficient showing where “although the success of Debtor’s reorganization is speculative at this early stage—there is nothing in the record to suggest that Debtor does *not* have a reasonable likelihood of reorganization”); Securities Claim PI Op., 640 B.R. at 336 (concluding “Debtor has met its burden” to show a realistic possibility of successfully reorganizing).

Any opposition from claimants to the Debtor’s petition does not undermine the Debtor’s ability to satisfy this factor. The Bankruptcy Court’s injunction was designed to provide “an opportunity to formulate a plan of reorganization.” Robins, 788 F.2d at 998 (emphasis added). A party’s disagreement with the requested relief therefore cannot serve as a basis for finding that the Debtor’s reorganization is unlikely. Cf. Carolin Corp. v. Miller, 886 F.2d 693, 701 (4th Cir. 1989) (stringent bad-faith dismissal standard supported by policy of not “prejudging the likelihood of a successful reorganization”). Objecting parties may later change their minds. See, e.g., Aldrich Pump, 2021 WL 3729335, at *35 (rejecting the argument that the reorganization was unlikely to success because “the asbestos claimants will never agree to a

Plan” and explaining that, “[h]aving sat on two other hotly contested and apparently irreconcilable asbestos bankruptcy cases that wound up with consensual plans as between these constituencies . . . this Court is unable to conclude that our parties cannot reach an agreement, as well”); In re Purdue Pharms., L.P., 619 B.R. 38, 58 (S.D.N.Y. 2020) (affirming section 105 injunction enjoining mass tort claims against nondebtors, noting that “Appellants cannot say that a reorganization is unlikely simply because they intend to object to the plan as presently constituted”). Moreover, any objections by other parties to the restructuring support agreement establishes only that “the parties have disagreements about the [restructuring support agreement], not that a resolution of those disagreements is out of the question.” In re Caesars Entm’t Operating Co., 561 B.R. 441, 452 (Bankr. N.D. Ill. 2016).

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.

In analyzing irreparable harm, the key question is “whether the litigation ‘could interfere with the reorganization of the debtor’ or ‘would interfere with, deplete or adversely affect property of [the] estates or which would frustrate the statutory scheme of chapter 11 or diminish [the debtor’s] ability to formulate a plan of reorganization.’” Grace, 115 F. App’x at 570 (first quoting Robins, 828 F.2d at 1025, then quoting In re Johns-Manville, 26 B.R. at 436); Aldrich Pump, 2021 WL 3729335, at *33 (“[T]he critical, if not decisive, issue over whether injunctive relief should be granted is whether and to what extent the non-debtor litigation interferes with the debtors’ reorganization efforts.” (quoting Brier Creek, 486 B.R. at 694)).

Recent Third Circuit authority establishes that the irreparable harm prong of the test for injunctive relief can be satisfied by a showing of potential harm or the risk of harm. See ADP, Inc. v. Levin, 2022 WL 1184202, at *3 (citing Adams v. Freedom Forge Corp., 204 F.3d 475, 488 n.13 (3d Cir. 2000) (collecting cases)). Indeed, this Court has recently clarified that “the mere risk of a potentially adverse impact on a debtor’s bankruptcy can be sufficient to support a preliminary injunction” and the “plaintiff’s theory that the debtor would not suffer an adverse impact should not be tested at the debtor’s peril.” See PI Op., 638 B.R. at 314; Securities Claim PI Op., 640 B.R. at 337 (stating that a movant may be entitled to a preliminary injunction if movant demonstrates that “the risk of future harm [is] anything other than speculative”) (quoting ADP, Inc. v. Levin, 2022 WL 1184202, at *3).

The ramifications of continued litigation of the Debtor Talc Claims against Protected Parties outside this Chapter 11 Case cannot be overstated. This Court previously recognized that, without a stay or injunction, “it is difficult to envision how a successful reorganization can be achieved in this case.” See PI Op., 638 B.R. at 304-05 (citing PI Tr. at 142:15-17 (“We’re not going to have a bankruptcy case of any sort if everybody can go sue J&J and assert the same claims that they would be asserting there.”)). Other courts agree in similar circumstances. 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”); In re DBMP, 2021 WL 3552350, at *41 (“[T]he litigation of DBMP Asbestos Claims in the tort system while the Chapter 11 Case remains pending would undermine the purposes of chapter 11 and section 524(g) to resolve all such current and future claims in a fair and equitable manner though a chapter 11.”).

The Debtor will not burden the Court with extensive repetition of the various means discussed at length above by which continued litigation of Debtor Talc Claims in the tort system would impact this Chapter 11 Case. These numerous impacts on and risks to the Debtor's restructuring efforts include, among others: the liquidation of claims outside the Chapter 11 Case for which the Debtor is liable, whether directly or via actual or alleged indemnification obligations; the impact of ongoing litigation on the Debtor's efforts to negotiate or mediate a resolution with present and future claimants; the likelihood of preclusion or other prejudice through res judicata, collateral estoppel and record taint; the potential depletion of available insurance coverage under shared policies; the disruption that continued litigation against J&J or HoldCo could cause to the funding of the Debtor's trust; and the constant drain on the Debtor's resources of monitoring fragmented litigation around the United States while seeking to preserve its rights. See supra §§ I.C, II.A. Continued litigation of the Debtor Talc Claims against the Protected Parties clearly presents an imminent and substantial risk of irreparable harm to the Debtor's estate.

3. The Irreparable Harm that the Debtor Would Suffer in the Absence of an Injunction Substantially Outweighs Any Prejudice to Claimants.

In contrast to the existential risk to the Debtor's reorganization posed by continued litigation of Debtor Talc Claims outside this Chapter 11 Case, any prejudice caused claimants by an injunction would be minimal, to the extent it would exist at all. The issuance of an injunction will not permanently deprive Defendants of an opportunity to pursue the Debtor Talc Claims. Instead, it will merely pause those alleged claims, giving the Debtor time to continue its substantial progress toward consensus on a plan of reorganization. And the length of that pause here is likely to be short, given that the Plan Support Agreements require that a chapter 11 plan containing the terms to which the parties have agreed must be filed by May 14,

2023, or as soon thereafter as is feasible. Thus, the requested injunction will do nothing more than place the Defendants 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 Debtor to establish a trust that equitably treats and pays all current and future Debtor Talc Claims.

The Defendants are unlikely to suffer prejudice in the form of delay. Based on the historical pace of resolution of claims in the tort system, it would take decades to resolve them all. Ex. 42.2 (Hr’g Tr., Nov. 5, 2021, Mullin Direct) at 455:6-456:15; Ex. 41 (Debtor’s PI Hr’g Ex. 31, Expert Report of Charles h. Mullin PhD), at ¶ 17. Such resolutions are costly—Old JCI incurred nearly \$1 billion defending personal-injury talc claims in the five years leading up to the 2021 Petition Date alone—and they result in widely varying recoveries for claimants with comparable damages. See Ex. 43 (2021 First Day Decl.) ¶¶ 38-40, 58. In contrast, a bankruptcy trust will provide claimants (and the Debtor) “with an efficient means through which to equitably resolve [the] claims.” PI Op., 638 B.R. at 322 (citing Bestwall, 606 B.R. at 257 (quoting Federal-Mogul, 684 F.3d at 357-62)); see also Ex. 42.2 (Hr’g Tr., Nov. 5, 2021, Mullin Direct) at 455:6-456:15; Ex. 41 (Debtor’s PI Hr’g Ex. 31) ¶ 25.

Even if this Court assumes that an injunction might cause delay for some claimants, “it is well established that mere delay is insufficient to prevent the issuance of an injunction.” Bestwall, 606 B.R. at 257; LTL Mgmt. LLC v. Those Parties Listed on Appendix A to Complaint (In re LTL Mgmt. LLC), Adv. Pro. No. 21-03032, ECF No. 102 (the “NC Prelim. Inj. Order”) at 6 (“Delay, in and of itself, is insufficient to overcome irreparable harm caused to the Debtor and its estate.”); 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). Otherwise, an injunction could never be issued, because injunctions inherently involve some delay, yet relief of this type has “uniformly been issued” by many different courts notwithstanding claimants raising this theoretical consequence. Bestwall, 606 B.R. at 254 (citing cases).

Rather than the issuance of an injunction, it is continued litigation of Debtor Talc Claims in the tort system that is likely to harm claimants. Outside this Chapter 11 Case, holders of current Debtor Talc Claims would receive a reduced chance of recovery, or recoveries materially different from those realized by current or future claimants through a court-approved trust. Further, mass tort litigation generally requires extensive discovery, involves numerous parties and presents complicated questions of causation. Such litigation is rarely efficient and often endures for many years of motions, trials and appellate practice. By contrast, a trust established by the Debtor in this 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. As a result, “a preliminary injunction will not result in greater harm to the talc claimants. Instead, it will ‘remedy some of the intractable pathologies of asbestos litigation.’” PI Op., 638 B.R. at 321 (quoting Federal-Mogul, 684 F.3d at 362).⁶¹

The Court previously identified numerous benefits to talc claimants through the issuance of a preliminary injunction and the “handling of their claims through the bankruptcy

⁶¹ See Federal-Mogul, 684 F.3d at 362 (“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).

process,” including: (i) “protect[ing] the interests of future claimants;” (ii) “prevent[ing] a race for proceeds;” (iii) “promot[ing] equality in distribution;” (iv) avoiding (a) “the sluggish pace of litigation,” (b) the “legitimate possibility that they will not succeed in proving their claims” and (a) the “appellate process, where—at worst—their judgment is overturned, and—at best — recovery is delayed;” and (v) enjoying through claims reconciliation via a bankruptcy trust “reduced evidentiary and causation burdens” and “a far more expeditious pace” and “a far simpler and streamlined process than currently available in the tort system.” *Id.* The Debtor agrees, and the balance of harms clearly weighs in favor of issuing a preliminary injunction.

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.” *Chakarian*, 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 Corp., 211 B.R. 545, 588 (Bankr. E.D. Mich. 1997) (“[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.”). In addition, “a bankruptcy trust protects the needs of future talc claimants,” whereas such claimants’ “interests are largely unrepresented in the tort system.” See PI Op., 638 B.R. at 322. “Indeed, both present and future ‘claimant’s interests are protected by the bankruptcy court’s power to use future earnings to compensate similarly situated tort claimants equitably.” Id. (citing Federal-Mogul, 684 F.3d at 359).

Permitting Debtor Talc Claims to continue against the Protected Parties would jeopardize the very purpose of the Debtor’s Chapter 11 Case. Undermining this Chapter 11 Case also undermines the public interest. As set forth above, enjoining “direct” claims against the Protected Parties is entirely appropriate. Without the requested relief, the Debtor would not benefit from a reprieve of litigation to focus on its reorganization. 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. In fact, central to the proposed plan terms in the Plan Support Agreements are commitments by the Debtor and J&J to pay up to \$8.9 billion net present value to fund a trust to resolve all current and future talc claims. 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; see also In re Combustion Eng’g, Inc., 391 F.3d 190, 233-34 (3d Cir. 2004) (holding that a channeling injunction may be extended to non-debtors where the requirements of section 524(g) are met). 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.

Courts have consistently affirmed the public’s interest in a successful reorganization,⁶² which may be at its greatest in mass-tort bankruptcies.⁶³ This Court has also stated that “it holds no doubts that claim resolution through the bankruptcy process is in the public interest.” PI Op., 638 B.R. at 321-22; see also Securities Claim PI Op., 640 B.R. at 342 (“[T]he Debtor’s reorganization and the uniform, timely, and equitable resolution of the Talc Claims for the benefit of injured parties—existing and future—are at the forefront of this Court’s mind.”); NC Prelim. Inj. Order at 6 (“The public interest lies with the Debtor completing its reorganization process and resolving the Debtor Talc Claims in a uniform and equitable manner.”). As detailed above, the preliminary injunction is a critical component of the Debtor’s successful reorganization.

⁶² Rehabworks, Inc. v. Lee (In re Integrated Health Servs.), 281 B.R. 231, 239 (Bankr. D. Del. 2002) (“In the context of a bankruptcy case, promoting 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 Integrated Health Servs.).

⁶³ See, e.g., Robins, 788 F.2d at 1008 (noting “the unquestioned public interest in promoting a viable reorganization”).

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. This Court has previously reached the same conclusion. See PI Op. 322 (determining that all factors weigh in favor of Debtor's [request for a preliminary injunction] and a 105(a) injunction is appropriate). The North Carolina Bankruptcy Court also agreed. See Ex. 47 (Hr'g Tr., Nov. 10, 2021) at 141:5-6, (finding "that a 105 injunction should issue consistent with what the debtor has proposed"); id. at 135:22-25 (noting that, were the court keeping the case, it may have made the preliminary injunction "more permanent" than 60 days). There has been no change in circumstances or the law that warrants a different outcome.

IV. THE COURT SHOULD GRANT A TEMPORARY RESTRAINING ORDER TO EFFECTUATE THE RELIEF SOUGHT BY THE DEBTOR PENDING A FINAL HEARING.

1. Request for an Ex Parte Temporary Restraining Order

The Debtor requests that this Court immediately, on an ex parte basis, 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).⁶⁴ 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).

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. First Day Decl. ¶ 110. Without immediate injunctive relief, the Debtor will be compelled to divert key estate resources away from its reorganization efforts to focus on that ongoing litigation, hampering the Debtor's reorganization from the outset. Id. 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 thus cause the very harm that the Debtor seeks to prevent by the Motion and the Complaint.

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. Id. ¶ 108. It would create chaos across mass-tort proceedings nationwide, as litigation over tens of thousands of talc claims resumes, all of which may come grinding to a halt if this Court grants this Motion. Id. Approximately 1,000 individually set ovarian cancer claims (not subject to docket-wide coordination procedures) are pending in various state courts outside of the federal MDL and consolidated state proceedings in California and New Jersey. Id. An additional 470 mesothelioma claims are pending in state courts across the country—in 44 courts, across 25 different states. Id. None of those cases is coordinated, and many are filed on specialized, asbestos-specific accelerated dockets. Id. Each is in the process of suddenly

⁶⁴ 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.

springing back into activity and proceeding towards trial absent extension of the stay or issuance of a preliminary injunction. Id. Many of the cases have proceeded in the interim against other defendants and without the Debtor's involvement, but suddenly, the Debtor would be thrown into the mix—potentially significantly impacting the progress, scope and nature of the cases. Id.

Moreover, there are at least 20 mesothelioma cases now on the eve of trial or that could be set for trial imminently (in the next 60 days, with trial scheduled to begin in the Valadez Case on April 17), all of which would demand significant investment in expedited, catch-up discovery, expert witness engagement, trial lawyer time, and other resources. Id. ¶ 109. And this machinery does not run itself. From just the perspective of the Debtor, prior to the commencement of the 2021 Chapter 11 Case, 30 firms and 40 experts were retrained to handle the mesothelioma cases referenced above. Id. These negative effects on the Debtor's estate will only compound as new Debtor Talc Claims are filed against the Protected Parties. Id.

Bankruptcy courts in similar mass tort chapter 11 cases 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 LTL Mgmt. LLC, No. 21-03032, Adv. No. 21-03032 (Bankr. D.N.J. Mar. 4, 2022); In re LTL Mgmt. LLC, No. 21-03032, Adv. No. 21-03032 (Bankr. W.D.N.C. Oct. 26, 2021); 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).⁶⁵ Under the circumstances

⁶⁵ See also In re Aldrich Pump LLC, No. 20-30608, Adv. Pro. 20-3041 (Bankr. W.D.N.C. June 25, 2020); In re DBMP LLC, No. 20-30080, Adv. Pro. No. 20-3004 (Bankr. W.D.N.C. Jan. 29, 2020); In re Bestwall LLC, No. 17-31795, Adv. No. 17-03105 (Bankr. W.D.N.C. Nov. 8, 2017); In re Kaiser Gypsum Co.,

here, as in these other cases, immediate injunctive relief is required to safeguard the Debtor's prospects for a successful reorganization. Moreover, although temporary restraining orders generally are limited to 14 days, the Court may extend its order for an additional 14 days before that period expires and for good cause. Fed. R. Civ. P. 65(b)(2).

2. The Valadez Case

The Valadez Case is a mesothelioma case against J&J, the Debtor and certain Retailers pending in the Superior Court of the State of California, Alameda County. First Day Decl. ¶ 113. The Valadez Case was automatically stayed as to the Debtor on the Petition Date, and it should immediately be stayed and enjoined as to J&J and the Retailers for all the same reasons that every talcum powder personal injury lawsuit pending across the country should be stayed. But in light of recent, unequivocal statements by counsel to Valadez that leave no doubt he intends to put the 2021 Chapter 11 Case—and indeed the bankruptcy system itself—on trial during the Valadez Case, the risk of permitting the Valadez Case to proceed in the tort system at the very same time that the Debtor and thousands of claimants work towards a consensual resolution of this Chapter 11 Case in this Court are acute and warrant specific discussion.

Only after the Third Circuit's dismissal opinion did this Court grant full relief from the stay to permit the Valadez Case to proceed against the Debtor and the other Protected Parties. See Dkt. 3771 in Case No. 21-3059. The Court, as a result of the Third Circuit's opinion, determined then that "the pendulum has swung" such that "it is difficult for the Court to make [the] same finding that there is an effective reorganization in prospect." Ex. 48 (Hr'g Tr.,

No. 16-31602, Adv. No. 16-03313 (Bankr. W.D.N.C. Oct. 7, 2016); In re Garlock Sealing Techs., LLC, No. 10-31607, Adv. No. 10-03145 (Bankr. W.D.N.C. June 7, 2010).

Feb. 24, 2023) at 41:6-12. The Court, therefore, gave “less deferen[ce] to the reorganization needs of the Debtor” and granted stay relief to the plaintiff. Id. at 41:13-14.

Since stay relief was granted, the Valadez Case has served as a distraction to the Debtor’s and J&J’s management, and a drain on resources. First Day Decl. ¶ 112.

The California state court has scheduled an accelerated trial to begin imminently, on April 17. Id. ¶ 111. In the next two weeks, the parties are scheduled to undertake 24 depositions of fact witnesses, persons most knowledgeable and experts. Id. These depositions include the continued deposition of the Debtor’s person most knowledgeable on a number of topics, some of which indicate that counsel to Valadez will press for irrelevant and, in some instances, privileged information regarding a wide range of topics related to the 2021 Chapter 11 Case and the involvement of both specific members of the J&J legal department and various executive-level personnel to address the same. Id. Beyond these depositions, the parties are embroiled in significant evidentiary disputes over the possible spoliation of key testing materials by the plaintiff’s testing expert and whether or not to proceed with genetic testing of the plaintiff (as advocated by certain of his own expert witnesses). Id.

Given the support for this Chapter 11 Case from over 60,000 claimants and the Debtor’s new financing arrangements that address the concerns raised by the Third Circuit, the pendulum has swung back. An effective reorganization is in prospect once again, and the balance of the harms weighs decidedly in favor of enjoining the Valadez Case to allow this Chapter 11 Case to proceed without the threat posed by a concurrent trial of a single claimant among many thousands. Findings in that trial could jeopardize the success of this Chapter 11 Case by undermining the terms of the plan set forth in the Plan Support Agreements, contradicting findings by this Court, and threatening the delicate balance now in place as both

the Debtor and claimants work to resolve all talc claims on an equitable and permanent basis. Permitting one talc claimant to proceed to an accelerated trial on the merits of his talc claim, while thousands of other talc claimants work towards a full, equitable and final resolution of all talc claims, risks undermining the Debtor's reorganizational efforts. The Debtor respectfully submits that there is no basis for providing preferential treatment to the plaintiff in Valadez, particularly where a plan process is underway and has significant support from talc claimants.

In addition, concerns about the Valadez Case are heightened because counsel to Valadez has unabashedly made clear his intention to put the 2021 Chapter 11 Case on trial during the course of trial. According to a March 6 letter to the Alameda County court (the "March 6 Letter"), Trailblazer Studios, "a production company based in Raleigh, NC, which focuses on documentary filmmaking and post-production services for premium platforms like Netflix, Hulu, National Geographic, Disney + and ESPN," contacted the trial judge in the Valadez Case seeking permission to film the trial. See March 6 Letter, 1.⁶⁶ Trailblazers, and its counsel in a letter dated March 21 (the "March 21 Letter"),⁶⁷ clarified that Trailblazers intends to produce a for-profit documentary "focused on the ongoing talc bankruptcy saga," and hopes to include an "unknown" amount of Valadez Case trial footage, to be released at an "unknown" time, to "unknown" media outlets, in that documentary. Id.; March 21 Letter, 2-3.

Given the inevitable distraction of allowing a production company into the courtroom, let alone the well-known and documented prejudicial impact of such activities, defendants promptly opposed Trailblazers' request. In response, counsel for Valadez stated that "Defendants' *bad-faith bankruptcy* and infliction of *further harm* upon mesothelioma victims . . .

⁶⁶ A copy of the March 6 Letter is attached as Annex G to the First Day Declaration.

⁶⁷ A copy of the March 21 letter is attached as Annex H to the First Day Declaration.

is a ‘matter of public interest’” such that the court should permit the trial to be recorded by a production company. See Pl.’s Resp. to Defs.’ Opp. to Trailblazer Studios’ Req. to Record T. Proceedings, at 2-3 (Mar. 23, 2023) (emphasis added).⁶⁸ Based on these developments, it appears that counsel to Valadez intends to turn the Valadez trial into a referendum on the 2021 Chapter 11 Case and the Debtor’s reorganization efforts generally. Permitting such a “trial within a trial” to proceed about the propriety of the 2021 Chapter 11 Case, including the rulings by this Court and the Third Circuit, at the same time that the Debtor pursues confirmation of a plan that contains the terms in the Plan Support Agreements, will harm the Debtor and its estate, including the talc claimants.

The Valadez Case highlights the critical need for an immediate, ex parte temporary restraining order to avoid exacerbating the very rush to the courthouse that this Motion seeks to prevent. Id. ¶ 116; 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). Without immediate injunctive relief, the Debtor—as real party in interest for all of the reasons previously discussed—will be compelled to pull key estate resources from its reorganization efforts immediately to focus on the Valadez Case and all other ongoing litigation, hampering the Debtor’s reorganization efforts from the outset. First Day Decl. ¶ 116.

Moreover, absent immediate and specific relief, developments in the Valadez Case risk undermining support for a plan in this Chapter 11 Case. For example, an extreme verdict (i) could make it more difficult for the Debtor to obtain additional support for the

⁶⁸ A copy of the plaintiff’s response is attached as Annex I to the First Day Declaration.

proposed plan, and (ii) would potentially result in substantially different treatment of Valadez's claim than all other talc claims under a plan with the terms contained in the Plan Support Agreements. Further, unless expressly prohibited, the plaintiff in the Valadez Case and other litigants are likely to move quickly to take actions available to them to circumvent the protections of the automatic stay through coordinated efforts against Protected Parties in friendly forums. Id. 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 therefore cause the very harm that the Debtor seeks to prevent by this Motion. An immediate, ex parte temporary restraining order is thus critical to prevent plaintiffs from defeating the purpose of this Chapter 11 Case of achieving a fair and equitable resolution for the benefit of thousands of talc claimants.

The Debtor therefore requests that the Court: (i) for good cause, enter a temporary restraining order extended for the maximum period allowed under Civil Rule 65 — 28 days; and (ii) 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. The Debtor further requests that any order granting the requested temporary restraining order expressly provide that the Valadez Case is subject to its terms.

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.⁶⁹ 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 ex parte 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.

⁶⁹ 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: April 4, 2023

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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**

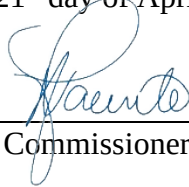
Pursuant to Federal Rule of Civil Procedure 65(b)(1)(B) and Federal Rule of Bankruptcy Procedure 7065, I hereby certify as counsel for movant herein that, for the reasons stated in this Motion and the *Declaration of John K. Kim in Support of First Day Pleadings* [Dkt. 4 in Case No. 23-12825], notice 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/ Paul R. DeFilippo
Paul R. DeFilippo

This is **Exhibit “C”** referred to in the

Affidavit of John K. Kim

sworn before me by video conference
this 21st day of April, 2023



A Commissioner, etc.

Alexia Parente, LSO #81927G

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 23-12825 (MBK)
	.	
LTL MANAGEMENT LLC,	.	
	.	U.S. Courthouse
Debtor.	.	402 East State Street
	.	Trenton, NJ 08608
.	.	
LTL MANAGEMENT LLC,	.	Adv. No. 23-01092 (MBK)
	.	
Plaintiff,	.	
	.	
v.	.	
	.	
THOSE PARTIES LISTED ON	.	
APPENDIX A TO COMPLAINT AND	.	
JOHN AND JANE DOES 1-1000,	.	
	.	
Defendants.	.	Tuesday, April 18, 2023
.	.	10:00 a.m.

TRANSCRIPT OF HEARING ON
MEMORANDUM OF LAW IN SUPPORT OF MOTION BY MOVANT ANTHONY
HERNANDEZ VALADEZ FOR AN ORDER (I) GRANTING RELIEF FROM THE
AUTOMATIC STAY, SECOND AMENDED EX PARTE TEMPORARY RESTRAINING
ORDER, AND ANTICIPATED PRELIMINARY INJUNCTION, AND (II) WAIVING
THE FOURTEEN-DAY STAY UNDER FEDERAL RULE OF BANKRUPTCY
PROCEDURE 4001(a)(3) [DOCKET 71]; AND DEBTOR'S MOTION FOR AN
ORDER (I) DECLARING THAT THE AUTOMATIC STAY APPLIES OR EXTENDS
TO CERTAIN ACTIONS AGAINST NON DEBTORS OR (II) PRELIMINARILY
ENJOINING SUCH ACTIONS AND (III) GRANTING A TEMPORARY
RESTRAINING ORDER EX PARTE PENDING A HEARING ON A PRELIMINARY
INJUNCTION [ADVERSARY DOCKET 2]; AND MOTION TO SEAL; AND
SERVICE PROCEDURES MOTION

**BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE**

Audio Operator: Kiya Martin

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

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JOHN KIM

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1 THE COURT: Okay. We are here this morning on LTL
2 Management, LLC. I think there are two -- well, no, there are
3 three matters on the amended agenda: the continued automatic
4 stay litigation regarding Mr. Satterley's client, the
5 preliminary injunction in the adversary proceeding, and I
6 believe an uncontested matter on the service procedures motions
7 within the preliminary injunction matter, there's the Official
8 Committee's motion to seal and motion to intervene as well as I
9 believe the debtor's motion to seal.

10 I think I covered it all. If not, you'll let me
11 know. Let me turn to debtor's counsel.

12 Good morning, Mr. Gordon

13 MR. GORDON: Good morning, Your Honor.

14 Greg Gordon, Jones Day, on behalf of the debtor. A
15 preliminary matter for Your Honor. We had discussions over the
16 last few days about the conduct of the hearing today. And we
17 almost have an agreement but not completely as best I
18 understand it. So I'd like to describe what we propose, and
19 then I think Mr. Jonas or Mr. Winograd will describe where the
20 other side may be on these issues and ultimately we may need
21 some guidance from Your Honor.

22 What we had proposed for the conduct of the hearings,
23 and in my mind, I'm combining Mr. Satterley's motion with the
24 PI motion --

25 THE COURT: Yes.

1 MR. GORDON: -- because to me they're very
2 interrelated. We had proposed because we have limited time a
3 50-50 time split. Those supporting the motion have 50 percent
4 of the time, those opposing the motion would have 50 percent of
5 the time.

6 We had proposed time limits, and we are thinking
7 based on the Court's schedule, and this is very presumptuous of
8 us that we'd each have three hours for six hours total.

9 With respect to the presentations today, I think we
10 mostly have agreement but I'm not sure. We basically agreed to
11 one live witness at the moment which Mr. Kim who Your Honor
12 knows. The debtor plans to put him up on direct through his
13 declaration. He's been deposed. And then he'd be made
14 available for cross, and we'd follow up with redirect.

15 And our view is that would be the only live testimony
16 that Your Honor would hear today. Again, there may not be
17 complete agreement on that because there's been some back and
18 forth about whether the other side might want to call Mr.
19 Murdica. We hadn't really prepared for that, but to be honest,
20 Mr. Murdica's here in the courtroom. So that's an issue that's
21 at least open at the moment.

22 I think otherwise, Your Honor, in terms of the
23 record, I think we do have an agreement as to exhibits that
24 each side can submit exhibits, ones produced in discovery or
25 used during the depositions. We've also agreed we can -- both

1 sides can use the record from the prior PI and dismissal
2 hearings.

3 And the plan would be to basically exchange the list
4 of exhibits after the hearing. We haven't settled quite yet on
5 the time by which that would be done, but it would be done
6 quickly, presumably sometime this week.

7 And there would be a similar agreement with respect
8 to designations from the depositions, that each side following
9 the hearing would put together a list of deposition
10 designations giving the other side an opportunity to review and
11 put in counter-designations. And, again, I think the thought
12 would be that that would all be finished by the end of this
13 week.

14 So that's at least what we have in mind. As I've
15 said, we've had a bunch of back and forth with the other side.
16 It's not entirely clear to me where we are, but I want to just
17 put that on the record and see if we can't resolve some of
18 these issues right upfront.

19 THE COURT: All right. Thank you, Mr. Gordon.

20 Counsel?

21 MR. WINOGRAD: Good morning, Your Honor.

22 Michael Winograd from Brown Rudnick on behalf of the
23 -- we are proposed counsel for the Official Committee of the
24 Talc Claimants, Your Honor.

25 Your Honor, with respect to the time, we just don't

1 see it being reasonable 50-50 split. I don't see why we need
2 to allocate the time at all. But 50-50 certainly isn't fair.
3 We have multiple parties that they're attributing to us
4 including the United States Trustee, including other parties
5 other than the TCC.

6 And, for example, while we'll discuss it in a moment,
7 if ultimately Mr. Kim's declaration comes in on direct, that is
8 a huge sloth of time that they don't have to devote towards
9 that witness. And we just don't think the 50-50 split is fair.

10 With respect to Mr. Kim's declaration, I think we are
11 in agreement with the live cross and live redirect. We think
12 he's here. There are parties that would like potentially to
13 have him testify live. We understand that he submitted a
14 declaration in this matter, as well, Your Honor.

15 With respect to Mr. Murdica, the intent -- he is
16 here. We deposed him. The intent is simply Mr. Kim throughout
17 his testimony referred and pushed things off to Mr. Murdica
18 quite a bit. We don't know what Mr. Kim may or may not say
19 especially if he's testifying live. And in that event, we may
20 need to call Mr. Murdica. And so that was the simple
21 reservation that we discussed with the other side.

22 With respect to the exhibits and designations, Your
23 Honor, we agree that the parties should have some amount of
24 time to submit those to the Court after the hearing. We just
25 don't think that we need all that much time, and we would

1 propose the end of day Wednesday.

2 THE COURT: All right.

3 MR. WINOGRAD: Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Winograd.

5 Mr. Satterley?

6 MR. SATTERLEY: Good morning, Your Honor. Jose
7 Satterley, Kazan McClain Satterley & Greenwood. I would agree
8 with Mr. Winograd, and I would just say a few additional
9 comments.

10 We want to be efficient today, and we want to get
11 this done quickly. On behalf of Mr. Valadez, I would like to
12 get a ruling upon his specific case because Judge Seabolt is
13 waiting in the wings to find out what's going to happen. He
14 moved the trial from yesterday to tomorrow. So certainly, for
15 Mr. Valadez, we want to do that.

16 I want to also say with regards to the 50-50 time
17 split, I don't think Your Honor needs to make a ruling about
18 that right now. Hopefully, we can go and see how things work
19 out. I do agree that submitting a detailed declaration gives
20 the debtor a lot of advantage because Your Honor's had that for
21 several days. And so there shouldn't be a strict 50-50 time
22 split.

23 Also, I would endorse the position that several other
24 parties including the U.S. Trustee and Arnold & Itkin and other
25 objectors may want to be heard, as well.

1 Finally, with regard to Mr. Murdica, as it stands
2 right now, we subpoenaed him. He was deposed on Sunday. They
3 had full knowledge that he is a potential witness. Do I think
4 he's actually going to be called as a witness? Probably not.
5 Maybe. We'll see how the testimony unfolds and to what extent
6 Mr. Kim actually says he doesn't have personal knowledge
7 because part of the declaration he submitted, first-day
8 declaration, I believe there's evidentiary problems with
9 regards to does he actually have personal knowledge.

10 With that, Your Honor, I believe that we should
11 proceed and have this trial quickly and efficiently, and I
12 think we can do that. And I don't believe Your Honor really
13 needs to make a ruling. We should probably just jump in and
14 proceed. Thank you, Your Honor.

15 THE COURT: All right. Thank you, Mr. Satterley.

16 MR. PLACITELLA: Good morning, Your Honor.

17 THE COURT: Mr. Placitella, good morning.

18 MR. PLACITELLA: How are you?

19 THE COURT: Good, thank you.

20 MR. PLACITELLA: So sometime while I was on a train
21 last night around 8:00, I got a kind of secret motion to affect
22 my cases to add debtors to the preliminary injunction. I'm
23 assuming that was directly directed at the cases I filed last
24 week against Janssen and Kenvue. So I don't see how a 50
25 percent-50 percent time slot -- I'm actually still working on

1 my response as I sit here. So I can't predict how long I'm
2 going to need, but I'm going to need some time. Thank you.

3 THE COURT: All right. Thank you.

4 MR. PLACITELLA: And I have some questions.

5 THE COURT: Of who?

6 (Laughter)

7 MS. RICHENDERFER: Good morning, Your Honor.

8 THE COURT: Good morning.

9 MS. RICHENDERFER: Linda Richenderfer from the Office
10 of the United States Trustee.

11 To be very clear, the U.S. Trustee will be speaking
12 today, maybe conducting examination. I think that there was
13 the implication that maybe there was a question whether we
14 would be addressing the Court. We will be addressing the
15 Court.

16 Unfortunately, communications that were occurring
17 yesterday about how today's hearing would be conducted excluded
18 the U.S. Trustee. I shouldn't say exclude. We weren't
19 included on the emails. So when you're not included on the
20 emails, you don't know what's being agreed to.

21 And I agree with what Mr. Satterley said. It remains
22 to be seen what Mr. Kim can and cannot address today. There
23 was a lot that Mr. Murdica could not address during his
24 deposition and we'll see if Mr. Kim can address it today, but
25 there may be the need to go forward with the testimony of Mr.

1 Murdica live today.

2 Like I said, I question Mr. Murdica, and I think that
3 there may be a need for that. But, also, I don't think it's
4 fair that the U.S. Trustee's position that it be 50-50. We're
5 here to figure out which way this case should proceed. And I
6 think that there are various views that need to be presented
7 fully and completely to this Court, and I don't know that 50-50
8 is fair. But I also think that we can wait and see how the day
9 goes. I just don't want to see somebody dragging out to fill
10 three hours and then leaving the rest of us to three hours.

11 Thank you, Your Honor.

12 THE COURT: Well, one more.

13 MR. RUCKDESCHEL: Your Honor, Jonathan Ruckdeschel on
14 behalf of Paul Crouch. I join in the comments of my
15 colleagues. We were not consulted. I filed pleadings on
16 behalf of Mr. Crouch. I've made it clear that we're
17 participating. I've been in the depositions. I was not
18 consulted about these alleged agreements, and I object.

19 UNIDENTIFIED SPEAKER: Me too, Judge.

20 THE COURT: I like that response.

21 (Laughter)

22 THE COURT: Maybe some of you can adopt that, and we
23 can done here.

24 MR. GORDAN: Your Honor, I have like three brief
25 points to make. One is that going to the 50-50 split, there

1 are people on our side who want to be heard, as well, parties
2 who support the plan. And I want Your Honor to know there is
3 an Ad Hoc Committee of plaintiffs that support the plan that is
4 forming. I don't know if their representative is here today,
5 but I know some of the members of that committee are here today
6 and want to be heard. So that's one thing.

7 Number two, I thought Your Honor should know that
8 there was a reference here to the U.S. Trustee and the fact
9 that we're attributing their time to the other side. That's
10 because the U.S. Trustee is opposed to the motion. Your
11 Honor's not surprised by that. He may be surprised by the fact
12 that in depositions, we learned that the Committee is asserting
13 a common interest privilege with the U.S. Trustee's Office and,
14 based on that privilege, refused to answer any questions about
15 conversations between the Committee or its members and the U.S.
16 Trustee. So that's another reason why it's clear to us that
17 they should be on that side.

18 And the only other point I would make in response to
19 what I heard, they seem to be suggesting some unfairness
20 because we want to put up Mr. Kim through his declaration. But
21 there is a balance there anyway because they will have a right
22 to cross-examine. I imagine there's going to be multiple
23 attorneys that do. We're going to have a right to redirect, so
24 there's going to be a balance there with respect to that.

25 So we continue to believe that the 50-50 split is

1 appropriate. We have a concern we won't get done without the
2 time limits, but obviously we recognize that's up to Your
3 Honor.

4 THE COURT: All right. Thank you.

5 MR. GORDON: Thank you.

6 THE COURT: Ms. Richenderfer?

7 MS. RICHENDERFER: Your Honor, I hate to arise again,
8 but I was not on for most of Mr. Molton's deposition last
9 night. I was on for only a very small portion of it because I
10 was preparing for today's hearing. I don't know the basis of
11 the common interest privilege.

12 Let me tell you this. I have entered into no common
13 interest agreement with the TCC. And the Office of the United
14 States Trustee remains open to hear from all parties, and we do
15 get calls from all parties. I don't know again what the basis
16 was. And if I recall correctly the little bit that's been
17 reported to me and that I heard, I don't think the questions
18 even went to the issue of the preliminary injunction and
19 questions that there may have been with the U.S. Trustee
20 conversations.

21 So I do take exception to that. It's been a very
22 contentious week. And they're trying to drag the U.S. Trustee
23 into it, and we object to that, Your Honor. And I just needed
24 to address that. Thank you, Your Honor.

25 THE COURT: All right. Thank you.

1 We're going to move forward today. It is my express
2 goal to get evidence in today, to hear from everyone on oral
3 argument. I don't need to allocate time. I will be pushing
4 everyone. In that regard, try your best not to be repetitive.
5 I'm not a brick. Some may disagree, but I understand the
6 arguments. We had a good chunk of the arguments previously.
7 I'm aware of a lot of the facts except what you've all
8 discovered during your recent depositions.

9 We can move this forward. It's in the interest of
10 the claimants to move this forward, so you're stepping on your
11 own toes by delaying it. It's in the interest of the debtor to
12 move this forward because there's a time frame involved in this
13 case, a limited window. So let's do that, and I would hope to
14 be in a position to rule.

15 As far as documents and exhibits, I understand the
16 record is important. So we'll accommodate the interest to have
17 a complete record if there's a need for appeals. But other
18 than that, this should get done today. So let's move on. And
19 please have a thick skin if I prod you a bit, especially during
20 the PowerPoints, okay, so that we can accommodate everybody.

21 I'm going to -- you can come up, Mr. Stolz.

22 I am going to allow Mr. Kim's direct testimony
23 through the declaration. It will expedite the process. You've
24 had him available for discovery. You've had him in discovery
25 in the last case. You've had him in discovery prior to the

1 bankruptcy. Let's get to it.

2 Mr. Stolz?

3 MR. STOLZ: Good morning, Your Honor. Daniels Stolz,
4 Genova Burns, on behalf of the TCC.

5 There are two preliminary motions which relate to the
6 proceedings that are going to ensue. One is our motion to
7 intervene which has been assigned to me since it's uncontested,
8 which should tell you something. And as Your Honor knows,
9 under Marion Motor Oil, the Committee has an absolute right to
10 intervene. I understand the debtor's not objecting. We
11 intervened in LTL 1, so we'd ask that that be granted.

12 There is then the debtor's motion to seal and our
13 motion to seal. Just to be clear, the Committee only made its
14 motion because the debtor had designated certain items we
15 wanted to present to Your Honor as confidential. So however
16 Your Honor rules on their motion to seal, ours will just follow
17 along with that.

18 THE COURT: All right. Thank you. Is there any
19 opposition for the Committee's motion to intervene? I didn't
20 think it was something to bleed over, right, Mr. Stolz.

21 So that's fine. It will be granted. As to the
22 motions to seal, they will be granted for purposes of today's
23 hearing. And we'll see what's required down the road.

24 Mr. Gordon or Mr. Prieto, however you wish to
25 proceed.

1 MR. GORDON: Your Honor, Greg Gordon again on behalf
2 of the debtor. I have a brief opening statement I would like
3 to make.

4 THE COURT: That's fine. I would assume -- does the
5 Committee want to make or do you want to reserve your openings
6 for your case? I'm just trying to think of what's going to be
7 expeditious.

8 MR. SATTERLEY: I'll tell Your Honor what's going to
9 happen is I'm going to give a very brief, no PowerPoint opening
10 statement. Mr. Maimon's going to give a very brief opening
11 five or ten minutes with a few slides. Mr. Jonas is going to
12 give a very brief opening statement. so we're going to be
13 quick and efficient.

14 THE COURT: All right. Mr. Sponder, you're --

15 MR. SPONDER: We're all -- U.S. Trustee's also going
16 to (indiscernible).

17 THE COURT: I will not discount the U.S. Trustee.

18 Go ahead, Mr. Gordon.

19 MR. GORDON: Your Honor, at last week's hearing, Mr.
20 Molton and others proclaimed that the debtor J&J and the
21 plaintiff firms who support the plan of reorganization we
22 described committed various bad acts.

23 We committed fraud. We engaged in collusive
24 behavior. We lied and fabricated facts. We breached fiduciary
25 duties. We acted unethically. We engaged in criminal

1 activity.

2 As Your Honor may recall, they provided no evidence
3 to support any of those accusations other than a press release
4 from a plaintiffs' firm that is not one of the plan supports.
5 Mr. Molton even acknowledged later in the hearing that he had
6 no evidence to present.

7 Since last week, the group of firms representing a
8 minority of claimants, this group, that opposed the plan has
9 embarked on an effort to acquire that evidence. They have
10 requested documents and sought to take the depositions of Mr.
11 Kim and Mr. Dickinson from LTL -- you may recall Mr. Dickinson
12 is the CFO of LTL -- Mr. Haas and Mr. Murdica from J&J. And
13 they also sought to take the depositions of two of the
14 supporting plaintiffs' firms and those are Mr. Watts and Mr.
15 Pulaski.

16 The debtor in fact produced documents responsive to
17 the document request and agreed to submit each of Mr. Kim, Mr.
18 Dickinson, Mr. Murdica, and Mr. Haas for deposition. And Mr.
19 Watts and Mr. Pulaski also submitted themselves to deposition.
20 The debtor and J&J for their part took the depositions of Mr.
21 Birchfield, you may recall him from last week, and Mr. Molton.

22 What you will learn during the course of this hearing
23 is that this group of firms still has no evidence to support
24 any of their accusations. They have no evidence that LTL's and
25 J&J's negotiations with law firms during the first case and

1 into this one were improper, no evidence of any side deals.
2 They have no evidence that LTL or J&J committed fraud or sought
3 to harm the claims or in fact harmed the claimants.

4 They have no evidence that the claimants support we
5 described to Your Honor last week is fabricated or is a lie.
6 They have no evidence that LTL and J&J are seeking to defy the
7 Third Circuit. To the contrary, Your Honor, the evidence will
8 confirm what we said, that this group of firms and others have
9 been harassing supporters for the plan and seeking to
10 intimidate them in order to coerce firms not to support the
11 plan or to withdraw their support for the plan.

12 We will show that the purported opposition to the
13 plan they described at last week's hearing appears much smaller
14 than represented and that the support for the proposed plan we
15 described is even greater than what we said. The evidence will
16 reinforce the extent of LTL's and J&J's good faith by offering
17 a trust funding number that is unprecedented in any mass tort
18 bankruptcy, a number that includes an ovarian cancer settlement
19 that is more than double the amount Mr. Birchfield offered to
20 accept through the Imerys bankruptcy prior to the filing of the
21 first LTL Chapter 11 case.

22 And it will further confirm the benefits of a
23 resolution in bankruptcy by showing how the tort system fails
24 to provide for timely consideration of claims and how most
25 claimants after suffering long delays receive nothing. In

1 short, Your Honor, the evidence will not support these firms'
2 contention that LTL and J&J have engaged in bad faith or
3 committed any of the other bad acts the firms have accused them
4 of. It will also not support these firms' contention that the
5 debtor has no chance of achieving a successful reorganization.

6 Indeed, it will show the opposite. It will show,
7 Your Honor, that the likelihood of a successful reorganization
8 is very high, that the debtor and LTL believe they already have
9 the support of 70 to 80 thousand claimants and that that
10 support is sufficient to surpass the 75 percent voting
11 threshold in the Bankruptcy Code.

12 Aside from these issues, Your Honor, the evidence
13 will establish that the claims the plaintiffs seek to assert
14 against the protected parties which include primarily
15 affiliates of LTL and retailers are the same claims they assert
16 against LTL. They involve the same products, the same time
17 periods, the same injuries, the same evidence.

18 The evidence will confirm that the debtor's insurance
19 is shared and will be diminished if the claims are permitted to
20 proceed. The evidence will establish that given the
21 indemnities LTL has provided, judgments against the protected
22 parties would be the equivalent of judgments against LTL.

23 The evidence will establish that the litigation of
24 claims in the tort system will impede plan negotiations here
25 and distract LTL from its efforts to finalize and confirm a

1 plan consistent with the plan support agreements as soon as
2 possible. And the evidence will establish, Your Honor, that
3 the absence of a stay and injunctive relief to prevent
4 piecemeal litigation in the tort system of the same claims that
5 LTL seeks to resolve here will thwart the fundamental objective
6 of this case which is to equitably resolve all current and
7 future talc claims in this proceeding.

8 In sum, Your Honor, we submit that the evidence Your
9 Honor will hear today will fully support our motion, and we
10 will request based on the record that Your Honor grant the
11 motion and overrule the objections of these law firms.

12 Thank you, Your Honor.

13 THE COURT: Thank you, Mr. Gordon.

14 Mr. Satterley?

15 MR. SATTERLEY: May it please the Court, Joe
16 Satterley, Kazan, McClain, Satterley & Greenwood, on behalf of
17 Anthony Valadez, Vincent Hill, Kristie Doyle, Marlon Eagles
18 (phonetic), Dean McElroy, Terry Leavitt, Susan Bader, and many
19 many other cancer victims. I appreciate Your Honor allowing me
20 to be here and allowing us to be here on behalf of these cancer
21 victims, to be heard regarding LTL's second bankruptcy.

22 We believe the bankruptcy to be in bad faith, a
23 litigation tactic, and there is no chance of success on the
24 merits when analyzed under the facts. The PI, the preliminary
25 injunction must be dismissed and Your Honor should do away with

1 the temporary restraining order.

2 I'm going to defer many of my arguments until later
3 and allow co-counsel, Mr. Maimon, to speak regarding many of
4 the issues. I just want to say that yesterday the debtor filed
5 a list of the top creditors. And me and Mr. Maimon represent
6 -- are listed as three of the top four. We've gone diverted
7 against J&J, JJCI, Cyprus, Imerys. We know the affiliates that
8 they're trying to protect the party.

9 And nothing could be further from the truth that this
10 is a cookie-cutter situation and the facts are the same in
11 every case. In fact, when we try cases against J&J alone which
12 I have done that without JJCI, the evidence and witnesses are
13 different than if I had to try cases against JJCI or LTL now.
14 And same goes with regards to Cyprus, Imerys, the retailers.
15 So it's not the same facts, not the same evidence. There is
16 some overlapping, but it's not the same.

17 I'll leave Your Honor and I'll sit down, I told you
18 I'd be brief, with this precedential decision by Third Circuit
19 amended at the end of March. And on Page 48 and 49, a
20 unanimous Third Circuit says,

21 "Most importantly, though the payment right gave LTL
22 direct access to J&J's exceptionally strong balance
23 sheet, at the time of LTL's filing, J&J had well over
24 400 billion in equity with a Triple A credit rating
25 and \$31 billion just in cash and marketable

1 securities. It distributed over \$13 billion of
2 shareholders in each of 2020 and 2021. It is hard to
3 imagine a scenario where J&J and new consumer would
4 be unable to satisfy their joint obligations under
5 the funding agreement."

6 Page 49. I say that because I believe throwing away
7 a funding agreement, destroying a \$61 billion contract is
8 fraud. And I believe all of the facts support what the U.S.
9 Trustee filed yesterday, that this bankruptcy is
10 unconscionable. It's unconscionable under the law. It's
11 unconscionable on their facts. Your Honor should deny the
12 preliminary injunction and allow these cancer victims to have
13 their day in court.

14 Thank you, Your Honor.

15 THE COURT: Thank you, Mr. Satterley.

16 Mr. Maimon?

17 MR. MAIMON: Thank you, Your Honor.

18 Thank you, Your Honor. May it please the Court. i
19 appreciate the opportunity to speak briefly. I'm going to
20 speak on behalf of two of Mr. Satterley and mine's clients who
21 we put in our oppositions to the preliminary injunction
22 yesterday, and that is widow or the representative of the
23 Estate of Terry Leavitt, Dean McElroy, as well as Susan Bater,
24 the sister and Executrix of the Estate of Patricia Schmitz.

25 Both of those mesothelioma victims had full trials in

1 Alameda County, verdicts in their favor, affirmed on appeal,
2 and final judgments against Johnson & Johnson as well as
3 Johnson & Johnson Consumer Inc.

4 What's important about those cases is that the issues
5 of liability, the issues of proximate cause, the issues of
6 allocation of fault have all been determined and are therefore
7 res judicata against the debtor when it comes out that the case
8 is dismissed but more importantly for Your Honor's purposes
9 today, against Johnson & Johnson.

10 In the Leavitt case, Mr. McElroy's wife, Johnson &
11 Johnson was independently assessed 78 percent of the liability
12 for their own independent liability. And so a court of
13 competent jurisdiction affirmed on appeal and denied cert by
14 the California Supreme Court has determined that Johnson &
15 Johnson has independent liability there and there is absolutely
16 no basis for a preliminary injunction to prevent the Leavitt
17 family from having a damage inquest to determine the wrongful
18 death damages because that's all there's left to do.
19 Everything else is res judicata.

20 The same thing is true with the Schmitts family. Ms.
21 Schmitts died. Her case has now been rejected for certiorari
22 by the California Supreme Court having affirmed the published
23 decision in the Bater case which Your Honor has been given a
24 copy of. Johnson & Johnson is jointly and severally liable for
25 the entire liability in that case because of the jury's finding

1 of an intentional tort in that regard against Johnson & Johnson
2 specifically.

3 And so we're here to urge the Court to deny the
4 motion by Johnson & Johnson for the preliminary injunction and
5 to vacate the temporary restraining order that the Court had
6 issued. Johnson & Johnson says that in their papers, Your
7 Honor, we've been through this. We had a whole big hearing.
8 Your Honor decided it. Just do it again. But we live in a
9 whole new world today than we did when Your Honor made that
10 ruling then.

11 The Third Circuit has ruled in a precedential opinion
12 that LTL's filing was in bad faith. Bad faith in terms of the
13 law, bad faith in terms of what the Bankruptcy Code requires.
14 They throw around good faith, we have good intentions. The
15 Circuit said that doesn't matter. Your good intentions don't
16 matter for this. This is legally in bad faith.

17 And what is important here is that in order to even
18 file the first bankruptcy, Johnson & Johnson did the Texas Two-
19 Step divisional merger and put a \$61.5 billion funding
20 agreement in order to avoid a fraudulent transfer claim. That
21 was central to what they came in front of Your Honor for.

22 And now that that has now been terminated voluntarily
23 without any consideration as the Circuit mentioned, that
24 crumbles under its own weight and that fraudulent transfer ab
25 initio destroys the bankruptcy here and we believe the

1 jurisdiction in order to give the preliminary injunction.

2 And so the Circuit Court of Appeals took the funding
3 agreement and they took Mr. Kim, Mr. Gordon, and Mr. Katyal at
4 their word and those are binding admissions that the funding
5 agreement pays and is binding even out of bankruptcy and, as
6 Mr. Gordon stood in front of Your Honor and said, even if the
7 case is dismissed. They cannot run away from that, and they
8 are stuck with that.

9 The Court said we take J&J and LTL at their word.
10 Those are the words of Mr. Kim, Mr. Gordon, Mr. Katyal. And so
11 the issue is they fall under their own weight that now that
12 there's been a termination of the most valuable asset that the
13 debtor had for no consideration whatsoever, that is under the
14 law a fraudulent transfer, under bankruptcy law, a fraudulent
15 transfer. And we believe that the evidence that's going to be
16 submitted here today will show that without any, any, any
17 doubt.

18 And so the Circuit prescient said, well, maybe
19 they're going to do it and the question is did LTL receive
20 reasonably equivalent value in exchange for foregoing its
21 rights under the funding agreement. It's not a question of
22 reasonably equivalent value. They had no value. And that was
23 an admission by the chief financial officer of LTL.

24 And so there is no financial consequence to LTL by
25 the lack of the funding agreement. He said that. There is no

1 difference in the financial condition before the bankruptcy was
2 dismissed and after the bankruptcy was dismissed for LTL, the
3 chief financial officer admitted. LTL can meets its
4 obligations now, he testified under oath, the chief financial
5 officer. LTL can meet its obligations into the foreseeable
6 future, which is exactly what the Circuit said is the
7 requirement for good faith and financial distress.

8 And so, Your Honor, there is no reasonable chance of
9 success for this bankruptcy filing. The fraud on two parts,
10 first, with regard to the funding agreement being central to
11 the divisional merger which established the first bankruptcy,
12 now that it's gone, crumbles under its own weight; and, second,
13 the fraudulent transfer of terminating the funding agreement.
14 And, third, there's no financial distress whatsoever.

15 So how do you get around and escape the Third Circuit
16 holding? And you do it with the opening that Mr. Gordon gave.
17 And that is like anyone trying to have a magic trick, you have
18 to have a diversion. And the diversion is often glitzy, it's
19 often sensational, but it's all meant to misdirect you from the
20 three principle points that make it all moot and make it all
21 irrelevant.

22 And I'll briefly talk what those diversions are.
23 Diversion number one is the claim that there's \$8.9 billion
24 available to satisfy J&J's creditors. We'll see what's wrong
25 with that. Secondly is the entire or the most of the opening

1 was about this so-called claimants' support. I want to state
2 right upfront both of these are absolutely irrelevant to the
3 preliminary injunction and irrelevant to the merits of this
4 case and the fact that it should be dismissed because you can't
5 manufacture jurisdiction. You can't manufacture financial
6 distress. And it doesn't matter how many people support a
7 bankruptcy that's filed in bad faith and has no financial
8 distress and shouldn't have been filed in the first place.

9 And so let's go right to it. The claim is that
10 there's \$8.9 billion. And in their papers, J&J and the debtor
11 put together what it's going to cover. They say it's going to
12 cover gynecological cancers, although today Mr. Gordon says
13 that is ovarian cancer. They say that it's going to cover
14 mesothelioma claims, and they say that it's going to cover the
15 claims of the governmental entities, the states' attorneys
16 generals and so forth that Your Honor has dealt with.

17 Nowhere in their papers, nowhere in the term sheet,
18 nowhere in the plan support agreements that plaintiffs' lawyers
19 signed is there anything for the third-party parent claims.
20 Blue Cross Blue Shield of Massachusetts is a creditor on the
21 Official Committee. And, yet, there is nothing from this \$8.9
22 billion that is allocated to there.

23 Where does that money come out of? Whose pocket does
24 that come out of? The plaintiffs' lawyers who signed the plan
25 support agreements, they have no idea. It's not coming out of

1 their part. And J&J is silent because they don't want anyone
2 to know that the \$8.9 billion isn't real.

3 The other part of it is that they make no claims or
4 they make no provision for the indemnity claims that are
5 asserted by their suppliers of talc over the years, Imerys as
6 well as Cyprus, which in the Imerys bankruptcy, Johnson &
7 Johnson went into that court and characterized the value, the
8 potential value of those indemnity claims, quote, in the
9 billions of dollars.

10 Where is those billions of dollars coming out of?
11 J&J is not going to agree to pay on top of that. J&J's going
12 to say, well, we're putting aside \$8.9 billion. And so
13 diversion number one doesn't meet it, and it flows into
14 diversion number two. And that is that diversion of claimant
15 support.

16 Let me say again claimant support is irrelevant to
17 any issue Your Honor is dealing with today. It's irrelevant
18 here because claimant support cannot fix the fatal flaw of a
19 bad-faith filing and no financial distress and that was what
20 the Circuit Court held.

21 And so let's look at Johnson & Johnson's false claims
22 and what we intend and expect the evidence to show about that.
23 They filed on the first day of this bankruptcy that Your Honor
24 will see an 8-K form together with the Securities and Exchange
25 Commission. There are rules and regulations for making false

1 claims in an 8-K form.

2 In their 8-K filing, Johnson & Johnson represented
3 that LTL also has secured commitments from over 60,000 current
4 claimants to support a global resolution in these terms. That
5 is their representation to the Securities and Exchange
6 Commission that they had some secured commitments from over
7 60,000 claimants.

8 They've also done so in their own website. They say
9 LTL's organization announced in April 2023 is supported by
10 60,000 current claimants. They say that publicly in a website.
11 They've told the press this. In an email statement from
12 Allison Brown, lawyer for J&J, she said, "The refiling
13 represents significant progress for the plan for efficient and
14 effective resolution that addresses the concerns raised by the
15 Third Circuit, is consistent with the Bankruptcy Code" -- and
16 here's the important part -- "and currently supported by
17 roughly 70,000 claimants and numerous law firms."

18 The conjunctive, not the disjunctive. In front of
19 Your Honor, Mr. Gordon got up and said that this is the group
20 includes -- the second filing is supported by over 60,000 talc
21 claimants. He said that as a representative of LTL in open
22 court.

23 He said, "We've also moved for the appointment of co-
24 mediators Judge Snyder and Mr. Russo. Their involvement was
25 instrumental in reaching the agreement we've reached with over

1 60,000 claimants.: He represented in open court as an officer
2 of the Court that the debtor has reached agreement with over
3 60,000 claimants. He says it's unprecedented \$8.9 billion.
4 It's supported by over 60,000 claimants who have signed and
5 delivered plan support agreements and support is continuing to
6 come in.

7 Your Honor will see that not a single claimant, not a
8 single claimant has signed a plan support agreement. Not a
9 single one. And so these are the false claims. The truth, and
10 we've asked the plaintiffs' lawyers themselves about this. The
11 plaintiffs' lawyers have said that their clients have not yet
12 decided whether to approve the agreement, that they've told
13 Reuters that they, the lawyers, plan to recommend their clients
14 take the deal.

15 If we don't want to believe Reuters for reporting
16 this, we can look to the evidence that Your Honor is going to
17 have which is the sworn testimony of two of the major
18 proponents of the deal with Johnson & Johnson who signed plan
19 support agreements, Mr. Pulaski.

20 Mr. Pulaski testified under oath and was questioned,
21 "Q Does LTL have secured commitments from over 60,000 current
22 claimants to support a global resolution?

23 "A My understanding is they have commitments from attorneys
24 representing those clients, if not more. And I believe there
25 are probably more with attorneys that are going to recommend

1 that their clients support the agreement."

2 Nowhere does Mr. Pulaski, and we'll see why in a
3 moment, nowhere does Mr. Pulaski represent that any of his
4 clients have signed commitments where it actually committed to
5 the plan. He simply said that he understands that his
6 obligations under the plan support agreement that he signed is,
7 "If the plan sheet is there, I believe there's finality to that
8 and at such time when the plan is disseminated for voting if it
9 gets there, then in all likelihood, I'll propose to our clients
10 that they support the plan."

11 Mr. Watts when we deposed him said, yeah, I plan on
12 supporting -- recommending to my clients as well, but I don't
13 know what's going to happen between now and the time they send
14 it out to vote. If it changes substantially, I'm going to be
15 on the other side and oppose this.

16 The false claim that 60 or 70 thousand claimants
17 support it is not only false but again it's a diversion, it's a
18 sensational claim to try and take this Court's attention away
19 from where under the law it should be.

20 "Q Did J&J or LTL secure commitments from any of your
21 individual clients?

22

23 "A They have secured my commitment to propose to my clients
24 that they support the plan."

25 And so we do have the evidence that J&J has not been

1 forthright with this Court, has not been forthright in their
2 security filings, and has not been forthright with the public.

3 Mr. Watts who was the first to sign the PSA or
4 negotiate the PSA with Johnson & Johnson said on Page 64 of his
5 deposition,

6 "Q At any point did you tell Mr. Murdica that your clients
7 had consented to the support plan, to the PSA?"

8 And let's see what he said. He said,

9 "A No. In fact, I think it would be a violation of the anti-
10 solicitation rules under the Bankruptcy Code for me to do so
11 before his term sheet is transferred into plan documents.
12 Litigation is had with respect to whether or not that's going
13 to be actually sent out for a vote."

14 And so he under oath disclaimed what they represented
15 that he did. He said it would absolutely be a violation of the
16 Bankruptcy Code for me to get pre-consent from my clients and
17 yet that's what Ms. Brown said to the press, that's what Mr.
18 Gordon said to Your Honor, and that's what they put in a public
19 filing to the SEC.

20 We asked him point-blank, because you can't do it, he
21 said it would be a violation, you have never committed to Mr.
22 Murdica or Mr. Haas who are the two people he negotiated the
23 deal with from J&J that your clients would vote in favor of the
24 plan.

25 "A True. That's true. I've committed that I will recommend

1 it and that's all.

2 Both of these diversions, Your Honor -- that's at
3 Page 248 and 249 of his transcript which will be available to
4 Your Honor. Both of these diversions, Your Honor, are illusory
5 because they weren't straight with the Court about what they
6 were. But, most importantly, let me reiterate what I said in
7 the beginning. They are diversions because they cannot get
8 away, they cannot say, oh, but this is going to frustrate our
9 purpose. Their purpose here is irrelevant if you don't come,
10 A, with clean hands but, more importantly, with financial
11 distress that the Circuit said. And, therefore, it's all a
12 diversion.

13 Your Honor, in the first-day hearing, and we heard
14 from Mr. Murdica, we heard from Mr. Haas, we heard from Mr.
15 Kim, we heard from Mr. Watts that they want to give these women
16 the choice to vote, they want to give them the chance to vote.
17 I want to tell Your Honor that on behalf of my clients, we do
18 not and will never stand in the way or urge anyone not to
19 settle with J&J.

20 We urge J&J to sit down without holding anybody
21 captive by way of a preliminary injunction or an automatic stay
22 to enter into good-faith negotiations with Mr. Watts, with Mr.
23 Pulaski, with Mr. Birchfield, with Mr. Satterley, with Mr.
24 Simon. Let them do that.

25 In bankruptcy, Your Honor, the Circuit has said that

1 J&J cannot do this because it is not eligible for bankruptcy.
2 It said that the desire for settlement, "cannot displace the
3 rule that resort of Chapter 11 is appropriate, only for
4 entities facing financial distress."

5 And, therefore, Your Honor, because there's no
6 reasonable chance of success due to the fraud both ab initio
7 with the funding agreement being the basis for the reliability
8 and foundation of the Texas Two-Step, as well as the fraudulent
9 transfer of no value for the termination of the funding
10 agreement, and because they are not according to their own
11 chief financial officer, under immediate financial distress,
12 this case cannot have a preliminary injunction in favor of a
13 non-debtor or any non-debtors.

14 Fraud is not a legitimate way to manufacture
15 distress, and no one should fall for the diversions of the
16 half-trillion-dollar magician. I appreciate the Court's
17 indulgence. Thank you.

18 THE COURT: Thank you, Counsel.

19 As we go forward, I hope there's not a disconnect
20 between a lawyer's five and ten minutes and five and ten
21 minutes in real terms. But I appreciate that there's a lot to
22 get out there.

23 MS. RICHENDERFER: Good morning, Your Honor. Linda
24 Richenderfer from the Office of the United States Trustee.

25 Your Honor, we heard from Mr. Gordon today and at the

1 first-day hearing that a fundamental objective of this debtor
2 is to resolve all claims of all talc clients. Admirable
3 objective, but that doesn't mean they qualify for bankruptcy.

4 And that's the lesson learned in part from the Third
5 Circuit opinion. And I'll have other lessons in that opinion,
6 but that's one of the lessons from the Third Circuit opinion.
7 That objective alone is not grounds for the filing of a
8 bankruptcy.

9 To bring us back to what we are here today to talk
10 about, there's no debate. LTL's covered by the stay. What we
11 are only talking about today is LTL non-debtor affiliates.
12 We're talking about J&J, JJCI, Holdco. I don't know what all
13 the names are at this point in time, Your Honor. They've
14 changed since the first case. But that's what we're talking
15 about. Whether 362 allows this Court to extend the stay or
16 whether under 105 Your Honor has the power to impose a stay to
17 prevent claims from going forward against non-debtor
18 affiliates.

19 And in order to get the preliminary injunction, I
20 just want to bring us all back to the four elements that the
21 people who want the injunction and stay must prove. There's no
22 burden of proof on people opposing the preliminary injunction
23 to prove bad faith. I think that was implied in Mr. Gordon's
24 opening remarks. There's no objective. There's no burden
25 today to do that.

1 The burden is totally on the movant. And the movant
2 must prove likelihood of success on the merits that it is in
3 the public interest that when you balance the harms, Your Honor
4 should extend the stay or the preliminary injunction. And you
5 have to look at the irreparable harm to the ability to
6 reorganize. That's the way that they have phrased it.

7 In my opening remarks, I'm only going to focus on two
8 or three of these points. There will be a lot more in the
9 closing after Your Honor has a chance to hear the evidence.
10 Likelihood of success on the merits, remember, this is
11 likelihood of success from the non-debtor affiliates. Not LTL,
12 non-debtor affiliates.

13 So first we have the issue that we've been talking
14 about and that I've talked about during the first-day hearing,
15 number of people in favor of the plan. This is not a situation
16 where we have an RSA that the actual creditors have signed on
17 to. We have a PSA where attorneys have signed on to it, And
18 as has been mentioned, the attorneys admit it's still up to
19 their clients to vote on the plan.

20 One of the things we tried to determine during
21 discovery and Your Honor will hear evidence of this is to what
22 extent has the number been I'll call it de-duping. I don't
23 know what else to call it. I speak from experience in Imerys.
24 I can tell you how many claims were knocked out because more
25 than one attorney thought that they represented the same party.

1 Sometimes it's because the party actually did sign more than
2 one agreement. It happens.

3 And there were thousands if not tens of thousands of
4 votes that were knocked out because of that. But nobody here
5 is de-duped. I don't know whether the number is 60, 70, 80. I
6 don't know if it's 30 or 40. I don't know what it is. But we
7 also don't know how many of those people will ever be able to
8 vote on the plan because we don't know how many of those people
9 have medical records that support the fact that they should be
10 voting on this plan, or how many of these people can show that
11 they had exposure to talc products. And that's based on the
12 deposition testimony of people like Mr. Watts and Mr. Pulaski.

13 The other issue that comes up on likelihood of
14 success on the merits is will this case survive a
15 jurisdictional challenge. Will this case survive a motion to
16 dismiss? And the third issue is if this case survives the
17 challenge, will there be a channeling injunction and a case
18 where LTL and J&J tell us there's no asbestos in their product,
19 or will there be a third-party release in this plan to cover
20 the non-debtor affiliates?

21 That's an important point, Your Honor. It's an issue
22 that I'm sure Your Honor's well aware how it's pending in front
23 of the Second Circuit yet and hopefully they'll rule any day
24 now in the Purdue case. But likelihood of success on the
25 merits, we need to focus on the non-debtor affiliates. And

1 that last point is very important.

2 I'm also going to talk about the public interest
3 here. I'll allow plaintiffs' counsel and Committee counsel to
4 focus on the balance of harms. But I need to talk about the
5 public interest here, Your Honor.

6 The Third Circuit, we are well aware of, stated that
7 good intentions of resolving talc claims wasn't enough. There
8 needed to be financial distress. And it found that financial
9 distress wasn't present on the record before it.

10 And I've heard during depositions, I've heard during
11 argument that the Third Circuit gave LTL the path forward on
12 how to file the second bankruptcy. Your Honor, I think it's in
13 the public interest that we make clear the Third Circuit, in no
14 uncertain terms, gave LTL a path forward to turn around two
15 hours and eleven minutes later to file a bankruptcy case after
16 it went through the machinations that it did.

17 And it's important to look at where Footnote 18
18 appears in the Third Circuit's opinion. Third Circuit said,
19 quote, while LTL inherited massive liabilities, its call on
20 assets to fund them exceeded any reasonable projections
21 available on the record before us.

22 The, quote, attenuated possibility, end quote, that
23 top litigation may require it to file for bankruptcy in the
24 future does not establish its good faith as of the petition
25 date. At best, the filing was premature.

1 And then it goes to Footnote 18 where it says, quote,
2 some might read our logic to suggest LTL meet only part with
3 its funding backstop to render itself fit for renewed filing.
4 While this question is also premature, we note interested
5 parties may seek to avoid any transfer made within two years of
6 any bankruptcy filing by a debtor who receives less than a
7 reasonably equivalent value in exchange for such transfer and
8 became insolvent as a result.

9 So if the question becomes ripe, the next question
10 might be that LTL receive reasonably equivalent value in
11 exchange for forgoing its rights under the funding agreement.
12 And, Your Honor, I'll admit I skipped over some of the
13 citations to code provisions when reading that for the Court.

14 Your Honor, I would say that that footnote gives
15 people opposing what's going on in this court the game path for
16 how we proceed forward. It did not give LTL instructions, go
17 get rid of the funding agreement and then you can come back
18 into the bankruptcy court. Your Honor, it's exact opposite.

19 And so, Your Honor, to the extent that the non-debtor
20 affiliates become covered by another preliminary injunction or
21 a stay, or whatever terminology is used, Your Honor, I think I
22 its in the public interest that this Court consider whether or
23 not that is to be allowed under the scenario that is in front
24 of the Court today.

25 I would submit, Your Honor, that when one takes into

1 account the public interest to uphold the rule of law that was
2 laid down by the Third Circuit, that public interest requires
3 that the preliminary injunction stay not be extended to cover
4 the non-debtor affiliates. Thank you, Your Honor.

5 THE COURT: Thank you. Mr. Jonas?

6 MR. JONAS: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. JONAS: Jeff Jonas from Brown Rudnick. With me
9 are my partners Mike Winograd and David Molton, proposed
10 counsel for the Official Committee of Talc Claimants.

11 Your Honor, I'm going to reserve my opening for
12 close. I think the evidence in this case is the most important
13 thing we can do. And I'd like to use the time we have with you
14 to present the evidence. Thank you.

15 THE COURT: Sensible. Thank you.

16 All right. Then I return to Mr. Gordon. We have Mr.
17 Kim's declaration as direct, correct?

18 MR. GORDON: Yes, Your Honor.

19 We would tender Mr. Kim on direct through his
20 declaration. We also reserve the right, as I indicated
21 earlier, to provide evidence through exhibits and through
22 deposition designations which we'll work on post the hearing as
23 soon as we can.

24 But Mr. Kim is here and available for cross-
25 examination. And we reserve our right to redirect.

1 THE COURT: All right, thank you. Mr. Kim, please,
2 if you would take the stand. And by any chance, do we have an
3 extra copy of his declaration if we want to mark it?

4 MS. BROWN: Your Honor, we'll make sure you get it at
5 the next break.

6 THE COURT: Okay. Great. Thank you. Mr. Kim,
7 please raise your right hand.

8 JOHN KIM, PLAINTIFF'S WITNESS, SWORN

9 THE COURT: All right. Please have a seat. State
10 your name and business address for the record.

11 THE WITNESS: John Kim. I'm at 501 George Street, 1
12 J&J Plaza, New Brunswick, New Jersey.

13 THE COURT: All right. Thank you, Mr. Kim.

14 And, Mr. Jonas, will you be leading off?

15 MR. JONAS: Yes. I think so, Your Honor.

16 THE COURT: All right.

17 MR. JONAS: For the record, Your Honor, Jeff Jonas,
18 Brown Rudnick, for the TCC.

19 CROSS-EXAMINATION

20 BY MR. JONAS:

21 Q Good morning, Mr. Kim.

22 A Good morning, Mr. Jonas.

23 Q Mr. Kim, I'd like to start with a document --

24 MR. JONAS: Your Honor, I would ask your patience.
25 We've been going around the clock the last week or so. I think

1 we have enough copies at least for the witness, the Court, and
2 opposing counsel. But we're doing this a little bit on the
3 fly. We didn't have a chance to pre-mark or anything like
4 that. So I would just ask your indulgence.

5 THE COURT: Absolutely. Understood.

6 MR. JONAS: We're going to have two -- we're going to
7 start with two exhibits, Your Honor. If I could have what
8 we'll mark as I guess Trial Exhibits 1 and 2.

9 THE COURT: Why don't we mark this as TCC-1 and
10 TCC-2?

11 MR. JONAS: Thank you, Your Honor. May I approach?

12 THE COURT: Yes, please. Thank you.

13 BY MR. JONAS:

14 Q Okay. Mr. Kim, I'm going to show you tow documents which
15 have been marked Exhibits TCC-1 and TCC-2. The first one I'd
16 like you to take a look at, it should be a voluntary petition
17 filed on October 14th, 2021. That was the earlier bankruptcy
18 case for LTL Management LLC. Do you see that?

19 A I do.

20 Q And if you look at Page 22 of 22, you signed that under
21 the penalty of perjury, correct?

22 A I'm sure I signed it. I'm sorry, you said Page 22 of 22?

23 Q At the top, you'll see the Court stamp. And if you look
24 at what's stamped as 22 of 22. You should see your signature
25 at the bottom.

1 A Yes.

2 Q Okay. Now just to orientate, let's look at Exhibit 2,
3 TCC-2 which is the petition, more recent petition filed on
4 April 4th, 2023. And if you look at Page 24 of 24, you also
5 signed this petition under penalty of perjury, correct?

6 A I did.

7 Q Okay. Now the latest petition, that is TCC-2, which was
8 filed at the beginning of this bankruptcy case, there is a list
9 beginning on Page 18. And it's the list of law firms with
10 significant talc claims. Just let me know when you get there.

11 A Yes, I have it.

12 Q Okay. And this list that you filed a few weeks ago, it
13 doesn't have certain of the plaintiffs' law firms that were
14 listed on the earlier bankruptcy petition, that is that
15 commenced the first bankruptcy case. Correct?

16 A I believe that's true. Yes.

17 Q And conversely, certain plaintiffs' firm, law firms which
18 did not appear on the prior petition now appear on this list of
19 plaintiffs' law firms, correct?

20 A They do.

21 Q For example, the Ferrer Poirot & Wansbrough firm is listed
22 on your latest petition, but not on the earlier petition,
23 correct?

24 A I'd have to check. I'll take your word for it.

25 Q Okay.

1 A And the McDonald Worley PC firm, it's listed on your
2 latest petition. It's not on your earlier petition, correct?

3 A Again, I'd have to check. I believe -- if you represent
4 that's true, I'll believe that.

5 Q Okay. The Pulaski Kherker firm, it's listed on your
6 latest petition but not on your earlier petition, correct?

7 A Again, same answer. I could check if you'd like me to.
8 But I'll take -- I trust your representation.

9 Q The Reub Stoller & Daniel firm, listed on your latest
10 petition, not your earlier petition, correct?

11 A Again, same answer. I will defer to your representation.
12 I'd have to check to make sure.

13 Q The Watts Guerra firm, listed on your latest petition, not
14 your earlier petition, correct?

15 A Same -- same answer.

16 Q Okay. Now all the firms I just mentioned, they're law
17 firms with which LTL has entered into plan support agreements,
18 right?

19 A I would have to check the plan support agreements to
20 confirm what you said. I haven't memorized all the firms.

21 Q Will you accept my representation on that?

22 A If you say so. But again, I'd have to go check to --

23 Q Okay.

24 A -- to confirm.

25 Q All right. Now let's go back and look at Exhibit 1, the

1 petition filed in LTL-1. You see the Ashcraft & Gerel firm
2 listed there? Right at the second firm listed.

3 A I'm sorry. I'm trying to get to the list.

4 Q Sure. It's on Page 16 of 22.

5 A Okay.

6 Q Do you see the Ashcraft & Gerel firm?

7 A I do see that.

8 Q That firm was a member of the TCC, the Talc Claimants
9 Committee, in the first bankruptcy case. Wasn't it?

10 A I actually don't -- don't know what the composition of the
11 TCC was.

12 Q Okay. Okay. You didn't include that firm in your
13 bankruptcy petition this time around, did you?

14 A Again, I'll take your word for it. I can check if you'd
15 like me to.

16 Q The Karst Von Oiste firm that's listed, I think it's,
17 let's see, number 17. That firm was a member of the Talc
18 Claimants Committee in LTL-1, wasn't it?

19 A Again, I don't know the composition of the committee.

20 Q You didn't list that firm here, did you?

21 A Again, I'll take your -- I'll take your word for it unless
22 you want me to check.

23 MR. JONAS: I'll tell you what. Your Honor, may I
24 approach?

25 THE COURT: Sure.

1 MR. JONAS: Your Honor, I don't have enough copies.
2 So I'll just introduce it. Hopefully, it will refresh the
3 witness' recollection. It's an order appointing the Official
4 Committee of Talc claimants, again LTL-1.

5 THE COURT: Okay.

6 BY MR. JONAS:

7 Q Mr. Kim, you're looking at -- okay. You're looking at a
8 list. And you'll see it's from the North Carolina bankruptcy
9 case. And it has the representatives. And I appreciate that
10 the law firms themselves are not members. But they have
11 clients that are members of the Talc Claimants Committee and
12 they're representatives.

13 And you'll see on there, just to confirm what I've
14 represented to you, you see on there the Ashcraft & Gerel firm,
15 right?

16 A I see this on this list, yes.

17 Q And you see the Karst Von Oiste firm, don't you?

18 A I do see that on the list.

19 Q You see Weitz & Luxenberg?

20 A I do see that on this list, yes.

21 Q Do you see Kazan McClain?

22 A I do see that on the list.

23 Q And the Levy Konigsberg firm, do you see that on there?

24 A I do.

25 Q Okay. Now all of the firms I just mentioned that you,

1 when you filed your petition in the earlier bankruptcy case,
2 you didn't include any of those law firms in your second, more
3 recent bankruptcy petition.

4 A Again, I'll take your -- I'll take your word for it unless
5 you want me to check.

6 Q Well, the reason you didn't include the five firms that
7 were listed on your initial petition, and you didn't include
8 them on your second petition was you were attempting to
9 manipulate how the creditor's committee in this case would be
10 put together. Were you not?

11 A No.

12 Q And the reason, sir, that you've added at least four or
13 five firms that you've now settled with, and you've included
14 them on your list of law firms representing talc claimants,
15 again you're attempting to manipulate the list so that you
16 would have input into which creditors were on the creditor's
17 committee. Isn't that correct?

18 A I disagree with that.

19 Q Okay. Mr. Kim, with respect to talc claims against LTL,
20 there's a difference between talc cases and talc claims,
21 correct?

22 A Some people would define them differently, yes.

23 Q And you define them differently, don't you?

24 A I think what I said in my deposition is I sometimes use
25 them interchangeably.

1 Q But you also told me that a case is something that's
2 filed, correct?

3 A Technically, a case is filed, a claim is not filed.

4 Q Okay. A case is filed, a claim is not filed. And at the
5 beginning of this case, the debtor and loiters for the debtor
6 alleged that there were approximately 60,000 talc claimants
7 that were supportive of the debtor's proposed plan, correct?

8 A We did.

9 Q And that you, I think you said that was indicated by
10 certain plan support agreements, or PSAs, which the debtor
11 Johnson & Johnson Holdco, Inc. and Johnson & Johnson entered
12 into with talc plaintiffs' lawyers, correct?

13 A That is true.

14 Q And you agree that those are not actual settlements of any
15 talc claims, correct?

16 A Correct. They're not settlements. They are just
17 indications of support for a plan to eventually lead to a
18 settlement.

19 Q The PSAs themselves simply provide that the talc
20 plaintiffs' lawyer will recommend the deal to his or her
21 clients, correct?

22 A I think the PSA doesn't actually say that. My
23 understanding is that the PSAs represent a commitment by the
24 attorney that his clients will support a plan.

25 Q You think the lawyer was binding his clients to support

1 the plan?

2 A No. I did not say that. I said the lawyer represents
3 that his clients will support the plan.

4 Q Well, how could he represent that? Do you know if he
5 spoke to his clients?

6 A The issue is not whether we're binding claimants to the
7 plan. As we do in -- as a standard practice in any mass tort
8 settlement, when we're negotiating something with a plaintiffs'
9 counsel, we get a representation from the plaintiffs' counsel
10 that their clients will do what the plaintiffs' lawyer says
11 they will do.

12 In other words, they are representing that, you know, they
13 will either recommend or actually have commitments or, I mean,
14 there are various forms that that can take. But what it really
15 means is that when you're dealing with a plaintiffs' lawyer,
16 you have a commitment that the plaintiffs' clients will follow
17 the recommendation. That's true for virtually every mass tort
18 settlement we enter into.

19 Q Mr. Kim, I know you appreciate how important your
20 testimony is today, correct? You appreciate that?

21 A I -- I think I do, yes.

22 Q Okay. Good, because I want to get -- this is a very
23 important fact.

24 A Yes.

25 Q Are you saying that the lawyers that sign the PSAs

1 committed their clients to vote in favor of the plan that's
2 outlined there?

3 A No, I'm not saying that. I just explained what I'm
4 saying. I'm saying that --

5 Q Right. All it -- I'm sorry. Go ahead.

6 A I'm saying that the plaintiffs' lawyer has committed to us
7 in one form or another as if whether he's going to recommend
8 the -- the proposal to his clients, and he believes that the
9 clients will listen to his recommendation. That's one way to
10 do it.

11 Other times they have actual commitments from plaintiffs'
12 clients. But whatever form it takes, what we take is that it's
13 a representation that we believe that the claimants will
14 eventually go -- would go with the plaintiffs' lawyer's
15 recommendation, follow the recommendation, and that that's a
16 commitment to us.

17 Q Of the alleged 60,000 supporters that you had, how many of
18 them were, to use your words, commitments? How many were
19 absolute commitments from an underlying talc claimant to
20 support the plan?

21 A I don't have that number. We don't ask for that number.
22 For us, all we need to know is that the plaintiffs' lawyer is
23 committing to us that these folks, his clients will eventually
24 support a plan.

25 Q Mr. Kim, I want you to be very careful because I think

1 you've said a few different things. So let me try it my way.
2 All the lawyers that -- all the plaintiffs' lawyers that
3 signed, all they did was basically represent to you that they
4 would advise their clients to support the plan. They would
5 recommend that, correct?

6 A And that they believed that the clients will follow the
7 recommendation. You know, things may change in the future.
8 Again, this is -- entering into plan support agreement is not
9 the settlement, right? There's still a lot of things that have
10 to be done before we get to a plan and get the confirmation.
11 There has to be a vote.

12 So before that happens, all we can get is a, you know, a
13 commitment that the plaintiffs' lawyer represents to us that he
14 believes that his clients are going to vote for the plan, or
15 support the plan.

16 Q It's the case, is it not, that anyone, or all of the
17 plaintiffs' lawyers that sign these could go to their clients,
18 they could make a recommendation, and every one of those
19 clients could say you know, I don't like that deal. I'm not
20 going to vote for this plan. That could happen, could it not?

21 A If it went to vote, it could. And we think that, we
22 believe that what -- so, yes. I agree with you, absolutely,
23 because that's the way this is designed. What we said is that
24 we have the commitments from the lawyers that their clients are
25 going to follow their advice and vote and support the plan. We

1 have no reason to believe that they won't.

2 We've done this. This is a matter of course in many, many
3 mass tort situations. This is the way it's done. We're not
4 going to go and we're not going to try to get actual
5 commitments ahead of time for this. It makes no sense to do
6 that.

7 Q I appreciate that. But do you think before you tell
8 everyone that you have the vote or you have support, that you
9 should get a commitment?

10 A No. We have the support. We absolutely believe we have
11 the support. We've talked to the lawyers who have represented
12 these claimants. You know, I've, again -- you know, as I
13 testified earlier, we have Jim Murdica who has been negotiating
14 this has extensive experience with these plaintiffs' lawyers.
15 We have done this time and time again in other situations.

16 Members of the -- my understanding is that members of the
17 TCC, in trying to negotiate with us, have done the same thing.
18 We don't get commitments from their clients before we talk to
19 them. And so what I would say is that this is standard
20 practice. We believe we have the commitments. It's absolutely
21 truthful what we've said. And we believe that we have
22 sufficient to get a plan approved.

23 Q Okay. Let me wrap up on this. Let me see if I've got
24 this right. You've got 15, 16, 17, I think you've told me high
25 teens, signatures from plaintiffs' lawyers and pieces of paper

1 that say they will suggest or recommend to their clients to
2 support your plan. That's what you have, right?

3 A Well, again, I don't think plan support agreements say
4 that. I think the plan support agreements say that we have the
5 commitment of the -- of claimants.

6 Q A commitment of claimants.

7 A No, no. The -- I'm sorry. The commitment of the
8 plaintiffs' counsel, and that we understand from
9 representations that when they commit to this, we believe that
10 they will come through and those votes -- and the claimants
11 will support this plan.

12 Q Sir, you don't know if any one of the 16 or 17 plaintiffs'
13 lawyers that you signed up with, you don't know if any one of
14 them have spoken to their clients about this deal, do you?

15 A All I know is the representation that they made that they
16 have looked at the plan, they've -- they believe that the plan
17 is fair, reasonable, and that the clients will take it. And
18 that's all I need to know at this time, at this juncture.

19 Whether they talk to their clients, you know, they are in the
20 best position to know what their clients would want.

21 Q Mr. Kim, yes or no. Do you know if any of the plaintiffs'
22 lawyers that you've signed up with discussed the terms of your
23 plan with their clients? Yes or no?

24 A No, because I did not ask for that, nor would I have.

25 Q You didn't ask for anything. You don't know -- let me ask

1 you, did you talk to any of the underlying clients?

2 A No. I talked to my attorney. Or I talked to attorneys
3 and that were involved in negotiations.

4 Q You haven't talked to a single one of the alleged 60,000
5 people that are going to, I guess, support your plan. You
6 haven't talked to one of them, have you?

7 A Mr. Jonas, you know that would not be appropriate.

8 Q Well, before signing a PSA with any specific talc
9 plaintiffs' lawyer, you didn't vet those underlying claims, did
10 you?

11 A I did vet them to the extent that I relied on my lawyer
12 who has significant experience dealing with these plaintiffs
13 firms and got representations from those firms, and that we had
14 asked for supporting data that had individualized names. And
15 that this is something that happens in every -- every --
16 virtually ever mass tort settlement that we enter into. That's
17 how I vetted it.

18 Q Let me ask you because you keep making reference to this
19 is how it's done in every mass tort case. Is this how it's
20 done in a mass tort bankruptcy where the first bankruptcy was
21 dismissed for bad faith, and then the company filed a new one
22 two hours later? Is that how it's done in your experience in
23 that type of bankruptcy case?

24 A Well, if there were that type of bankruptcy case, I would
25 suspect the same methodology would have been used, yes.

1 Q If the talc plaintiffs' lawyer told you that he had 500
2 claims or 5,000 claims, you wouldn't do anything to confirm the
3 number of claims. You didn't do anything to confirm the number
4 of claims, did you?

5 A The number of claims are confirmed by the reputation that
6 that lawyer has with the lawyer that I was using to negotiate.
7 Plus, we did ask for underlying data. Plus, you know, there is
8 a process that would happen later on to confirm this.

9 When this goes to a vote or when plaintiffs will get paid,
10 all that data, all the confirmation will happen at that time
11 because that's when it's appropriate. At this time, it makes
12 no sense to spend the time, the energy, the cost of trying to
13 confirm these things up front when all we're trying to do is
14 get the plan to a vote.

15 Q Let me try my question again. If a talc plaintiffs'
16 lawyer told you that he had 500 claims or 5,000 claims, you
17 didn't do anything to confirm the number of claims, did you?

18 A No, that's not true.

19 MS. BROWN: Your Honor, respectfully, I'm going to
20 object. I believe this question --

21 MR. JONAS: I'll move on, Your Honor.

22 MS. BROWN: -- has been asked --

23 MR. JONAS: I'll move on.

24 MS. BROWN: Thank you.

25 THE COURT: I'll just give an admonition. I get the

1 points very often.

2 MR. JONAS: I know you --

3 THE COURT: I understand. So I understand where
4 you're going.

5 MR. JONAS: I apologize. Sometimes I like to make
6 sure you do, Your Honor.

7 THE COURT: Beating a dead judge. Go ahead.

8 MR. JONAS: I'll move on.

9 BY MR. JONAS:

10 Q Okay. The -- let me strike that. It is the case, is it
11 not, Mr. Kim, that some of those talc plaintiffs' lawyers have
12 backed out of the -- I think those were your words, backed out
13 of PSAs that they had signed?

14 A That is true.

15 Q And you mentioned this, but let me make sure the Court's
16 aware of it. The only information that the plan support
17 agreement requires that a talc plaintiffs' lawyer provide is
18 his or client's name, right? Name?

19 A Yes. There's a chart.

20 Q Okay. I'll tell you what. I'll lay it out for you. It's
21 name, date of birth, and the last four digits of their Social
22 Security number, right?

23 A That's what's required on the -- on the documents. But
24 again, you know, this -- that happens after numerous
25 conversations that the plaintiffs' lawyer has with the person

1 negotiating.

2 Jim Murdica who had been negotiating for the most part
3 these plans, and Jim Murdica gets -- asks a lot of questions
4 about what claimants do you have and has many discussions with
5 them beforehand.

6 Q I don't want to -- we're not here to talk about
7 Mr. Murdica. You are an officer of this debtor in this case,
8 right?

9 A I am.

10 Q And you signed the PSAs, right?

11 A I did.

12 Q Okay. So before you signed the PSA, did you ask for any
13 information relating to the plaintiffs' lawyers, any medical
14 information?

15 A No. My understanding was that the person negotiating the
16 PSAs had discussions with the plaintiffs' lawyer who was going
17 to sign the PSAs, and that there was a commitment and
18 representations from that plaintiffs' lawyer about the number
19 of claims they had.

20 We asked for other identifying information in the PSAs to
21 be attached as an attachment. That is the appropriate level of
22 inquiry we need to do, and what makes sense at the time that we
23 enter into these things.

24 Q It made sense to you, right?

25 A Because of my -- that -- my experience negotiating and

1 settling cases and coming to agreements in numerous mass tort
2 settings.

3 Q Did you -- when you signed the PSA, did you have any
4 information as to when the particular plaintiffs' lawyer had
5 signed up his clients?

6 A Again, that's irrelevant to me because we had the
7 representation up from that lawyer. And again, that
8 representation is based -- is given to a person negotiating
9 that has a lot of experience with that lawyer, knows the
10 credibility of that lawyer. And you know, I think you asked me
11 the question.

12 If someone, if any lawyer comes and says they have 500
13 claimants, would you take him at his word. No, of course not.
14 There are discussions that are had. And the person negotiating
15 has to know and do their due diligence as to what they know
16 about the plaintiffs' lawyer that they're talking about.

17 Q And do you know what due diligence, to use your words,
18 Mr. Murdica did in connection with his negotiations with the
19 plaintiffs' lawyers?

20 A I've known and worked with Mr. Murdica for over 20 years.
21 I know what he does in these types of situations. I know the
22 questions he asks. I know the detail that he goes into. In 20
23 years of experience with Mr. Murdica settling 20, 30, 40 mass,
24 major mass tort cases, I have relied on Mr. Murdica. He has
25 not let me down on this type of information.

1 Q Do you know if Mr. Murdica had any medical information
2 with respect to the underlying claimants?

3 A Again, just like every other claim including claims --
4 claimants represented by members of the TCC, we don't ask for
5 that type of material. We don't vet it. There's no need to do
6 it at this juncture. When it comes down to voting, whether
7 it's a valid vote, when it comes down to payment, whether we
8 actually have to pay these people, that's when it makes sense
9 to do that process.

10 It doesn't make sense to take the effort, the cost, the
11 time at this juncture when all we're asking for is an
12 indication of support for a plan. We did not pay these --

13 THE COURT: The answer's no. The answer is no.

14 MR. JONAS: Sorry, Your Honor.

15 BY MR. JONAS:

16 Q Last question on this topic, and I promise I won't --
17 Mr. Kim, of these lists you have of claimants, you don't know
18 if there's any duplicate claimants on those lists, do you?

19 A No. But what I do know is that when we -- when going
20 through this process, we asked these plaintiffs' lawyers to
21 only give us names of people who they are the main counsel for.

22 Q That was a no?

23 A That's a no.

24 Q Okay. Okay. Okay. In the first day declaration you
25 filed in the first bankruptcy case on October 4th, 2021, you

1 state, and I'll quote, the design of the 2021 corporate
2 restructuring insures that the debtor has at least the same, if
3 not greater, ability to fund talc-related claims that -- and
4 other liabilities as old JJCI had before the restructuring.
5 You said that in your first declaration, right?

6 A I did.

7 Q And the first funding agreement, I may call it funding
8 agreement one versus funding agreement two, the first funding
9 agreement was available to LTL, the debtor here, both in and
10 outside of bankruptcy, correct?

11 A Based upon the facts and law that we knew at the time,
12 yes.

13 Q That's a yes?

14 A At that time, yes.

15 Q Under the funding agreement one, there was total value of
16 around, let me -- I think you said around \$60 billion available
17 to LTL, correct?

18 A At the time of the filing, there was.

19 Q Today, under funding agreement two, the total value
20 available to LTL is tens of billions of dollars less than under
21 funding agreement one, correct?

22 A That's assuming that funding agreement one was still
23 enforceable and not void or voidable. If the Third Circuit had
24 not rendered the opinion the way it had, then that would be
25 true.

1 Q Sir, very, very important question, okay? Yes or no.

2 Today, under funding agreement two, the total value available
3 to LTL is tens of billions of dollars less than was available
4 under funding agreement one. Yes or no?

5 A That is not true.

6 Q So you think today, LTL-2 -- no, strike that. You think
7 that the debtor today under funding agreement two has available
8 to it to satisfy talc claims around \$60 billion?

9 A No, that's not what I said. What I said was that it's not
10 the -- not tens of billions of dollars less because you have to
11 take into account that because of the Third Circuit decision,
12 funding agreement two was rendered void or voidable, and
13 there's material risk that it was not enforceable. So
14 therefore, if you're trying to compare those two, I think that
15 statement would not be true.

16 Q I don't want to compare anything. I just want -- let's --
17 I'll tell you what. Let's do it this way. Funding agreement
18 one, the debtor had \$60-odd billion available to it to satisfy
19 my client's claims, right?

20 A Prior to the Third Circuit decision, I would say yes.

21 Q Great. Today, how much does the debtor have available to
22 it under its funding agreement to satisfy talc claims?

23 A I think there's a calculation about what the value of --
24 an internal valuation of the principal assets of Holdco which
25 is around \$30 billion, plus the amounts that LTL has through

1 (indiscernible).

2 Q Well, pick a number. Is it 30, is it 40? I don't know.
3 You're the chief legal officer of the debtor, right? Let me
4 ask you a few questions. You're the chief legal officer of the
5 debtor, right?

6 A I am.

7 Q Now, do you understand that these funding agreements,
8 they're the most valuable asset of the debtor, right?

9 A That's true.

10 Q Do you understand how critically important they are to
11 talc victims who the only way they're going to be able to
12 recover effectively is under the funding agreement?

13 A I do.

14 Q Okay. So when you negotiated funding agreement two, you
15 had that in mind how critically important it was, right?

16 A Well, when we agreed to funding agreement two, I did.
17 Yes.

18 Q So did you think to yourself I better make sure I get at
19 least \$60 billion of value for these people because I'm a
20 debtor in Chapter 11. I have fiduciary duties to these people.
21 And I better make sure I get them at least the same amount of
22 value. Did that go through your mind?

23 A No, because at the time that -- after the Third Circuit
24 decision, the -- it was clear, there was consensus reached that
25 the first funding agreement was void or voidable, at least the

1 J&J guarantee part of that. And so when we were entering into
2 funding agreement two, we took out this risk of enforceability
3 and put in a new agreement that would benefit all the parties.

4 Q Sir, do my clients have the same amount that they can
5 recover from under funding agreement two as under funding
6 agreement one? Yes or no?

7 A No, because of the Third Circuit decision, not because of
8 what we did.

9 Q It's the Third Circuit's fault?

10 MS. BROWN: Your Honor, I object. It's
11 argumentative.

12 THE COURT: Sustained.

13 BY MR. JONAS:

14 Q Are you saying that the Third Circuit is responsible for
15 my clients having tens of billions of dollars less that they
16 can recover from?

17 MS. BROWN: Same objection, Judge.

18 MR. JONAS: I'd like to know, Your Honor.

19 THE COURT: Overruled.

20 THE WITNESS: What I'm saying is that when the Third
21 Circuit made its decision, one of the ramifications of the
22 decision was that it frustrated the purpose of the first
23 funding agreement, rendering it void or voidable. So I don't
24 think -- the Third Circuit didn't meant do that. I don't blame
25 the Third Circuit for doing that. It's just a consequence of

1 how the Third Circuit ruled.

2 Therefore, when we were looking at this, from LTL's
3 position, we're now looking at an agreement, a funding
4 agreement which is the most valuable asset that has been
5 rendered void or voidable. And so we came up with the solution
6 to try to rectify the situation, get -- get sufficient funding
7 for the claimants, and turn to a plan, a support agreement with
8 J&J where they would provide enough liquidity to come up with
9 the -- a solution to the issue which is embodied in the
10 proposal.

11 BY MR. JONAS:

12 Q So when you gave up funding agreement one and you entered
13 into funding agreement two, you were trying to take care of my
14 clients? Is that what you're saying?

15 A Yes, absolutely, because we did not give up funding
16 agreement one. Funding agreement one became void or voidable
17 and unenforceable, particularly the J&J guarantee as a result
18 of the Third Circuit decision.

19 What we did, we took that situation and tried to come up
20 with a situation for the benefit of all parties. So we
21 exchanged an unenforceable funding agreement with an
22 enforceable funding agreement with Holdco, and a plan support
23 agreement that would provide, you know, \$8.9 billion in a
24 settlement that has been -- that has the overwhelming support
25 of claimants.

1 Q Let me get at it another way. I want to talk about how
2 J&J did under the funding agreements. What was J&J's
3 liability, potential exposure or liability under funding
4 agreement one?

5 A They had a void or voidable commitment under funding
6 agreement one after the Third Circuit decision.

7 Q Sir, let's go back in time, okay, before I think you said
8 the Third Circuit made a mistake. Before that happened, what
9 was J&J's exposure, possible exposure under funding agreement
10 one? How much?

11 A First, I didn't say the J&J -- that the Third Circuit made
12 a mistake. I never -- I never said it. And if I did say that,
13 I didn't mean to say that. But under funding agreement one,
14 under the terms at that time, it voluntarily, without any need
15 to -- obligation as the Third Circuit said, J&J committed to
16 fund up to the fair market value of JJCI for the purpose of
17 getting all the cases resolved in a bankruptcy.

18 Q Okay. So under funding agreement one, J&J's total
19 exposure could have been \$60 billion, right?

20 A At that time, knowing the facts that we knew in
21 bankruptcy, yes.

22 Q Okay. Funding agreement two, today, under funding
23 agreement two, what is J&J's total potential exposure under
24 funding agreement two?

25 A So after the funding agreement one was found void or

1 voidable, and it had no exposure, it then committed to a \$8.9
2 billion support agreement in order to get a plan approved to
3 resolve all talc claims, which again has the overwhelming
4 support of claimants.

5 Q J&J's exposure went from 60 billion to 8.9 billion?

6 A So --

7 Q Yes or no, sir.

8 A No. No. J&J -- no, no. J&J's exposure originally was
9 nothing. It -- without -- and again, as the Third Circuit
10 said, it voluntarily, without obligation, committed to \$60
11 billion to get these claims resolved in bankruptcy. Once the
12 Third Circuit ruled, exposure then became potentially zero.
13 And so after that, in order to get a plan approved, it now has
14 an exposure of \$8.9 billion in order to get a plan approved in
15 bankruptcy.

16 Q Okay. So let me ask you, was it automatic? When the
17 Third Circuit ruled, did J&J's exposure go to zero?

18 A I think when it happened, there was a material risk that
19 its exposure went to zero automatically.

20 Q Okay. Material risk. That's a good time to negotiate.
21 So tell me, when you were sitting there with J&J and you said
22 -- and they said -- they did tell you they thought their
23 exposure went to zero, right? Did they tell you that?

24 A I'm a little hesitant on attorney/client. But I will
25 answer.

1 Q Well, let's wait.

2 A Yeah.

3 Q Wait, because at deposition, you wouldn't answer that
4 question. So let's see whether your counsel now for the first
5 time wants to let you, allow you to answer these types of
6 questions.

7 MS. BROWN: Well, Your Honor, I think that is also
8 argumentative. And certainly, what was true in the deposition
9 is true here. To the extent answering that question is going
10 to reveal attorney/client communications, protected by work
11 product or common interest, then Mr. Kim shouldn't reveal
12 conversations he had with lawyers. But certainly, he should be
13 able to answer that in the way that he understands he can do
14 without violating the privilege.

15 THE WITNESS: So what I would say is my understanding
16 -- I had numerous conversations with J&J attorneys. My
17 understanding from going away with that was that they were
18 asserting that the -- it was -- the contract was void or
19 voidable because of the Third Circuit decision based on a
20 number of legal principals that they had researched, my lawyers
21 had researched. And we came to the conclusion there's a
22 material risk that the contract was void or voidable.

23 MR. JONAS: Your Honor, I'm going to move to strike
24 because at deposition, time and time again we were not allowed
25 -- we were told that the only people, and I'll ask questions to

1 confirm this, that the only people that could answer questions
2 about the alleged negotiation, to say it lightly, between J&J
3 and JJCI and the debtor were between lawyers. And so they
4 could not tell us anything about those conversations.

5 So now for the first time, I guess we're going to
6 hear about it. And I think it's inappropriate. They cannot
7 use the privilege as a sword and a shield, Your Honor.

8 THE COURT: Well, okay. If I sustain your objection,
9 and his testimony's stricken, then what's the purpose in asking
10 the question.

11 MR. JONAS: Well, I didn't know when I asked the
12 question, first of all, Your Honor. So now that it's been
13 confirmed, I just, I don't think they can meet their burden
14 without answering these questions. They didn't answer in the
15 deposition. I don't think they should be able to permit it
16 here, and I don't think they can meet the burden.

17 THE COURT: I'll sustain the objection. I'll strike
18 the answer.

19 MS. BROWN: Your Honor, can I be heard on this,
20 though?

21 THE COURT: Yes.

22 MS. BROWN: His testimony here is entirely consistent
23 with what the testimony was at the deposition. He is giving
24 the testimony that he made the conclusion there was a material
25 risk. He gave testimony at the deposition as he did right here

1 about what his understanding was about J&J's position. Beyond
2 that, as we asserted at the deposition, and as is true here,
3 discussions about a legal issue were had between lawyers.

4 THE COURT: Mr. Jonas?

5 MR. JONAS: Well, let me --

6 THE COURT: He can testify as to his understanding.

7 MR. JONAS: That's fine, Your Honor. I'll keep --

8 THE COURT: And if you want to phrase it -- that's
9 the bulk of it, although he referred to --

10 MR. JONAS: Let me try some other questions, Your
11 Honor.

12 THE COURT: All right.

13 MR. JONAS: Maybe it will be useful.

14 BY MR. JONAS:

15 Q So who at LTL negotiated this resolution with J&J? Was it
16 you?

17 A I was involved, with my counsel.

18 Q You were involved, with your counsel. That's the counsel
19 -- that's Jones Day, the folks that negotiated the funding
20 agreement one, right?

21 A It is.

22 Q Okay. And so were you the principal -- you had authority
23 to bind LTL in connection with these negotiations?

24 A We did not bind LTL until the board resolution.

25 Q Okay. But you were authorized to go out and speak for

1 LTL?

2 A I was authorized to discuss this.

3 Q Okay. So tell us about the negotiation between LTL and
4 J&J. Did you guys say hmm, okay, maybe it's voidable. How
5 about 59 billion, give us 59 billion. And they said no, we're
6 only going to give you 8.9.

7 What happened? How did you end up at 8.9 billion?

8 A It's a result of the PSA. There was -- so at the same
9 time that we are discussing how to deal with this situation
10 with the void or voidable -- I'm sorry, funding agreement and
11 the support agreement, at the same time there were negotiations
12 going on, of course, about a potential resolution through a
13 plan.

14 And so when those resolution -- when the discussions about
15 a potential plan resolution were being had, and a number was
16 proposed and accepted by lawyers representing over 60,000
17 claimants, that number of course became the basis for a new
18 support agreement in the bankruptcy setting.

19 Q Okay.

20 A That's where the number came from.

21 Q Let me try and wrap up on a little piece here. The
22 bottom, let me see if I can get to the bottom line. The bottom
23 line is under funding agreement one, J&J's liability could have
24 been 60 billion. Under funding agreement two, it's 8.9
25 billion.

1 Is that right?

2 A With all the, you know, answers that I've given on how
3 that came to be.

4 Q I find it curious that you tell me that J&J raised the
5 issue of voidability or void because I think you said at your
6 deposition, please tell me if I'm wrong, that you made a
7 determination that there was a material risk that funding
8 agreement one was void or voidable based on the Third Circuit
9 Court of Opinions decision that LTL's first bankruptcy was
10 filed in bad faith.

11 Is that right?

12 A That is right. But that doesn't foreclose the discussions
13 I had with other people, and that they reached the same
14 conclusions either at the same time or before I did. So --

15 Q Well, who approached who? Who -- was it J&J or was it LTL
16 that said oh my God, the funding agreement might be void or
17 voidable? Who raised it first?

18 A It was raised on a call that we were having. We have
19 routine calls to discuss the bankruptcy. I'm not sure who
20 raised it first. But I think we quickly -- the issue came up
21 quickly. And then the parties went off and did research on
22 that.

23 Q But you're the guy that came up with the idea, right?

24 A I never said that I came up with the idea.

25 Q Well, let me --

1 A I came up with an idea in my head that this is a
2 possibility. I don't think I was the one that actually raised
3 it with J&J. I think they also -- I think you cannot read that
4 decision without coming to the conclusion that there was a
5 frustration of purpose.

6 In fact, the Third Circuit itself pointed it out by saying
7 that it was ironic that the funding agreement that was there to
8 support a bankruptcy was used, you know, prevented the
9 bankruptcy. So I think this is something that like minds think
10 alike.

11 And so, you know, I don't know that I was the one that
12 first raised the issue. I know that it was discussed very
13 early on. And everybody had that thought already.

14 Q Just so you know, Mr. Kim, I read the decision a few
15 times. Frustration of purpose never crossed my mind, just so
16 you know that. Okay. The Third Circuit's decision was issued
17 on or about January 30th, 2023, correct?

18 A Yes.

19 Q And prior to January 30th, 2023, you had never thought
20 about or considered that funding agreement one might be void or
21 voidable, right?

22 A That's correct.

23 Q And then on January 30th, the Third Circuit's decision
24 comes down. And you think to yourself funding agreement one
25 now could be void or voidable, right?

1 A That is true.

2 Q And your determination was based on a footnote in the
3 Third Circuit's decision, right?

4 A Well, that was part of it. It was the entire decision.
5 But the footnote was a good marker for that, yes.

6 Q And let me ask you, going back to when you first did
7 funding agreement one because again, that was the most valuable
8 asset, right?

9 A Yes.

10 Q You knew how important it was, right?

11 A Yes.

12 Q You knew it was really important to my clients, right?

13 A We understood it was important for everyone.

14 Q So when you negotiated funding agreement one, you hired
15 great counsel, Jones Day, right?

16 A We did.

17 Q Yeah. And you really put a lot of effort into making sure
18 that funding agreement one would be a great agreement. It
19 would always be available to our clients, right?

20 A Well, in bankruptcy, yes.

21 Q I thought you said the funding agreement was available in
22 and out of bankruptcy.

23 A Well, it's a little complicated because the funding
24 agreement is really in two parts. There's the part where JJCI
25 has, you know, has given up its agreement to fund up to its

1 value. And then there's the J&J basically backstop. That
2 backstop really was only intended to deal with things in
3 bankruptcy.

4 The J&J -- the JJCI portion of it, you know, is really a
5 function of the fact that we filed the divisional merger and we
6 had to take all the assets, or we wanted to have the assets of
7 JJCI.

8 Q Did J&J tell LTL that it would not honor the funding
9 agreement outside of bankruptcy after the Third Circuit's
10 decision?

11 A No, it didn't get that far because we came to a
12 resolution. We understood the funding agreement was void or
13 voidable. We never said to J&J well, you must pay us or else.
14 We both came to the conclusion, and a consensus, that the
15 funding agreement was void or voidable, possibly unenforceable.
16 There's a material risk.

17 And so what we did was we negotiated a solution. We came
18 to a consensus on a solution to it before having a need to how
19 J&J, you know, refused to fund anything.

20 Q Did you go to the TCC or any of the talc claimants, the
21 beneficiaries of funding agreement one and say hey guys, let's
22 talk about this. We've got to figure out a strategy against my
23 counter party J&J because I don't want to lose \$60 billion.
24 Did you talk to any of these folks who were the beneficiaries
25 about what to do?

1 A I did not. I had my own counsel. And I did my own review
2 and came to my own conclusions.

3 Q So you thought it was best for you, yourself, to make
4 decision for tens of thousands of talc victims as to how to
5 handle the funding agreement?

6 A I relied on, again, discussions I had with my counsel.
7 And we came -- and this is the path we chose.

8 Q Did the board or anybody at LTL examine whether maybe
9 there was a claim against your counsel to what negotiated the
10 first funding agreement?

11 MS. BROWN: Your Honor, I'm going to object to the
12 extent that implicates legal advice and exploration of legal
13 claims. I don't think that's proper.

14 THE COURT: Overruled.

15 THE WITNESS: I think I did answer this in the
16 deposition. So again, having been involved in putting together
17 the funding agreement, I was aware of these issues. There was
18 -- it was clear to me and to others that this was something
19 that was completely unforeseen and would be unforeseen by all
20 parties. And there was no question that there was no need to
21 try to look into filing a lawsuit against counsel.

22 BY MR. JONAS:

23 Q I think everybody's going to get sick of me in about 30
24 seconds. So I'm going to ask one last question to wrap it up
25 and see if I have it right. Maybe I do, maybe I don't. My

1 clients had the benefit of a \$60 million funding agreement, the
2 first funding agreement, right?

3 A At that time, yes.

4 Q And today, maybe, maybe, I guess if they vote in favor of
5 a plan, they'd have the benefit of funding agreement two which
6 I'm not sure what you said, I think you said \$30 billion of
7 value. Is that right?

8 A It is. But then you're missing out that there's a plan
9 proposal on the table that a substantial number of claimants
10 have approved, which would be \$8.9 billion, which is fully
11 funded under the funding agreement.

12 Q Okay. So that's my client. Now let's just make sure I
13 got the J&J piece right. J&J was liable for up to \$60 billion
14 under funding agreement one, right?

15 A Again, J&J, without any obligation, put that in in order
16 to enhance the prospects of a bankruptcy. So that was why it
17 got put in. At some point, it becomes void or voidable because
18 the Third Circuit decision. And then they again committed
19 without having to, to an \$8.9 billion support agreement in
20 order to facilitate a resolution.

21 Q Just to wrap up, today, J&J's maximum liability is \$8.9
22 billion, right?

23 A Under the support agreements that it has.

24 Q So with -- because of the Third Circuit's decision, J&J
25 got off the hook for \$50 billion of talc liability?

1 A Again, it did not get off the hook. The hook -- the
2 agreement itself, the first funding agreement was not required
3 by J&J. And as the Third Circuit noted, it put in that
4 guarantee in order to facilitate a resolution of bankruptcy.

5 Once the -- ironically, I think it was the Third Circuit
6 said the very -- the very provision that was supposed to help
7 it in bankruptcy actually turned into a provision that
8 prevented the bankruptcy, causing that guarantee to be void or
9 voidable.

10 And after that, as a resolution to try to resolve all this
11 talc claims in bankruptcy, J&J again committed \$8.9 billion
12 which was part of the PSA, part of the plan that was negotiated
13 to try to resolve all the litigation. And that's what
14 happened.

15 MR. JONAS: Your Honor, could we have a short break?

16 THE COURT: Sure. Let's see. It's ten to 12. My
17 plan is to go to 1:00, take a half-hour lunch. Why don't we
18 come back in ten minutes?

19 MR. JONAS: Thank you, Your Honor.

20 (Recess at 11:52 a.m./Reconvene at 12:06 p.m.)

21 THE COURT: Okay.

22 BY MR. JONAS:

23 Q Mr. Kim, on what date did the old funding agreement become
24 inoperative and the new funding agreement become operative?

25 A I think the date of the termination agreement.

1 Q Which is what?

2 A It became effective right after the case, the bankruptcy
3 case was dismissed.

4 Q So the funding agreement, even though this risk
5 void/voidability occurred on January 30th, the funding
6 agreement remained operative for the remainder of the
7 bankruptcy case?

8 A That was our agreement.

9 Q Your agreement with whom?

10 A Well, because it's a termination agreement, the agreement
11 was that it would remain operative until the termination
12 agreement.

13 Q Okay. Well, on what date did you reach that -- strike
14 that.

15 I take it that agreement was between LTL and J&J; right?

16 A I think there was a consensus among the lawyers.

17 Q Consensus among the lawyers. Well, lawyers don't make
18 deals -- can't bind clients to deals; right? Clients have to
19 do that themselves; right?

20 A Right. The board was apprised ahead of time that there
21 was a termination agreement that was going to be in place and
22 what that would mean is that everything would stay in place so
23 that, you know, LTL would not remain bare until the
24 termination agreement became effective, which happened as soon
25 as the bankruptcy case was dismissed. So you'll see, I think,

1 I'm sure there's a packet of materials where there's a
2 termination agreement that becomes effective right after the
3 bankruptcy case gets dismissed.

4 Q So while you were -- strike that.

5 While you were an officer of a Chapter 11 debtor in
6 bankruptcy with fiduciary duties to talc claimants, you had
7 negotiated the termination of the existing funding agreement;
8 correct?

9 A Well, we had authorized the termination if the bankruptcy
10 -- again, it was all predicated upon the bankruptcy being
11 dismissed; therefore, at that point, we would not have, you
12 know, the bankruptcy. So all the things that go with the
13 bankruptcy, including creditors committees, the debtor, you
14 know, the claimants, once we're out of bankruptcy, that would
15 all have ended. So what we agreed was that, if the bankruptcy
16 gets terminated, then we would take these actions.

17 Q Okay, let me back up. I'm not being clear and I
18 apologize.

19 This case, LTL I was dismissed on April 4 -- April -- I
20 think it was April 3rd or 4th; right?

21 THE COURT: April 4th.

22 BY MR. JONAS:

23 Q 4th. Correct?

24 A I will take your word for that as well.

25 Q Okay. And about two hours or so after LTL I was

1 dismissed, LTL II commenced a new bankruptcy case; right?

2 A It did.

3 Q Okay. Now, that whole -- you've told about this
4 void/voidability issue, negotiation, discussion, termination
5 agreement, new funding agreement, that all didn't happen in two
6 hours; did it?

7 A The discussions around it didn't happen in the two hours,
8 the authorization for it, it was -- the authorization for it
9 specifically stated that it would not become effective until
10 the termination of the first bankruptcy.

11 Q And those -- I think you said those discussions,
12 negotiations, whatever they are, between LTL and J&J, they
13 started pretty quick after the Third Circuit decision; right?

14 A There were numerous discussions right after the Third
15 Circuit decision, yes.

16 Q Okay, so February, March. And over those months, while
17 you were an officer of a Chapter 11 debtor, you were doing a
18 new deal, a new transaction, a new arrangement with J&J to
19 terminate the existing funding agreement and enter into a new
20 funding agreement; right?

21 A I would say that there were ongoing discussions among the
22 lawyers of a variety of things that could happen, one of them
23 which was the termination of the old funding and the new
24 funding agreement, but there were discussions throughout that
25 period of how to -- how to resolve sort of the talc litigation

1 for everyone.

2 Q And so, obviously, LTL, J&J, they knew what was going on
3 in this connection because they were involved in it; right?

4 A They were involved in it, yes.

5 Q Okay. Did you tell the creditors committee, the TCC, what
6 was going on during this time that you were in Chapter 11?

7 A Not -- I did not have any conversations with the creditors
8 committee or the TCC.

9 Q In fact, sir, you hid it from the Bankruptcy Court and the
10 bankruptcy community, meaning the TCC and others, you hid that
11 from them; didn't you?

12 A I --

13 MS. BROWN: I object, Your Honor, argumentative.

14 THE COURT: Overruled.

15 THE WITNESS: I would say, you know, these are
16 confidential communications, we had no idea what we were going
17 to do. We were looking at various options and we did not want
18 to make public disclosures about this at the time that we were
19 still involved in looking at these issues.

20 MR. JONAS: May I approach, Your Honor?

21 THE COURT: Yes, please.

22 MR. JONAS: I think we're on --

23 THE COURT: 3.

24 MR. JONAS: -- 3.

25 BY MR. JONAS:

1 Q Mr. Kim, I want you to take a look at what's been marked
2 as TCC Exhibit 3. And you're familiar with this type of form,
3 it's a monthly operating report; right?

4 A I am.

5 Q And this one is dated March 21, '23. Do you see that at
6 the top?

7 A I do.

8 Q Okay. And this is a document that LTL, the debtor, files
9 to advise the Court and to advise its creditors and, in this
10 case, talc claimants how the debtor is doing, what's going on
11 financially with the debtor; right?

12 A I believe that's true, yes.

13 Q And I want you to take a look at page, at the top it says
14 3 of 11, paragraph 9. And the second sentence says --

15 A I'm sorry --

16 Q I'm sorry.

17 A -- 3 of 11 -- oh, I see, yes.

18 THE COURT: It's the --

19 THE WITNESS: I got it.

20 THE COURT: -- there's a second document that has
21 numbers.

22 MR. JONAS: I'm sorry --

23 THE WITNESS: Thank you, Your Honor.

24 MR. JONAS: -- I'm sorry.

25 BY MR. JONAS:

1 Q Just let me know when you're there. You'll see the first
2 full paragraph is 8 and then it says 9.

3 A I see that, yes.

4 Q And 9, the second sentence says, "Further funding, if
5 necessary, will be available under the funding agreement to
6 satisfy the debtor's expenses." Do you see that?

7 A I do.

8 Q So, on March 21st, you knew on this date you would --
9 strike that.

10 On March 21st, you had had multiple discussions,
11 conversations, whatever you want to call them, between LTL and
12 J&J about terminating the funding agreement and doing a new
13 funding agreement; right?

14 A Yeah, when the bankruptcy got dismissed.

15 Q Okay, but that -- on March 21st, you knew that; right?

16 A Yeah, when the bankruptcy got dismissed, there was a
17 discussion of terminating the funding agreement.

18 Q You knew the bankruptcy was going to get dismissed within
19 a few weeks; right?

20 A No. We were still at that point hopeful that we would get
21 a stay of proceedings and seek review, cert review by the
22 United States Supreme Court. So, you know, there was still --
23 we still had our plan to try to get the U.S. Supreme Court to
24 hear it.

25 Q Okay, but on March 21st, notwithstanding that you knew and

1 J&J knew and JJCI knew that, if the case was dismissed, you
2 were going to terminate the existing funding agreement and you
3 were going to do a new funding agreement and you were going to
4 have -- let J&J off the hook for tens of billions of dollars,
5 you filed something with the Court letting everybody know the
6 funding agreement was still in place?

7 A In bankruptcy because, again, the plan was the termination
8 doesn't happen until the bankruptcy is dismissed. So this
9 report talking about what funds are available in bankruptcy is
10 true then, it's true now, and I'm not sure what you're getting
11 at.

12 Q Sir, with respect to -- strike that. Okay, moving on.

13 Mr. Kim, in the first bankruptcy case, Randi Ellis was
14 appointed Future Claimants Representative or FCR; correct?

15 A That is correct.

16 Q And Ms. Ellis' role as FCR was terminated on the dismissal
17 date April 4th, 2023; correct?

18 A I believe that's true. I'd have to look at the order and
19 the date of the order.

20 Q I'll represent that to you.

21 A That's fine.

22 Q The debtor is seeking to have Ms. Ellis appointed as FCR
23 again in the second bankruptcy case; correct?

24 A We are.

25 Q And I want to show you the next exhibit, the term sheet.

1 MR. JONAS: May I approach, Your Honor?

2 THE COURT: Yes, please.

3 THE WITNESS: Thank you.

4 MR. JONAS: This will be TCC-4.

5 THE WITNESS: Thank you.

6 BY MR. JONAS:

7 Q And, Mr. Kim, this is a term sheet for, I guess I'll call
8 it the debtor's plan; is that fair?

9 A Well, it was a term sheet that was attached to the plan
10 support agreement.

11 Q Okay. And this is basically outlined in the term sheet;
12 right?

13 A These were terms that were proposed.

14 Q Okay. Now, you didn't file this -- you filed the PSA with
15 your declaration; correct?

16 A Correct.

17 Q But you didn't file this?

18 A I believe that's true, yes.

19 Q Okay. And I want to -- and this was prepared in probably
20 March sometime?

21 A I don't know when it was prepared.

22 Q Okay. It wasn't prepared in the two hours between the two
23 bankruptcy cases; right?

24 A I doubt that, but I don't know when it was prepared.

25 Q Well, you have PSAs, if we went and looked, you have PSAs

1 dated in mid-March; right?

2 A There are, but I don't know what was attached or if
3 anything was attached to them at that time.

4 Q So there's PSAs that don't have the term sheet attached?

5 A Again, I don't believe that's true, I just don't know.

6 Q Well, sir --

7 A Well, and when I say attached, I understand that people --
8 and I've read Mr. Murdica's testimony that he discussed these
9 terms with everyone, but I don't know what form was there.

10 Q I'm going to make it easy. You -- on behalf of the
11 debtor, you signed plan support agreements; right?

12 A I did.

13 Q Okay. My question is, the 16 or 17 plan support
14 agreements that you signed, did they all have the term sheet
15 attached?

16 A I signed a document in -- to be effective as of the -- as
17 of the date of the bankruptcy. So they weren't physically
18 attached when I signed it, I believe they were attached, but,
19 again, I don't know.

20

21 Q Do you know if they were attached when the plaintiffs' law
22 firm signed it?

23 A I don't know if they were attached or whether they were
24 discussed or given to them separately, that's all.

25 Q Well, if they weren't attached, do you think the law firms

1 were bound to the PSA that says we're bound to the attached
2 term sheet and there's no term sheet?

3 A Again, according to Mr. Murdica, all the plaintiffs knew
4 what the terms were.

5 Q Okay. So, as early as mid-March, there's PSAs getting
6 signed up and, I guess, maybe they have a term sheet attached
7 and maybe they don't; right?

8 A Yeah, I don't know exactly what was attached.

9 Q Okay. The term sheet is the centerpiece of LTL's Chapter
10 11 plan to go forward and resolve talc claims; correct?

11 A Well, the terms are the important terms, but some of these
12 terms, as I think I explained to you in my deposition, some of
13 these are just placeholders and some are still subject to
14 negotiation.

15 Q Sir, the plan -- the term sheet is the centerpiece of the
16 Chapter 11 plan; right?

17 A No, I would say -- I disagree with that. I would say some
18 terms are material and the centerpiece, I would say some of the
19 terms in here are not the centerpiece, they're just typical
20 terms that appear in many agreements and that are necessary for
21 a plan.

22 Q Let's try it this way: Is the term sheet important in
23 this bankruptcy case?

24 A I would say most of the terms of that term sheet are
25 important, some terms are more important than others.

1 Q Okay. Let's take a look at page 5. At the top of this
2 term sheet, which you were signing people up to during the
3 pendency of the first bankruptcy case, while Ms. Ellis had a
4 court-appointed official, she was the FCR, during that period
5 of time, on paragraph -- on page 5, at the top, (b)(1), "Randi
6 Ellis shall serve as claims administrator of the Talc Trust for
7 purposes of qualifying claimants and allocating proceeds to be
8 distributed amongst all existing and future qualifying
9 claimants. Ms. Ellis shall utilize and supervise Archer
10 Systems, LLC in the qualification and allocation of talc
11 claims."

12 Do you see that?

13 A I do see that.

14 Q And in fact that was in March, at least the first term
15 sheet that was attached to a PSA was in mid-March; right?

16 A Yes. Understand, this is a placeholder name that Mr.
17 Murdica put in without really consultation because he thought
18 that this was a -- she would be a good choice. But, again,
19 this is one of these terms that is not really material and that
20 is subject to a negotiation.

21 Q Sir, it may not be material to you, but are you aware --
22 give me a second. I'm not trying to be -- cause a firestorm, I
23 just want to know, are you aware that it is a bankruptcy crime
24 under 18 U.S.C. 152(6) to knowingly and fraudulently give,
25 offer, receive, or attempt to attain any money, property,

1 remuneration, compensation, reward, advantage, or promise
2 thereof, for acting or forbearing to act in any case under
3 Title 11, are you aware of that law?

4 MS. BROWN: Your Honor, I object to this question for
5 numerous reasons, including that it's argumentative.

6 THE COURT: Overruled. Are you -- can you answer
7 that question?

8 THE WITNESS: So this is -- no, I'm not aware; it
9 makes sense to me, but I'm not aware.

10 BY MR. JONAS:

11 Q Okay. And, after you filed the second bankruptcy case on
12 April 4th, you filed a motion to have Ms. Ellis, the claims
13 administrator under your term sheet, to be reappointed as FCR;
14 correct?

15 A Correct. And, again, she's not claims administrator under
16 the term sheet. This is a placeholder put in place because Mr.
17 Murdica thought she'd make a good claims administrator. My
18 understanding is that, you know, there was no offer or
19 discussion about this. This is a placeholder and subject to
20 negotiation.

21 Q Well, when the plaintiffs' lawyers show the PSA and the
22 term sheet to their 60-odd-thousand, according to you, clients,
23 they're going to think Ms. Ellis is the claims administrator;
24 right?

25 A Yeah. I'm not sure they're going to care about that at

1 all.

2 Q I know, sir, and maybe they won't care, but we're in a
3 formal legal proceeding and there are rules that have to be
4 abided by. Do you understand that?

5 A Yeah, I don't think there's a rule about putting a
6 placeholder name in a document.

7 Q Okay. You're aware that Ms. Ellis filed a declaration in
8 support of the motion to have her appointed, reappointed as
9 FCR; correct?

10 A I think I heard that at the last hearing; I don't think
11 I've ever seen it.

12 Q You've never seen it. So you don't know whether Ms. Ellis
13 disclosed her role as claims administrator in her declaration?

14 A I would say that assumes that she has a role as claims
15 administrator, which she doesn't.

16 Q Well, let me ask it this way: Did she disclose she might
17 be the claims administrator?

18 A She might or she might not. I don't think -- I don't even
19 really know that -- I don't believe Ms. Ellis even knows that
20 her name appears in this. You'd have to ask her.

21 Q How do you know that, sir? How do you know that?

22 A Because my understanding is that, at least from our
23 perspective, Mr. Murdica never talked to Ms. Ellis about
24 putting this -- about this and he had put her name is a
25 placeholder.

1 Q Did you read the term sheet before you signed the PSAs?

2 A I did.

3 Q You read it carefully, I hope, right, because that's going
4 to -- if this works, if your plan works, you're going to bind
5 all the talc claimants; right?

6 A Well, the plan -- the plan will bind it, if it gets
7 approved. And this is not part of the plan. Again, this is
8 subject to negotiation, there are parts of this that are going
9 to be changed when an actual plan comes together and when
10 actual people decide that they really want these roles or that
11 the roles are actually offered to them. So that's somewhere
12 down the road.

13 Q You testified quite a bit about your, I don't know, I'll
14 deign to call it vast experience in mass tort cases; right?

15 A Well, I shouldn't have used the word vast. I have a lot
16 of experience in mass tort cases --

17 Q Okay.

18 A -- yes.

19 Q So you know that claims administrators oftentimes in large
20 mass tort cases, they get paid millions of dollars, you know
21 that; don't you?

22 A So I don't know that. You know, from my perspective,
23 that's -- usually claims administrators, when we enter into a
24 mass tort settlement, is something that the defense really has
25 very little interest in. The defense cares about putting the

1 money into a fund and then how it gets administered and the
2 administration of that, that's generally left up to the
3 plaintiffs.

4 Q Well, let's take a look at some board minutes of March
5 16th.

6 (Crosstalk)

7 MR. JONAS: May I approach, Your Honor?

8 THE COURT: You may.

9 THE WITNESS: Thank you.

10 BY MR. JONAS:

11 Q Okay, let's just take a quick look -- I hope we're in the
12 home stretch, Mr. Kim -- at what will be, I think, TCC No. 5.
13 This is the debtor's minutes from a board of managers meeting
14 on March 16th, 2023; correct?

15 A Yes.

16 Q And you were at this meeting; right?

17 A I was.

18 Q And down below, on March 16th, 2023, the board was talking
19 about contingency planning; right?

20 A Correct.

21 Q And they talked about seeking approval from the board to
22 file another bankruptcy; right?

23 A That's one of the things that -- contingencies they were
24 looking at, yes.

25 Q Yeah. And another thing you talked about -- turn the page

1 over, please, and if you look at the fourth bullet, you talked
2 about gauging whether the future claimants representative would
3 support a further bankruptcy in the contours of a plan; right?

4 A I see that, yes.

5 Q Because you thought it was important to get the future
6 claimants representative on board with your new plan; right?

7 A No, we were not trying to get the future claimants
8 representative on board. We were having discussions to see
9 what her reaction would be if a new bankruptcy were filed.

10 Q But let me ask you what I asked you at your deposition.
11 The debtor's board thought it was important to get the FCR on
12 board to support a second bankruptcy and the contours of a
13 plan; isn't that right?

14 A If that was the question, I mean, the -- well, I think
15 getting on board would be objectionable. I don't know that we
16 tried getting her on board. We were trying to determine what
17 the -- what her views were on it.

18 Q Okay. Let's look at hopefully the last exhibit, which
19 will be a presentation on March 28th to the board.

20 MR. JONAS: May I approach, Your Honor?

21 THE COURT: Yes.

22 MR. JONAS: TCC Exhibit 6.

23 THE WITNESS: Thank you.

24 (Pause)

25 BY MR. JONAS:

1 Q Mr. Kim, I want to show you what's been marked as TCC-6,
2 it's a presentation to the board of managers of LTL on March
3 28th; right?

4 A It is.

5 Q And you were at that board meeting too; right?

6 A I was.

7 Q And if you go to page 7 of the presentation, it has the
8 Bates number 239, the last digits on the bottom.

9 A Yes.

10 Q It says -- the title is "Support of Future Claimants
11 Representative." Do you see that?

12 A I see that.

13 Q And you were having separate discussions about your new
14 plan with the FCR during the old bankruptcy case; right?

15 A No. We weren't actually -- at that point, it was just a
16 support for the bankruptcy. I don't know about she was
17 presented or discussed any plan with her.

18 Q Sir, the top bullet, it says, "Separate discussions have
19 occurred with FCR."

20 Those discussions were about the yet-to-be-filed new
21 bankruptcy; were they not?

22 A Yeah, they were about the bankruptcy, not the plan. In
23 other words, it wasn't -- I don't think at this time we were --
24 we had started -- I think there were talks about starting to
25 talk also about a plan, but at the time we were trying to her

1 support just on a new bankruptcy filing.

2 Q Really? Okay.

3 And it says here that she -- I guess the good news, she
4 was supportive of a second LTL Chapter 11 case in the event the
5 current case is dismissed; right?

6 A That's what this says, but, you know, eventually, she
7 decided that she was not going to take a position on the
8 filing.

9 Q But, sir, I heard what you said, but the last bullet says,
10 "In addition, discussions are ongoing to obtain a plan support
11 agreement from the FCR."

12 Do you see that?

13 A I do, but this is not the same plan support agreements
14 that we would have signed by the plaintiffs' counsel, this is
15 -- you know, if you look at the form, it would make no sense
16 for her to sign the plan support agreement that we were looking
17 at. I think discussions were ongoing as to what kind of -- if
18 she would support a plan and what kind of plan she would
19 support. But, again, nothing happened because she decided that
20 she was not going to take a position on this.

21 Q But you tried to get her to take a position; did you not,
22 sir?

23 A Well, we wanted to see if she was supportive of what we
24 were trying to do.

25 Q Yeah. And I assume, in connection with getting her to

1 sign a plan support agreement, did you give her the term sheet?

2 A Again, there would be a different plan support agreement.

3 That plan support agreement that the plaintiffs signed would

4 not be the same plan support agreement she has. I mean, if you

5 look at the form, it would not make sense.

6 Q Did you give her the term sheet, sir?

7 A I don't believe so, but, again, I don't know.

8 Q Mr. Kim, you understand that in order for the Court to

9 grant a preliminary injunction today it has to find a

10 reasonable likelihood of success that the debtor will be able

11 to confirm a plan; correct?

12 A I believe that's -- I believe that's true. I'm not a

13 bankruptcy expert, but I've heard -- I've heard that said here

14 several times.

15 Q And do you understand that that means that this Court and

16 likely the Third Circuit Court of Appeals would have to find

17 that termination of the funding agreement was not a fraudulent

18 transfer, do you understand that?

19 A I believe that's true, yes.

20 Q Okay. And do you also understand that you would need 75

21 percent of talc claimants to approve any plan?

22 A When it came to a vote, yes, I do.

23 Q And you understand that the Official Committee of Talc

24 Claimants in this case, substantially composed of plaintiffs'

25 lawyers representing thousands or tens of thousands of talc

1 claimants, opposes the debtor's plan, do you understand that?

2 A I understand that they're a very small portion of the
3 claimants and the vast majority of claimants support the plan.

4 Q Do you understand that during any stay that the debtor and
5 J&J obtain in this case talc claimants die during that period
6 of time?

7 THE COURT: Sustained.

8 MS. BROWN: Objection, Your Honor.

9 MR. JONAS: No further questions, Your Honor. Thank
10 you.

11 THE COURT: Mr. Satterly, just give me an estimate.
12 I wanted to stop at 1:00. Are we going to fit you in?

13 MR. SATTERLY: Yes, I'll stop at 1:00. I may be
14 finished by 1:00, but if not, it will just be a few minutes
15 after lunch.

16 THE COURT: Okay.

17 MR. SATTERLY: May I proceed, Your Honor?

18 THE COURT: Yes.

19 CROSS-EXAMINATION

20 BY MR. SATTERLY:

21 Q Good afternoon, Mr. Kim. Joe Satterly. You and I met
22 many times; correct?

23 A We have, Mr. Satterly.

24 Q And I'm going to talk about specific individual claimants
25 that Mr. Maimon mentioned earlier, but before I do that I want

1 to make sure I clearly understand the situation here.

2 LTL and J&J are separate entities; correct?

3 A Yes, but LTL is a subsidiary indirectly of J&J.

4 Q And you, upon reading the Third Circuit opinion on January
5 30th, in your mind, you made the decision that the funding
6 agreement could be void or voidable; correct?

7 A No. I came to the conclusion that that was an issue that
8 -- I think everyone thought that was an issue and that, after
9 further discussions and research, then I came to the conclusion
10 that there was a material risk that the agreement was void or
11 voidable and unenforceable.

12 Q And at no point in time in February of this year are there
13 any board minutes where you and Robert Wuesthoff and Rich
14 Dickinson sat down and talked about whether the funding
15 agreement was void or voidable; true?

16 A Not true.

17 Q That's not true?

18 A No, it's in the resolutions and it was discussed at the
19 board meeting --

20 Q And --

21 A -- before --

22 MS. BROWN: Let him finish.

23 THE WITNESS: -- I'm sorry --

24 BY MR. SATTERLY:

25 Q I'm sorry, February?

1 A Maybe it's the date issue.

2 Q I said February.

3 A In February.

4 Q In February. I'll get to April 2nd in a little bit.

5 A Okay. In February, there are no board meetings, but there
6 were staff meetings where we discussed the potential issues
7 with the contract.

8 Q So let me ask the question again. In February 2022, there
9 are no board minutes, no documents discussing the funding
10 agreement being void or voidable?

11 THE COURT: February 2023?

12 MR. SATTERLY: February 2023, yes, Your Honor. Sorry
13 about that.

14 THE COURT: Time flies.

15 THE WITNESS: There may be legal -- there may be
16 documents, there are no board minutes. When you say are there
17 any documents, I don't know how many documents could be out
18 there that discuss this. There was a lot of research being
19 done on this, but there were no board minutes that discussed
20 this before --

21 BY MR. SATTERLY:

22 Q Well, let me ask a question. LTL, over the last week or
23 so since the filing of the second bankruptcy, hasn't produced a
24 single document in February 2023 wherein the discussion of the
25 funding agreement being void or voidable is discussed?

1 A No. I think, because of the press of time, we have not
2 been able to do a full document production review. So we tried
3 to get as much information as we could for this hearing and we
4 came up with the board minutes and the presentations, which you
5 have.

6 Q At any point in time from January 30th until April the 4th
7 of 2023, LTL did not get independent evaluations, separate and
8 apart from whatever lawyers you were talking about, independent
9 evaluations regarding the funding agreement being void or
10 voidable; correct?

11 A I'm actually not sure whether there was other lawyers that
12 were asked about this. I don't have any recollection
13 currently, but I do recall there were -- there were -- there
14 may have been some conversations with other lawyers, but,
15 again, I don't recall them specifically.

16 Q At no point in time from January 30th of this year until
17 the filing of the second bankruptcy did LTL come back to this
18 Court, to Judge Kaplan, and say I want Your Honor to declare
19 one way or the other whether or not this funding agreement is
20 void or voidable; true?

21 A It's true. It did not come to the point where we needed
22 to do that because we came to an agreement as to how to resolve
23 the issues by entering into another funding agreement and a
24 support agreement by J&J.

25 MR. SATTERLY: Move to strike everything beyond "It's

1 true."

2 THE COURT: Sustained.

3 BY MR. SATTERLY:

4 Q It's true, sir, that you have never negotiated anything
5 with regards to any of the plaintiffs' lawyers that have signed
6 this plan support agreement; true?

7 A No, that is true, I did not do the negotiations.

8 Q You never, other than maybe meeting Mr. Watts at one point
9 in time, you never sat down and negotiated anything with
10 regards to any talc claimants with him; correct?

11 A I did not.

12 Q And same with regard to Mr. Pulaski, you haven't conducted
13 any negotiations with him as well; correct?

14 A No, correct. I relied on counsel.

15 Q And I'm going to get to relied upon counsel in a minute.

16 And you have not negotiated anything on behalf of LTL with
17 any plaintiffs' lawyers with regard to talc at all; correct?

18 A Not directly with plaintiffs' lawyers, no.

19 Q Okay. And you said you relied upon counsel. The counsel
20 that you relied upon is Mr. Murdica, you said that earlier;
21 correct?

22 A Well, Mr. Murdica was doing most of the direct
23 negotiations, but my counsel at Jones Day also was involved in
24 reviewing materials as well.

25 Q And so with regards to the negotiations, though, I'm not

1 talking about just reviewing materials, with regards to the
2 negotiations with these plaintiffs' counsel, it's your
3 testimony that you relied upon Jim Murdica --

4 A Well, again, I --

5 Q -- correct?

6 A No. It depends on how you define the negotiations. We
7 were -- I included where it was being apprised routinely about
8 the state of the negotiations, asked questions, had input. So
9 I did not read -- I and Jones Day may not have been interacting
10 directly with counsel, but, you know, we were aware of the
11 negotiations and we had discussions about them.

12 Q You said earlier that it was Mr. Murdica's obligation to
13 do due diligence with regards to these plaintiffs' law firms;
14 correct?

15 A That would be one of his obligations, yes.

16 Q And Mr. Murdica at no point in time provided you a due
17 diligence report regarding his evaluations; correct?

18 A No. We discussed the things that he was doing and getting
19 periodically. So I don't know what a due diligence report is,
20 but, again, I've known Mr. Murdica for over 20 years, I've
21 worked with him. We have discussions regularly about what's
22 going on, what's being provided, who's saying what, what
23 representations are being made.

24 So, again, if that's -- you know, I'm not sure what you
25 mean by due diligence report --

1 Q A document, a report. Let me show you my due diligence,
2 what I did with regards to investigating these lawyers, these
3 law firms, what's happening with these settlements?

4 A And none of my dealings of over 30 years of negotiating
5 these --

6 Q I didn't ask you --

7 A -- agreements do we ever see a due diligence report.

8 MR. SATTERLY: Move to strike, Your Honor, non-
9 responsive. I didn't ask him whether something happened over
10 30 years.

11 MS. BROWN: But, Your Honor, could he at least be
12 allowed to finish his answer, please? I think --

13 MR. SATTERLY: I'll let him finish, Your Honor --

14 MS. BROWN: -- Counsel is cutting him off --

15 MR. SATTERLY: -- before I move to strike.

16 MS. BROWN: -- multiple times.

17 THE COURT: Motion to strike is granted. Allow him
18 to finish the answer.

19 Limit your answers, please, to yes or no when you
20 can.

21 THE WITNESS: Thank you, Your Honor.

22 MS. BROWN: Thank you, Your Honor.

23 BY MR. SATTERLY:

24 Q Let me ask the question again, sir. Has Mr. Murdica, who
25 is charged with the due diligence of investigating these

1 lawyers, these law firms, provided any written reports to LTL,
2 to you or anybody else at LTL?

3 A There's no --

4 Q Is that a yes or no?

5 A Would an email count? There may be emails, but no written
6 due diligence, something called -- titled due diligence report.

7 Q Did Mr. Murdica share with you any investigation with
8 regards to Mr. Watts' previous representations of having claims
9 and representing to courts that he had claims when he really
10 didn't have claims?

11 A I assume, since they didn't have claims. I've seen the
12 PSA, I've seen the chart that Mr. Watts provided; I had
13 conversations with Mr. Murdica about Mr. Watts. I'm not sure
14 what you're -- you know, is there a formal report titled a due
15 diligence report?

16 Q Sure.

17 A No.

18 Q Well, let me ask you, let me just ask you this, sir, did
19 Mr. Murdica advise you, for example, that Mr. Watts in the BP
20 litigation claimed to have 40,000 claims and it turned out that
21 he didn't?

22 MS. BROWN: Your Honor, I'm going to object as
23 assuming facts and lacking foundation.

24 MR. SATTERLY: I think it's right on point, Your
25 Honor, with regard to this due diligence that he delegated to a

1 separate entity.

2 THE COURT: Objection sustained.

3 BY MR. SATTERLY:

4 Q Did Mr. Murdica advise you as to any aspect of what he did
5 with regards to any of these lawyers?

6 A As I guess I testified several times, we -- I know that we
7 had discussions about him having discussions with lawyers,
8 about his knowledge of the reputation, of how long he's been
9 dealing with these folks, how -- you know, whether he trusted
10 them or not, what information he was getting from them.

11 So, you know, we had -- and also what is actually needed
12 at this time for our purposes and whether, you know, a process
13 should be taken later to confirm all this stuff. So we've had
14 discussions about that.

15 Q With regards to these negotiations of mass tort cases that
16 you have relied upon with regards to Mr. Murdica, you said, in
17 the past, none of them, zero, involved the entry of a
18 channeling injunction preventing individuals from filing
19 lawsuits against J&J; true?

20 A Yeah, none of them were in bankruptcy, but --

21 Q And none --

22 A -- nothing else --

23 MS. BROWN: Can you please let him finish?

24 THE WITNESS: Yeah, none of them was in bankruptcy,
25 but --

1 BY MR. SATTERLY:

2 Q Is that a true statement?

3 A -- so that -- yeah, so that that -- yeah, so that would be
4 different, yes.

5 Q So that's a yes; correct?

6 A That's true.

7 Q Okay. And so none of the negotiations that you're
8 referring to in the past would have prevented future
9 individuals from making a lawsuit against J&J or any of the J&J
10 subsidiaries through the negotiation process that Mr. Murdica
11 engaged in with these lawyers; correct?

12 A I believe that's -- that's true.

13 Q Okay. Let me just ask a few more points before the lunch
14 break.

15 The PSA, the plan support agreement, is dated March 21st;
16 correct?

17 A I don't believe it's dated at all.

18 MR. SATTERLY: Well, Your Honor, I only have one copy
19 of it. May I approach at lunch and we'll make copies?

20 COUNSEL: What number again?

21 MR. SATTERLY: It's -- what number do you guys want
22 to call it?

23 COUNSEL: No. Who signed it?

24 MR. SATTERLY: Who signed it? John Kim signed it.
25 No, this one is Johnson Law Group.

1 COUNSEL: We don't have that one. I'm sorry.

2 MR. SATTERLY: It doesn't matter, they're all the
3 same.

4 BY MR. SATTERLY:

5 Q Well, let me ask. You know the plan support agreements
6 are all the same; right?

7 A I think they are all the same, but they're not dated. The
8 signature may be dated, but they're different dates for
9 different people. So I --

10 MR. SATTERLY: May I approach, Your Honor?

11 THE COURT: Yes.

12 MR. SATTERLY: Oh, they got a whole bunch of them.
13 We'll call this 8, right? Is that 8?

14 COUNSEL: It's 7.

15 MR. SATTERLY: 7? All right.

16 May I approach again, Your Honor?

17 THE COURT: Yes, please.

18 BY MR. SATTERLY:

19 Q Do you see right below the words "Plan Support Agreement"
20 --

21 A I see, yes.

22 Q -- it says dated March 21st, 2023. Do you see that?

23 A I do see that.

24 Q Okay. And so -- and then if we go over to the page 11,
25 the signature page of this particular one is Slater Slater

1 Schulman, and it's signed on March 27th; correct?

2 A I see that, yes.

3 Q And then, if we flip over to the next page, we've got your
4 signature on the 4th of April; correct?

5 A Yes, I see that.

6 Q And, as I looked at these plan support agreements, all of
7 them have the exact same signature, I mean, verbatim, because
8 you only signed one document; correct?

9 A To be effective for the sign -- yes, because everything is
10 supposed to be effective on the date of bankruptcy.

11 Q Sure. You predated your signature a couple days
12 beforehand and just let the lawyers attach this to the
13 agreement on the 4th; correct?

14 A They were attached on the 4th or shortly thereafter.

15 Q I couldn't hear you, sir.

16 A On the 4th or shortly thereafter, they were attached.

17 Q And so that is a true statement, you signed this document
18 in advance a few days beforehand, gave it to the lawyers, and
19 then they attached it to this agreement at the time of the
20 bankruptcy; correct?

21 A I'm actually not --

22 MS. BROWN: Your Honor, I object, that misstates his
23 testimony.

24 THE WITNESS: Yeah, I'm actually not sure when I
25 signed it.

1 THE COURT: Repeat the question.

2 BY MR. SATTERLY:

3 Q You signed this document a few days before this was filed
4 in court -- or in the bankruptcy; correct?

5 MS. BROWN: Same objection, Your Honor.

6 MR. SATTERLY: Let me withdraw the question.

7 BY MR. SATTERLY:

8 Q You signed this document a few days before it's dated;
9 correct?

10 MS. BROWN: Same objection.

11 THE WITNESS: It may have been --

12 THE COURT: Overruled.

13 THE WITNESS: -- on the date that I signed it.

14 BY MR. SATTERLY:

15 Q Okay. Do you have any evidence of that?

16 A I don't -- I don't recall when I signed --

17 Q Did you do this through DocuSign or --

18 A No, this was a -- I think a hard signature.

19 Q And so, as you sit here today, you can't tell the Judge
20 exactly the date or time when you actually signed this plan
21 support agreement?

22 A I cannot, but it was effective as of the date of the
23 bankruptcy.

24 Q All right. And you signed one document, it was your
25 understanding it was going to be applicable to all of them;

1 correct?

2 A Correct.

3 Q And you did not have all the attachments, the exhibits,
4 Exhibit A, Exhibit B, a listing of cases, you didn't have all
5 that. You just signed the document; correct?

6 A I had a file of all the PSAs and all the exhibits that we
7 had. You know, the exhibits were coming in from time to time,
8 but I had a -- I did have a file of all those and, you know,
9 reviewed most of them.

10 Q So I'm confused. Are you saying, when you just signed one
11 document for all these, you reviewed everything associated with
12 all these different agreements?

13 A I knew they were there, I had a file of all the
14 agreements. I did not look at every page of every exhibit, you
15 know, but I did have it in my possession and satisfied myself
16 that they were what they were.

17 Q And you were never involved on behalf of LTL of
18 negotiating the plan support agreement. That was done by
19 Murdica; correct?

20 A That is true.

21 Q You were not even given -- let me just ask you a
22 hypothetical. If Mr. Watts emailed a plan support agreement or
23 template for one back in February, you weren't carbon copied on
24 that; were you?

25 A I was not.

1 Q The first time you saw this agreement was in early April;
2 true? Let me -- early April.

3 A I'm not sure when I saw it. I saw templates at some point
4 and one is attached to the declaration. Yeah, I'm not sure
5 when I first saw it.

6 Q Nowhere in the plan support agreement does it say a law
7 firm must commit its clients to follow the attorney's
8 recommendation; true?

9 A I think that's true, yes.

10 Q And you know -- you're a lawyer; correct?

11 A I am a lawyer.

12 Q And are you licensed here in New Jersey?

13 A I am not.

14 Q Have you ever been licensed --

15 A No, sorry, I have what they call a provisional in-house
16 license by the bar. So there is a provision for licensing in-
17 house counsel in New Jersey.

18 Q Are you subject to the Rules of Professional Conduct in
19 New Jersey?

20 A I believe I am.

21 Q And you know that the rules of New Jersey courts, Rule 3.3
22 says a lawyer shall not make a false statement of material fact
23 or law to a tribunal?

24 MS. BROWN: Objection, Your Honor, to this line of
25 questioning.

1 THE COURT: Overruled.

2 MS. BROWN: There are also ethical implications, Your
3 Honor, to making ethical claims and reading from Codes of
4 Professional Conduct. I object to the implications and to
5 these questions.

6 MR. SATTERLY: I'm just asking if he's familiar with
7 that rule.

8 THE COURT: And that limited question, just like the
9 one with the bankruptcy fraud, limited question, he can ask.

10 MS. BROWN: Thank you, Your Honor.

11 BY MR. SATTERLY:

12 Q Do you want me to ask it again?

13 A What I will say, I haven't read this specific chapter, but
14 that's generally true in most jurisdictions.

15 Q 3.3, it's a lawyer shall not knowingly make a false
16 statement of material fact or law --

17 THE COURT: Sustained.

18 MS. BROWN: Thanks, Judge.

19 BY MR. SATTERLY:

20 Q All right. Now let me ask you about Valadez.

21 Now, LTL -- this Court permitted me to bring a claim
22 against LTL in the Valadez case, you know --

23 A I am familiar with it, yes.

24 Q Okay. And the court in Alameda required LTL to put up a
25 corporate representative in the Valadez case to give testimony

1 and did so, LTL did so on March the 31st. Do you know that?

2 A I do know that.

3 Q And no one from the LTL board, you, Wuesthoff, or
4 Dickinson, was that corporate representative; correct?

5 A Correct.

6 Q Okay. And you do know that a fellow named James
7 Mittenthal was the corporate representative in the Valadez
8 case; correct?

9 A He was designated as a corporate representative pursuant
10 to the rules of the court, yes.

11 Q And did you meet with him -- and I'm not going to ask the
12 substance of your discussions, but did you meet with him to
13 educate him to be the person most qualified in the Valadez
14 case?

15 A I did.

16 Q Okay. And you do know that in the Valadez, specifically,
17 several retailers refused to agree to indemnification
18 agreements allowing LTL and J&J to indemnify them?

19 MS. BROWN: Your Honor, that assumes facts, it's
20 inaccurate, and it lacks foundation.

21 MR. SATTERLY: Well, he -- she shouldn't be able to
22 say -- give him -- coaching him while he's on cross-
23 examination.

24 THE COURT: Objection overruled. Ask the question --
25 can you answer the question?

1 THE WITNESS: Yeah, I believe that's not true.

2 BY MR. SATTERLY:

3 Q Oh, really? So Mr. Mittenthal gave false testimony for
4 LTL on March the 31st --

5 THE COURT: Sustained.

6 BY MR. SATTERLY:

7 Q -- when he said several retailers refused to sign an
8 indemnification agreement?

9 A No, I --

10 MS. BROWN: Wait, I object.

11 BY MR. SATTERLY:

12 Q Is that --

13 MS. BROWN: Hold on.

14 THE COURT: Ask the question again.

15 BY MR. SATTERLY:

16 Q Did Mr. Mittenthal, the LTL corporate representative, give
17 false testimony on March the 31st when he said several
18 retailers refused to sign indemnification agreements?

19 MS. BROWN: That's a complete inaccurate
20 representation --

21 MR. SATTERLY: I'm asking him --

22 MS. BROWN: -- of his testimony. I object.

23 THE WITNESS: I dis --

24 THE COURT: Objection sustained. Do you know of the
25 testimony he gave?

1 THE WITNESS: I do know of the testimony, yes, but
2 that's not what the testimony was.

3 BY MR. SATTERLY:

4 Q You were not personally involved in negotiating any
5 indemnification agreements between the prospective protected
6 third parties, the retailers, and LTL; correct?

7 A There were times where I did get involved in the past.
8 I'm not sure which retailers you're talking about now, but I
9 have been involved in negotiations --

10 Q Since LTL's creation and specifically with regards to Mr.
11 Valadez, did you negotiate with the retailers regarding any
12 indemnification agreements?

13 A I'd have to know which retailers are in the Valadez case
14 and when the negotiations happened. So there is a possibility,
15 I just don't recall sitting here right now whether we had
16 negotiated indemnification with these retailers three years
17 ago, in which case I would have been involved, or whether these
18 are new negotiations. I just don't -- you'd have to tell me
19 more information about that -- about that --

20 Q As you sit here today, can you offer any personal -- do
21 you have any personal knowledge that you were involved in
22 negotiating any indemnification in the Valadez case?

23 A Again, when you say negotiations of retailers in the
24 Valadez case, I don't know which retailers are in the Valadez
25 case, and so I don't know when those negotiations happened.

1 Q It's almost 1 o'clock, I've got one last topic.

2 The Leavitt case, Terry Leavitt case, you're very familiar
3 with Terry Leavitt's case; correct?

4 A I believe I am. You'd have to, again, remind me of sort
5 of the details of that. I have not looked at these cases in
6 over a year.

7 Q It's a case that went to verdict and you were in Oakland
8 during that trial. Do you recall coming to Oakland?

9 A I was in Oakland for -- is this the one --

10 Q Two of them. I'm going to ask you about Leavitt and
11 Schmitz.

12 A Okay.

13 Q You were there for both of them at least part of the time;
14 correct?

15 A I believe I was at most trials, but I don't have a solid
16 recollection of which case is which.

17 Q And you know because at the time back in 2019 when those
18 cases went to verdict that you were counsel for J&J charged
19 with overseeing the talc litigation; correct?

20 A I was one of the lawyers that was overseeing the talc
21 litigation.

22 Q And you know that the Leavitt case, that there was a
23 verdict in favor of the plaintiff, and the jury allocated 78
24 percent to J&J -- the mother ship, the big J&J -- 20 percent to
25 JJCI, and two percent to Cypress. Do you recall that?

1 A I know that in various cases, I think as I testified in
2 the first hearing, there have been all these allocations, many
3 of them that don't make sense because they're different than
4 others.

5 So I don't recall specifically the Leavitt case
6 allocation, but I'll take your word that that's what the jury
7 did.

8 Q And you know that the Leavitt case was affirmed on appeal
9 and J&J sought review at the California Supreme Court, it was
10 denied, and J&J and JJCI has paid that verdict, you understand
11 that?

12 A I believe that's true, yes.

13 Q And you know that, with regard to the Schmitz case in
14 2019, Patricia Schmitz, there was a verdict in the summer of
15 2019 of approximately \$12 million and it was affirmed on appeal
16 in a published opinion and recently, as recently as a week or
17 so ago, the Supreme Court of California denied review, you know
18 that; correct?

19 A I recall that, yes.

20 Q And you know that -- and you know just yesterday LTL
21 listed its largest creditors -- and Mrs. Schmitz's estate,
22 Susan Bader was listed as one of the largest creditors;
23 correct?

24 A I believe she is on that list, yes.

25 Q And with regard to Mrs. Schmitz, you know that J&J was

1 found jointly and severally liable, along with Colgate, because
2 of intentional misconduct; true?

3 A I'd have to go back and look at the trial. I don't
4 recall, sitting here right now.

5 Q Are you aware of the implications of what that means under
6 California law with regards to J&J, the parent company's
7 responsibility with regard to the Schmitz case?

8 MS. BROWN: Objection, Your Honor.

9 THE COURT: Sustained.

10 BY MR. SATTERLY:

11 Q Do you know whether or not the process, having been senior
12 counsel involved in all the talc litigation for all those
13 years, you know what occurs next with regards to the Schmitz
14 case?

15 MS. BROWN: Same objection.

16 THE COURT: No, he can answer that.

17 THE WITNESS: Yeah, I'm not sure what you mean by
18 what -- I mean, are you talking about further appeal or --

19 BY MR. SATTERLY:

20 Q Well, there's no further appeal --

21 A -- cert denial or --

22 Q -- I mean, but do you know what happens under California
23 procedure?

24 A I'd have to advise -- get counsel's advice on that.

25 Q Okay.

1 MR. SATTERLY: Your Honor, it's 1 o'clock, I have no
2 further questions. I'm going to pass the witness formally.
3 I'm sure they're going to probably complain that I should have
4 said reserve, but in the interest of time, I'm going to pass
5 the witness.

6 THE COURT: All right. Thank you.

7 Let's come back at 1:30, folks.

8 ALL COUNSEL: Thank you, Your Honor.

9 THE COURT: The usual admonitions, don't discuss your
10 testimony with anybody.

11 THE WITNESS: Thank you, Your Honor.

12 (Recess at 1:01 p.m./Reconvened at 1:36 p.m.)

13 THE COURT: Are we good to go?

14 THE CLERK: Yes, sir.

15 THE COURT: Let's see.

16 THE CLERK: We are unmuted.

17 THE COURT: All right. Here we go.

18 All right. Thanks, everyone. Hope everyone had a
19 good lunch. Mr. Maimon.

20 MR. MAIMON: May I proceed, Your Honor.

21 Thank you, very much.

22 CROSS-EXAMINATION

23 BY MR. MAIMON:

24 Q Good afternoon, Mr. Kim.

25 A Good afternoon, Mr. Maimon.

1 Q First of all, do you recall that Mr. Satterley and I tried
2 to let a case together in Oakland that you came to watch?

3 A I do believe so. Again, I sometimes get the cases a
4 little mixed up, so.

5 Q Right. Understandable. I'd like to start talking to you
6 about the funding agreement, number one, the \$61.5 billion
7 funding agreement that was part of LTL 1, okay.

8 A Okay.

9 Q And that funding agreement was in place when the
10 restructuring took place that led to the creation of LTL,
11 correct?

12 A I think they were all done at the same time.

13 Q Understand. But it was part of that restructuring to have
14 a funding agreement that would provide LTL with the value in
15 the restructuring, right?

16 A Correct. But when you say funding agreement, again there
17 were sort of two parts to that. There was the JJCI, the New
18 JJCI agreement, and then the backup by J&J, the --

19 Q Right. But in all of the Court documents, and the Third
20 Circuit Court of appeals, talked about the funding agreement.
21 That's the one we're talking about, the \$61.5 billion funding
22 agreement. Right.

23 A I understand that, yes.

24 Q Okay. And part of what happened in the restructuring is
25 Johnson & Johnson Consumer Incorporated put its talc

1 liabilities into LTL, right?

2 A Through a series of transactions, that's eventually what
3 happened, yes.

4 Q And a lot of the assets went to another company, right?

5 A All the other assets, but except for the TA assets, went
6 to what became New JJCI.

7 Q And the talc assets went where?

8 A I'm not sure what you mean by talc assets.

9 Q The baby powder line, where did it go?

10 A The baby powder line went to -- I'm trying to place
11 whether there was actually be a better line at the time.

12 Q Well, you still --

13 THE COURT: Consumer products.

14 THE WITNESS: Consumer products.

15 BY MR. MAIMON:

16 Q Consumer products went to New JJCI, right.

17 A Consumer products went to New JJCI.

18 Q Right.

19 A But I don't know that there were baby powder products at
20 that time.

21 Q Well, the company still continued to sell Johnson's Baby
22 Powder as cornstarch, right?

23 Q Oh, the cornstarch products. Well, yes --

24 A Consumer.

25 Q -- was in the consumer group, yes.

1 A Okay. And part of the restructuring and having that \$61.5
2 billion funding agreement in place was so that nobody could
3 claim that J&J was fraudulently decreasing the value of its old
4 business by splitting off the talc liabilities to LTL, correct?

5 A I think part of it. So the JJCI agreement was to make
6 sure that the new, what would turn into LTL, had the financial
7 backing of JJCI up to that amount. The J&J, of course, backup,
8 was so that in bankruptcy, the asset -- that number could be
9 preserved in bankruptcy.

10 Q Well, that, what you just said, is not written in that
11 agreement, is it?

12 A There would be no other reason why J&J would have with
13 that obligation in it, a backup. JJCI's value is JJCI's value.
14 I think the issue is if you're not putting JJCI into bankruptcy
15 and you're only putting LTL into bankruptcy, how do you stop
16 the diminution of the JJCI assets, and so in bankruptcy, the
17 J&J guarantee comes into play so that it doesn't. So that's
18 the only reason to have the J&J guarantee.

19 MR. MAIMON: Move to strike as non-responsive. My
20 question is, that's not in the agreement itself, Your Honor.

21 THE COURT: Is it in the terms of the agreement?

22 THE WITNESS: I'm not sure. Well, I'm not sure if
23 that's laid out.

24 BY MR. MAIMON:

25 Q That's fine.

1 A I think that's the intent and maybe parts of that may be
2 in that agreement.

3 Q If you're not sure, you just tell us you're not sure,
4 okay. It's a perfectly acceptable answer. All right.

5 THE COURT: Mr. Kim, I know we've done this in the
6 past.

7 Answer yes or no, if you can. Limit your answers to
8 the questions, and we'll move on expeditiously.

9 THE WITNESS: Yes, sir.

10 BY MR. MAIMON:

11 Q Now, you testified this morning that the \$61.5 billion
12 funding agreement was LTL's largest asset when it first filed
13 in October of '21, correct?

14 A True. Yes.

15 Q Okay. And do you still have the exhibit up with you?

16 A I do.

17 Q Take a look at Exhibit 1.

18 That's the voluntary petition that was filed on
19 October 14, 2021, correct?

20 A Exhibit 1, yes.

21 Q And if you turn to Page 4 of that voluntary petition, you
22 signed that as Chief Legal Officer, correct?

23 A I did.

24 Q And you dated it and executed it on October 14, 2021,
25 true?

1 A Yes.

2 Q And you signed it under penalty of perjury, correct?

3 A I did.

4 Q And Mr. Gordon signed it as the attorney on the next page,
5 Page 5, right?

6 A He did.

7 Q Okay. So now, you just told us that on that date, the
8 funding agreement of \$61.5 billion was its largest asset. Take
9 a look on Page 4, Number 15, estimated assets.

10 A Yes.

11 Q Are you there?

12 A I do see that.

13 Q You marked the section that the estimated assets were
14 between 1 billion and \$10 billion, and you did so under penalty
15 of perjury, correct?

16 A I did.

17 Q Okay. Thank you.

18 Now, you recall that in the first bankruptcy, there was a
19 hearing in this Court on the motion to dismiss.

20 A I do recall that, yes.

21 Q And Mr. Gordon represented LTL at that hearing, correct?

22 A He did.

23 Q And he was authorized as your attorney to speak for LTL on
24 your behalf, correct?

25 A He was.

1 Q Were you present in Court when Mr. Gordon, in arguing
2 against dismissal of the first LTL bankruptcy, pointed to the
3 \$61.5 billion funding agreement and assured Judge Kaplan that
4 it applied outside of bankruptcy even if the bankruptcy was
5 dismissed? Were you present when he made that statement?

6 A I was.

7 Q Thank you. Were you present on September 19, 2022, when
8 Neal Katyal argued on behalf of the debtor at the Third Circuit
9 Court of Appeals?

10 A I was.

11 Q And were you there -- and he was retained to argue on
12 behalf of LTL, true?

13 A He was.

14 Q And he was authorized to speak on behalf of LTL, correct?

15 A He was.

16 Q And were you there when he told the panel of the Third
17 Circuit that the funding agreement applied outside of
18 bankruptcy?

19 A I was.

20 Q Okay. Now, you told us that when you read the Third
21 Circuit opinion on or about January 30, 2023, you first started
22 thinking that the funding agreement might be void or voidable.

23 Is that correct?

24 A That is. Correct, that discussion did come up.

25 Q Now, this morning there was some discussion between you

1 and Mr. Jonas about what exactly it was that you concluded.

2 MR. MAIMON: May I approach, Your Honor?

3 THE COURT: Yes.

4 MR. MAIMON: Thank you.

5 BY MR. MAIMON:

6 Q I'm handing you up your deposition in this case of
7 April 14, 2023.

8 And just for identification, we'll mark this as TCC-9.

9 MR. MAIMON: Is that our next number?

10 THE COURT: Eight.

11 MR. MAIMON: Okay.

12 MS. BROWN: Mr. Maimon, could I have a copy, please?

13 MR. MAIMON: Here you go, eight.

14 BY MR. MAIMON:

15 Q Now, if you can turn to -- you'll see this is a condensed
16 transcript and there are four to a page. Do you see that?

17 A I do see that.

18 Q Go to the page where the transcript pages are 77 through
19 80.

20 A I'm there.

21 Q Now, do you see on the bottom of the previous page,
22 Page 76, Mr. Jonas asked you, "What about the Third Circuit
23 opinion made you believe that the funding agreement was void or
24 voidable?" Do you see he was asking you about that?

25 A I think --

1 MS. BROWN: I'm sorry, Counsel. What line are you
2 on?

3 MR. MAIMON: Page 76, Line 24.

4 MS. BROWN: Thank you.

5 BY MR. MAIMON:

6 Q Do you see that?

7 A Yes.

8 Q Okay. And then I'd like to draw your attention to Page 78
9 and your answer at Lines 6 through 10. You stated under oath,
10 "I think everyone agrees --

11 MS. BROWN: Your Honor --

12 MR. MAIMON: -- that the Third Circuit decision --

13 THE COURT: Wait, Mr. Maimon.

14 MS. BROWN: I'm just going to object. This is
15 improper use of this deposition. He has not testified
16 inconsistently with his deposition. If he's looking to impeach
17 him, he knows there's a proper way to do that. I would just
18 object to reading sections of a deposition where there's been
19 no inconsistent testimony.

20 THE COURT: Mr. Maimon?

21 MR. MAIMON: Yes. May I proceed, Your Honor. I'll
22 ask a new question.

23 BY MR. MAIMON:

24 Q This morning, when Mr. Jonas --

25 THE COURT: Sustained.

1 BY MR. MAIMON:

2 Q -- was asking you --

3 THE COURT: He's asking a new question.

4 MS. BROWN: Okay.

5 MR. MAIMON: I'm sorry.

6 THE COURT: You're asking a new question?

7 MR. MAIMON: Yes.

8 THE COURT: Yes.

9 BY MR. MAIMON:

10 Q This morning, you told Mr. Jonas that you never said that
11 the Circuit decision was wrong. Didn't you say that this
12 morning?

13 A No, no, no. I said that I did not state in my prior
14 answer to Mr. Jonas that they had made a mistake.

15 Q Okay.

16 A I believe the Circuit decision is in error. We filed
17 appeals and papers with our position on that. So, I just said
18 that, or Mr. Jonas said, you said the Third Circuit made a
19 mistake. And I responded, I don't think I said they made a
20 mistake. They did what they did. I accept that. I think it's
21 in error. But I didn't say that. I didn't say -- yeah, I just
22 said -- I didn't say that it was a mistake.

23 Q You were of the opinion that the Third Circuit made a
24 mistake and that the Third Circuit was wrong, true?

25 A I believe the Third Circuit was wrong in its decision. We

1 filed papers to support that.

2 Q The Third Circuit decision is the law, and you have given
3 up all of your appeals on that, true?

4 A Yeah. And we followed the law, the Third Circuit law
5 specifically, when we entered into the new funding arrangement
6 and support agreement, so we're not flouting what the Third
7 Circuit said.

8 THE COURT: Mr. Kim.

9 THE WITNESS: I'm sorry.

10 MR. MAIMON: Move to strike everything after --

11 THE COURT: Sustained.

12 MR. MAIMON: -- "Yes, it is the law."

13 THE COURT: Sustained.

14 MR. MAIMON: Thank you.

15 BY MR. MAIMON:

16 Q In your deposition, you said that everyone agrees that the
17 Third Circuit was wrong.

18 MS. BROWN: And, Your Honor, it's the same objection.
19 I mean, the proper way to do it is ask the question, if you get
20 an inconsistent answer, then you go to the deposition. But
21 he's making representations of the deposition without the
22 predicate question, and so I just object to the way this is
23 being done as improper.

24 MR. MAIMON: I'll ask it differently if that's okay,
25 Your Honor.

1 THE COURT: All right. Thank you.

2 MS. BROWN: Thank you, Your Honor.

3 BY MR. MAIMON:

4 Q It was your opinion, Mr. Kim, as the chief legal officer
5 of LTL, that everyone agreed that the Third Circuit was wrong,
6 true?

7 A No, clearly, not the Third Circuit. But I was just trying
8 to say that the people that I consulted on this issue agreed
9 that there was an error.

10 Q And that was the Jones Day people, right?

11 A Yes.

12 Q And that was the Hogan Lovells people, right?

13 A Yes.

14 Q And the Skadden Arps people, right?

15 A Yes.

16 Q And all of you agreed that the --

17 A Well, there are others. I mean --

18 Q -- Circuit was wrong, right?

19 A I'm sure there are others, too.

20 Q You wouldn't tell us who the others were at your
21 deposition, would you?

22 MS. BROWN: Your Honor, at the deposition, we
23 instructed him to not reveal privileged communications. He
24 gave the answers of the law firms that were on the brief, which
25 is exactly what he's done today and which is consistent with

1 the privilege law.

2 THE COURT: All right. Thanks. Sustained.

3 BY MR. MAIMON:

4 Q Now, do you have Exhibit 7 up there with you? That's the
5 plan support agreement that was signed by Mr. Slater.

6 A I do.

7 Q And that was signed by Mr. Slater, if you look at Page 11,
8 on March 27, 2023, correct?

9 A I see that date is there.

10 Q But the agreement itself, the plan support agreement, is
11 dated as of March 21, 2023, correct?

12 A Well, that's what the date is on the agreement, but
13 that's -- but it was -- the date is on the agreement.

14 Q Yes, that's the date on the agreement, right?

15 A That's what it states on the first page, yes.

16 Q Okay. Now, if you turn to Exhibit 5, these are the board
17 minutes from LTL Management from five days earlier, March 16,
18 2023. Do you see that?

19 A I'm sorry. I'm sorry. I've got a bunch of exhibits up
20 here.

21 Q It's a single page.

22 A Okay. Some of these exhibits are just, they're not marked
23 with a number.

24 Q You've got the right one there.

25 MS. BROWN: You have it.

1 THE COURT: That's it.

2 BY MR. MAIMON:

3 Q Got it?

4 A Yeah, I do.

5 Q Okay. And what happened at that meeting is Mr. Prieto led
6 a discussion on contingency planning, right?

7 A Yes.

8 Q And Mr. Prieto sought approval from the board to file
9 another bankruptcy, correct?

10 A No.

11 Q Who sought approval from the board? It says, you see the
12 bullet point at the bottom of page one?

13 A I do.

14 Q It says, "Seeking approval from this board to file another
15 bankruptcy."

16 A Planning in the event we get an adverse ruling.

17 Q Right.

18 A So we were not seeking approval at this time. We were
19 raising the possibility as a contingency that we might come
20 back later to to seek approval. And if you look at the minutes
21 where we actually sought approval, you can see that. So this
22 was just a, again, contingency planning. In the event we get
23 an adverse ruling, one of the contingency plans that we were
24 looking at was whether to seek approval to the board to file
25 another bankruptcy.

1 Q Now, the second bullet point, and so it was contemplated
2 on March 16, 2023. The second bullet point is amending the
3 funding agreement, right? Or entering into new agreements,
4 right?

5 A Correct. That's what it says.

6 Q Okay. So that we know that as of March 16th, LTL and
7 their board were discussing amending the funding agreement or
8 entering into new agreements, true?

9 A I would say we were discussing the possibility of doing
10 that. These are all contingency plans. These are not plans
11 that we have agreed to do or wanted or decided to do. These
12 are contingency plans. We're looking at all contingencies
13 trying to determine and giving the board a view of things that
14 could happen.

15 Q Are you done with your answer?

16 A Yes.

17 Q Turn back to the plan support agreement, Exhibit 7.

18 A Okay.

19 Q If you take a look at the bottom, the last paragraph
20 there, it has in bold letters, the word "term sheet." Do you
21 see that?

22 A I'm sorry, where?

23 Q First page, bottom paragraph?

24 A Yes. I do see that.

25 Q And it says, "A copy of the term sheet is attached to this

1 agreement as Exhibit B," right?

2 A Correct.

3 Q So we know, whatever else, is that as of March 21, 2023,
4 the date of this, it says that a term sheet is attached to this
5 agreement as Exhibit B, correct?

6 A That's what it says, yes.

7 Q Okay. Let's take a look at the term sheet, which was
8 Exhibit 4.

9 And if you take a look, the first page has a section
10 called "agreement." Do you see that?

11 A Yes.

12 Q And it lists certain qualifications that the payment terms
13 are contingent on. Do you see that?

14 A I see that, yes.

15 Q Okay. And then it lists 1, 2, and I'd like to go on to
16 Page 2, the third contingency item. Do you see that?

17 A I see that.

18 Q Within the term sheet that was attached to the PSA dated
19 March 21, 2023, one contingency was, "The futures claims
20 representative agreement that she will not assign more than one
21 third of the trust corpus to qualifying future claims." That's
22 what it says.

23 A I do see that.

24 Q And that was a contingency that was put into the term
25 sheet that Mr. Murdica drafted on your behalf, true?

1 A Yes, as a contingency.

2 Q Okay. Now, let's take a look at Page 5.

3 Ms. Ellis, who was referred to as the FCR and it had to be
4 that she couldn't commit more than one third of the corpus of
5 the trust to future claims, is discussed on Page 5,
6 Section B(1) as a claims administrator of the talc trust. Do
7 you see that?

8 A I'm sorry. Could you read back that question?

9 Q Sure.

10 Page 2 refers to the future's claims representative,
11 right?

12 A It does.

13 Q At that time, LTL 1 was -- LTL was still in bankruptcy,
14 right?

15 A Well, at the time that this was being discussed, yes, we
16 were (indiscernible) --

17 Q At the time that this was finalized and signed by
18 Mr. Slater on March 27, 2023, LTL was still in bankruptcy,
19 right?

20 A It's not finalized. It is not finalized. It is not
21 effective until after the bankruptcy was dismissed. That was
22 one of the contingents -- that was one of the conditions we had
23 when we -- we wouldn't sign it until the bankruptcy was
24 dismissed.

25 Q Go back to Page 2. Let's make sure we're on the same

1 wavelength. The future's claims representative agreement that
2 she -- Do you see that?

3 A Yeah, it's not an agreement by the future claims
4 representative. This is a contingency.

5 Q Sir, if you could listen to my questions.

6 MS. BROWN: Judge, could he just be allowed to
7 answer, please?

8 MR. MAIMON: But he's not listening to my question.

9 THE WITNESS: But he said the agreement.

10 THE COURT: Mr. Kim, I think he's asking you just to
11 read the agreement.

12 THE WITNESS: Okay.

13 THE COURT: All right.

14 MR. MAIMON: The term sheet.

15 THE COURT: So just read the terms.

16 BY MR. MAIMON:

17 Q Number 3, "The future claims representatives agreement
18 that she will not assign more than one third of the trust
19 corpus to qualifying future claims." Did I read that
20 correctly?

21 A Yes.

22 Q It refers to the future claims representative as she,
23 correct?

24 A It does.

25 Q Because at that point, the only future claims

1 representative was Randi Ellis, right?

2 A Yes.

3 Q And J&J has immediately, upon filing -- or, I'm sorry,
4 withdrawn.

5 LTL, immediately upon filing this bankruptcy, moved for
6 Ms. Ellis to be reappointed as FCR in this bankruptcy, correct?

7 A We did.

8 Q Okay. Now, so we know what that contingency was on
9 Page 2. Let's go now to Page 5. This refers to Ms. Ellis by
10 name here, right?

11 A It does.

12 Q And it refers to, even if it's a placeholder, first of
13 all, you didn't draft this agreement, did you?

14 A I did not draft it, no.

15 Q Okay. It says, "Randi Ellis shall serve as claims
16 administrator of the talc trust for purposes of qualifying
17 claimants and allocating proceeds to be distributed among all
18 existing and future qualifying claimants."

19 Do you see that?

20 A I do see that.

21 Q And so this is talking about somebody whose role it would
22 be to say how much each contingent of the claimant pool was
23 going to get, right?

24 A I'm not sure what the exact duties would be of the claims
25 administrator.

1 Q Well, that's what it describes, "allocating proceeds to be
2 distributed amongst all existing and future qualifying
3 claimants." That's the role that it says, right?

4 A It is.

5 Q Okay.

6 A But allocate, I'm just quibbling with the word allocating
7 proceeds. I'm not -- my understanding is that a claims
8 administrator just takes proceeds, takes the chart, and
9 determines where you fall, and then sends the money to where
10 it's supposed to be sent.

11 Q Here it says, the purposes for the claims administrator of
12 the talc trust are, quote "qualifying claimants and allocating
13 proceeds to be distributed amongst all existing and future
14 qualifying claimants." That's what it says, right?

15 MS. BROWN: And, Your Honor, I would just object to
16 the way that's being read. I think it misstates how it's
17 worded, and I think it speaks for -- the sentence speaks for
18 itself.

19 MR. MAIMON: I can't ask a question unless we read
20 it, Your Honor.

21 THE COURT: All right. I've read this paragraph.
22 Ask the question.

23 MR. MAIMON: Yes.

24 BY MR. MAIMON:

25 Q How was it that J&J thought that somebody could ethically

1 be a FCR commit to less than one third of the proceeds going to
2 future representatives and yet be a claims administrator whose
3 duties it was to allocate proceeds to be distributed among all
4 existing and future qualifying claimants?

5 MS. BROWN: I object, Your Honor. Lacks Foundation.
6 Calls for speculation.

7 THE COURT: Sustained.

8 BY MR. MAIMON:

9 Q Now, when LTL made the motion to have Ms. Ellis appointed
10 as FCR in this case, it did not disclose to the Court that it
11 also put her as a placeholder prospective claims administrator
12 whose responsibilities would be to allocate proceeds to be
13 distributed amongst all existing and future claimants, did it?

14 MS. BROWN: I object, Your Honor. That misstates the
15 testimony. It's also a duplicative questioning of what we had
16 before on this issue. I'd object to that as well.

17 THE COURT: Overruled.

18 THE WITNESS: No. Because, again, as a placeholder,
19 it did not mean that she was the claims administrator.

20 MR. MAIMON: move to strike everything after no, Your
21 Honor.

22 THE COURT: Overruled.

23 BY MR. MAIMON:

24 Q When LTL moved to have Ms. Ellis appointed futures claims
25 representative in this case, it did not disclose to the Court

1 that part of the agreement that it made with various law firms
2 was that J&J's payment was contingent on that FCR agreeing not
3 to assign more than a third of the trust corpus to qualifying
4 future claims. You didn't disclose that, did you?

5 A No.

6 MS. BROWN: Objection, Your Honor. Misstates the
7 evidence.

8 THE COURT: Sustained. The question is confusing.
9 I'm aware of what they disclosed. Remember, I'm the trier of
10 fact. I know the docket. Let's move forward so we can get
11 this moving forward.

12 MR. MAIMON: Thank you.

13 BY MR. MAIMON:

14 Q Take a look at Exhibit 6. This is the presentation to the
15 board of LTL on March 28, 2023. Do you have that?

16 A I do.

17 Q And this was a presentation that Mr. Prieto made, correct?

18 A Parts of it, yes.

19 Q Okay. And parts of this discuss terms that are straight
20 out of the term sheet. For instance, Page 5, the payments.
21 That's exactly what's provided for in the term sheet, right?

22 A It may be, yes, those same terms. Yes.

23 Q And already on March 28th, we saw Mr. Slater, if you look
24 on Page 4, there's a report here that law firms representing
25 thousands of claimants have signed or are expected to sign the

1 plan support agreements, right?

2 A I believe that's true, yes.

3 Q And there were signed PSAs by this time, right?

4 A We believe -- I think there were, yes.

5 Q Okay. So now we know from Exhibit 5, which were the board
6 meeting minutes of March 16th, that one of the bullet points
7 was gauging whether the future's claims representative would
8 support a further bankruptcy and the contours of a plan, right?
9 That was discussed on March 16, right?

10 A That was one of the items discussed, yes.

11 Q If we take a look at Page 7 of the PowerPoint
12 presentation, this now reports 12 days later that separate
13 discussions have occurred with the FCR, right?

14 A Yes.

15 Q You did not have those discussions with her, did you?

16 A I did not.

17 Q Who did?

18 A I'm actually not sure who was actually having discussions
19 with the FCR. I can guess.

20 Q Okay.

21 MR. MAIMON: We don't want you to guess.

22 THE COURT: Don't guess.

23 BY MR. MAIMON:

24 Q We don't want you to guess. But as the chief legal
25 officer, you didn't know who was having discussions on behalf

1 of the LTL with Ms. Ellis?

2 A I guess I had an assumption.

3 Q I don't want your assumption. You don't know. You can't
4 tell us, right?

5 A Again, I have an assumption of who it was. I don't know
6 that I actually know. I wasn't part of those discussions.

7 Q I'm not looking for your assumptions. I'm not looking for
8 guesses, sir.

9 A Okay.

10 Q Either tell us you know or you don't know. Either one is
11 fine.

12 A I have a strong assumption. I won't get into it.

13 Q There's also a report here for -- well, first of all, you
14 didn't give this information, which is on Page 7, right,
15 because you didn't speak with Ms. Ellis, right?

16 A That's correct.

17 Q Okay. There's also a statement here that the FCR is
18 supportive of a second LTL Chapter 11 case, right?

19 A Yes, I see that.

20 Q Now, at that time, the FCR, Ms. Ellis, was the FCR in
21 LTL 1, right?

22 A She was.

23 Q Okay. It also says here, the FCR has agreed to sign and
24 submit a declaration in support of a new Chapter 11 case,
25 right?

1 A Yeah. That's the filing of the case, yes.

2 Q Well, let's just read what it actually says. "FCR has
3 agreed to sign and submit a declaration in support of a new
4 Chapter 11 case." Those are the words, right?

5 A That's exactly right. The filing of a new Chapter 11
6 case.

7 Q Well, it doesn't say "filing." It says what it says. Can
8 we agree on that?

9 A Sure. Yes, we can.

10 Q Okay. And this is phrased in the past tense, that she
11 already has agreed, right?

12 A Which, yeah, did not turn out to be true.

13 Q And then -- well, this is what was reported to the board,
14 right?

15 A Correct.

16 Q Okay.

17 A And it was later reported that it was not happening.

18 Q And then, later it was reported that she was unwilling to
19 sign a declaration, right?

20 A That she chose not to, yeah, sign a declaration.

21 Q In addition to a declaration, there's a discussion here
22 about discussions are ongoing to obtain a plan support
23 agreement from the FCR, correct?

24 A Yes. Yes, I see that.

25 Q And the FCR, Ms. Ellis, chose not to execute that as well,

1 correct?

2 A Correct. Any plan support agreement? She did not
3 choose -- she did not submit any plan support agreement.

4 Q It has the words "Plan Support Agreement." The first
5 letter of each word is in capitals, correct?

6 A It is.

7 Q Okay. Thank you.

8 And the only -- withdrawn.

9 Now, the same day that that meeting took place of the
10 board of LTL Management, we saw that LTL Management filed its
11 monthly operating report for the period ending February 28,
12 2023. That's Exhibit 3, correct?

13 A Yeah, I'm not -- I can check the dates. I take your word
14 for it.

15 Q That's Exhibit 3. Please take it up. I just want to make
16 sure that we have accurate testimony.

17 A I do see that.

18 Q Okay. And that was one week before the dismissal of the
19 first bankruptcy and the filing of the second, right?
20 Remember, February only has 28 days this year.

21 A I believe that's correct, yes.

22 Q Okay. Now, during this time period and these discussions
23 and these board meetings that you were having, I think you told
24 Mr. Jonas that there was a discussion about terminating the old
25 funding agreement and having a new one in place, right?

1 A That's correct.

2 Q And that was a central part to the second bankruptcy,
3 right?

4 A That was --

5 Q The new funding agreement?

6 A That is part of the second bankruptcy, yes.

7 Q And nobody suggested, among anyone that you spoke to,
8 either at LTL or J&J, to keep the old funding agreement in
9 place and on top of that, to make sure that you had belts and
10 suspenders to have a new one with an \$8.9 billion funding
11 agreement, correct?

12 A That was never suggested or never discussed.

13 Q I'm not surprised. LTL did not -- withdrawn.

14 You spoke to Mr. Satterley a little bit about your
15 knowledge of the ethical rules, right?

16 A Yes.

17 Q And you also recognize that here in New Jersey, it's not
18 only a violation to violate the ethics rules yourself, but it's
19 also a violation to urge or ask another lawyer to do so? You
20 realize that, right?

21 MS. BROWN: Objection.

22 THE COURT: Sustained. This line of questioning is
23 not relevant.

24 MS. BROWN: Thank you, Your Honor.

25 BY MR. MAIMON:

1 Q In addition to ethical obligations, you realize that as
2 the debtor-in-possession, you had fiduciary duties to
3 creditors, correct?

4 A I believe there are duties to creditors by a debtor-in-
5 possession, yes.

6 Q And those duties to the creditors of LTL 1 continued up
7 until the minute that the case was dismissed, true?

8 A I believe that's true.

9 Q Okay. As the fiduciary, you did not disclose to the TCC
10 your plans to either terminate the old funding agreement and
11 file another bankruptcy.

12 MS. BROWN: And Your Honor, I would just --

13 MR. MAIMON: True?

14 MS. BROWN: -- object as this very same question was
15 asked by Mr. Jonas this morning. It's duplicative, cumulative,
16 harassing.

17 THE COURT: We know the answer. Sustained.

18 BY MR. MAIMON:

19 Q In addition to not informing either the TCC who
20 represented at that time the creditors to whom you owed a
21 fiduciary duty, and not reporting it to Judge Kaplan, you did
22 not report it to the United States Trustee's Office, either,
23 did you?

24 MS. BROWN: Same objection, Your Honor.

25 THE COURT: Well, he did answer that before, but --

1 MR. MAIMON: I didn't hear an answer before.

2 THE WITNESS: Yeah, we did not report this to the
3 Trustee. The transaction happened after the dismissal of the
4 first bankruptcy.

5 BY MR. MAIMON:

6 Q I understand that's when you made it effective, but the
7 plan was in place before the bankruptcy of LTL 1 was dismissed,
8 true?

9 A Well, there were discussions about it going into
10 effectiveness at the time that the bankruptcy gets dismissed.

11 Q The decision and authorization of the Board to file a new
12 bankruptcy occurred before the first bankruptcy was dismissed,
13 true?

14 A The board meeting happened, yes, before -- the
15 authorizations happened before the bankruptcy was dismissed to
16 be effective once the bankruptcy was dismissed.

17 Q Okay. So the decision by LTL to terminate the old funding
18 agreement and file a new bankruptcy was made by the management
19 of LTL while it had fiduciary duties in the first bankruptcy,
20 correct?

21 A It's correct that the board decided that they were going
22 to replace a funding agreement that was void or voidable or
23 unenforceable with a better funding arrangement that also had
24 the support agreement to dismiss -- to resolve fairly, fully,
25 and equitably all the talc claims in the second bankruptcy that

1 had the support of lawyers representing over 60,000 claimants.

2 MR. MAIMON: Move to strike as non-responsive.

3 THE COURT: Granted.

4 MR. MAIMON: Thank you.

5 THE COURT: This is why I couldn't allocate 50
6 percent of the time to 50 percent of the time. I wouldn't know
7 who to charge this to.

8 MR. MAIMON: Thank you.

9 THE COURT: Limit your answers, please, yes or no.

10 BY MR. MAIMON:

11 Q Did you play any role in J&J's filing of it's 8K statement
12 in which it asserted that LTL had secured commitments from over
13 60,000 current claimants to support a global resolution on
14 these terms?

15 MS. BROWN: Object, Your Honor.

16 MR. MAIMON: Did you play any role?

17 THE COURT: Objection sustained.

18 BY MR. MAIMON:

19 Q Did you -- withdrawn.

20 Did you play any role in putting onto LTL's website the
21 statement that LTL's organization plan announced in April 2023
22 is supported by 60,000 current claimants? Did you have any
23 role in putting that on LTL's Website?

24 A I believe I saw the statements before they were posted.

25 Q And did you approve them?

1 A Yeah, I did approve them.

2 Q Thank you.

3 MR. MAIMON: Those are all the questions I have here,
4 Your Honor.

5 THE COURT: Thank you, Counsel.

6 Well, Mr. Placitella, we'll let Ms. Richenderfer -- I
7 think we did that the last time.

8 UNIDENTIFIED SPEAKER: Okay.

9 THE COURT: Ms. Richenderfer.

10 MS. RICHENDERFER: Thank you, Your Honor. Good
11 afternoon. Linda Richenderfer on behalf of the Office of the
12 United States Trustee.

13 CROSS-EXAMINATION

14 BY MS. RICHENDERFER:

15 Q Mr. Kim, I think we've spent some time together over the
16 last several years.

17 A We have.

18 Q Question for you. When did LTL retain Mr. Murdica to
19 represent it?

20 A Mr. Murdica is not retained by LTL. Mr. Murdica is
21 retained by Johnson and Johnson.

22 Q Yeah. I believe you've testified today that Mr. Murdica
23 was negotiating the PSAs on behalf of LTL, correct?

24 A Oh, I would say for the benefit of LTL or with, you know,
25 with, frankly, we had also counsel for LTL involved discussing

1 with Mr. Murdica. Mr. Murdica is J&J's counsel and he was
2 doing this, and it benefitted LTL.

3 Q And I think several times, you referred to Mr. Murdica as
4 LTL's counsel?

5 A If I did, that was a mistake. I apologize.

6 Q Okay.

7 A He's J&J's counsel.

8 Q Okay.

9 A So we can set the record clear on that.

10 Q So then who, on behalf of LTL, was involved in negotiating
11 the plan support agreements?

12 A So, you know, when you say negotiating, so Mr. Murdica was
13 charged with doing the actual face-to-face negotiations.

14 Q Right.

15 A He was reporting continually to attorneys of Jones Day and
16 to myself and getting input. So he was the face of the
17 negotiations on behalf of J&J, but he was taking, getting
18 comments, and reporting things to LTL because, of course,
19 there's a sort of common interest in resolving all these
20 litigations.

21 Q Who was the face during the negotiations for LTL? You
22 said Mr. Murdica was the face for J&J. Who was the face,
23 during the negotiation of the PSAs --

24 A Yeah, I --

25 Q Yeah, I would say it's faceless because, again, we weren't

1 having direct negotiations -- people at LTL were not having
2 direct negotiations with the plaintiffs. We were, again, in
3 constant contact with Mr. Murdica being apprised of what he was
4 doing, giving comments and things like that.

5 Q Directing Mr. Murdica?

6 A Directing? I think I would say that we were having
7 consultations with Mr. Murdica.

8 Q The transaction by which J&J Consumer Incorporated or New
9 JJCI, as we referred to them in the first case, the transaction
10 by which it became HoldCo and basically transferred a great
11 number of its assets occurred in early January 2023, correct?

12 MS. BROWN: Objection, Your Honor, to the question.
13 Assumes facts.

14 MS. RICHENDERFER: I'm sorry, Your Honor. I didn't
15 hear that.

16 MS. BROWN: I object to the question, Your Honor. It
17 was lacking foundation, assuming facts.

18 MS. RICHENDERFER: Okay. Mr. --

19 THE COURT: Rephrase it, please.

20 MS. RICHENDERFER: Well, Your Honor, I am looking at
21 Mr. Kim's first day declaration. I don't know if he has it
22 there. I forget if we ever eventually marked it as an exhibit.

23 THE WITNESS: I don't know if I do.

24 THE COURT: I don't know we have it.

25 THE WITNESS: Yeah, I don't have it.

1 MS. RICHENDERFER: Okay.

2 UNIDENTIFIED SPEAKER: You want it?

3 MS. RICHENDERFER: I have it here, but if you have an
4 extra copy to give the witness so that we can see exactly what
5 the witness has already confirmed under -- I'll go on to
6 another question while they look for that for me.

7 UNIDENTIFIED SPEAKER: I think we have it right here.
8 Here you go, Linda.

9 MS. RICHENDERFER: Your Honor, may I approach?

10 THE COURT: Yes.

11 MS. RICHENDERFER: I apologize. This has many more
12 pages (indiscernible) but --

13 THE COURT: That's all right. Thank you.

14 Thank you.

15 And actually, I believe we had this marked as
16 Debtor's 1.

17 MS. BROWN: Yes, Your Honor. I actually have a copy
18 right here.

19 MS. RICHENDERFER: Okay.

20 BY MS. RICHENDERFER:

21 Q Then, I will refer you to what's been marked as
22 Debtor's 1, but you can look at the one that's in front of you,
23 because I don't think the debtor gave you a copy. I'm not
24 sure. Or it's lost in the -- can you turn to Paragraph 26?

25 A Yes. I see that.

1 Q Okay. And my question was based on the last sentence in
2 Paragraph 26, "In December 2022, New JJCI changed its name" --

3 A I apologize. I'm sorry. Paragraph 26?

4 Q Paragraph 26. It's on Page 8 --

5 THE COURT: On Page 8.

6 BY MS. RICHENDERFER:

7 Q -- of your first day declaration that you signed.

8 A Yes.

9 Q Okay. Last sentence there. "December 2022, New JJCI
10 changed its name to Johnson and Johnson HoldCo NA, Inc., a New
11 Jersey corporation, which has been referred to today as HoldCo.
12 And in early January, 2023, HoldCo transferred its consumer
13 business assets to its parent entity."

14 A Yes, I see that.

15 Q So let me ask the question again. Prior to the Third
16 Circuit issuing its opinion at the end of January, New JJCI
17 became HoldCo and HoldCo, in early January, transferred its
18 consumer business assets to its parent.

19 A That's true.

20 Q And who is its parent?

21 A I actually don't have a corporate chart in front of me. I
22 don't know sitting here right now, but we can get that
23 information.

24 Q I believe if you look at your first day declaration, it is
25 Annex B, Page 2 of 2.

1 If you're looking, I don't know whether you have a -- yes,
2 you do have the copy that was filed on the docket, so it is
3 Page -- it's Document 4-2, Page 2 of 2, if that helps;

4 A I appreciate that.

5 Yeah, it's either Janssen Pharmaceuticals or, I believe it
6 is Janssen Pharmaceuticals. I think that line may be, yeah, I
7 think it's -- I think it looks from this chart to be Janssen
8 Pharmaceuticals, Inc.

9 Q Okay. So based on your affirmed testimony as part of your
10 first day declaration, prior to even the Third Circuit's
11 opinion being issued, HoldCo transferred its consumer business
12 to Janssen Pharmaceuticals, Inc., which appears to be the
13 parent based on the yes chart that you gave as part of your --

14 A Yes. Unrelated to the Third Circuit decision, this
15 transaction happened.

16 Q And was that ever disclosed to the Tort Claimant's
17 Committee?

18 A No, nor do I understand why it would have to be disclosed.

19 MS. RICHENDERFER: Your Honor, please, I'd like to
20 strike everything after, "No."

21 THE COURT: Just, again --

22 MS. RICHENDERFER: I know, Your Honor.

23 THE COURT: I'm the jury, so I understand it.

24 MS. RICHENDERFER: Okay.

25 THE COURT: Please limit your answers to yes or no.

1 BY MS. RICHENDERFER:

2 Q And did -- I'm going to call it LTL 1, meaning LTL, the
3 debtor that existed prior to 1:49 p.m. on April 4th. Did LTL 1
4 have any funding or support agreements with Janssen
5 Pharmaceuticals?

6 A I don't believe it did, no.

7 Q Okay. So in the original funding agreement that we've
8 been calling funding agreement one included support from JJCI,
9 New JJCI. And that was supported by its consumer business,
10 which prior to the dismissal of the case was transferred to
11 Janssen Pharmaceuticals, correct?

12 A I don't understand that question.

13 Q I think it's a pretty simple question, Mr. Kim, based on
14 your years of experience. You've got far more --

15 THE COURT: Sustained. Rephrase the question,
16 please.

17 BY MS. RICHENDERFER:

18 Q What was left in HoldCo after this transfer occurred prior
19 to the dismissal of LTL 1?

20 A The non-consumer assets. And, again, it did have the
21 support agreement. You know, the funding agreement also
22 included J&J, so, it had the co-obligation of J&J. So prior to
23 the Third Circuit decision, it had, you know, the resource of
24 the funding agreement. It had the funding agreement also with
25 J&J to support LTL.

1 Q Okay. So prior to the dismissal, HoldCo transfers its
2 consumer business assets to Janssen, but your point, if I
3 understand you, is that LTL 1 still had the funding support
4 agreement that included J&J and now, HoldCo. Is that correct?

5 A Well, HoldCo is JJCI and --

6 Q Well --

7 A -- all it did was change its name.

8 Q I'm using the terminology that's in your affidavit here so
9 that we can all be on the same terminology. Okay.

10 A I understand. I just wanted to clarify that HoldCo is the
11 same as JJCI, it just changed its name.

12 Q Right.

13 A So it --

14 Q But it changed its name and gave away its consumer
15 business, right?

16 A Unrelated to anything, it gave away its consumer business,
17 but still had, at that time, prior to the Third Circuit
18 decision, it still had the agreement, the backup of J&J.

19 Q That's right. But it did give away its consumer business,
20 correct?

21 A It did.

22 Q Okay. When you were talking previously about the FCR and
23 you were asked about the PSA, you said, oh, well, there would
24 be a different PSA with the FCR, not the PSA that we signed
25 with the plaintiff's attorneys.

1 Have you ever seen a draft PSA that the FCR would have
2 signed?

3 A I don't think I saw a draft, no.

4 Q To your knowledge, was one ever drafted.

5 A I'm actually not sure. There may have been. I haven't
6 seen it.

7 MS. RICHENDERFER: Your Honor, if I could just have a
8 minute. There was something right there on the tip of my
9 tongue and it --

10 BY MS. RICHENDERFER:

11 Q I know that the term sheet was marked previously as an
12 exhibit. I believe it's Exhibit 4, if you want to find that
13 there.

14 A Yes.

15 Q How many pages is the term sheet?

16 I know there's an annex to it, so maybe you can give us
17 the number count for the pages of the agreement and of the term
18 sheet, and then the pages for the annex.

19 A So there are eight pages to the term sheet and there are
20 five pages to the annex.

21 Q Okay. Do you know how many pages the 10th amended Imerys
22 plan of reorganization was?

23 A No.

24 MS. BROWN: Objection, Your Honor.

25 THE COURT: Sustained.

1 MS. RICHENDERFER: Well, Your Honor, if I could just
2 respond. We're talking about something that is far removed
3 from --

4 THE COURT: You can argue it --

5 MS. RICHENDERFER: Okay.

6 THE COURT: -- when the time comes.

7 MS. RICHENDERFER: We'll do so, Your Honor.

8 No further questions.

9 THE COURT: Thank you, Ms. Richenderfer.

10 Mr. Placitella.

11 MR. PLACITELLA: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. PLACITELLA:

14 Q So the good news, Mr. Kim, is the U.S. Trustee took a lot
15 of my questions.

16 So I want to follow up on the line of questions that you
17 were being asked. And late last night -- I want to try to
18 share something.

19 MS. BROWN: Mr. Placitella, if it's a document, do
20 you have a copy?

21 MR. PLACITELLA: I got it from you, so.

22 THE COURT: Well, let's see what it is.

23 MR. PLACITELLA: Sure.

24 MS. BROWN: Thank you.

25 MR. PLACITELLA: Okay.

1 Is that showing up?

2 THE COURT: Yes.

3 MR. PLACITELLA: Okay.

4 BY MR. PLACITELLA:

5 Q So last night when I was on the train --

6 MS. BROWN: I'm sorry I understand that's been filed
7 on the docket. I'm just wondering if you have a hard copy of
8 what you're about to use.

9 MR. PLACITELLA: No, I don't. I got it on the train
10 last night. You sent it to me and I barely had time to read it
11 before I came here today, so no, I don't have a hard copy.

12 MS. BROWN: Judge, I don't think that's necessary.
13 If we're going to use exhibits, I'm just inquiring if there's
14 one for me to look at.

15 MR. PLACITELLA: Well, they filed it, Your Honor.

16 THE COURT: True. But we don't have access to the
17 document here.

18 MR. PLACITELLA: I'm just going to ask questions.

19 THE COURT: Why don't we see where the questions go?

20 MS. BROWN: Okay.

21 THE COURT: All right. And if you have a need, we'll
22 arrange --

23 MR. PLACITELLA: There's no trick questions.

24 THE COURT: -- to pull it up.

25 MR. PLACITELLA: Okay.

1 MS. BROWN: Thanks, Judge.

2 BY MR. PLACITELLA:

3 Q Last night, you filed this document with the Court,
4 correct?

5 A I believe that's true, yes.

6 Q And the title of the document is "Notice of Filing
7 Supplemental Appendices." Do you see that?

8 A That's true, yes.

9 Q Okay. And what was the reason you filed that?

10 A I think over the weekend, we discovered that you had filed
11 a complaint against several entities unrelated to talc but for
12 a talc claim. And what we had done prior to filing our list of
13 protected parties is we had put together, at the request of
14 every -- I think -- I keep saying everybody.

15 We understand that the first list we had of protected
16 party was large. And the reason we did that was because we
17 didn't want any of our subsidiaries unrelated to the talc
18 litigation to get sued in various courts. We found out over
19 the weekend that you had filed a lawsuit against parties that,
20 A, have no relationship to talc --

21 Q We're going to get there.

22 A Okay.

23 Q Okay.

24 A But, again, because we had, in the first instance, to try
25 to streamline the injunction here, limited the protected

1 parties to people who actually have claims against them, when
2 you filed a lawsuit involving defendants that have nothing to
3 do with talc, or, you know, that have never been sued before,
4 we wanted to make sure that any injunction that issued would
5 then cover them. So I think we explained early on that our
6 list of protected parties was going to be limited with the
7 reservation of rights and if people started suing them that we
8 can put them into the list of protected parties.

9 And so that's what this is. This is a notice that we want
10 to expand the list because you had filed a lawsuit against
11 them.

12 Q Okay. Let's talk about that for a second.

13 A Okay.

14 Q So I got this last night and it talks about Appendix A.
15 And Appendix A are all the people who you said filed new
16 lawsuits against you, right?

17 A This is -- yeah. That was also part of the filing was we
18 had a number of other lawsuits filed --

19 Q Okay.

20 A -- that we wanted to put in the record.

21 Q And Appendix A, that's where you listed them. That's what
22 I have up here, right?

23 A Yes.

24 Q All right. You didn't list an Appendix A, the lawsuit I
25 filed against you, which was last week, not over the weekend,

1 right?

2 A I think we just found out about it last week.

3 Q You didn't list it though, did you?

4 A I think we listed the parties.

5 Q I don't think so.

6 A (Indiscernible) have the parties)?

7 Q Do you want me to flip through them?

8 A Yeah, I'd have to review the list to see what --

9 Q Okay. So I'm going to give you my copy because it was
10 late, so ignore my handwriting.

11 A It's okay.

12 Q This is the lawsuit filed by Justin Bergeron, a 32-year
13 old man with mesothelioma with two minor children. Did you
14 know that?

15 A No. I think I looked at the complaint.

16 Q Okay. And Mr. Bergeron sued Janssen and Kenvue as
17 successors-in-interest under New Jersey law for the torts of
18 JJCI, correct?

19 A I think the complaint speaks for itself. I didn't study
20 the complaint in detail. My understanding it's a talc claim
21 against Kenvue and Janssen.

22 Q Well, in Mr. Bergeron's complaint I put up on the screen,
23 that complaint -- you know, the facts in that complaint come
24 primarily from the affidavit you filed in this Court, right?
25 You read that part, correct?

1 A I saw references to that. Again, I didn't read the
2 complaint thoroughly. I just looked at -- I was apprised of
3 the lawsuit, who the defendants were, and we wanted to make
4 sure that we covered them as protected parties.

5 Q Well, as you see on Page 4, on Paragraph 14, it talks
6 about the information in the complaint coming directly from
7 your affidavit. Do you see that?

8 Here, I'll blow it up in case you don't see it. Do you
9 see that?

10 A Fourteen, I see.

11 I do see that.

12 Q Okay. And one of the things that was talked about -- oh,
13 by the way, the U.S. Trustee did a lot of this so we can dial
14 it forward. But give me a second.

15 It's written on Paragraph 26, "Unbeknownst to the
16 plaintiffs, during the time the Third Circuit Court of Appeals
17 was considering the propriety of LTL'S bankruptcy filing, New
18 JJCI," that was who you were working for, right, before you
19 changed the name?

20 A I was working for LTL.

21 Q Oh, okay. I'm sorry.

22 "New JJCI began the process of moving its assets and
23 businesses to yet another J&J subsidiary," correct?

24 A That's what you say.

25 Q Right. What you did is you took the assets, you then

1 transferred them to the parent, which was Janssen, with the
2 notion that you were going to put it in still another
3 subsidiary called Kenvue, right?

4 MS. BROWN: Objection, Your Honor.

5 THE COURT: What's the basis?

6 MS. BROWN: It assumes facts. There's no factual
7 support for these allegations.

8 MR. PLACITELLA: I'm going to go right through it,
9 Judge.

10 MS. BROWN: And this is a complaint that he's filed
11 and it is inconsistent with the facts.

12 MR. PLACITELLA: The complaint quotes from your
13 affidavit, sir. So let's just talk to it.

14 THE COURT: Well, are you just reciting the
15 complaint? Or --

16 MR. PLACITELLA: I'm asking if my complaint correctly
17 cites his affidavit and what he believes to be true.

18 THE COURT: And what's the purpose?

19 MR. PLACITELLA: The purpose is to demonstrate here
20 that Johnson and Johnson, while the Third Circuit's decision
21 was pending, was moving assets out of Old JJCI -- out of New
22 JJCI into Janssen with the intention of then moving those
23 assets again to Kenvue. And they brought to this Court trying
24 to extend the TRO to those transfers.

25 And my client, Justin Bergeron, under New Jersey law,

1 has every right to proceed against Janssen and Kenvue in the
2 chain of distribution of those assets. It wasn't me that
3 brought this to the Court, Your Honor. They brought it to the
4 Court late last night.

5 They didn't tell the Court that the reason they were
6 doing it was because Mr. Bergeron had sued them. They just
7 said, can't we just add these on, Judge? No big deal. And it
8 is a big deal.

9 THE COURT: All right. It's more of an argument,
10 which is fine. What specific questions --

11 MR. PLACITELLA: Well, can I go through the facts,
12 please?

13 THE COURT: Okay. I'm trying to make sure that
14 everybody can have an opportunity to go forward.

15 MR. PLACITELLA: Okay.

16 BY MR. PLACITELLA:

17 Q Sir, do you --

18 MS. BROWN: I'm sorry, Your Honor, and just as to the
19 objection that we're reading unsubstantiated allegations in a
20 complaint into the record, I object to that.

21 THE COURT: Why don't you ask Mr. Kim if he has
22 knowledge of this transaction?

23 BY MR. PLACITELLA:

24 Q Sir, you just told the U.S. Trustee that you transferred
25 the assets of New JJCI to the parent Janssen, correct?

1 A No. I said that that part of the transaction is what I
2 know. What's in the affidavit is what I know. I was not
3 involved in this transaction. This is not an LTL transaction.

4 You know, again, what I know is what I used to determine
5 the value of HoldCo, which is what assets it contains.

6 Q Well, sir, you said in Paragraph 26 of your affidavit, in
7 early 2023, New JJCI transferred its consumer business assets
8 to its parent entity. That's what you said.

9 A Yes. That is the part of the transaction that I know. I
10 was not involved in that transaction. The reason I know it is
11 because I wanted to know what the value of HoldCo was at this
12 time. But I was not involved in that transaction. That's a
13 J&J transaction, or a Janssen transaction, and I'm at LTL. I
14 had nothing to do with that transaction.

15 MR. PLACITELLA: Move to strike, Your Honor. All I
16 asked him is if that was what was in his affidavit.

17 THE COURT: Well, his answer, it was in the
18 affidavit.

19 MR. PLACITELLA: Okay.

20 BY MR. PLACITELLA:

21 Q Okay. It was in your affidavit and you said to its parent
22 entity, correct?

23 A Yes. That's what I understood it to have transferred it
24 to.

25 Q How come you didn't name the parent entity? Why did

1 people have to figure it out?

2 A As you can tell, I actually don't know what the actual
3 parent is. My understanding of the transaction is what I put
4 in my declaration. The reason I needed to know that much was
5 trying to figure out what the assets of HoldCo were at the
6 time.

7 Q So when you had Figure 1 in your affidavit, which lists
8 who the parent entity is, who did that for you if you didn't
9 know anything about it?

10 A That was done by Counsel.

11 Q Okay. And does it list here the parent entity as Janssen
12 Pharmaceuticals?

13 A We can look at it again. I believe it does.

14 Q I've got it up on the screen. Let me blow it up for you.

15 A I think it's -- the only thing that bothers me is the way
16 the lines connect suggesting that other direct subsidiaries
17 somehow might be above Johnson and Johnson -- the HoldCo
18 between Janssen and HoldCo. I don't know. I don't think
19 that's true. But that line just threw me because it's a little
20 confusing.

21 Q Well, but this is in your affidavit that you spoke to
22 under oath.

23 A It is.

24 Q Okay.

25 A But, again, what I swore to is that went into its parent.

1 I believe this is the right one. It's just a little confusing
2 because of the way that the other direct subsidiaries is.

3 Q Okay. And the parent Janssen, last year made in sales
4 what? \$138 billion?

5 A I don't know.

6 MS. BROWN: Lacks foundation.

7 BY MS. PLACITELLA:

8 Q They're not bankrupt, are they sir?

9 MS. BROWN: Your Honor, I object.

10 THE COURT: Sustained.

11 BY MR. PLACITELLA:

12 Q Are they in financial distress?

13 MS. BROWN: Wait, but there's a --

14 THE COURT: Sustained.

15 MS. BROWN: -- pending objection.

16 THE COURT: Thank you.

17 MR. PLACITELLA: Okay.

18 BY MR. PLACITELLA:

19 Q Sir, do you know anything about during the pendency of the
20 Third Circuit decision that Janssen was then going to try to
21 transfer those same assets that started with your company to a
22 company called Kenvue?

23 MS. BROWN: I object, Your Honor. This completely
24 lacks foundation.

25 MR. PLACITELLA: I'm asking if he knows anything

1 about it.

2 MS. BROWN: LTL --

3 THE COURT: He's already testified his knowledge is
4 limited to the asset went to the parent.

5 MS. BROWN: All right. Your Honor, object to this
6 entire line of questioning. LTL owns the liability and this
7 witness lacks foundation about other transactions within the
8 J&J corporate family.

9 MR. PLACITELLA: Judge, I'll make a --

10 THE COURT: Proceed.

11 MR. PLACITELLA: -- separate submission. This is not
12 the time for argument, but in fact SEC filing from Kenvue says
13 that they're responsible for Johnson's Baby Powder.

14 THE COURT: And that may --

15 MR. PLACITELLA: And we'll go through --

16 THE COURT: Again, that's more argument.

17 MR. PLACITELLA: Okay.

18 THE COURT: Thank you.

19 BY MR. PLACITELLA:

20 Q So, just to be clear, you knew about the transfer of the
21 assets out of HoldCo during the pendency of the Third Circuit
22 decision, correct?

23 MS. BROWN: Objection, Your Honor. That misstates
24 his testimony?

25 THE WITNESS: Yeah, I know the transaction. I don't

1 know when --

2 THE COURT: Overruled.

3 THE WITNESS: Yeah. I didn't learn about it until
4 afterwards.

5 BY MR. PLACITELLA:

6 Q Okay. But you don't know anything about taking those
7 assets and then moving them again?

8 A I do not.

9 Q Okay. Let me ask you a couple other questions.

10 Representation -- then I'll sit down because I'm not
11 allowed to ask you all the questions I want, good for you.

12 THE COURT: It happens. Go ahead.

13 MR. PLACITELLA: It happens. It happens.

14 BY MR. PLACITELLA:

15 Q Okay. So you represented to the Court that you had the
16 support of some 60,000 claimants, correct?

17 A Correct.

18 Q But you don't know how many of those claimants actually
19 had claims that they could make within the statute of
20 limitations, correct?

21 A Yeah. I don't know. I don't know whether any of them
22 are. Yeah, I don't know.

23 THE COURT: So the answer is yes.

24 THE WITNESS: Yes. I don't know.

25 BY MR. PLACITELLA:

1 Q So it could be that of the 60,000 claimants that you say
2 support the claim, a high percentage of them could have had
3 diagnosis or died more than two years before the LTL 1
4 bankruptcy, correct?

5 MS. BROWN: Objection, Your Honor.

6 THE COURT: Sustained. Speculation.

7 BY MR. PLACITELLA:

8 Q Well, your Counsel testified under oath that they don't
9 know what claims were barred or not barred? Do you know that?

10 MS. BROWN: Objection, Your Honor. Misstate's
11 testimony, lacks foundation, calls for speculation.

12 THE COURT: Sustained.

13 MR. PLACITELLA: Okay.

14 BY MR. PLACITELLA:

15 Q Do you know that -- well, here, because I don't want to
16 misstate anything.

17 Mr. Watts (phonetic) is the gentleman that you say
18 supports your proposal.

19 MS. BROWN: And, Your Honor, I will object here. I
20 don't know what document this is, and I --

21 MR. PLACITELLA: It comes from his deposition,
22 Counsel. You were there yesterday.

23 MS. BROWN: Okay. If you're referring to the
24 transcript of somebody else's deposition --

25 MR. PLACITELLA: Yes, sir.

1 MS. BROWN: -- I don't have it memorized. And this
2 appears to be in a PowerPoint that says, "Who is in the 60,000
3 count?" I would just ask Your Honor if he's going to question
4 about a document that we provide each other with a copy.

5 MR. PLACITELLA: Well, you have it.

6 THE COURT: Mr. Placitella, let me ask you this. Can
7 you ask the question without referring to the PowerPoint?

8 MR. PLACITELLA: Yeah.

9 BY MR. PLACITELLA:

10 Q Did you know that Mr. Watts testified under oath that he
11 does not know and had not done the analysis as to how many
12 claimants that you say support the plan inhaled baby powder and
13 got sick versus had it applied perineal, ovarian cancer
14 claimants? Do you know that?

15 MS. BROWN: Your Honor, I object as lacking
16 foundation, calling for speculation.

17 THE COURT: Sustained.

18 BY MR. PLACITELLA:

19 Q Do you know that your own lawyer, Mr. -- oh, he's not your
20 lawyer, right? Johnson's and Johnson's lawyer.

21 Do you know that he testified under oath that he doesn't
22 know how many of the claimants with ovarian cancer --

23 MS. BROWN: Same objection.

24 THE COURT: Sustained.

25 BY MR. PLACITELLA:

1 Q Or did you listen to the testimony, sir?

2 A I did not.

3 Q Okay. Did you know, sir, that under Judge Wolfson's
4 opinion --

5 MS. BROWN: I think it's the same objection, Judge.

6 MR. PLACITELLA: I'm going to ask him if he knows.

7 BY MR. PLACITELLA:

8 Q Did you ever read Judge Wolfson's Daubert decision, sir?

9 A I have.

10 MS. BROWN: Objection, Your Honor.

11 BY MR. PLACITELLA:

12 Q Yes?

13 A I have read the Daubert decision.

14 Q Okay. So you know under Judge Wolfson's Daubert
15 decision --

16 THE COURT: Wait.

17 MR. PLACITELLA: -- that if someone inhaled Johnson
18 and Johnson's talc and got ovarian cancer, that claim would be
19 disallowed in this Court. You know that, correct?

20 THE WITNESS: No, I don't think that's what the --

21 THE COURT: Wait. Don't answer.

22 MS. BROWN: Your Honor, I object on multiple grounds,
23 including foundation --

24 THE COURT: Sustained.

25 MS. BROWN: -- speculation.

1 THE COURT: The objection is sustained.

2 MS. BROWN: Thank you.

3 BY MR. PLACITELLA:

4 Q So as we sit here, sir, you don't really know how many of
5 the 60,000 claimants could actually qualify to file a lawsuit.

6 MS. BROWN: Same objection.

7 MR. PLACITELLA: Correct?

8 THE COURT: Sustained.

9 MR. PLACITELLA: Basis, sir?

10 THE COURT: Yes.

11 MR. PLACITELLA: Excuse me.

12 THE COURT: Oh, basis.

13 MR. PLACITELLA: Yeah, just so I want it just --

14 THE COURT: Speculate.

15 MR. PLACITELLA: I'm just asking if he knows.

16 MS. BROWN: You're asking him to speculate, so I
17 object.

18 MR. PLACITELLA: No, I'm just asking if he knows.

19 MS. BROWN: And the Judge sustained it.

20 UNIDENTIFIED SPEAKER: We stipulate it's speculative,
21 how many people there are.

22 MR. PLACITELLA: Okay.

23 BY MR. PLACITELLA:

24 Q Since I'm not allowed to ask you any other questions about
25 what happened with the money in Kenvue, which we'll save for

1 another time, I'm done for the day.

2 MR. PLACITELLA: Thank you, Your Honor.

3 THE COURT: Thank you, Mr. Placitella.

4 MR. RUCKDESCHEL: Judge, I have two questions.

5 THE COURT: Okay. Come on up.

6 CROSS-EXAMINATION

7 BY MR. THOMPSON:

8 Q Mr. Kim, you're a J&J shareholder, right?

9 A Yes, I am.

10 Q And you're aware that Johnson and Johnson just this
11 morning increased its dividends by 5.3 percent. Did you know
12 that?

13 A No.

14 MS. BROWN: Objection, Your Honor.

15 MR. THOMPSON: That's all I have.

16 THE COURT: Overruled.

17 MR. RUCKDESCHEL: Your Honor, I also have two
18 questions.

19 THE COURT: Okay.

20 CROSS-EXAMINATION

21 BY MR. RUCKDESCHEL:

22 Q Mr. Kim, what consideration did HoldCo get from Janssen
23 Pharmaceuticals for giving it its consumer product business?

24 MS. BROWN: Objection, Your Honor. Speculation.

25 THE WITNESS: I --

1 THE COURT: Wait. Do you know this answer?

2 THE WITNESS: I was not. No, I don't.

3 BY MR. RUCKDESCHEL:

4 Q What have you done to investigate what consideration
5 HoldCo received from Janssen Pharmaceuticals for giving away
6 its valuable consumer product business?

7 MS. BROWN: Lacks foundation.

8 THE COURT: Sustained.

9 MR. RUCKDESCHEL: I'm asking whether he has done any
10 investigation.

11 BY MR. RUCKDESCHEL:

12 Q And, Mr. Kim, since LTL determined that the funding
13 agreement, one, with respect to Johnson and Johnson was, as
14 you've termed it, void and voidable, what steps has LTL done to
15 get those assets back to HoldCo?

16 MS. BROWN: Objection, Your Honor.

17 THE COURT: Overruled.

18 THE WITNESS: Yeah, I don't understand the question.

19 BY MR. RUCKDESCHEL:

20 Q Has LTL's --

21 THE COURT: Wait a minute. Wait a minute. Do you
22 need the question rephrased?

23 THE WITNESS: Yeah. I don't understand the question.

24 BY MR. RUCKDESCHEL:

25 Q Has LTL taken any steps to attempt to have the assets that

1 HoldCo gave away to Janssen return to HoldCo so that they can
2 backstop LTL under funding agreement two?

3 MS. BROWN: I object, Your Honor. Lacks foundation,
4 misstates the record, and it's vague.

5 THE COURT: Overruled. Answer if you can.

6 THE WITNESS: Yeah, I wouldn't know what theory we
7 would even try to do that.

8 BY MR. RUCKDESCHEL:

9 Q So LTL has taken no steps?

10 A There would be no steps to take.

11 Q There would be no steps to take even though you don't know
12 what theory you could potentially pursue?

13 A Well, what I said is, yeah, I can't even think of the
14 theory that that would pertain to that, that you would do that.

15 MR. RUCKDESCHEL: No further questions.

16 THE COURT: All right. Thank you.

17 Redirect.

18 MS. BROWN: Thank you, Your Honor. Very briefly.

19 THE COURT: I tried.

20 THE WITNESS: Thank you.

21 REDIRECT EXAMINATION:

22 BY MS. BROWN:

23 Q Mr. Kim, how are you?

24 A Very well, thank you.

25 Q Well, a lot of questioning, but I just have a couple of

1 questions to clear something up.

2 Earlier this morning, sir, you were asked a number of
3 questions about funding agreement one and funding agreement
4 two. Do you remember those questions?

5 A I do.

6 Q Okay. And numbers were put on those funding agreements,
7 like \$61.5 billion and the like, right, sir?

8 A Yeah, I recall that.

9 Q Okay. But the truth is, sir, that the value of the
10 funding agreements are driven by the talc liability, correct?

11 A It is. It would be part of that, the value.

12 Q Okay. And so, for example, J&J'S liability is limited to
13 J&J's exposure for the talc liability, correct?

14 A That would be the -- right. So when you say -- I think
15 the issues --

16 UNIDENTIFIED SPEAKER: (Indiscernible)

17 THE COURT: Leading?

18 UNIDENTIFIED SPEAKER: Both leading, yes.

19 THE COURT: Try to avoid the leading if possible.

20 MS. BROWN: I will, Your Honor. Just trying to move
21 it along. But I will, I'll ask an open-ended question.

22 BY MS. BROWN:

23 Q Mr. Kim, you were going to answer that?

24 A Yes. The opening question. Yeah, the amount of money
25 we're talking about, of course, is the maximum that is, not the

1 exposure, of liability. So it's the amount that they agreed to
2 fund not any, you know, what the exposure. I think that's what
3 the question that you're getting at is.

4 Q Well, and in terms of the liability, that was the same
5 under funding agreement one -- in terms of whether -- do you
6 have a view on whether or not the liability changed under
7 funding agreement one and funding agreement two?

8 A Well, so the talc liability, so I, yeah I see. The talc
9 liability is enormous. We don't have an aggregate number for
10 it, but it is, you know, huge. I think what I would do is
11 refer to all the testimony I gave in the prior proceeding about
12 the liability and adopt that here.

13 That liability, if anything, has gotten bigger. We know
14 that after a year of being in bankruptcy, we have at least -- I
15 think it almost doubled from what we know from unknown claims.
16 So what I would say is that the liability itself is even much
17 larger than it was when the first bankruptcy was filed.

18 Q And how does that liability relate to the value of the
19 funding agreement?

20 A Well, at the end of the day, we believe that we have
21 sufficient funds to meet the liability except for the -- so we
22 believe we're not insolvent, but we do believe that we are in
23 financial distress because of the magnitude of the liability,
24 the wild and unpredictable verdicts, the cost of the
25 litigation, which is ever increasing.

1 Q So putting aside the liability and the value of the
2 funding agreements, are you familiar with commitments to fund
3 that J&J and LTL made in the first bankruptcy and in this
4 bankruptcy?

5 A I am.

6 Q Okay. And unlike the amount of the liability, have the
7 commitments changed from the first bankruptcy to this
8 bankruptcy?

9 A They have. They're changed in terms of where they're
10 coming from.

11 Q And was the commitment in the first bankruptcy
12 approximately \$2 billion?

13 A Oh, well, the commitment of \$2 billion was the original
14 amount that was going to be put into a qualified trust fund.
15 And that's changed dramatically from the \$2 billion. Now, it's
16 the \$8.9 billion in the bankruptcy.

17 Q Okay. And so the commitment has gone from 2 billion to
18 8.9 billion now, correct?

19 A From the first qualified fund in the first bankruptcy to
20 what is now committed in the second bankruptcy has increased to
21 \$8.9 billion.

22 Q Okay. Thanks very much, Mr. Kim.

23 MS. BROWN: I have no further questions.

24 THE COURT: Thank you.

25 Any redirect?

1 MR. SATTERLEY: I've just got a couple questions,
2 Your Honor.

3 RECROSS-EXAMINATION

4 BY MR. SATTERLEY:

5 Q Just on the point that you've made a determination that
6 the liability has doubled. You would agree that's pure
7 speculation, Mr. Kim. You haven't done an analysis of that,
8 have you?

9 A Yeah, I didn't say the -- I'm sorry. If I said the
10 liability doubled, what I meant to say was that we know that
11 the number of claims have doubled.

12 Q Well the truth of the matter is, you said just a few
13 minutes ago that the liability is now enormous, it's doubled
14 since the first bankruptcy because of the number of potential
15 claimants, correct?

16 A Yeah. I think if I said that, I was a little sloppy.

17 Q You were sloppy. You've not done even a back of the
18 envelope analysis of any of these potential claimants, correct?

19 A Again, we know who the potential claimants are and the
20 number of claimants has doubled from the first bankruptcy.

21 Q You don't have any pathology reports for a single
22 claimant, true?

23 A We don't have that for the original claimants.

24 Q You have no depositions or sworn testimony of a single
25 claimant, true?

1 A Again, we have --

2 MS. BROWN: Objection, Your Honor. Misstates the
3 record, asked and answered.

4 THE COURT: Overruled.

5 MR. SATTERLEY: Well, Your Honor, I'm making a point.

6 He said it's enormous now and it's doubled. I'm just
7 demonstrating that's incorrect testimony.

8 THE COURT: Accepted. Move on. Thank you.

9 MR. SATTERLEY: All right.

10 BY MR. SATTERLEY:

11 Q Final question. You have no expert witness evaluation of
12 those doubled, enormous number of cases that you're saying has
13 agreed to this plan, true?

14 A We have no experts, no, not yet.

15 MR. SATTERLEY: Thank you. Thank you, Mr. Kim.

16 MR. MAIMON: May I briefly, Your Honor.

17 THE COURT: All right.

18 RECCROSS-EXAMINATION

19 BY MR. MAIMON:

20 Q Mr. Kim, you discussed the funding agreement with your
21 attorney, Ms. Brown. Do you recall that?

22 A Yes.

23 Q The Third Circuit Court of Appeals on Page 24 of its
24 opinion said still, Old Consumer was a highly valuable
25 enterprise, estimated by LTL to be worth \$61.5 billion,

1 excluding future talc liabilities, with many profitable
2 products and brands.

3 Do you recall that statement in the Third Circuit opinion?

4 A I do recall that statement.

5 Q And whether or not it's an error, J&J and LTL have
6 foregone their right to appeal anything in the Third Circuit
7 opinion, correct?

8 MS. BROWN: Objection, Your Honor.

9 THE COURT: Sustained.

10 BY MR. MAIMON:

11 Q The Third Circuit also says that with regard to funding
12 agreement number one, there were few conditions to funding and
13 no repayment obligations. Do you recall that?

14 MS. BROWN: Objection, Your Honor. This goes beyond
15 the three questions I asked about the funding agreement. I
16 object as beyond the scope.

17 MR. MAIMON: Well, this goes to the difference
18 between funding number one and funding number two, which was
19 exactly testimony that was (indiscernible).

20 THE COURT: Objection overruled.

21 BY MR. MAIMON:

22 Q Do you recall the Circuit saying that?

23 A I do recall the Circuit saying that.

24 Q And the Circuit said that the value of the payment right
25 could not drop below a floor defined as the value of new

1 Consumer measured as of the time of the divisional merger
2 estimated by LTL at \$61.5 billion, right?

3 A That's the J&J guarantee portion, yes.

4 Q That was the floor, correct, sir?

5 A I read what they said. I'm not, I guess I agree that
6 there was a J&J guarantee for that amount.

7 Q That was the floor, correct?

8 A I believe that's true.

9 Q Thank you.

10 THE COURT: Thank you.

11 MR. MAIMON: That's all I have. Thank you.

12 MR. JENKINS: Nothing further, Your Honor.

13 THE COURT: Thank you, Mr. Jonas.

14 All right. Mr. Kim, you may step down.

15 THE WITNESS: Thank you.

16 (Witness dismissed)

17 THE COURT: Mr. Gordon, did you have any other
18 witnesses?

19 MR. GORDON: We do not, Your Honor, other than my
20 point earlier about deposition designations and exhibits, but
21 no further witnesses.

22 THE COURT: All right. Thank you, Mr. Kim.

23 All right.

24 MR. PLACITELLA: Are they resting? Are they resting
25 their case?

1 THE COURT: Are you --

2 MR. GORDON: I mean, subject to closing.

3 THE COURT: Yes. Well, yes, but you have no further
4 testimony or evidence.

5 Mr. Satterley.

6 MR. SATTERLEY: Nothing here, Your Honor. Just
7 respectfully to the U.S. Trustee just to ask if they're done.

8 THE COURT: Ms. Richenderfer.

9 MS. RICHENDERFER: Nothing from the U.S. Trustee,
10 Your Honor.

11 THE COURT: Mr. Satterley.

12 MR. SATTERLEY: I would just add, Your Honor, in
13 addition to what Mr. Gordon said, the deposition testimony
14 Mr. Maimon referred to earlier, we're going to incorporate that
15 into the record as long as well as some exhibits.

16 THE COURT: That's appropriate.

17 Mr. Placitella.

18 MR. PLACITELLA: I would offer two additional
19 exhibits, Your Honor.

20 THE COURT: Yes.

21 MR. PLACITELLA: Mr. Bergeron's complaint and the
22 Kenvue SEC filing.

23 THE COURT: Any objections?

24 UNIDENTIFIED SPEAKER: Not here, Your Honor.

25 MS. BROWN: Yes, Your Honor. We would object to two

1 complaints that were not the subject of any discovery that have
2 no relevance to what's going on here in this proceeding.

3 THE COURT: Well, I'll accord them relevance.

4 Let's --

5 MR. PLACITELLA: Your Honor, they made it the subject
6 of a late night application to extend the TRO.

7 THE COURT: I'm going to mark the -- I
8 have -- Mr. Placitella?

9 MR. PLACITELLA: Yes.

10 THE COURT: I have the exhibit. Do you have the
11 second document?

12 MR. PLACITELLA: I'm going to ask Mr. Stolz if he can
13 get me a copy during a break.

14 THE COURT: All right. Thank you.

15 Then, I'm going to mark this Placitella 1.

16 MR. PLACITELLA: And I guess we should mark the
17 notice of supplemental filing that came in last night.

18 THE COURT: It's on the docket.

19 MR. PLACITELLA: Okay.

20 THE COURT: Thank you.

21 All right. Does this mean we're ready for argument?

22 MR. GORDON: Your Honor, Greg Gordon on behalf of the
23 debtor.

24 I think it would be helpful if we could take about a
25 10 minute break. Also, I wanted to note for the record, we've

1 probably been going four and a half hours or longer. I think
2 the debtor's share of the time has been about 20 minutes. And
3 the only reason I bring it to Your Honor's attention, I am
4 worried that we're going to get pressure to shorten our
5 presentations and we would prefer that not happened given the
6 sort of inequality in the time that's been used.

7 THE COURT: Do you all have two suits like
8 Mr. Satterley brings?

9 UNIDENTIFIED SPEAKER: I've got two suits, Your
10 Honor. I'm willing to spend the night. I love Trenton. I
11 would say that a lot of the questions were not answered.
12 Mr. Kim likes to give speeches, so --

13 THE COURT: I don't want to have argument over who's
14 dawdling, who's moving efficiently. I want to get this done
15 today. I'll be prepared to stay as late as it takes. Kiya, is
16 that okay.

17 THE CLERK: I'm okay with this.

18 THE COURT: Okay. So let's take a break.

19 (Recess at 2:55 p.m./Reconvened at 3:08 p.m.)

20 MR. GORDON: So Your Honor --

21 THE CLERK: Yes. Yes, Your Honor.

22 THE COURT: All right. Thank you.

23 MR. GORDON: Thank you, Your Honor. Greg Gordon on
24 behalf of the debtor. We actually have two PowerPoints, Your
25 Honor. I'm going to do one, and then Ms. Brown is going to do

1 one. And we're going to go through them, I think, fairly
2 rapidly.

3 And I will say as a forewarning that there are some
4 video clips from the deposition. We've tried to keep them
5 under five minutes. I'm not even sure how many there are at
6 this point, but we'll go through them as quickly as --

7 THE COURT: All right. Thank you.

8 UNIDENTIFIED SPEAKER: We have two.

9 MR. GORDON: There are two video clips?

10 UNIDENTIFIED SPEAKER: About five minutes.

11 MR. GORDON: Okay. All right. Next slide, please.

12 So, Your Honor, in our view, there are three primary
13 issues in this proceeding. Number one is whether the debtor
14 has a realistic opportunity to --

15 MR. SATTERLEY: Is it possible, Your Honor, just to
16 get a copy so we can follow along like Ms. Brown was suggesting
17 earlier when something is displayed. We could follow along
18 maybe.

19 UNIDENTIFIED SPEAKER: Sure.

20 MR. SATTERLEY: Save me from having to write notes
21 and transfer out stuff.

22 (Counsel confer)

23 UNIDENTIFIED SPEAKER: May I approach, Your Honor?

24 THE COURT: Yeah. Please. Thank you.

25 MR. SATTERLEY: Pretty heavy and thick, Your Honor.

1 THE COURT: They use good paper.

2 Mr. SATTERLEY: This is both, right?

3 THE COURT: Thank you.

4 (Counsel confer)

5 MR. GORDON: So we'll try again. You know, it's
6 funny. Since COVID, I don't do much in the way of paper
7 anymore, so I'm not used to it when people ask for paper.
8 Okay.

9 THE COURT: Continue.

10 MR. GORDON: So, Your Honor, there are, in our view,
11 three primary issues that are raised by the relief we're
12 seeking. Number one, which has probably been the focus of most
13 of what you've heard today already, is whether the debtor has a
14 realistic opportunity to successfully reorganize.

15 Number two are the talc claims against the protected
16 parties, including allegedly direct and independent claims
17 which we heard about today, fundamentally the same claims
18 against Old JJCI and now the debtor. And this is going to take
19 a little bit of a recap of what you heard before, but we're
20 going to do it in a really summary fashion.

21 And then will ending the stay and preliminary
22 injunction and joining actions against the protected parties
23 thwart the objectives of the case? And we think the answer to
24 all three of these questions, as indicated on the slide, is
25 yes.

1 Next slide, please.

2 So in our view, a stay of the litigation is required,
3 and it's required for multiple reasons. And number one is that
4 the debtor has broad support for its reorganization. And I'm
5 going to come back to this, but think about what you heard
6 today and think about the assertions that were made by this
7 group of law firms back a week ago about how the support's not
8 real; it's a lie. I don't think you heard anything today that
9 suggests that anything that we've said to Your Honor wasn't
10 true.

11 The second point is -- and, again, we're going to
12 come back to this. There's been no improper conduct. There's
13 been no fraudulent transfer. There's just been lots of
14 accusations, lots of innuendo, but no facts.

15 And I think it's clear and it will be clear from the
16 record that continued litigation outside of this case would
17 jeopardize what we're trying to do inside this case which is to
18 equitably resolve all the claims here, treat the claims in an
19 equivalent manner. And from your earlier opinion, if the stay
20 is not extended to the protected parties, it's difficult to
21 envision how a successful reorganization can be achieved in
22 this case. And I would say that that finding has the same
23 vitality today as it did when you made it back in 2022.

24 Next slide, please.

25 These are just -- this is just the outline of what

1 I'm going to discuss. And obviously I'm going to go through
2 some factual background. Some of this I'm going to do very
3 quickly. And then I'll go through the legal arguments.

4 Next slide. Next, please.

5 So I want to focus on some things here, because
6 you've heard a lot. Again, a number of accusations and
7 innuendos suggesting that the fact that we were actually
8 continuing or engaging in negotiations with the plaintiffs or
9 with plaintiffs' firms and utilizing the mediators was somehow
10 improper.

11 So if you recall, Your Honor, back in March of 2022,
12 in the first case you referred the parties to mediation. And
13 then you amended that order in May. And what's important about
14 the order -- I went back and looked at it -- is that order
15 obligated the parties to make a good-faith attempt to settle.
16 And it also said that the parties were required to make
17 reasonable efforts to attend all mediation sessions.

18 And that order remained in effect all the way through
19 March '23. And in March '23, Your Honor entered a text order.
20 In it, you terminated the mediation and the mediators and the
21 estimator. But in that order, you also encouraged the parties
22 to continue any settlement efforts following the termination of
23 the mediation.

24 And per Your Honor's orders, the debtor continued
25 settlement efforts during this full period. I don't think

1 there's any basis for anyone to argue that following Your
2 Honor's order is somehow a violation of law, a breach of
3 fiduciary duty, unethical conduct, whatever.

4 Next slide, please.

5 As Your Honor knows from what you've already heard,
6 the negotiations achieved a significant degree of success.
7 After all this time, they ultimately generated significant
8 support from law firms. And there's been lots of argument by
9 the other side about, well, you're really misstating or you're
10 exaggerating. It's really not the claimant's support. It's
11 technically the lawyer's, right?

12 But you've heard Mr. Kim testify, and you're going to
13 see in a deposition from Mr. Murdica that the way this was
14 done, the commitments were made are a standard practice in mass
15 torts. I've certainly seen it in every asbestos case I've been
16 in. I think Mr. Molton did the exact thing in the Boy Scouts
17 case, representing claimants who settled in that case.

18 But to suggest that there's some problem in
19 representing support because we haven't produced affidavits
20 from claimants or we haven't verified specifically the
21 claimants themselves supported or we haven't ourselves talked
22 with claimants, which we can't do because they're represented
23 by counsel, that somehow it means that support isn't there.

24 So where we are at this point, Your Honor -- and,
25 again, this is all in the record -- 15 firms signed plan

1 support agreements. These firms represent more than 55,000
2 claimants. And the reason -- you've heard 60,000 and then
3 57,000 and 55,000. We've taken into account that there are, I
4 think, two agreements that have been rescinded since what we've
5 talked about before. But we're at more than 55,000. And these
6 are ones that signed plan support agreements.

7 And, importantly, of those there are over 600
8 mesothelioma claimants. And that's important, because Your
9 Honor may recall that at the outset of the first case there
10 were 400. Now we're at 600. I think I said last week we're
11 still working on trying to figure out what the denominators are
12 here. And hopefully in short order we'll be able to provide a
13 bit more information on that. We're trying to get a handle on
14 that.

15 But, you know, we're at a point where we believe the
16 support is very substantial (indiscernible) with the support we
17 have from people who haven't executed -- haven't yet executed
18 plan support agreements. So we do have documentation. It's
19 real. We think we're approaching or exceeding 75 percent based
20 not only on the signed agreements but also on commitments we
21 have that are not yet the subject of agreements. And I'm going
22 to come back to that in a little more detail.

23 And it's interesting. I think Mr. Maimon said today
24 that, you know, this claimant support is a diversion. It's
25 irrelevant. And it's interesting to hear him say that when the

1 plaintiffs have pretty much spent all their time, both today
2 and in discovery, focusing on this very issue, trying to show
3 that the support doesn't exist, trying to show that there's a
4 huge amount of opposition. And they haven't been able to deny
5 this -- these facts or support their view that there's a
6 substantial amount of dissent.

7 Next slide, please.

8 Just trying to provide more detail on this, Your
9 Honor. This is a chart that just shows the firms that have
10 signed. It also shows the approximate numbers of claims.

11 And if you go to the right of this, you'll see not
12 only total numbers but we've also tried to report the filed
13 claims and the unfiled in the last two columns. Because,
14 again, I think there's been this sort of innuendo that, well,
15 if they weren't filed before, they're not real or somehow you
16 don't really have any of the filed claims. Well, here we're
17 showing you that out of the 40,000 or approximately 38,000, I
18 guess, that existed at the time of the first filing, we've got
19 16,000 of those with commitments from their lawyers through the
20 PSAs. And, again, we have more support that we believe have
21 where the PSAs have not yet been executed.

22 Next slide, please.

23 Now, you've heard a lot about Mr. Murdica. He's in
24 the courtroom today. He's at Barnes & Thornburg, and he's the
25 counsel for J&J who's led the efforts. You heard that --

1 Mr. Kim testify about him. And he's been working on this since
2 2019. We've been somewhat inpatient with Mr. Murdica to
3 deliver faster, but he's done a great job gathering support.

4 But he's -- and you'll see this from his deposition.
5 He's been instrumental in 20 prior mass tort settlements and
6 often with the same firms. And what's important about this is
7 it completely undermines these firms' views that these claims
8 aren't real, because you don't have the substantiation you
9 should have.

10 And you'll see from Mr. Murdica's deposition, he
11 makes clear that the way this support has been generated is the
12 way it's done in all mass torts and that he trusts the
13 representations made by these firms, because he's worked with
14 them before. He's settled many cases with them before.
15 There's a relationship there. And that's extremely important.

16 So his testimony is that at this point we have over
17 70,000 claimants through law firms that he has commitments
18 from, perhaps as high as 80,000. And he believes if the vote
19 occurred today, we would surpass the 75 percent threshold. And
20 he also believes, based on the commitments that he has, that we
21 have over half of the filed claims.

22 You saw about, I think, 40 percent or so on the chart
23 for the executed agreements. We believe based on other
24 commitments we're over half of all filed claims. And, again,
25 it's based on -- you'll see from his deposition he has a high

1 degree of confidence in this, because these are firms that he's
2 worked with. He's done it in a way that's consistent with the
3 course of dealing and the course of conduct he's had with
4 this -- these same firms for many years across many different
5 torts.

6 Next slide, please.

7 Okay. And then here's one of the videos. That's
8 Mr. Murdica, as you can probably tell.

9 (Video deposition of Jim Murdica Played)

10 MR. GORDON: Okay. Next slide.

11 So, Your Honor, you may recall from the last hearing,
12 Mr. Watts came up to the podium. His deposition was taken as
13 well, as I indicated earlier.

14 He is counsel for close to 17,000 talc claims,
15 including approximately 500 mesothelioma claims. He has
16 medical records for over 14,000 claims, and he has a robust
17 process to check the legitimacy of the claims. You're going to
18 see from the record that he was extensively involved in
19 negotiating the plan support agreement and also involved in
20 negotiating a term sheet.

21 This settlement, I think you'll hear, is -- from his
22 perspective, this \$8.9 billion settlement an historic one.
23 It's a one-time opportunity for claimants who would otherwise
24 continue to suffer with delay in the tort system and never
25 receive any recovery to actually receive a recovery. He views

1 it, and you heard him say this last week, as a material
2 improvement over prior settlement offers. He believes it's the
3 best one available.

4 And in his experience, his view is that 97 to 99
5 percent of his clients will accept the settlement or clients
6 generally will accept the settlement if recommended by their
7 lawyers. And he'll also confirm that there are a significant
8 number of firms not yet heard from who have expressed support
9 or not yet -- who've become public, have expressed support.

10 So next slide, please.

11 So here's the next video clip, Your Honor.

12 (Video Deposition of Mikal Watts Played)

13 MR. GORDON: Next slide, please.

14 So, Your Honor, as you've heard, we have these plan
15 support agreements. You'll see these are all in the record
16 now. Also in the record are claimant lists, redacted claimant
17 lists that go along with them.

18 And the commitments reflected in these agreements are
19 important. The parties to those agreements, and we're one of
20 the parties, have committed to negotiate, finalize, and file a
21 plan by May 14th. They've all agreed to support relief to stay
22 and/or enjoin the talc litigation during the pendency of the
23 bankruptcy case, so there's an opportunity to actually resolve
24 the claims here. And they've also agreed to do all things
25 necessary -- reasonably necessary to confirm a plan, including

1 voting, supporting approval of a disclosure statement,
2 supporting voting procedures for the solicitation process. And
3 there are other commitments reflected in the agreements as
4 well, all of which are intended to provide overall support for
5 an expedited plan process to get to a vote to see, as Mr. Watts
6 said, whether we have a plan or we don't have a plan based on
7 how the vote comes out.

8 Next slide, please.

9 So, Your Honor, this is just an outline of the plan
10 terms. You've heard this, I think. This is just what was in
11 the plan support agreement, the \$8.9 billion I described the
12 last time. Unlike the last time, we've laid out now the actual
13 installment payments over the 25-year period which we didn't
14 provide the detail before.

15 You'll see an amount -- there is an amount allocated
16 for the governmental claims, the state AGs. And there is the
17 one-third -- no more than one-third is proposed as an
18 allocation for futures.

19 But, again, as I think Mr. Kim testified to, these
20 are the broad outlines of the plan, the broad outlines of the
21 economics. There's more work to be done, and there's more work
22 to be done not only with the claimants who have signed up to
23 support the plan but also the ones that haven't, and we're
24 working on that.

25 Next slide, please.

1 I thought it would make sense, Your Honor, to provide
2 a timeline of what we're thinking. And we describe this as
3 illustrative, because we don't know exactly how things are
4 going to unfold. But this one assumes that we file the plan on
5 May 14th. That's the deadline in the plan support agreement.
6 We would hope to file even sooner than that if possible. We've
7 got drafts in the works, and we've got a lot of people working
8 on the final pieces of the plan.

9 But we're anticipating that we're going to file a
10 motion in the -- well, really in the next day or two to start
11 setting the process for a disclosure statement hearing. And
12 you can see what we're proposing in terms of a timeline for
13 that with objections as soon as June the 5th. So that
14 obviously assumes we're going to be filing a disclosure
15 statement very quickly.

16 And then we're proposing a -- under this timeline a
17 hearing on the adequacy of the disclosure statement by
18 mid-June. And then we've got -- the next box, we set it up as
19 a range. And the reason for the range -- and Your Honor
20 probably has a lot of experience with this -- it depends really
21 on the contours of the noticing program.

22 And in these mass tort cases, as Your Honor probably
23 knows, we typically have for due process purposes a very broad
24 program that goes out on several levels. It's not -- you know,
25 in the old days, it used to be you'd publish in The Wall Street

1 Journal and The New York Times and local newspapers. And of
2 course we'll do that. We'll do the print media. But there's
3 also all the social media and everything else. And that's got
4 to be developed.

5 So we are in the process right now of engaging an
6 expert to assist with this, and we're working with that expert
7 right now to sort of nail this down. But so we have sort of
8 a -- you know, we have sort of a very optimistic schedule for
9 that. Another one -- in other words, one that's expedited and
10 one that's longer.

11 But under either scenario, it seems to us if we move
12 quickly, we shorten some of the time periods, we could actually
13 get the confirmation by mid-August or perhaps late October.
14 And the good news, in both events we're seeing this happening
15 this year. That's kind of what we're looking at.

16 And, obviously, again, this is illustrative. And
17 we'll be talking to other parties about this and how to do it.
18 But this reflects our preliminary thinking at this point on a
19 plan process.

20 Next slide, please.

21 So, Your Honor, you've heard a lot about the
22 financing arrangements, and I think Your Honor's aware from the
23 documentation, the way this was done, that there was -- there's
24 a termination agreement that had the effect of terminating the
25 initial funding agreement Your Honor was well familiar with.

1 And there was a related intercompany loan agreement between New
2 JJCI and J&J that was also terminated. And then they were
3 replaced by the two new agreements which you heard a fair
4 amount about today, the new funding agreement and the New J&J
5 support agreement.

6 Next slide, please.

7 So just to provide some of the details, and this is
8 laid out in Mr. Kim's declaration, the funding agreement is
9 between HoldCo and the debtor. And Your Honor knows, I think,
10 from what you've heard that HoldCo is the new name for New
11 JJCI. And, of course, it has the in-bankruptcy component and
12 the outside-bankruptcy component like the initial funding
13 agreement. And I should say, this funding agreement in a lot
14 of respects is very similar to the first one.

15 But in a bankruptcy case, HoldCo would provide backup
16 funding for the costs of the case. And that's -- I say backup
17 because that's in instances where the debtor's cash flow isn't
18 sufficient. And I'll come back to that. And then also funding
19 for a talc trust on terms consistent with the plan support
20 agreements. And, again -- well, in this case, if there's
21 insufficient cash and the debtor's assets are insufficient.

22 And then outside a Chapter 11, it's operative where
23 HoldCo would provide funding for all costs, and those would
24 include judgments and settlements. But, again, in the event
25 the debtor's cash flow is insufficient to do that.

1 And unlike the first funding agreement, J&J is not a
2 party. It's not an obligor. It's not a party at all under
3 this new funding agreement.

4 Next slide, please.

5 Then we have the J&J support agreement. There's
6 actually three parties to that agreement: J&J, HoldCo, and the
7 debtor. And here, J&J is committed to pay HoldCo's trust
8 funding obligation under the funding agreement if HoldCo fails
9 to do that on a timely basis. HoldCo then is obligated
10 promptly to reimburse J&J. And if it doesn't do that, then the
11 obligation -- that obligation to reimburse is deemed a
12 financing that's covered by a loan by J&J.

13 This agreement is operative only in the Chapter 11
14 case, and it's effective only upon approval by the Court.
15 Those are the -- what I would describe as sort of the key
16 aspects of the J&J support agreement.

17 Next slide, please.

18 There's been a lot of contentiousness about this
19 issue. We believe -- the debtor believes that this new
20 financing arrangement follows the Third Circuit guidance. And
21 it -- you know, it's interesting. I guess there's just a
22 fundamental disagreement about what the Third Circuit said in
23 this respect and particularly as to the so-called footnote 18.
24 And the other side's position seems to be that the Third
25 Circuit was saying absolutely no way can the funding agreement

1 ever be changed, period, end of story.

2 And our reading is that's not what it says. It
3 actually anticipated the possibility it would be changed but
4 pointed out, correctly we believe, it would be subject to
5 fraudulent transfer review.

6 But if you go back to the opinion, in our view, what
7 the Third Circuit did was they found that LTL was not in
8 financial distress in the period prior to the filing because of
9 the funding agreement. And they focus in particular on the
10 co-obligation of J&J. And as was pointed out -- somebody read
11 the language in court this morning which they said provided the
12 debtor with direct access to J&J's strong balance sheet.

13 After making that finding, they had to acknowledge
14 the irony of their ruling. The fact that J&J, which had no
15 obligation to provide that support, provided it, it was
16 provided for the purposes of facilitating a bankruptcy. Yet
17 the Third Circuit determined it had exactly the opposite
18 effect. It made bankruptcy unavailable for LTL.

19 And, again, the third bullet just goes back to what I
20 said. In our view, footnote 18 is an indication by the Third
21 Circuit that they foresaw the possibility of a second
22 bankruptcy filing. And they said without the funding backstop
23 altogether but noted the applicability of fraudulent transfer
24 law.

25 And, importantly, they referred specifically to the

1 issue of reasonably equivalent value but also to the question
2 of solvency. And we know that under fraudulent transfer law,
3 it takes both. It's got to be lack of reasonably equivalent
4 value and the entity is rendered insolvent. And in our view,
5 the other side tends to just gloss over that and just focus on
6 reasonably equivalent value.

7 Next slide, please.

8 So I want to address these points, because obviously
9 a essential piece of the arguments the other side is advancing
10 is that this case should be dismissed. Therefore, there is no
11 possibility of a successful reorganization. Therefore, there
12 should be no injunction.

13 We believe the debtor is in financial distress. Our
14 view is that the Third Circuit would have been of the same
15 opinion based on the evidence Your Honor heard about all the
16 impacts of the talc claims on the Old JJCI business but for the
17 J&J support. And, you know, they talked about making it a \$61
18 billion ATM machine or words to that effect.

19 Well, that support -- that access to the J&J balance
20 sheet no longer exists outside of bankruptcy. Under the
21 funding agreement, the sole sources of funding are the debtor's
22 assets, which Your Honor knows very well what those are. They
23 include the subsidiary, RAM. And then the assets of HoldCo.

24 And HoldCo is an entity -- it is called HoldCo now
25 because it is primary a holding company. It has \$400 million

1 in cash. It has rights to dividends from the subsidiaries that
2 it has interest in, although those dividends are uncertain in
3 timing and amount.

4 And I think it's important to note -- and we'll get
5 into this more at the appropriate time -- that HoldCo's assets
6 are otherwise illiquid. And as a consequence, the debtor and
7 HoldCo may need to be liquidated in order to pay talc
8 liability.

9 Again, we know from the prior record that the talc
10 litigation and its related costs were literally massive. They
11 were increasing at an extraordinary scale. And, I mean, Your
12 Honor remembers. I think we had a chart. I think Ms. Brown
13 put it together. It was like a circle showing all the things
14 that were bearing down on the company.

15 You know, it wasn't just the personal injury claims.
16 It was the governmental entities. It was the Canadian class
17 actions. It was a whole variety of problems. It was -- state
18 attorneys general investigations, congressional investigations,
19 securities fraud actions and the like. It was many, many
20 things.

21 And, of course, maybe one of the worst aspects of it
22 was the episodic plaintiff verdicts in huge amounts. And, of
23 course, the Ingham was the one big example of that.

24 Next slide, please.

25 But in our view, the debtor is not insolvent. I

1 think at the last hearing, the first day hearing, yeah, you
2 heard a lot about, well, nobody is saying what the value of
3 HoldCo is. Well, that's all in the record now. Based on
4 valuations, we have the value of HoldCo as 30 billion.

5 Again, it's an entity that it has interest in
6 subsidiaries, primarily foreign. But in the view of the
7 company, it has sufficient value to cover the liability. So
8 from a balance sheet perspective, in our view it's not
9 insolvent. But Your Honor probably remembers that the Third
10 Circuit itself drew a distinction between insolvency and
11 financial distress and indicated that insolvency is not
12 required, noting there is a difference.

13 Next slide, please.

14 So here's just a little bit more on HoldCo itself.
15 The subsidiaries in which it holds ownership interest are
16 largely foreign based, and they're operating in treasury
17 companies. Most of the value is held in a Apsis subsidiary.
18 That's a French company. And it holds a 36.1 percent interest
19 in an Irish company called Gh Biotech Holdings Limited. And
20 then there are other companies that are owned by HoldCo that --
21 the ones that are listed, there's Janssen Sciences. Then there
22 are distributors and medical devices companies and other
23 entities.

24 But, importantly, what's reflected at the bottom is
25 the most recent valuations we have reflect a total value of

1 these entities at about \$30 billion.

2 Next slide, please.

3 So on the fraudulent transfer allegation, you know,
4 we've heard from the beginning that this is the largest
5 fraudulent transfer that's ever occurred in the history of the
6 United States. But we don't believe there's a basis to find
7 either an actual or a constructive fraudulent transfer. I
8 don't think there's any question based on the financing
9 arrangements that are in place that the debtor has sufficient
10 funding or sufficient resources to fund the agreed plan. And
11 in that case, both the funding agreement and the J&J support
12 agreement are available to provide funding. Again, as I've
13 said before, we believe the debtor has sufficient asset value
14 to cover talc costs outside of bankruptcy, again based on the
15 assets of HoldCo and the debtor.

16 And then the other point I wanted to make here --
17 and, obviously, there's a major disagreement over this, but you
18 heard Mr. Kim answer many, many questions in response on this
19 issue. We believe -- the debtor believes that there was a
20 serious question, and I think Mr. Kim characterized it as a
21 material risk, that in the wake of the Third Circuit ruling the
22 funding agreement would no longer be enforceable.

23 And, you know, fundamentally, the thinking is that
24 the way the court ruled was not reasonably foreseeable. It had
25 the effect of frustrating the central purpose of the funding

1 agreements. We don't believe it was reasonably foreseeable to
2 affect -- to expect that the Third Circuit would find that the
3 funding agreement had the exact opposite effect of what it was
4 intended to do.

5 It was intended to facilitate a bankruptcy. It
6 wasn't intended to make a bankruptcy unavailable. Yet, that's
7 where we ended up.

8 THE COURT: Well, let me ask this --

9 MR. GORDON: Yeah.

10 THE COURT: -- Mr. Gordon. One of the arguments
11 that's been put forward is that the funding agreement clearly
12 provided for a mechanism of payment outside of a bankruptcy.

13 MR. GORDON: Correct.

14 THE COURT: So how can it not be reasonably
15 foreseeable to have a situation where the debtor is outside of
16 a bankruptcy as a result of a dismissal of the case by this
17 Court or the reversal? How is that not foreseeable, and why
18 would it make it void or voidable?

19 MR. GORDON: Well, the point I'm making -- that's a
20 really good question, Your Honor. The point I'm making is I'm
21 not saying that a dismissal was not reasonably foreseeable.
22 Obviously, we -- the --

23 THE COURT: Well, I didn't see it coming, but go
24 ahead.

25 MR. GORDON: Well, I'm just saying -- I'm talking

1 about in a more general way. For example, the case -- let's
2 just say we were still here three years later and weren't
3 making much progress. You could see the case being dismissed.
4 The debtor might dismiss at some point, saying there's just no
5 hope.

6 So we -- there was a recognition that a dismissal
7 could occur. The point I'm making is that nobody could have
8 expected that the dismissal would be based on the existence of
9 an agreement that was intended to facilitate the bankruptcy.
10 And that's, to us, what raised a material question as to
11 whether the fundamental purpose of that agreement was
12 frustrated, affecting its enforceability, whether there was
13 really any consideration received, for example, by J&J in
14 making its commitment, because its commitment was intended to
15 facilitate a bankruptcy.

16 And Your Honor may remember this, but I remember it
17 very well. In North Carolina, we were always being criticized
18 in these funding agreements on the basis that what's to stop
19 the (indiscernible) from dividending all its assets up to the
20 parent. And one of the big justifications or thinking behind
21 this funding agreement or the J&J support was just to take that
22 issue off the table.

23 And, again, it was to facilitate a filing to get
24 parties beyond concerns about fraudulent transfer and then move
25 forward to try to confirm a plan. And the tables were

1 completely turned on us where the Third Circuit came back and
2 said that's exactly the opposite of what you intended. In
3 fact, it's what disqualified you. We recognize the irony in
4 our opinion, but that's where we are based on financial
5 distress.

6 Did I answer your question, Your Honor?

7 THE COURT: It's an answer.

8 MR. GORDON: I wasn't asking you to comment whether
9 it was a good answer, of course.

10 You know, I think the -- you know, the other thing I
11 want to say about this is one reason we're getting into this
12 point is I think it takes off the table the idea of there's
13 some problem with reasonably equivalent value. Because from
14 our perspective, we weren't just in a situation where we were
15 saying we're just giving up something for nothing. We had a
16 concern that there was a material issue about enforceability.
17 And in return for eliminating that risk, we got a new funding
18 agreement and a new support agreement which provided the debtor
19 with the ability, in our view, to satisfy claims both inside
20 the bankruptcy and outside the bankruptcy.

21 And so, from our perspective, there was sufficient
22 value to pay claims both before and after. And I should
23 comment on that. I should pause and comment for a second,
24 because there were a lot of questions today about a \$60 billion
25 funding agreement versus a \$30 billion funding agreement, and

1 you allowed all this value to go away. That's really not
2 correct.

3 The value of the funding agreement is equal to the
4 amount of the liability. And so in other words, there's just
5 not -- there's not an obligation to pay 60 billion. There was
6 an obligation to provide backup support to cover talc
7 liability.

8 And the reason I make that point, it goes to just
9 what I've been saying. LTL was of the view that under the
10 first funding agreement it had sufficient resources to cover
11 its talc liability. It feels the exact same way under the
12 second funding agreement. And to suggest that there's been
13 some huge transfer of value out that creates a fraudulent
14 conveyance we believe mischaracterizes the way those agreements
15 work.

16 Value is equal to the liability. It's not \$60
17 billion. It's whatever the liability is. And that hasn't
18 changed. So I did want to clarify that.

19 Next slide, please. So I wanted to come back on the
20 no improper conduct. And I realize I addressed this in my
21 opening, but --

22 Oh, let me go back -- go back to that prior slide,
23 please.

24 I got -- there's one other point I thought I should
25 make that's very important. And that's the last bullet. And

1 this also really undercuts, I think, all the vitriol we're
2 hearing about what happened and how this is a fraud and it's
3 criminal liability.

4 There's no harm to claimants outside bankruptcy for
5 the additional reason that -- and you heard them say it two or
6 three times today. Their position is J&J is jointly and
7 severally liable on the talc claims. And so they're going
8 to -- if this case were be -- to be dismissed, and we'd go back
9 in the tort system, based on their own arguments there's more
10 than enough to cover, because in their position J&J has joint
11 and several liability.

12 That, to me, is sort of separate and apart from the
13 fraudulent transfer analysis. But it goes to the point of this
14 doesn't harm anybody. So these allegations that great harm's
15 been done, you didn't consult with our clients, how could you
16 do this while you're a Chapter 11 debtor, to me there's just no
17 foundation for that based on what their position is in the
18 litigation outside.

19 And what happens, of course, is if J&J pays, it's
20 still a problem for HoldCo, because HoldCo has the obligation
21 to cover the liability, as Your Honor remembers before, because
22 it assumed it. But from the outside perspective, in other
23 words, the perspective of the claimants, they get paid under
24 that theory.

25 Next slide, please.

1 So on the improper conduct, again, it's -- what made
2 me think of it, in our view, no harm has been done to the
3 claimants. And, in fact, in our view, all the actions we've
4 taken we've taken to benefit them. We believe that we've been
5 comporting with our fiduciary duties, because we continue to
6 believe that a resolution in the bankruptcy is in the best
7 interest of the claimants.

8 Your Honor sees now from the documents from Mr. Kim
9 we are engaging in contingency planning. We were at a time
10 where although the Third Circuit had ruled, we had re-hearing
11 petitions pending. We filed motions for stay. It wasn't clear
12 whether the case was going to be dismissed or not, and we were
13 planning for either scenario. We were planning for the
14 possibility that as this plan was coming to fruition, we could
15 proceed in the initial bankruptcy case. But if not, we could
16 proceed potentially in a second bankruptcy case.

17 Again, we don't think we've defied the Third Circuit,
18 because we think, you know, we've read carefully what they've
19 said. There have been no improper negotiations. And this is
20 interesting, because we answered these questions in the
21 depositions about the negotiations and when they occurred and
22 why we did them.

23 When we asked questions of the other side, like
24 Mr. Molton about whether he was doing the same thing, all those
25 questions were cut off. And the reason they were, we believe,

1 is because they were doing the same thing. I mean, they were
2 doing what Your Honor asked as well which is to continue
3 negotiating.

4 There's no evidence of any side deals. There's no
5 evidence that we fabricated anything. The only improper
6 actions that have occurred -- and you'll see this in the
7 record -- is that the firms who oppose the plan have been
8 engaging in threats and intimidation.

9 And you saw today with the witness with a number of
10 times with Mr. Kim he was asked, are you familiar with Title 18
11 of the Bankruptcy Code? Are you familiar with the New Jersey
12 rule that says you're not supposed to basically lie to a
13 tribunal? And there's just -- in our view, the record's very
14 clear there's a concerted effort by this group of firms who
15 represents a minority of plaintiffs to effectively
16 disenfranchise the group. They're going to do everything in
17 their power to stop this case from even getting to a vote.

18 And that's what would test ultimately their
19 allegations that the support isn't there. Take it to a vote.
20 If that's what you really think, let's go to a vote.

21 Next slide, please. Next. Next slide, please.

22 So, Your Honor, I'm just going to --

23 I'm sorry. The one before that. My mistake.

24 So, Your Honor, this is very much short -- and you
25 remember all this. There's the corporate history that we went

1 through. You know that the division was transferred to a
2 predecessor of JJCI and that the liability for the baby
3 products assets was picked up at that point and it traveled all
4 the way through in various restructurings that occurred through
5 2015.

6 Next slide, please.

7 You know from the evidence we presented before that
8 the liabilities included Shower to Shower. And I won't go
9 through the details, but we had, I think, a 10-K filing. There
10 was correspondence, and there was an annual report, all of
11 which reflected the fact that the transfer occurred, I think,
12 at the end of 1977. And that Shower to Shower liability also
13 ultimately became the responsibility of Old JJCI through a --
14 through the series of restructurings.

15 Next slide, please.

16 The other thing I wanted to remind Your Honor of is
17 that on top of that -- because we -- there was a lot of
18 disputes about this. There was also the established course of
19 performance that had been in place since literally 1979 or '78
20 where all the costs related to talc were ultimately born by
21 JJCI. And this is just some of the detail of how the
22 accounting was handled and how things work.

23 I mean, you may have a vague memory of this. You may
24 have wanted to wipe it out of your memory banks. But this
25 largely went back to Mr. Lisman who testified about the course

1 of performance.

2 Next slide, please.

3 And, of course, Your Honor made findings based on the
4 record as it was about the fact that Old JJCI had assumed the
5 responsibility for the talc liabilities, including the Shower
6 to Shower liability.

7 Next slide, please.

8 And you may remember that Judge Whitley, before he
9 transferred the case here, made a similar finding with respect
10 to Old JJCI assuming the responsibility for the talc liability
11 back in 1979.

12 Next slide, please.

13 Again, I'm going to breeze through these. This is
14 important for the PI motion, because it goes to the point of
15 whether the claims are basically one and the same. And there
16 were allegations made by the plaintiffs back in the first trial
17 and even going back to North Carolina that the claims were
18 different. You've heard today even I think from Mr. Placitella
19 and others, they're independent, they're separate.

20 But we showed you various pleadings that had been
21 filed before the first case where the parties just treated J&J
22 and Old JJCI interchangeably. This is an example from the MDL
23 master complaint.

24 Next slide, please.

25 Here's another one from a complaint, Anderson vs.

1 Borg-Warner.

2 Next slide, please.

3 Similar one. And this is one I always remember from
4 the court in South Carolina where the judge basically had the
5 same view that these were the same. And he says if you think
6 anybody in any of these cases is going to allow the stay
7 against liability on behalf of Old JJCI to somehow affect the
8 evidence that's going to be received whether that evidence was
9 from J&J, Old Johnson, or New Johnson, that is a very different
10 kettle of fish, and I can tell you right now that's not going
11 to happen in this case as far as I'm concerned.

12 Again, to point out the way these cases were being
13 tried. And they were being tried as if J&J and Old JJCI were
14 interchangeable.

15 Next slide, please.

16 This is -- again, I won't spend much time on this.
17 This was one of Mr. Satterley's cases. And, again, expressing
18 a similar view. This was the Van Klive case that was pending
19 shortly before the first bankruptcy filing.

20 Next slide, please.

21 Also same thing here from Mr. Satterley, same case,
22 Van Klive.

23 Next slide.

24 And then we had some excerpts from the Ingham case as
25 well where, again, like so many of the complaints, they just

1 aggregated all the allegations against the Johnson & Johnson
2 defendants. They made -- drew no distinction between J&J or
3 Old JJCI. No distinction between their conduct. No
4 distinction between theories of liability.

5 In fact, the only difference that ever occurred was
6 the amount of punitive damages that might be awarded, and
7 that's because those were based on the amount of the respective
8 entity's net worth. Had nothing to do with whether the claims
9 were different or whether the legal theories on which they were
10 based were different.

11 Next slide, please.

12 And, again, both Your Honor in your opinion and Judge
13 Whitley in his basically found the claims were the same. As
14 you put it, the talc claims against the protected parties
15 involved the same products, the same time periods, the same
16 alleged injuries, and the same evidence. And Judge Whitley's
17 finding was very similar a few months before that.

18 Next slide, please. Again, I'll go through these
19 very quickly. Next.

20 I think you remember the issue about indemnification
21 and the evidence that was submitted with respect to the
22 retailers. Here's an example of language in one of the
23 guarantees that had been executed in connection with the sale
24 of talc products.

25 And, Your Honor, let me know if I'm going too fast.

1 I just feel like --

2 THE COURT: Oh, you can't be going too fast.

3 MR. GORDON: I'm trying to go as fast as I can. Next
4 slide, please.

5 MR. SATTERLEY: Only 50 more slides.

6 MR. GORDON: And, again, we had a list of all the
7 tenders, a summary list of all the tenders that had been
8 received from retailers.

9 Next slide.

10 We gave you an example of what a letter looked like
11 where the company would accept a tender from the retailer, so
12 you get a sense for how that worked.

13 Next slide, please.

14 Then briefly on the insurance policies. Again,
15 another summary exhibit that showed there are about 450 shared
16 insurance policies, the defense cost indemnity payments on
17 claims against J&J, and the retailers would erode coverage
18 under those policies.

19 Next slide, please.

20 And here's some of the operative language that makes
21 clear that the insureds included subsidiaries of J&J as well as
22 the retailers.

23 Next slide. Okay. All right. Next slide.

24 Again, I'm going to go through these quickly, Your
25 Honor, because you've been through this at least three times, I

1 think, in this case. So we think you have ample authority, as
2 you've said, to extend the stay under Section 362(a), to do
3 that under 105(a), and to issue a preliminary injunction. And
4 you had, I think, cited the McCartney case which cites the
5 Robins case with approval.

6 Next slide, please.

7 Again, this comes from you. There's a three-step
8 inquiry in connection with the motion: whether the Court has
9 jurisdiction, whether the stay applies or should be extended,
10 and whether the Court should issue a preliminary injunction.

11 Next slide. Next, please.

12 So we believe that the jurisdiction is clear. Your
13 Honor is familiar with the three aspects of jurisdiction: the
14 arising under, arising in, or related to.

15 Next slide.

16 I think we've actually added to this list a bit.
17 There is a long list of asbestos cases where the stay has been
18 extended in analogous circumstances. And we haven't been able
19 to find -- well, maybe we could say Aearo. I don't know. But
20 in any event, our experience has always been these are granted.
21 In fact, my experience until this case, and I guess a couple of
22 others, was it was retained. They weren't even contested to
23 extend these. But lots of authority for extending the stay in
24 these circumstances.

25 Next slide, please.

1 We believe there's arising under, because the
2 automatic stay is a substantive right. And we cited cases that
3 support that proposition.

4 Next slide.

5 Arising in. Again, it has no existence outside of
6 the bankruptcy case. This is a preliminary injunction and a
7 request to extend the stay within the case for the purposes of
8 the case. We think, therefore, the Court has arising-in
9 jurisdiction.

10 Next slide.

11 And at a minimum, the Court has related-to
12 jurisdiction, because the -- you know, these claims could
13 conceivably have an effect on the estate. And, in fact, they
14 could have a very serious effect, because they impact our
15 ability to actually achieve the reorganization that we are
16 seeking to achieve.

17 Next slide, please.

18 And this is just some -- here again, Your Honor, I
19 think, found this related-to jurisdiction existed, you know,
20 due to the impact on the claims we're seeking to resolve as
21 well as the potential impact on the insurance coverage.

22 Next slide.

23 And we believe there's clearly a potential -- or
24 there's clearly an adverse effect on the estate if the
25 litigation were allowed to proceed. And in various ways, it

1 would impact the estate. Again, number one on our list is just
2 the impairment of our ability to resolve cases in bankruptcy
3 when the same claims are being adjudicated outside of
4 bankruptcy.

5 You have the indemnification obligations which have
6 the effect of making judgments against the protected parties,
7 effectively judgments against the debtor. You have the
8 potential loss of insurance. And then you have the collateral
9 estoppel and evidentiary prejudice risks, all of which I think
10 Your Honor recognized in your earlier opinions.

11 Next slide, please.

12 And, again, I think Your Honor put it well. You said
13 it's difficult to envision how successful reorganization could
14 be achieved in this case without extending the stay. And,
15 again, Judge Whitley made a very similar finding during the
16 time -- the short time he had the case in North Carolina.

17 Next slide, please.

18 We think it's clear that Your Honor has jurisdiction
19 to enjoin the claims, whether they're deemed direct,
20 derivative, independent, because of the impact they would have
21 on the estate. And, you know, we've cited Judge Beyer from the
22 Bestwall opinion that found that exactly. And we've also cited
23 the Mallinckrodt case where again with respect to independent
24 liability the Court reached the same conclusion.

25 Next slide. All right. Next, please.

1 And, again, this just lays out the law a bit.
2 Section 362(a)(1). And, you know, here the Colonial Realty
3 case makes clear that 362(a)(1) must encompass cases in which
4 the debtor is not a defendant. Otherwise, some of the language
5 would be mere surplusage.

6 Next slide.

7 The automatic stay has the effect of centralizing the
8 claims against the debtor in the bankruptcy case. And when the
9 claims against protected parties are the same, that central
10 purpose of the automatic stay would be defeated. I mean, we
11 need to have the claims here so that they can be resolved here.

12 Next slide, please.

13 Again, there's support for extending the automatic
14 stay in unusual circumstances. That comes from the Third
15 Circuit's McCartney decision.

16 Next.

17 You know, we've seen various courts talk about what
18 the unusual circumstances are. And from Robins, probably the
19 number one description of it is where there's such an identity
20 of interests that the debtor would be said to be the real party
21 in interest or the real party defendant and that a judgment
22 would have the effect -- a judgment against a third party would
23 have the effect of being a judgment against the debtor. And
24 then just more generally, you see it like in Philadelphia
25 newspapers, a third-party action would have an adverse impact

1 on the debtor's ability to achieve a reorganization.

2 Next slide, please.

3 Identity of interest.

4 Next.

5 So, Your Honor, we think the record makes clear that
6 the debtor is the real party in interest. Old JJCI had the
7 responsibility for all talc liability. LTL now has that
8 responsibility. It's indemnified the protected parties.
9 There's an identity of claims. There's an identity of issues.
10 And they're all -- the allegations against JJCI and J&J are
11 inextricably intertwined in the sense that they seek the same
12 damages and the same relief, and they do that against protected
13 parties -- the same damages and relief against protected
14 parties they would seek against the debtor.

15 Next slide.

16 And I think Your Honor found this again in your
17 opinion. Same product, same time periods. I think I went
18 through that before. And I think you found there was a basis
19 for that. No basis to deny the corporate transactions and
20 indemnity agreements that left the debtor ultimately
21 responsible for talc liability.

22 Next, please.

23 You had similar rulings by Judge Whitley in the DBMP
24 and Aldrich where he found that the debtor was the real party
25 defendant. Because, again, in those cases, he viewed the

1 claims as basically the same.

2 Next slide.

3 And, again, just more case law on this point about
4 the direct or independent claims should be stayed. And you can
5 see Mallinckrodt, the Grace case, American Film Technologies
6 and the Ms. Kipps case.

7 Next slide, please.

8 We had some argument the last time about whether
9 these indemnification agreements were of a type that would be
10 viewed as creating a problem sufficient to warrant a stay, and
11 there was discussion about automatic liability, whether
12 there -- there's automatic liability or not. From our view,
13 the agreements are clear that the debtor has liability if, in
14 fact, the liability against the retailers is based on the sale
15 of products that were manufactured by LTL's predecessors. And
16 we have some cites there to the Dow Corning case, the re cite.

17 Next slide, please. All right. Next.

18 And here again, this just kind of sums up the
19 findings Your Honor made on the point about the impact
20 continued litigation would have on the reorganization. You
21 noted the liquidation of the pending tort claims and the
22 problem that would occur. You noted the potential depletion of
23 insurance coverage. You noted the potential impact on
24 mediation efforts and negotiations and the diversion of funds
25 and resources toward defense costs rather than towards a trust

1 to fund a plan.

2 And I think the third point is even more significant
3 now given that we have a plan in prospect. And we have a lot
4 of work to do in the next several weeks and beyond to finalize
5 that plan and push forward to take that plan to a vote, to see
6 if we can consummate a trust and reorganize in a fashion that
7 we believe is beneficial to everyone.

8 Next slide, please.

9 This again provides some additional support on the
10 point about the shared insurance coverage and the fact that the
11 fact there is shared insurance coverage supports extending the
12 stay.

13 Next slide.

14 And, you know, there was some arguing the last time
15 about how this really wasn't important, because the insurers
16 were disputing coverage. But as we pointed out, and I think
17 Your Honor ultimately found, there's been no determination at
18 this point in time whether coverage is available or not or the
19 extent to which it's available. And there's just no reason not
20 to protect this insurance, because it's potentially very
21 valuable at a time when it's -- the extent of the availability
22 of that coverage has not been determined.

23 THE COURT: The \$8.9 billion proposal, that's not
24 dependent on insurance coverage?

25 MR. GORDON: No, Your Honor.

1 THE COURT: So that's outside of the funds that would
2 be available?

3 MR. GORDON: Right. That's correct.

4 Next slide, please.

5 You know, and I should mention while you're asking me
6 about that, Mr. Watts referred to it. There's also a provision
7 that says that if there's additional funds that would be made
8 available through Imerys, those are on top of the 8.9. So I
9 did want to make that clear. There was maybe one question this
10 morning that seemed to reflect maybe a misunderstanding about
11 that, so I didn't want to --

12 THE COURT: So in other words, if there's a recovery
13 in the Imerys case --

14 MR. GORDON: Yeah. Because there's an overlap in the
15 claimants. And you may remember that Mr. Watts, I think,
16 pointed that out when he came to the podium at the first
17 hearing.

18 THE COURT: That's what I'm confused on is I thought
19 there was a potential obligation, indemnification obligations
20 in Imerys.

21 MR. GORDON: Correct.

22 THE COURT: So we don't know if that's materially --

23 MR. GORDON: We don't --

24 THE COURT: Which way the dollars are flowing.

25 MR. GORDON: Well, we don't know how that's going to

1 work. We believe -- the way I think about it, putting aside
2 the complexity of indemnification, we have Imerys sitting in
3 bankruptcy with Cyprus. The claims have been filed against
4 that by most of the same parties related to the same talc. And
5 what I'm saying is if there's a recovery in that case to the
6 same talc claimants, that would be on top of the recovery in
7 this case.

8 THE COURT: Okay.

9 MR. GORDON: In other words, the --

10 THE COURT: They're not going to get it in both
11 cases.

12 MR. GORDON: Yeah. We're not saying we get the
13 money. We're putting up the 8.9. If we were to win and get
14 money out of Imerys, we get to keep it, it would go to the
15 claimants.

16 THE COURT: Okay.

17 MR. GORDON: Okay. And this is just saying, again,
18 our insurance hasn't been exhausted, and it hasn't -- the
19 extent of coverage hasn't been determined.

20 Next slide, please.

21 Your Honor recognized potential collateral estoppel,
22 res judicata, and evidentiary prejudice risks of continued
23 litigation. And I -- again, we think the record supports that
24 finding again.

25 Next slide. All right. I'm getting towards the end

1 here, I think. Next slide. Preliminary injunction. Next.

2 So, you know, the standards here are somewhat
3 different. You know, from the Grace case, the standard for a
4 grant of a stay is generally whether the litigation could
5 interfere with the reorganization, whether it could diminish
6 the debtor's ability to formulate a plan. And it's, again,
7 from the McKellan (phonetic) case, same thing. Standard for a
8 grant of the stay is generally whether the litigation could
9 interfere with the reorganization. For the reasons I've
10 already indicated, we think interference is clear here.

11 Next slide.

12 Again, I think we've seen this before. These
13 injunctions have been issued many times.

14 Next.

15 We believe you have the authority under Section 105
16 to enjoin direct and independent claims based on -- or
17 allegedly based on non-debtor conduct. And, again, we cited a
18 number of cases which Your Honor is familiar with.

19 Next slide.

20 We have the traditional preliminary injunction
21 factors. I'll just go through these quickly.

22 Next slide. And next.

23 (Audio skip from 4:20:41 p.m. to 4:20:44 p.m.)

24 MR. GORDON: -- Your Honor is familiar with this
25 proposition that establishing the reorganization is likely to

1 be successful is not intended to be a particularly high
2 standard. You'll see that from Bestwall and this
3 Solidus Networks case and other cases as well.

4 Next slide.

5 We believe the case has a proper reorganizational
6 purpose. In fact, we note that even the Third Circuit
7 referenced our good intentions with respect to the bankruptcy
8 filing. But you'll see from these other courts as well they
9 recognize the good-faith purpose of attempting to resolve mass
10 tort liability in a bankruptcy case.

11 Next slide.

12 We believe we can successfully reorganize. And we
13 think our case on this prong is even stronger than it was the
14 last time Your Honor heard from us on the preliminary
15 injunction matters because of the plan support we have and not
16 only through the executed agreements but also the support you
17 heard -- or the commitments that Mr. Murdica indicated he had
18 from other firms as well. We have the principal economic
19 terms. We have an agreement on those. And Your Honor probably
20 knows from other mass tort cases that's probably the number one
21 issue that has to be resolved before anything can happen.

22 And I think there's reasons to think this
23 reorganization will be successful just given the size of the
24 amount. It's historic. It's unprecedented. We think the
25 changes are good that the momentum in favor of the plan is

1 going to continue to build.

2 And, again, we're going to move very quickly on the
3 plan process. So I think the Court's going to know if we're
4 permitted to move forward and we can keep these cases in front
5 of this Court that you're going to find out really relatively
6 quickly whether we're a go on a plan or not.

7 And as I said before, and I won't repeat it, we
8 believe the second filing does comply with the good-faith
9 standard for filing as articulated by the Third Circuit in its
10 recent opinion.

11 Next, please.

12 Again, I'm not going to repeat this, but the
13 claimants' support is real. It's interesting; you didn't
14 really hear much today so far, maybe we'll hear more, about the
15 claimant counts anymore. And, again, I think the evidence has
16 only served to confirm that the support is even more
17 significant than we indicated at the last hearing, and the
18 opposition is smaller than was represented by the other side.
19 And, again, we are going to make every effort to broaden the
20 support and to finalize the plan and move forward.

21 Next slide, please.

22 And you can see, again, Mr. Maimon indicated this is
23 all just a side show. It's a diversion. But the fact there's
24 significant claimant support is very important. It's very
25 important for this factor. It's very important, I think, for

1 demonstrating our good faith.

2 And just to be dismissive of that, I think, is just
3 false. It's exceedingly important to Your Honor's
4 consideration, I think, of this motion and other matters that
5 come before you as hopefully we move down the road towards a
6 plan of reorganization.

7 Next slide, please. Irreparable harm. Next.

8 Again, this sort of goes back to what I talked about
9 before. It's hard to imagine how you can reorganize if at the
10 same time you're trying to resolve the claims here the claims
11 are proceeding outside of this court.

12 And if you think about it now, Your Honor, you know,
13 in a situation now where we have substantial support, and we're
14 moving forward, imagine the distraction that would arise if the
15 litigation is allowed to proceed outside of this court.
16 Because it's going to put -- I think it's going to create this
17 scenario where claimants who might otherwise be prepared to
18 move forward might say, well, let me wait and see what happens
19 in this case. Or maybe I want to see how this appeal turns
20 out. You know, maybe I should just wait for this.

21 And that -- to me, it's an enormous distraction. Not
22 to mention from the company's perspective all the time we would
23 have to spend as this litigation would literally be restarting
24 in thousands of cases and all the work that would have to be
25 devoted to that at a time that's so critical to us, because

1 we're under an extremely tight deadline to get a plan moving
2 forward.

3 And I know Your Honor expects from us -- you want us
4 to give our maximum effort to move this process as fast as we
5 can. So to me, this is even a bigger issue for us in this case
6 than it was in the last case given where we are in this case.

7 Next slide.

8 Other harms are the ones we've already talked about:
9 impacts on insurance, evidentiary prejudice, res judicata,
10 indemnification obligations. So I won't repeat those.

11 Next, please.

12 I did want to point out, I think Mr. Kim alluded to
13 this earlier, that we have modified the protected parties list.
14 Because we have heard some criticism about, you know, how you
15 can just put in literally hundreds of J&J affiliates. That
16 seems overly broad.

17 From my perspective, that wasn't really an issue,
18 because if nobody's intending to sue those affiliates, there's
19 no harm. But by the same token, I can't really say we have to
20 have the relief, that we need the relief, because they haven't
21 been sued. So we've tried to reduce the list of affiliates
22 down to the companies that have been named.

23 And you heard in the back and forth with
24 Mr. Placitella that in addition to the four we had on our
25 original list, which were Old JJCI, J&J, HoldCo, and J&J

1 Canada, we've added Janssen Pharmaceutical and Kenvue, because
2 they've now been identified for the first time as defendants in
3 talc litigation. And then, of course, we have the retailers
4 and the indemnified parties. We have not included the
5 insurers.

6 So we have attempted to modify the list somewhat to
7 address some of the criticisms that were made to the initial
8 list of protected parties.

9 Next slide, please. Next, please.

10 I think the balance of the harms, in our view,
11 ultimately comes down to the issue I've been emphasizing, which
12 is absent an injunction, we think our ability to succeed with
13 this plan will be, if not defeated, altogether substantially
14 undermined. We also continue to believe strongly that
15 resolution in bankruptcy is better for the claimants. It's
16 more efficient. It's more equitable to the claimants.

17 I mean, what we see is a situation in the tort system
18 where the large majority get nothing. And you're going to see
19 in the record, by the way, Your Honor, that that's reflected in
20 the record of what we -- what came out in the depositions. The
21 large majority get nothing.

22 I think the plaintiffs' firms hope that while
23 occasionally we might hit the ultimate home run, get a big
24 recovery for the claimant and ourselves. But what about all
25 the others who get nothing? And the benefit of a plan is they

1 all get something, and they all get equivalent payments based
2 on their circumstances.

3 So we continue to believe that this is in their best
4 interests. And, again, the tort system and the record bears
5 this out based on the deposition. There's substantial delay.
6 You heard it from Mr. Watts. There's substantial uncertainty
7 and a high prospect of no recovery at all.

8 Next slide.

9 And, again, I won't spend much time on this. You may
10 remember that Mr. Mullin -- or Dr. Mullin of Bates White had
11 issued a report in the prior proceedings about the benefits of
12 a resolution through bankruptcy. And here's some of the
13 significant points he made about the benefits of trust
14 resolution, including at the bottom just the cost is so much
15 less. The cost of processing and paying claims is so much less
16 than the cost of litigation in the tort system.

17 Next slide.

18 And, again, just the way these -- the trust would
19 work, this is just really important in our view that there's
20 common set of rules, common set of criteria. Similarly
21 situated claimants are treated the same. There's assurances
22 for the future claimants that they get treated in the same way
23 as currents.

24 And that's one of the benefits that I see of this
25 plan proposal that it literally provides for payments over a

1 25-year period, which I would think would provide the future
2 claimants with comfort that the money is going to be there. It
3 won't all be spent on current claims or claims that come to
4 fruition before a future claimant's claim arises.

5 Next slide, please.

6 Again, just sort of more of the same from courts
7 noting the benefits of trust resolution in addition to Your
8 Honor. Judge Beyer in Bestwall and the Federal-Mogul decision.
9 Recognition by the Third Circuit of the benefits of the trusts.

10 Next slide.

11 And, again, these are all things you've heard before,
12 and these are the findings that you made based on the evidence
13 before with respect to these issues. And, again, we believe
14 the evidence in the record, which includes evidence from the
15 prior record, supports the same findings this time around.

16 Next slide. Public interest. Next.

17 THE COURT: We're getting close.

18 MR. GORDON: I'm getting close. It's good, because
19 I'm sort of tired of standing right now. It's been a long few
20 days.

21 (Counsel confer)

22 MR. GORDON: So, Your Honor, these slides just point
23 out that a successful reorganization, many courts have
24 recognized that that's in the public interest if it can be
25 accomplished. And I would say it's especially so in mass tort

1 cases where you can resolve literally thousands of claims or,
2 in this case, tens of thousand of claims in a uniform manner
3 and in an equitable manner.

4 Next slide.

5 MR. SATTERLEY: Our slide show only goes to 94, so
6 that's why we don't have those. I did not --

7 THE COURT: They win.

8 MR. GORDON: Well, these are the key slides too.

9 UNIDENTIFIED SPEAKER: We have one. We'll share with
10 you.

11 MR. SATTERLEY: That's okay.

12 MR. GORDON: Sorry about that.

13 MR. SATTERLEY: Proceed on to --

14 MR. GORDON: Sorry. And, again, this is from your, I
15 think, prior ruling with respect to public interest. And,
16 again, we think the basis for your finding then, it equally
17 applies now.

18 Next slide.

19 So I'm at the conclusion. So, Your Honor, just to go
20 through the basics on the stay and the preliminary injunction,
21 we think the record's clear that the debtor is responsible for
22 all the talc liability. The claims at their core -- you can
23 call them independent or separate with respect to protected
24 parties, but at their core they're all the same. It's the same
25 legal theory, same injury, same time period, same damages.

1 The claims have been indemnified by the debtor. The
2 debtor has shared insurance. There's a potential that
3 insurance would be diminished.

4 And then if you think about where we are, we're in a
5 good place. Recent negotiations, in our view, have created a
6 window of opportunity to effectuate the largest mass tort
7 bankruptcy resolution ever. In our view, that opportunity will
8 be lost absent a stay and injunction. And it shouldn't be
9 lost, in our view, because a group of law firms who represent a
10 minority of the claimants want to prevent the majority of
11 claimants from having the ability to decide for themselves
12 whether to approve the plan that's been put together.

13 And that's all we're really asking. We want -- we're
14 asking for the ability to get to a vote, to provide the
15 claimants with an opportunity to decide for themselves. And we
16 believe that in order to do that, we need the stay and
17 injunction that we've requested.

18 THE COURT: All right.

19 MR. GORDON: So we are -- we do ask Your Honor to
20 grant the motion. But I know Ms. Brown's got some additional
21 slides.

22 THE COURT: Thank you, Mr. Gordon.

23 MR. GORDON: Thank you.

24 THE COURT: Ms. Brown?

25 MS. BROWN: Thank you, Your Honor. And if I could

1 ask for the Court's indulgence for just two minutes while I
2 make sure the slides are there --

3 THE COURT: Yes.

4 MS. BROWN: -- and just get a clicker. Would that be
5 okay?

6 THE COURT: That's fine.

7 MS. BROWN: Thank you so much.

8 (Counsel confer)

9 MS. BROWN: Okay, Your Honor. Thank you. I think
10 we're set up.

11 (Counsel confer)

12 MS. BROWN: May I approach with a copy? Thank you.
13 Thank you, Your Honor.

14 May I proceed, Your Honor?

15 THE COURT: Please.

16 MS. BROWN: Thank you very much. Judge, we are back
17 before you now. I think it's only --

18 (Counsel confer)

19 THE COURT: Here, you can -- if you want to use --

20 MS. BROWN: Or use this --

21 THE COURT: Yeah.

22 MR. SATTERLEY: Well, this one has Mr. Valadez in it,
23 and I think I need to read what she's going to say about
24 Mr. Valadez. So I'm sorry. And I didn't know we were going to
25 do both the general and Valadez at the same time. But however

1 Your Honor wants to proceed.

2 This 50-point -- 50-page PowerPoint seems a little
3 excessive since we've already seen a hundred, but -- and it's
4 5:00 at night. But I got two suits, and I'm willing to come
5 back tomorrow, Your Honor.

6 THE COURT: Well, no. I have other -- I do have
7 other cases just --

8 MS. BROWN: I talk fast, Judge. I talk really fast.

9 THE COURT: Okay.

10 MS. BROWN: I'm going to fly through this, Your
11 Honor, and certainly not duplicate anything Mr. Gordon did.
12 Your Honor, we are back before you now. It has only been a
13 week but an incredible amount of discovery has happened, as
14 Your Honor knows, because we had to drag you into some of it.

15 But at the end of more than five depositions,
16 multiple meet and confers and exchange of documents, what is
17 clear, Your Honor, is that the overwhelming evidence
18 demonstrates the likelihood of success of reorganization here.
19 The evidence in the record now for the support of firms who
20 will recommend to claimants to support the plan, Your Honor, is
21 substantiated. It's real. And it's supported by testimony and
22 documents, whereas the evidence of opposition to the plan that
23 Your Honor heard from the now TCC members last week is not
24 substantiated and through multiple depositions has no support
25 in the record.

1 Your Honor heard, of course, through the testimony of
2 Mr. Kim by his declaration that what is on the table here is an
3 unprecedented proposal. It would be the largest asbestos
4 bankruptcy case settlement ever, Your Honor, including an --
5 for all of these companies who intentionally put asbestos in
6 their products, Your Honor. And, of course, the Court is very
7 familiar that J&J has never wavered in its position that
8 cosmetic talc is safe, does not contain asbestos, and does not
9 cause cancer.

10 But nevertheless, Your Honor, this settlement is
11 historic, and it is far more than settlements that had been
12 made throughout the years, including by members of the TCC.
13 What has come out in the discovery over just the last few days,
14 Your Honor, is evidence including a proposal made by
15 Mr. Birchfield of Beasley Allen to resolve all of the ovarian
16 cancer claims, both the current and the future, through the
17 Imerys bankruptcy for \$3.25 billion, Your Honor, back in 2020.
18 And, of course, as Your Honor knows, as we just looked at, this
19 settlement encompasses more claims but is more than double what
20 Mr. Birchfield himself offered just a few years ago.

21 We heard, Your Honor, when we were here just a few
22 weeks ago from Mr. Molton that there was vehement opposition to
23 the plan, that there were over 100 law firms representing
24 40,000 claimants who were going to oppose this plan. But, Your
25 Honor, here before you a week later and all these depositions

1 and documents later, we don't know who they are.

2 What we do know from some depositions, including that
3 of Mr. Birchfield, is that they include unfiled cases.

4 Mr. Birchfield testified that he believes of the 40,000 cases
5 that Mr. Molton represented would be in opposition, about 5,000
6 of them are unfiled, and they're cases that Mr. Birchfield
7 would not recommend filing in the tort system.

8 But beyond that, Your Honor, we don't know much more.
9 We don't know for -- we know there are no written agreements --
10 at least Mr. Birchfield was not aware of any written agreements
11 to oppose the plan or any written agreements that co-counsel
12 might have to oppose a settlement on these terms. And, Your
13 Honor, when we asked Mr. Molton about the identity of the 100
14 law firms or the 40,000 claimants he represented to the Court
15 would be in opposition to the plan, numerous privileges were
16 asserted, including the attorney/client privilege, the attorney
17 work product privilege. We'll talk a little bit later about
18 the mediation privilege, the settlement privilege, the common
19 interest privilege that was asserted during that deposition,
20 Your Honor.

21 But we have no evidence in the record of who these
22 firms are or who -- any documentary evidence that there are 100
23 firms with 40,000 claimants that are, indeed, objectors to the
24 plan. That, of course, is in stark contrast to the evidence
25 Mr. Gordon reviewed with the Court that came in through the

1 plan support agreements that we have of lawyers who have
2 committed to recommend to their clients that they will support
3 this historic settlement, through the testimony of lawyers who
4 have provided hours and hours of testimony about their
5 evaluation of this deal and how they think it is historic and
6 the best for plaintiffs.

7 You heard, Your Honor, last week allegation that J&J
8 and LTL's conduct is rotten and that not one talc claimant has
9 agreed to this deal, that Mr. Molton hadn't seen a lawyer
10 affidavit, that these were unsubstantiating (sic) claims that
11 the debtor and, indeed, also J&J were making up, Your Honor.
12 But what we've heard through discovery, Your Honor, and what
13 you heard a little bit about here today is that the process
14 that was filed -- that was followed here to substantiate the
15 support that we have for the plan is the very same process that
16 has been followed through a number of different other events,
17 including, as Mr. Haas testified, at least three times in his
18 dealings with Mr. Birchfield in trying to reach a global
19 resolution of these claims over the years.

20 Mr. Haas testified that here in terms of the
21 information we required, in terms of our dealings with the
22 plaintiffs' lawyers, we followed the exact same process that we
23 have in the past. So, for example, in the past in negotiating
24 with the plaintiffs, affidavits had not been required. There
25 had not been representations about what clients said or agreed

1 to. And, of course, that's exactly the same scenario that went
2 on here.

3 As Mr. Gordon mentioned and Mr. Haas testified that
4 when he gets -- he gives his word in a settlement negotiation,
5 he keeps it. And you heard on the very first day from both
6 Mr. Birchfield and from Mr. Watts that Mr. Haas gave his word
7 that there would be no side deals and that Mr. Birchfield and
8 Mr. Watts agreed that, in their point of view, they're aware of
9 no side deals. No evidence has come in over the past week,
10 Your Honor, that anything improper or untoward or any side deal
11 or side cut is going on here.

12 You heard and you saw testimony and Mr. Gordon's
13 presentation, Your Honor, about Mr. Murdica's confidence as the
14 person who has been negotiating most closely with the
15 plaintiffs on -- the plaintiffs' lawyers on the other side.
16 His confidence based on 20 years of doing this type of work, of
17 negotiating with some of these very same plaintiffs' lawyers
18 that he's confident when representations are made to him by
19 these particular professionals that they'll be kept. And when
20 they say in the past that their claimants will support a deal,
21 that's what they're going to do. And you heard his confidence
22 in that video clip, Your Honor, that if the plan were to go to
23 a vote today, more than 75 percent of the claimants would
24 approve it.

25 Importantly, Your Honor, one of the things that was

1 revealed in discovery were some of the terms of the offer that
2 Mr. Birchfield made to resolve all of the current and future
3 ovarian claims back in 2020 for \$3.25 billion. And what's
4 critical and what's important here, Judge, is that this
5 proposed settlement agreement tracks almost perfectly with some
6 of the provisions put forth in the plan support agreement and
7 the term sheet.

8 So, for example, Your Honor -- and we'll take a look
9 at the language in a second, this master settlement agreement
10 provides that the identification of the plaintiffs would come
11 through a spreadsheet, just like the ones that we have in this
12 case and that we produced to the other side that contains
13 identifying information like social security number, first
14 name, last name, and in our case also the type of disease.
15 Certainly, there were no client affidavits that were required
16 or declarations about conversations with plaintiffs that were
17 required under Mr. Birchfield's proposal.

18 We heard in discovery, Your Honor, a fair amount of
19 criticism about the proposed lien administrator in the term
20 sheet and the PSA. In fact, it's the same one that was
21 contained in the proposal that Mr. Birchfield sent in 2020.
22 And, of course, what Mr. Birchfield recognized in the proposal
23 he made for less than half of the amount of the current
24 proposal is that a channeling injunction was needed to be able
25 to -- to provide for and resolve these claims for not just

1 current claims but, of course, future claims as well.

2 And Your Honor has heard, and I won't repeat it here,
3 how it -- how especially important it is in a case like this
4 where the latency period on the two diseases that plaintiffs
5 claim are associated with cosmetic talc have latency periods of
6 anywhere from 20 to 30, all the way up to 60 years, Your Honor.

7 This is some of the actual language, Your Honor, from
8 the proposal that came from the other side a few years ago.
9 You can see that the way that you would evidence the agreement
10 would be through an Excel spreadsheet that -- listing the
11 claimants. Again, that's, of course, exactly what we did here.

12 And we have some testimony, Your Honor, on that as
13 well. Mr. Birchfield was good enough to sit for a deposition
14 and explain to us that, exactly as the agreement reads, yes,
15 the way we would provide consent would be through a spreadsheet
16 with the current claims. And he would not, Your Honor, require
17 affidavits that we've heard so much questioning about,
18 commitments through conversations with claimants or anything
19 like that.

20 You'll recall, Your Honor, when we were here last
21 week, those were some of the very same criticisms that we heard
22 of our proposal was that we didn't have affidavits and
23 conversations with claimants. And I think we even heard that
24 in some of the questioning with Mr. Kim this morning. But
25 Mr. Birchfield made clear that this is standard practice and

1 the practice he followed as well.

2 Your Honor, we also heard a fair amount of
3 suggestions last week that some misconduct or something
4 untoward happened in terms of LTL and J&J's continued effort to
5 try and resolve this case even after the Third Circuit's ruling
6 on January 30th. There was a suggestion that there was
7 something wrong about the parties continuing to negotiate,
8 continuing to try to find a way to reach a resolution.

9 And, of course, as this Court well knows, the Court
10 urged the parties to continue informal settlement discussions
11 even when the Court was discharging the mediators and the
12 estimator and other court professionals. And the Court urged
13 the parties to continue these discussions, recognizing the
14 importance of trying to resolve this litigation.

15 And, Your Honor, we asked -- even though our
16 deponents were truthful and accurate and honest about those
17 continued efforts, Your Honor, we asked the TCC about their own
18 efforts, about what they were doing during that time period.
19 Mr. Molton was deposed late last night. And this was another
20 effort -- another example, Your Honor, of this sort of sword
21 and shield use of the privilege. Because when we asked about
22 the TCC's efforts to continue to settle, to resolve the case
23 after the 30th of January, all of these privileges were
24 asserted, and Mr. Molton was instructed not to answer.

25 Here, the instructions, Judge, went beyond

1 attorney/client, attorney work product. They reached
2 mediation. Which as the Court will remember, I had actually
3 argued in opposition to Mr. Haas' deposition. And the Court
4 found, of course, that was not appropriate, and Mr. Haas sat
5 for a deposition.

6 But the TCC invoked that, and Mr. Molton didn't
7 answer questions. Settlement privilege was also invoked, and
8 an instruction not to answer was given.

9 But perhaps, most importantly to draw to the Court's
10 attention, and I think it was referenced earlier, was a common
11 interest with the United States Trustee that was invoked. And
12 here's some of the details on that, Your Honor.

13 In fact, this questioning, and Your Honor will see it
14 in the deposition, happened a number of times throughout the
15 deposition, so much so that Mr. Storer (phonetic) went back to
16 it at the end of the deposition to just confirm that, in fact,
17 counsel for Mr. Molton was asserting a common interest with the
18 United States Trustee's Office for the period of time after the
19 Third Circuit decision and up to and including the filing of
20 the second bankruptcy. And, again, as you'll see there,
21 Mr. Molton was instructed, maybe for the twelfth time, that
22 there was a common interest between two parties, the U.S.
23 Trustee and the TCC, co-litigants, and that there was going to
24 be an instruction not to answer the substance of communications
25 with the U.S. Trustee.

1 And, Your Honor, we also heard today some suggestions
2 that something improper was going on with Ms. Ellis, Your
3 Honor. And as the Court knows and as the Court instructed, all
4 parties continued to do what they could to resolve the case.
5 We have no idea about the discussions that went on between the
6 TCC and the FCR, because they similarly instructed Mr. Molton
7 not to answer those questions, Your Honor. We were complete
8 and truthful when those questions were asked of Mr. Kim,
9 Mr. Murdica, Mr. Haas.

10 And I would just remind the Court about the
11 endorsement that came from the TCC when Ms. Ellis was
12 appointed, how folks stood up here and sang her praises and
13 said what an important day it was for the first woman future
14 claims representative in the entire history of future claim
15 representatives in the United States, Your Honor. That the TCC
16 was, of course, in support of that.

17 And all of a sudden this morning, Your Honor, we --
18 and throughout the depositions, we have heard suggestive,
19 threatening questioning about something improper happening in
20 terms of dealings with the FCR. Your Honor, there is no basis
21 in the record, in the truth to suggest that. This is a team of
22 lawyers who were in favor of her just a few months ago, Your
23 Honor, that have now, all of a sudden, refused to answer
24 questions about their own discussions with her and are starting
25 to ask questions, Your Honor, and make suggestions that are

1 wholly inappropriate and, we believe, unsupported by the
2 record.

3 Your Honor, I want to talk a little bit about what
4 has been reinforced in this short window of discovery. And
5 I'll do it quickly, because this was the subject, as Your Honor
6 knows quite clearly, of the motion to dismiss hearing.

7 But our discovery over the last few days has only
8 reinforced what this Court found last year and what is the
9 truth. The tort system has failed the plaintiffs in this
10 litigation, Your Honor. This is a slide that we used in the
11 motion to dismiss hearing, and these facts are well familiar to
12 the Court.

13 If we just look at the cases in the MDL, almost
14 40,000 cases pending in the MDL at the time of our motion to
15 dismiss hearing last year. Only 1,000 of them even got to the
16 point of filling out what we call a plaintiff profile form.
17 Only 30 of those were selected for discovery work up, some
18 discrete depositions, Your Honor, and more involved written
19 discovery. Only six of them were selected to have expert
20 discovery and start getting ready for trials. And at the time
21 of the bankruptcy, Your Honor, even though the MDL had been in
22 existence for over five years, no cases had gone to trial at
23 all.

24 And that's not wholly unrepresentative of what things
25 looked like out in the larger state court system where the

1 state court system didn't have any more success, so to speak,
2 Your Honor, with getting cases through jury trials. At the
3 time of the bankruptcy filing, Your Honor, again almost, you
4 know, 40,000 cases pending everywhere.

5 Forty-six cases went to trial. Of those, only 38
6 went to an actual verdict. Of those, the overwhelming majority
7 were either won by defendants in front of a jury, were won by
8 defendants on appeal. A small handful of them remain on appeal
9 at the time of the bankruptcy filing. A handful of them were
10 resolved on appeal. But only two final plaintiff's verdicts
11 all the way through the appeal process were paid out and
12 finalized, Your Honor. And that would include the Ingham
13 verdicts that we spent so much time talking about in the motion
14 to dismiss hearing.

15 Your Honor saw these stats and know that post that
16 Ingham decision where that jury awarded almost \$5 billion to 22
17 plaintiffs, the plaintiffs' bar went on a losing streak for
18 five years of ovarian cancer cases, a mistrial, a defense
19 verdict, and then four straight unanimous defense verdicts,
20 including in a multi-plaintiff case in the City of St. Louis.

21 And, Your Honor, we heard from Mr. Birchfield both in
22 court last week and through his press releases that he is
23 opposed to this deal, Your Honor. He doesn't think it's enough
24 money. And he was here last week and showed the Court a chart
25 with the medical expenses that he thinks are sort of the

1 average for his cases.

2 But what I think is important and what we talked to
3 Mr. Birchfield about a little bit in his deposition and what
4 was left out of this slide, Your Honor, is that the plaintiffs
5 in each one of these cases received zero dollars. And that's
6 either because a jury returned a defense verdict or because the
7 case was reversed on appeal. And so while the slide was used,
8 of course, for the point of medical expenses that were being
9 asked of a jury, the reality is the majority of those juries
10 and appellate -- the totality of the jury and the appellate
11 courts came back with zero dollars, Your Honor.

12 THE COURT: So doesn't that go to what Judge Ambro
13 was saying in the Third Circuit that the -- I should have taken
14 into account these verdicts and potential settlements in
15 calculating distress?

16 MS. BROWN: Well, Your Honor, I think the issue is we
17 could win 50 trials in a row and then get hit with an Ingham
18 verdict. The problem with the tort system is the lottery-like
19 jury verdicts. Two issues actually, Judge. One is the
20 lottery-like verdicts where you could go on for ten years --
21 even if you only had one Ingham verdict for ten years -- we
22 submitted that information to the Court.

23 But also, Your Honor, it's the cost of defense. It's
24 the cost of -- my colleagues agree. It's the cost of defense,
25 Your Honor, of just paying lawyers like me and a lot of other

1 lawyers like me to do all the discovery in these cases, to try
2 these cases that are going on all at the same time. The volume
3 is enormous.

4 And the testimony was that those costs just to defend
5 could reach \$190 billion. And that's money that's going to no
6 claimant at all. I mean, that's just the side cost to lawyers
7 to be able to get the cases to a place where we can defend
8 ourselves. So there's an enormous waste of money in the tort
9 system if what your objective is, is to compensate plaintiffs.
10 And the risk of financial distress, Your Honor, comes not just
11 from an Ingham-type verdict but from the cost of having lawyers
12 defend the cases.

13 And so, Your Honor, these are just a little more
14 details on the cases and the verdicts that we went through with
15 Mr. Birchfield. But, you know, Mr. Birchfield, to his absolute
16 credit, was perfectly honest with us and was asked, you know,
17 with respect to the 11,000 or so claims that Beasley Allen
18 represents, they have tried only 11 cases. They haven't
19 settled a case. And they haven't recovered a dime for
20 claimants in the last ten years.

21 And that is no disrespect, Your Honor, to
22 Mr. Birchfield or to his firm. I have litigated against these
23 folks, and they are good lawyers. The science does not support
24 these claims, Your Honor. And when the truth gets to juries
25 around the country, they are resoundingly rejecting these

1 claims.

2 And the Beasley Allen inventory is a perfect example
3 of that, Your Honor. Ten years, 11 cases, small number -- I'd
4 say -- we did the math yesterday. It's something like .000009
5 percent of the cases got to a jury. And when they did, every
6 single one of those women went home with zero dollars.

7 And, Your Honor, the concern -- and we've raised it
8 in the past. The concern is that while the tort system is not
9 benefitting the plaintiffs themselves, there is a perverse
10 incentive for the lawyers to want to remain in the tort system.

11 And in addition, you know, to the percentage of
12 recovery they can get on a lottery-type verdict, there is
13 something called a common benefit fund. And one was created in
14 the multi-district litigation, Your Honor. And it doesn't
15 exist, of course, in bankruptcy. But in the MDL here in New
16 Jersey, a common benefit fund was created so that if you are
17 doing work for the benefit of the entire litigation, you have
18 the ability to essentially tax everybody else's settlements or
19 verdicts or resolutions.

20 The percentage that the common benefit fund was
21 established here in New Jersey was 12 percent, Your Honor. It
22 changed a little bit over time, but it started at 12 percent.
23 And Mr. Birchfield agreed that given their leadership role,
24 Beasley Allen stood to recover the bulk of that 12 percent tax
25 on any settlements or recovery in the MDL.

1 And so if you just assume for a moment, Judge,
2 that -- you know, take the \$6.5 billion that is allocated to
3 the ovarian claims in the term sheet here, and let's say that
4 was a tort system recovery. In bankruptcy, that \$6.5 billion
5 is going to the claimants with the, you know, attorney's fees
6 coming out of it. But in the tort system, the \$6.5 billion is
7 being sort of taxed twice to the benefit of the lawyers.
8 There's fees coming out of it, and then there's a common
9 benefit fund, 12 percent tax, that here would amount to \$780
10 million.

11 And we talked about this perverse incentive in the
12 past, but it's very hard to look at these kind of structural
13 processes that exist in the tort system like the common benefit
14 fund and think that this is something that is not incentivizing
15 lawyers to want to stay there as opposed to resolve claims in a
16 bankruptcy with a historic settlement number on the table.

17 Mr. Gordon touched on this a little bit before, but
18 we really have here -- and you've seen it on display here
19 today, Judge. You know, this is a situation of the tail
20 wagging the dog in terms of some of the most vocal opponents in
21 this case. Just take some of the folks, including
22 Mr. Satterley -- he won't mind if I pick on him a little bit,
23 Judge.

24 MR. SATTERLEY: Don't worry. I'll pick back.

25 MS. BROWN: I know. But he's here, Judge, very

1 loudly and very vocally opposing this and taking a lot of time
2 up. You know, no disrespect. But he has 13 filed claims, Your
3 Honor. I mean, we are talking about numbers, if you look at
4 Mr. Mordica's testimony, some of the information Mr. Gordon put
5 up, we're looking at, you know, 80 -- maybe 80,000, 90,000
6 claimants or so.

7 THE COURT: But these claims listed, are they
8 primarily meso claims?

9 MS. BROWN: Correct, Your Honor. Mr. Satterley
10 represents, as far as I know on the filed claims, exclusively
11 mesothelioma. Mr. Konigsberg, mesothelioma, 100. I'm sorry.
12 Mr. Maimon from Levy Konigsberg and Mr. Block also from the
13 same firm.

14 And so this really is a situation -- we have
15 Mr. Birchfield, the leadership of the MDL. And there are, you
16 know, sort of issues we discussed with that. And then we have
17 a small minority of claims that are voicing enormous
18 opposition, Your Honor.

19 We believe, Your Honor, that at this point in time --
20 you saw Mr. Gordon's timeline of events. We are so close,
21 Judge. Mr. Gordon's timeline has a plan being proposed in just
22 a few weeks in the middle of May.

23 Our focus right now should be on finalizing a plan
24 and getting a plan to go through all of the appropriate
25 channels so that we can get it out for a vote. We have a short

1 window of time to do this. We've set forth the self-imposed
2 deadline as close to May 14th as we can get, Your Honor.

3 And to touch briefly on the issue that we were before
4 Your Honor with just last week, this issue of lifting the stay
5 for one of Mr. Satterley's 13 clients at a time when the debtor
6 should be singularly focused on getting the Court this plan.
7 You have to consider stats like this. Mr. Satterley's cases,
8 you will not be surprised, Your Honor, are some of the longest
9 cases in this litigation. The average ovarian cancer trial is
10 about 25 days. Mr. Satterley more than doubles that, most of
11 those cases in Alameda County, Your Honor, where -- California
12 where most of the judges do four days a week, 9 to 2.

13 These trials go on for an enormous amount of time.
14 And so if you just look at it this way, Your Honor, the Valadez
15 trial that Mr. Satterley is asking for the stay to be lifted
16 would still be going well past the time period that we are
17 targeting trying to finalize this plan and get it to Your
18 Honor.

19 I want to also respond briefly, Your Honor, to what I
20 heard was the Court's suggestion about a potential way to allow
21 some discovery to continue in these cases short of trials
22 continuing. And having been on the front line of these
23 discovery efforts for the past five years, I want to put on the
24 record and give the Court some statistics about what really
25 goes on when the idea of something like a corporate

1 representative deposition or a company witness deposition is
2 made available.

3 Here are some statistics of what has happened in our
4 litigation, Your Honor, over the past five or so years. One
5 hundred and five Johnson & Johnson or JJCI -- and I think these
6 stats even include the most recent LTL witness -- have been
7 deposed. One hundred and five individuals from one of the
8 company defendants.

9 Fifty corporate representatives. And Your Honor, of
10 course, well knows what that means is those individuals had to
11 be educated on a list of sometimes 100 topics. And there's the
12 stat more than 1,000 topics were identified. Forty-seven
13 different witnesses. And you see, you know, it's like a
14 third -- more than a third of a year of testimony and nearly
15 40,000 pages of testimony.

16 Specifically, when you start thinking about the
17 Valadez case, Your Honor, it's important to know the Kazan
18 McClain firm has been particularly aggressive and robust in --

19 MR. SATTERLEY: Your Honor, I want to object. First
20 of all, none of this is in the record. This is so far outside
21 the record. I don't -- we have time limits, and Ms. Brown is
22 now -- she's going to go way out of the record in a little bit,
23 because I've looked at her sides.

24 There needs to be some rules of evidence,
25 something -- we need to have some federal rules of evidence and

1 some arguments based upon the evidence. Otherwise, I'm going
2 to need hours to respond to all of this stuff. So I object to
3 this, Your Honor.

4 THE COURT: All right.

5 MS. BROWN: Your Honor, I'm responding in three
6 slides to something that the Court raised with us on one of the
7 meet and confer -- the discovery calls we had with the Court.
8 And it fits squarely in connection with this motion, Your
9 Honor.

10 MR. SATTERLEY: But --

11 MS. BROWN: I mean, are moving -- can I just finish,
12 please? We are moving, Your Honor, for all of the reasons
13 articulated by Mr. Gordon and myself, for the stay to be
14 extended so that all of discovery and all of the trials are
15 stopped, and we can focus on what should be the singular
16 priority is getting this plan out to a vote.

17 But we hear the Court. We hear the Court that you
18 may be inclined to allow some portion of discovery to go
19 forward, and this information is critical as the Court tries to
20 weigh whether or not that is going to harm the debtor and
21 potentially put a reorganization plan in jeopardy.

22 MR. SATTERLEY: If I may respond, please?

23 MS. BROWN: And so I have two more slides on this
24 issue, Your Honor.

25 THE COURT: Mr. Satterley?

1 MS. BROWN: Yes. First of all, there's -- most of
2 the remaining slides are outside the record. This slide right
3 here, she already went past -- 105 company witnesses, 50
4 corporate representatives, 1,000 topics, 47 different -- it's
5 so far outside the record. I object --

6 THE COURT: Mr. Satterley, this -- these slides
7 aren't part of the record. This is argument. I wouldn't have
8 even --

9 MR. SATTERLEY: But argument's got to be --

10 THE COURT: You just repeated them again to me. I
11 was already past them.

12 MR. SATTERLEY: I know. But argument has got to be
13 based upon the record, Your Honor. And a lot of this -- I've
14 sat by and listened to a lot of argument not based upon the
15 record, just attorney argument. And so I want to object for
16 the record. I know it's late in the day, but I think fairness
17 to my clients require that Your Honor's decision be based upon
18 actual evidence and not just argument.

19 THE COURT: All right. Please continue. I don't
20 need to see the slides. Just make the arguments --

21 MS. BROWN: Okay.

22 THE COURT: -- as far as the -- I assume you're
23 focusing on the merits of the automatic stay with respect to
24 the general -- my comments as to my initial inclinations.

25 MS. BROWN: Exactly right, Your Honor. And in the

1 interest of efficiency, I was also attempting to do the second
2 part of the Valadez argument which I'll -- I've sort of folded
3 into one section here. And I think it squarely fits in both,
4 Your Honor, because these -- we talked last week about the
5 corporate representative deposition notices that Mr. Satterley
6 issued in the Valadez case and how they went squarely to issues
7 in the bankruptcy, LTL's ability to pay, who LTL is, LTL's
8 history.

9 And this really gives the Court a flavor for how
10 broad those categories can be. This (indiscernible) notice
11 meant that Johnson & Johnson and JJCI had to take an individual
12 person and educate them on a 110 categories for depositions
13 that in some cases, Your Honor, lasted four, five, even six
14 days.

15 And when you look at the categories of topics that
16 are requested, they are always duplicative. These are two
17 notices a month -- or a few weeks apart that --

18 THE COURT: Move past it. I can't even read it.
19 It's too small.

20 MS. BROWN: Okay. Sorry, Judge. That are identical.
21 The questioning in a corporate representative deposition, Your
22 Honor, we just gave you a flavor here, oftentimes is well
23 outside of the notice. And we are required -- the attention --
24 to the extent the Court would allow corporate representative
25 depositions to move forward in a short time period, Your Honor,

1 they're not one or two-hour depositions. They are multi-day
2 depositions with a hundred topics that someone has to be
3 educated on with reams of documents that are, you know,
4 probably now back to being done in person but for a while we
5 were doing them on Zoom. It is an enormous undertaking, Your
6 Honor.

7 Very quickly, Judge, I want to touch on just two
8 points that have come up in the opposition -- the reply papers
9 in the Valadez case. One of the discovery issues, Your Honor,
10 that I raised with the Court last week that remains to be
11 completed before we could ever even get to a trial in Valadez
12 is a ruling on our motion to compel.

13 We talked about the pericardial mesothelioma, the
14 most rare mesothelioma that Mr. Emory (sic) Valadez has, how
15 only 15 people a year get that disease, and the efforts of the
16 Stanford physicians to get Emory genetically tested.
17 Unbeknownst to me as I stood before the Court last week but
18 known to Mr. Satterley is that Emory was finally recently
19 genetically tested at Stanford. Very limited panel, Your
20 Honor. And it revealed a genetic mutation. It revealed a
21 RAD51C variant of unknown significance, Your Honor. That is
22 critical to our experts in understanding the genetic reasons or
23 the familial cancer syndrome that Emory Valadez likely has.

24 And plaintiffs were absolutely dishonest with the
25 Court in their papers, Your Honor, when they suggested there is

1 no scientific literature associating this mutation with
2 mesothelioma, because the evidence is actually just the
3 opposite, Your Honor. This is a significant gene in malignant
4 mesothelioma.

5 And so one of the big issues in the Valadez case that
6 would take an enormous amount of time and briefing would be
7 whether or not they're still going to stand on preventing us of
8 getting our own genetic testing, whether our experts can now
9 opine on this significant mutation as it relates to the type of
10 mesothelioma that Emory Valadez has.

11 Two more slides, Your Honor, and I will sit down.
12 And I appreciate the Court's indulgence in listening to a
13 number of these points that I'm addressing here.

14 But in addition to apparently undergoing genetic
15 testing, something else happened after we were with Your Honor
16 just last week. Emory Valadez -- Emory Hernandez is another
17 name they go by -- the evening after the hearing when I showed
18 the Court the picture of Emory, removed all Facebook posts,
19 completely shut down all social media and took everything down.

20 And I wonder, Your Honor, why that was. When I
21 looked back at the information that was shared with the world
22 through social media from this particular individual, I wonder
23 why it was that after the April 11th hearing Emory decided to
24 make -- to take all of that away. And I think, Your Honor, it
25 might be this.

1 Mr. Satterley stood up that day in court in fierce
2 opposition to a potential resolution, in strong advocacy for
3 proceeding with a trial for one of his 13 plaintiffs and he
4 said for most people suffering and dying of cancer, it's not
5 about the money; most of the time it's about justice. And just
6 a few weeks ago, what Emory Valadez posted on February 27th at
7 a time where we were issuing deposition notices in the Valadez
8 case was that I want money, not feelings.

9 And what I would suggest to the Court is that we need
10 to let the claimants vote, Your Honor, that the only people we
11 have heard from advocating for jury trials are people who stand
12 to benefit from those jury trials, Your Honor. When we look at
13 the record of what actual claimants have got, actual claimants
14 who want and need and whose family needs compensation, those
15 folks have not been compensated through the tort system, Your
16 Honor.

17 And so I echo Mr. Gordon's priority on getting this
18 plan done in a short period of time and putting it out to the
19 claimants so that if people would prefer to take compensation
20 over decades and decades in the tort system with an enormous
21 risk that they would go home with nothing, it's their choice to
22 do so.

23 And so, Your Honor, for reasons that I articulated
24 last week, the stay should not be lifted for one out of tens of
25 thousands of claimants. If the Court is inclined to allow any

1 limited discovery, we would ask for the opportunity to brief
2 that, Your Honor, because there are particular areas that we
3 believe are particularly burdensome to the debtor, and we would
4 request the opportunity to further address that with the Court.
5 Thanks very much, Judge.

6 THE COURT: All right. Thank you.

7 Hold on one second, folks. Is there anyone else who
8 wishes to speak to the Court in favor of the injunctions?

9 UNIDENTIFIED SPEAKER: The injunctions, did Your
10 Honor say?

11 THE COURT: In favor of continuing the restraints in
12 the injunctions.

13 UNIDENTIFIED SPEAKER: Oh, okay.

14 THE COURT: In other words, supporting the debtor.

15 MR. WATTS: Your Honor, if I could take four minutes.

16 THE COURT: Okay.

17 MR. WATTS: I do not intent to become the ham and
18 cheese between these two, so let me just do this. I was
19 shocked by the difference between the tone of the informational
20 brief and what actually came out in the depositions, and I just
21 want to call out some things you haven't heard.

22 Number one, the cross-examination that the debtor
23 committed fraud by manipulating the list of the counsel, I will
24 tell you that two members of the TCC and LTL 1 support the deal
25 and did not apply for the TCC in LTL 2. Instead, I'm just

1 notifying you that those of us who support the plan are
2 organizing an ad hoc committee which we will tell the Court
3 about.

4 Number two, there was a comment today about a
5 "alleged negotiation" that they couldn't pursue because their
6 claims are privileged. I think you saw in the video. I was at
7 my ranch yesterday. I was by myself. I did not have a lawyer.
8 I sat for what was supposed to be two hours, then became four.
9 And I kept answering questions until it was four hours and 27
10 minutes and did not refuse to answer one.

11 So that's something I think the Court needs to
12 understand. There was no sword by this person who negotiated
13 the deal.

14 Number three, the innuendo that the Court is going to
15 see in the depositions with respect to how these negotiations
16 occurred, you're going to hear all sorts of innuendo against
17 Mr. Murdica who likes to fish on fishing yachts and every once
18 in a while does it with lawyers. Turns out Mr. Birchfield does
19 as well. As an officer of the court, I'll tell you that this
20 was negotiated in the Barnes & Thornborough (sic) conference
21 room, and I've never been on a fishing yacht with Mr. Murdica.

22 Off the record, you heard a comment about something
23 that happened to me 13 years ago. I'm happy to tell you all
24 about it. There is a gentleman in federal prison, and I am
25 not. I would just caution counsel that it's real easy to ring

1 sanctimonious about let Mr. Valadez go because of the merits of
2 jury verdicts under the Seventh Amendment, but it would be
3 unfortunate for that same mouth to desecrate verdicts under the
4 Sixth.

5 Now, with respect to the settlement process, there
6 was no attempt to hide this from the TCC. There were SEC
7 problems with it getting out, and so there was a decision that
8 I recommended that was made to make people sign an NDA before
9 they could hear about what was going on. I could not get
10 Mr. Birchfield to do that. I don't criticize him for it. But
11 that's why it was there.

12 One more comment with respect to the settlement and
13 the Birchfield deposition. In addition to the 3.25 billion
14 that was pitched back in 2020 that I was familiar with at the
15 time, I will tell you, and you know a lot about the mediation
16 that your mediators did last summer, that this deal that was
17 negotiated was materially better than whatever disconnect these
18 two gentlemen had.

19 I'm sitting in the negotiations. There was very
20 clearly a disconnect between one side that thought it was worth
21 a certain amount of money and the other side that thought they
22 could pay it over time. This negotiation got that net present
23 value up front where 12.08 billion was paid over time with a
24 net present value of \$8.9 billion.

25 The payments were accelerated under the first year,

1 one at 30 days, one after a year, to get 5.9 billion paid so
2 that all the existings could be paid.

3 MR. SATTERLEY: Your Honor, I want to object to all
4 this hearsay.

5 MR. WATTS: This is in the record.

6 MR. SATTERLEY: Wait a second. This --

7 THE COURT: Wait.

8 MR. SATTERLEY: I just want to object to all this
9 hearsay. And, obviously, he was deposed yesterday. I asked
10 him a lot of questions. But I think a lot of this is hearsay
11 within hearsay, double hearsay, triple hearsay. I just want to
12 make that record.

13 THE COURT: Well, sustained. Just --

14 MR. WATTS: It's going to be in the deposition.

15 THE COURT: -- speak to arguments --

16 MR. WATTS: Sure. It's --

17 THE COURT: -- not other testimony.

18 MR. WATTS: The point is, is the testimony you're
19 going to see is going to show this improvement that occurred
20 during this. And, of course, we'll go from there.

21 You heard today about the TCC supports the plan.
22 Until before Friday, the two members of the TCC that have more
23 cases than the rest of them have agreed to support the plan.
24 So what's left of the TCC doesn't support the plan. But when
25 you add up all the votes, they are in favor of the plan.

1 Lastly, with respect to this argument that you heard
2 last week and you heard again this week that it's lawyers
3 supporting the plan and not their clients, I would just
4 reiterate the discussion there. But I've been through this out
5 in California with respect to the solicitation rules, and there
6 are very clear guidelines that I don't need to educate the
7 Court on with respect to what has to happen. And so that's why
8 this process is being done so that we comply with Rule 3017(d),
9 11 U.S.C. Section 1125(b), Rule 3017(c), 11 U.S.C. Section
10 1126(b).

11 Lastly, deduping. It has been done before.
12 Mr. Birchfield recommended it. We sent Excels. They are
13 deduping. That's one.

14 Number two, with respect to who should be voting,
15 there's very robust discussion in all of these depositions as
16 to the quality of Mr. Birchfield's docket, as to the process
17 that my docket is underway and Mr. Pulaski's and the like.
18 That's a decision for another day.

19 What I would tell the Court is this. What we tried
20 to do and what I'm encouraging the Court is it was not lost on
21 me the heat that was coming my way when I stood up and said we
22 were negotiating this. But part of what we got is there shall
23 be plan documents by May the 14th so this Court can consider
24 the motions and what's going to be appropriate quickly so we
25 can get a vote done.

1 Out in California four years ago, the voting took 45
2 days. I very much commend to the Court the timeline that was
3 proposed that we should be done with this vote by the end of
4 the summer. And then you can have final confirmation motions
5 and hear all the evidence if the vote goes the way I think the
6 evidence most certainly is going to show that it does.

7 So I appreciate the Court's time. Thank you.

8 THE COURT: Thank you, Mr. Watts.

9 All right. The Court needs, and probably others, to
10 take ten minutes. And then we'll continue. I assume
11 there's --

12 (Recess at 5:23 p.m./Reconvened at 5:35 p.m.)

13 THE COURT: I'm ready. Kiya, are you ready?

14 THE CLERK: Yes, Your Honor.

15 THE COURT: Okay. Sounds like, feels like about 35
16 minutes.

17 MR. JONAS: 32. Your Honor, Jeff Jonas from Brown
18 Rudnick for the official committee of Talc claimants. I just
19 want to say, Your Honor, it has been really a difficult week I
20 know for everybody on both sides of the aisle but I just want
21 to thank my co-counsels obviously from Brown Rudnick, Mr.
22 Molton and Mr. Winograd, also Susan Sieger-Grimm was here with
23 us, Otterbourg, Melanie Cyganowski, Richard Haddad and David
24 Castleman who's here. Of course, Mr. Stolz and Mr. John
25 Massey, all proposed counsel for the official committee of Talc

1 claimants and I also want to thank our members, Your Honor, who
2 in very short order have already had meetings and have already
3 started to put the time that's necessary in and so I want to
4 thank all those parties, Your Honor.

5 With that, Your Honor, before I get to the slides, I
6 just wanted to give a quick few responses to some of what I
7 heard on the other side that aren't covered by the slides. And
8 first, Your Honor, I just have to say because it seems so apt
9 that this truly is a case of the emperor not wearing any
10 clothes. You've heard the testimony. You've heard, and let me
11 tell you why that it is, Your Honor. You know and this goes
12 back to what Mr. Molton has been criticized for saying that
13 there's something rotten and it just doesn't smell right.

14 And I agree with that, Your Honor. We've had a lot
15 of talk from Mr. Gordon about rushing to a plan and letting
16 people vote and I'll get to that of course, Your Honor. But at
17 its core, and I think rather than speeches, the evidence speaks
18 to it. You heard Mr. Kim, and you'll form your own view as to
19 what the facts are but to me, it was crystal clear that this
20 new bankruptcy case is based on a fraud and it proves one of
21 the things that we complained about throughout LTL 1 which was
22 that this debtor is controlled by Johnson & Johnson. This
23 debtor does Johnson & Johnson's bidding.

24 And the reason I say there's a fraud here is because,
25 and it's so incredibly contorted, that that's why I say the

1 emperor isn't wearing any clothes, because they had to contort
2 themselves to get to where we are today. They had to rely,
3 they had to find a way and rely on a theory, I don't know when
4 the last time you had a frustration of purpose case, Your
5 Honor. I've never had one. So unlike Mr. Kim when I read the
6 Third Circuit's opinion it frankly didn't occur to me that my
7 God, the whole funding agreement is void or voidable to use
8 their term.

9 So what really happened? You heard it. They got
10 together with their masters, the LTL got together with their
11 masters at J&J and they said how do we fix this? We're J&J.
12 We're exposed for 60 billion bucks now outside of bankruptcy
13 and to use what they would probably say, we've got these crazy
14 tort lawyers coming after us and we're hanging fire on 60
15 billion bucks. So they said what do we do? Ah, frustration of
16 purpose. See that footnote in that decision by the Third
17 Circuit which found that the first case was filed in bad faith.
18 On that basis, we can void the agreement and reduce Johnson &
19 Johnson's exposure by \$50 billion. That's what you heard.

20 And that Your Honor, I don't think we need anymore
21 than that. We can talk about votes and plans. I'll tell you
22 why I think they're doing that. I mean it's obvious. But
23 that's it. If you find that in fact what I'm saying is correct
24 which I think the evidence supports, I think you should sua
25 sponte dismiss the case right now. We asked you to do that

1 last time and you said I don't have any evidence.

2 Okay, you've got all the evidence you need, Your
3 Honor. We had a debtor who had a fiduciary duty to us and
4 frankly, respectfully, Your Honor, not only did they put one
5 over on us, they put one over on you. They used the cover of
6 the bankruptcy process while under the cover of the bankruptcy
7 process. As a debtor, they were planning this fraud. They had
8 it all lined up. They negotiated the termination and a new
9 funding agreement. They had the petition ready. And within
10 two hours of the dismissal, bang, they're back in and here we
11 are.

12 Why? Not only did they want to eliminate Johnson &
13 Johnson's massive exposure, they wanted to do something else.
14 They didn't give up on trying to "beat the tort system" or beat
15 the tort lawyers. They said aha, we'll go, well, I'll get to
16 that. We'll give it another shot. Let's see if we can -- in
17 my opinion they're trying to outrun respectfully if you don't
18 do as we ask, and either dismiss the case or deny the PI, even
19 if you deny the PI but don't dismiss the case, they're trying
20 to outrun the appellate process. Again, respectfully, Your
21 Honor, we believe no matter, if you don't do as we suggest, we
22 think we're going to win on appeal. Because we think the Third
23 Circuit will be outraged, outraged by what happened here. And
24 if that's the case, we'll win but it will be too late. They're
25 trying to outrun them. That's why they've got this great time

1 table, May, June, they're going to be out of bankruptcy.
2 They'll let people vote. That doesn't work.

3 First of all, you can't outrun your fraud and you
4 shouldn't be able to outrun the appellate system. And so I
5 would just say, Your Honor, and I do want to get to the slides
6 because the way we've had this case on fast, it's important
7 that I get the record in through some of the slides. But just
8 sitting here and thinking about it, I just, you know we heard
9 all about lots of different things. Mr. Molton, my partner is
10 not answering questions and Mr. Birchfield, his cases haven't
11 been successful. What does that got to do with anything?

12 We had the debtor in the box answering questions, has
13 proven a record, on the basis of which this case should be
14 dismissed right now. And if you don't dismiss the case, you
15 should absolutely not give a PI because I don't think without
16 good faith for starters, I don't think a PI should be granted.
17 And if they want to try this, let them run for luck, but they
18 shouldn't get the benefit of a PI.

19 So that's my first kind of off the cuff comment.
20 Second, Your Honor, they made a big deal about your order
21 encouraged the parties to continue their settlement efforts. I
22 thought that was funny. Because what they interpret that to
23 mean, not to continue their settlement efforts with all the
24 folks that were spending lots of time trying to settle with
25 them, they went out and found some new folks who allegedly have

1 all kind of claims. I'm not going to disparage them.

2 And when I say allegedly, it's not in an effort to
3 disparage, I don't know. All they are, are names on a piece of
4 paper right now. Even they don't know. They didn't talk to
5 their clients about this plan. They don't have, some of them
6 don't have medical records. They don't have cases. They're
7 just claims.

8 So whatever they are, they are. It's not for me to
9 cast dispersions on them. But the point is they went out, they
10 didn't follow your order to continue the settlement efforts.
11 They went out and found a new paradigm. They went out and
12 found some people and said wow, we'll do it and run around
13 those other people. Those people have been too tough for us.
14 So I don't think that qualifies under your order is what was
15 intended.

16 Third, Your Honor, again the arrogance of J&J is just
17 incredible. Not only everything we've heard today, we heard on
18 one of Mr. Gordon's slide, it's a one time offer. Never going
19 to get better. Take it or lose it. That's not the way the
20 system is supposed to work, Your Honor. It's not the way the
21 tort system is supposed to work. It's not the way the
22 bankruptcy system is supposed to work.

23 Four, Your Honor, it's a little bit of deja vu from
24 when I was here in LTL 1 and I know, well, I shouldn't say I
25 know, I think you always try to do the right thing and I think

1 you would like to see the right thing get done here and you may
2 believe that the right thing is to get some money to some
3 people. But please, Your Honor, the ends can't justify the
4 means. They can't.

5 If you find, as I hope you will and I think you
6 should that there was a fundamental fraud here, a breach of
7 fiduciary duties, they pulled one over on us. They pulled one
8 over on you. If you find that, it doesn't matter what they're
9 promising. They can pay all the money in the world, it won't
10 fix the fraud that happened here.

11 And last, Your Honor, as I said, and then I'll go to
12 my slides, there has been a whole bunch of slides, lots of
13 slides about my partner, Mr. Molton and Mr. Birchfield and ad
14 hominem attacks against them. I just, I don't think it's
15 relevant. I don't think it has anything to do with what we're
16 here for. And with that, Your Honor, let me turn to my slides.

17 First, Your Honor, I want to talk about the
18 likelihood of success on the merits and the lack of financial
19 distress. You heard here, you heard testimony that LTL 2 is
20 not insolvent. This is another pin that Mr. Kim dances on the
21 head of. He said we're not insolvent but we're in financial
22 distress. They can't be insolvent because then there would be
23 even more clear fraudulent transfer so they don't want to be
24 insolvent but they've got to be in financial distress.

25 So even with the termination of the 2021 funding

1 agreement, we know based on the testimony that LTL has not been
2 solvent. Go to the next slide. As to financial distress, LTL
3 is actually better positioned now than Old JJCI. That's what
4 Mr. Kim said. The question was, is it true today, that the
5 debtor, LTL has at least the same if not greater ability to
6 fund Talc related claims and other liabilities as Old JJCI had
7 before the prior restructuring. I believe it is. So I don't
8 think they've improved their argument that they're now in
9 financial distress.

10 Next slide. And they still have at least as you
11 heard the testimony, at least \$30 billion available to pay Talc
12 claims. So again, there's no immediacy, no urgency here and
13 LTL still hasn't shown any difference in the tort system
14 litigation since the last time. Mr. Kim, because it has
15 sufficient funds to pay off its debts currently as they come
16 due. And the says, I would include even prior to our, we
17 disagree with the Third Circuit on whether it was in financial
18 distress during LTL 1.

19 THE COURT: Mr. Jonas, can I ask you a question?

20 MR. JONAS: Please, Your Honor.

21 THE COURT: Because I had trouble reconciling this in
22 LTL 1 and the issue doesn't go away. I'm reading from the
23 committee's brief and it speaks to the settlement being
24 illusory. The \$8.9 billion payment isn't enough when you take
25 into account the billions that are due to governmental units on

1 the Deceptive Trade Practices claims. The billions, and I'm
2 using your language or your firm language, the billions that
3 are due for indemnification, the billions that are due on
4 copays to the insurance claims. Lot of billions are thrown
5 here that aren't covered by the 8.9.

6 MR. JONAS: Uh-hum.

7 THE COURT: So how do, and the committee and others
8 make arguments that there's no financial distress and there has
9 been huge fraudulent transfer.

10 MR. JONAS: Uh-hum.

11 THE COURT: It sounds like financial distress when
12 you hear all these billions that are being thrown in your own
13 words about beyond the 8.9 billion. The billions for mesos,
14 the billions for other ovarian, the billions of estate, the
15 billions on insurance.

16 MR. JONAS: Sure. I can respond to that.

17 THE COURT: So it's either these are real potential
18 liabilities which suggest distress or they're not and it's much
19 lower and then maybe there's not an insolvency. How is it
20 reconciled?

21 MR. JONAS: Sure. Let me, I think there's two
22 responses to that, Your Honor. First, I don't think you can in
23 this context any way, I don't think, there are separate
24 arguments here, okay. First there's the fraudulent transfer
25 argument and second there's somewhat separately a financial

1 distress argument. But I think they're related in the
2 following way which is I don't think you can commit a
3 fraudulent act or commit a fraudulent transfer and say oh my
4 God, now we're in financial distress. And so then you begin to
5 use, and I'll just play this out, you say well, now they don't
6 have 60 billion.

7 Now, they only have 30 billion and if I add up a
8 bunch of billions that you're throwing at me, maybe it's pick a
9 number, 15, 20 billion and therefore now they're in financial
10 distress. What I would say to that is, it's, you've turned it
11 on its head and I would argue an improper way because you
12 can't, you can't create financial distress in a fraudulent way.
13 So I would argue, first of all, I'm not sure that the Third
14 Circuit Court of Appeals would accept that if in fact the total
15 claims are 15 billion and they have the wherewithal of 30
16 billion, I don't know if that's financial distress. Frankly,
17 Your Honor, I argue it's probably not.

18 And so that, I just I think that's the way you have
19 to look at it. I don't think you can, it's unfair to match
20 whatever these claims might be --

21 THE COURT: Well, just seems to be an inconsistency
22 to argue that there's no distress because of the wherewithal of
23 the company but in a couple of paragraphs later suggest that
24 the 8.9 billion can't approach covering the liabilities that
25 are out there in the billions.

1 MR. JONAS: Well, --

2 THE COURT: And I don't know and I agree, I respect
3 the Third Circuit opinion. It's not, if a company is worth 30
4 billion on paper and it owes 15 billion and has to write a
5 check, not every company can do that without liquidating. Is
6 that distress? We all know there are different situations.
7 Book value isn't the only way of looking at it.

8 MR. JONAS: Yeah, I agree. I guess what I would say
9 to that, Your Honor, is, I don't want to say don't put too much
10 weight on what we said in our papers but we were trying to make
11 a point which is they're extolling the virtues of an \$8.9
12 billion settlement and I think the point we were trying to make
13 is that this isn't just to settle the OC claims, which at one
14 point in time in ancient history we were talking about.

15 There's a lot more here. This settlement gets them
16 off the hook for everything now, futures, mesos, OC's, et
17 cetera, et cetera, states, there was, and again I'm not trying
18 to put on evidence as far as I know, in all the prior
19 discussions, I don't think the states ever were kind of wrapped
20 into a settlement number at least in the prior. So the point
21 we were trying to make, Your Honor, is don't be fooled by an
22 \$8.9 billion number that the biggest amount ever funded to a
23 trust in history, yadda, yadda, yadda. The point is there's a
24 lot, you've got to look under the hood a little bit. And yes,
25 there's more, you know there's more there. I can't, and I'm

1 not here to tell you exactly what that number is and I'm not
2 here to necessarily say as against \$30 billion that's evidence
3 of financial distress.

4 I think it's a fundamentally unfair inquiry to use
5 the 30 billion when they got there by committing, you know a
6 fraudulent act. So that's how I would respond to that, Your
7 Honor.

8 THE COURT: All right, fair enough.

9 MR. JONAS: Mike, can we go to slide eight?

10 MR. WINOGRAD: Sure.

11 MR. JONAS: On this point exactly, Your Honor, LTL
12 failed to manufacture financial distress and it's still not in
13 financial distress and you don't have to believe me. So I
14 think we have their witness that answers your question where he
15 was asked, this is the CFO, Mr. Dickinson, can you personally
16 identify any financial consequence to LTL from terminating the
17 2021 funding agreement, yes or no. No, I cannot. Next
18 question, Mr. Dickinson, as the chief financial officer of LTL,
19 can you identify anything that was different about LTL's
20 financial condition on April 3rd as compared to April 4th? I
21 cannot.

22 So at least the CFO is telling us he doesn't think
23 they're in financial distress or worse off. That's what the
24 evidence shows. Next slide. Actually, let's go to 10, Mike.
25 I won't speak to the slide exactly, Your Honor. I'll just say

1 this. We don't believe and I think the evidence now shows that
2 they still setting everything else aside, they still have not
3 met the requirement per the Third Circuit of being in financial
4 distress independent of everything else.

5 Slide 11, Mike and the next one. Your Honor, this
6 goes to my kind of fundamental point that I freelanced with at
7 the beginning. They cannot create subject matter jurisdiction.
8 And we quote a number of cases here that go to this point.
9 They, they cannot manufacture subject matter jurisdiction by
10 engaging in fraud, that's, and I've tried to back up my
11 comments if you will with a little bit of law including
12 combustion engineering where the Third Circuit rejected any
13 suggestion that a debtor could create subject matter
14 jurisdiction by agreement.

15 Next slide 13. Your Honor, termination of the 2021
16 funding agreement is avoidable as a fraudulent transfer.
17 They've admitted that intent of terminating the 2021 funding
18 agreement was to create financial distress, trying to find a
19 basis in which to be before this Court. Mr. Kim, you'll see in
20 the last comment in his declaration, debtor believes its
21 prefiling financial condition is sufficiently distressed to
22 satisfy the standard established by the Third Circuit and
23 obviously that was the result of terminating the first funding
24 agreement.

25 Next slide. Termination of the 2021 funding

1 agreement again is avoidable because these are a couple
2 examples where at least, at least somewhat prior to today,
3 J&J's counsel refused to answer questions on this topic
4 claiming privilege. Mr. Haas was asked when did you first
5 obtain any knowledge that J&J and LTL were going to terminate
6 the '21 funding agreement. Ms. Vonn (phonetic) gave an
7 instruction. He himself said yeah, that calls for an attorney
8 client privilege information and my role as litigation counsel
9 of J&J so it's not an appropriate inquiry.

10 Similarly, later on, Mr. Haas, are you aware, yes or
11 no, of whether J&J and LTL agreed to terminate the 2021 funding
12 agreement while the first LTL bankruptcy was still pending. I
13 object privilege instruction not to answer. Again, Your Honor,
14 we really have, I think we have enough facts to conclude my, to
15 reach my summary of what I think happened but we have very
16 little facts.

17 My first question to Mr. Kim at his deposition was
18 did J&J call you and say they were going to void the agreement?
19 Of course I didn't get an answer. He says he came up, it's
20 like the gang that can't shoot straight. He says he came up
21 with the idea. Well, why would you call your counterparty and
22 suggest that the agreement is voidable? I have no idea. Do we
23 have an answer? No answer, none at all.

24 Your Honor -- slide 15, Mike. Objectively,
25 termination of the '21 funding agreement is bad for LTL and

1 it's good for J&J. But again, and I think the answer to that
2 is why? Well, you had lawyers on both sides of the
3 transaction. Mr. Haas', J&J lead litigation counsel, and he
4 was on both sides of the transaction. He says, when he was
5 asked, sir, do you represent at this time in any capacity LTL?
6 Of course I do. They're a subsidiary of Johnson & Johnson,
7 wholly owned. Well, sure if you have lawyers on both side of
8 the transaction, I can surmise what's going to happen.

9 Later on, you'll see on the left hand side, Ms. Brown
10 asserted well, he has a common interest with LTL. Common
11 interest between LTL and J&J. It's interesting, you see on my
12 next slide before I even heard the testimony of Mr. Kim, I
13 used, I used the analogy LTL was an empty chair with respect to
14 the restructuring. J&J negotiated on both sides. Mr. Kim used
15 the word faceless. He said well, when you were asked about who
16 was negotiating for LTL, on the PSA agreements, he said we were
17 faceless because all that was done by J&J or J&J's lawyer.

18 And that's seen here on slide 16 regarding the PSA's.
19 Question, who negotiated this PSA on behalf of LTL? I know Mr.
20 Kim signed it. Who negotiated? The witness, and this was Mr.
21 Murdica. I don't have any information that would implicate a
22 privilege. Same thing with Mr. Kim.

23 Again, Your Honor, LTL claims that the Third
24 Circuit's opinion may have created a risk that the '21 funding
25 agreement is void or unenforceable. That is clearly contrived.

1 LTL's CFO testified when asked, let me rephrase the question.
2 Other than what is shown here in the minutes about what Mr.
3 Prieto said to you about the risk of the '21 funding agreement
4 being potentially void, avoidable, do you have any other
5 information about that?

6 Once again, going to defer to the minute notes, that
7 could have been more than Mr. Prieto, I'm going to defer to the
8 minute notes. Okay. No business person at JJCI or J&J ever
9 told you as a business person that the funding agreement was
10 void or voidable, correct? Correct.

11 In fact, Your Honor, as I've suggested but now proven
12 out by the evidence on the slide, it looks like no one at LTL
13 even put the ultimate question to J&J about the funding
14 agreement. Question to Mr. Haas. Do you recall any
15 conversations concerning without going into the substance of
16 those conversations, do you recall any conversations concerning
17 the enforceability of the '21 funding agreement prior to the
18 Third Circuit decision? And there's a number of questions and
19 answers. Down below, I do not recall having conversations
20 about the agreement being void or voidable.

21 And on the right hand side, Mr. Kim, which party
22 wanted to declare it void? His answer, consistent with what he
23 said today. I would say there was a consensus reached that
24 there was a material risk that the funding agreement was
25 unenforceable because it was void or voidable.

1 That's not how parties to a contract talk. That's
2 not how we expected our fiduciary, the debtor in this case to
3 protect our interests. To put it quite bluntly, Your Honor,
4 that \$61 billion, that was our money and they gave it away.
5 Didn't ask us. As far as we can tell, didn't negotiate it. He
6 listened to his master and they restructured it in a way that
7 was best for J&J.

8 I'm going to go ahead, Your Honor, ah, to slide 21.
9 Your Honor, the 2021 funding agreement provided LTL with over
10 \$61 billion in funding to pay Talc claims inside or outside of
11 bankruptcy. So yes, Your Honor, it was clearly my client's
12 expectation when the case got dismissed, the funding agreement
13 would be available to ultimately satisfy claims. Were we
14 somehow misguided in that thinking? Was that unreasonable? I
15 don't think so. Because Mr. Gordon told this Court whether
16 there was no case filed or whether the case is filed or
17 dismissed, the money is available for that purpose.

18 Mr. Katyal, Katyal, to the Third Circuit said I
19 understand that the funding agreement does have provisions for
20 funding outside of bankruptcy. And I think it was Judge Ambro
21 but I'm not sure. The Court said yeah, that's what I thought.
22 So we've now had 18 months of bankruptcy. We've now had two
23 courts issue decisions critical for my clients and I don't
24 know, Your Honor, was that based, I don't think there were
25 misrepresentations made at the time that they were made. But

1 now all of a sudden, we don't have the benefit of it.

2 And clearly, whether some of the earlier decisions in
3 this case might have been different had the Court known how
4 this was going to turn out. Your Honor -- slide 23. Your
5 Honor, as you know, Section 548(a), the actual intent standard
6 doesn't require insolvency. And we believe that avoidance of
7 the April 4th transactions and restoration of the '21 funding
8 agreement are required under the Bankruptcy Code. Once
9 restored, the 2021 funding agreement mandates dismissal under
10 the Third Circuit's opinion and LTL cannot evade the Circuit's
11 mandate by committing the fraud they committed in this case.

12 Your Honor -- next slide. The LTL, this bankruptcy
13 is even filled with more bad faith than the first bankruptcy.
14 The Third Circuit dismissed the first bankruptcy for lack of
15 good faith. We believe that LTL's fraud means that LTL's
16 second bankruptcy has even less good faith. The fraud was
17 orchestrated while LTL 1 was a debtor in possession. It
18 certainly was not an ordinary course transaction. Just like
19 LTL cannot create subject matter jurisdiction by engaging the
20 fraudulent transfer. LTL cannot create good faith by engaging
21 in a fraudulent transfer.

22 Slide 26, Mike. Your Honor, the question here,
23 another question here, although as I've mentioned I think I've
24 been pretty clear, I don't think you even get to it, but if you
25 do and you consider the PI on its merits, the question is

1 whether there's a reasonable likelihood of a successful plan.
2 And they've asserted, the debtors asserted that it has support
3 of roughly 70,000 claimants. And before we go down this path,
4 Your Honor, I just want to say it one more time. We think we
5 can win on the standard but I think it's wholly inappropriate
6 to even go there.

7 Again, whether or not you dismiss the case, I think
8 the evidence is abundantly clear that there is a lack of good
9 faith in this case and if you require us to file a formal
10 motion to dismiss, we plan on doing it. We plan on doing it
11 soon but a PI should not issue on this record, Your Honor. And
12 you know we've made, we've tried to make much of this, Your
13 Honor, in terms of the fact that while they claim that there
14 are 70,000 claimants that support the plan, the fact of the
15 matter is, and we can go to slide 28, they have no idea how
16 many Talc claimants each of the support firms represent. Mr.
17 Kim says he's relied unverified statements from the firms and
18 Mr. Murdica, you can see it here and I think you heard it again
19 today, he said well, we rely on the statements of counsel. I
20 rely on Mr. Murdica.

21 As we said, Your Honor, we think there's quite a bit
22 of unfiled claims, to the extent you find that to be important
23 versus claims that have been filed. And Your Honor, critically
24 on slide 31, as I think we've brought out pretty clear, Mr.
25 Murdica simply relied on the law firms without further

1 verification. You'll see the testimony at his deposition. He
2 was asked did you request any diligence or evidence of that
3 representation and he said that's not the way this works.

4 And then you'll see also, question, did the lawyers
5 who told you that their claimants would support this claim, did
6 they say they had commitments from their claimants to support
7 the terms? Answer, I don't know what, that I can make a
8 blanket statement for all of that. And when they make a
9 representation to me that their claimants are going to support
10 the plan, or in the past, when their claimants are going to
11 support a settlement, they've always followed through. And I
12 think we brought this out, Your Honor. The fact of the matter
13 of is, not one actual claimant has committed to support this
14 claim. They've got a lot of lawyers. They've got to talk to
15 their clients. They're going to recommend that they support
16 the plan. But not one actual voter, and you heard Mr. Kim say
17 this, I asked him. Not one voter has said he's going to, he or
18 she is going to support this plan.

19 Your Honor, we've also talked about the very limited
20 information that has been provided about particular claimants.
21 You'll see on slide 33 quite a bit of this was redacted before
22 we got it but this is what an actual, not sure you saw this
23 earlier, this is what an actual signed PSA, this is the March
24 27th PSA that was signed. This is what it looks like.
25 Obviously here we just have the first names listed but it's

1 very limited information.

2 And let's go to slide 35, Mike. Again, here's some
3 testimony, Your Honor, particularly Mr. Watts, you'll see on
4 the left hand side. All I've committed is that I'm going to
5 recommend it to them. Also, later what I can't commit to the
6 Court is I have ordered records, this is as to records for his
7 client's medical records. I have ordered all of them. I've
8 got a ton of them going back internally. We're having them
9 analyzed at this point and we'll certainly have the data at
10 some point.

11 Your Honor, slide 37. I did not negotiate with or
12 obtain the support of a substantial number of claimants. Over
13 100 law firms have pledged to defeat the plan. Four of the law
14 firms that have signed PSA's, do not have a single filed Talc
15 lawsuit against J&J, LTL or any of their affiliates including
16 the Watts' firm. Sixty to 70,000 claimant number is
17 unreliable. As I said, all of the MDL leadership, and
18 concluding all of the MDL leadership opposed the plan,
19 represent over 40,000 claimants and the majority of the cases
20 that have been filed in state and federal courts around the
21 country.

22 Your Honor, you've seen first hand unfortunately the
23 acrimony between the parties, the odds of a consensual plan
24 here are low. The mass tort bar is galvanized behind defeating
25 J&J particular giving the maneuvering since the Third Circuit

1 ruling. In any event, Your Honor, as we show on slide 38,
2 J&J's plan faces lengthy appeals. It does have independent
3 liability which can't be channeled under 524(g) and we cite the
4 Combustion Engineering case. Next slide.

5 Let's go to slide 40, Mike. But again, Your Honor,
6 whether or not the plan is confirmed, part of the game here for
7 J&J is just getting more time. They've gotten too much time
8 already, Your Honor, and it's time to bring this to a close.
9 We thought that would be the case after the Third Circuit
10 ruling. I guess we got that wrong. But we would urge, Your
11 Honor, to finally bring this somewhat ugly chapter to a close.

12 As for irreparable harm, Your Honor, slide 42, the
13 only harm articulated by LTL is that litigation could go
14 forwarded against responsible parties as Mr. Kim testified.
15 Having all this ancillary litigation on the same claims, same
16 product with the same plaintiffs would clearly be a detriment
17 to the ability to reorganize. Yet, Your Honor, next slide, an
18 injunction would cause irreparable harm to Talc claimants.
19 Talc claimants died during LTL's first bankruptcy without
20 having their day in court because of the injunction issued by
21 the Court.

22 Continuation of the injunction would cause further
23 mortal delay. A solvent Fortune 500 company being subject to
24 litigation in the tort system for selling products that
25 contains asbestosis is not irreparable harm. Title 11 does not

1 affect any right to trial by jury that an individual has under
2 applicable nonbankruptcy law with regard to a personal injury,
3 a wrongful death tort claim.

4 This Court cannot and should not strip Talc claimants
5 of finally of their right to a jury trial. J&J should be held
6 accountable in the Court system. We've talked, Your Honor, on
7 slide 45 in terms of balancing the harms, particularly
8 continuing to protect J&J with an injunction while Talc
9 claimants suffer which would be irreparable harm.

10 Your Honor, we think that once the April 4th
11 transactions are voided, LTL will again have access to over \$61
12 billion to pay Talc claims. And in contrast continuing to
13 prevent Talc claimants from exercising their rights is causing
14 irreparable harm, Your Honor. People are dying. Protecting
15 J&J discourages settlement discussions because it means that
16 they have no incentive to further negotiate in good faith.

17 Your Honor, in trying to wrap up, on slide 47, I just
18 wanted to highlight some comments made by the Third Circuit and
19 I think it's relevant to whether LTL can build a record
20 supporting a stay. Third Circuit said it is not obvious LTL
21 must indemnify J&J's for the latter's independent post 1979
22 conduct that is the basis of a verdict rendered against it.
23 Liabilities and obligations of every kind and description which
24 are allocated on the books or records of J&J as pertaining to
25 its baby division and lastly, it is also not clear, the

1 indemnity should be read to reach punitive damage verdicts
2 rendered against J&J for its own conduct.

3 Your Honor, as for public interest on slide 49, and
4 we'll certainly let the UST speak to this directly. We believe
5 that granting an injunction would be contrary to the public
6 interest. The Third Circuit ordered that LTL's case be
7 dismissed and granting, and you should not grant an injunction
8 and reward a party for committing fraud. And we believe that
9 this entire second bankruptcy is a clear attempt to circumvent
10 the Third Circuit's ruling. I think that's almost admitted.

11 The public interest is not served by parties
12 disregarding rulings made by a Circuit Court and the
13 continuation of this case has the potential to undermine public
14 confidence in the judicial system. Slide 50, and again I'll
15 let the UST speak to it directly. Their papers state that to
16 subject these victims to any additional delay would be
17 unconscionable, especially when balanced against LTL's slim to
18 nonexistent prospect for reorganization.

19 So Your Honor, in closing, I come back to what I
20 started. The emperor really is not wearing any clothes.
21 There's some great lawyers on the other side. There's a mega
22 corporation that can spend all the money in the world and they
23 can make up whatever they want to make up about why things are
24 the way they are but at base, Your Honor, and I think the
25 evidence, the evidence, not speeches, nothing else, the

1 evidence shows what happened here. There was a fraud. There
2 was a fraud committed on Talc claimants. On one day they had
3 something. The next day they didn't. Why? Allegedly because
4 of a Circuit Court of Appeals decision? It's ridiculous on its
5 face, Your Honor. And we would ask that you dismiss this case.
6 If you don't dismiss this case and you want to take it up on
7 our motion to dismiss it will be filed in short order, we would
8 ask that you not countenance this and not grant any further
9 injunctive relief.

10 Your Honor, may I ask permission? I don't like to do
11 this but I have a trial tomorrow in Indianapolis on a motion to
12 dismiss in the Aearo case which relates to 3M and if I don't
13 leave --

14 THE COURT: Good bye.

15 MR. JONAS: Thank you, Your Honor. I appreciate.

16 THE COURT: Just jealous.

17 MR. JONAS: Thank you, Your Honor.

18 THE COURT: Travel safely.

19 MR. JONAS: Thank you, Your Honor.

20 UNIDENTIFIED SPEAKER: All right, point of order,
21 maybe the US Trustee would go next.

22 THE COURT: Ms. Richenderfer, do you want to go? I'm
23 going to take, I just want people to come up. I'll take from
24 whomever.

25 UNIDENTIFIED SPEAKER: You should always go before me

1 anyhow.

2 UNIDENTIFIED SPEAKER: I was going to invite the US
3 Trustee to go and then Mr. Birchfield and then myself and Mr.
4 Meyner (phonetic).

5 UNIDENTIFIED SPEAKER: (indiscernible)

6 UNIDENTIFIED SPEAKER: Oh, I'm sorry.

7 THE COURT: Folks?

8 UNIDENTIFIED SPEAKER: I apologize, Your Honor.

9 THE COURT: This is getting a little bit absurd.

10 MS. RICHENDERFER: I plan on going next.

11 THE COURT: It's twenty after six. In your
12 presentations, I will ask that you try not to be repetitive of
13 points that have been made incessantly. I get it. So Ms.
14 Richenderfer.

15 MS. RICHENDERFER: Thank you, Your Honor. I
16 apologize in advance because some of this is going to seem a
17 little out of order because I am going to try to jump around in
18 my notes and cover territory that has already been covered.
19 I'll try as best as I can. Your Honor, to prepare for a
20 bankruptcy it's not unusual to find out that the debtor
21 prepetition sat down, entered into a restriction support
22 agreement with certain of its largest creditors, entered into
23 arrangements with the secured lenders, its shareholders, its
24 equity, all sorts of important parties, all sorts of important
25 players in its bankruptcy. Gets itself set ready to go and

1 walks into court the first day with everything in place.

2 And Your Honor, I know you've seen it, I've seen it
3 and it usually ruins my weekend because everyone likes to file
4 on Sunday night and so I end up working on the weekend to go
5 over all that.

6 J&J, I'm sorry, LTL, that really was just I'm tired.
7 LTL is trying to do that here but they're forgetting there's a
8 big fly in the ointment here, Your Honor. They were already in
9 bankruptcy. There were certain boundaries on what LTL could do
10 and not do prior to walking in the door the second time. We
11 have here a debtor that never had any operations and for its
12 very short time period that has been in existence, I guess it's
13 about, is it even two years at this point, I can't remember
14 when it incorporated.

15 But during its short existence, it has been in
16 bankruptcy continually except for two days at the beginning and
17 two hours and 11 minutes in between. And during that time, it
18 owed a fiduciary duty to all of its creditors and there is the
19 Bankruptcy Code that tells it what it can and cannot do. And
20 so this is not like the normal bankruptcy filing where you know
21 we walk in, we have the first days and we have the agreements.

22 I by no means of suggesting that there's something
23 wrong with the PSA's, Your Honor. I'm focusing right now on a
24 funding agreement. I'm focusing right now on having Holdco or
25 JJCI at one point in time having the consumer business. Prior

1 to the end of, prior to the end of January so before the Third
2 Circuit issued its ruling, that consumer business evaporates
3 which means therefore that LTL becomes more dependent on J&J's
4 ability to step up to the plate under the joint and several
5 liability agreement that was the 2021 funding agreement.

6 And it doesn't tell anybody, doesn't tell anybody
7 that that has happened and the Third Circuit issues its opinion
8 and for some reason the Third Circuit that says no, you can't
9 do this. You didn't do this in good faith. They think that's
10 a sign to go back and get rid of the assets. It's astonishing
11 to me how getting rid of assets that occurred and overlapped
12 with the first bankruptcy, maybe documents were signed in two
13 hours and 11 minutes, I don't know. I don't think they were
14 docusigned. Maybe they were sitting there already signed and
15 somebody had to staple the pages together.

16 But this was negotiated while they were still in
17 bankruptcy and I'm focusing right now, Your Honor, on the
18 funding agreements. You asked Mr. Jonas about assets of the
19 debtor. The second time around, LTL walked into this Court
20 with a new funding agreement that says that it will get money
21 for Holdco and Holdco can get a loan from J&J. Holdco no
22 longer has consumer business assets. And it walked in with the
23 fraudulent conveyance claim. And if the debtor doesn't want to
24 bring it, I'm sure the committee will look into bringing it.

25 But it walked into this courtroom with 52 billion or

1 whatever, I can't do the math this late at night in claims for
2 a fraudulent conveyance. And as Mr. Jonas pointed out, under
3 548, there's two provisions in there. They don't have to prove
4 insolvency under 548, I'm going to get it wrong now, --

5 THE COURT: A.

6 MS. RICHENDERFER: 8(2)(a). Thank you, Your Honor.
7 They don't have to prove insolvency. You have to prove intent
8 and I think we've already heard an awful lot because they
9 intended to get rid of that agreement. Mr. Kim was very clear.
10 They intended to get rid of that agreement and they did. They
11 got rid of that agreement. May have been based on bad, legal
12 advice. I don't know because I just don't understand how void
13 or voidable, I mean if it's voidable, that means that one of
14 the two parties has to take a step to make a void. If it's
15 void, then when did it become void? Was it void ab initio?
16 Did it become void because the Third Circuit said you're not
17 suffering financial distress. I don't know when allegedly it
18 became void. But if it's voidable, one of the two parties has
19 to take a step and Mr. Kim doesn't define when that occurred,
20 just people were talking about it and then next thing you know
21 there's no agreements that are in place.

22 These are all issues that go to the success on the
23 merits, Your Honor. They go to issues that will probably be in
24 front of this Court maybe on May 3rd, I don't know. I guess it
25 depends on how fast we all can move on appropriate motions to

1 dismiss. But those are issues that are going to be back in
2 front of this Court. But when LTL 2.0 came in, it had a lot of
3 money. And the difference is this, Your Honor. If we assume,
4 and I'll assume for the sake of argument, that they have 60,000
5 claimants all tied up because their attorneys are going to send
6 in ballots signing their names. That's what happened in Imerys
7 and we ended up with a huge amount of votes that gone thrown
8 out for one reason or another. One being absolutely no proof
9 of the claimant themselves, 15,000 of them having a claim and
10 other votes got thrown out because multiple law firms were
11 submitting ballots and it wasn't that the claimants were
12 signing two ballots, it was at two different law firms were
13 submitting a ballot for the same person.

14 So let's just assume that they do have 60,000 claims.
15 I don't know if that's claimants tied up. I don't know if it's
16 75 percent or not, Your Honor. I really don't know. Because
17 of the overwhelming number of claims that Mr. Watts has
18 acquired since the first filing. I don't know whether or not
19 anybody else has equally acquired the same number of claims.

20 But there's also the State Attorney Generals has
21 substantial claims. And I heard reference made to claims
22 against Imerys and Cypress. Well, I'll tell you this, Your
23 Honor. There have been adversary proceedings pending since,
24 see 2019 is when Imerys filed so probably 2020, adversary
25 proceedings by Imerys against Johnson & Johnson for

1 indemnification claims and also seeking coverage under these
2 insurance policies that are part of the monies that may or may
3 not end up in the pot here for this case.

4 And I will tell you that both Imerys and Cypress also
5 believe they have huge indemnification claims against Johnson &
6 Johnson. And I believe it was one of the counsel for the
7 debtor, Your Honor, made a comment about how well, you know if
8 claims get covered in the Imerys case. Your Honor, I went back
9 and I looked and of the 12 primary law firms, that have signed
10 PSA's, all but two of them either had no votes submitted in the
11 Imerys case or had their votes thrown out because there were
12 other law firms claiming the particular claimant as their
13 client.

14 So I don't see that there's going to be a lot of
15 overlap between people that are going to try to get paid
16 through the Imerys trust and people that are going to try to
17 get paid through the J&J or the LTL trust. And we started off
18 this case back in October 2021 with a pot of money that I will
19 admit is larger than what I can even comprehend. We now in LTL
20 2.0 have a pot plan, meaning here it is, here's the cutoff. So
21 all of you tort claimants, all you State Attorney Generals,
22 anybody seeking indemnification from us, insurance carriers,
23 Blue Cross, Blue Shield, here it is. Divvy it up.

24 There's a huge difference between the two. And
25 that's the problem here, the pot plan. There might still be

1 tell us what Judge Ambro says. But I know that Footnote 18
2 talks about fraudulent conveyances, which to me is saying don't
3 do it. But I guess minds can differ, that's why lawyers have
4 jobs, because we all disagree about how to interpret things.

5 It's beyond challenge that funding agreement one was
6 available in or outside of bankruptcy. Mr. Jonas already told
7 you, I think, about the colloquy that went forth between, it
8 was Judge Ambro who asked the question, and appellate counsel
9 for the debtor at first said that it wasn't available outside
10 of bankruptcy.

11 And then one of the co-counsel whispered in his ear
12 and he went up and he corrected himself. And Judge Ambro said
13 yes, I know that. I mean, Judge Ambro asked that question
14 knowing the answer, and he got the wrong answer and then got
15 corrected. So that agreement was available in or out of
16 bankruptcy.

17 Your Honor, the plan. And Your Honor saw me asking
18 questions of Mr. Kim about this. A plan in a case like this is
19 going to be 50, 60, 70 pages long. That's not even including
20 TDP's, that's not even including the trust agreement. I know
21 Your Honor is very well aware of this whole process. You've
22 had asbestos cases. You know how long these things are. You
23 know how heavily, heavily, heavily negotiated they are.
24 Because this means real dollar and cents.

25 And to take that term sheet and get it into a real

1 plan that each one of the law firms assigned a PSA is going to
2 say okay, that's it, that's what I agree to, that's what I
3 agree to support, we're a long way from that point, Your Honor.
4 We are a long way.

5 You know, I come from the Emerest (phonetic) case
6 where here we are going on, it will be four years. It is four
7 years, that's right. It was in February of 2019 that it filed.

8 Nowhere near it. It's the details. The devil is in
9 the details in these plans. And that's where reasonable people
10 differ. And so the time line that they set out, I'd love to
11 see a plan on May 14th. I have a feeling though it's going to
12 look like what I saw in Emerest, which was plan number one that
13 was so bereft of details that you didn't even know where to
14 begin in drafting your objection to it. And it wasn't until we
15 got to the tenth amended plan that it finally was in a state
16 where it could go out for solicitation.

17 So I believe there will be something that we will see
18 filed on May 14th. But I really question whether it is going
19 to be something that all of us, including Your Honor, will feel
20 is appropriate to send out to the claimants for them to vote
21 on. I mean, we haven't even had major discussions like okay,
22 how are they going to do the voting. I mean, that can take
23 days of arguments about do you send it to their attorneys, how
24 do you make sure that they get it, how do you make sure that if
25 they want to vote themselves, they get to vote.

1 So Your Honor, I'm just saying all of this because I
2 think that there's been a heavy emphasis by the debtor on let
3 us go forward, we're going to get this wrapped up like this.
4 And that is not going to occur here. Reality -- I just want to
5 bring a sense of reality into all of this.

6 And I go back to my opening statement, Your Honor.
7 There are four elements that need to be proved here. And most
8 of what I just said goes to element number one, success on the
9 merits. I haven't heard anything discussed as to why J&J and
10 its other nine debtor affiliates get a channeling injunction or
11 why they get a third party release, whatever it ends up being.

12 And I go to the fourth element which is the public
13 interest. And the public interest is in not allowing opinions
14 of the Third Circuit Court of Appeals to be ignored in this
15 fashion. To be twisted and turned around in this fashion. And
16 it is not in holding up people who have not been able to go
17 forward with their claims in the meantime.

18 The details on the claims I've left up to the
19 Committee and plaintiff's counsel that are here to discuss.
20 But the public interest is not allowing J&J to keep them again
21 from their day in court. Thank you, Your Honor.

22 THE COURT: Thank you, Ms. Richenderfer. So you can
23 come up, whoever is next. It is 6:36. I am telling you all
24 now, and adjust your arguments accordingly, I am adjourning at
25 7:30. I owe it to my staff for their health and their safety.

1 Let's get it done.

2 MR. BIRCHFIELD: Good evening, Your Honor. Andy
3 Birchfield, Beasley Allen. I know it's late in the day and I
4 appreciate you giving us this opportunity to be heard. J&J
5 began the day, LTL began the day denigrating me personally in
6 their opening, and my law firm. And they ended their day in
7 their closing denigrating me personally and my law firm. Why?
8 To what end? What relevance does that have to this proceeding?

9 I think there we may have evidence of true
10 frustration of purpose. It's not me. It's not me. There is a
11 committed team, a leadership team of a large member of lawyers
12 and we have held together and we have held firm. And because
13 we have held together and we have held firm that frustrates
14 J&J's purpose of using the bankruptcy process to coerce
15 plaintiffs to accept deeply discounted values.

16 And as part of the presentation you were given some
17 quotes from my deposition. Part of those, a significant
18 portion of that dealt with a proposed agreement, a proposal, a
19 draft proposal from September of 2020. And it was suggested
20 that that proposal was for all ovarian cancer claimants for
21 3.25 billion. I don't know what relevance, or I don't know
22 where 408 is here. But you will have the deposition and you
23 will have the agreement. And I'm going to --

24 I urge you, Your Honor, look at the agreement. See
25 if the total payments under that agreement are 3.25 or 5.5

1 billion. I urge you to review that agreement and see if that
2 is for ovarian cancer claimants only or does it include
3 mesothelioma claimants, does it include A.G. claimants. It
4 does not. It is ovarian cancer claimants only.

5 Look at that agreement. See if it is not a voluntary
6 opt-in proposal for a private QSF outside of bankruptcy. Only
7 a portion would have been involved in the Emerest and a
8 contribution into the Emerest bankruptcy. Look at that
9 agreement, see if it was accurately portrayed to Your Honor
10 here.

11 I also want you to remember, Your Honor, and I know
12 you do, from the first proceeding you had an enormous amount of
13 time that was spent on the spike, the huge spike in new claims.
14 There was a tremendous amount of time spent on. So what is the
15 difference, what is the difference in the number of claims
16 pending in September of 2020 and what is pending today. So
17 when every proposal, our leadership team on behalf of the
18 ovarian cancer claimants, we have been committed, we have been
19 committed from day one and we have held together and we have
20 encouraged all the lawyers, all the lawyers across the country
21 to hold together, to hold together in insisting that J&J pay
22 reasonable values for their claimants.

23 There is a big difference in the number of claims
24 that would have been, current claims that would have been
25 existed in 2020 and what there are today.

1 THE COURT: What is the difference? We started with
2 38,000 in the MDL, 3,000 in the State and four or 500 meso
3 claims. And now if, just by 40,000 are opposed and 60,000,
4 we're at 100,000 or more. Why in a year and a half?

5 MR. BIRCHFIELD: Because there is a difference
6 between filed claims and claims that may be valid claims that
7 are in lawyer's offices. So since LTL filed its bankruptcy
8 there could be no new claims. But law firms, they are
9 following the process.

10 What they would do, they would get a client to come
11 into their office, they would begin to investigation that claim
12 and they would look at the statute of limitations. When is the
13 statute of limitations? They would gather medical records and
14 they would evaluate that claim and determine whether or not
15 that claim should be filed or not.

16 And so all of that was put on hold in October of 2021
17 when J&J filed bankruptcy. And so there could be no new filed
18 claims. But claimants who have used baby powder for years or
19 decades were still getting ovarian cancer claims. So those
20 claims are still coming into lawyer's offices. They're still
21 being evaluated. Their medical records should still be
22 gathered on those claims, but they're not filed.

23 THE COURT: But then shouldn't the Court take that
24 into account for potential liabilities? And when we go back to
25 financial distress, that in a year and a half we've had 100

1 percent increase in claims?

2 MR. BIRCHFIELD: I mean, yes, Your Honor, I think you
3 should take that into consideration. It does not rise to the
4 level of putting J&J in financial distress. It doesn't. There
5 are a significant --

6 THE COURT: Not J&J --

7 MR. BIRCHFIELD: LTL. LTL in the position of
8 financial distress. Are there claims? Yes. There are claims.
9 Will there be more claims in the future? Yes. Does it rise to
10 the level, have they offered a showing that that rises to the
11 level of financial distress? It does not.

12 And Your Honor, I think one of the things that J&J,
13 LTL's presentation, because you had both today, one of the
14 things that it does show, I mean, they say that there is no
15 threat in the tort system, we're only facing 11 trials per
16 year. So that's why it's going to take claimants thousands of
17 years to be heard. And so there is no threat.

18 If that were the case, they made a significant
19 presentation about how the mass tort system has failed
20 plaintiffs. Your Honor, they're urging the Court to weigh in
21 on that policy, the policy matter of mass tort settlements in
22 bankruptcy court versus MDLs. The mass tort MDL system has
23 worked, it does work. If --

24 THE COURT: Right. And for today's purposes I'm not
25 -- This isn't a motion to dismiss --

1 MR. BIRCHFIELD: Yes, Your Honor.

2 THE COURT: -- in its current form.

3 MR. BIRCHFIELD: So one of the things -- I mean,
4 another issue, another issue here is what they're saying, if
5 you look at, if you take their argument, if you take their
6 argument then we would not have had a tobacco settlement. The
7 initial claims, if a company has the wherewithal to avoid
8 paying through settlements or taking verdicts and through
9 appeal, if they can avoid a global settlement for 10 years then
10 case over. They are entitled to bankruptcy.

11 Tobacco, the tobacco cases, you are talking decades
12 where the tobacco companies were resisting that, resisting any
13 liability. They were taking the same position that J&J is
14 taking here. No liability. But yet they ended up in a \$200
15 billion settlement. So the mass tort system works.

16 I must address the issue of the losing streak. You
17 have that. You have losing streaks, you have winning streaks
18 in virtually every mass tort. I mean, in the Vioxx litigation
19 you had a couple of wins, you had a significant number of
20 losses. No claimant was paid. No claimants were paid for
21 nearly seven or eight years, until there was a global
22 settlement paid.

23 It would be the equivalent here. Except J&J is
24 stopping short and they're saying cut us out of the tort
25 system, give us a steeply discounted settlement for the

1 claimants here. And I urge you not to do that.

2 Ms. Brown showed this list of wins and how those were
3 vacated. J&J got the benefit. They got the benefit of a
4 Supreme Court decision in BMS that vacated those verdicts,
5 significant verdicts. Verdicts of 72 million, 110 million.

6 THE COURT: For jurisdiction.

7 MR. BIRCHFIELD: On personal jurisdictional grounds.
8 Not the merits. And those cases are re-filed and pending
9 today. J&J, and she pointed out that J&J was on a winning
10 streak. They were winning those last few cases. J&J engaged
11 in highly aggressive out of bounds trial tactics. Tactics that
12 ended up with criminal contempt charges against J&J and its
13 medical officer and a guilty plea. That is not a sustainable
14 method of litigation. That's why we are here in the
15 bankruptcy. That's why they're asking for the preliminary
16 injunction.

17 And Your Honor, I want to turn to one last point.
18 And that is to respond to J&J's position, why not just let the
19 claimants vote. And they're going to be, and my colleagues are
20 going to address, you can't vote because this is not a
21 legitimate bankruptcy.

22 THE COURT: We'll they'll get to it once you sit
23 down.

24 MR. BIRCHFIELD: Yes, yes. So I'm not going to touch
25 that.

1 THE COURT: You're going to get notes soon.

2 MR. BIRCHFIELD: But here's what the other, here's
3 what I want to address. One of the things that is clear, one
4 of the things that is clear is J&J's effort here to stuff the
5 ballot box. All of our proposals, you look at the proposal
6 that they submit in my deposition, it is for ovarian cancer
7 cases that are supported by the science that Judge Wolfson
8 adopted in her Daubert decision. Here they are expanding that
9 to a lot of other claims that are not included. It's an effort
10 to stuff the ballot box. They should not be granted that
11 delay. Thank you, Your Honor.

12 THE COURT: Fair enough. Thank you, Mr. Birchfield.
13 Mr. Satterley.

14 MR. SATTERLEY: May it please the Court, Joe
15 Satterley, Kazan McClain Satterley and Greenwood. I don't have
16 150 slides like the debtor's counsel. I promise I have zero
17 slides. I'm only going to be a few minutes. On behalf of
18 Anthony Valadez I would request Your Honor to lift the stay so
19 we can proceed to trial. I'm not going to respond to all the
20 attacks on him or me. I'll get back to the balance of interest
21 in just a few minutes.

22 From my perspective, she had a slide that said I had
23 13 cases. I don't know if that's true. I don't know if I have
24 14, 15, 20, 30. All I know is from my perspective this is a
25 manufactured cram-down to protect J&J's reputation. That's all

1 it is. In the first trial, which I was here for every single
2 day, they tried this as a tort reform. They had slides of
3 advertising, lawyer advertising, how much they spend. And one
4 of the slides was Mr. Onder's slide. And they tried to say
5 Your Honor, you could fix this system.

6 And Your Honor wrote an opinion on February 25th,
7 refusing to grant the motion to dismiss. And in March, on
8 March the 19th Mr. Watts signed up his first talc case. I saw
9 him on March the 30th here in this courthouse 11 days later. I
10 didn't know he signed up his first case 11 days beforehand.
11 But the record, we took his deposition and he admitted he
12 didn't get involved in trying to collect cases until after Your
13 Honor denied the motion to dismiss.

14 And then from March 19th of 2022 until the day before
15 yesterday, because he said he signed up his last talc case the
16 day before yesterday, he signed up 16,925 cases of which 500
17 are meso. Now, I've been handling mesothelioma victims,
18 clients for 26, 27 years, actually as a paralegal for 30 years
19 beforehand. There's only 2,500 mesos a year. It's virtually
20 impossible for him to have signed up 500 mesotheliomas.

21 And when we asked have you obtained the medical
22 records, have you obtained and confirmed the pathology? We've
23 ordered them. We got good people that's going to look through
24 them. We're going to analyze them. And Mr. Block asked, can
25 you even say there's 1,000 confirmed cases? We got people who

1 are looking at them.

2 So what's happening here, Your Honor, is after the
3 Third Circuit reversed Your Honor's decision on January 3rd,
4 Mr. Watts on February the 26th, and this is in the record
5 yesterday, emailed Mr. Murdica and said here's a template for
6 what I did before on February 26th, almost 26 days later. And
7 from February the 26th there's not any additional written
8 negotiations. There's not any response emails that have been
9 produced. I asked counsel and they say they did everything
10 orally.

11 And so what do we have here? As the U.S. Trustee
12 said, this is not a plan. This term sheet, when I asked Mr.
13 Watts about the mesothelioma, I said did you negotiate this?
14 No, I didn't have anything to do with it. Who wrote it? Mr.
15 Murdica. Well, you know how much Mr. Valadez would be entitled
16 to under this plan that Mr. Murdica wrote and there was no
17 negotiations whatsoever between J&J, LTL and anybody? Mr.
18 Valadez would be entitled to \$50,000 under this plan. \$50,000.

19 So I would say to Your Honor that this is a
20 manufacturing attempt to cram-down. They have said today that
21 Mr. Murdica has been involved for 20 or 30 years negotiating
22 cases and settling cases. They're free to settle with anybody
23 they want at any point in time.

24 But what they're not free to do is to do a cram-down
25 to force people that want their day in court, to have their day

1 in court under the constitution. And that's just not
2 permitted. None of the negotiations that Mr. Murdica has done
3 in the last 20 or 30 years and end it with a channeling
4 injunction what they're seeking out today.

5 Now let me just turn -- I have a lot of other notes
6 but we've got other people who want to talk. Let me just turn
7 to Mr. Valadez. The Valadez case, you know, counsel showed
8 some pictures from Facebook. I've never been on Mr. Valadez'
9 Facebook page. I didn't even know he had a Facebook page. I
10 assume they got them off his Facebook page, I assume they're
11 accurate. I have no idea.

12 But it doesn't seem surprising to me that someone
13 like Mr. Valadez, who's been suffering with this disease for
14 over a year, in a wheelchair and had his trial yanked from him
15 by an improper bankruptcy, that maybe -- And also probably the
16 PR, the press release where \$8.9 billion is going to be given,
17 he probably had to answer questions from friends. Oh, are you
18 going to get money? I have no idea. I know I had to answer
19 questions from clients and colleagues about this.

20 And so it doesn't surprise me at all that there might
21 be something about financial issues with this. But this isn't
22 a settlement. And it isn't about J&J saying it's all good.

23 THE COURT: Mr. Satterley, let me ask you a question,
24 if I may.

25 MR. SATTERLEY: Yes.

1 THE COURT: On Mr. Valadez' case.

2 MR. SATTERLEY: Yes.

3 THE COURT: In your view, what remains to be
4 undertaken?

5 MR. SATTERLEY: We were prepared to be ready for
6 trial within eight days of the TRO being entered on the 5th of
7 --

8 THE COURT: You showed me lists of depositions that
9 had to be taken. Do they still have to be taken? I'm trying
10 to get a handle --

11 MR. SATTERLEY: Sure.

12 THE COURT: -- objectively on what remains.

13 MR. SATTERLEY: Sure, sure. And I was going to
14 request, Your Honor, probably eight to 10 days. Maybe a little
15 bit longer depending upon the expert witness's schedule. Quite
16 frankly, Judge Seabolt was doing a great job managing the
17 docket every single week. And he's prepared to resume again
18 tomorrow morning. Tomorrow at three o'clock. Tomorrow at
19 three o'clock we have, which is six o'clock eastern time, we're
20 scheduled to have another case management conference where I
21 tell him what Your Honor says to do or not to do.

22 So, Your Honor, I think that we got derailed by the
23 bankruptcy, the unexpected bankruptcy. But we can get back on
24 track in a very quick time frame, whether it be 10 days, two
25 weeks. And Judge Seabolt is, you know, he practiced for 43

1 years before he went on the bench and I'm sure he can manage
2 this case. All the other things that they raised last time and
3 today about Valadez, they're jury questions. They're jury
4 questions.

5 They got a great defense. They took a picture, the
6 back of a picture and went on the internet and found some --
7 the photograph was only on certain years. As I said before,
8 they're basically calling five people liars. That's a jury
9 question. If they're so confident that they're going to win
10 this case, let's go do it.

11 The bottom line, the balancing of interest, and I'm
12 going to end with this. I'm going to end with two things. The
13 balancing of interest and the irreparable harm I can't imagine
14 they would be more dramatic. Because on the one hand you have
15 somebody dying and living the last few days of their life. And
16 the other side of the balancing is we may have to pay lawyer
17 fees some money to go defend this case and potentially get a
18 defense verdict if they're really that good. If the evidence
19 is really on their side.

20 That's the balancing. There's no disruption. The
21 only disruption they're concerned about, to be candid, which
22 the Third Circuit said you can't consider, is protecting their
23 reputation.

24 The last point I'll make, Your Honor, and I've got a
25 lot of other notes but I know a lot of folks want to say, is

1 Mr. Kim said today oh, it's double, we got enormous, enormous.
2 There's no real evidence of that. Unfiled, unverified,
3 unknowns is not doubling on the back of an envelope. It's not
4 enormous liability. Don't fall for those arguments, because I
5 think -- I just don't think it's right under law.

6 You know, a long time ago somebody told me when the
7 law is not on your side argue the facts. When the facts are
8 not on your side, you know, attack the plaintiff's counsel.
9 When the plaintiff's counsel is not necessarily a bad guy,
10 attack the plaintiff. Well, that's what's happening here.

11 The law is not on their side, the facts are not on
12 their side, they attack me and say somehow I'm doing -- my
13 trials are too long because we go half days four days a week.
14 Or I take too many depositions because I'm a zealous advocate.
15 And now when they can't attack me because I'm genuinely a
16 pretty nice guy, they're going to attack Mr. Valadez. You
17 know, I urge Your Honor to not grant the preliminary injunction
18 for all my clients. But specifically to lift the stay and
19 allow the Valadez case to proceed. Thank you, Your Honor.

20 THE COURT: All right. Thank you, Mr. Satterley.

21 MR. MAIMON: Your Honor, while Ms. Davis Jones is
22 coming up to the podium, I just wanted to let the Court know
23 I've done a little bit of a head count here just so you have an
24 idea that myself, Mr. Thompson, Mr. Placitella, Mr. Simon, Ms.
25 Johnson, Ms. Davis Jones obviously, and Ms. Parfitt all would

1 like to be heard.

2 THE COURT: Divided by 35 minutes. And you could do
3 the math as easy as I can.

4 MR. MAIMON: Two minutes.

5 THE COURT: Thank you. Ms. Jones.

6 MS. JONES: Good evening, Your Honor. Laura Davis
7 Jones on behalf of Arnold and Itkin. Your Honor, I'm
8 representing thousands of ovarian cancer claimants.

9 Your Honor, we filed an opposition to the motion for
10 preliminary injunction on Sunday, and I trust Your Honor has
11 reviewed that opposition and I won't repeat it. Your Honor, I
12 would like to highlight two points that are made in our papers.
13 And with the support of the evidence today, we submit that this
14 motion should be denied.

15 Your Honor, as has been said a couple times, this is
16 a manufactured situation. It's a Chapter 11 designed attempt
17 to overrun and sidestep the rulings of the Third Circuit. By
18 the P.I. motion the debtor is asking for equitable relief,
19 relief that should be denied since the debtors have unclean
20 hands and cannot establish a reasonable likelihood of a
21 successful reorganization.

22 As to unclean hands, Your Honor, the debtor's actions
23 in manufacturing the financial distress the Third Circuit found
24 lacking in the first LTL qualifies as unconscionable. This is
25 especially so when the debtor now seeks to use the financial

1 distress those actions created as a pretext for a new Chapter
2 11 case that enables it to seek broad equitable relief against
3 the very talc claimants that were harmed by their actions.

4 The actions of the debtor J&J, in creating the
5 faceless debtor's new financial distress are directly related
6 to the requested preliminary injunction. But for those
7 actions, this Chapter 11 case could not have been filed.
8 Without a Chapter 11 case there would be no basis for any
9 equity relief that is sought in this motion.

10 The talc claimants would be free to pursue or settle
11 their claims against the debtor J&J and other protected
12 parties. Without the improper conduct to create financial
13 stress, the debtor could not have sought such an injunction.
14 The Court should bar such relief under the Unclean Hands
15 Doctrine.

16 Your Honor, as to my second point, the debtor cannot
17 establish a reasonable likelihood of a successful
18 reorganization if the debtor and J&J require a plan with a
19 channeling injunction that includes all of the "protected
20 parties" and "debtor talc claims". Such an injunction would be
21 beyond the permissible scope of a channeling injunction under
22 524(g) (4) of the Code.

23 Under the plain language of 524(g) (4) neither
24 retailers nor indemnified parties are among the parties for
25 whom can favor a channeling injunction may be issued under

1 Section 524(g) (4). Neither a party's status as a retailer nor
2 a party's status as an indemnified party qualifies the party
3 for inclusion in any of the four categories of the statutorily
4 defined relationships set forth in Sections 1 through 4 of
5 Section 524(g) (4) (ii) so as to qualify claims against that
6 party for inclusion in a third party channeling injunction.
7 The fact that such parties may have contractual indemnification
8 rights against the debtor does not change that result.

9 Your Honor, we would, given the lateness of the hour,
10 I'd ask Your Honor to look closely at the opposition that we've
11 put before the Court. We've spent only two pages describing
12 the Grace case which was mentioned earlier by Mr. Gordon. But
13 I was debtor's counsel in Grace all the way up since 2001. And
14 his recitation of what happened in Grace is not exactly on
15 point. Your Honor, we spent some time, as I said, a couple
16 pages in our opposition that I'd ask you to look at.

17 Your Honor, the proposed injunction goes well beyond
18 the stridency of 524(g). And Combustion Engineering instructs
19 us that 105 cannot be used to expand the injunction. Your
20 Honor, as I heard counsel discuss their debt presentations, and
21 I think Mr. Jonas said this too, all I could think of Your
22 Honor, is here we go with the end justifies the means. That,
23 Your Honor, is not the law of this Circuit and indeed has not
24 been sanctioned by the Third Circuit. Precedent is critical
25 and instructive and controlling.

1 Your Honor, the same is true whether there's one
2 claimant complaining about this. There were comments made
3 earlier that there's only 100 people complaining, or 15 people
4 complaining, what have you. I'm standing here with thousands
5 of ovarian cancer claimants. But that issue aside, Your Honor,
6 the issue is the same whether it's one or thousands of us. We
7 found that argument, Your Honor, to be ridiculous and frankly
8 offensive. And Your Honor, we'd ask that the motion for
9 preliminary injunction be denied. Thank you, Your Honor.

10 THE COURT: Thank you, Ms. Jones. Mr. Placitella.

11 MR. PLACITELLA: If I'm more than two minutes, you
12 give me the hook, Your Honor.

13 THE COURT: Your colleagues will do that. Go ahead.

14 MR. PLACITELLA: Janssen and Kenvue are not protected
15 parties under this Court's TRO and there's no basis in law or
16 fact to enjoin plaintiffs from proceeding against them,
17 including Mr. Burgeron (phonetic). They asked in the middle of
18 the night, they submitted a pleading sticking Janssen and
19 Kenvue with a pleading with no facts whatsoever. And I asked
20 Mr. Kim, why did you do it? He said it was a knee jerk
21 reaction. You filed a lawsuit, we figured we could go to Judge
22 Kaplan, he'd fix it for us.

23 But there has been no proof today. I asked Mr. Kim,
24 what do you know about Kenvue? Nothing. What do you know
25 about Janssen? Nothing. So they have not satisfied their

1 burden of proof to impose an injunction as it relates to those
2 parties. LTL has no -- There was no issue about shared
3 insurance, indemnity claims, all these things that they're
4 talking about. LTL has no standing to make arguments about
5 Kenvue or Janssen. There's nothing to support jurisdiction
6 respectfully of this Court concerning those claims.

7 And whether Janssen and Kenvue are responsible to Mr.
8 Burgeron who's dying of cancer with two minor children is
9 something for the trial Court to determine under law of the
10 State of New Jersey. And if J&J or LTL or whoever -- Forget
11 it. They have nothing to say about it. If Kenvue or Janssen
12 think that's wrong, they can go to the appellate courts. But
13 that's a matter of State law, it's not a matter for this Court.
14 Thank you very much for hearing me.

15 THE COURT: Thank you, Mr. Placitella.

16 MR. SIMON: Good evening, Your Honor. My name is
17 Jeffrey Simon and I filed a pro hac yesterday. May I be heard
18 with a few brief remarks?

19 THE COURT: Absolutely.

20 MR. SIMON: Thank you. As I said, my name is Jeffrey
21 Simon. I'm losing my voice, but I'm with the law firm of Simon
22 Greenstone Panatier and we are a firm that specializes in mass
23 tort litigation and particularly mesothelioma litigation. I
24 personally have been trying mesothelioma cases for over 30
25 years. Our firm has tried many talc related mesothelioma

1 cases, including several against Johnson & Johnson and I
2 personally have tried several myself.

3 Our firm represents hundreds of people with
4 mesothelioma who would have claims against Johnson & Johnson in
5 the tort system if given the opportunity to pursue them. And
6 we object, join in the objections which have been heard. And I
7 would note that we are among over 40 firms that filed formal
8 objections to the relief that the debtor and the non-debtor
9 parent seek.

10 I'm going to talk fast. I have a somewhat unique
11 perspective and Your Honor will decide if it's meaningful or
12 not. I'm a professor of mass tort litigation at SNU Law School
13 and I teach about your opinion from March 4th, 2022. And I
14 teach about the Third Circuit opinion regarding it. And I read
15 your opinion many times. And when I read it I --

16 THE COURT: When can I be a guest lecturer?

17 MR. SIMON: You can. You can. I agreed with a lot
18 of where you described the complexities of coming up with
19 resolution methodologies in mass tort litigation that are fair
20 and equitable to all the parties, and the struggles that
21 various types of Courts have had over the years to apply them.
22 You know, the only area where I respectfully departed from your
23 conclusion was how then we should reason our way through the
24 issues that were before you. So be it.

25 Having said that, the Third Circuit opinion set forth

1 some core truths that really were no different than your
2 reasoning. It was just some difference in how they chose to
3 apply them. And I'd like to just comment on two. One of them
4 at page 40 was Congress designed Chapter 11 to give those
5 businesses teetering on the verge of a fatal financial plummet
6 an opportunity to reorganize on solid ground and try again.
7 Not to give profitable enterprises an opportunity to evade
8 contractual or other liability.

9 Respectfully, LTL is not teetering on the verge of a
10 fatal financial plummet. I don't even think they're contending
11 that they are. And J&J is not either. And because that is
12 true, because LTL has never paid a dollar in the tort system in
13 terms of a settlement or a judgment, what is before us now is
14 the kind of distortion of Chapter 11 that I believe the Third
15 Circuit said let's not countenance that. We're not here for
16 that.

17 They have terrific lawyers and they make impassioned
18 arguments about how the mass tort system is broken. But
19 bankruptcy courts are courts of limited jurisdiction and it is
20 not their job to resolve those kinds of policy questions about
21 the pros and cons of the mass tort litigation system.

22 And I would make the point that it is now self
23 evident, it is not even in dispute that Johnson & Johnson is
24 extremely adept and astute in resolving mass torts in the tort
25 system. Mr. Kim said it is standard practice. He testified

1 that Mr. Mordica has assisted him in the resolution of 20, 30,
2 40 mass torts in the system. They know how to do this and
3 they're free to do so, which says too much about why only this
4 one for which they seek bankruptcy protection.

5 Having said that, at the end of the day Your Honor
6 knows what issues to balance and you've heard them. And I
7 don't want to be presumptuous or repetitive. But I would take
8 Your Honor back to some observations you made in your March
9 4th, 2022 opinion which were dead-on. Which is that history
10 has taught us in mass tort litigation that resolution by forced
11 proxy is usually the least equitable and least effective.
12 That's what we saw when we tried the class action structures.
13 Not me personally, but Amchem Products and Ortiz.

14 What works is informed free choice of each claimant
15 to decide based on counsel whether or not to move forward with
16 their claim in the tort system, risk dismissal on motion,
17 settle, or attempt to try their case to verdict. And
18 bankruptcy courts are not set up to circumvent that system,
19 which is what they're trying to do here.

20 With that, unless you have any questions, which I bet
21 you don't, thank you for your time and consideration of my
22 remarks.

23 THE COURT: Thank you, counsel. Appreciate it. Mr.
24 Maimon.

25 MR. MAIMON: Thank you, Your Honor. May it please

1 the Court. I'd like to start off by answering a question that
2 Your Honor put to Mr. Jonas. And it reminds me of the song
3 that our grand kids sing, a billions here, billions there,
4 billions everywhere. How is that not financial distress? Your
5 Honor asked that question. And I'll answer that question
6 straight on from a legal perspective, because Your Honor is not
7 sitting here as a CPA, as a financial advisor. Your Honor is
8 sitting here as a jurist.

9 The same record that existed in LTL 1 exists in LTL 2
10 with regard to the debtor. But the Circuit said no, they're
11 not in financial distress. The billions that were there
12 before, billions in claims are here again. That they're here
13 now and the Circuit said no financial distress. And that was
14 assuming what Kim admitted was a floor of \$61.5 billion.

15 And that is why, at page 55 of the Circuit Court's
16 opinion it said what if time shows with the progression of
17 litigation outside of bankruptcy that cash available under the
18 funding agreement cannot adequately address talc liability.
19 Perhaps at that time LTL could show it belonged in bankruptcy.
20 That was the context of the footnote that the Circuit dropped
21 about them getting rid of the funding agreement.

22 But they said there's going to be litigation and
23 we're going to see what happens. They circumvented it and they
24 completely threw it out. The proof of financial stability and
25 no financial distress is from Mr. Kim's own words where he

1 said, "we have sufficient funds to meet the liability." There
2 can be no financial distress according to the Circuit's
3 reasoning if they have sufficient funds to meet the liability.

4 And so they must advance the ridiculous notion that
5 the Circuit got it wrong but we've made -- And that they could
6 never have reasonably anticipated it. But if you look at the
7 appellate briefs that were filed on behalf of the appellants,
8 the appellants raised this very issue. That by virtue of the
9 \$61.5 billion funding agreement there is no financial distress.

10 And so with only the hubris and conceit that a half
11 trillion dollar company can have, they thumb their nose and
12 they say no one could have expected that Judge Ambro and his
13 panel mates would have been so stupid to accept such an
14 argument. That is if not so outrageous, it would be laughable.

15 The frauds here, the 51, \$61.5 billion that was there
16 to justify the Texas two-step has now gone and it crumbles of
17 its own accord. Mr. Gordon said that it was provided to
18 facilitate bankruptcy. No. According to Mr. Kim in his sworn
19 testimony, it was provided to save the Texas two-step from a
20 claim of fraudulent transfer. The termination of the funding
21 agreement for absolutely zero value in exchange is a fraud.
22 And as the U.S. Attorney's Office pointed out today, the
23 disgorgement by Holdco of the consumer business is likewise.

24 You can't create financial distress through fraud and
25 there is none here. And so what does that bring us to? That

1 brings us to the diversions for which they have no answer. The
2 billions of dollars that Your Honor asked about perhaps the
3 third party payers are there. But they're not considered to be
4 somebody who's going to get money through their plan. The
5 billions of dollars for the indemnity claims that the U.S.
6 Attorney confirmed is a claim against J&J. That's not there.
7 That's the illusory sensational headline of \$8.9 billion.

8 Not only that. The false claims that J&J has made
9 about claimant support is also a diversion. And I'll answer
10 your question, Your Honor. Should you take into account new
11 claims? If there were evidence of new claims perhaps the Court
12 could take it into account. But all the Court has in front of
13 it are lists of names. Lists of names where the attorneys who
14 represent them have admitted under oath that they haven't even
15 looked at those people's medical records to see if they
16 actually have the diseases that they called on the phone about.

17 Mr. Kim says no, no, no, no, no, we have commitments
18 from lawyers that their clients will follow their
19 recommendations. He says, we take the representation that
20 claimants will follow the recommendations and will come with
21 us. The lawyer's commitments that the clients would support
22 the plan. Contrast that, Your Honor, with Mr. Watts' --

23 THE COURT: He's not here. I wish he were.

24 MR. MAIMON: -- assurances that he follows the
25 ethical rules. He follows the bankruptcy rule, that there's no

1 claimant support at this point in time. There is none.
2 Because to get it would be a violation of the anti solicitation
3 rule. He said it's not my job, it's not my role, it's not my
4 right to give consent. That's a client's right. He said he
5 did not even send the term sheet to the clients because that
6 would be improper.

7 And so there's nothing for these clients and these
8 claimants to support. He said it's the obligation of the
9 lawyer to account for a client's unique situation, particular
10 objective and interest in making settlement decisions. And he
11 said to fatally doom the diversion here. That is why this is a
12 proposal. This is not an agreement to settle. There is no
13 claimant support, and he said it.

14 He was honest and said I can't tell you what the
15 analysis of the medical records for my clients has said. I
16 don't know. I know that I have listed 500 mesotheliomas, but I
17 can't tell you if any of them have a confirming pathology
18 report.

19 How could Your Honor take that into account, a list
20 of names? Mr. Birchfield doesn't have a list of names. We
21 don't have lists of names. That's not something that the Court
22 should take into account. And Mr. Kim's suggestion, Mr. Kim's
23 suggestion that the claimants have committed and the lawyers
24 have committed their clients to vote in favor of the plan would
25 be unethical. It would be unethical. And yet he says we do it

1 time and time again.

2 I don't know if J&J really does it time and time
3 again, because I believe Mr. Watts that he never does it
4 because it's unethical. But doing something time and time
5 again doesn't make it right. And therefore they say the best
6 argument we have, Your Honor, the best argument we have is Jim
7 Murdica trusts these firms. He believes that the clients will
8 follow them and he believes that over 50 percent of the filed
9 claims will go along with it.

10 Shorthand, we know we've got their support because
11 these lawyers have come through for us in the past. That
12 cannot be a basis for this Court's opinion that Jim Murdica
13 trusts somebody, or Jim Murdica believes somebody. That would
14 be, with all due respect, an abdication of this Court's role to
15 put everyone at the mercy of what Jim Murdica trusts and
16 believes.

17 Mr. Watts, according to J&J this was said. Mr. Watts
18 testified at his deposition that according to J&J this was a
19 one-time opportunity and they will not settle outside of
20 bankruptcy. So I understand Mr. Watts and I sympathize with
21 the position that he's put in. That if his clients want
22 compensation instead of waiting, they should be able to do
23 that. I agree. We agree. But we do not agree that they
24 should be able to do that by depriving other claimants of their
25 Seventh Amendment rights. But that is exactly the threat that

1 Johnson & Johnson makes and it should not be countenanced.

2 Because right now all of our claimants, all claimants
3 are being held captive in this court by a TRO and a preliminary
4 injunction. Somebody whose claim is being held captive may
5 feel that they are under duress to accept anything that's
6 offered and not risk, maybe I get out, maybe I don't. But the
7 threat to lawyers that we will not settle your cases unless you
8 support our efforts to deny others their jury rights should not
9 be countenanced by this Court.

10 The last point that I have, Your Honor, and I
11 appreciate the opportunity. The excuse that it's only a small
12 minority of people who oppose this, the small minority excuse.
13 This is not only in the name of, words of my colleague,
14 unacceptable, this is abhorrent. The excuse that it's been,
15 that the use of this excuse to abuse minority rights in the
16 past has been an abhorrence that our country and our Court
17 should not countenance. How many does it take to make it
18 wrong? Does it take 13, does it take 100, does it take 1,000?
19 How many does it take to make it wrong?

20 The Third Circuit started and ended the following
21 way. We start and stay with good faith. Good intentions such
22 as to protect the J&J brand or comprehensively resolve
23 litigation do not suffice alone. What counts to access the
24 bankruptcy code safe harbor is to meet its intended purposes.
25 Only a punitive debtor in financial distress can do it. LTL

1 was not. That's why they dismissed.

2 In Your Honor's words, in Your Honor's words at the
3 first day hearing, the world is watching. We have every
4 confidence that Your Honor will do the right thing. Thank you,
5 Your Honor.

6 THE COURT: Thank you, counsel.

7 MS. PARFITT: Your Honor, good evening and thank you
8 for the opportunity to speak. Your Honor, I haven't had a
9 chance to be before you up until now, but my name is Michelle
10 Parfitt and I co-lead the multi district litigation along with
11 Leigh O'Dell.

12 I've listened today and I've listened for the last 18
13 months and I do have a few remarks. And if you will indulge
14 me. And I'm trying to be very conscientious of the needs of my
15 other colleagues.

16 Your Honor, when I heard Ms. Brown say that the tort
17 system is broken, it has failed, the tort system has not
18 failed. It has been a system of justice that has been embraced
19 by both sides of the table. It has been a system of justice
20 that has worked for centuries. It is a system of justice that
21 provides choices, rights, and liberties. One has to ask why,
22 why does LTL seek to retreat to the bankruptcy system?

23 They have a system of justice that they have
24 embraced, but here today in this case they retreat to the
25 bankruptcy system. To say it's perverse, is perverse the fact

1 that the Honorable Judge Wolfson for the last seven years
2 governed the multi-district litigation and put attorneys to
3 task to prove the case, to prove the science before we were
4 able to embark on a liability of the case we were to prove the
5 science of the case. Not a check box on a bankruptcy form, but
6 to prove what diseases are related to what exposures.

7 And Judge Wolfson, after a very lengthy Daubert
8 proceeding, and after years of preparing for that determined
9 that there were certain cancers, certain epithelial ovarian
10 cancers that could be caused by and were caused by exposure to
11 talcum powder. Not uterine cancer, not vaginal cancer, not
12 cervical cancer, not categorically gynecological cancers, but
13 ovarian cancers.

14 What they seek to do is to come into the bankruptcy
15 court, keep our clients there, provide them with a checklist of
16 broad ranges of mesothelioma, asbestos exposure, broad ranges
17 of gynecological cancers. You asked Mr. Birchfield why the
18 increase of cases? You know why there's an increase of cases,
19 Your Honor, at 60, 70,000? Ask what kinds of cancers are
20 those? Is it a grab bag or are they cancers that are proved by
21 the science? Perverse, the word perverse is used. What's
22 perverse is for a half trillion dollar corporation to retreat
23 to the bankruptcy system claiming the need for refuge and
24 protection for their company.

25 Dishonestly, that was used too. Dishonest people,

1 dishonest claimants. What's dishonest is to sell and
2 manufacture to consumers around the world a product that
3 contained asbestos and they knew was not safe for 100 more
4 years. That's dishonest.

5 Time. Your Honor, our claimants don't have time.
6 J&J has all the time in the world. They can spend five years
7 working through the different formulas and time lines for a
8 bankruptcy system. Our clients have spoken. We are their
9 voices. They have said give us at least the right, the choice
10 to go into a tort system. At least give us the right to speak.
11 Don't force us into a system we never asked to be in. For
12 those that choose, that's a good right, that is their choice.
13 For those that believe the tort system can be fair.

14 If J&J believes what they say, that they want to give
15 our claimants fair and reasonable compensation, you can do that
16 in a tort system. You can do it in a trial, outside of a
17 trial, in a resolution or not. You don't need to cram the
18 people into a bankruptcy system under a false premise that you
19 are insolvent or that you have financial distress.

20 THE COURT: All right, counsel.

21 MS. PARFITT: Thank you.

22 THE COURT: Thank you.

23 MS. JOHNSON: Good evening, Your Honor. Ericka
24 Johnson from Womble Bond Dickinson on behalf of the Ad Hoc
25 Committee of State Attorney Generals. I rise just to raise a

1 discrete issue with respect to the likelihood of success.

2 Your Honor has heard it's premised on a plan that's
3 to be formed and drafted consistent with the term sheet that
4 was admitted to evidence today. You've also heard Your Honor
5 that that term sheet was negotiated by J&J on the one hand and
6 primarily one plaintiff attorney on the other hand. They came
7 up with a number for total talc liability. It's unclear what
8 the basis for that number was.

9 They also allocated that amount for claimants that
10 weren't part of the negotiation, including the amount that's to
11 be allocated for government claims. Again, it's unclear what
12 the basis was for that allocation. And I didn't want our
13 silence throughout today or debtor's arguments to suggest that
14 there is an agreement with respect to the amount other parties
15 have allocated to the government claims. There's no agreement
16 that the \$400 million that's allocated for all government
17 claims is sufficient.

18 Your Honor keeps hearing that there's a resolution.
19 But as Your Honor knows, settlement requires a meeting of the
20 minds. The states weren't consulted in negotiating the term
21 sheet, they haven't agreed that the debtor's liability for all
22 government claims is capped at \$400 million. I also want to
23 note Your Honor, that contrary to debtor's assertion that they
24 can come and develop a plan, confirm a plan in short order is
25 just not close to reality.

1 First of all, that plan has to be drafted. But it
2 also can't be solicited if it's unconfirmable. And as Your
3 Honor knows that you can't provide for a dissenting class with
4 materially different treatment, especially when a company, as
5 they assert, is solvent. And under that term sheet, that's
6 what's proposed here.

7 It would be materially different treatment likely for
8 the government claims, which constitutes unfair discrimination,
9 and such a plan cannot be confirmed. Thank you, Your Honor.

10 THE COURT: All right, thank you. I think, you have
11 a minute and a half. Give it your best shot.

12 MR. RUCKDESCHEL: Well, Your Honor, I'm going to
13 defer to Mr. Thompson and I ask the Court's -- Give him it's
14 indulgence.

15 THE COURT: I can't --

16 MR. RUCKDESCHEL: This is a \$10 billion case at a
17 minimum and I would like to be heard.

18 THE COURT: Counsel, the Court's been very indulgent
19 and I owe it to my employees and the staff here. I'm sorry.

20 MR. RUCKDESCHEL: Your Honor, if LTL 1 from the Third
21 Circuit stands for anything, it's that Your Honor cannot fill
22 in evidentiary gaps in the proof submitted by the defendant, by
23 the debtor here. The debtor has the burden to show that they
24 are in imminent financial distress such that they need the
25 relief of the Code. They have failed.

1 You have to take their testimony at its word. You
2 can't fill it in. What have they admitted? They admitted
3 they're not insolvent, they can pay their liabilities as they
4 come due. They have not estimated their aggregate liability so
5 they can't say we've got too much debt and not enough assets.
6 The CFO admitted to me in deposition in this case two days ago
7 that they've done no analysis of how much it would take to fund
8 their liability in the tort system for the next year, the next
9 three years or at any time.

10 There is no estimate or evidence before this Court
11 that they are unable to fund the stream of payments required to
12 be in the tort system. I asked the CFO specifically and he
13 said there's no such analysis that he's aware of. Nobody has
14 done it. And he's the CFO. There's not a shred of evidence
15 before this Court that they can't meet their liabilities as
16 they come due. In fact, the testimony is contrary to that.
17 And what LTL 1 says is you can't go beyond the record and fill
18 that in yourself.

19 And so the last thing I'll say, because I know you're
20 trying to get done. And I have more things and I wish I could
21 say them all, is Your Honor last week suggested that you were
22 inclined to potentially continue some sort of injunction for a
23 brief period of time. That would be an abuse of discretion.
24 Johnson & Johnson cannot obtain permanent relief. It can't buy
25 its way into permanent relief, it's definitely not distressed

1 itself. New Jersey law prevents the indemnity contract that it
2 bases related to jurisdiction on.

3 They admit that the shared insurance doesn't really
4 exist, or it's highly contingent at best. They can't get
5 permanent relief and they can't get temporary relief because of
6 it. And In Re Piccadilly Circus, In Re Marsh which are both
7 cited in the papers I filed for Mr. Crouch, specifically deal
8 with this.

9 In In Re Marsh they found it an abuse of discretion
10 to delay for 60 days the imposition of the jurisdictional
11 ruling that there wasn't a jurisdictional basis to hold the
12 case so that the debtor could more orderly liquidate. And
13 Piccadilly Circus says the prospect of a successful resolution
14 cannot override the jurisdictional concerns. You cannot say
15 there will be a settlement and we'll come back and say that
16 it's okay to be here now. It's not okay to be here now.

17 The debtor is praying on Your Honor's belief in the
18 bankruptcy system which is a good thing for a bankruptcy judge
19 to have. It's a good thing. And I applaud Your Honor for the
20 thoughtful, I disagreed with, but 50 page decisions that you
21 entered in LTL 1, the analysis that was done and for certifying
22 the issue to the Third Circuit. The Third Circuit said the
23 record is not there.

24 And when I asked John Kim in deposition before this
25 hearing, what's the evidence of financial distress of LTL that

1 you have today, he said it's the same as I testified to before
2 and that His Honor found before. And I clarified, this is at
3 page 205 and 206 of his deposition. I said, you're saying the
4 bankruptcy Court's findings. He said, that's right. And those
5 are findings that the Circuit Court found were not supported by
6 the evidence. You can't fill in their case for them. They
7 didn't submit evidence and they can't, because if they
8 submitted that evidence they'd be admitting fraud. Thank you,
9 Your Honor.

10 THE COURT: Thank you.

11 MR. THOMPSON: I have one sentence.

12 THE COURT: One sentence I can fit.

13 MR. THOMPSON: All of the arguments that they made
14 today are policy arguments and they're the kind of arguments
15 that you make when the law is not on your side and the Third
16 Circuit did not just kibosh your whole scheme. This Court does
17 not have subject matter jurisdiction. The Third Circuit said
18 so. Start and stay with good faith. They are not in good
19 faith. I'm not yelling at you, Judge. Thank you for hearing
20 me.

21 THE COURT: No, I understand. All right, folks.
22 Thank you very much. Long day. I'm not giving a ruling right
23 now. I understand what's going on in California. I will give
24 a ruling, I will read a ruling into the record probably a
25 condensed version Thursday at, I don't know, we'll call it

1 noon, high noon. All right? We'll set up a Zoom.

2 MR. SATTERLEY: Can I just ask for Judge Seabolt's --
3 So there's not going to be anything on Valadez tomorrow at all.
4 That will be Thursday.

5 THE COURT: Correct. Move the conference to Thursday
6 afternoon.

7 MR. SATTERLEY: Okay. Yes, Your Honor.

8 MR. MOLTON: Judge, can I make, just for the purpose
9 of going forward.

10 THE COURT: Yes.

11 MR. MOLTON: You haven't heard from me today except
12 for the fact that, as you predicted, I protected my client's
13 attorney/client privilege and my deposition was short. But I
14 guess that's why they did it, they wanted to use it for that
15 purpose.

16 In any event, we intend to file. David Molton, by
17 the way, for the proposed counsel for the Talc Claimants
18 Committee. We propose, we are intending to file and
19 contemplate filing a motion to dismiss. Nothing surprising in
20 that. Hopefully by the end of this week we'll be talking with
21 Jones Day about scheduling and looking forward to getting that
22 on your calendar in accordance with the Bankruptcy Rules within
23 the time frame as required. Thank you, Judge.

24 THE COURT: Understood. Thank you.

25 MR. GORDON: Your Honor, I'm sorry, there's one other

1 loose end quickly.

2 THE COURT: Yes.

3 MR. GORDON: We talked about finalizing the rest of
4 the record, so we've got to get that to you before Thursday.
5 So we'll work on that. We still have to get to you the
6 exhibits and the deposition designations because you should
7 have the full record --

8 THE COURT: See what you could do. That's why I'm --
9 That's why I pushed it to Thursday.

10 MR. GORDON: Okay. We appreciate it, Your Honor.

11 THE COURT: All right. Thank you all. Get home
12 safely, or wherever you're going.

13 ATTORNEY: Everybody clean up your --

14 THE COURT: Yes. And this isn't Yankee Stadium.

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C E R T I F I C A T I O N

We, DIPTI PATEL, TRACEY WILLIAMS, KAREN WATSON, LIESL SPRINGER and TRACY GRIBBEN, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and to the best of our ability.

/s/ Dipti Patel

DIPTI PATEL

/s/ Tracey Williams

TRACEY WILLIAMS

/s/ Karen Watson

KAREN WATSON

/s/ Liesl Springer

LIESL SPRINGER

/s/ Tracy Gribben

TRACY GRIBBEN

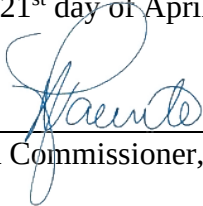
J&J COURT TRANSCRIBERS, INC.

DATE: April 20, 2023

This is **Exhibit “D”** referred to in the

Affidavit of John K. Kim

sworn before me by video conference
this 21st day of April, 2023



A Commissioner, etc.

Alexia Parente, LSO #81927G

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 23-12825 (MBK)
	.	
LTL MANAGEMENT LLC,	.	
	.	U.S. Courthouse
Debtor.	.	402 East State Street
	.	Trenton, NJ 08608
.	.	
LTL MANAGEMENT LLC,	.	Adv. No. 23-01092 (MBK)
	.	
Plaintiff,	.	
	.	
v.	.	
	.	
THOSE PARTIES LISTED ON	.	
APPENDIX A TO COMPLAINT AND	.	
JOHN AND JANE DOES 1-1000,	.	
	.	
Defendants.	.	Thursday, April 20, 2023
.	.	12:02 p.m.

TRANSCRIPT OF RULING ON
MEMORANDUM OF LAW IN SUPPORT OF MOTION BY MOVANT ANTHONY
HERNANDEZ VALADEZ FOR AN ORDER (I) GRANTING RELIEF FROM THE
AUTOMATIC STAY, SECOND AMENDED EX PARTE TEMPORARY RESTRAINING
ORDER, AND ANTICIPATED PRELIMINARY INJUNCTION, AND (II) WAIVING
THE FOURTEEN-DAY STAY UNDER FEDERAL RULE OF BANKRUPTCY
PROCEDURE 4001(a)(3) [DOCKET 71]; AND DEBTOR'S MOTION FOR AN
ORDER (I) DECLARING THAT THE AUTOMATIC STAY APPLIES OR EXTENDS
TO CERTAIN ACTIONS AGAINST NON DEBTORS OR (II) PRELIMINARILY
ENJOINING SUCH ACTIONS AND (III) GRANTING A TEMPORARY
RESTRAINING ORDER EX PARTE PENDING A HEARING ON A PRELIMINARY
INJUNCTION [ADVERSARY DOCKET 2]; AND MOTION TO SEAL; AND
SERVICE PROCEDURES MOTION

**BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE**

Audio Operator: Kiya Martin

Proceedings recorded by electronic sound recording, transcript
produced by transcription service.

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- - - - -

1 THE COURT: Okay. Good afternoon, everyone.

2 This is Judge Kaplan. Getting a little feedback.

3 UNIDENTIFIED SPEAKER: Good afternoon, Your Honor.

4 THE COURT: Good afternoon.

5 I hope everybody's doing well. Bear with me as I go
6 through the usual mechanics of getting us up from an IT
7 perspective.

8 All right. Thank you. This afternoon I intend to
9 address the pending motions with respect to the preliminary
10 injunction based on the debtor's verified complaint, as well as
11 the pending relief from automatic stay filed by Mr. Satterley
12 on behalf of Emory Valadez.

13 First, some preliminary matters, if I may. The Court
14 is in receipt of submitted evidence and deposition designations
15 proffered, by both the debtor and the committee, TCC. The
16 Court is also in receipt of the objection filed by the TCC to
17 certain designations of testimony with respect to Mr. Haas,
18 Mr. Murdica, and Mr. Birchfield.

19 At this point in time, the Court is accepting into
20 evidence all of the evidence and designations submitted by both
21 the debtor and the Committee. The Court is overruling the
22 objections raised by the Committee with respect to those
23 identified depositions and testimony. But the Court is going
24 to note that the Court in reaching its ruling this afternoon
25 has accorded zero weight to the depositions and the evidence

1 reflected in the testimony.

2 The Court is also in receipt of supplemental
3 submissions from you all. Thank you. We have the debtor's
4 supplemental submission dated April 19th. We have the
5 Committee's objection to it. We have supplemental submissions
6 on behalf of the Bergeron's, on behalf of Maune Raichle's
7 clients, Katherine Tolleson, on behalf of Paul Crouch. We have
8 also, the Court is in receipt of an initial statement on behalf
9 of an ad hoc committee supporting talc claimants.

10 Oh, let me go back. With respect to the evidence, I
11 have also received the U.S. Trustee's objection with respect to
12 the use of confidentiality designations. And the Court agrees
13 that the evidence has been accepted for purposes of the PI
14 motion only and not for any other purpose in this case. I
15 think that covers all these supplemental submissions. And the
16 Court has had the opportunity to review these this morning.

17 I'm prepared to read my ruling into the record. I
18 hope you all will bear with me in the time it takes.

19 I sat through yours.

20 All right. One of the advantages of conducting the
21 hearing in a hybrid fashion, both live and remote this past
22 Tuesday, was that my wife could log in and see that I was
23 actually working and in Court for over nine hours. And when I
24 got home, she asked me why I didn't cut off the arguments and
25 the endless PowerPoint presentations sooner. I told her that I

1 was looking for answers, that it was repeated often that the
2 world is watching and I wanted every opportunity to understand
3 the facts and get answers to my concerns. I believe that the
4 Court and the world is entitled to such answers.

5 Well, frankly, after Tuesday, I have more questions
6 than answers. The fundamental question addressed by the
7 parties is whether the debtor has a realistic possibility of
8 success. It is the linchpin of the four-prong injunction test
9 employed universally. In Chapter 11, the inquiry is more
10 focused on whether the debtor has a reasonable possibility of
11 reorganizing, which needless to say, at a minimum, requires
12 that the debtor survive any motions to dismiss for cause,
13 including lack of good faith.

14 Our Third Circuit now has made clear that it views
15 the gateway to good faith being a determination that a debtor
16 is in financial distress. Mr. Maimon, among others, argued
17 that this determination should be straightforward. Did
18 anything occur in the two hours and 11 minutes between filings
19 and after the Third Circuit's ruling, which changed the
20 debtor's financial situation and created distress.

21 I'm not sure that this is the correct question.
22 Rather, I think it must be whether anything changed in the
23 debtor's financial picture. Since October of '21, the date of
24 the first filing and the period fixed for purposes of the five-
25 day trial undertaken in February of 2022, and April 4, 2023,

1 the date of the second filing.

2 Well, certain things have changed. Claims against
3 the debtor have soared from approximately 41,000 to in all
4 likelihood well over a 100,000. Are these new claims
5 supportable? Tuesday provided more speculation than answers.
6 Does the increased volume of claims add to or create financial
7 distress for this debtor? Maybe. Maybe not.

8 Since the first filing, the acknowledged floor for
9 the debtor's talc liability has increased from 2 billion to 8.9
10 billion with questions remaining as to whether this sum would
11 cover the billions claim due for third-party providers, state
12 regulators, Canadian class claimants, indemnified parties, and
13 others.

14 Does this increase floor of debt add to or create
15 financial distress for this debtor? Again, maybe. Maybe not.
16 Since the first filing, the debtor's funding resources have
17 been reduced from 61 billion to possibly 30 billion plus. The
18 reduction certainly appears manufactured by the debtor, HoldCo,
19 and J&J in response to the Third Circuit's ruling. Does this
20 reduction in funding add to or create financial distress for
21 this debtor? Maybe. Maybe not.

22 Does the manner in which the transactions were
23 undertaken give rise to an independent bases for finding bad
24 faith? Possibly. Do the transactions give rise to fraudulent
25 transfer liability for the benefit of the debtor's creditors?

1 Well, constructive fraud generally, under the Bankruptcy Code
2 and state law, requires a determination of insolvency. Can the
3 Court conclude after Tuesday's hearings that the debtor's
4 liabilities exceed its assets? I don't think so since the
5 extent of the liabilities has not been anywhere close to being
6 fixed.

7 The Third Circuit specifically cautioned and
8 admonished against casual calculations and back of the envelope
9 forecasts. Given the limited record here, this Court cannot
10 make an informed determination or comparison of the assets and
11 liabilities of this debtor in this bankruptcy, which according
12 to the Third Circuit, is where the inquiry should be focused.

13 As to actual fraud, can the Court conclude that
14 there's been an actual intent to hinder, delay, and defraud
15 creditors? Maybe. But proof of subjective intent may be
16 difficult to determine without knowing the extent of the
17 liabilities and whether it's reasonable for the debtor to
18 believe that its remaining assets are sufficient to cover such
19 liabilities.

20 And for the Court, there was a very concerning
21 question regarding this loss of value in the funding agreements
22 and its potential impact on the interest of present and future
23 creditors. What happens if this case is dismissed? I know the
24 lawyers that represent these claimants will fight zealously and
25 tirelessly for their individual clients, as they should. But

1 who pursues the claims for the possible loss in funding value?
2 Who will fight for the other a 100,000 or so creditors or
3 claimants to pursue recovery that may be available because of
4 these transactions? Outside of bankruptcy, who will fight to
5 protect the interest of future claimants?

6 Now, it may be that this Court determines that the
7 last series of questions, or in fact any of the other
8 questions, are not relevant. Once the Court hears from the
9 movants with regard to the anticipated motion to dismiss,
10 undoubtedly the debtor has an uphill battle. There are
11 unresolved issues such as the voidability of the 2021 funding
12 agreement, the potentially largest fraudulent transfer
13 undertaken in history, as the phrase has been proffered; the
14 need to acquire 75 percent approval for the plan. But at this
15 point, with so many unanswered questions, the Court cannot
16 reach a determination that there is no possibility of a
17 successful reorganization premised upon the objections of
18 certain claimants, vehement as they may be.

19 The Court cannot at this juncture *sua sponte* dismiss
20 this case or rely on bad faith as a basis to deny the
21 preliminary injunction. That being said, the Court is
22 skeptical and will require a well-supported and timely showing
23 by the debtor that this reorganization has a meaningful chance.

24 For purposes of today, the Court refers and
25 incorporates into this ruling its analyses and discussions

1 found in its prior published opinions at 638 B.R. 291, 640 B.R.
2 at 322, and 645 B.R. 59. Specifically, these prior opinions
3 explicate the Court's authority to hear, decide, and enter a
4 final order and judgment in the adversary proceeding, which
5 would have the effect of extending the automatic stay and
6 enjoining litigation against non-debtor third parties relative
7 to the debtor talc claims as defined in the verified complaint.

8 In sum, the Court concludes that Section 362(a) and
9 Section 105(a), and/or the Court's inherent powers can each
10 serve as an independent basis to extend the stay to non-debtor
11 third parties. In so concluding, the Court continues to follow
12 the Philadelphia newspapers approach set forth at 423 B.R. 102,
13 which considers whether there is jurisdiction to enter the
14 injunction, whether the extension of the automatic stay to non-
15 debtors is appropriate, and whether the Court should in its
16 discretion, issue the injunction.

17 As in the last case, the debtor has asked for a
18 preliminary injunction and/or an extension of the stay to
19 certain non-debtor parties. The UST, the TCC, and
20 representatives of certain claimants, among others, oppose this
21 request. At the core of all these objections is the argument
22 that the debtor cannot confirm a plan, that there is no
23 likelihood of success because the objecting claimants will not
24 agree to a plan proposed by the debtor. Yet the debtor comes
25 before this Court with an alleged 55,000 or more claimants in

1 support of a proposed settlement.

2 This Court cannot discount those claimant's rights
3 and preferences in favor of others. Notwithstanding, claimants
4 who have had over the past 18 months their claims and
5 litigation stalled during the pendency of the prior bankruptcy,
6 should not lose more valuable time. Therefore, I have
7 determined that the TRO currently in place should be dissolved
8 and replaced with a far more limited preliminary injunction.

9 Needless to say, the automatic stay remains in effect
10 as to the debtor. The more limited preliminary injunction to
11 be entered will prohibit the commencement or continuation of
12 any trial against any of the protected parties identified in
13 Appendix B to the verified complaint, as amended, through and
14 including June 15, 2023, a period of approximately 60 days.
15 This is aimed at preventing the liquidation of claims for which
16 this debtor may have liability with the liquidation occurring
17 outside of this bankruptcy.

18 But to be clear, I am neither enjoining nor
19 restraining the filing of new complaints against the protected
20 parties, nor am I enjoining or restraining any ongoing
21 discovery or other pretrial matters. Given the very limited
22 scope of these restraints, the Court did not, and frankly could
23 not, on the factual record examine the basis of relief for each
24 of the specific protected parties.

25 The restraints included in the current amended TRO

1 will remain in effect as to the MDL that's currently pending
2 before Judge Michael Shipp. I have spoken with Judge Shipp and
3 we both agree that the continuing restraints as to the MDL
4 should and will be revisited along with the continuing
5 appropriateness of the preliminary injunction itself at the
6 Court's omnibus hearing scheduled for May 22, 2023.

7 With respect to Section 108(c) tolling provisions
8 relative to the statute of limitations for unfiled claims, the
9 Court's preliminary injunction order will include language that
10 the automatic stay under Section 362(a) remains in effect for
11 unfiled claims unless the claimant, through counsel, notifies
12 the debtor in writing of his, her, or their interests and
13 intent to proceed with the filing of a complaint.

14 The purpose of this language is to ensure that such
15 claimants who wish to defer filing a complaint and paying the
16 necessary filing fees while the bankruptcy case unfolds are not
17 placed in the position of having to file and incur that
18 expense. The Court welcomes any and all suggestions as to
19 workable language that addresses this issue.

20 Finally, the Court recognizes the debtor's concern
21 that a full throttled resumption of litigation may place
22 immediate burdens on staff and potential witnesses, such as a
23 proffered 30(b)(6) witness and sees no reason why transcripts
24 of such initial depositions can't be provided in lieu of
25 multiple repeat and duplicative depositions across the country.

1 If a problem arises in this regard, the Court will address this
2 and any specific problems at a future date.

3 In reaching today's ruling, that Court employs its
4 discretion and judgment to balance the interest of the tens of
5 thousands of claimants who wish to go forward outside of
6 bankruptcy, the interest of the tens of thousands of claimants
7 who wish to pursue settlement within this case, and the
8 interest of the debtor in pursuing a fair and equitable
9 resolution of these claims through a bankruptcy reorganization.

10 I wish to make one thing clear. Contrary to some
11 suggestions, the Court is not endeavoring to make policy. That
12 has never been the Court's aim. Rather, the Court is engaged
13 in trying to do its best to advance the interest of creditors
14 as a whole, a task I and my bankruptcy judge colleagues
15 undertake daily.

16 With respect to the Valadez matter, I am troubled
17 with the same issue I've had to tackle in the prior case,
18 whether it is ever appropriate to start picking and choosing
19 which claimant among thousands should be permitted to go
20 forward and liquidate claims while others abide by the process.
21 From everything I have heard and read there remains
22 considerable tasks, including expert discovery and motion
23 practice, which must be completed before the matter is ready
24 for trial.

25 Mr. Satterley, I see you're on. There are no present

1 restraints preventing you from moving forward in this regard
2 apart from proceeding to trial. I will provide your client the
3 opportunity to quickly revisit this issue by carrying your
4 motion to May 3rd, and if appropriate, that's the next
5 scheduled omnibus hearing, and if appropriate to the May 22nd
6 hearing, to hear where you stand with respect to pretrial
7 matters.

8 Alternatively, you may submit a form of order
9 granting in part and denying in part your requested relief so
10 that you may pursue an immediate appeal. You can advise
11 chambers after this hearing as to your preference.

12 Finally, as noted, on Tuesday as part of the text
13 order in the first case, which terminated mediation due to the
14 anticipated dismissal of the case, I urge the parties to
15 continue settlement discussions. I have not altered my view
16 that mediation is important. Indeed, considering the debtors'
17 intent to file a plan in short order I believe mediation is
18 critical and should begin as soon as possible.

19 The parties must have confidence in the mediator, and
20 the mediator must have plenary authority to conduct any
21 mediation as he, she, or they deem appropriate. I know the
22 debtor has filed a motion to reappoint Mr. Russo and Judge
23 Schneider. Notwithstanding, I am directing the Committee and
24 the debtor to provide me in confidence with three names of
25 proposed mediators by the close of business this coming

1 Wednesday. I am away out of state until then. My inclination
2 is to appoint a single mediator to start who will be subject to
3 the same mediation protocol employed in the prior case. Thank
4 you.

5 I will ask the debtor to settle a form of order with
6 the Committee and others, reflecting my ruling today, of course
7 by reference. And fearfully I will ask are there any
8 questions?

9 MR. SATTERLEY: Yes, Your Honor.

10 THE COURT: Well --

11 MR. SATTERLEY: I'm sorry.

12 THE COURT: We'll start -- Mr. Satterley?

13 MR. SATTERLEY: Yes. So, obviously I got -- I'm
14 going to read Your Honor's -- the transcript whenever we get it
15 today, and I need to consult with appellate counsel, but I just
16 got a little confused as you read along.

17 With regards to the granting of the -- or the
18 decision to appeal, will Your Honor allow me and certify the
19 issue to the Third Circuit? I need to know that so I can talk
20 to appellate counsel also as I advised Your Honor on the 11th.
21 I advised Your Honor that it was my intention to take a writ --
22 emergency writ because of the pending death of my client, so I
23 just wanted to find out from Your Honor will you give me
24 permission, if my appellate counsel tells me it's appropriate,
25 to go to the Third Circuit directly?

1 THE COURT: The best I can do is give you the
2 authorization to make the request to me formally. I have to --

3 MR. SATTERLEY: Yes, Your Honor.

4 THE COURT: -- allow other parties to weigh in on it.

5 MR. JONAS: Your Honor, may we have the same
6 response? Because we would intend to do so, as well.

7 THE COURT: The same response would be appropriate.

8 MR. JONAS: Thank you, Your Honor.

9 MS. BROWN: Your Honor, this is Allie Brown. Could I
10 ask, I understand the Court's ruling. Given the significance
11 of the discovery that will no doubt be coming our way very
12 soon, could we ask that the order not go into effect until
13 Monday at nine a.m. so that we can alert counsel throughout the
14 country who handle these matters on a local basis and have no
15 visibility into what's been going on here, so they are prepared
16 to deal with letters to the Court, and calls to the Court in
17 the individual cases they are monitoring? I fear if we don't
18 do that it could be somewhat chaotic, as discovery requests
19 start immediately.

20 THE COURT: Well, as a practical --

21 MR. SATTERLEY: May I respond to that, Your Honor?

22 THE COURT: Let me -- I'll let you respond. Let me
23 -- as a practical matter I don't have an order. I asked the
24 parties to settle an order. And I leave on Saturday morning,
25 and I'll be out of the state. So --

1 MS. BROWN: Understood.

2 THE COURT: I don't know how to respond to you.

3 Certainly --

4 MS. BROWN: I think I understand, Your Honor. So, it
5 will be dependent on us proposing something to the Court --

6 THE COURT: Right.

7 MS. BROWN: -- and there is at least a few days time
8 on that so we can get the logistics in order.

9 THE COURT: Right. With Mr. Satterley --

10 MS. BROWN: Understood.

11 THE COURT: Yes. Thank you.

12 MR. SATTERLEY: So, this -- counsel has been aware of
13 Your Honor's tentative since last Thursday, and Your Honor, you
14 know, while it's more formalistic and you put it all in more
15 detail, they have been aware, and just as Your Honor directed
16 me to do, I went to Judge Seabolt and asked him to do exactly
17 what Your Honor said, move the hearing until today. And
18 counsel for J&J and all the retailers were present, and they
19 said I correctly stated what Your Honor said. There is
20 absolutely no reason to further delay, because trial courts,
21 state courts have a docket also, and they need to manage their
22 docket.

23 So I would request, Your Honor, to allow us to advise
24 the state courts, advise the trial judges the procedure.
25 Obviously various state laws control with regards to how much

1 time they have to respond to discovery. No state that I'm
2 aware of requires the debtor -- I mean, the non-debtor, the
3 non-debtor to respond immediately to discovery. Usually it's
4 20 days, or 30 days, or 45 days.

5 So even if we were to tender discovery today, it's
6 not going to be tomorrow that they're going to respond to it.
7 So I object to Mrs. Brown's request to once again further delay
8 the resumption of our client's rights to go -- and because, for
9 example, Your Honor, one of the cases I filed an objection to
10 was Mr. Eagles (phonetic). His trial, Mr. Eagles' trial was
11 already set for April the 2nd. Because of the TRO we moved it
12 to May the 1st. And now I was going to tell Judge Seabolt to
13 move it to June the 15th. And what Ms. Brown is in essence
14 asking for is in Mr. Eagles' case, who is dying of
15 mesothelioma, that we would not be able to start preparing that
16 case further for trial. So I would object to Mrs. Brown's
17 request, and allow us to begin the preparation so that these
18 individuals are not further harmed.

19 THE COURT: I think I can --

20 MS. BROWN: Your Honor --

21 THE COURT: Well, Ms. Brown, I think I can address
22 this -- and I see other hands raised. I do not have an
23 objection -- I know you all will secure a copy of this
24 transcript quickly. I have no objection to you providing it to
25 non-bankruptcy courts with the note that a formal order has not

1 been entered. It will speak for itself.

2 MS. BROWN: And, Your Honor, until the formal order
3 is entered we will have at least a few days to organize the
4 local counsel and be prepared to respond?

5 THE COURT: I can't see any court acting to prejudice
6 those interests in the days it will take. Work hard, get me an
7 order. I will enter it even if I am not in the state. But --

8 MS. BROWN: Understood, Your Honor.

9 THE COURT: All right. Mr. Placitella?

10 MR. PLACITELLA: Good morning, Your Honor. Thank you
11 very much. In your decision you referenced Appendix B to the
12 Notice of Filing. There was an amended Appendix B that listed
13 Janssen and Kenvue that we received with no notice and no
14 evidence offered during the hearing, and I want to understand
15 the scope of your decision if it includes Janssen and Kenvue
16 for which no evidence was submitted during the hearing, and for
17 which Mr. Kim said he had no knowledge whatsoever.

18 THE COURT: Well, I anticipated your question, and
19 candidly, I can't see how your clients would be prejudiced with
20 no trial to occur. That's the only limitation until June in a
21 case that where issue hasn't even been joined yet. So, but if
22 you want to explain --

23 MR. PLACITELLA: But the issue, Your Honor --

24 THE COURT: If you want to address it --

25 MR. PLACITELLA: Respectfully, Your Honor, yes,

1 because the issue is whether the standard has been met for a
2 temporary restraining order. And with no evidence, and in
3 fact, they submitted a brief to you saying whatever happened
4 after Holdco is irrelevant, with no evidence, even with Your
5 Honor's best intent there is no basis even for a short
6 restraint to stop the case against Kenvue or Janssen. The
7 operation of -- I'm assuming what's going to happen is they are
8 going to file a motion to dismiss, and the trial court will
9 make a determination.

10 But, you know, having them give notice, you know,
11 after five a day before the hearing, put on no evidence and say
12 oh, well, protect them too when Mr. Kim doesn't even know why
13 it was included, respectfully, I don't think it should be
14 included.

15 THE COURT: All right. Fair enough. At this
16 juncture I am going to excise out those two defendants from the
17 Exhibit A. I will preserve the debtor's rights to come back
18 before me to include them at a later date if it becomes
19 relevant.

20 MR. PLACITELLA: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. JONAS: Your Honor?

23 THE COURT: Yes?

24 MR. JONAS: Your Honor, it's Jeff Jonas from Brown,
25 Rudnick, and with me is Melanie Cyganowski from Otterbourg on

1 behalf of the Committee, TCC. Your Honor, I would ask that you
2 sua sponte grant the Committee derivative standing to
3 investigate and bring state court causes of action and claims.
4 I think -- I hope, Your Honor, that our hearing, trial earlier
5 this week, if nothing else, demonstrated, and I think you have
6 sufficient evidence as to the futility of expecting this debtor
7 to investigate, never mind bring, those claims and causes of
8 action. So we would ask you to do that now, Your Honor.

9 THE COURT: All right. Does the debtor wish to be
10 heard? Mr. Gordon?

11 MR. GORDON: Greg Gordon, Your Honor, Jones Day, on
12 behalf of the debtor. I don't think it's appropriate to make
13 that request orally for a sua sponte ruling. There are
14 standards that have to be met, including advising the Court and
15 the parties what claims we're talking about, and there's got to
16 be a showing that they are colorable claims. And so from our
17 perspective we think, as you handled the other matter, a motion
18 should be filed and we should be given the right to respond to
19 it.

20 THE COURT: All right. I knew there would be a
21 danger in conducting this not in a webinar format where counsel
22 had the ability to ask questions. I'm not prepared or inclined
23 to grant sua sponte relief at this -- or any further relief
24 today. The purpose for today's hearing was to try to read a
25 ruling and direct the parties to come to a form of order.

1 MR. GORDON: And, Your Honor, I wanted to spend one
2 minute on Mr. Placitella, if I could. I obviously heard Your
3 Honor's ruling. I just wanted to indicate that he did say in
4 court, as I recall, that the basis for the claims is successor
5 in interest, which would be property of the estate, and
6 therefore those claims would be barred by the automatic stay.
7 But we heard Your Honor. We'll handle that appropriately.
8 We'll file a motion as necessary to get the relief that we
9 think would confirm that those claims are barred by the
10 automatic stay.

11 THE COURT: In fairness to Mr. Placitella, I was
12 moving everybody along quickly --

13 MR. GORDON: Understood.

14 THE COURT: -- on Tuesday, and we didn't vet these
15 arguments.

16 MR. GORDON: Sure.

17 THE COURT: And given the stage where it's at there's
18 ample time to address it further.

19 MR. GORDON: Understood, Your Honor.

20 THE COURT: Ms. Cyganowski, I can't tell, is there
21 still a hand up?

22 MS. CYGANOWSKI: Yes, there is, Your Honor. Melanie
23 Cyganowski for the Committee. I'm not asking for the relief
24 today, but just to advise the Court that we will be opposing
25 the debtor's request for expedited relief with respect to the

1 hearing on the disclosure and plan.

2 THE COURT: The Court has received the debtor's
3 motion on shortened time, but I believe the Court did receive
4 something from your firm, or one of the firms representing the
5 TCC in opposition. In all candor, it sits on the corner of my
6 desk, and I have not looked at it, nor will I through today and
7 probably through tomorrow. So if other firms want to weigh in,
8 one side or the other, they may do so.

9 MS. CYGANOWSKI: Thank you.

10 MR. SATTERLEY: Your Honor, I have one last question.
11 Can we -- I know Your Honor said you were going to be away. Is
12 it -- can we have a deadline for the order? The only thing I'm
13 afraid of, we can obviously meet and confer today. Can we
14 submit by tomorrow competing orders to the extent we can't
15 agree on the exact language? Because I have -- not necessarily
16 with this debtor, but I have had situations where defendants in
17 litigation don't agree, and it just protracts the submission of
18 the order of the Court. So I was going to suggest is it
19 possible we'll meet and confer this afternoon. If we can't
20 agree to an order by 12 noon tomorrow we can submit competing
21 orders, and Your Honor decide what's appropriate?

22 THE COURT: My thought is that if you -- let's see.
23 I'm trying to make it as expeditious, but I am not sure where I
24 am going to be during the early part of next week. So, how
25 about this? Do your best to meet and confer, come up with the

1 terms. It shouldn't be a difficult order. I have laid it out
2 subject to anybody's rights to take an appeal, of course, but
3 most of it should just be by reference.

4 And so, you should be able to come up with the terms
5 of the order. You can take action as appropriate.

6 So, if by the close of business on Monday you haven't
7 all agreed on a form of order, reach out for chambers. We'll
8 see if we can have a conference call.

9 MS. BROWN: Thank you, Your Honor.

10 MR. STOLZ: Your Honor, maybe an easier way to -- to
11 handle it is to have this -- Your Honor's ruling constitute a
12 bench order to be followed up by a written order so it's
13 effective immediately?

14 MS. BROWN: Judge, we'd like the opportunity to
15 follow your instructions, and we can certainly do so by Monday,
16 and we'll reach out if there is an issue.

17 THE COURT: I think --

18 MR. SATTERLEY: The only problem with that, Your
19 Honor --

20 THE COURT: Go ahead.

21 MR. SATTERLEY: -- my clients die. Every day is
22 important to my client. And if I have to make a decision about
23 an emergency appeal, as I told Your Honor on the 11th, every
24 single day that goes by my client is -- is closer to being in
25 the ground, dead, and so I would request -- Your Honor made it

1 real clear what your order is today. There's no reason why we
2 cannot agree to something this afternoon or tomorrow morning
3 and submit something to Your Honor. What -- so, I would -- Mr.
4 Stolz makes a great point, and I would request that Your Honor
5 incorporate Mr. Stolz's request.

6 MS. BROWN: Your Honor, there are wide implications
7 of your order, and we are prepared to follow the Court's
8 instruction to immediately meet and confer and get the Court by
9 Monday a proposed order.

10 MR. MAIMON: Your Honor?

11 THE COURT: Yes, Mr. Maimon?

12 MR. MAIMON: Thank you, Your Honor. We object to the
13 debtor stringing this out. This is -- Your Honor noted that
14 the delay for claimants should not continue any more as to the
15 non-debtors, and it should not be that on Monday, first thing,
16 with Your Honor out of the state, and we don't know what the
17 Court's availability is, that we then have to first start
18 scheduling conferences. The Court was very clear with its
19 decision today. Mr. Stolz is correct. It's standard practice
20 for courts to issue a bench order that the transcript is the
21 order of the Court to be followed up with a more formal written
22 order that can form the basis of any appeals or anything like
23 that. But we should be able to proceed in accordance with the
24 Court's ruling immediately.

25 THE COURT: All right. Well, in effect I thought I

1 was providing Mr. Satterley and others with the authorization
2 to take this transcript. A bench order requires the transcript
3 in the first place. So, I anticipate that you're going to be
4 using the transcript. If you want the magic language that this
5 is it's so ordered from the bench subject to the terms of a
6 more formal order to be entered at a later date, you have it.

7 MR. SATTERLEY: Thank you, Your Honor.

8 UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

9 THE COURT: All right. And then I think I wish all
10 of you a good weekend.

11 UNIDENTIFIED ATTORNEY: Enjoy your vacation, Your
12 Honor.

13 THE COURT: Thank you.

14 UNIDENTIFIED ATTORNEY: Don't tell anyone where you
15 are.

16 THE COURT: I should be so lucky. Thank you.

17 UNIDENTIFIED ATTORNEY: Thank you.

18 * * * * *

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C E R T I F I C A T I O N

We, KAREN K. WATSON and TAMMY DERISI, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and to the best of our ability.

/s/ Karen K. Watson

KAREN K. WATSON

/s/ Tammy DeRisi

TAMMY DERISI

J&J Court TRANSCRIBERS, INC.

DATE: April 20, 2023

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 April 21, 2023**

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Lawyers for the Foreign Representative

TAB 3

Court File No. CV-23-00697824-00CL

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

THE HONOURABLE MR.	)	THURSDAY, THE 24 TH
	)	
JUSTICE OSBORNE	)	DAY OF APRIL, 2023

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

ORDER

THIS MOTION, 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 amending the stay period referenced in paragraph 7 of the Supplemental Recognition Order dated April 14, 2023 granted in these proceedings (the “**2023 Supplemental Recognition Order**”) was heard this day by video conference.

ON READING the Notice of Motion, the affidavit of John K. Kim sworn April 21, 2023 and the first report of Ernst & Young Inc., in its capacity as information officer, (the “**Information Officer**”) dated April 21, 2023, each filed,

AND UPON HEARING the submissions of counsel for the Foreign Representative and counsel for the Information Officer, no one else appearing although properly served as appears from the Affidavit of Service of Nancy Thompson sworn April 21, 2023, filed:

SERVICE

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

AMENDMENT

2. **THIS COURT ORDERS** that paragraph 7 of the 2023 Supplemental Recognition Order is hereby amended by deleting “April 24, 2023” and replaced with “May 3, 2023”, so that such paragraph reads as follows:

ADDITIONAL PROVISIONS RE: TRO

7. **THIS COURT ORDERS** that in connection with the recognition of the TRO, the Debtor Talc Claims,¹ including but not limited to, those set out in Schedule “C” hereto, are hereby stayed as to the Defendants (as defined in the TRO), 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

¹ “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. The Debtor Talc Claims do not include talc-related claims for which the exclusive remedy is provided under workers’ compensation statutes and similar laws.

- 3 -

Pharmaceuticals International, Inc. and Bausch Health Companies Inc. until the later of (i) the expiry of the TRO, by its terms, unless extended by further order of the New Jersey Bankruptcy Court or another court having jurisdiction over such extension, or (ii) May 3, 2023.

3. **THIS COURT ORDERS** that this Order shall have effect as of April 13, 2023.
-

Court File No.: CV-23-00697824-00CL

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

ORDER

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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

**MOTION RECORD
(Amending Stay Period)
Returnable April 24, 2023**

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capacity as Foreign Representative