

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

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In re:  
LTL MANAGEMENT LLC,  
  
Debtor.<sup>1</sup>

Chapter 11

Case No. 21-30589 (MBK)

Judge: Michael B. Kaplan

Hearing Date and Time:  
January 11, 2022 at 10:00 a.m.

**DEBTOR'S OBJECTION TO VINCENT HILL'S  
MOTION FOR ORDER LIFTING PRELIMINARY INJUNCTION**

LTL Management LLC (the "Debtor") hereby files this objection to the *Motion*  
*for an Order Lifting the Preliminary Injunction as to Johnson & Johnson, Non-Debtor*

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<sup>1</sup> 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.

*Distributor, and Certain Non-Debtor Retailers to Continued Prosecuting of Movant's State Court Action to Which Those Entities Are Parties, and Waiving the Fourteen Day Stay Under Federal Rule of Bankruptcy Procedure 4001(a)(3) [Dkt. 932] (the "Motion") filed by Vincent Hill (the "Movant").* In support of this objection, the Debtor respectfully represents as follows:

**Preliminary Statement**

The Movant requests permission to proceed with litigation of his mesothelioma claim against the Debtor's parent (J&J<sup>2</sup>), three of the Debtor's Retailers (Albertsons Companies, Inc., Safeway Inc., and Thrifty Corporation), and one of the Debtor's indemnified parties (Owens & Minor Distribution Inc.). But the Movant's claim is stayed and enjoined under the terms of the PI Order. The stay should not be lifted to permit Movant's litigation against these Protected Parties to proceed, particularly where there is no basis to treat the Movant differently from the thousands of other talc-related claimants whose claims are also currently stayed.

The Movant asserts that the relief sought by the Motion will not interfere with the bankruptcy case. Mot. ¶ 40. However, the Movant is one of thousands of claimants who allege the same type of claims against the Debtor. Granting the Motion would establish a precedent for potentially thousands of other claimants to obtain similar relief in a piecemeal fashion, sabotaging the Debtor's prospects for reorganization. As detailed in the PI Order, ongoing litigation of talc claims in other courts against the Debtor's parent, retailers, and indemnified parties would cause irreparable harm to the Debtor. The Debtor needs the protection of the automatic stay to preserve its ability to permanently, fully, and equitably resolve current and future talc claims through the establishment of a trust.

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<sup>2</sup> Capitalized terms not otherwise defined herein have the meanings given to them in the PI Order (as defined below).

The twelve Mid-Atlantic factors used by courts to assess whether cause exists to lift the automatic stay weigh against the Motion. Despite Movant's assertions to the contrary, granting the requested relief would interfere with the bankruptcy case and prejudice the interests of other claimants. Furthermore, lifting the stay would not promote the interests of judicial economy and the balance of the harms weighs in favor of denying the Motion.

Significantly, the same counsel that represents the Movant similarly argued before the United States Bankruptcy Court for the Western District of North Carolina (the "NC Bankruptcy Court"), that the stay should be lifted to permit the Vanklive trial to proceed (which was much further along than the Movant's claim). The NC Bankruptcy Court denied the request, noting that "[t]he problem we have here is 38,000 plus claims, plus all those that are going to come to, to light. If I start with one, I'm going to have to go to dozens, if not hundreds, if not thousands . . . I don't think I can start making exceptions or this will all unravel and we'll be back at where we were before." 11/10/21 Hr'g Tr. at 155:8-22. These circumstances and considerations have not changed, and there is no reason Movant's case should be treated differently than the Vanklive case or any of the other thousands of pending talc-related claims. The Debtor respectfully submits that the Motion should be denied.

### **Relevant Background**

#### ***The Debtor's Talc Liabilities***

1. As of October 14, 2021 (the "Petition Date"), there were approximately 38,000 ovarian cancer cases pending against the Debtor, including approximately 35,000 cases pending in the federal multi-district litigation in New Jersey, and approximately 3,300 cases in multiple state court jurisdictions across the country. *Declaration of John K. Kim in Support of First Day Pleadings* [Dkt. 5] (the "First Day Declaration") ¶ 42. In addition to the ovarian claims, more than 430 mesothelioma cases were pending against the Debtor on the Petition Date.

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. Id.

2. Johnson & Johnson Consumer Inc. ("Old JJCI"), the Debtor's predecessor, had relationships with various retailers that sold Old JJCI's talc-containing products (collectively, the "Retailers"). 11/4/21 Hr'g Tr. at 154:3-155:12 (direct examination of John K. Kim). Some of the Retailers have contractual indemnities with the Debtor related to the sale of Old JJCI's talc-containing products. *Supplemental Declaration of John K. Kim in Support of Debtor's Complaint for Declaratory and Injunctive Relief and Related Motions* [Adv. Dkt. 3] (the "Supplemental Kim Declaration") ¶ 8. In addition, to the extent a Retailer is held liable for a claim arising out of the products manufactured and/or sold by Old JJCI (i.e., such that those claims are talc claims), and not by independent actions of the Retailers, the Debtor likely has an obligation to indemnify the Retailers under applicable state law.<sup>3</sup> Supp. Kim Decl. ¶ 8; 11/4/21 Hr'g Tr. at 156:1-5; 160:4-10. In addition, Old JJCI agreed to indemnify certain other transaction counterparties for liability arising from Old JJCI's talc-containing products. Supp. Kim. Decl. ¶ 11.

3. On the Petition Date, the Debtor commenced this reorganization case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code in NC Bankruptcy

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<sup>3</sup> 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) ("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.

Court. On November 16, 2021, the NC Bankruptcy Court entered an order transferring the case to the District of New Jersey, which referred the case to this Court.

***The Temporary Restraining Order, Preliminary Injunction, and Extension of the Automatic Stay***

4. On October 21, 2021, the Debtor filed an adversary complaint [Adv. Dkt. 1] (the "Complaint") commencing an adversary proceeding and seeking a (a) declaration that the automatic stay applies to prohibit the commencement or continuation of certain actions against the Protected Parties while this chapter 11 case remains pending; and (b) preliminary injunction under section 105(a) of the Bankruptcy Code to enjoin the commencement or prosecution of actions outside of this chapter 11 case on account of the same talc claims that exist against the Debtor in this chapter 11 case. On the same day, the Debtor filed the PI Motion seeking such declaration and preliminary injunction. Various parties filed objections,<sup>4</sup> and the Debtor filed a reply [Adv. Dkt. 58] (the "PI Reply").

5. On October 26, 2021, the NC Bankruptcy Court entered a temporary restraining order [Adv. Dkt. 28] prohibiting and enjoining talc claims against the Debtor and Old JJCI and scheduling a further hearing on the PI Motion and the Complaint for November 4 and 5, 2021. Thereafter, counsel to certain objectors propounded written discovery and deposed five witnesses between October 27, 2021 and November 3, 2021. The parties then presented evidence at the two-day hearing before the NC Bankruptcy Court.

6. On November 10, 2021, the NC Bankruptcy Court issued oral findings of fact and conclusions of law in respect of the PI Motion. On November 15, 2021, the NC Bankruptcy Court entered a preliminary injunction order [Adv. Dkt. 102] (the "PI Order")

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<sup>4</sup> See Adv. Dkts. 44-45, 49-50, 52.

granting the PI Motion on a preliminary basis. Pursuant to the PI Order, the NC Bankruptcy Court determined that the automatic stay applies to prohibit the commencement or continuation of Enjoined Talc Claims against the Protected Parties and also preliminarily enjoined the prosecution of such claims for 60 days (i.e. until January 14, 2022), subject to modification or extension by this Court. In the PI Order, the Court made various findings, including:

- "There is a reasonable likelihood that the Debtor will succeed on the merits by successfully reorganizing in chapter 11, including by confirming a plan that will establish a trust pursuant to section 105 and/or 524(g) of the Bankruptcy Code to resolve the Debtor Talc Claims." PI Order ¶ K.
- "Without the injunctive relief sought herein, the Debtor would suffer the following irreparable harm: [r]ecoveries against the Protected Parties could trigger the Debtor's indemnification obligations, reduce available insurance, and have the effect of fixing talc-related claims against the Debtor outside of the Chapter 11 Case[.]" Id. ¶ L(i).
- "The purpose of the Debtor's Chapter 11 Case would be defeated if the litigation of Debtor Talc Claims were allowed to proceed against the Protected Parties[.]" Id. ¶ M(i).

7. On November 22, 2021, this Court held a status conference in this chapter 11 case and scheduled a hearing for January 11, 2022 to consider the Debtor's request for an extension of the relief granted in the PI Order. On December 8, 2021, the Debtor filed a supplemental memorandum in further support of the PI Motion [Adv. Dkt. 128] (the "Supplemental PI Memorandum") and collectively with the PI Motion and the Reply, the "Debtor PI Briefs"). Certain parties filed additional objections. [Adv. Dkts. 141, 142, 143].

### **Argument**

#### **I. Movant's Claim, Like the Thousands of Other Enjoined Talc Claims, Is Clearly Stayed.**

8. By the Motion, the Movant seeks relief from the automatic stay to continue prosecution of his personal injury action against certain Protected Parties (Owens & Minor, J&J, and three Retailers). Mot. ¶ 31; see Appendix B to Complaint at 702, 709-11 (naming J&J, Owens & Minor, Albertson's, Safeway, and Thrifty Corporation as Protected Parties). Movant's claim against these Protected Parties is stayed by the express terms of the PI Order and Movant does not dispute that. See PI Order ¶ 2; Mot. ¶ 24 (acknowledging that Movant is prohibited and enjoined from continuing to prosecute his claims against Protected Parties). However, Movant asserts that the stay should be lifted as to his claim on the asserted basis that his case is unique. In particular, Movant alleges that his case is the only "asbestos talc case in the country involving Owens & Minor," (Mot. ¶ 1), and that Movant is the only mesothelioma claimant "alleging both personal and occupational exposure to asbestiform fibers from Johnson's Baby Powder talc." Id. ¶ 50.

9. However, these assertions, assuming they are accurate, do not provide a basis to distinguish Movant's claims from the thousands of other talc claims that make similar assertions, and yet are currently stayed pursuant to the PI Order. Whether the Movant claims personal or occupational exposure, his claim is an Enjoined Talc Claim—i.e. "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)." PI Order, ¶ A (emphases added).

10. The fact that Movant's claim may be the only one involving Owens & Minor also does not meaningfully differentiate it from other claims against the Protected Parties. An indemnification obligation executed between Old JJCI and Owens & Minor on September 23, 2021 (the "Indemnification Agreement") obligates the Debtor to indemnify Owens & Minor against this suit.<sup>5</sup> If the case continues against Owens & Minor, Owens & Minor would be entitled, through a right of indemnification, to recover from the Debtor any amounts it paid to the Movant.

11. Movant disputes that the Debtor is obligated under the Indemnification Agreement, but presents nothing other than supposition and innuendo in support of this assertion. See Mot. ¶ 41. The Debtor is obligated to indemnify Owens & Minor pursuant to the Indemnification Agreement, which was executed prior to the Petition Date and remains valid and enforceable. Accordingly, Owens & Minor is no different from the other indemnified distributors or other indemnified parties that are Protected Parties under the PI Order, and the Movant's claim should not be permitted to proceed for the same reasons applicable to all the talc-related claims. See, e.g., Supp. PI Mem. §§ III.A, IV.

## **II. Granting the Motion Would Trigger a Tidal Wave of Similar Requests from Holders of Enjoined Talc Claims and Defeat the Purpose of the Automatic Stay.**

12. Granting the Motion would violate a fundamental tenet of the automatic stay: to enable the bankruptcy court "to avoid interference with the orderly liquidation or rehabilitation of the debtor." In re Rexene Prod. Co., 141 B.R. 574, 576 (Bankr. D. Del. 1992) (citing Borman v. Raymark Indus., Inc., 946 F.2d 1031, 1036 (3d Cir. 1991) (in turn quoting St. Croix Condo. Owners v. St. Croix Hotel, 682 F.2d 446, 448 (3d Cir. 1982))). After

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<sup>5</sup> The Indemnification Agreement was allocated to the Debtor from Old JJCI as a result of the 2021 Corporate Restructuring.



consideration of the cost, burden, uncertainty, and anticipated duration of the cosmetic talc litigation, the Debtor concluded that this chapter 11 case offered the only alternative for equitably and permanently resolving all current and future talc-related claims against it. In particular, the Debtor determined the litigation of talc-related claims in the tort system for the next 50 years or more (as claimants seek to do) is untenable, unsustainable, and inequitable.

13. Permitting the Movant, and thereby setting the stage for others like him, to continue his state court litigation would likely lead to a spate of similar requests, not only among the hundreds of mesothelioma claimants, but likely among the thousands of ovarian cancer claimants as well. This tidal wave of requests would frustrate the fundamental purpose of the case—to achieve an equitable, final, and full resolution of the Debtor's talc liabilities. Granting relief to Movant, who asserts claims like those of thousands of others claimants, would create precedent for lifting the stay on a large scale. The Motion should be denied.

### **III. The Mid-Atlantic Factors Weigh Heavily in Favor of Denying the Motion.**

14. The automatic stay of section 362 has been described as "one of the fundamental debtor protections provided by the bankruptcy laws." Midlantic Nat'l. Bank v. N.J. Dep't of Env't. Prot., 474 U.S. 494, 503 (1986) (citation omitted). The automatic stay, however, is not absolute and in appropriate instances, relief may be granted. See In re SCO Grp., Inc., 395 B.R. 852, 856 (Bankr. D. Del. 2007). Thus, section 362(d)(1) provides that:

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—(1) for cause . . . .

11 U.S.C. § 362(d)(1). "Cause" is a flexible concept and a bankruptcy court is granted wide discretion to determine whether to lift the automatic stay for cause. See In re Mid-Atlantic Handling Sys., LLC, 304 B.R. 111, 130 (Bankr. D.N.J. 2003).

15. Because of this flexibility, courts often rely upon the twelve factors set forth in Mid-Atlantic to determine whether to grant a motion for relief from the automatic stay to permit litigation to proceed. Id. "All twelve factors are not necessarily present in a particular case, and a court need not rely on any plurality of factors in deciding whether to lift the automatic stay." Id. The twelve Mid-Atlantic factors are:

1. Whether relief would result in a partial or complete resolution of the issues;
2. Lack of any connection with or interference with the bankruptcy case;
3. Whether the other proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;
5. Whether the debtor's insurer has assumed full responsibility for defending it;
6. Whether the action primarily involves third parties;
7. Whether litigation in another forum would prejudice the interests of other creditors;
8. Whether the judgment claim arising from the other action is subject to equitable subordination;
9. Whether the moving party's success in the other proceeding would result in a judicial lien avoidable by the debtor;
10. The interests of judicial economy and the expeditious and economical resolution of litigation;
11. Whether the parties are ready for trial in the other proceeding; and
12. Impact of the stay on the parties and the balance of the harms.

Id.

16. Consideration of these Mid-Atlantic factors here, particularly potential interference with the bankruptcy case, prejudice to other claimants, judicial economy, and the

balance of the harms leads to one conclusion: the Motion should be denied. These factors<sup>6</sup> are analyzed in turn below.

**A. Whether Relief Would Result in A Partial or Complete Resolution of the Issues.**

17. The Movant argues that, because all of the defendants are alleged to be in the talc powder product's chain of distribution and because under California law such defendants may be held jointly and severally liable, permitting prosecution of his talc-related personal injury claims to proceed as requested by the Motion would result in their complete resolution. Mot.

¶ 39. For the reasons discussed above, however, any resolution of Movant's claim outside of this chapter 11 case would threaten the fundamental purpose of this case: an equitable, global resolution of all the Debtor's talc-related claims. There is simply no meaningful basis to distinguish Movant's claims from the thousands of other pending talc claims against the Debtor. Accordingly, lifting the stay as requested by Movant will not completely resolve the issues; rather, it will foster efforts to pursue piecemeal litigation and serial presentation of the same issues in different courts around the country. This factor weighs against lifting the stay.

**B. Lack of Any Connection With or Interference With the Bankruptcy Case.**

18. Movant argues that lifting the stay to permit his claim to proceed would not interfere with this chapter 11 case because Movant has asserted direct claims against J&J, the Retailers, and Owens & Minor. Mot. ¶ 40. However, for the reasons set forth in the Debtor PI Briefs, prosecution of claims against the Protected Parties, direct or otherwise, would (a) liquidate claims against the Debtor, including by triggering existing indemnification and

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<sup>6</sup> Whether the other proceeding involves the debtor as a fiduciary, whether the judgment claim arising from the other action is subject to equitable subordination, and whether the moving party's success in the other proceeding would result in a judicial lien avoidable by the debtor are not relevant here and are not analyzed below.

similar obligations of the Debtor to such entities, (b) create risks of binding the Debtor through res judicata and collateral estoppel, and creating an evidentiary record that could prejudice the Debtor, and (c) irreparably harm the Debtor. See, e.g., Supp. PI Mem., 44, 65-74, 79-86. As the NC Bankruptcy Court found in the PI Order, "[f]ailure to enjoin prosecution of the Debtor Talc Claims in the tort system would cause irreparable injury to the Debtor and defeat the purpose of the Chapter 11 Case," (see PI Order ¶ L (emphasis added)), and permitting the Debtor Talc Claims to proceed would compel the Debtor "to actively monitor, participate in and defend litigation of Debtor Talc Claims against the Protected Parties, and key personnel would be diverted from assisting the Debtor in achieving its reorganization goals." See id. ¶ L(iv). The circumstances under which the NC Bankruptcy Court made these findings have not changed, and this factor weighs against granting the Motion.

**C. Whether A Specialized Tribunal With the Necessary Expertise Has Been Established To Hear the Cause of Action.**

19. The Debtor does not dispute that the Superior Court of California has the expertise to hear Movant's personal injury cause of action. However, as set forth above, this factor does not distinguish Movant's claims from the Debtor's myriad other talc claims. The Debtor's chapter 11 case is the only proceeding in which the Debtor can achieve a global and equitable resolution of its talc-related claims. This factor weighs against granting the Motion.

**D. Whether the Debtor's Insurer Has Assumed Full Responsibility for Defending Movant's Claims.**

20. As detailed in the Supplemental PI Memorandum, "the Debtor believes that it has rights to extremely valuable insurance coverage for its Debtor Talc Claims." Supp. PI Mem., 25. Although J&J and Old JJCI have tendered talc-related claims to the third-party insurers, to date none of those insurers has acknowledged its coverage obligations or defended

Old JJCI or J&J. Id. at 28. Moreover, the Debtor's insurance coverage is subject to aggregate limits and could be eroded. Id. As a result, this factor also weighs against granting the Motion.

**E. Whether the Action Primarily Involves Third Parties.**

21. Movant's argument that the underlying litigation would only proceed against third parties ignores the Debtor's indemnification obligations to these parties. These third parties are Protected Parties, and for the reasons set forth above and in the Debtor PI Briefs, prosecution of Debtor Talc Claims, including Movant's claim, against them would harm the Debtor and its prospect for achieving a global resolution of its talc-related claims. See PI Order ¶ L(ii)-(iv); see, e.g., Supp. PI Mem., 44, 65-74, 79-86. As a result, this factor also does not support granting the Motion.

**F. Whether Litigation in Another Forum Would Prejudice the Interests of Other Creditors.**

22. For the reasons set forth above and in the Debtor PI Briefs, permitting this single claim to proceed would prejudice the interests of other talc claimants, who have similarly situated claims and yet would remain subject to the stay. See, e.g., Supp. PI Mem., 86-90. This factor weighs against granting the Motion.

**G. The Interests of Judicial Economy and the Expeditious and Economical Resolution of Litigation.**

23. Lifting the stay would not promote judicial economy and the expeditious and economical resolution of the litigation.<sup>7</sup> The untenable, unsustainable, and inequitable nature of the talc litigation was a driving factor in the Debtor's determination to commence this case. As set forth above, lifting the stay could result in an avalanche of similar requests and

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<sup>7</sup> To the extent Movant wishes to continue his suit, Movant acknowledges that he may do so against certain "brake defendants." Mot. ¶¶ 6, 29. To the extent joint and several liability applies, Movant would be permitted to recover his compensatory damages in full from those defendants.

frustrate the purpose of this case. The most efficient and economic resolution of not just Movant's claim, but the thousands of current (and future) talc-related claims against the Debtor, is through resolution via the bankruptcy process and the creation of a trust. The PI Order recognizes the judicial economy and efficiency of this process. See PI Order ¶ M(iii)(b) ("Ultimately, the Chapter 11 Case should provide both existing and future claimants with an efficient and expedited means by which to address their claims through a trust.").

**H. Whether The Parties Are Ready for Trial in the Other Proceeding.**

24. While the Movant argues that his claim has preferential status and is governed by an expedited pre-trial discovery schedule in state court (see Mot. ¶ 48), the Movant's case is not ready for trial. In fact, Movant seeks to lift the automatic stay as to certain Protected Parties to permit discovery. See id. ¶ 2. When the PI Order was entered, trial on the Movant's claim was two months away. Moreover, the NC Bankruptcy Court heard argument from Movant's counsel to lift the automatic stay as to the Vanklive personal injury case, which was farther along, and still declined to extend the stay as to that claim. See 11/10/21 Hr'g Tr. at 145:1-24 (requesting to lift stay for the Vanklive case, which had preceded to trial as of the Petition Date); id. at 155:9-11 (Whitley, J. denying request and explaining that "[i]f I start with one, I'm going to have to go to dozens, if not hundreds, if not thousands."). This factor does not weigh in favor of granting the Motion here.

**I. Impact of the Stay on the Parties and the Balance of the Harms.**

25. Movant argues that, without the requested relief, his case will not be heard during his lifetime. See Mot. ¶ 49. However, as set forth above, Movant acknowledges that he is free to move forward now against other co-defendants. In addition, even if the stay/injunction results in some delay to Movant (which may not be the case as noted), "[d]elay, in and of itself, is insufficient to overcome irreparable harm caused to the Debtor and its estate." See PI Order

¶ M(iv). By contrast, lifting the stay would jeopardize the Debtor's ability to fully and equitably resolve all its current and future talc claims and lead to inequitable treatment of similarly situated claimants.

### **Conclusion**

26. For all the reasons set forth herein, the Debtor respectfully requests that the Court (a) deny the Motion and (b) grant the Debtor such other and further relief as the Court may deem proper.

Dated: January 4, 2022

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