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

In re:	:	Chapter 11
	:	
LTL MANAGEMENT LLC,	:	Case No. 21-30589
	:	
Debtor.	:	
	:	

**OBJECTION OF MESOTHELIOMA PLAINTIFFS REPRESENTED BY KAZAN,  
McCLAIN, SATTERLEY & GREENWOOD TO MOTION OF CLAIMANT  
SHIRLEETA ELLISON FOR APPOINTMENT TO THE OFFICIAL  
COMMITTEE OF TALC CLAIMANTS**

The law firm of Kazan, McClain, Satterley & Greenwood, A Professional Law Corporation, and local counsel Saiber LLC, on behalf of their mesothelioma clients whose cases were filed in California<sup>1</sup> and New Jersey<sup>2</sup> (“Kazan Plaintiffs”), through their undersigned counsel, hereby files this objection to the *Motion of Claimant Shirleeta Ellison for Appointment to the Official Committee of Talc Claimants* [Dkt. 1963-1] (the “Motion”). In support of their objection, Kazan Plaintiffs respectfully represent as follows:

### **PRELIMINARY STATEMENT**

Once reconstituted on April 12, 2022, the 11-member Official Committee of Talc Claimants (“TCC”) will be comprised of 6 ovarian cancer claimants (“OC Claimants”), 4 mesothelioma claimants (“Meso Claimants”), and 1 lien holder claimant (“LH Claimant”). Despite OC Claimants outnumbering all other claimants combined, Movant Shirleeta Ellison (“Movant”), a potential OC Claimant, seeks an order appointing her to the TCC. For three reasons, an order denying the Motion is warranted and the current makeup of the membership should be maintained.

*First*, the TCC already includes creditors like Movant. The OC Claimants outnumber the Meso Claimants by six to four. Further, OC Claimants have enough of a majority to win every vote on disputed issues. Thus, Movant is adequately represented and has a “meaningful voice” in the TCC. *In re Dow Corning Corp.*, 194 B.R. 121, 141 (Bankr. E.D. Mich. 1996).

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<sup>1</sup> The California cases involve the following mesothelioma plaintiffs: Susan Barkley, John Carreiro, James Daugherty, Daniel and Kristie Lynn Doyle, Meredith Egli, Nawal Helo, Vincent Hill, Teresa Leavitt, Christina Prudencio, Rosalino Reyes, Patricia Schmitz, and Nedelka Vanklive.

<sup>2</sup> The New Jersey cases involve the following mesothelioma plaintiffs: Greg Guild, Stephen Kalish, William Korbholz, Hannah Mazeriegos, and Christine Sabatelli.

*Second*, Movant’s argument that there is an imbalance on the TCC lacks merit. Movant argues that another OC Claimant should be appointed because ovarian cancer claims far outnumber mesothelioma claims. But this contention ignores that mesothelioma claims are much more valuable than ovarian cancer claims. It is undisputed that mesothelioma, unlike ovarian cancer, is a sentinel disease because there is a strong causal link between disease development and prior asbestos exposures. Johnson & Johnson (“J&J”) has conceded in litigation that asbestos causes mesothelioma, while disputing that asbestos causes ovarian cancer. Indeed, many ovarian cancer cases proceed on talc only and do not include claims of asbestos exposure. Given that there is asbestos in Johnson’s Baby Powder, a mesothelioma plaintiff has a stronger claim for damages compared to an ovarian cancer plaintiff. Hence, it is unsurprising that Debtor and J&J value mesothelioma cases more than ovarian cancer cases.

*Third*, Movant cites no authority requiring this Court to appoint her to the TCC because doing so further diversifies the TCC and represents New Jersey claimants. But it is well settled for “a particular group of creditors to be adequately represented by an existing committee, it is not necessary for the committee to be an exact reflection of that committee’s designated constituents.” *In re Dow Corning Corp.*, 194 B.R. at 141. For a creditor group to be adequately represented by a committee, the interests of that group must “have a *meaningful* voice on the committee in relation to their posture in the case.” *Id.* (emphasis added). Here, Movant makes no showing that the current members of the TCC, which already include two minority women, precludes her from having a “meaningful voice” on the TCC. Movant’s argument is therefore unsupported and should be disregarded.

Accordingly, Kazan Plaintiffs request that this Court deny the Motion. Alternatively, if this Court chooses to appoint Movant to the TCC as an OC Claimant, then this Court should similarly increase the number of Meso Claimants.

### **ARGUMENT**

#### **I. This Court Has Discretion to Deny Movant's Appointment to the Official Committee of Talc Claimants.**

1. The Bankruptcy Code gives this Court the discretion to change the membership of the committee only if it is necessary to provide adequate representation. 11 U.S.C. § 1102(a)(4).

2. The Bankruptcy Code does not provide a framework to determine adequate representation. *In re Enron Corp.*, 279 B.R. 671, 685 (Bankr. S.D.N.Y. 2002). This Court is therefore tasked with determining whether a committee as constituted adequately represents creditors upon an examination of the facts of each case. *See In re Hills Stores Co.*, 137 B.R. 4, 5 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 55 B.R. 945, 948 (Bankr. S.D.N.Y. 1985).

3. Because the Bankruptcy Code does not provide a statutory definition of "adequate representation of creditors," this Court evaluates the adequacy of representation by considering the following factors:

- i. The ability of the committee to function;
- ii. The nature of the case;
- iii. The standing and desires of the various constituencies;
- iv. The ability for creditors to participate in the case even without an official committee and the potential to recover expenses pursuant to section 503(b);
- v. The delay and additional cost that would result if the court grants the motion;
- vi. The tasks that a committee or separate committee is to perform; and
- vii. Other factors relevant to the adequate representation issue.

*In re Dana Corp.*, 344 B.R. 35, 38 (Bankr. S.D.N.Y. 2006) (citations omitted).

4. Because these factors are fact intensive, “no one factor [is] dispositive, both individually and in the aggregate.” *In re Park W. Circle Realty, LLC*, BKR. 10-12965 AJG, 2010 WL 3219531, at \*3 (Bankr. S.D.N.Y. Aug. 11, 2010) (citations omitted).

5. Here, Movant makes no effort to address each of the seven factors set forth above. To the best of Kazan Plaintiffs’ understanding, only the second factor (“nature of the case”) is addressed in the Motion. In doing so, Movant claims that the TCC should (i) be balanced by disease type, (ii) have New Jersey representation, and (iii) have minority representation. [Motion at 8-9.] As more fully set forth below, Movant’s arguments lack merit and an order denying the motion is warranted.

## **II. The Majority of the TCC is Already Comprised of OC Claimants, like Movant Here.**

6. “A determination of whether one group of creditors has adequate representation on a committee will entail a balancing of that group’s interest against the interest of other groups on the committee.” *In re Dow Corning Corp.*, 194 B.R. at 142. “This, of course, cannot be done unless the various group of creditors and their interests are known.” *Id.* Here, there is no need to appoint another OC Claimant to the TCC for three reasons.

7. First, OC Claimants already outnumber all other claimants in the TCC. When it is reconstituted on April 12, 2022, TCC will have six OC Claimants, four Meso Claimants, and one LH Claimant. Thus, Movant already has a “meaningful voice” on the TCC because OC Claimants already outnumber Meso Claimants six to four. Even if the Meso Claimants and LH Claimant form a unified front, the OC Claimants can still win every vote on disputed issues.

8. Second, appointing Movant to the TCC creates an even number of members. For voting purposes, the number of committee members should remain an odd number. Adding

Movant means that this Court must appoint another claimant to the TCC. There is no need to do so.

9. Third, Movant's argument that adding another OC Claimant somehow "more adequately aligns committee membership with the population of claimants" [Motion at 8], ignores the reality that mesothelioma cases are much more valuable than ovarian cancer cases.

10. Mesothelioma is a terminal disease with a short life expectancy. The medical and scientific literature are in accord that the causal relationship between mesothelioma and asbestos exposure is so strong that mesothelioma is a sentinel or signal tumor for exposure to asbestos. For example, the American Cancer Society states that "[a]sbestos exposure is the main cause of pleural mesothelioma. About 8 out of 10 people with mesothelioma have been exposed to asbestos." [American Cancer Society, "What Causes Mesothelioma?" at <https://www.cancer.org/cancer/malignant-mesothelioma/causes-risks-prevention/what-causes.html> (as of April 11, 2022).] In contrast, there is no similar, conclusive association between prior asbestos exposure and ovarian cancer. Indeed, not all ovarian cancer is related to asbestos or talc exposure. [See American Cancer Society, "What Causes Ovarian Cancer?" at <https://www.cancer.org/cancer/ovarian-cancer/causes-risks-prevention/what-causes.html> (as of April 11, 2022) ("We don't know yet exactly what causes most ovarian cancers"; listing risk factors associated with ovarian cancer, none of which is asbestos exposure).]

11. In mesothelioma cases over the last four years, the science and the liability case against J&J and Debtor have developed and has shown that there is very strong evidence that J&J talc causes malignant mesothelioma. For example, J&J admits internally that "[m]esothelioma [is] known to be exclusively caused by asbestos." [Dkt. No. 932-4 at 605, 621.]

J&J also admits that there is no safe level of exposure to asbestos. [*Id.* at 643-645.] Further, asbestos was identified in J&J talc on many occasions for decades.

12. Further, Movant presents no evidence showing that ovarian cancer cases are more valuable than mesothelioma cases. Indeed, the record demonstrates that Debtor values mesothelioma cases more than ovarian cancer cases. For example, the Debtor's Chief Legal Officer, John Kim, testified that J&J has settled more mesothelioma cases than ovarian cancer cases. [11/4/2021 Hearing Transcript at 241:22-242:1.] And J&J has had a different settlement strategy for mesothelioma cases as compared to ovarian cancer cases. [*Id.*]

13. In sum, the number of lawsuits alone do not make them more valuable. Hence, Movant's "quantity" over "quality" argument fails and an order denying the motion is warranted.

### **III. Movant Cites No Authority for Her Remaining Arguments that TCC Must Include New Jersey Residents and Further Diversity.**

14. Movant's remaining arguments lack any legal authority and seem specious.

15. First, Movant argues that her appointment to the TCC means that the interests of New Jersey residents are represented. But none of the seven factors articulated above require that creditors committee must have a member from each state.

16. Second, Movant, who is African American, argues that her appointment "helps to further diversify the TCC." But she provides no cogent reason why she has no "meaningful voice" in the TCC when there are already two minority women in the TCC. It is well settled that for "a particular group of creditors to be adequately represented by an existing committee, it is not necessary for the committee to be an exact reflection of that committee's designated constituents." *In re Dow Corning Corp.*, 194 B.R. 121, 141 (Bankr. E.D. Mich. 1996). For a creditor group to be adequately represented by a committee, the interests of that group must "have a *meaningful* voice on the committee in relation to their posture in the case." *Id.*

(emphasis added). Hence, Movant's argument is unsupported and should be disregarded.

17. "It is well settled that statutory unsecured creditors committees owe a fiduciary duty to the entire class of creditors represented by such committee and are required to place the collective interest of the class they represent above their own personal stake in the bankruptcy case." *In re Residential Capital, LLC*, 480 B.R. 550, 559 (Bankr. S.D.N.Y. 2012) (citations omitted). "Furthermore, this fiduciary obligation is present whether or not a particular group is included in its membership." *Id.* (internal quotation and citation omitted). "A committee must guide its actions so as to safeguard as much as possible the rights of minority as well as majority creditors." *Id.* (internal quotations and citations omitted). Accordingly, Movant makes no showing how her appointment to the TCC is necessary when she already has a "meaningful voice" on the committee.

### **CONCLUSION**

18. For the foregoing reasons, Kazan Plaintiffs request that this Court deny the Motion, and for such other relief to which they are entitled. Alternatively, should this Court choose to appoint Movant to the TCC as an OC Claimant, then this Court should similarly increase the number of Meso Claimants.

Respectfully submitted:

KAZAN, McCLAIN, SATTERLEY &  
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- and -

SAIBER LLC  
*Counsel for Certain Mesothelioma Plaintiffs*

By: /s/ John M. August  
JOHN M. AUGUST

DATED: April 11, 2022