EXHIBIT Q

IN THE CHANCERY COURT OF THE FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

THE STATE OF MISSISSIPPI, Ex rel. LYNN FITCH, ATTORNEY GENERAL

Civil Action No. 25CH1:14-cv-001207

PLAINTIFF,

v.

JOHNSON & JOHNSON; ET. AL.

DEFENDANTS.

REPLY IN SUPPORT OF DEFENDANTS' NOTICE OF BANKRUPTCY FILING

Defendants Johnson & Johnson and LTL Management LLC, the entity now responsible for talc claims against Johnson & Johnson Consumer Companies, Inc. (also known as Johnson & Johnson Consumer Inc.) (together, the "Defendants"), by and through undersigned counsel, respectfully submit this reply in further support of their Notice of Bankruptcy Filing.

INTRODUCTION & RESERVATION OF RIGHTS

Defendants filed a Notice of Bankruptcy Filing (the "Notice") in this case on October 18, 2021. *See* Doc. 390. That Notice informed the parties and this Court of LTL's chapter 11 filing and LTL's position regarding the scope of the automatic stay—that it applies to all talc-related claims against Old JJCI,[1] New JJCI, J&J, and their other corporate affiliates, among other parties

[1] As detailed in the Notice, Johnson & Johnson Consumer Inc. ("Old JJCI"), one of the two named defendants in this action, completed an internal corporate restructuring (the "2021 Corporate Restructuring"). As a result of that restructuring, Old JJCI ceased to exist, and two new companies were created. The first new company is named LTL Management LLC ("LTL"). The second new company, like the former company, is named Johnson & Johnson Consumer Inc. ("New JJCI"). As a result of the internal corporate restructuring,

26, 2021 Order. Then, on November 10, 2021, the Bankruptcy Court orally announced its ruling[3] that the automatic stay applies to prohibit the commencement or continuation of any action seeking to hold the Protected Parties, including Johnson & Johnson ("J&J"), liable on account of Debtor Talc Claims. Further, the court announced that it was entering a preliminarily injunction against such actions against the Protected Parties, for a period of 60 days subject to a further order of a court with jurisdiction over LTL's chapter 11 case. The Bankruptcy Court's ruling expressly does not address the claims of governmental entities, which were not defendants in the Adversary Proceeding, and all parties' rights with respect to the application of the automatic stay to actions by such entities were preserved.

The State argues that there is no stay because J&J and Old JJCI are not the debtors. But the bankruptcy court has expressly ruled that the automatic stay **does** cover talc-related claims against Old JJCI, J&J, and LTL. Second, the State argues that a stay would not apply under the police powers exception. But the State is not seeking to enjoin any ongoing wrong by Defendants here. All that remains is a claim for money. And as to that claim, the stay applies, notwithstanding the police powers exception, because the State is asserting that Defendants in this action are alter egos of one another and exert control over each other. See Compl. ¶ 16 (alleging that Defendants are alter egos of one another). It is well established that an alter ego claim is property of a debtor's bankruptcy estate that cannot be asserted by a creditor absent relief from the automatic stay.

To the extent there is any ambiguity on the subject, it should be resolved by the Bankruptcy Court presiding over LTL's bankruptcy case. Waiting for that court's resolution is consistent with the Mississippi Supreme Court's decision in *Overbey v. Murray*, 569 So. 2d 303, 307 (Miss. 1990),

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3 An order memorializing the Bankruptcy Court's ruling had not been entered as of the date of this filing.

agreement was established among New JJCI, J&J and LTL for the purpose of ensuring that LTL has at least the same, if not greater, ability to pay the Debtor Talc Claims as Old JJCI had before the 2021 Corporate Restructuring.

III. THE ACTION IS STAYED NOTWITHSTANDING THE INVOCATION OF THE POLICE POWERS EXCEPTION.

Section 362(b) of the Bankruptcy Code sets forth exceptions to the automatic stay. 11 U.S.C. § 362(b). In particular, section 362(b)(4) excepts from the automatic stay actions by a

> governmental unit . . . to enforce such governmental unit's . . . police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's . . . police or regulatory power.

11 U.S.C. § 362(b)(4). The legislative history of section 362(b)(4) states that this exception is narrow:

> This section is intended to be given a narrow construction in order to permit governmental units to pursue actions to protect the public health and safety and not to apply to actions by a governmental unit to protect a pecuniary interest in property of the debtor or property of the estate.

124 Cong. Rec. H 11,089, reprinted in 1978 U.S. Code Cong. & Admin. News 6436, 6444 45. "Courts have devised two tests to determine whether an action qualifies as a proceeding pursuant to a governmental unit's police or regulatory power." *In re Midway Airlines Corp*., 283 B.R. 846, 850 (E.D.N.C. 2002). First, the pecuniary purpose test asks "whether the governmental action relates primarily to the protection of the government's pecuniary interest in the debtor's estate or primarily to matters relating to public safety." *Id*. at 850-51. Second, the public policy test "evaluates whether the action seeks to effectuate public policy or to adjudicate public rights." *Id.* at 851. The Fourth Circuit, where the bankruptcy petition was filed here, has adopted an objective standard that incorporates both of these tests and focuses on the purpose of the law. *Safety Kleen,*

Inc. v. Wyche, 274 F.3d 846, 865 (4th Cir. 2001). The Third Circuit, where the bankruptcy case is being transferred, has also adopted "both the pecuniary purpose test and the public policy test." *In re Nortel Networks, Inc.*, 669 F.3d 128, 139-40 (3rd Cir. 2011).

Here, as sales of talc were halted more than a year ago, this case is primarily about the recovery of funds from Defendants. Although one court (relying on legislative history) has held that such an action is not stayed under the automatic stay, *In re First All. Mortg. Co*., 263 B.R. 99, 107 (9th Cir. Bkr. Panel 2001), here the claims being asserted by the State are similar in nature to the claims being asserted by the other talc claimants. In the absence of a need to protect the public through injunctive relief, there is no reason to view the State's pecuniary interest here as distinct from the other creditors asserting talc claims.

But this Court need not reach that issue, because the nature of the claims here renders the police power exception inapplicable. The State is asserting that Defendants in this action are alter egos of one another and exert control over each other. *See* Compl. ¶ 16 (alleging that Defendants are alter egos of one another). It is well established that an alter ego claim is property of a debtor's bankruptcy estate that cannot be asserted by a creditor absent relief from the automatic stay. Alter ego claims, such, as those asserted here,[4] are considered property of a debtor's estate. *See*, *e.g.*, *Steyr-Daimler Puch of America Corp. v. Pappas*, 852 F.2d 132, 135 (4th Cir. 1988); *In re*

[4] Here, the State's alter ego claim against J&J and other defendants is based on facts and theories generally available to LTL's other creditors. In other words, if there is a valid basis to the alter ego claim, then all creditors would benefit if it were successful. *See In re Emoral Inc.*, 740 F.3d 875 (3d Cir. 2014); see also *Litchfield Co. of S.C. Ltd. P'ship v. Anchor Bank (In re Litchfield Co. of S.C. Ltd. P'ship)*, 135 B.R. 797, 802 (W.D.N.C. 1992) (holding that the bank's continued prosecution of its state court action violated the automatic stay imposed by section 362(a)(3) because, "under South Carolina law, the debtor was empowered to compel its general partners to pay the debts of the debtor partnership and that, under Code § 541(a), this power became property of the estate upon the filing of the debtor's bankruptcy case.").

Tronox, 855 F.3d 84,104 (2d Cir. 2017); *S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc. (In re S.I. Acquisition, Inc.)*, 817 F.2d 1142, 1152-53 (5th Cir. 1987); *In re Emoral Inc.*, 740 F.3d 875 (3d Cir. 2014); *Rosener v. Majestic Mgmt., Inc. (In re OODC, LLC)*, 321 B.R. 128, 136-37 (Bankr. D. Del. 2005). As the Fourth Circuit explained in *Steyr*:

> Since the alter ego claim against Pappas and Hawk U.S.A. is "property of the estate" within the meaning of § 541(a)(1), certain conclusions follow. First, the automatic stay applies. Moreover, because the claim is property of the estate, the trustee is given full authority over it. Thus, before . . . a creditor may pursue a claim, there must be a judicial determination that the trustee in bankruptcy has abandoned the claim. Without such a determination, a creditor seeking to pursue a claim cannot maintain it.

852 F.2d at 136 (citations omitted).

Thus, "§ 362(a)(3) stays automatically—without a restraining order—a creditor's claim against a third-party that the debtor can assert for the benefit of the estate." *Litchfield Co. of S.C. Ltd. P'ship v. Anchor Bank (In re Litchfield Co. of S.C. Ltd. P'ship)*, 135 B.R. 797, 803 n.4 (W.D.N.C. 1992).

The police power exception invoked by the State does not apply in these circumstances. The Fourth Circuit has expressly ruled that the police and regulatory power exception does not permit a State to pursue an alter ego claim, without the permission of the bankruptcy court. In *Wharton v. Com. of Va.*, 993 F.2d 1541 (Table), 1993 WL 192515 (4th Cir. 1993), the Fourth Circuit held that the alter ego claims being pursued by the Commonwealth were property of the debtor's bankruptcy estate that were to be pursued by the bankruptcy trustee, not the Commonwealth. The bankruptcy court had lifted the stay to permit the Commonwealth to pursue a pre-bankruptcy action against the debtor in state court. During the trial, the Commonwealth amended its complaint to allege an alter ego claim against the debtor's president, who had already entered into a settlement with the bankruptcy trustee that resolved all claims held by the estate, including alter ego claims. The vice president filed a contempt action against the Commonwealth for violating the automatic stay. The district court ruled that that automatic stay prohibited the Commonwealth from prosecuting its state court alter ego action. On appeal, the Fourth Circuit agreed. The Fourth Circuit explained:

> The Commonwealth's claim is premised on the assumption that the claim is part of its police powers that the bankruptcy code did not intend to abrogate. **The action does not fit within the police powers exception to the statute. Sections 362(b)(4) and (5) of the bankruptcy code, the police powers exceptions, do not provide a blanket exception for all bankruptcy stays. The police power exception on which the Commonwealth relies does not apply to section 362(a)(3) . . . .** The police powers exception of 362(b)(4) and (5), clearly states that it is only applicable to sections 362(a)(1) and (a)(2).

Wharton, 1993 WL 192515, at *3 (emphasis added). The Court of Appeals reasoned: "The Commonwealth's request would have the effect of giving its claim priority over the claims of other creditors." *Id.* at *4. For that reason, that "[t]he decision to pursue, compromise, or drop an alter ego claim belongs to the estate and is determined by the trustee after considering the best interest of all the creditors, not just one." *Id.*

The same reasoning applies here. But to the extent there is any ambiguity, this Court should await resolution of the issue by the Bankruptcy Court. Deferring to the Bankruptcy Court is consistent with *Overbey*, which held that the state court should consider deferring close questions involving the applicability of exceptions to the automatic stay under 11 U.S.C. § 362(b) to the bankruptcy court. 569 So. 2d at 307-08. To date, the State has not appeared or raised the issue in that forum and has not sought any relief from the automatic stay. Defendants, however, intend to raise the issue and to seek a confirmation from the assigned Bankruptcy Court that the stay applies to this action.