

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
RED RIVER TALC, LLC, ¹)	
Debtor.)	Case No. 24-90505 (CML)

**INITIAL STATEMENT OF COALITION OF COUNSEL FOR JUSTICE
FOR TALC CLAIMANTS REGARDING CHAPTER 11 CASE**

TO THE HONORABLE CHRISTOPHER M. LOPEZ
UNITED STATES BANKRUPTCY JUDGE

The Coalition of Counsel for Justice for Talc Claimants (the “Coalition”),² by and through its undersigned counsel, respectfully submits this Initial Statement of Coalition of Counsel for Justice for Talc Claimants Regarding Chapter 11 Case (the “Coalition Statement”). In support thereof, the Coalition respectfully states as follows:

PRELIMINARY STATEMENT

1. This is an unprecedented bankruptcy case that defies the fundamental goals of the Bankruptcy Code in nearly every respect:

- Johnson & Johnson (J&J), a Fortune Global 500 company that is one of only two U.S. companies with a AAA credit rating, has now filed three consecutive Chapter 11 cases³ to shield itself and its affiliates from talc-related mass tort liability. This

¹ The last four digits of the Debtor’s federal tax identification number are 8508. The Debtor’s address is 501 George Street, New Brunswick, New Jersey 08933.

² The Coalition includes Ashcraft & Gerel, LLP; Beasley Allen Crow Methvin Portis & Miles, PC; Golomb Legal, PC; Levin Sedran & Berman, LLP; Levin, Papantonio, Rafferty, Proctor, Buchanan, O’Brien, Barr, Mougey, PA; and Robinson Calcagnie, Inc.

³ In each case, J&J has used a company created for the sole purpose of holding and resolving all talc-related tort liability in bankruptcy as the debtor, to avail J&J and its other affiliates of the benefits of a Chapter 11 bankruptcy case without submitting their businesses to the consequent scrutiny.

litigation tactic runs roughshod over the good faith requirements in the Bankruptcy Code.

- The debtor here, Red River Talc, LLC (“Red River” or the “Debtor”), a shell without any business that was formed only one month prior to commencing this case, did not exist during the solicitation of votes on “its” plan of reorganization. Red River was directed to file this third Chapter 11 case in Texas, making this the third venue chosen by J&J in the three consecutive bankruptcy cases it has orchestrated. Brazen forum shopping like this contravenes the integrity of the Bankruptcy Code.⁴
- Unlike the prior two failed bankruptcy cases J&J directed, in this case the Debtor does not seek to resolve all talc-related liability of J&J and its affiliates but isolates only a subset of such talc-related liabilities—claims of *women* harmed by talcum powder products in the United States. Contrary to J&J’s prior claims that bankruptcy provides the best forum for the resolution of mass tort claims, J&J has chosen to address all other talc liabilities included in the first two bankruptcy cases (*i.e.*, mesothelioma and lung cancer claims, talc-related claims asserted by governmental units, and Canadian talc-related claims) outside of bankruptcy. This disparate treatment of claims is contrary to any concept of justice and violates the Bankruptcy Code’s principle of the equitable treatment of claims.
- Contrary to the United States Supreme Court’s holding in *Harrington v. Purdue Pharma L.P.* that the Bankruptcy Code does not authorize non-consensual third-party releases in a plan of reorganization, the Debtor seeks such protection for J&J and its other affiliates in its plan. Section 524(g) of the Bankruptcy Code does not provide the authority for what J&J, through the Debtor, seeks.
- In an effort to obtain support for the proposed plan, J&J engaged in an extensive campaign of television, radio and online advertisements, and social media postings encouraging individuals suffering no talc-related injury other than a fear of cancer, to vote on the yet-to-be-created Debtor’s “prepack” plan. A prepack plan that releases these individuals’ claims against the Debtor and its affiliates without providing such individuals with any recoveries under the Plan. Normally such claims would be separately classified and be deemed to have rejected the plan under section 1126(g). Here, however, J&J solicited votes from “claimants” who did not understand that they were voting for a plan that provided them with no (or *de minimis*) recovery and seeks to use those votes to defeat claimants who suffered actual injury and refused to accept a pittance in exchange for releasing all talc-related claims against J&J and its many affiliates.

⁴ The Office of the United States Trustee agrees, having filed its own motion to transfer venue of this case to the District of New Jersey. See *Notice of Motion to Transfer Venue and Request for Stay Pending Before the United States Bankruptcy Court for the District of New Jersey*, Case No. 24-90505, Dkt. No. 35.

2. Notwithstanding the extraordinary relief sought by the Debtor for its affiliates and the unconventional manner in which J&J has orchestrated the Debtor’s bankruptcy case to obtain that relief, the Debtor seeks to circumvent the safeguards and deliberative processes espoused in Chapter 11 of the Bankruptcy Code. As evidenced by its “first day” pleadings, the Debtor hopes to obtain this relief through the expedited approval of an unchecked prepetition solicitation process on a contested “prepack” plan.

3. The “prepack” process is typically used to implement funded debt restructurings, where creditors are easily identifiable, and the proposed plan is consensual and delivered to the bankruptcy court with the near unanimous support of voting creditors. *See e.g., In re Belk Inc.* (Bankr. S.D. Tex. 2021); *In re Mood Media Corporation* (S.D. Tex. 2020); *In re Sheridan Holding Company I LLC* (Bankr. S.D. Tex. 2020); *In re Sungard Availability Services* (Bankr. S.D.N.Y. 2019); *In re FullBeauty Brands* (Bankr. S.D.N.Y. 2019). In the *Sungard* pre-packaged bankruptcy, Judge Drain observed that:

It would seem to me that if the Debtors here and their professionals knew that there was a vocal minority or even a vocal party of one opposing the plan, they wouldn’t seek this process if there were issues going to valuation, for example, that that vocal minority could raise, or the like.

May 2, 2019 Hearing Transcript at 20, *In re Sungard* (Bankr. S.D.N.Y. 2019), attached as Exhibit “1” to the Declaration of Sunni P. Beville in Support of the Coalition Statement, filed contemporaneously herewith (the “Beville Decl.”).

4. A “prepack” case does not contemplate contentious opposition to the solicitation process or the plan—the very concept of “prepackaging” a case requires that disagreements are resolved before the case comes before the court. While the Debtor is fully aware of the opposition to this case, it hopes to eliminate it by steamrolling through expedited approval of a dubious voting

process rather than implementing an orderly solicitation process and addressing objections in a fair and measured manner.

BACKGROUND

5. Notwithstanding the Debtor’s glib efforts to cast the relief sought in this bankruptcy case as normal, there is nothing normal about J&J’s third attempt to resolve its own and its non-debtor affiliates’ talc liability through the bankruptcy of a new affiliate created solely for this purpose.

6. The foundation on which this bankruptcy has been filed supplies critical context that must be considered in deciding how to proceed with this case. A summary of the salient facts and circumstances surrounding the filing of this Case follow below. *See also In re LTL Mgmt. LLC*, 64 F.4th 84 (3d Cir. 2023).

I. Events Preceding, During and Terminating J&J’s First Bad Faith Bankruptcy Filing

A. The Federal and State Court Litigation Spawnd by J&J’s Talc Products

7. Prior to 2010, there had been little litigation against J&J and its affiliates alleging talc liability.⁵ That changed in or around 2016 when three plaintiff verdicts in trials alleging ovarian cancer from J&J talc products “ushered in a wave of lawsuits alleging Johnson’s Baby Powder caused ovarian cancer and mesothelioma.”⁶ As of October 2021, when J&J first attempted to resolve its talc liabilities through a bankruptcy filing, there were over 38,000 ovarian cancer actions (most of which are consolidated in a federal multidistrict litigation (“MDL”) in New Jersey) and over 400 mesothelioma actions pending against J&J and Old JJCI.⁷

⁵ *In re LTL Mgmt. LLC*, 64 F.4th at 93.

⁶ *Id.* at 93-4.

⁷ *Id.* at 94.

8. The Debtor obscures the results of those litigations (and, thus, of claimants' expected outcome from commencing litigation) in its Disclosure Statement. While Old JCCI and J&J "often succeeded at trial," they also lost significant verdicts that were upheld on appeal. Moreover, in ovarian cancer cases, reversals on appeal were almost invariably *not* on the merits, but instead on the grounds of lack of personal jurisdiction under the Supreme Court's then recent ruling in *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, and were remanded for re-litigation.⁸ Statements in the Disclosure Statement to the effect that "in the 17 ovarian cancer cases that proceeded to trial . . . claimants received nothing,"⁹ with the exception of one case, are also false and misleading. The "one case" in which, according to the Debtor, "plaintiffs prevailed" was actually 22 cases, consolidated for trial, and, as to the others that went to trial and were reversed on jurisdictional grounds, juries have yet to determine what, if anything, such plaintiffs will recover.

9. In *Ingham v. Johnson & Johnson*, the "one case" the Debtor concedes "plaintiffs prevailed," the Missouri Court of Appeals affirmed a jury's award of compensatory and punitive damages in favor of 22 ovarian cancer plaintiffs and against each of Old JCCI and J&J, while reversing a \$4.69 billion total damages award and reducing it to over \$2.24 billion.¹⁰ Moreover, contrary to J&J's repeated suggestion that any liability for talc products it has borne (or may bear) is merely derivative of its affiliate's liability, the Court of Appeals in *Ingham* upheld *separate and different awards* of compensatory and punitive damages on account of direct claims against *each* of J&J and Old JCCI. The court found that "Defendants' decision to chart their course of

⁸ *Bristol-Myers Squibb Co. v. Superior Court of California, San Francisco County*, 582 U.S. 255 (2017).

⁹ Disclosure Statement for Prepackaged Chapter 11 Plan of Reorganization of the Debtor ("Disclosure Statement"), Dkt. No. 25-2 at p. 4 (file-stamped page 21 of 195).

¹⁰ *Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 724-25 (Mo. Ct. App. 2020), *cert. denied*, 141 S. Ct. 2716 (2021); *see also In re LTL Mgmt. LLC*, 64 F.4th at 94.

reprehensible conduct began with J&J long before [Old] JJCI was spun off as a separate entity in 1979 and engaged in reprehensible conduct of its own,” thereby justifying “the higher [punitive to compensatory damages] ratio of 5.72:1 for J&J.”¹¹ In contrast, Old JJCI’s punitive to compensatory damages award was only 1.8:1.¹² That J&J’s punitive to compensatory damages ratio was significantly higher than that of Old JJCI’s reflects the jury’s conclusion that J&J’s own behavior was significantly more reprehensible than Old JJCI’s. The jury held J&J responsible for its own independent liability.

10. Moreover, the Debtor’s assertion in the Disclosure Statement that what claimants should expect “to recover litigating in the tort system . . . typically is nothing” ignores the fact that J&J, by its own admission, has settled thousands of claims involving ovarian cancer or mesothelioma allegedly caused by J&J talc products.¹³ While J&J settled those cancer claims, it has never settled or paid a claim for the types of non-ovarian gynecologic cancers and other injuries alleged by the population from which J&J solicited votes in this bankruptcy. As J&J’s chief settlement negotiator, James Murdica, explained on the stand during J&J’s second attempt to resolve its talc liabilities through bankruptcy, J&J had “settle[d] thousands of ovarian cancer cases in the tort system,” for which J&J has paid many millions of dollars.¹⁴ Mr. Murdica also acknowledged that J&J also had settled over 1,000 mesothelioma cases for which it paid many millions of dollars.¹⁵ In contrast, as Mr. Murdica admitted, “Johnson and Johnson *never* knowingly paid on a claim for a non-ovarian gynecological cancer.”¹⁶

¹¹ *Ingham*, 608 S.W.3d at 721-23.

¹² *Id.*

¹³ In the words of the Third Circuit, “[Old JJCI] and J&J often avoided trial before [the first] bankruptcy, settling roughly 6,800 talc-related claims for just under \$1 billion in total.” 64 F.4th at 94.

¹⁴ Beville Decl. Ex. 2 (*LTL 2.0* June 28, 2023 Hearing Tr. at 111:18-112:7 (Murdica testimony)).

¹⁵ *Id.* at 112:8-112:15.

¹⁶ *Id.* at 111:13-111:17 (emphasis added).

11. Further undermining J&J’s unequivocal assertions in the Disclosure Statement that its talc products are safe and that claimants should expect to receive “nothing” in the tort system, multiple trial and appellate courts have rejected J&J’s self-serving position on the safety of its talc products.¹⁷ Significantly, in April 2020, the court overseeing the J&J talc products MDL (the “MDL Court”), *In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Practs. & Prods. Litig.* (the “Talc MDL”), found (with certain limited exceptions) asbestos in talc to be scientifically-based. Further, the MDL Court found the expert testimony proffered by the plaintiffs establishing a causal relationship between talc products and ovarian cancer to be admissible at trial, thereby paving the way for bellwether and remand trials to proceed.¹⁸

12. While J&J (through its created for bankruptcy affiliates) runs from bankruptcy court to bankruptcy court, it cannot escape the science. Since the filing of the first bankruptcy in 2021, additional scientific studies affirm an increased risk of ovarian cancer in women who used talc in the perineal area—none of which are identified in the Disclosure Statement. On May 15, 2024, a cohort study conducted by researchers from the National Institute of Health and published in the *Journal of Clinical Oncology* involving approximately 51,000 women overall and hundreds of women with ovarian cancer concluded that there was a nearly doubling of the risk of epithelial ovarian cancer among those women who used talc for greater than or equal to two decades or used during their 20s or 30s. These results were consistent with the positive association demonstrated between the genital use of talc and ovarian cancer in prior studies. *See* Beville Decl. Ex. 3 (Katie

¹⁷ *See, e.g., Ingham*, 608 S.W.3d at 718; *Bader v. Johnson & Johnson*, 86 Cal. App. 5th 1094, 1129 (Cal. Ct. App. 2022), *cert. denied* (Apr. 12, 2023); *Carl v. Johnson & Johnson*, 237 A.3d 308, 311 (N.J. App. Div. 2020), *cert. denied*, 244 A.3d 270 (N.J. 2021); *Johnson & Johnson Talcum Powder Cases*, 249 Cal. Rptr. 3d 642, 676 (Cal. Ct. App. 2019).

¹⁸ *See In re Johnson & Johnson Talcum Powder Prods. Mktg., Sales Practs. & Prods. Litig.*, 509 F. Supp. 3d 116, 198 (D.N.J. 2020).

M. O'Brien, *et al.*, *Intimate Care Products and Incidence of Hormone-Related Cancers: A Quantitative Bias Analysis*, *J. Clin. Oncology* (2024)).

13. In July 2024, a working group within the International Agency for the Research on Cancer reclassified talc as a probable carcinogen based in part on the “strong mechanistic evidence that talc exhibits key characteristics of carcinogens, including inducing chronic inflammation and altering cell proliferation, cell death, or nutrient supply.”¹⁹ This classification was for talc only. Talc containing asbestos remains a known human carcinogen for ovarian cancer in accordance with IARC 20s12.

B. J&J Orchestrates the Creation and Bankruptcy Filing of LTL to Resolve Its Talc Liability, but Fails

14. Following the adverse *Daubert* ruling in the Talc MDL and “the U.S. Supreme Court's denial of certiorari in *Ingham*, members of J&J's management explored ways to mitigate Old JJCI's] exposure to talc litigation.”²⁰ “In a July 2021 email with a ratings agency, J&J's treasurer described a potential restructuring that would capture all asbestos liability in a subsidiary to be put into bankruptcy.”²¹

15. Accordingly, in October 2021, J&J used Texas's divisional merger statute to split Old JJCI into two new Texas entities, a Texas limited liability company, LTL Management LLC (“LTL”), and a Texas corporation that was quickly renamed as Johnson & Johnson Consumer, Inc. (“New JJCI”).²²

¹⁹ Beville Decl. Ex. 41 (“Carcinogenicity of talc and acrylonitrile,” *Lancet Oncology* (online), July 5, 2024). “The Working Group also noted that contamination of talc products with asbestos has been documented and that industry standards used to assess talc in cosmetic and pharmaceutical products have often not been sufficiently sensitive to rule out contamination with asbestos. . . .”

²⁰ *In re LTL Mgmt. LLC*, 64 F.4th at 95.

²¹ *Id.*

²² *In re LTL Mgmt. LLC*, 64 F.4th at 95-96 & n.3.

16. New JJCI took Old JJCI’s “productive business assets,”²³ including an array of famous “cash-flowing” brands, like Tylenol, Band-Aid, and Listerine.²⁴ In turn, LTL—which stands for “Legacy Talc Liabilities”—took on Old JJCI’s talc-related liabilities.²⁵ At the same time, LTL was given rights under a funding agreement (the “2021 Funding Agreement”) with J&J and New JJCI.²⁶ The 2021 Funding Agreement gave LTL the right, both outside and inside bankruptcy, to demand cash from J&J and New JJCI up to New JJCI’s value—an amount guaranteed by the agreement to be no less than \$61.5 billion.²⁷

17. Despite originally being organized as a Texas company, LTL was not directed to file its first bankruptcy case in Texas. Instead, within hours of its formation, LTL converted from a Texas company to a North Carolina company (while New JJCI converted to a New Jersey corporation). On October 14, 2021, LTL filed for bankruptcy protection under Chapter 11 in the Western District of North Carolina.²⁸ The result of J&J’s coupling the divisive merger of Old JJCI with the immediate bankruptcy filing of LTL (which the New Jersey bankruptcy court called a “single integrated transaction”) was the extraordinary (and specifically engineered) outcome that only a single sub-class of Old JJCI’s unsecured creditors – talc claimants – were forced into a bankruptcy proceeding, while all other of Old JJCI’s unsecured creditors were unimpaired by, and remained outside of, bankruptcy, able to continue transacting with New JJCI in the ordinary course.

²³ *Id.* at 97.

²⁴ *Id.* at 92, 106.

²⁵ *In re LTL Mgmt. LLC*, 64 F.4th at 96.

²⁶ *Id.* at 96.

²⁷ *Id.* at 96-97.

²⁸ *In re LTL Mgmt. LLC*, 64 F.4th at 97.

18. The case did not last long in North Carolina, however. The North Carolina court transferred the case to the District of New Jersey, rejecting LTL’s effort to “manufacture venue.”²⁹

19. J&J’s goal of permanently resolving its talc liability through LTL’s bankruptcy failed. Although the bankruptcy court denied the motions of the official talc claimants committee and others to dismiss the bankruptcy under 11 U.S.C. §1112(b),³⁰ the Third Circuit accepted a direct appeal, reversed the bankruptcy court and dismissed the case as a bad faith filing.³¹

20. The Third Circuit found that LTL could not show the “immediate” threat of “financial distress” necessary to establish that its petition “served a valid bankruptcy purpose and was filed in good faith.”³² To the contrary, the record showed that “LTL, at the time of its filing, was highly solvent with access to cash to meet comfortably its liabilities as they came due for the foreseeable future.”³³ With the backstop of the \$61.5 billion 2021 Funding Agreement, a virtual “ATM” for paying claims as they came due, LTL could pay any reasonable projection of its liabilities “without any disruption to its business or threat to its financial viability.”³⁴

21. The Third Circuit recognized J&J’s arguments that bankruptcy offered a more efficient procedure for addressing its talc liabilities. “But given Chapter 11’s ability to redefine fundamental rights of third parties,” the court explained, “only those facing financial distress can call on bankruptcy’s tools to do so.”³⁵ “This safeguard ensures that claimants’ prebankruptcy remedies—here, the chance to prove to a jury of their peers injuries claimed to be caused by a

²⁹ *Id.* at 97-98.

³⁰ *In re LTL Mgmt. LLC*, 637 B.R. 396 (Bankr. D.N.J. 2022).

³¹ *In re LTL Mgmt. LLC*, 64 F.4th 84. The Third Circuit did not decide the propriety of the bankruptcy court’s extension of the automatic stay to nondebtors, because “[d]ismissing [the] case annuls the litigation stay ordered by the [bankruptcy] [c]ourt and makes moot the need to decide that issue.” *Id.* at 111.

³² *In re LTL Mgmt. LLC*, 64 F.4th at 102, 110.

³³ *Id.* at 109.

³⁴ *Id.*

³⁵ *In re LTL Mgmt. LLC*, 64 F.4th at 110.

consumer product—are disrupted only when necessary.”³⁶ The court further observed that “a filing to change the forum of litigation” from the tort system to bankruptcy court “where there is no financial distress” raises the “specter of ‘abuse which must be guarded against to protect the integrity of the bankruptcy system.’”³⁷

22. The Third Circuit then denied LTL’s petition for rehearing *en banc*.³⁸ It also denied LTL’s motion to stay the mandate, filing an amended opinion emphasizing that its ruling “comports with the theme LTL proclaimed in this case from day one: it can pay current and future talc claimants in full.”³⁹ On April 4, 2023, following issuance of the Third Circuit’s mandate, LTL 1.0 was dismissed.⁴⁰

II. Events Following the Disposition of J&J’s First Bad Faith Bankruptcy Filing, and Events Preceding, During and Terminating J&J’s Second Bad Faith Bankruptcy

A. J&J Spins Off Old JJCI’s “Productive Assets” to Kenvue, and Orchestrates LTL’s Surrender of the 2021 Funding Agreement and Second Bankruptcy

23. In December 2022, even before the Third Circuit had issued its landmark decision, New JJCI—which had been given all of Old JJCI’s “productive assets” (aka, the consumer business assets) in the October 2021 divisive merger—changed its name to Johnson & Johnson HoldCo (NA) Inc. (“HoldCo”). In early January 2023, HoldCo then transferred the consumer business assets to HoldCo’s parent company, Janssen Pharmaceuticals, Inc. (“Janssen”).⁴¹ Janssen

³⁶ *Id.* at 111.

³⁷ 64 F.4th at 110 n.19 (quoting *In re SGL Carbon Corp.*, 200 F.3d 154, 169 (3d Cir. 1999)). Because the Third Circuit found bad faith on the basis of LTL’s filing without any financial distress, the court reserved as to whether LTL’s petition had been filed “‘merely to obtain a tactical litigation advantage.’” *Id.* The court likewise found it unnecessary to decide whether J&J’s use of Texas’s divisional-merger statute to isolate its talc liabilities in a new, made-for-bankruptcy entity—the so-called “Texas Two-Step”—could be squared with the Bankruptcy Code’s “principles and purposes.” *Id.* at 96, 111.

³⁸ See *In re LTL Mgmt. LLC*, 652 B.R. 433, 439 (Bankr. D.N.J. 2023) (“The Debtor filed a petition for rehearing and rehearing *en banc* with the Third Circuit, which the Circuit denied on March 22, 2023.”).

³⁹ *In re LTL Mgmt. LLC*, 2023 WL 2726441 (3d Cir. Mar. 31, 2023).

⁴⁰ Beville Decl. Ex. 4 (*LTL 2.0 Ad. Pro.*, Dkt. 39-39 (Order of Dismissal)).

⁴¹ Beville Decl. Exs. 5-6 (*LTL 2.0 Main Case Dkt. No. 614* (Debtors’ Omnibus Objection to Motions to Dismiss Chapter 11 Case)), at 8 & *LTL 2.0 Ad. Pro.*, Dkt. No. 185 (Debtor’s Reply in Support of Motion to (i) Extend

then transferred the assets to Kenvue, Inc. (“Kenvue”), while that company also was a subsidiary of J&J. Kenvue, in accordance with J&J’s previously announced intent to spin off its Consumer Health business⁴², then spun off from J&J in an IPO.⁴³

24. Further, without any advance notice, and while LTL and its principal asset (the 2021 Funding Agreement) remained under bankruptcy court supervision, LTL then terminated the entirety of the 2021 Funding Agreement, an agreement that the Third Circuit had described as a \$61.5 billion “ATM disguised as a contract.”⁴⁴ LTL jettisoned the 2021 Funding Agreement despite the fact that the bankruptcy court had specifically rejected any notion that the “tort claimants had been placed in a worse position” due to the divisive merger and filing of LTL 1.0 because: “[w]ith Debtor’s chapter 11 filing, this Court now has jurisdiction and oversight under the bankruptcy estate, which controls LTL’s rights under the Funding Agreement, and can ensure that debtor pursue its available rights against J&J and New JJCI”; thus, the tort claimants have “an immediate enforcement vehicle” in bankruptcy.⁴⁵

25. Yet, while a debtor-in-possession in bankruptcy and without any prior notice or bankruptcy court approval, LTL deliberately abandoned the 2021 Funding Agreement, *i.e.*, its most valuable asset by orders of magnitude. LTL did so, moreover, in direct contravention of the Third Circuit’s express admonitions. The Third Circuit had warned: “Some might read our logic

and Modify the Preliminary Injunction Order and (ii) for Confirmation that Successor Liability Actions Are Subject to the Automatic Stay)), at ¶ 1.

⁴² Beville Decl. Exs. 7-8 (J&J Form 8-K, November 15, 2021) (“On November 12, 2021, Johnson & Johnson (the ‘Company’) issued a press release announcing its intent to separate the Company’s Consumer Health business”).

⁴³ Beville Decl. Ex. 9 (Kenvue Form 10-Q, Aug. 2, 2023, at p.6) (“The registration statement related to the initial public offering of Kenvue’s common shares was declared effective on May 3, 2023, and Kenvue’s common shares began trading on the New York Stock Exchange under the ticker symbol “KVUE” on May 4, 2023 (the ‘Kenvue IPO’)”).

⁴⁴ *In re LTL Mgmt., LLC*, 637 B.R. at 423.

⁴⁵ *In re LTL Mgmt. LLC*, Case No. 21-30589 (MBK) (Bankr. D.N.J. Feb. 25, 2022), *Memorandum Opinion* at 43-4.

to suggest LTL need only part with its funding backstop to render itself fit for a renewed filing. While this question is premature, . . . if the question does become ripe, the next one might be: Did LTL receive reasonably equivalent value in exchange for foregoing its rights under the Funding Agreement?”⁴⁶

26. LTL’s explanation for jettisoning the 2021 Funding Agreement, furthermore, defied credulity: LTL justified its conduct by embracing J&J’s view that purpose of the 2021 Funding Agreement had been frustrated by the Third Circuit decision, which relied on the 2021 Funding Agreement to conclude LTL had no valid reorganizational purpose and, thus, could not avail itself in bankruptcy. According to J&J, outside of bankruptcy, the 2021 Funding Agreement had no purpose and, thus, was rendered unenforceable. But the agreement, on its face and according to multiple in-court admissions, operated, and was intended to operate, fully outside of bankruptcy.

27. In place of the jettisoned 2021 Funding Agreement, LTL adopted two new agreements—a new funding agreement (the “2023 Funding Agreement”) and a bankruptcy support agreement (the “J&J Support Agreement”).⁴⁷ Unlike the 2021 Funding Agreement, which was backed by both New JJCI and J&J, the new agreement looked only to HoldCo – now, worth only approximately \$30 billion after the Kenvue spin-off, instead of over \$60 billion – for funding.⁴⁸ As for the J&J Support Agreement, it offered the possibility of funding from J&J, but subject to contingencies such that it applied only in bankruptcy and only pursuant to a confirmed plan of reorganization that met J&J’s approval. Those terms stood in stark contrast to the 2021 Funding Agreement, which required J&J to provide funding both in and outside of bankruptcy.

⁴⁶ *In re LTL Mgmt. LLC*, 64 F.4th at 110

⁴⁷ *In re LTL Mgmt. LLC*, 64 F.4th at 110.

⁴⁸ Beville Decl. Ex. 10 (*LTL 2.0 Main Case Dkt. No. 4-5* (2023 Funding Agreement)).

28. Having orchestrated a deliberate attempt to create financial distress by transferring assets and replacing the 2021 Funding Agreement with a more restrictive funding agreement, on April 4, 2023, LTL filed for bankruptcy a second time. This time, in New Jersey two hours and eleven minutes after its first bankruptcy case was dismissed.

B. No Longer on a Blank Slate, J&J’s Second Bankruptcy Case Takes a Different Course than the First

29. LTL entered and pursued its second bankruptcy case as Red River does here, with the purported “support of the overwhelming majority of talc claimants” and a steady drumbeat that “a vocal minority of stonewalling law firms should not be permitted to hijack this Chapter 11 Case” “to elevat[e] their parochial interests over the best interests of their clients,” and “derail the Debtor’s efforts” to confirm a multi-billion plan.⁴⁹ But J&J could not wipe clean the slate written on its first bad faith filing. That inescapable history of bad faith set the second case before the same bankruptcy court on a different trajectory from the first filing.

30. Among other things, in light of the proceedings during the first bankruptcy, particularly the Third Circuit’s direct precedent, the bankruptcy court decided the motions to dismiss differently from those in the prior bankruptcy case. This time, the bankruptcy court granted the motions to dismiss. The bankruptcy court found that, under the Third Circuit precedent, “LTL [was] not sufficiently financially distressed to avail itself of bankruptcy at this

⁴⁹ Beville Decl. Ex. 5 (*LTL 2.0 Main Case*, Dkt. No. 614 (Debtors’ Omnibus Objection to Motions to Dismiss Chapter 11 Case), at pp. 4 & 65); *see also* Beville Decl. Exs. 11 – 12 (*LTL 2.0 Main Case*, Dkt No. 3 (Debtor’s Statement Regarding Refiling of Chapter 11 Case), at p.2 (“Central to the proposed plan term are commitments by the Debtor and J&J to pay up to \$8.9 billion net present value, over a 25-year period, to fund a trust that would fully and finally resolve all current and future talc claims. That funding constitutes an increase of \$6.9 billion over the \$2 billion J&J previously agreed to advance to the Debtor to establish a qualified settlement fund in the first chapter 11 case. Plaintiff law firms, on behalf of more than 60,000 current talc claimants,² have committed their support for this proposed plan. The breadth of support validates this proposed plan and provides a clear path forward toward a prompt resolution of this case.”) & Dkt. No. 4 (“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”)).

time,” because “[t]he weight of the evidence” showed that LTL ‘does ‘not have any likely need in the present or the near-term . . . to exhaust its funding rights to pay talc liabilities.’”⁵⁰ The bankruptcy court further found that neither the claimed support of 60,000 claimants nor the court’s own views as to “the best interests of creditors” could alter the outcome, concluding that “‘bad faith’ cannot be cured or justified,” not even with supposedly overwhelming creditor support.⁵¹ The bankruptcy court thus granted the motions to dismiss and dismissed the bankruptcy case – less than three full months after its commencement.⁵²

31. On July 25, 2024, the Third Circuit affirmed the dismissal without argument. The Third Circuit found no error by the bankruptcy court in “not crediting LTL’s speculation about potential massive verdicts” and by concluding “that in the worst-case scenario, LTL’s assets exceed its liabilities.” The Third Circuit concluded that the bankruptcy court correctly followed Third Circuit precedent.⁵³

III. Events and Circumstances Preceding J&J’s Third Bad Faith Bankruptcy Filing

A. J&J Seeks New Forum for a Third Bankruptcy

32. It did not take long after the bankruptcy court’s dismissal of J&J’s second bankruptcy attempt before it announced its intention to file yet a third bankruptcy. During its third quarter earnings call on October 17, 2023, J&J told analysts that “we’re pursuing a consensual resolution of the talc claims through another bankruptcy,” with “a vote expected in the next 6 months to

⁵⁰ Beville Decl. Ex. 13 (LTL 2.0 Main Case, Dkt. No. 1127 (Memorandum Opinion, dated July 28, 2023, at p. 25 quoting *In re LTL Mgmt. LLC*, 64 F.4th at 108.))

⁵¹ *Id.*, at p. 35.

⁵² *Id.*, at p. 39.

⁵³ Beville Decl. Ex. 14 (LTL 2.0 3d Cir. Case Nos. 23-2971 and 23-2972, Main Dkt. No. 107, at pp. 7, 8-10. “Because [the Third Circuit] conclude[d] that LTL’s bankruptcy petition fails for want of financial distress, [the court did] not consider Appellees’ arguments that LTL’s decision to amend the funding agreement in a way that sacrificed more than \$30 billion of promised value and limited its recourse to J&J was in bad faith.” *Id.*, at p. 4 n..2.)

determine whether the requisite supermajority of claimants support the plan.”⁵⁴ JNJ told reporters it was “now exploring Texas as the venue for a potential third filing.”⁵⁵

33. Consistent with a planned Texas bankruptcy filing, LTL sought to return to the state in which it was originally created and from which it quickly fled in favor of greener pastures. In December 2023, LTL converted back from a North Carolina entity to a Texas entity.⁵⁶ And in an effort to reinvent itself (and its history as a serial bad faith bankruptcy filer), changed its name as a Texas entity from “LTL” to the anagram, “LLT.”⁵⁷

34. Meanwhile, J&J started to announce out-of-court settlements to resolve talc liabilities that J&J previously indicated could be resolved only through a bankruptcy filing. During an investor presentation on December 5, 2023, J&J told attendees that it had “made recent progress over the last few weeks in resolving a number and a series of large mesothelioma portfolios with the goal to facilitate our pursuit of a consensual prepackaged bankruptcy resolution.”⁵⁸ According to J&J, those settlements “resolved all but one of the cases that were on schedule for 2023 and significantly curtailed those for 2024.”⁵⁹ The following month, J&J disclosed that it also had “tentatively agreed to pay about \$700 million to settle an investigation brought by more than 40 states into the marketing of its talcum-powder baby powder.”⁶⁰ The settlements of significant mesothelioma and governmental talc liabilities foreboded a third bankruptcy filing specifically targeting ovarian cancer claimants.

⁵⁴ Beville Decl. Ex. 15 (Transcript, Q3 2023 Johnson & Johnson Earnings Call, on Oct. 17, 2023, at p. 10).

⁵⁵ Beville Decl. Ex. 16 (“Johnson & Johnson Considers Ditching Texas Two-Step for Third Talc Bankruptcy,” *Wall Street Journal*, Oct. 20, 2023).

⁵⁶ Beville Decl. Ex. 17 (LTL Articles of Conversion to a Foreign Entity, dated Dec. 29, 2023).

⁵⁷ Beville Decl. Ex. 18 (Application for Reservation of an Entity Name, dated Dec. 19, 2023).

⁵⁸ Beville Decl. Ex. 20 (Transcript, Johnson & Johnson Enterprise Business Review, Dec. 5, 2023, at p. 53).

⁵⁹ *Id.*

⁶⁰ Beville Decl. Ex. 19 (“Johnson & Johnson to Pay \$700 Million to Settle Baby Powder Probe,” *Wall Street Journal*, Jan. 23, 2024).

B. J&J Launches a Campaign to Demonize Opponents

35. At the same time, J&J sought to marginalize the voices of those who led the opposition to J&J's first two failed bankruptcies. In early December, J&J filed applications in both the Talc MDL and in the analogous multi-county litigation in New Jersey ("MCL") to disqualify Andy Birchfield and Beasley Allen, claiming that Mr. Birchfield had "obtained privileged and confidential information" from one of J&J's former talc attorneys.⁶¹ J&J's filings – in no uncertain terms – sought to demonize Mr. Birchfield and blame him personally for the failure of J&J's first two bad faith bankruptcy filings, accusing Mr. Birchfield and his firm of elevating their own personal interests above those of their clients.⁶² Notably, launching personal attacks against perceived obstacles to J&J's talc strategy was not new. Months earlier, J&J had taken the unprecedented step of suing a medical doctor for defamation based on her publication of findings linking talc products to mesothelioma.⁶³ Not surprisingly, that case was dismissed at the pleadings stage.⁶⁴

36. The baseless attacks on Mr. Birchfield and his firm suffered a similar fate. Following multiple days of evidentiary hearings heard simultaneously by the MCL Judge and the Talc MDL magistrate judge, the MCL judge issued a written 31-page opinion denying J&J's motion. The court concluded that "J&J did not provide any credible evidence that Conlan [J&J's former

⁶¹ Beville Decl. Ex. 21 (MDL Dkt. 28760 (Defendants Johnson & Johnson and LTL Management LLC's Motion for an Order to Show Cause Why Andy Birchfield and Beasley Allen Should Not Be Disqualified from this Litigation or Removed from the Plaintiffs' Steering Committee)), at pp. 4-5 ("Lawyers representing a minority of plaintiffs . . . opposed LTL's bankruptcy, led by Andy Birchfield. Birchfield's opposition to LTL's proposed resolution was particularly ironic, insofar as his firm has lost every case it tried against LTL and its predecessors. Nonetheless, Birchfield took his opposition all the way to the Third Circuit and managed to defeat the bankruptcy plan, denying recovery to tens of thousands of talc plaintiffs who wanted to see the plan proceed.")

⁶² *Id.*

⁶³ Beville Decl. Ex. 22 (*LTL Mgmt. LLC v. Moline*, United States District Court for the District of New Jersey, [Dkt. No. 1] (Complaint, dated May 31, 2023)).

⁶⁴ Beville Decl. Ex. 23 (*LTL Mgmt. LLC v. Moline*, United States District Court for the District of New Jersey, [Dkt. No. 40] (Opinion, dated June 28, 2024)).

attorney] shared client confidences with Birchfield” and, further, that J&J did not present “any credible evidence to disqualify the Beasley Allen firm.”⁶⁵ In a separate ruling by the special master in the MDL that quashed a J&J subpoena for records probing Beasley Allen’s alleged use of litigation financing, the special master rejected the assertion that Mr. Birchfield’s and Beasley Allen’s opposition to J&J’s prior or current bankruptcy settlements are or were “irrational or arbitrary and capricious,” and found “no good cause exists to believe that Beasley Allen’s settlement position is motivated by any insidious reasons such as litigation financing or the prospect of a lucrative common benefit fee.”⁶⁶ Rather, the special master attributed opposition to J&J’s bankruptcy settlement to “drastically different views as to whether asbestos is present in defendants’ product,” views still unsettled by “decades of litigation, . . . continuing scientific debate, and the fact that thus far plaintiffs have overcome a *Daubert* challenge.”⁶⁷

37. Nevertheless, despite the baselessness of its charges, J&J continues its effort to deprive the very talc victims J&J says it wants to treat fairly and equitably from their chosen lawyers. For example, J&J repeatedly lambastes Beasley Allen in its calls with analysts—going so far to suggest that, this time, Mr. Birchfield and Beasley Allen are unlikely to pose any “impediment” to J&J’s bankruptcy strategy, because “there’s a really good chance he won’t be around much longer representing his claimants”⁶⁸ in light of J&J’s motion to disqualify – a motion

⁶⁵ Beville Decl. Ex. 24 (*In re Talc-Based Powder Product Litig.*, Case No. 300, MCL Dkt. No. ATL L 002468 15, July 19, 2024 [Decision], at pp. 31). The same day, the MDL magistrate judge entered a text order directing J&J to show cause why the same findings and result should not be entered in the MDL. *See* Beville Decl. Ex. 25 (MDL Dkt. No. 32984).

⁶⁶ Beville Decl. Ex. 26 (MDL Dkt No. 32926 [Special Master Order No. 25 (Addressing Three Motions to Quash and/or for Protective Order)], at pp. 11-12).

⁶⁷ *Id.*

⁶⁸ Beville Decl. Ex. 27 (Transcript, Johnson & Johnson Announces Plan by its Subsidiary, LLT Management, Conference Call, May 1, 2024), at p. 8.

which months later, was rejected and never had “a really good chance” of success.⁶⁹ Incredibly, on the same day this case was commenced, J&J filed a *second* motion in the MDL to disqualify Beasley Allen.⁷⁰ The Disclosure Statement and the *Debtor’s Statement Regarding Filing of Chapter 11 Case* double down on these baseless attacks.⁷¹

C. J&J Commences Dubious Prepetition Solicitation Process on a ‘Prepackaged’ Plan

38. On May 1, 2024, J&J made an official announcement that it would be embarking on a prepackaged bankruptcy strategy to resolve its talc products liabilities. The announcement was extraordinary for a number of reasons. First, J&J confirmed that its prepackaged bankruptcy strategy would not target all talc claims as in the past but rather, only a sub-class of talc claims, namely ovarian cancer claims. J&J made clear that both “personal injury lawsuits relate[d] to mesothelioma” and “[s]tate consumer protection claims will also be addressed outside the Plan.”⁷² Second, and in contrast to the typical pre-packaged bankruptcy reflecting an agreement amongst the debtor and a known and acknowledged capital structure to reorganize on universally agreed terms, here, J&J denied the existence of any valid claims against it and its subsidiaries. Rather, J&J not only “reiterate[d] that *none* of the talc-related claims against it have merit,” but then decried that all the claims are examples of “meritless litigation and extreme judgments obtained by the plaintiffs’ bar through forum shopping, the distortion of scientific literature with junk

⁶⁹ Beville Decl. Ex. 24 (*In re Talc-Based Powder Product Litig.*, Case No. 300, MCL Dkt. No. ATL L 002468-15, July 19, 2024 [Decision], at pp. 31). The same day, the MDL magistrate judge entered a text order directing J&J to show cause why the same findings and result should not be entered in the MDL. *See* Beville Decl. Ex. 25(MDL Dkt. No. 32984).

⁷⁰ *See* Beville Decl. Ex. 56 (Notice of Defendant Johnson & Johnson’s Second Motion to Remove Beasley Allen from the Plaintiffs’ Steering Committee (MDL Dkt. No. 33290).

⁷¹ Disclosure Statement, Dkt. No. 25-2 p. 16 (file stamped page 33 of 195); *Debtor’s Statement Regarding Filing of Chapter 11*, Case No. 24-90505, Dkt. No. 3.

⁷² Beville Decl. Exs. 27-(May 1, 2024 Conference Call Transcript Announcing Plan) and 28 (Johnson & Johnson Press Release (Johnson & Johnson Announces Plan by Its Subsidiary, LLT Management LLC, to Resolve All Current and Future Ovarian Cancer Talc Claims Through a Consensual ‘Prepackaged’ Reorganization, dated May 1, 2024).

science, and the unregulated and surreptitious financing of product litigation.”⁷³ Third, J&J confirmed the bankruptcy plan that it would be putting forward was intended to resolve *its* talc liabilities. Its announcement emphasized as a bolded heading that “the Plan enables the *Company* [defined as J&J] to resolve *its* talc litigation.”⁷⁴

39. The solicitation package that LLT disseminated on May 1, 2024 revealed that, while the target of J&J’s third bankruptcy was ovarian cancer cases, J&J solicited votes from a much wider population. The Disclosure Statement disclosed that, under the proposed Plan, all claimants in “Class 4 – Channeled Talc Personal Injury Claims” would be impaired and, thus, would be permitted to vote.⁷⁵ Channeled Talc Personal Injury Claims, however, were not limited to ovarian cancer claims. They included “*any manner of alleged bodily injury, death, sickness, disease, emotional distress, fear of cancer, medical monitoring, or any other alleged personal injuries (whether physical, emotional, or otherwise), directly or indirectly arising out of or in any way relating to the presence of or exposure to talc or talc-containing products,*” *except* claims for alleging “Mesothelioma or Lung Cancer,” claims asserted by “any governmental unit,” and claims alleging injury or death in Canada.⁷⁶

40. Accordingly, the “Official Plan Website” advertised that “[i]f you *believe* you are sick from using J&J products that contain talc, such as Johnson’s Baby Powder or Shower to Shower, you may be able to vote on a Plan that governs how claims will be paid,” caveat only that “Mesothelioma, lung cancer and Canadian claims are not part of the Plan.”⁷⁷ And its broadly published “Legal Notice” stated that “Johnson & Johnson and a subsidiary . . . have agreed to pay

⁷³ Beville Decl. Ex. 28 (May 1, 2024 Press Release (emphasis added)).

⁷⁴ *Id.* (emphasis added).

⁷⁵ Dkt. No. 25-2 p. 49 (file stamped page 66 of 195)

⁷⁶ Plan, at §§ 1.1.22 & 1.1.135 (emphasis added).

⁷⁷ Beville Decl. Ex. 29 (Official Plan Website).

approximately \$8 billion over 25 years to people who claim talcum powder products made them sick.”⁷⁸ Despite Mr. Murdica’s testimony that J&J had never paid a single gynecological, non-ovarian cancer claim, J&J solicited votes from such claimants. J&J’s strategy of proposing and advertising a plan to over-compensate people asserting previously non-compensable claims in order to induce their vote for a plan that would undercompensate compensable ovarian cancer claims has been widely reported.⁷⁹

41. Beyond the obvious attempt to stuff the ballot box, J&J’s solicitation package also revealed J&J’s unprecedented maneuver of soliciting votes to reorganize a debtor that, at the time of the solicitation, did not even exist and that, according to J&J, might never exist. After disclosing that LLT was soliciting votes on a Plan and that only “[i]f the Plan is approved by the requisite votes, . . . [the Debtor] Red River Talc LLC . . . will be created,” it continued to make clear that, even after a successful vote, “J&J retain[s] all rights to decide” whether to create Red River and file a bankruptcy petition.⁸⁰

D. J&J Delays Its Subsidiary’s Bankruptcy Filing to Target “No” Votes, While It Proceeds with Yet Another Divisional Merger

42. The solicitation materials established a voting deadline of July 26, 2024 (the “Voting Deadline”).⁸¹ “Once that [voting] process concludes,” J&J told the capital markets on July 17, 2024, “we plan to make a public announcement on the next steps regarding a prepackaged bankruptcy filing.”⁸²

⁷⁸ Beville Decl. Ex. 30 (Plan Publication Notice)

⁷⁹ Beville Decl. Ex. 31 (“J&J Allies with Mass-Tort Specialists to Seal \$8 Billion Talc Settlement,” *Wall Street Journal*, Jul. 23, 2024).

⁸⁰ Dkt 25-2 at pp. iii (file-stamped page 4 of 195), 30 (file-stamped page 47 of 195).

⁸¹ Beville Decl. Ex. 27 (Transcript, Johnson & Johnson Announces Plan by its Subsidiary, LLT Management, Conference Call, May 1, 2024) at p. 91.

⁸² Beville Decl. Ex. 47 (Transcript, Q2 2024 J&J Earnings Call, July 17, 2024), at p. 6.

43. But, in the weeks following the Voting Deadline, J&J did not make any “public announcement” regarding the results of the votes or its next steps toward a third bankruptcy filing. In fact, J&J held off certifying and announcing the results of its solicitation for over a month after the Voting Deadline, even though it undoubtedly knew the (disappointing) results.

44. On August 19, 2024, more than one month after the Voting Deadline, J&J undertook the corporate restructuring to create its new debtor entity. As a result, HoldCo became New HoldCo (a New Jersey corporation) that wholly owns both the newly-created Debtor entity, Red River Talc (a Texas limited liability company) that holds the so-called gynecological cancer talc liabilities, and Pecos River Talc (a Texas limited liability company) (“PRT”), a newly formed entity that holds other talc liabilities, including mesothelioma and the claims of states’ attorneys general.⁸³ Janssen Pharma owns 100% of the equity interests in New HoldCo, and New HoldCo owns 100% of the equity interests in each of the Debtor and PRT.⁸⁴

45. On August 23, 2024, J&J’s Worldwide Litigation Vice President, Mr. Haas, circulated a statement that J&J had agreed to “pause the certification timeline,” but, in “preparation to potentially pursue the Plan,” nonetheless had proceeded to “restructure[] its subsidiary, LLT Management, LLC (‘LLT’).”⁸⁵

46. During the “pause” in the voting certification process, J&J set out to pay more money in order to change “no” votes into “yes” votes for the Plan. On September 4, 2024, the *Wall Street Journal* reported that “[J&J] is expected to secure more votes in favor of its talc settlement plan

⁸³ See Red River First Day Declaration, ¶¶ 37-38.

⁸⁴ See Beville Decl. Ex. 32 (Certificate of Merger of J&J HoldCo (NA) LLC filed on August 19, 2024 at Document No. 1394129700002).

⁸⁵ Beville Decl Ex. 48 (Update on Plan Certification Timeline).

after increasing its offer to claimant,” “the company said.”⁸⁶ According to the company, by “increasing its offer by \$1 billion to roughly \$9 billion to compensate women who allege that the company’s talc baby powder caused them to develop gynecological cancer,” J&J had “won support from Allen Smith, a tort lawyer, who, along with another firm [identified as Beasley Allen], jointly represents roughly 12,000 claimants.”⁸⁷

47. The problem is that J&J has never considered Allen Smith as having the authority to vote for, much less to solicit votes from, 12,000 clients. In LTL 1.0 and LTL 2.0, LTL moved the bankruptcy court in each case for authority to “file a list of the top law firms with talc cases . . . in lieu of the 20 largest unsecured creditors, and for approval to provide notice of the bankruptcy proceedings to such *law firms*, rather than to the individual talc claimants.”⁸⁸ In each case, the bankruptcy court granted the motion, and LTL proceeded to serve filings in the case on the law firms in lieu of on the individual talc claimants.⁸⁹ In neither case did LTL recognize Smith as having any significant number of clients.⁹⁰ In contrast, in both cases, it recognized Beasley Allen

⁸⁶ Beville Decl. Ex. 49 (“Johnson & Johnson Wins Over Longtime Holdout for Talc Settlement,” *Wall Street Journal*, Sept. 4, 2024).

⁸⁷ *Id.*

⁸⁸ Beville Decl. Exs. 50 (*LTL 1.0 Main Case* Dkt. No. 7 (Debtor’s Motion for an Order: (I) Authorizing It to File a List of the Top Law Firms with Talc Cases Against the Debtor in Lieu of the List of the 20 Largest Unsecured Creditors; (II) Approving Certain Notice Procedures for Talc Claimants; and (III) Approving the Form and Manner of Notice of Commencement of this Case) & 51 (*LTL 2.0 Main Case* Dkt. No. 10 (Debtor’s Motion for an Order: (I) Authorizing It to File a List of the Top Law Firms with Talc Cases Against the Debtor in Lieu of the List of the 20 Largest Unsecured Creditors; (II) Approving Certain Notice Procedures for Talc Claimants; and (III) Approving the Form and Manner of Notice of Commencement of this Case).

⁸⁹ Beville Decl. Exs. 52 (*LTL 1.0 Main Case* Dkt. No. 321 (Order (I) Authorizing It to File a List of the Top Law Firms with Talc Cases Against the Debtor in Lieu of the List of the 20 Largest Unsecured Creditors; (II) Approving Certain Notice Procedures for Talc Claimants; and (III) Approving the Form and Manner of Notice of Commencement of this Case) & 53 (*LTL 2.0 Main Case* Dkt. No. 231 (Order: (I) Authorizing It to File a List of the Top Law Firms with Talc Cases Against the Debtor in Lieu of the List of the 20 Largest Unsecured Creditors; (II) Approving Certain Notice Procedures for Talc Claimants; and (III) Approving the Form and Manner of Notice of Commencement of this Case).

⁹⁰ But here, the Debtor seeks to include Smith in the list of “top law firms” to receive notice on behalf of ‘its’ talc claimants. *See Debtor's Emergency Motion for an Order: (I) Authorizing it to File a List of the Top Law Firms with Talc Claims Against the Debtor in Lieu of the List of the 20 Largest Unsecured Creditors; (II) Approving Certain Notice Procedures for Talc Claimants; (III) Authorizing the Debtor to Redact Certain Personally*

as being the law firm with thousands of cases who should receive notice on behalf of its clients.⁹¹ Consistently, in quashing J&J's subpoena in the Talc MDL to discover Mr. Smith's litigation funding arrangements, the Special Master noted that "[t]he Smith Law Firm is not counsel of record to any party in the litigation"; rather, a Beasley Allen partner is "Co-Lead Counsel" in the Talc MDL and "[a]nother partner, Andy Birchfield, Esquire, has taken a leadership role with respect to leadership issues."⁹²

48. Yet here, the Debtor seeks to imbue Smith with that authority. J&J entered into a *Confidential Memorandum of Understanding & Agreement Regarding Talc Bankruptcy Plan Support* with The Smith Law Firm PLLC that forms the basis for the Debtor to proclaim that "the substantial majority of the clients jointly represented by the Smith Firm and Beasley Allen have now voted to accept the Amended Plan."⁹³ With this dubious vote change, the Debtor now touts that over 83% of the claimants support the Amended Plan.⁹⁴

49. Ultimately, J&J now seeks, for the third time, to (mis)use the bankruptcy process to isolate and force an inequitable settlement on women suffering (or who have died) from ovarian cancer. J&J seeks both this Court's approval of its machinations to rid itself and its affiliates of their talc liability, and this Court's accelerated consideration and approval of an obfuscated prepetition solicitation process as the cornerstone of a "prepackaged" bankruptcy case. As

Identifiable Information; and (IV) Approving the Form and Manner of Notice of Commencement of this Case [Docket No. 21].

⁹¹ Beville Decl. Exs. 54 (*LTL 1.0 Main Case* Dkt. No. 728 (Schedules of Assets and Liabilities for LTL Management LLC) & 55 (*LTL 2.0 Main Case* Dkt. No. 450 (Schedules of Assets and Liabilities for LTL Management LLC))

⁹² Beville Decl. Ex. 26 (MDL Dkt No. 32926 (Special Master Order No. 25 (Addressing Three Motions to Quash and/or for Protective Order)), at pp. 2-3.

⁹³ *Debtor's Statement Regarding Filing of Chapter 11 Case*, Case No. 24-90505, Dkt. No. 3.

⁹⁴ *Id.*

explained in detail herein, this case did not arrive at the Court as a ready-to-confirm prepackaged plan. Treating it as such only serves to subvert the integrity of the Bankruptcy Code.

IV. What Happens Next?

50. As discussed above, expedited consideration of the Debtor's prepetition solicitation process and prepackaged plan is wholly inappropriate under the circumstances of this case. The Coalition respectfully asserts there are a number of fundamental issues that must be determined before the Court can properly consider approval of the prepetition solicitation process and confirmation of the Debtor's plan.

51. Among the fundamental considerations that this Court must address include the following:

- Venue. The Debtor's sole contact with the State of Texas is a result of J&J's use of the Texas divisive merger statute to isolate its tort liability. The Debtor is not conducting business within this jurisdiction. Conversely, J&J and most of the Debtor's other affiliates are located in New Jersey, as are the majority of pending cases the Debtor seeks to resolve through this Chapter 11 case. New Jersey is also the location of the Bankruptcy Court for the District Court of New Jersey, which has overseen the two prior bankruptcy cases and the Bankruptcy Court there is intimately familiar with the facts and players in the case. This case should not proceed before this Court if the chosen venue is not proper.
- Dismissal. On the heels of two bad faith dismissals of bankruptcy cases orchestrated by J&J, the Court must consider whether it is appropriate to allow this case to proceed even if venue is proper. This is especially true in light of the Supreme Court's ruling on the availability of non-debtor releases like those sought by J&J and the Debtor's other affiliates in this case and the efforts by Congress to enact a bill that prohibits the kind of bankruptcy filings orchestrated by J&J in this case and the two previous cases.
- Timing. Given the opposition to the plan and the issues raised with respect to the solicitation process for the Debtor's plan (before the Debtor existed) this case cannot be considered "prepackaged" for quick plan confirmation. As such, an expedited schedule is inappropriate and curbs due process.
- Voting Issues. Unlike most "prepack" bankruptcy cases, the potential claimants in this case—especially given claim definitions so broad that they are practically undefinable—are potentially innumerable. This is not a case in which the Court can assume that all potential claimants have had a reasonable opportunity to consider

the plan and its consequences. Moreover, with unsupported “vote changes”, the voting certification process is rife with discrepancies. As a result, the Court should consider whether the solicitation and voting certification processes were proper, and if so, whether the claims were properly weighted in the voting process, and whether a bar date and estimation proceedings are warranted.

- Discovery. Given the number of issues that have been raised regarding the solicitation and voting process that was *not* overseen by this Court, it would be reasonable for the Court to develop a schedule for proper discovery related to the myriad of issues before the Court.

52. The unprecedented and interwoven nature of the issues presented warrant a due and deliberative process. As J&J, through its newly formed affiliate, seeks the benefits of a bankruptcy, its claimants are entitled to the protections of bankruptcy.

Dated: Dallas, Texas
September 21, 2024

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CERTIFICATE OF SERVICE

I certify that on September 21, 2024, I caused a true and correct copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Peter C. D'Apice

Peter C. D'Apice