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In re: **LTL MANAGEMENT LLC,** [1] Debtor.	Chapter 11 Case No.: 23-12825 (MBK) Honorable Michael B. Kaplan

NOTICE OF MOTION OF THE OFFICIAL COMMITTEE OF TALC CLAIMANTS TO DISMISS SECOND BANKRUPTCY PETITION OF LTL MANAGEMENT, LLC

PLEASE TAKE NOTICE, that ***on May 22, 2023 at 10:00 a.m***, the undersigned, as local bankruptcy counsel for the Official Committee of Talc Claimants (the "Committee") of LTL Management LLC, ("LTL" or the "Debtor"), shall move before the Honorable Michael B. Kaplan, United States Bankruptcy Judge, at the United States Bankruptcy Court, for the District of New Jersey, Courthouse, 402 East State Street, Trenton, New Jersey 08608, seeking the entry of an order dismissing the Debtor's Chapter 11 case, and for such other relief that is just and proper.

PLEASE TAKE FURTHER NOTICE, that the undersigned shall rely upon the Motion filed herewith in support of the relief sought.

PLEASE TAKE FURTHER NOTICE, that oral argument is requested.

PLEASE TAKE FURTHER NOTICE, that no brief is being filed herewith since the legal basis upon which relief should be granted is set forth in the Motion.

PLEASE TAKE FURTHER NOTICE, that all objections must be in writing and filed no later than seven (7) days before the hearing with the Clerk of the United States Bankruptcy Court, for the District of New Jersey, Courthouse, 402 East State Street, Trenton, New Jersey

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

08608, and a copy thereof must simultaneously be served upon GENOVA BURNS, LLC., Attn: Daniel M. Stolz, Esq., 110 Allen Road, Suite 304, Basking Ridge, New Jersey 07920.

Respectfully submitted,

GENOVA BURNS, LLC

By: */s/ Daniel M. Stolz* .

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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LTL MANAGEMENT, LLC,[1]	Case No.: 23-12825 (MBK)
Debtor.	Honorable Michael B. Kaplan

MOTION OF THE OFFICIAL COMMITTEE OF TALC CLAIMANTS TO DISMISS
THE SECOND BANKRUPTCY PETITION OF LTL MANAGEMENT, LLC

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

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The Official Committee of Talc Claimants ("TCC") in the above captioned case, by and through its undersigned counsel, hereby submits this Motion to Dismiss the Second Bankruptcy Petition of LTL Management, LLC (the "Debtor" or "LTL") for cause, pursuant to Section 1112(b) of the Bankruptcy Code and Rule 9011 of the Bankruptcy Rules.

INTRODUCTION

On April 20, 2023, this Court recognized that, "with regard to the anticipated motion to dismiss," LTL "has an uphill battle."[1] Although declining to sua sponte dismiss this second bankruptcy ("LTL 2.0"), the Court expressed significant skepticism that LTL could show that it is in financial distress, recognizing that LTL bears the burden to make "a well-supported and timely showing . . . that this reorganization has a meaningful chance."[2] The Third Circuit has clearly stated the burden LTL faces: "Once at issue, the burden to establish good faith is on the debtor." *LTL Mgmt., LLC v. Those Parties Listed on Appendix A to Complaint et al. (In re LTL Mgmt., LLC)*, 64 F.4th 84, 100 (3d Cir. 2023) (amended opinion). LTL bears the burden to show that it ***is*** in financial distress, and such financial distress "must be ***immediate*** enough to justify a filing." *Id.* at 102 (emphasis added). It is not the TCC's burden to prove that there is no scenario that could result in LTL's financial distress. LTL has the incontrovertible burden to establish good faith, and therefore financial distress. It cannot.

At the April 18 Hearing, LTL continued to offer its canard that all the machinations between January 30 and April 4 were intended to address and comply with the Third Circuit's opinion. Yet LTL has failed to and cannot overcome the Third Circuit's explanation for LTL's lack of financial distress: "LTL did not have any likely need in the present or the near-term, or

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1 *See* Exhibit 1 attached to the Declaration of Daniel M. Stolz filed herewith ("Ex."), at 9:8-10 (Apr. 20, 2023 Hearing Tr.).

2 *Id.*, at 9:22-23.

even in the long-term, to exhaust its funding rights to pay talc liabilities." *Id.* at 108. Mr. Kim testified, answering questions from his own lawyer, that "we believe that we have sufficient funds to meet the liability" but that there was "financial distress because of the magnitude of the liability."[3] But that is not the test. The Third Circuit never conditioned distress on the magnitude of the liability, but rather whether the particular debtor seeking Chapter 11 protection "was highly solvent"—conceded by LTL—"with access to cash to meet comfortably its liabilities as they [come] due for the foreseeable future." 64 F.4th at 108. And as LTL's counsel freely admitted on April 18: "The value of the funding agreement is equal to the amount of the liability . . . LTL was of the view that under the first funding agreement, it had sufficient resources to cover its talc liability. It feels the exact same way under the second funding agreement."[4] That is not financial distress.

At both hearings in this case, LTL presented this Court with slide after slide about how the "tort system has failed the plaintiffs," how that system results in "lottery-like jury verdicts," and (after the Court asked about taking "into account these [defense] verdicts and potential settlements in calculating distress") how much it costs to defend these cases.[5] Other than a casual mention by LTL's litigation counsel of a $190 billion figure that was specifically rejected by the Third Circuit, 64 F.4th at 107, LTL failed to present this Court with any meaningful analysis of the potential talc liabilities. [redacted] Incredibly, again answering

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3 Ex. 2, at 180:20-23 (Apr. 18, 2023 Hearing Tr.).

4 *Id.* at 212:3-12. Mr. Dickinson, LTL's CFO, similarly testified at deposition that he could not "identify any financial consequence to LTL from terminating the 2021 Funding Agreement." Ex. 3, at 136:21-25 (Apr. 17, 2023 Dickinson Dep. Tr.).

5 Ex. 2, at 251:9-254:5 (Apr. 18, 2023 Hearing Tr.).
[redacted]

his own lawyer's question "on whether or not the liability changed under funding agreement one and funding agreement two," Mr. Kim answered that "[t]he talc liability is enormous. We don't have an aggregate number for it, but it is, you know, huge."[7] Mr. Dickinson, LTL's CFO, testified that after the Third Circuit decision on January 30, he was not aware of any evaluation by LTL as to how much money it would take to fund a return to litigating talc claims in the tort system over the following twelve months or even three years.[8] After the Third Circuit took LTL to task for failing to analyze its talc liability sufficiently before coming to this Court for bankruptcy protection, what did it (or its corporate parent Johnson & Johnson, Inc. ("J&J")) do to fix that fatal defect for this new filing? Nothing.

After weeks of planning this second bankruptcy, after days of depositions, and after hours of examination of LTL's primary corporate witness, what has LTL actually established? That it has long-term contingent and unliquidated liability—which it is unable to calculate—and that it has sufficient funds to meet that liability. Despite every opportunity, LTL failed to present to this Court even the most summary evidence that it cannot meet its liabilities as they come due for the foreseeable future. LTL instead raised the specter of the possibility of some undefined hypothetical future financial distress that might occur in a worst-case scenario (for LTL), and then tried to shift the burden to the TCC to establish that there was no possible or conceivable scenario under which LTL could be in financial distress. The TCC is not seeking the protection of the bankruptcy system, LTL is. LTL bears the burden to establish that it is in financial distress. It has not, will not, and cannot carry that burden. This case must be dismissed.

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7 Ex. 2, at 180:4-12 (Apr. 18, 2023 Hearing Tr.).

8 Ex. 3, at 162:21-163:23 (Apr. 17, 2023 Dickinson Dep. Tr.).

Even though LTL is not in financial distress, LTL plainly realized that under the controlling Third Circuit decision, it would have to feign financial distress in order to try to once again take advantage of the bankruptcy system. After all, as the Third Circuit opined: "Our ground for dismissal is LTL's lack of financial distress." 64 F.4th at 110. This Court has recognized that financial distress is a threshold issue, holding on April 20 that the "Third Circuit now has made clear that it views the gateway to good faith being a determination that a debtor is in financial distress."[9] This threshold issue trumps any desire by LTL and J&J to resolve its talc liability through the bankruptcy system, no matter how strong "J&J's belief that this bankruptcy creates the best of all possible worlds." 64 F.4th at 111. As the Third Circuit continued, the requirement for financial distress is a "safeguard," necessary to ensure that the talc claimants' "chance to prove to a jury of their peers injuries claimed to be caused by a consumer product [is] disrupted only when necessary." *Id*.

So, although the Third Circuit found that it could not "currently see how its lack of financial distress could be overcome," *id*. at 110, LTL continued its burden-flipping exercise and tried to find a way to become financially distressed so that it could use the bankruptcy system to resolve mass tort liabilities. LTL's legerdemain took two forms, one on the liability side and one on the asset side. On the liability side, there is the specter of thousands of new claimants, based on its purported Plan Support Agreements with a number of new law firms that just happened to come out of the woodwork when LTL needed them the most. The TCC, represented by lawyers who have decades of collective experience in significant mass tort cases, including the lawyers leading the Multidistrict Litigation (the "MDL") concerning this very talc liability, is well-positioned to see through LTL's sleight-of-hand: To try to create the impression of broadened support for a

9 Ex. 1, 6:14-16 (April 20, 2023 Hearing Tr.).

plan, LTL broadened the definition of harm from only those certain subtypes of epithelial ovarian cancer that form the basis of compensable and scientifically based claims under the *Daubert* decision in the MDL, to instead include claimants with generic "gynecological" cancers for which there is no evidence supporting a scientific causal connection with the use of talcum powder.[10] Tellingly, LTL has admitted that it has not done a detailed analysis of the validity of these claims. Instead, LTL hopes to use these highly suspect claims to stack the deck with purported support for rushing through a reorganization plan, despite having failed to meet the good faith standard required to seek any relief in this Court.

Even so, this Court should not be drawn into sitting as an alternate trial court in judgment of these supposed potential unfiled claims. The question for this Court, sitting in bankruptcy, is whether the actual or even forecasted liability caused by all these new alleged potential unfiled claims puts LTL in financial distress, as this Court stated in its April 20 ruling. And the burden for establishing that financial distress is on LTL. Yet, LTL was unable (or unwilling) to even make an estimate for such liability when it decided to file LTL 2.0. LTL instead buried its head in the sand and refused to perform even an internal analysis to present to its own Board, and Mr. Kim admitted that he did not know the scope of the talc liabilities.[11] LTL's Board knew it did not have an estimate for these liabilities, refused to do the work to find out, and filed this bankruptcy anyway.[12]

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10 For example, uterine cancer, vaginal cancer, cervical cancer, or vulvar cancer. Notably, neither J&J nor LTL appealed the Daubert decision in the MDL. *In re Johnson & Johnson Talcum Powder Prod. Mktg., Sales Pracs. & Prod. Litig.*, 509 F. Supp. 3d 116, 181 (D.N.J. 2020).

11 Ex. 2, at 180:4-12 (Apr. 18, 2023 Hearing Tr.).

12 LTL's litigation counsel did, however, spend substantial time at the April 11 and April 18 hearings boasting of its record of wining trials, which this Court noted weighs against finding distress. Ex. 2, at 253:12-15 (Apr. 18, 2023 Hearing Tr.).

That left LTL with only one choice—a bald attempt to manufacture financial distress by stripping LTL of its largest asset (the 2021 Funding Agreement) and cooking up the largest intentional fraudulent transfer in United States history. On March 16, while still waiting for the Third Circuit to rule on its petition for rehearing and while still in bankruptcy with fiduciary duties to talc claimants, LTL's Board met to discuss [redacted] In order to manufacture distress, LTL sought a new funding agreement, which in its counsel's words were because the original "funding agreement had the exact opposite effect of what it was intended to do."[15] At some point, LTL also had to abandon the existing, highly valuable 2021 Funding Agreement, which rightly created for this Court "a very concerning question regarding th[e] loss of value."[16] LTL's excuse, about which the Court heard lengthy testimony on April 18, was that the 2021 Funding Agreement was rendered "void or voidable" (LTL never said which) by the Third Circuit opinion announced on January 30.

Absent from the Board minutes of that March 16 meeting, though, is [redacted] On March 28, after rehearing had been denied by the Third Circuit and while LTL's motion to stay the mandate was pending, LTL's Board met again to discuss [redacted] On April 2, after the stay had been denied and the Third Circuit mandate issued,

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13 LTL did not produce any board minutes to the TCC for meetings between January 30 and March 16, 2023. [redacted]

15 Ex. 2, at 209:3-4 (Apr. 18, 2023 Hearing Tr.).

16 Ex. 1, at 8:20-23 (Apr. 20, 2023 Hearing Tr.). [redacted]

LTL's Board met one more time while still in the LTL 1.0 bankruptcy [redacted] And yet, when Mr. Kim was asked for details about the discussion about how it was ***decided*** that the 2021 Funding Agreement was "void or voidable," Mr. Kim and his lawyers hid behind the privilege, what his attorney characterized as "discussions about a legal issue [] between lawyers."[19] This Court should recognize "void or voidable" for what it is—a post-hoc pretext cooked up by LTL's lawyers as a last-minute excuse to manufacture financial distress and justify "the potentially largest fraudulent transfer undertaken in history."[20] Indeed, had LTL (or J&J) actually thought the 2021 Funding Agreement was void or voidable, it could have sought a ruling from this Court on its validity. As Mr. Kim admitted, LTL sought no such ruling.[21]

The Third Circuit foresaw LTL's strategy and expressly warned that such a tactic might be avoidable as a fraudulent transfer. 64 F.4th at 109 n.18. Despite LTL's attempts to justify abandoning its most valuable asset (without first seeking approval from this Court while a debtor in possession) under its "void or voidable" theory, its pretext simply cannot withstand scrutiny. LTL had access to the ATM-like funding in the 2021 Funding Agreement whether inside and outside bankruptcy, and as LTL previously told this Court, even in the event of a dismissal of LTL 1.0. The implications for LTL's "void or voidable" pretext are stunning, as the 2021 Funding

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[redacted]

19 Ex. 2, at 68:3-70:3 (April 18, 2023 Hearing Tr.).

20 Ex. 1, at 9:12-13 (Apr. 20, 2023 Hearing Tr.).

21 Ex. 2, at 101:16-21 (Apr. 18, 2023 Hearing Tr.).

Agreement was the consideration LTL received in exchange for assuming the talc liability. By voiding one part of a "single integrated transaction"[22] that made up the divisive merger, LTL may have created a justification to pierce its own corporate veil on the grounds that voiding one part of an integrated transaction voids the entire transaction.

LTL argues that claimants should be allowed to decide for themselves how to resolve their claims and submits that some would prefer to settle on J&J's terms. But LTL is not entitled to propose a plan for a vote unless LTL qualifies for bankruptcy protection. Moreover, no one is preventing LTL or J&J (a non-debtor) from resolving cases with willing claimants through voluntary settlements. After LTL 1.0 was dismissed, LTL was free to settle with any claimants who wanted to do so. Instead, LTL is trying to abuse the bankruptcy system to force a resolution on claimants who do not want to settle on the terms offered by J&J. J&J is seeking to use bankruptcy to cram down its proposal on nonconsenting claimants. That attempt is illegitimate and unlawful.[23]

This abusive second bankruptcy cannot be allowed to continue. Even with the purported reduction of available funding in the 2023 Funding Agreement, LTL cannot carry its burden to show that it is in financial distress, which the Third Circuit and this Court on April 20 recognized is a "gateway" issue. Nor can the change from the 2021 to the 2023 Funding Agreement be any basis for finding financial distress and good faith. Not only will such an obvious fraudulent

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22 A phrase used by LTL to describe the transaction as late as March 22, 2023, in a brief to the Third Circuit, well after LTL had allegedly decided by "consensus" with J&J that the 2021 Funding Agreement was "void or voidable." Ex. 9, at 14 (Motion to Stay Mandate, Doc. No. 173, Case No. 22-2003 (3d Cir. filed Mar. 22, 2023)).

23 Even if, *arguendo*, this case is not dismissed, the TCC submits that LTL's intended proposal (as currently described) cannot satisfy 11 U.S.C. § 1129(a)(7). The value a trustee would recover from reinstatement of the 2021 Funding Agreement will provide more value to creditors—who in a Chapter 7 liquidation would also retain the value of their claims against solvent non-debtors—than the collusive scheme proposed by LTL and its corporate parent. Further, the best interests test cannot be waived by proceeding under § 524(g), nor can creditors' rights to pursue claims against solvent third parties (like J&J) be extinguished by such a plan. LTL is nowhere close to a consensual or confirmable plan of reorganization.

transfer eventually be reversed, but it would be perverse for fraud and breach of fiduciary duty to provide a basis for good faith. Perhaps most significantly, LTL's latest petition is an abuse of the bankruptcy system and an affront to our justice system, created to further a massive corporation seeking a litigation advantage over victims harmed by its own products. Talc claimants have already been forced to endure an 18-month delay that the Third Circuit has now authoritatively established was impermissible. The claimants have waited long enough. Hundreds died during the Debtor's first bankruptcy without receiving fair compensation or their day in court. And, because of LTL's renewed abuse, that tragedy will continue. LTL's fraudulent conduct cannot be rewarded with another 18 months in bankruptcy while talc victims continue to suffer and die. The TCC therefore respectfully requests that LTL's second bankruptcy petition be dismissed.

BACKGROUND

A. The 2021 Funding Agreement

In LTL 1.0, LTL repeatedly touted to this Court the protections afforded claimants by the 2021 Funding Agreement. In opposing the motion to dismiss, for example, Mr. Gordon told this Court that LTL 1.0 was "different from all other cases in the sense that it includes also a Johnson & Johnson, the ultimate parent, agreeing to obligate itself to the extent of the value of Old JJCI. So you have basically two sources of asset availability."[24] In fact, according to Mr. Gordon, "the whole idea with these funding agreements… [is] to basically to be able to say to the Court, to say to the parties, look, you haven't been hurt because the entity that was standing behind or the value of assets that were effectively standing behind the liability or were available to pay the liability, that value is fully preserved through that funding agreement. So that was [] fully preserved. The

[24] Ex. 10, at 56:1-8 (Feb. 18, 2022 Hearing Tr.).

only difference is that instead of having the company there, you have a funding agreement that provides direct right to those assets through this funding agreement."[25]

Mr. Gordon told this Court, in the presence of Mr. Haas, J&J's head of worldwide litigation, that the 2021 Funding Agreement applied outside of bankruptcy and would continue to apply even if the bankruptcy case were dismissed. He explained that "there's literally no conditions or any material conditions on the permitted uses under this document," and he expressly included "funds available to pay settlements, to pay judgments in the tort system. So it makes it very clear this is what we're talking about if there's no proceeding in bankruptcy. Whether there was no case filed or ***whether the case is filed or dismissed***, the money's available for that purpose…. So this is there to protect the claimants. ***It's there to assure this isn't treated or consider a fraudulent conveyance***. The idea was and the intent was the claimants are covered either way in bankruptcy or outside."[26] And Mr. Gordon told this Court after the Third Circuit ruled, again in the presence of Mr. Haas, that dismissal was a "reasonably foreseeable" event and that LTL understood that its case "might [be] dismiss[ed] at some point."[27]

Indeed, the terms of the 2021 Funding Agreement expressly provide that it applies outside bankruptcy and enables "the payment of any and all costs and expenses of the Payee incurred in the normal course of its business," such as talc judgments and settlements, "***at any time when there is no proceeding under the Bankruptcy Code*** pending with respect to the Payee."[28] Mr. Kim reassured this Court that the 2021 Funding Agreement applied outside bankruptcy.[29] Mr.

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25 *Id.*, at 59:7-16.

26 *Id.*, at 60:16-20, 61:5-20 (emphases added).

27 Ex. 2, at 209:14:210-5 (Apr. 18, 2023 Hearing Tr.).

28 Ex. 11, at 5 (2021 Funding Agreement) (emphasis added).

29 *See* Ex. 12 ¶ 27 (2021 First Day Declaration of John Kim ("Kim Decl. I")) ("Significantly, the Funding Agreement imposes no repayment obligation on the Debtor; it is not a loan. ***It obligates New JJCI and J&J, on a joint and***

Kim reiterated under oath, in deposition and at the April 18 hearing, that the 2021 Funding Agreement applied outside of bankruptcy.[30]

Accordingly, this Court found that the 2021 Funding Agreement obligated New JJCI and J&J "to pay for costs and expenses of the Debtor incurred in the normal course of its business (a) at any time ***when there is no bankruptcy case***" and "requires New JJCI and J&J to, up to the full value of New JJCI, fund amounts necessary (a) to satisfy the Debtor's talc-related liabilities at any time when ***there is no bankruptcy case***." *In re LTL Mgmt.*, 637 B.R. 396, 423 n.27 (Bankr. D.N.J. 2022) (emphasis added).

Mr. Katyal, LTL's appellate counsel, told the Third Circuit that the 2021 Funding Agreement applied outside bankruptcy, and Judge Ambro agreed.[31] Relying on the plain language of the Funding Agreement, as well as this Court's findings and LTL's representations, the Third Circuit concluded that LTL "had the right, outside of bankruptcy, to [enforce the Funding Agreement]." 64 F.4th at 106. The Third Circuit also pointed to the benefit to claimants of New JJCI's role in the Funding Agreement: "The value of the payment right could not drop below a floor defined as the value of New Consumer measured as of the time of the divisional merger, estimated by LTL at $61.5 billion, and was subject to increase as the value of New Consumer

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several basis, to provide funding, up to the full value of New JJCI, to pay for costs and expenses of the Debtor incurred in the normal course of its business (a) at any time when there is no bankruptcy case and (b) during the pendency of any chapter 11 case, including the costs of administering the chapter 11 case, in both situations to the extent that any cash distributions received by the Debtor from Royalty A&M are insufficient to pay such costs and expenses. ***In addition, the Funding Agreement requires New JJCI and J&J to, up to the full value of New JJCI, fund amounts necessary (a) to satisfy the Debtor's talc-related liabilities at any time when there is no bankruptcy case*** and (b) in the event of a chapter 11 filing, to provide the funding for a trust, in both situations to the extent that any cash distributions received by the Debtor from Royalty A&M are insufficient to pay such costs and expenses and further, in the case of the funding of a trust, the Debtor's other assets are insufficient to provide that funding.)) (emphasis added).

30 Ex. 13, at 62:15-21, 182:10-17 (April 14, 2023 Kim Dep. Tr.); Ex. 2, at 61:7-14 (April 18, 2023 Hearing Tr.).

31 *See*, *e.g.*, Ex. 14, at 83:21-25 (Sept. 19, 2022 Third Circuit Oral Arg. Tr.) ("Mr. Katyal: Now you had asked before, Your Honor, I just have to slightly correct something. I understand that the funding agreement does have provisions for funding outside of bankruptcy. The Court: Yeah, that's what I thought.").

increased after it." *Id.* at 97. Thus, the value of the Funding Agreement "would increase as the value of New Consumer's business and assets increased." *Id.* at 106. In addition, New JJCI "had access to Old Consumer's cash-flowing brands and products along with the profits they produced, which underpinned the $61.5 billion enterprise value of New Consumer as of LTL's filing. And the sales and adjusted income of the consumer health business showed steady growth in the last several years when talc costs were excluded." *Id.*

B. J&J and LTL Machinations Starting in January 2023

Starting in January 2023, however, both J&J and LTL took steps to significantly prejudice claimants, during the pendency of LTL 1.0, at a time when LTL as a Chapter 11 debtor-in-possession owed the claimants a fiduciary duty, *see In re Marvel Entm't Grp., Inc.*, 140 F.3d 463, 471 (3d Cir. 1998), and owed legal obligations to both the U.S. Trustee's Office and this Court. J&J and LTL did not disclose their actions to the Official Committee in existence at the time (similar to this TCC), to the U.S. Trustee's Office, or to this Court.

First, in early January 2023, New JJCI, renamed HoldCo, transferred its consumer health business to its parent entity.[32] Mr. Kim acknowledged, "[a]s a result" of the transfer of the consumer health business, "HoldCo's assets, which were prior to this filing (and are) available through the 2023 Funding Agreement, no longer include the consumer health business."[33] As a result of the transfer, claimants lost the benefit of what the Third Circuit described as the "cash-flowing brands and products along with the profits they produced," as well as the benefit of the appreciation in value of the consumer business. 64 F.4th at 106.

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32 Kim Declaration [Doc. No. 4] (the "Kim Decl. II") ¶ 26.
33 *Id.* ¶ 83.

Instead, HoldCo's assets are limited to $400 million in cash[34] and ownership interests in various other companies, [35] which LTL values at approximately $30 billion.[36] In addition, LTL has cash on hand of $15.78 million,[37] and Royalty A&M,[38] which owns a portfolio of royalty streams deriving from consumer brands and is valued by LTL at approximately $402 million.[39]

Second, LTL and J&J witnesses have also testified in deposition and in this Court as to how and when they allegedly concluded that the 2021 Funding Agreement was "void or voidable" (although never specifying which). Mr. Kim testified that on the very day the Third Circuit decision issued, he came up with the idea in his head that the 2021 Funding Agreement might be deemed "void or voidable," and LTL began discussing "whether we should be refiling for bankruptcy."[40] [redacted] And Mr. Dickinson, LTL's CFO, testified that no business person at J&J or JJCI ever told him that they believed the 2021 Funding Agreement was void, voidable, or unenforceable.[42] Mr. Kim acknowledged that no business person at J&J reached out to him to say that J&J would refuse to honor the Funding

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34 Kim Decl. II ¶ 28.

35 Ex. 15, at 10 (February 2023 Monthly Operating Report, Case No. 21-30589-MBK, Doc. No. 3886-1 (Mar. 21, 2023) (the "Feb. 2023 MOR")).

36 Ex. 13, at 68:3-6 (April 14, 2023 Kim Dep. Tr.).

37 Ex. 15, at 4 (Feb. 2023 MOR).

38 Kim Decl. II ¶ 27.

39 Ex. 15, at 10 (Feb. 2023 MOR).

40 Ex. 13, at 74:23-75:10, 76:3-13; 77:2-18, 82:11-23 (Apr. 14, 2023 Kim Dep. Tr.). [redacted]

42 Ex. 3, at 151:17-21, 152:15-22 (Apr. 17, 2023 Dickinson Dep. Tr.).

Agreement.[43] J&J never refused to pay anything due under the Funding Agreement.[44] And as noted above, LTL understood that LTL 1.0 might be dismissed.[45]

Mr. Kim testified that there were "discussions" with J&J about whether the 2021 Funding Agreement was voidable.[49] All discussions were through counsel.[50] Mr. Kim testified that "there are various legal theories behind it, but that frustrated the purposes of the funding agreement and rendered it void or voidable."[51] According to Mr. Kim, "the law firms that we've discussed this with" (citing Jones Day and Hogan Lovells) agreed that "the Third Circuit decision" "was

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43 Ex. 13, at 209:9-210:18 (Apr. 14, 2023 Kim Dep. Tr.); Ex. 2, at 75:8-15 (Apr. 18, 2023 Hearing Tr.).

44 Ex. 13, at 207:7-14. (Apr. 14, 2023 Kim Dep. Tr.).

45 *See supra* n.27 and accompanying text.

49 Ex. 13, at 188:19-190:3, 190:12-20, 191:5-8 (April 14, 2023 Kim Dep. Tr.).

50 *Id.* at 207:17-23.

51 *Id.* at 78:16-18.

something that no one would have -- ·could have anticipated."[52] Mr. Kim testified that a "consensus" was reached between LTL and J&J "through their lawyers," all of whom were being paid by J&J, to void the 2021 Funding Agreement,[53] and that it never occurred to him to see if one of the other counterparties thought the agreement was void or voidable.[54]

Although Mr. Kim directly and repeatedly put legal advice concerning enforceability at issue, as reflected above, LTL has not produced a single supporting legal memorandum explaining why or how the Third Circuit's ruling suddenly meant that LTL had no access to funding under the 2021 Funding Agreement to pay billions in talc liabilities allocated to it, even though the 2021 Funding Agreement expressly provides for funding outside of bankruptcy to pay talc liabilities. Nor has LTL produced a single contemporaneous non-privileged document before April 2—just two days before the filing of LTL 2.0—demonstrating consideration of the enforceability issue.

LTL also never raised with the TCC, the U.S. Trustee's Office, this Court, or the Third Circuit (in its numerous post-decision appellate motions) its concern that the 2021 Funding Agreement might be "void or voidable." Indeed, on March 21, 2023, LTL filed a monthly operating report, signed by LTL's CFO and its counsel, which indicated the 2021 funding agreement remained in place.[55] Yet during this time, prior to the dismissal of LTL 1.0, LTL embarked on a scheme to evade the Third Circuit's decision and re-file for bankruptcy. It prepared to terminate the 2021 Funding Agreement and replace it with new financing agreements (the 2023 Funding Agreement and J&J Support Agreement) in order to manufacture (purported) financial

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52 *Id.* at 78:6-10, 78:25-79:2.

53 *Id.*, at 189:13-190:3, 191:5-8. The collusion is further evidenced by Mr. Kim's lawyers instructing him not to answer questions about J&J's views on the funding agreement because of a "common interest privilege," even though LTL and J&J were counterparties to the transaction at issue. *Id*. at 83:14-25.

54 *Id*. at 85:23-86:3.

55 Ex. 15, at 2 (Feb. 2023 MOR).

distress. Under the new agreements, "J&J's balance sheet [is] not available to the Debtor," and "HoldCo's [formerly New JJCI's] assets … no longer include the consumer health business."[56] The LTL Board approved this transaction during the pendency of LTL 1.0, while LTL's directors, officers and counsel owed fiduciary duties to the talc victims.

[redacted] At the First Day Hearing in this case, LTL's counsel candidly admitted that the "purpose of the filing remains the same."[59] [redacted]

C. LTL's Attempt to Create the Illusion of Support for its Second Filing

Part of Debtor's scheme was to create an illusion of claimant support for the new bankruptcy filing. Mr. Kim testified that "with the assistance of the mediators," J&J's outside counsel Mr. Murdica engaged in negotiations during the pendency of LTL 1.0 with "various plaintiff law firms" over Plan Support Agreements (PSAs) and an attached term sheet to be used in a second bankruptcy filing.[61] The PSA template was dated March 21 and was signed by plaintiff

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56 Kim Decl. II ¶ 83. [redacted]

59 Ex. 17, at 7:25 (April 11, 2023 Hearing Tr.). [redacted]

61 Kim Decl. II ¶ 72.

law firms at different times.[62] For example, the Johnson firm signed a PSA on March 21,[63] and the Slater, Slater & Schulman firm signed on March 27[64] – all during the pendency of LTL 1.0. Although LTL was a party to the PSAs signed by plaintiff law firms, Mr. Kim testified that [redacted] Mr. Kim described LTL as "***faceless***" in the process of negotiating PSAs.[66]

J&J and LTL publicly announced that they had secured commitments from ***claimants themselves*** to support the second bankruptcy. For example, on the day LTL filed the second bankruptcy, J&J issued an 8-K stating that LTL "has secured commitments from over 60,000 current ***claimants*** to support a global resolution on these terms."[67] LTL's counsel stated at the First Day Hearing that the second filing is "supported by over ***60,000 claimants who have signed and delivered*** plan support agreements."[68] LTL and J&J's litigation counsel was quoted in the press as saying that the re-filing is "currently supported by roughly 70,000 claimants ***and*** numerous plaintiff law firms."[69] Mr. Kim testified that LTL had "an agreement with ***thousands of claimants.***"[70]

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62 Ex. 2, at 108:19-109:5 (Apr. 18, 2023 Hearing Tr.).

63 *Id*. at 107:25-108:23.

64 *Id*. at 108:24-109:2.

[redacted]

66 Ex. 2, at 151:25 (Apr. 18, 2023 Hearing Tr.).

67 Ex. 18 (J&J 8-K of April 4, 2023) (emphasis added).

68 Ex. 17, at 26:9-10 (April 11, 2023 Hearing Tr.) (emphasis added).

69 "J&J Begins 'Audacious' Return to Failed Cancer Settlement Tactic," Bloomberg Law (April 5, 2023) (emphasis added).

70 Kim Decl. II ¶ 72 (emphasis added).

Yet the truth is that ***not a single claimant*** has signed a plan support agreement. [redacted]

Moreover, the evidence shows that the "60,000" figure cited by Debtor is unreliable. The vast majority of these claims are unfiled cases, many of which have only recently been acquired. Mr. Watts, for example, testified that he had acquired 16,925 unfiled cases since LTL 1.0 was filed, through advertising and referrals from other firms.[76] [redacted] Certain of the settling law firms are strangers to the MDL or other consolidated

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[redacted]

[76] *Id.* at 25:19-26:3, 130:22-132:15. [redacted]

litigation and have never filed a talc-related lawsuit against J&J. [redacted] Nor did anyone seem to care whether the putative claimant even had the disease recognized by the *Daubert* ruling in the MDL Court. [redacted] Mr. Kim testified that he did not know whether the list contained duplications.[84]

Tellingly, Mr. Murdica sought to stack the voting deck by expanding the definition of ovarian cancer to include non-ovarian "gynecological" cancers,[85] resulting in potential inclusion of thousands of claims which could never be proven. Judge Wolfson's *Daubert* decision limited the scientifically supported claims not to "gynecological cancers" generally or even to ovarian cancer generally, but to ***epithelial ovarian*** cases specifically. *See In re Johnson & Johnson Talcum*

[redacted]

84 Ex. 2, at 60:16-23 (April 18, 2023 Hearing Tr.).

85 Ex. 21 at 54:14-18 (April 16, 2023 Murdica Dep. Tr.).

Powder Products Marketing, Sales Practices and Products Litigation, 509 F. Supp. 3d 116, 181 (D.N.J. Apr. 27, 2020) ("The testimony of Plaintiffs' experts demonstrates that their opinions rest on good grounds and considered scientific evidence to conclude that the association is specific to ovarian cancer. The experts do not opine as to any link between talc use and any other genital cancer. Their findings are limited to epithelial ovarian cancer.").

The U.S. Trustee's Office cast doubt on LTL's claimed numbers at the First Day Hearing on April 11, wondering how these numbers could be accurate based on the U.S. Trustee's calculations.[87] "Your Honor, I don't know how the math works out. I really don't. . . . Where are these claimants coming from and who are these claimants? Because we just can't reconcile them with the numbers that we had that we were discussing and that were in front of us in the first case. And I can't reconcile some of the statements with things that I know about from the *Imerys* case."[88]

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87 Ex. 17, at 103:5-23 (April 11, 2023 Hearing Tr.).

88 *Id*. at 102:5-22. LTL also apparently attempted to manipulate the composition of the TCC in LTL 2.0 by deleting, from its submitted list of the top 30 law firms with talc claims, law firms with members who had served on the TCC in LTL 1.0. LTL added to that list firms with unverified numbers of unfiled claims. Ex. 13, at 26:5-31:15, 34:24-38:10, 46:17-47:7 (Apr. 14, 2023 Kim Dep. Tr.); Ex. 2 at 43:14-48:18 (April 18, 2023 Hearing Tr.). At the First Day hearing, the U.S. Trustee's Office called the Court's attention to the Debtor's list of top 30 law firms. The U.S. Trustee's Office noted that "there is some inconsistency here, Your Honor, in what got put on the top list in the first case and what's even on the 18 list here for the second case." Ex. 17, at 144:21-23 (April 11, 2023 Hearing Tr.). "[I] the first case, the top 30, 18 of the 30 firms that were listed in the first case are not part of the top 18 that were listed in the second case. . . . So there were eight firms listed in the top 18 for this case that appear nowhere on the list for the first case. So we are rather confused as to where these names are coming

The U.S. Trustee's Office explained that, in *Imerys*, "thousands if not tens of thousands" of votes were eventually excluded because of double-counting or other issues.[89]

In contrast, more than 100 law firms representing ovarian cancer and mesothelioma claimants oppose J&J's proposal as currently described. Most of these law firms have been active participants in the federal MDL or state courts for years, have filed talc claims against J&J and its affiliates, and represent talc claimants with cancer diagnoses that have a scientific link to exposure to J&J's toxic products. The TCC can confirm that ***not a single*** law firm that was placed on the Plaintiffs' Steering Committee in the MDL supports the J&J deal or this bankruptcy case. And only four (4) law firms identified by LTL in the list of the Top 30 Law Firms that represented talc claimants filed in the first bankruptcy—Onder Law, Nachawati Law Group, Johnson Law Group, and Trammell PC—have apparently pledged their allegiance to J&J's plan.

ARGUMENT

Under 11 U.S.C. § 1112(b), this Court must dismiss any bankruptcy that is not filed in good faith. *In re LTL Mgmt., LLC*, 64 F.4th at 99 (citing *15375 Mem'l Corp. v. BEPCO, L.P.*, 589 F.3d 605, 618 (3d Cir. 2009)). As the Third Circuit has explained, a "lack of good faith constitutes 'cause'" under the meaning of § 1112(b), and therefore requires dismissal. *Id*. Moreover, a bankruptcy petition must both serve a valid bankruptcy purpose which presupposes financial distress, and it cannot be "filed merely to obtain a tactical litigation advantage." *Id*. at 101. LTL's filing is not in good faith for three reasons: (1) LTL cannot carry its burden to establish that it is in financial distress, a threshold and dispositive issue; (2) LTL's attempt to manufacture distress by fraudulently transferring its prior funding guarantee and stacking the deck with new claimants

from. And I think I stated before, they're talking about other factors that they used to create the list. I don't know what that means." *Id*. at 143:13-24.

89 Ex. 2 at 37:20-38:12 (April 18, 2023 Hearing Tr.).

cannot form the basis for good faith; and (3) LTL's pre-filing conduct demonstrates a clear desire to use this bankruptcy to obtain a tactical litigation advantage.

I. LTL Cannot Meet Its Burden To Establish It Is In Financial Distress

The Third Circuit has clearly explained the burden that LTL or any other debtor must bear if it is to seek protection under the bankruptcy system: "Once at issue, the burden to establish good faith is on the debtor." 64 F.4th at 100. As this Court recognized in its April 20 ruling, the question posed by the Third Circuit is whether "LTL was in financial distress when it filed its Chapter 11 petition," *id*. at 106, which was October 2021 for LTL 1.0 and April 2023 for LTL 2.0.[90] Critically, however, the question is ***not*** whether LTL's condition worsened between October 2021 and April 2023—but rather whether LTL can meet its burden to establish that as of April 2023 it was in ***immediate*** financial distress under the standards set forth by the Third Circuit ***for this particular debtor***.

In its opinion, the Third Circuit did much more than just decide that LTL was not in financial distress as of October 2021. The Third Circuit also undertook a detailed analysis of LTL's financial condition to set the parameters for how to determine that ***this*** debtor, facing ***these*** liabilities, is in financial distress. The Third Circuit looked at the funding "backstop" in place for LTL "when judging its financial condition," as well as the "projections of future liability." 64 F.4th at 107. The Third Circuit cautioned against using "back-of-the-envelope forecasts," and expressly noted that LTL's litigation successes were also relevant. *Id*. at 108.

The Third Circuit also considered the immediacy of LTL's proffered distress. *Id.* at 102. "The 'attenuated possibility' that talc litigation may require it to file for bankruptcy in the future does not establish its good faith as of its petition date. At best the filing was premature." *Id.* at

90 Ex. 1, at 6:21-7:1 (April 20, 2023 Hearing Tr.).

109. The Third Circuit drew comparisons to other mass tort litigation, such as the Johns Manville case, where the debtor faced true financial distress, including " 'forced liquidation of key business segments.' " *Id*. at 104 (citation omitted). The Third Circuit opined that further litigation in the tort system would help, not hinder, LTL's reorganization: "the progression of the multidistrict litigation on a separate track would continue to sharpen all interested parties' views of mutually beneficial settlement values." *Id.* at 108. It noted that in the Dalkon Shield bankruptcy, "the Court and stakeholders had the benefit of data from 15 years of tort litigation by A.H. Robins before its filing." *Id.* at 103 n.13.

LTL has gone to great lengths in this bankruptcy to argue that it is not insolvent even if it is financially distressed, perhaps realizing that the fact of insolvency would create a substantial problem for its corporate parents in defending constructive fraudulent transfer claims.[91] The Third Circuit did not, however separate financial distress from insolvency in the way LTL implies. Rather, the Third Circuit held that "we cannot ignore that a debtor's balance-sheet insolvency or insufficient cash flows to pay liabilities (or the future likelihood of these issues occurring) are likely always relevant . . . because they pose a problem Chapter 11 is designed to address: 'that the system of individual creditor remedies may be bad for creditors *as a group* when there are *not enough assets* to go around.'" 64 F.4th at 102 (citation omitted) (emphasis in original). And the Third Circuit applied that standard to LTL specifically by finding that it "was highly solvent with access to cash to meet comfortably its liabilities as they come due for the foreseeable future." *Id*. at 108. In other words, for the foreseeable future, there was enough to go around.

Under that standard, LTL could not carry its burden in LTL 1.0, and cannot in LTL 2.0. Might the increase in potential claimants—which the TCC does not concede given that many of

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[91] Claiming that LTL is not "insolvent" is not a get-out-of-jail-free card. Section 548(a)(1)(B)(ii)'s requirements can be met by showing "unreasonably small capital" or the inability to pay debts as they "mature[]."

these claimants have not yet been vetted and may not have the specific types of cancers that generally lead to significant talc liability—create significant additional liabilities for LTL? This Court said on April 20, "maybe, maybe not."[92] Indeed, Mr. Kim testified that the "bona fides" of those largely unfiled claims had not been established and made clear that LTL would never consider paying them without intensive scrutiny and verification.[93] The Third Circuit found that previous "back-of-the-envelope" calculations were clearly erroneous. Any rough math based on the 60,000 purported claims would be even worse and cannot meet LTL's burden of proving ***immediate*** financial distress.

[redacted] Might that substantial but reduced funding in the 2023 Funding Agreement create significant reduced assets for LTL? This Court said on April 20, "maybe, maybe not." However, the question is not whether LTL's financial condition worsened between October 2021 and April 2023. The question is whether LTL can demonstrate that it cannot meet its liabilities as they come due. 64 F.4th at 108-09. If LTL can meet its liabilities as they come due, then LTL is not in financial distress. *Id.*

Yet LTL's ability to meet its debts as they come due, the central question, is not in dispute. On April 18, LTL admitted that it can meet its liabilities as they come due—in testimony by its

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92 Ex. 1, at 7:2-7 (April 20, 2023 Hearing Tr.). LTL's assertion that it has reached agreements with tens of thousands of claimants (Kim Decl. II ¶ 8), if taken at face value, simply proves the Third Circuit's point that the potential for settlement precludes a finding of financial distress warranting bankruptcy. 64 F.4th at 107 (noting "the possibility of meaningful settlement").

93 Ex. 13, at 50:1-51:2 (April 14, 2023 Kim Dep. Tr.).

[redacted]

General Counsel, on questioning from LTL's own lawyer Ms. Brown, in open court, after the TCC had put LTL's good faith at issue:

> Ms. Brown: Well, and in terms of the liability, that was the same under funding agreement one -- in terms of whether -- do you have a view on whether or not the liability changed under funding agreement one and funding agreement two?
>
> Mr. Kim: Well, so the talc liability, so I, yeah I see. The talc liability is enormous. ***We don't have an aggregate number for it***, but it is, you know, huge. I think what I would do is refer to all the testimony I gave in the prior proceeding about the liability and adopt that here. That liability, if anything, has gotten bigger. We know that after a year of being in bankruptcy, we have at least -- I think it almost doubled from what we know from unknown claims. So what I would say is that the liability itself is even much larger than it was when the first bankruptcy was filed.
>
> Ms. Brown: And how does that liability relate to the value of the funding agreement?
>
> Mr. Kim: ***Well, at the end of the day, we believe that we have sufficient funds to meet the liability*** except for the -- so we believe we're not insolvent, but we do believe that we are in financial distress because of the magnitude of the liability, the wild and unpredictable verdicts, the cost of the litigation, which is ever increasing.[96]

In this colloquy, Ms. Brown and Mr. Kim went to great lengths to show that LTL's liability is "huge" and "increasing." And yet, despite litigating financial distress alone for the last 18 months, LTL amazingly still had not calculated an aggregate number for its talc liability and decided to reenter bankruptcy anyway. This cannot satisfy ***its burden***. In fact, whether the liabilities are "huge" is not the test.[97] Whether the liabilities are "increasing" is not the test. Whether LTL can meet "its liabilities as they c[o]me due for the foreseeable future" is the test. 64 F.4th at 108. And

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96 Ex 2, at 180:4-25 (emphases added) (April 18, 2023 Hearing Tr.). Mr. Kim also testified in deposition that LTL "has sufficient funds to pay off its debts currently as they come due." Ex. 13, at 117:14-15 (April 14, 2023 Kim Dep. Tr.).

97 Ms. Brown also trumpeted the same $190 billion figure for talc trial costs, Ex. 2, at 254:5 (April 18, 2023 Hearing Tr.), which the Third Circuit specifically cited as meaningless in rejecting this Court's projections as clearly erroneous. LTL simply refuses to accept the Third Circuit's decision.

on that question, Mr. Kim answered that "we have sufficient funds to meet the liability."[98] Mr. Dickinson testified that, as of April 4, 2023, LTL was "able to meet its liabilities as they came due."[99]

LTL has cash on hand of $15.78 million,[100] and HoldCo has access to an additional $400 million in cash.[101] LTL owns Royalty A&M,[102] which owns a portfolio of royalty streams deriving from consumer brands and is valued by LTL at approximately $402 million.[103] HoldCo has ownership interests in various other companies, *id.*, which it values at approximately $30 billion.[104] LTL's counsel have repeatedly stressed—as part of their argument that the tort system has "failed"—that it faces relatively few trials in the near future.[105] LTL cannot have it both ways. It has failed to prove ***immediate*** financial distress.

In case there was any doubt, Mr. Gordon's closing on April 18 made clear that LTL has sufficient funding to cover its liabilities:

> Mr. Gordon: ***The value of the funding agreement is equal to the amount of the liability***. And so in other words, there's just not -- there's not an obligation to pay 60 billion. There was an ***obligation to provide backup support to cover talc liability***.
>
> And the reason I make that point, it goes to just what I've been saying. LTL was of the view that under the first funding agreement it had ***sufficient resources to cover its talc liability. It feels the exact same way under the second funding agreement***. And to suggest that there's been some huge transfer of value out that creates a fraudulent conveyance we believe mischaracterizes the way those agreements work.

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98 Ex. 2, at 180:20-21 (April 18, 2023 Hearing Tr.).

99 Ex. 3, at 162.11-162.17 (Apr. 17, 2023 Dickinson Dep. Tr.).

100 Ex. 15, at 14 (Feb. 2023 MOR).

101 Kim Decl. II ¶ 28.

102 *Id.* ¶ 27.

103 Ex. 15, at 10 (Feb. 2023 MOR).

104 Ex. 13, at 68:3-6 (April 14, 2023 Kim Dep. Tr.).

105 Ex. 2, at 251:19-252:2 (April 18, 2023 Hearing Tr.) ("Only six of [the MDL cases] were selected to have expert discovery and start getting ready for trials. And at the time of the bankruptcy, Your Honor, even though the MDL had been in existence for over five years, no cases had gone to trial at all. And that's not wholly unrepresentative of what things looked like out in the larger state court system where the state court system didn't have any more success, so to speak, Your Honor, with getting cases through jury trials.").

> ***Value is equal to the liability***. It's not $60 billion. ***It's whatever the liability is***. And that hasn't changed. So I did want to clarify that.[106]

Value sufficient to cover liability, having sufficient resources to cover talc liability, having access to backup support to cover liability—that is what the Third Circuit analyzed when it determined that "LTL was well-funded to do this," specifically "manage and defend thousands of talc-related claims." 64 F.4th at 109. Neither the TCC nor this Court need to determine whether LTL's funding can cover its liabilities in April 2023 as opposed to in October 2021. ***LTL has already provided the Court with the answer***. It has the funding. It has "enough assets to go around." It is not in distress. That is dispositive and alone requires dismissal.[107]

II. LTL's Unsuccessful Attempt to Manufacture Financial Distress Cannot Create a Good Faith Filing

LTL's admissions in open court on April 18 conclusively demonstrate that it is not in financial distress under the standard the Third Circuit set for LTL. In addition, and in the alternative, LTL's attempts to manufacture financial distress—unsuccessful as they may have been—cannot serve as the basis for a good faith filing. Rather, they show bad faith. As such, LTL cannot simply jettison the 2021 Funding Agreement and now (incorrectly) claim financial distress.

The Third Circuit explained that, under the 2021 Funding Agreement, "LTL had the right, ***outside of bankruptcy***, to cause J&J and New Consumer, jointly and severally, to pay it cash up to the value of New Consumer as of the petition date (estimated at $61.5 billion) to satisfy any talc-related costs and normal course expenses." 64 F.4th at 106 (emphasis added). The Third

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106 *Id*., at 212:3-18 (emphases added).

107 Although LTL's admission that it is not in financial distress is dispositive, the TCC further notes that LTL remains a "shell company" with no business operations and no "need to reorganize." 64 F.4th at 109. The Third Circuit's reasoning remains applicable: "[I]f a petitioner has no need to rehabilitate or reorganize, its petition cannot serve the rehabilitative purpose for which Chapter 11 was designed." *Id.* at 101 (citation omitted); *see also 15375 Mem'l Corp. v. BEPCO, L.P.*, 589 F.3d 605, 619 (3d Cir. 2009) (debtor had "no going concerns to preserve—no employees, offices, or business other than the handling of litigation").

Circuit determined that the 2021 Funding Agreement functioned "not unlike an ATM" and provided LTL with a right to at least $61.5 billion in cash with minimal conditions. *Id.* at 106-09.

The Third Circuit held that LTL had a "duty" "to access its payment assets." *Id.* at 107. As fiduciaries, its directors must do so. Yet in a transparent attempt to evade the Third Circuit's ruling, the Debtor breached this duty and surrendered its rights under the 2021 Funding Agreement to more than $61 billion on demand, ***which was available both inside and outside bankruptcy***, and which was guaranteed by J&J, one of the richest companies in the world. J&J moved all consumer business out of JJCI (renamed HoldCo), and LTL entered into the J&J Support Agreement and a new 2023 Funding Agreement under which "J&J's balance sheet was ***not*** available to the Debtor" outside of bankruptcy, and "HoldCo's [formerly New JJCI's] assets … ***no*** longer include the consumer health business."[108]

LTL openly admits that it attempted to manufacture financial distress by surrendering the 2021 Funding Agreement. Mr. Kim testified that the Debtor parted with its most valuable asset so that "its pre-filing financial condition" would be "sufficiently distressed to satisfy the standard established by the Third Circuit."[109] How can parting with a $61.5 billion asset to create a situation that is "sufficiently distressed" ever constitute good faith? How could that ever constitute anything but bad faith?

Notably, the Third Circuit anticipated the Debtor's maneuvering. It warned the Debtor that parting with the 2021 Funding Agreement might constitute a fraudulent conveyance and therefore could not cure the defects in its bankruptcy filing:

> Some might read our logic to suggest LTL need only part with its funding backstop to render itself fit for a renewed filing. While this question is also premature, we note interested parties may seek to "avoid any transfer" made

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[108] Kim Decl. II ¶ 83 (emphasis added).
[109] *Id.*

> within two years of any bankruptcy filing by a debtor who "receive[s] less than a reasonably equivalent value in exchange for such transfer" and "became insolvent as a result of [it]." 11 U.S.C. § 548(a). So if the question becomes ripe, the next one might be: Did LTL receive reasonably equivalent value in exchange for forgoing its rights under the Funding Agreement?

64 F.4th at 109, n. 18.[110]

The Third Circuit did not invite the Debtor to commit fraud—actual or constructive—so that it could re-file for bankruptcy. Indeed, the Third Circuit observed that it did not see how the Debtor could legitimately cure its lack of financial distress: "Our ground for dismissal is LTL's lack of financial distress. . . . ***And we cannot currently see how its lack of financial distress could be overcome***." 64 F. 4th at 110 (emphasis added).

This Court "must implement ***both the letter and spirit*** of the mandate, taking into account the appellate court's opinion and the circumstances it embraces." *EEOC v. Kronos Inc.*, 694 F.3d 351, 361 (3d Cir. 2012) (emphasis added; internal quotation marks and citation omitted). The Court of Appeals has explained that the requirement that a lower court "comply in full with our mandate has several important purposes," including "preserv[ing] the proper allocation of authority within the tiered federal court structure set up by Congress and the Constitution" and "safeguard[ing] stability in the administration of justice, for the orderly functioning of the judiciary would no doubt crumble if trial judges were free to disregard appellate rulings." *Id.* at 362 (emphasis added and internal quotation marks omitted). "Post mandate maneuvering" in the lower courts "would undermine the authority of appellate courts and create a great deal of uncertainty in

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[110] In the Court of Appeals, LTL responded to the objection that "some future conveyance may place assets out of LTL's creditors' reach," by reassuring the Court of Appeals that "for any hypothetical future transfer by LTL, New JJCI, and J&J, . . . [t]he Bankruptcy Court will always have jurisdiction to protect against fraudulent conveyances." Ex. 23, at 72, 73. *See also In re Fruehauf Trailer Corp.*, 444 F.3d 203, 210 (3d Cir. 2006) (§ 548 "aims to make available to creditors" assets "that are rightfully a part of the bankruptcy estate, even if they have been transferred away" (citing *In re PWS Holding Corp.*, 303 F.3d 308, 313 (3d. Cir. 2002)).

the judicial process." *United States v. Kennedy*, 682 F.3d 244, 253 (3d Cir. 2012) (internal quotation marks omitted).

In this case, the Third Circuit's Judgment is particularly broad, perhaps anticipating the potential for post-mandate maneuvering. The Judgment specifically provides that this Court is bound ***by the Third Circuit's Opinion in its entirety***, not merely by the specific actions on remand directed by the Court of Appeals. The Judgment provided that "the order of the Bankruptcy Court entered March 2, 2022 is reversed and the case is remanded with the instruction to dismiss Appellee's Chapter 11 petition. The order of the Bankruptcy Court entered March 4, 2022 is vacated as moot. . . . ***All of the above in accordance with the Opinion of this Court***."[111] "Where the reviewing court in its mandate prescribes that the court shall proceed in accordance with the opinion of the reviewing court, such pronouncement operates to make the opinion a part of the mandate as completely as though the opinion had been set out at length." *Bankers Trust Co. v. Bethlehem Steel Corp*., 761 F.2d 943, 949 (3d Cir. 1985) (internal quotation marks omitted). This Court is bound to respect and implement every aspect of the Third Circuit's opinion.

LTL cannot manufacture jurisdiction or financial distress by engaging in fraud. If that were the case, any solvent company seeking to use bankruptcy to enjoin tort claims in litigation could do so by fraudulently transferring its assets on the eve of a bankruptcy filing. Such machinations run afoul of the fundamental principle that "no action of the parties can confer subject-matter jurisdiction upon a federal court." *Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982). Efforts to manufacture federal subject-matter jurisdiction are prohibited by statute. 28 U.S.C. §1359. The Third Circuit has rejected any suggestion that "a

[111] Ex. 24 (Judgment, Third Circuit Case No. 22-2003, Doc. 151-1) (emphasis added).

debtor could create subject matter [bankruptcy] jurisdiction" by agreement. *In re Combustion Engineering*, *Inc.*, 391 F.3d 190, 238 (3d Cir. 2004).

LTL seeks to evade the Third Circuit's decision (and footnote 18 in particular) by positing that (i) it ***is not*** insolvent as a result of its surrender of the 2021 Funding Agreement, although (ii) it ***is*** in financial distress due to the (supposedly) illiquid nature of HoldCo's assets. But the Third Circuit noted that LTL bears the burden of demonstrating good faith, 64 F.4th at 100, and a ***unilateral assertion*** of financial distress or illiquidity does not meet that burden. After all, HoldCo owns ***equity interests*** in companies, which are hardly unmarketable assets. Moreover, any supposed illiquidity would be due to J&J's January 2023 transfer of the consumer business away from HoldCo, resulting in the Debtor's lost access to what the Third Circuit described as "Old Consumer's cash-flowing brands and products along with the profits they produced." *Id.* at 106. This transaction, which occurred in early January 2023, while LTL 1.0 was still pending, was not an ordinary course transaction and was undertaken without Bankruptcy Court approval, or indeed any notice to the TCC, the U.S. Trustee, or this Court. Indeed, Thibaut Mongon, head of JJCI/HoldCo was fully aware of the JJCI obligations under the 2021 Funding Agreement, as he testified at the trial on the Motion to Dismiss in LTL 1.0. LTL cannot rely on that improper transfer to establish illiquidity or financial distress.

In addition, LTL ignores its liability for an ***actual*** fraudulent conveyance action under 11 U.S.C. § 548(a)(1)(A), for which insolvency is not an element. *See In re Taylor*, 642 B.R. 912, 921 n.5 (W.D. Ark. 2022) ("The Court need not analyze whether the debtor was actually insolvent on the date of the transfers because proving actual insolvency is not necessary for the trustee to prevail under § 548(a)(1)(A)."); 5 Collier on Bankruptcy ¶ 548.04[1][b][iii] ("[S]ection 548(a)(1)(A) does not require the trustee to show that the debtor was insolvent when the transaction

occurred or that the transaction rendered the debtor insolvent."). The Debtor admits that it attempted to create "financial distress" in an effort to justify its second bankruptcy filing,[112] which shows an evident purpose of hindering, delaying, or defrauding creditors. And there are other remedies available to unwind the fraudulent surrender of the 2021 Funding Agreement, besides the constructive fraudulent conveyance action noted by the Third Circuit in footnote 18 of its opinion.[113]

Nor can LTL show that the 2021 Funding Agreement was "void or voidable" after the Third Circuit's decision. Mr. Gordon flat out admitted that dismissal was a foreseeable event. J&J never refused to make a payment under the 2021 Funding Agreement or ever so much as indicated it would refuse to do so or that it otherwise intended to seek to void the 2021 Funding Agreement. No business person at J&J indicated that it would refuse to do so.[114] Nothing would have prevented J&J from continuing to honor its 2021 Funding Agreement to its subsidiary even if a theoretical risk of frustration of purpose—normally an affirmative defense—existed, especially in light of LTL's repeated assurances to this Court and the Third Circuit that the 2021 Funding Agreement applied outside of bankruptcy. And yet, the day the Third Circuit's decision was issued, LTL's general counsel (a longtime J&J employee who led the defense of the talc litigation) admitted that it was he who was looking for a reason to abandon the funding backstop.[115]

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112 Kim Decl. II ¶ 83.

113 *See AYR Composition, Inc. v. Rosenberg*, 619 A.2d 592, 595-97 (N.J. App. Div. 1993) (transfer of company's sole asset in breach of fiduciary duty constitutes "a fraudulent conveyance as a matter of law" under New Jersey law). In addition, relief is available under the Texas divisive merger statute, Tex. Bus. Orgs. Code Ann. §§ 10.003, 10.901, which cannot be used to "disadvantage" creditors. *Plastronics Socket Partners, Ltd. v. Hwang*, 2022 WL 108948, *3-4 (Fed. Cir. Jan. 12, 2022). The remedy for a violation "would generally be to reallocate all or a portion of the allocated liability to one or more of the surviving entities in the merger or to make some or all of the resulting entities liable for all or a portion of the liabilities of the predecessor debtor corporation." *In re DBMP LLC*, 2021 WL 3552350, at *26 (Bankr. W.D.N.C. Aug. 11, 2021) (citation omitted).

114 *See supra* n.42 and accompanying text (Dickinson testimony).

115 Ex. 13, at 74:23-75:10 (Apr. 14, 2023 Kim Dep. Tr.),

Frustration of purpose is merely an affirmative defense to a breach of contract action, *Brenner v. Little Red School House, Ltd.*, 274 S.E.2d 206, 209 (N.C. 1981),[116] rather than a basis for deeming a contract "void or voidable." LTL never litigated that affirmative defense. LTL cannot come close to showing the elements of the frustration of purpose defense. "Essentially, there must be an implied condition to the contract that a changed condition would excuse performance; this changed condition causes a failure of consideration or the expected value of performance; and that the changed condition was not reasonably foreseeable." *Faulconer v. Wysong and Miles Co.*, 574 S.E.2d 688, 691 (N.C. App. 2002).[117]

First, there is no implied condition. Because the 2021 Funding Agreement expressly provided for J&J's funding obligation outside bankruptcy, there cannot be an "implied condition" that funding outside bankruptcy would constitute frustration of purpose. The Supreme Court of North Carolina addressed this issue in *Brenner* when it held that "if the parties have contracted in reference to the allocation of the risk involved in the frustrating event, they may not invoke the doctrine of frustration to escape their obligations." 274 S.E.2d at 211. Here, the 2021 Funding Agreement expressly provides that it applies outside of bankruptcy. There is no valid argument that could have been made by LTL or J&J that dismissal—which placed LTL outside of bankruptcy—was a frustrating event. Moreover, the 2021 Funding Agreement contains an "entire agreement" provision,[118] preventing any implied provision that the 2021 Funding Agreement would be limited to bankruptcy. *See D.S. Simmons, Inc. v. Steel Group, LLC*, 2008 WL 488845, at *3 (E.D.N.C. Feb. 19, 2008) (rejecting frustration of purpose defense because defendant failed

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116 The 2021 Funding Agreement is governed by North Carolina law. Ex. 11 § 9 (2021 Funding Agreement).

117 Although North Carolina law governs the 2021 Funding Agreement, New Jersey law similarly requires a changed condition that is not foreseeable for the frustration of purpose defense to apply. *See, e.g.*, *JB Pool Mgmt., LLC v. Four Seasons at Smithville Homeowners Ass'n, Inc.*, 431 N.J. Super. 233, 245-46 (App. Div. 2013).

118 Ex. 11 § 11 (2021 Funding Agreement).

to show "that the parties expressly or impliedly agreed that a [specific scenario] would discharge defendant's performance").

Second, LTL has failed to show "a failure of the consideration or a practically total destruction of the expected value of the performance." *Brenner*, 274 S.E.2d at 209 (quoting 17 Am. Jur. 2d Contracts § 401 (1964)). Here, the 2021 Funding Agreement had important functions outside bankruptcy, which LTL and its witnesses touted. *See also Balogh Associates VII LLC v. Dick's Sporting Goods, Inc*., 2022 WL 4624827, *17 (M.D.N.C. Sept. 30, 2022) (rejecting defense where subject of contract was not "destroyed").

Third, the doctrine of frustration is not a defense if the frustrating event was "reasonably foreseeable." *Brenner*, 274 S.E.2d at 209 ("If the frustrating event was reasonably foreseeable, the doctrine of frustration is ***not a defense***." (emphasis added)); *see also Fairfield Harbour Property Owners Ass'n, Inc. v. Midsouth Golf, LLC*, 715 S.E.2d 273, 284 (N.C. App. 2011) (rejecting frustration of purpose defense: "the doctrine is inapplicable where the frustrating event is reasonably foreseeable"). That principle is dispositive here: LTL's counsel has conceded that dismissal was foreseeable.[119]

Mr. Gordon readily admitted this fact. At the time the Debtor and its counsel represented that the 2021 Funding Agreement was available outside bankruptcy during LTL 1.0, they knew that prior Texas two-step transactions in North Carolina had been subject to vigorous challenge in court, even though the North Carolina restructurings were less ambitious than what J&J was seeking. Mr. Gordon explained to this Court:

> And Your Honor may remember this, but I remember it very well. In North Carolina, we were always being criticized in these funding agreements on the basis that what's to stop the [payor] from dividending all its assets up to the parent. And

[119] Ex. 2, at 209:20-21 (April 18, 2023 Hearing Tr.) ("I'm not saying that a dismissal was not reasonably foreseeable.").

> one of the big justifications or thinking behind this [2021] funding agreement or the J&J support was just to take that issue off the table. And, again, it was to facilitate a filing to get parties beyond concerns about fraudulent transfer.[120]

J&J was on notice, at the time it was drawing up the 2021 Funding Agreement, that even less ambitious transactions had been vigorously challenged in court.[121] This is why the 2021 Funding Agreement was drafted to apply outside of bankruptcy and included support from J&J, as Mr. Gordon explained.

LTL and J&J had every opportunity to include language in the 2021 Funding Agreement making it "void or voidable" in the event of dismissal *for any reason* and chose not to do so, which precludes resort to the doctrine of frustration. *See Golden Triangle #3, LLC v. RMP-Mallard Pointe, LLC*, No. 19 CVS 13580, 2022 WL 3048320, at * 19 (Sup. Ct. N.C. Aug. 2, 2022). LTL and J&J cannot first credibly assert that the 2021 Funding Agreement made over $61 billion available to LTL from J&J outside of bankruptcy to pay talc claims when they needed to defend against assertions that the divisive merger was a fraud, and then take the precise opposite position when they found themselves outside of bankruptcy.

Mr. Kim's "void or voidable" theory was premised on his personal view that the Third Circuit decision "changed the law."[122] But the Third Circuit did not change the law or announce a new rule. The Third Circuit made clear that its decision rested on decades of precedent and an

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120 *Id*. at 210:16-24.

121 Unlike J&J, the Aldrich and Murray entities in *Aldrich Pump* were themselves parties to a Texas divisional merger with Trane Technologies Company LLC, successor by merger to Ingersoll-Rand Company, and Trane U.S. Inc. *See Aldrich Pump LLC v. Those Parties to Actions Listed on Appendix A to Complaint (In re Aldrich Pump LLC)*, Case No. 20-30608, Adv. Proc. No. 20-03041, 2021 WL 3729335, at *1 (Bankr. W.D.N.C. Aug. 23, 2021). Similarly, the DBMP entity was itself a party to a Texas divisional merger with CertainTeed Corporation. See *DBMP LLC v. Those Parties Listed on Appendix A to Complaint (In re DBMP LLC)*, Case No. 20-30080, Adv. Proc. No. 20-03004, 2021 WL 3552350, at *1 (Bankr. W.D.N.C. Aug. 11, 2021)). Neither *Aldrich Pump* nor *DBMP* involved a separate parent entity like J&J seeking the benefit of a divisional merger to which it was not a party.

122 Ex. 13, at 78:14 (April 14, 2023 Kim Dep. Tr.).

application of what bankruptcy law requires. *See Congoleum Corp. v. Pergament (In re Congoleum Corp.)*, Bankr. No. 03-51524(KCF), Adversary No. 05-06245, 2007 WL 4571086, at *9-11 (Bankr. D.N.J. Dec. 28, 2007) (rejecting argument that the Court's interpretation of the Third Circuit's *Combustion Engineering* decision "frustrated" the purpose of agreements reached between the debtor's and two classes of claimants); *In re SGL Carbon Corp.*, 200 F.3d 154, 164 (3d Cir. 1999).[123]

LTL has suggested that, even though dismissal was reasonably foreseeable, J&J and LTL were surprised by the Third Circuit's rationale. J&J did not expect dismissal to happen for at least "three years"—*i.e.*, after J&J got the benefit of a three-year litigation stay.[124] But nothing in the terms or language of the 2021 Funding Agreement imposes conditions or limitations based on the reason that a bankruptcy petition might be dismissed and the reason why LTL finds itself outside of bankruptcy. And the absence of an anticipated benefit to a single party is insufficient to form the basis of a frustration-of-purpose defense. For the defense to apply, "the subject of the contract must be destroyed." *Tucker v. Charter Med. Corp.*, 299 S.E.2d 800, 804 (N.C. App. 1983) (finding the purpose of a commercial lease was not frustrated). Here, nothing was destroyed.

Moreover, even if the frustration-of-purpose doctrine applied, which it clearly did not, it would not justify the actions LTL took to manufacture financial distress. The 2021 Funding Agreement was executed as part of the divisive merger. LTL's right to demand payment from J&J

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[123] LTL has cited to *Union County Utilities Authority v. Bergen County Utilities Authority*, 995 F. Supp. 506 (D.N.J. 1998), applying New Jersey rather than North Carolina law, but that case does not help LTL. *Union County* did not actually apply the frustration-of-purpose defense at all – it merely listed that doctrine, along with others, for consideration by state courts. Further, *Union County* indicated that "parties who contract in highly regulated environments are on notice that the law may change against their interest," *id.* at 517, that "[c]ourts consistently have held that contracts should be construed in ways that preserve the legality and validity of the agreements that the parties have freely entered into," *id.*, and that courts "will have to carefully examine the language of the contract." *Id.* All of these observations militate strongly against LTL's attempt to invoke frustration of purpose.

[124] Ex. 2, at 209:19-210:5 (Apr. 18, 2023 Hearing Tr. (Gordon Argument)).

and New JJCI for talc liabilities was provided to LTL in consideration for LTL being allocated Old JJCI's talc liabilities. Among the talc liabilities allocated to LTL was the obligation to indemnify J&J and New JJCI. This "integrated transaction"—as LTL has repeatedly called it—was designed to ensure that LTL had the financial capacity sufficient to pay its obligations as they became due in the ordinary course of business.[125] Absent the rights under the 2021 Funding Agreement being allocated to LTL, the divisive merger would have failed for lack of consideration and would have been an obvious fraudulent conveyance.

If the Third Circuit's ruling had the effect of excusing J&J's and New JJCI's performance under the 2021 Funding Agreement, then the divisive merger would also be voided. If LTL could not require payment from J&J or New JJCI for those liabilities, then those liabilities would go back to JJCI. Neither LTL nor J&J could have selectively voided a single aspect of an integrated transaction; they would have been required to unwind the transaction in its entirety.[126]

III. LTL's Latest Bankruptcy Filing Displays Other Indicia of Bad Faith

The Third Circuit noted but did not resolve the issue whether the Debtor's first bankruptcy petition was subject to dismissal because it was filed merely to obtain a tactical litigation advantage. 64 F.4th at 110 n.19 ("Because we conclude LTL's petition has no valid bankruptcy purpose, we need not ask whether it was filed 'merely to obtain a tactical litigation advantage.' Yet it is clear LTL's bankruptcy filing aimed to beat back talc litigation in trial courts.") (citation omitted). The Debtor's second petition is similarly accompanied by a sweeping request to stay all litigation against non-debtor J&J and hundreds of other non-debtor defendants. J&J told this Court

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125 *See* Ex. 11 at Recital E (2021 Funding Agreement), *cited by In re LTL Mgmt. LLC*, 64 F.4th at 109.

126 *See*, *e.g.*, *Moss v. First Premier Bank*, No. 2:13-cv-05438, 2020 WL 5231320 (E.D.N.Y. Sept. 2, 2020) (when multiple documents represent a "single, integrated transaction" the voiding of one voids the other); *Hackel v. FDIC*, 858 F. Supp. 289 (D. Mass. 1994) (holding that when a party repudiates a contract that is part of an integrated transaction, all other agreements that are part of the integrated transaction also become "null and void").

in the first bankruptcy that, unless the preliminary injunction were extended in this manner, "[t]he entire purpose of this case" "would be thwarted."[127] The second petition is even more clearly filed merely to obtain a tactical litigation advantage and is subject to dismissal on that basis.

Mr. Katyal acknowledged before the Third Circuit that this case would look like a pure litigation ploy absent the 2021 Funding Agreement: "[W]e're not here defending something in the absence of a funding agreement. If there is no funding agreement, that valid bankruptcy purposes that Judge Kaplan isolated those [for] look very different. They look like litigation advantages."[128] That statement is squarely applicable to the Debtor's second bankruptcy petition.

Moreover, the shifting identity of the entity contributing to LTL's funding agreements (J&J? New JJCI? HoldCo?) underscores the manufactured boundaries of the debtor and the manipulation of those boundaries in an attempt to reap the benefits of bankruptcy for the entire J&J corporate enterprise, without the burdens. What is driving these sequential bankruptcy filings is not LTL's financial condition—which J&J seeks to manipulate at will—but rather J&J's desire for injunctive relief to protect against responsibility for its own independent tort liability arising from its own separate wrongdoing. That is the epitome of an attempt to gain an improper litigation advantage.

LTL admits it filed for bankruptcy a second time in order to avoid litigation that would have ensued upon dismissal of the first bankruptcy case,[129] even though the Third Circuit rejected LTL's motion for stay alleging that such litigation would have caused LTL irreparable harm. LTL filed for bankruptcy 2 hours and 11 minutes after the entry of the dismissal order, without even attempting to see if any of its dire predictions would come to pass. That is directly contrary to the

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[127] Doc. 146, Adv. Pro. No. 21-03032, at 51.
[128] Ex. 14, at 74:7-11 (Sept. 19, 2022 Third Circuit Oral Arg. Tr.).
[129] Kim Decl. II ¶¶ 108-110.

Third Circuit's holding that a debtor must show an immediate rather than speculative need for bankruptcy.

LTL argues that adverse verdicts "could make it more difficult for the Debtor to obtain additional support for the proposed plan."[130] But the Third Circuit took the opposite view, reasoning that additional tort litigation will facilitate reorganization rather than hindering it. 64 F.4th at 103 n.13.

The Debtor contends its filing is warranted in order "to fully, equitably and efficiently resolve" tort claims.[131] But this argument would eviscerate the "good faith" standard. Its reasoning could be applied in virtually every case where a debtor faces significant litigation, let alone mass-tort claims. Under the Debtor's reasoning, tactical litigation advantages would become *justifications* for bankruptcy, rather than indicia of bad-faith filings, as Third Circuit precedent dictates.

In *SGL Carbon Corp*., for example, the debtor was sued in several antitrust lawsuits, including a class action. *In re SGL Carbon Corp.*, 200 F.3d 154, 156-57 (3d Cir. 1999). The debtor filed for bankruptcy and expressed its "hope[] that the [bankruptcy] filing will cause a quicker resolution" of the litigation, compared to the pace of the civil justice system.[132] The district court found SGL Carbon "has expressed its hope that its Chapter 11 filing will facilitate a speedy and efficient resolution to the pending litigation" in bankruptcy. *In re SGL Carbon Corp.*, 233 B.R. 285, 290-91 (D. Del. 1999). The Third Circuit reversed the district court's finding as clearly erroneous and an abuse of discretion, explaining that the debtor acted "merely to obtain tactical

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130 Kim Decl. II ¶ 116.
131 Kim Decl. II ¶ 8.
132 Appellee's Brief in *SGL Carbon*, 1999 WL 33613444, *24.

litigation advantages," which "is not within the legitimate scope of the bankruptcy laws." 200 F.3d at 165 (internal quotation omitted).

In *15375 Memorial*, the debtor argued that its "valid bankruptcy purpose[]" was "to efficiently and cost effectively resolve and liquidate . . . pending and future claims" and to "allow claimants to obtain the benefit of Debtors' assets on a fair and equitable basis."[133] The bankruptcy court agreed and denied a motion to dismiss, explaining that "[l]itigating these, and other claims, in Bankruptcy Court is the most efficient way to resolve them." 382 B.R. 652, 685 (D. Del. 2008). The Third Circuit reversed, opining that the debtor's claimed efficiencies showed that the bankruptcy was filed as a "litigation tactic." 589 F.3d at 625.

And in *In re Integrated Telecom Express, Inc.*, 384 F.3d 108 (3d Cir. 2004), the debtor argued that it filed for bankruptcy to avoid "the costs and delay inherent in litigation."[134] The Third Circuit rejected that argument and described the debtor's strategy as an impermissible "mechanism to orchestrate pending litigation." 384 F.3d at 120 (internal quotation marks and citation omitted). LTL's purported justifications for bankruptcy echo those consistently rejected by the Third Circuit. In fact, LTL's petition bears all the hallmarks of an improper attempt to seek a tactical litigation advantage.

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133 Brief of Appellants, *15375 Memorial Corporation and Santa Fe Minerals, Inc.*, 2009 WL 5635433.
134 Appellee's Brief, *In re Integrated Telecom Express, Inc.*, 2004 WL 5020971.

CONCLUSION

The TCC respectfully requests that this Court enter an order under 11 U.S.C. § 1112(b) dismissing LTL's second bankruptcy petition as not filed in good faith.

Dated: April 24, 2023

Respectfully submitted,

GENOVA BURNS, LLC

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Proposed Local Counsel to the Official Committee of Talc Claimants

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
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In re: **LTL MANAGEMENT LLC,** [1] Debtor.	Chapter 11 Case No.: 23-12825 (MBK) Honorable Michael B. Kaplan

DECLARATION OF DANIEL M. STOLZ IN SUPPORT OF MOTION OF THE OFFICIAL COMMITTEE OF TALC CLAIMANTS TO DISMISS SECOND BANKRUPTCY PETITION OF LTL MANAGEMENT, LLC

I, Daniel M. Stolz, pursuant to 28 U.S.C. § 1746, declare, under penalty of perjury, that the following is true and correct:

1. I am a partner with law firm Genova Burns LLC, proposed local counsel to the Official Committee of Talc Claimants (the "TCC" or "Committee").

2. I submit this declaration to place in the record on the *Motion of the Official Committee of Talc Claimants to Dismiss Second Bankruptcy Petition of LTL Management, LLC* (the "Motion") certain documents submitted in connection with the Motion.

3. Attached hereto as Exhibit 1, is a true and correct copy of the transcript of proceedings held on April 20, 2023 in the bankruptcy case *In re LTL Management LLC*, Case No. 23-12825 (MBK) (Bankr. D.N.J.).

4. Attached hereto as Exhibit 2, is a true and correct copy of the transcript of proceedings held on April 18, 2023 in the bankruptcy case *In re LTL Management LLC*, Case No. 23-12825 (MBK) (Bankr. D.N.J.).

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

5. Attached hereto as Exhibit 3 is a true and correct copy of excerpts of the transcript of the deposition of Richard Dickinson taken on April 17, 2023, in connection with this matter.

6. Attached hereto as Exhibit 4, **filed under seal**, is a true and correct copy of a presentation dated April 2, 2023, bearing Bates numbers LTLMGMT-00000260 to LTLMGMT-00000271 produced by the Debtor in connection with this matter.[2]

7. Attached hereto as Exhibit 5, **filed under seal**, is a true and correct copy of a document entitled "Minutes of Board of Managers" dated March 16, 2023, bearing Bates numbers LTLMGMT-00002626 to LTLMGMT-00002627 produced by the Debtor in connection with this matter, subject to the reservation of rights as stated in note 2, *supra.*

8. Attached hereto as Exhibit 6, **filed under seal**, is a true and correct copy of a document entitled "Minutes of Board of Managers" dated March 28, 2023, bearing Bates numbers LTLMGMT-00000001 to LTLMGMT-00000005 produced by the Debtor in connection with this matter, subject to the reservation of rights as stated in note 2, *supra.*

9. Attached hereto as Exhibit 7, **filed under seal**, is a true and correct copy of a presentation dated March 28, 2023, bearing Bates numbers LTLMGMT-00000233 to LTLMGMT-00000259 produced by the Debtor in connection with this matter, subject to the reservation of rights as stated in note 2, *supra.*

10. Attached hereto as Exhibit 8, **filed under seal**, is a true and correct copy of a document entitled "Minutes of Board of Managers" dated April 2, 2023, bearing Bates numbers LTLMGMT-00000006 to LTLMGMT-00000019 produced by the Debtor in connection with this matter, subject to the reservation of rights as stated in note 2, *supra.*

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[2] The Committee is filing this exhibit and certain other exhibits under seal given the designation of the document as confidential by LTL Management LLC (the "Debtor"), pending the entry of a protective order in this case. By filing these exhibits under seal, the Committee does not waive any rights as to the confidentiality designation or use of any such exhibit, and expressly reserves all applicable rights.

11. Attached hereto as Exhibit 9 is a true and correct copy of excerpts of the Motion to Stay Mandate filed on March 22, 2023 by LTL Management LLC with the United States Court of Appeals for the Third Circuit in *In re LTL Management LLC*, Case No. 22-2003, Dkt. 173.

12. Attached hereto as Exhibit 10 is a true and correct copy of excerpts of the transcript of proceedings held on February 18, 2022 in the bankruptcy case *In re LTL Management LLC*, Case No. 21-30589 (MBK) (Bankr. D.N.J.).

13. Attached hereto as Exhibit 11 is a true and correct copy of the Amended and Restated Funding Agreement dated October 12, 2021.

14. Attached hereto as Exhibit 12 is a true and copy of the October 14, 2021 Declaration of John K. Kim in Support of First Day Pleadings filed in *In re LTL Management LLC*, Case No. 21-30589 (MBK) (Bankr. D.N.J.), Dkt. 5.

15. Attached hereto as Exhibit 13, **filed under seal**, is a true and correct copy of excerpts of the transcript of the deposition of John K. Kim taken on April 14, 2023, in this Adversary Proceeding, subject to the reservation of rights as stated in note 2, *supra*.

16. Attached hereto as Exhibit 14 is a true and correct copy of excerpts of the transcript of proceedings held on September 19, 2022 before the United States Court of Appeals for the Third Circuit in *In re LTL Management LLC*, Case No. 22-2003.

17. Attached hereto as Exhibit 15 is a true and correct copy of the Supporting Documentation to the Debtor's February 2023 Monthly Operating Report filed in *In re LTL Management LLC*, Case No. 21-30589 (MBK) (Bankr. D.N.J. Mar. 21, 2023), Dkt. No. 3886-1.

18. Attached hereto as Exhibit 16, **filed under seal**, is a true and correct copy of excerpts of the transcript of the deposition of Erik Haas taken on April 14, 2023, in this Adversary Proceeding, subject to the reservation of rights as stated in note 2, *supra*.

19. Attached hereto as Exhibit 17 is a true and correct copy of excerpts of the transcript of proceedings held on April 11, 2023 in the bankruptcy case *In re LTL Management LLC*, Case No. 23-12825 (MBK) (Bankr. D.N.J.).

20. Attached hereto as Exhibit 18 is a true and correct copy of a document titled "Form 8-K," dated April 4, 2023, filed by Johnson and Johnson with the United States Securities and Exchange Commission.

21. Attached hereto as Exhibit 19, **filed under seal**, is a true and correct copy of excerpts of the transcript of the deposition of Adam Pulaski taken on April 15, 2023, in connection with this matter, subject to the reservation of rights as stated in note 2, *supra*.

22. Attached hereto as Exhibit 20, **filed under seal**, is a true and correct copy of excerpts of the transcript of the deposition of Mikal Watts taken on April 17, 2023, in connection with this matter, subject to the reservation of rights as stated in note 2, *supra*

23. Attached hereto as Exhibit 21, **filed under seal**, is a true and correct copy of excerpts of the transcript of the deposition of James Murdica taken on April 16, 2023, in connection with this matter, subject to the reservation of rights as stated in note 2, *supra*

24. Attached hereto as Exhibit 22, **filed under seal**, is a true and correct copy of an email dated February 26, 2023 from Mikal Watts to James Murdica and Jason Itken (attached as Exhibit 6 to the April 17, 2023 Deposition of Mikal Watts).

25. Attached hereto as Exhibit 23 is a true and correct copy of excerpts of the Brief for Debtor-Appellee filed with the United States Court of Appeals for the Third Circuit in *In re LTL Management LLC*, Case No. 22-2003, Dkt. 104.

26. Attached hereto as Exhibit 24 is a true and correct copy of the March 31, 2023 Judgment and Mandate issued by the United States Court of Appeals for the Third Circuit in *In re LTL Management LLC*, Case No. 22-2003, Dkt. 181-1.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in the State of New Jersey on April 24, 2023.

/s/ Daniel M. Stolz
Daniel M. Stolz

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

IN RE:	Case No. 23-12825(MBK)
LTL MANAGEMENT LLC,	
Debtor.	U.S. Courthouse 402 East State Street Trenton, NJ 08608
LTL MANAGEMENT LLC,	Adv. No. 23-01092(MBK)
Plaintiff,	
v.	
THOSE PARTIES LISTED ON APPENDIX A TO COMPLAINT AND JOHN AND JANE DOES 1-1000,	
Defendants.	Thursday, April 20, 2023 12:02 p.m.

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

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

Audio Operator: Kiya Martin

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

J&J COURT TRANSCRIBERS, INC.
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APPEARANCES:

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For Ad Hoc Committee of Certain Talc Claimants and Ad Hoc Committee of Creditors:	Genova Burns LLC By: DANIEL M. STOLZ, ESQ. 494 Broad Street Newark, NJ 07102 Brown Rudnick By: JEFFREY L. JONAS, ESQ. DAVID J. MOLTON, ESQ. MICHAEL WINOGRAD, ESQ. 7 Times Square New York, NY 10036 Otterbourg PC By: MELANIE CYGANOWSKI, ESQ. 230 Park Avenue New York, NY 10169-0075
For Anthony Hernandez Valadez:	Kazan McClain Satterley & Greenwood By: JOSEPH SATTERLEY, ESQ. 55 Harrison St. Suite 400 Oakland, CA 94607
For the Office of the United States Trustee:	Office of the United States Trustee By: LINDA RICHENDERFER, ESQ. JEFF SPONDER, ESQ. J. Caleb Boggs Federal Building 844 King Street, Suite 2207 Lockbox 35 Wilmington, DE 19801

APPEARANCES CONT'D:

For Various Talc Claimants:	Maune Raichle Hartley Frency & Mudd, LLC By: CLAYTON L. THOMPSON, ESQ. 150 West 30th Street, Suite 201 New York, NY 10001 Levy Konigsberg, LLP By: JEROME H. BLOCK, ESQ. MOSHE MAIMON, ESQ. 101 Grovers Mill Road, Suite 105 Lawrence Township, NJ 08648 Simon Greenstone Panatier, PC By: LEAH CYLIA KAGAN, ESQ. 1201 Elm Street, Suite 3400 Dallas, TX 75720
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For Paul Crouch, individually and on behalf of Estate of Cynthia Lorraine Crouch:	Ruckdeschel Law Firm, LLC By: JONATHAN RUCKDESCHEL, ESQ. 8357 Main Street Ellicott City, MD 21043
For the Ad Hoc Committee of Attorney Generals:	Womble Bond Dickinson BY: ERICKA JOHNSON, ESQ. 1313 North Market Street Suite 1200 Wilmington, DE, US 19801

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THE COURT: Okay. Good afternoon, everyone.

This is Judge Kaplan. Getting a little feedback.

UNIDENTIFIED SPEAKER: Good afternoon, Your Honor.

THE COURT: Good afternoon.

I hope everybody's doing well. Bear with me as I go through the usual mechanics of getting us up from an IT perspective.

All right. Thank you. This afternoon I intend to address the pending motions with respect to the preliminary injunction based on the debtor's verified complaint, as well as the pending relief from automatic stay filed by Mr. Satterley on behalf of Emory Valadez.

First, some preliminary matters, if I may. The Court is in receipt of submitted evidence and deposition designations proffered, by both the debtor and the committee, TCC. The Court is also in receipt of the objection filed by the TCC to certain designations of testimony with respect to Mr. Haas, Mr. Murdica, and Mr. Birchfield.

At this point in time, the Court is accepting into evidence all of the evidence and designations submitted by both the debtor and the Committee. The Court is overruling the objections raised by the Committee with respect to those identified depositions and testimony. But the Court is going to note that the Court in reaching its ruling this afternoon has accorded zero weight to the depositions and the evidence

reflected in the testimony.

The Court is also in receipt of supplemental submissions from you all. Thank you. We have the debtor's supplemental submission dated April 19th. We have the Committee's objection to it. We have supplemental submissions on behalf of the Bergeron's, on behalf of Maune Raichle's clients, Katherine Tolleson, on behalf of Paul Crouch. We have also, the Court is in receipt of an initial statement on behalf of an ad hoc committee supporting talc claimants.

Oh, let me go back. With respect to the evidence, I have also received the U.S. Trustee's objection with respect to the use of confidentiality designations. And the Court agrees that the evidence has been accepted for purposes of the PI motion only and not for any other purpose in this case. I think that covers all these supplemental submissions. And the Court has had the opportunity to review these this morning.

I'm prepared to read my ruling into the record. I hope you all will bear with me in the time it takes.

I sat through yours.

All right. One of the advantages of conducting the hearing in a hybrid fashion, both live and remote this past Tuesday, was that my wife could log in and see that I was actually working and in Court for over nine hours. And when I got home, she asked me why I didn't cut off the arguments and the endless PowerPoint presentations sooner. I told her that I

was looking for answers, that it was repeated often that the world is watching and I wanted every opportunity to understand the facts and get answers to my concerns. I believe that the Court and the world is entitled to such answers.

Well, frankly, after Tuesday, I have more questions than answers. The fundamental question addressed by the parties is whether the debtor has a realistic possibility of success. It is the linchpin of the four-prong injunction test employed universally. In Chapter 11, the inquiry is more focused on whether the debtor has a reasonable possibility of reorganizing, which needless to say, at a minimum, requires that the debtor survive any motions to dismiss for cause, including lack of good faith.

Our Third Circuit now has made clear that it views the gateway to good faith being a determination that a debtor is in financial distress. Mr. Maimon, among others, argued that this determination should be straightforward. Did anything occur in the two hours and 11 minutes between filings and after the Third Circuit's ruling, which changed the debtor's financial situation and created distress.

I'm not sure that this is the correct question. Rather, I think it must be whether anything changed in the debtor's financial picture. Since October of '21, the date of the first filing and the period fixed for purposes of the five-day trial undertaken in February of 2022, and April 4, 2023,

the date of the second filing.

Well, certain things have changed. Claims against the debtor have soared from approximately 41,000 to in all likelihood well over a 100,000. Are these new claims supportable? Tuesday provided more speculation than answers. Does the increased volume of claims add to or create financial distress for this debtor? Maybe. Maybe not.

Since the first filing, the acknowledged floor for the debtor's talc liability has increased from 2 billion to 8.9 billion with questions remaining as to whether this sum would cover the billions claim due for third-party providers, state regulators, Canadian class claimants, indemnified parties, and others.

Does this increase floor of debt add to or create financial distress for this debtor? Again, maybe. Maybe not. Since the first filing, the debtor's funding resources have been reduced from 61 billion to possibly 30 billion plus. The reduction certainly appears manufactured by the debtor, HoldCo, and J&J in response to the Third Circuit's ruling. Does this reduction in funding add to or create financial distress for this debtor? Maybe. Maybe not.

Does the manner in which the transactions were undertaken give rise to an independent bases for finding bad faith? Possibly. Do the transactions give rise to fraudulent transfer liability for the benefit of the debtor's creditors?

Well, constructive fraud generally, under the Bankruptcy Code and state law, requires a determination of insolvency. Can the Court conclude after Tuesday's hearings that the debtor's liabilities exceed its assets? I don't think so since the extent of the liabilities has not been anywhere close to being fixed.

The Third Circuit specifically cautioned and admonished against casual calculations and back of the envelope forecasts. Given the limited record here, this Court cannot make an informed determination or comparison of the assets and liabilities of this debtor in this bankruptcy, which according to the Third Circuit, is where the inquiry should be focused.

As to actual fraud, can the Court conclude that there's been an actual intent to hinder, delay, and defraud creditors? Maybe. But proof of subjective intent may be difficult to determine without knowing the extent of the liabilities and whether it's reasonable for the debtor to believe that its remaining assets are sufficient to cover such liabilities.

And for the Court, there was a very concerning question regarding this loss of value in the funding agreements and its potential impact on the interest of present and future creditors. What happens if this case is dismissed? I know the lawyers that represent these claimants will fight zealously and tirelessly for their individual clients, as they should. But

who pursues the claims for the possible loss in funding value? Who will fight for the other a 100,000 or so creditors or claimants to pursue recovery that may be available because of these transactions? Outside of bankruptcy, who will fight to protect the interest of future claimants?

Now, it may be that this Court determines that the last series of questions, or in fact any of the other questions, are not relevant. Once the Court hears from the movants with regard to the anticipated motion to dismiss, undoubtedly the debtor has an uphill battle. There are unresolved issues such as the voidability of the 2021 funding agreement, the potentially largest fraudulent transfer undertaken in history, as the phrase has been proffered; the need to acquire 75 percent approval for the plan. But at this point, with so many unanswered questions, the Court cannot reach a determination that there is no possibility of a successful reorganization premised upon the objections of certain claimants, vehement as they may be.

The Court cannot at this juncture *sua sponte* dismiss this case or rely on bad faith as a basis to deny the preliminary injunction. That being said, the Court is skeptical and will require a well-supported and timely showing by the debtor that this reorganization has a meaningful chance.

For purposes of today, the Court refers and incorporates into this ruling its analyses and discussions

found in its prior published opinions at 638 B.R. 291, 640 B.R. at 322, and 645 B.R. 59. Specifically, these prior opinions explicate the Court's authority to hear, decide, and enter a final order and judgment in the adversary proceeding, which would have the effect of extending the automatic stay and enjoining litigation against non-debtor third parties relative to the debtor talc claims as defined in the verified complaint.

In sum, the Court concludes that Section 362(a) and Section 105(a), and/or the Court's inherent powers can each serve as an independent basis to extend the stay to non-debtor third parties. In so concluding, the Court continues to follow the Philadelphia newspapers approach set forth at 423 B.R. 102, which considers whether there is jurisdiction to enter the injunction, whether the extension of the automatic stay to non-debtors is appropriate, and whether the Court should in its discretion, issue the injunction.

As in the last case, the debtor has asked for a preliminary injunction and/or an extension of the stay to certain non-debtor parties. The UST, the TCC, and representatives of certain claimants, among others, oppose this request. At the core of all these objections is the argument that the debtor cannot confirm a plan, that there is no likelihood of success because the objecting claimants will not agree to a plan proposed by the debtor. Yet the debtor comes before this Court with an alleged 55,000 or more claimants in

support of a proposed settlement.

This Court cannot discount those claimant's rights and preferences in favor of others. Notwithstanding, claimants who have had over the past 18 months their claims and litigation stalled during the pendency of the prior bankruptcy, should not lose more valuable time. Therefore, I have determined that the TRO currently in place should be dissolved and replaced with a far more limited preliminary injunction.

Needless to say, the automatic stay remains in effect as to the debtor. The more limited preliminary injunction to be entered will prohibit the commencement or continuation of any trial against any of the protected parties identified in Appendix B to the verified complaint, as amended, through and including June 15, 2023, a period of approximately 60 days. This is aimed at preventing the liquidation of claims for which this debtor may have liability with the liquidation occurring outside of this bankruptcy.

But to be clear, I am neither enjoining nor restraining the filing of new complaints against the protected parties, nor am I enjoining or restraining any ongoing discovery or other pretrial matters. Given the very limited scope of these restraints, the Court did not, and frankly could not, on the factual record examine the basis of relief for each of the specific protected parties.

The restraints included in the current amended TRO

will remain in effect as to the MDL that's currently pending before Judge Michael Shipp. I have spoken with Judge Shipp and we both agree that the continuing restraints as to the MDL should and will be revisited along with the continuing appropriateness of the preliminary injunction itself at the Court's omnibus hearing scheduled for May 22, 2023.

With respect to Section 108(c) tolling provisions relative to the statute of limitations for unfiled claims, the Court's preliminary injunction order will include language that the automatic stay under Section 362(a) remains in effect for unfiled claims unless the claimant, through counsel, notifies the debtor in writing of his, her, or their interests and intent to proceed with the filing of a complaint.

The purpose of this language is to ensure that such claimants who wish to defer filing a complaint and paying the necessary filing fees while the bankruptcy case unfolds are not placed in the position of having to file and incur that expense. The Court welcomes any and all suggestions as to workable language that addresses this issue.

Finally, the Court recognizes the debtor's concern that a full throttled resumption of litigation may place immediate burdens on staff and potential witnesses, such as a proffered 30(b)(6) witness and sees no reason why transcripts of such initial depositions can't be provided in lieu of multiple repeat and duplicative depositions across the country.

If a problem arises in this regard, the Court will address this and any specific problems at a future date.

In reaching today's ruling, that Court employs its discretion and judgment to balance the interest of the tens of thousands of claimants who wish to go forward outside of bankruptcy, the interest of the tens of thousands of claimants who wish to pursue settlement within this case, and the interest of the debtor in pursuing a fair and equitable resolution of these claims through a bankruptcy reorganization.

I wish to make one thing clear. Contrary to some suggestions, the Court is not endeavoring to make policy. That has never been the Court's aim. Rather, the Court is engaged in trying to do its best to advance the interest of creditors as a whole, a task I and my bankruptcy judge colleagues undertake daily.

With respect to the Valadez matter, I am troubled with the same issue I’ve had to tackle in the prior case, whether it is ever appropriate to start picking and choosing which claimant among thousands should be permitted to go forward and liquidate claims while others abide by the process. From everything I have heard and read there remains considerable tasks, including expert discovery and motion practice, which must be completed before the matter is ready for trial.

Mr. Satterley, I see you’re on. There are no present

1 restraints preventing you from moving forward in this regard
2 apart from proceeding to trial. I will provide your client the
3 opportunity to quickly revisit this issue by carrying your
4 motion to May 3rd, and if appropriate, that's the next
5 scheduled omnibus hearing, and if appropriate to the May 22nd
6 hearing, to hear where you stand with respect to pretrial
7 matters.
8 Alternatively, you may submit a form of order
9 granting in part and denying in part your requested relief so
10 that you may pursue an immediate appeal. You can advise
11 chambers after this hearing as to your preference.
12 Finally, as noted, on Tuesday as part of the text
13 order in the first case, which terminated mediation due to the
14 anticipated dismissal of the case, I urge the parties to
15 continue settlement discussions. I have not altered my view
16 that mediation is important. Indeed, considering the debtors'
17 intent to file a plan in short order I believe mediation is
18 critical and should begin as soon as possible.
19 The parties must have confidence in the mediator, and
20 the mediator must have plenary authority to conduct any
21 mediation as he, she, or they deem appropriate. I know the
22 debtor has filed a motion to reappoint Mr. Russo and Judge
23 Schneider. Notwithstanding, I am directing the Committee and
24 the debtor to provide me in confidence with three names of
25 proposed mediators by the close of business this coming

Wednesday. I am away out of state until then. My inclination is to appoint a single mediator to start who will be subject to the same mediation protocol employed in the prior case. Thank you.

I will ask the debtor to settle a form of order with the Committee and others, reflecting my ruling today, of course by reference. And fearfully I will ask are there any questions?

MR. SATTERLEY: Yes, Your Honor.

THE COURT: Well --

MR. SATTERLEY: I'm sorry.

THE COURT: We'll start -- Mr. Satterley?

MR. SATTERLEY: Yes. So, obviously I got -- I'm going to read Your Honor's -- the transcript whenever we get it today, and I need to consult with appellate counsel, but I just got a little confused as you read along.

With regards to the granting of the -- or the decision to appeal, will Your Honor allow me and certify the issue to the Third Circuit? I need to know that so I can talk to appellate counsel also as I advised Your Honor on the 11th. I advised Your Honor that it was my intention to take a writ -- emergency writ because of the pending death of my client, so I just wanted to find out from Your Honor will you give me permission, if my appellate counsel tells me it's appropriate, to go to the Third Circuit directly?

THE COURT: The best I can do is give you the authorization to make the request to me formally. I have to --

MR. SATTERLEY: Yes, Your Honor.

THE COURT: -- allow other parties to weigh in on it.

MR. JONAS: Your Honor, may we have the same response? Because we would intend to do so, as well.

THE COURT: The same response would be appropriate.

MR. JONAS: Thank you, Your Honor.

MS. BROWN: Your Honor, this is Allie Brown. Could I ask, I understand the Court's ruling. Given the significance of the discovery that will no doubt be coming our way very soon, could we ask that the order not go into effect until Monday at nine a.m. so that we can alert counsel throughout the country who handle these matters on a local basis and have no visibility into what's been going on here, so they are prepared to deal with letters to the Court, and calls to the Court in the individual cases they are monitoring? I fear if we don't do that it could be somewhat chaotic, as discovery requests start immediately.

THE COURT: Well, as a practical --

MR. SATTERLEY: May I respond to that, Your Honor?

THE COURT: Let me -- I'll let you respond. Let me -- as a practical matter I don't have an order. I asked the parties to settle an order. And I leave on Saturday morning, and I'll be out of the state. So --

MS. BROWN: Understood.

THE COURT: I don't know how to respond to you. Certainly --

MS. BROWN: I think I understand, Your Honor. So, it will be dependent on us proposing something to the Court --

THE COURT: Right.

MS. BROWN: -- and there is at least a few days time on that so we can get the logistics in order.

THE COURT: Right. With Mr. Satterley --

MS. BROWN: Understood.

THE COURT: Yes. Thank you.

MR. SATTERLEY: So, this -- counsel has been aware of Your Honor's tentative since last Thursday, and Your Honor, you know, while it's more formalistic and you put it all in more detail, they have been aware, and just as Your Honor directed me to do, I went to Judge Seabolt and asked him to do exactly what Your Honor said, move the hearing until today. And counsel for J&J and all the retailers were present, and they said I correctly stated what Your Honor said. There is absolutely no reason to further delay, because trial courts, state courts have a docket also, and they need to manage their docket.

So I would request, Your Honor, to allow us to advise the state courts, advise the trial judges the procedure. Obviously various state laws control with regards to how much

time they have to respond to discovery. No state that I'm aware of requires the debtor -- I mean, the non-debtor, the non-debtor to respond immediately to discovery. Usually it's 20 days, or 30 days, or 45 days.

So even if we were to tender discovery today, it's not going to be tomorrow that they're going to respond to it. So I object to Mrs. Brown's request to once again further delay the resumption of our client's rights to go -- and because, for example, Your Honor, one of the cases I filed an objection to was Mr. Eagles (phonetic). His trial, Mr. Eagles' trial was already set for April the 2nd. Because of the TRO we moved it to May the 1st. And now I was going to tell Judge Seabolt to move it to June the 15th. And what Ms. Brown is in essence asking for is in Mr. Eagles' case, who is dying of mesothelioma, that we would not be able to start preparing that case further for trial. So I would object to Mrs. Brown's request, and allow us to begin the preparation so that these individuals are not further harmed.

THE COURT: I think I can --

MS. BROWN: Your Honor --

THE COURT: Well, Ms. Brown, I think I can address this -- and I see other hands raised. I do not have an objection -- I know you all will secure a copy of this transcript quickly. I have no objection to you providing it to non-bankruptcy courts with the note that a formal order has not

been entered. It will speak for itself.

MS. BROWN: And, Your Honor, until the formal order is entered we will have at least a few days to organize the local counsel and be prepared to respond?

THE COURT: I can't see any court acting to prejudice those interests in the days it will take. Work hard, get me an order. I will enter it even if I am not in the state. But --

MS. BROWN: Understood, Your Honor.

THE COURT: All right. Mr. Placitella?

MR. PLACITELLA: Good morning, Your Honor. Thank you very much. In your decision you referenced Appendix B to the Notice of Filing. There was an amended Appendix B that listed Janssen and Kenvue that we received with no notice and no evidence offered during the hearing, and I want to understand the scope of your decision if it includes Janssen and Kenvue for which no evidence was submitted during the hearing, and for which Mr. Kim said he had no knowledge whatsoever.

THE COURT: Well, I anticipated your question, and candidly, I can't see how your clients would be prejudiced with no trial to occur. That's the only limitation until June in a case that where issue hasn't even been joined yet. So, but if you want to explain --

MR. PLACITELLA: But the issue, Your Honor --

THE COURT: If you want to address it --

MR. PLACITELLA: Respectfully, Your Honor, yes,

because the issue is whether the standard has been met for a temporary restraining order. And with no evidence, and in fact, they submitted a brief to you saying whatever happened after Holdco is irrelevant, with no evidence, even with Your Honor's best intent there is no basis even for a short restraint to stop the case against Kenvue or Janssen. The operation of -- I'm assuming what's going to happen is they are going to file a motion to dismiss, and the trial court will make a determination.

But, you know, having them give notice, you know, after five a day before the hearing, put on no evidence and say oh, well, protect them too when Mr. Kim doesn't even know why it was included, respectfully, I don't think it should be included.

THE COURT: All right. Fair enough. At this juncture I am going to excise out those two defendants from the Exhibit A. I will preserve the debtor's rights to come back before me to include them at a later date if it becomes relevant.

MR. PLACITELLA: Thank you, Your Honor.

THE COURT: Thank you.

MR. JONAS: Your Honor?

THE COURT: Yes?

MR. JONAS: Your Honor, it's Jeff Jonas from Brown, Rudnick, and with me is Melanie Cyganowski from Otterbourg on

1 behalf of the Committee, TCC. Your Honor, I would ask that you
2 sua sponte grant the Committee derivative standing to
3 investigate and bring state court causes of action and claims.
4 I think -- I hope, Your Honor, that our hearing, trial earlier
5 this week, if nothing else, demonstrated, and I think you have
6 sufficient evidence as to the futility of expecting this debtor
7 to investigate, never mind bring, those claims and causes of
8 action. So we would ask you to do that now, Your Honor.
9 THE COURT: All right. Does the debtor wish to be
10 heard? Mr. Gordon?
11 MR. GORDON: Greg Gordon, Your Honor, Jones Day, on
12 behalf of the debtor. I don't think it's appropriate to make
13 that request orally for a sua sponte ruling. There are
14 standards that have to be met, including advising the Court and
15 the parties what claims we're talking about, and there's got to
16 be a showing that they are colorable claims. And so from our
17 perspective we think, as you handled the other matter, a motion
18 should be filed and we should be given the right to respond to
19 it.
20 THE COURT: All right. I knew there would be a
21 danger in conducting this not in a webinar format where counsel
22 had the ability to ask questions. I'm not prepared or inclined
23 to grant sua sponte relief at this -- or any further relief
24 today. The purpose for today's hearing was to try to read a
25 ruling and direct the parties to come to a form of order.

MR. GORDON: And, Your Honor, I wanted to spend one minute on Mr. Placitella, if I could. I obviously heard Your Honor's ruling. I just wanted to indicate that he did say in court, as I recall, that the basis for the claims is successor in interest, which would be property of the estate, and therefore those claims would be barred by the automatic stay. But we heard Your Honor. We'll handle that appropriately. We'll file a motion as necessary to get the relief that we think would confirm that those claims are barred by the automatic stay.

THE COURT: In fairness to Mr. Placitella, I was moving everybody along quickly --

MR. GORDON: Understood.

THE COURT: -- on Tuesday, and we didn't vet these arguments.

MR. GORDON: Sure.

THE COURT: And given the stage where it's at there's ample time to address it further.

MR. GORDON: Understood, Your Honor.

THE COURT: Ms. Cyganowski, I can't tell, is there still a hand up?

MS. CYGANOWSKI: Yes, there is, Your Honor. Melanie Cyganowski for the Committee. I'm not asking for the relief today, but just to advise the Court that we will be opposing the debtor's request for expedited relief with respect to the

hearing on the disclosure and plan.

THE COURT: The Court has received the debtor's motion on shortened time, but I believe the Court did receive something from your firm, or one of the firms representing the TCC in opposition. In all candor, it sits on the corner of my desk, and I have not looked at it, nor will I through today and probably through tomorrow. So if other firms want to weigh in, one side or the other, they may do so.

MS. CYGANOWSKI: Thank you.

MR. SATTERLEY: Your Honor, I have one last question. Can we -- I know Your Honor said you were going to be away. Is it -- can we have a deadline for the order? The only thing I'm afraid of, we can obviously meet and confer today. Can we submit by tomorrow competing orders to the extent we can't agree on the exact language? Because I have -- not necessarily with this debtor, but I have had situations where defendants in litigation don't agree, and it just protracts the submission of the order of the Court. So I was going to suggest is it possible we'll meet and confer this afternoon. If we can't agree to an order by 12 noon tomorrow we can submit competing orders, and Your Honor decide what's appropriate?

THE COURT: My thought is that if you -- let's see. I'm trying to make it as expeditious, but I am not sure where I am going to be during the early part of next week. So, how about this? Do your best to meet and confer, come up with the

terms. It shouldn't be a difficult order. I have laid it out subject to anybody's rights to take an appeal, of course, but most of it should just be by reference.

And so, you should be able to come up with the terms of the order. You can take action as appropriate.

So, if by the close of business on Monday you haven't all agreed on a form of order, reach out for chambers. We'll see if we can have a conference call.

MS. BROWN: Thank you, Your Honor.

MR. STOLZ: Your Honor, maybe an easier way to -- to handle it is to have this -- Your Honor's ruling constitute a bench order to be followed up by a written order so it's effective immediately?

MS. BROWN: Judge, we'd like the opportunity to follow your instructions, and we can certainly do so by Monday, and we'll reach out if there is an issue.

THE COURT: I think --

MR. SATTERLEY: The only problem with that, Your Honor --

THE COURT: Go ahead.

MR. SATTERLEY: -- my clients die. Every day is important to my client. And if I have to make a decision about an emergency appeal, as I told Your Honor on the 11th, every single day that goes by my client is -- is closer to being in the ground, dead, and so I would request -- Your Honor made it

real clear what your order is today. There's no reason why we cannot agree to something this afternoon or tomorrow morning and submit something to Your Honor. What -- so, I would -- Mr. Stolz makes a great point, and I would request that Your Honor incorporate Mr. Stolz's request.

MS. BROWN: Your Honor, there are wide implications of your order, and we are prepared to follow the Court's instruction to immediately meet and confer and get the Court by Monday a proposed order.

MR. MAIMON: Your Honor?

THE COURT: Yes, Mr. Maimon?

MR. MAIMON: Thank you, Your Honor. We object to the debtor stringing this out. This is -- Your Honor noted that the delay for claimants should not continue any more as to the non-debtors, and it should not be that on Monday, first thing, with Your Honor out of the state, and we don't know what the Court's availability is, that we then have to first start scheduling conferences. The Court was very clear with its decision today. Mr. Stolz is correct. It's standard practice for courts to issue a bench order that the transcript is the order of the Court to be followed up with a more formal written order that can form the basis of any appeals or anything like that. But we should be able to proceed in accordance with the Court's ruling immediately.

THE COURT: All right. Well, in effect I thought I

was providing Mr. Satterley and others with the authorization to take this transcript. A bench order requires the transcript in the first place. So, I anticipate that you're going to be using the transcript. If you want the magic language that this is it's so ordered from the bench subject to the terms of a more formal order to be entered at a later date, you have it.

MR. SATTERLEY: Thank you, Your Honor.

UNIDENTIFIED ATTORNEY: Thank you, Your Honor.

THE COURT: All right. And then I think I wish all of you a good weekend.

UNIDENTIFIED ATTORNEY: Enjoy your vacation, Your Honor.

THE COURT: Thank you.

UNIDENTIFIED ATTORNEY: Don't tell anyone where you are.

THE COURT: I should be so lucky. Thank you.

UNIDENTIFIED ATTORNEY: Thank you.

* * * * *

C E R T I F I C A T I O N

We, KAREN K. WATSON and TAMMY DERISI, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and to the best of our ability.

/s/ Karen K. Watson

KAREN K. WATSON

/s/ Tammy DeRisi

TAMMY DERISI

J&J Court TRANSCRIBERS, INC. DATE: April 20, 2023

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

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

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

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

Audio Operator: Kiya Martin

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

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

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

Good morning, Mr. Gordon

MR. GORDON: Good morning, Your Honor.

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

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

THE COURT: Yes.

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

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

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

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

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

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

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

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

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

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

Counsel?

MR. WINOGRAD: Good morning, Your Honor.

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

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

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

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

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

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

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

propose the end of day Wednesday.

THE COURT: All right.

MR. WINOGRAD: Thank you, Your Honor.

THE COURT: Thank you, Mr. Winograd.

Mr. Satterley?

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

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

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

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

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

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

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

MR. PLACITELLA: Good morning, Your Honor.

THE COURT: Mr. Placitella, good morning.

MR. PLACITELLA: How are you?

THE COURT: Good, thank you.

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

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

THE COURT: All right. Thank you.

MR. PLACITELLA: And I have some questions.

THE COURT: Of who?

(Laughter)

MS. RICHENDERFER: Good morning, Your Honor.

THE COURT: Good morning.

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

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

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

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

Murdica live today.

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

Thank you, Your Honor.

THE COURT: Well, one more.

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

UNIDENTIFIED SPEAKER: Me too, Judge.

THE COURT: I like that response.

(Laughter)

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

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

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

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

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

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

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

THE COURT: All right. Thank you.

MR. GORDON: Thank you.

THE COURT: Ms. Richenderfer?

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

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

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

THE COURT: All right. Thank you.

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

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

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

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

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

bankruptcy. Let's get to it.

Mr. Stolz?

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

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

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

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

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

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

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

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

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

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

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

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

Go ahead, Mr. Gordon.

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

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

activity.

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

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

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

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

1 into this one were improper, no evidence of any side deals.
2 They have no evidence that LTL or J&J committed fraud or sought
3 to harm the claims or in fact harmed the claimants.
4 They have no evidence that the claimants support we
5 described to Your Honor last week is fabricated or is a lie.
6 They have no evidence that LTL and J&J are seeking to defy the
7 Third Circuit. To the contrary, Your Honor, the evidence will
8 confirm what we said, that this group of firms and others have
9 been harassing supporters for the plan and seeking to
10 intimidate them in order to coerce firms not to support the
11 plan or to withdraw their support for the plan.
12 We will show that the purported opposition to the
13 plan they described at last week's hearing appears much smaller
14 than represented and that the support for the proposed plan we
15 described is even greater than what we said. The evidence will
16 reinforce the extent of LTL's and J&J's good faith by offering
17 a trust funding number that is unprecedented in any mass tort
18 bankruptcy, a number that includes an ovarian cancer settlement
19 that is more than double the amount Mr. Birchfield offered to
20 accept through the Imerys bankruptcy prior to the filing of the
21 first LTL Chapter 11 case.
22 And it will further confirm the benefits of a
23 resolution in bankruptcy by showing how the tort system fails
24 to provide for timely consideration of claims and how most
25 claimants after suffering long delays receive nothing. In

1 short, Your Honor, the evidence will not support these firms'
2 contention that LTL and J&J have engaged in bad faith or
3 committed any of the other bad acts the firms have accused them
4 of. It will also not support these firms' contention that the
5 debtor has no chance of achieving a successful reorganization.
6 Indeed, it will show the opposite. It will show,
7 Your Honor, that the likelihood of a successful reorganization
8 is very high, that the debtor and LTL believe they already have
9 the support of 70 to 80 thousand claimants and that that
10 support is sufficient to surpass the 75 percent voting
11 threshold in the Bankruptcy Code.
12 Aside from these issues, Your Honor, the evidence
13 will establish that the claims the plaintiffs seek to assert
14 against the protected parties which include primarily
15 affiliates of LTL and retailers are the same claims they assert
16 against LTL. They involve the same products, the same time
17 periods, the same injuries, the same evidence.
18 The evidence will confirm that the debtor's insurance
19 is shared and will be diminished if the claims are permitted to
20 proceed. The evidence will establish that given the
21 indemnities LTL has provided, judgments against the protected
22 parties would be the equivalent of judgments against LTL.
23 The evidence will establish that the litigation of
24 claims in the tort system will impede plan negotiations here
25 and distract LTL from its efforts to finalize and confirm a

1 plan consistent with the plan support agreements as soon as
2 possible. And the evidence will establish, Your Honor, that
3 the absence of a stay and injunctive relief to prevent
4 piecemeal litigation in the tort system of the same claims that
5 LTL seeks to resolve here will thwart the fundamental objective
6 of this case which is to equitably resolve all current and
7 future talc claims in this proceeding.
8 In sum, Your Honor, we submit that the evidence Your
9 Honor will hear today will fully support our motion, and we
10 will request based on the record that Your Honor grant the
11 motion and overrule the objections of these law firms.
12 Thank you, Your Honor.
13 THE COURT: Thank you, Mr. Gordon.
14 Mr. Satterley?
15 MR. SATTERLEY: May it please the Court, Joe
16 Satterley, Kazan, McClain, Satterley & Greenwood, on behalf of
17 Anthony Valadez, Vincent Hill, Kristie Doyle, Marlon Eagles
18 (phonetic), Dean McElroy, Terry Leavitt, Susan Bader, and many
19 many other cancer victims. I appreciate Your Honor allowing me
20 to be here and allowing us to be here on behalf of these cancer
21 victims, to be heard regarding LTL's second bankruptcy.
22 We believe the bankruptcy to be in bad faith, a
23 litigation tactic, and there is no chance of success on the
24 merits when analyzed under the facts. The PI, the preliminary
25 injunction must be dismissed and Your Honor should do away with

1 the temporary restraining order.
2 I'm going to defer many of my arguments until later
3 and allow co-counsel, Mr. Maimon, to speak regarding many of
4 the issues. I just want to say that yesterday the debtor filed
5 a list of the top creditors. And me and Mr. Maimon represent
6 -- are listed as three of the top four. We've gone diverted
7 against J&J, JJCI, Cyprus, Imerys. We know the affiliates that
8 they're trying to protect the party.
9 And nothing could be further from the truth that this
10 is a cookie-cutter situation and the facts are the same in
11 every case. In fact, when we try cases against J&J alone which
12 I have done that without JJCI, the evidence and witnesses are
13 different than if I had to try cases against JJCI or LTL now.
14 And same goes with regards to Cyprus, Imerys, the retailers.
15 So it's not the same facts, not the same evidence. There is
16 some overlapping, but it's not the same.
17 I'll leave Your Honor and I'll sit down, I told you
18 I'd be brief, with this precedential decision by Third Circuit
19 amended at the end of March. And on Page 48 and 49, a
20 unanimous Third Circuit says,
21 "Most importantly, though the payment right gave LTL
22 direct access to J&J's exceptionally strong balance
23 sheet, at the time of LTL's filing, J&J had well over
24 400 billion in equity with a Triple A credit rating
25 and $31 billion just in cash and marketable

1 securities. It distributed over $13 billion of
2 shareholders in each of 2020 and 2021. It is hard to
3 imagine a scenario where J&J and new consumer would
4 be unable to satisfy their joint obligations under
5 the funding agreement."
6 Page 49. I say that because I believe throwing away
7 a funding agreement, destroying a $61 billion contract is
8 fraud. And I believe all of the facts support what the U.S.
9 Trustee filed yesterday, that this bankruptcy is
10 unconscionable. It's unconscionable under the law. It's
11 unconscionable on their facts. Your Honor should deny the
12 preliminary injunction and allow these cancer victims to have
13 their day in court.
14 Thank you, Your Honor.
15 THE COURT: Thank you, Mr. Satterley.
16 Mr. Maimon?
17 MR. MAIMON: Thank you, Your Honor.
18 Thank you, Your Honor. May it please the Court. i
19 appreciate the opportunity to speak briefly. I'm going to
20 speak on behalf of two of Mr. Satterley and mine's clients who
21 we put in our oppositions to the preliminary injunction
22 yesterday, and that is widow or the representative of the
23 Estate of Terry Leavitt, Dean McElroy, as well as Susan Bater,
24 the sister and Executrix of the Estate of Patricia Schmitz.
25 Both of those mesothelioma victims had full trials in

1 Alameda County, verdicts in their favor, affirmed on appeal,
2 and final judgments against Johnson & Johnson as well as
3 Johnson & Johnson Consumer Inc.
4 What's important about those cases is that the issues
5 of liability, the issues of proximate cause, the issues of
6 allocation of fault have all been determined and are therefore
7 res judicata against the debtor when it comes out that the case
8 is dismissed but more importantly for Your Honor's purposes
9 today, against Johnson & Johnson.
10 In the Leavitt case, Mr. McElroy's wife, Johnson &
11 Johnson was independently assessed 78 percent of the liability
12 for their own independent liability. And so a court of
13 competent jurisdiction affirmed on appeal and denied cert by
14 the California Supreme Court has determined that Johnson &
15 Johnson has independent liability there and there is absolutely
16 no basis for a preliminary injunction to prevent the Leavitt
17 family from having a damage inquest to determine the wrongful
18 death damages because that's all there's left to do.
19 Everything else is res judicata.
20 The same thing is true with the Schmitts family. Ms.
21 Schmitts died. Her case has now been rejected for certiorari
22 by the California Supreme Court having affirmed the published
23 decision in the Bater case which Your Honor has been given a
24 copy of. Johnson & Johnson is jointly and severally liable for
25 the entire liability in that case because of the jury's finding

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

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

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

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

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

1 jurisdiction in order to give the preliminary injunction.
2 And so the Circuit Court of Appeals took the funding
3 agreement and they took Mr. Kim, Mr. Gordon, and Mr. Katyal at
4 their word and those are binding admissions that the funding
5 agreement pays and is binding even out of bankruptcy and, as
6 Mr. Gordon stood in front of Your Honor and said, even if the
7 case is dismissed. They cannot run away from that, and they
8 are stuck with that.
9 The Court said we take J&J and LTL at their word.
10 Those are the words of Mr. Kim, Mr. Gordon, Mr. Katyal. And so
11 the issue is they fall under their own weight that now that
12 there's been a termination of the most valuable asset that the
13 debtor had for no consideration whatsoever, that is under the
14 law a fraudulent transfer, under bankruptcy law, a fraudulent
15 transfer. And we believe that the evidence that's going to be
16 submitted here today will show that without any, any, any
17 doubt.
18 And so the Circuit prescient said, well, maybe
19 they're going to do it and the question is did LTL receive
20 reasonably equivalent value in exchange for foregoing its
21 rights under the funding agreement. It's not a question of
22 reasonably equivalent value. They had no value. And that was
23 an admission by the chief financial officer of LTL.
24 And so there is no financial consequence to LTL by
25 the lack of the funding agreement. He said that. There is no

1 difference in the financial condition before the bankruptcy was
2 dismissed and after the bankruptcy was dismissed for LTL, the
3 chief financial officer admitted. LTL can meets its
4 obligations now, he testified under oath, the chief financial
5 officer. LTL can meet its obligations into the foreseeable
6 future, which is exactly what the Circuit said is the
7 requirement for good faith and financial distress.
8 And so, Your Honor, there is no reasonable chance of
9 success for this bankruptcy filing. The fraud on two parts,
10 first, with regard to the funding agreement being central to
11 the divisional merger which established the first bankruptcy,
12 now that it's gone, crumbles under its own weight; and, second,
13 the fraudulent transfer of terminating the funding agreement.
14 And, third, there's no financial distress whatsoever.
15 So how do you get around and escape the Third Circuit
16 holding? And you do it with the opening that Mr. Gordon gave.
17 And that is like anyone trying to have a magic trick, you have
18 to have a diversion. And the diversion is often glitzy, it's
19 often sensational, but it's all meant to misdirect you from the
20 three principle points that make it all moot and make it all
21 irrelevant.
22 And I'll briefly talk what those diversions are.
23 Diversion number one is the claim that there's $8.9 billion
24 available to satisfy J&J's creditors. We'll see what's wrong
25 with that. Secondly is the entire or the most of the opening

1 was about this so-called claimants' support. I want to state
2 right upfront both of these are absolutely irrelevant to the
3 preliminary injunction and irrelevant to the merits of this
4 case and the fact that it should be dismissed because you can't
5 manufacture jurisdiction. You can't manufacture financial
6 distress. And it doesn't matter how many people support a
7 bankruptcy that's filed in bad faith and has no financial
8 distress and shouldn't have been filed in the first place.
9 And so let's go right to it. The claim is that
10 there's $8.9 billion. And in their papers, J&J and the debtor
11 put together what it's going to cover. They say it's going to
12 cover gynecological cancers, although today Mr. Gordon says
13 that is ovarian cancer. They say that it's going to cover
14 mesothelioma claims, and they say that it's going to cover the
15 claims of the governmental entities, the states' attorneys
16 generals and so forth that Your Honor has dealt with.
17 Nowhere in their papers, nowhere in the term sheet,
18 nowhere in the plan support agreements that plaintiffs' lawyers
19 signed is there anything for the third-party parent claims.
20 Blue Cross Blue Shield of Massachusetts is a creditor on the
21 Official Committee. And, yet, there is nothing from this $8.9
22 billion that is allocated to there.
23 Where does that money come out of? Whose pocket does
24 that come out of? The plaintiffs' lawyers who signed the plan
25 support agreements, they have no idea. It's not coming out of

1 their part. And J&J is silent because they don't want anyone
2 to know that the $8.9 billion isn't real.
3 The other part of it is that they make no claims or
4 they make no provision for the indemnity claims that are
5 asserted by their suppliers of talc over the years, Imerys as
6 well as Cyprus, which in the Imerys bankruptcy, Johnson &
7 Johnson went into that court and characterized the value, the
8 potential value of those indemnity claims, quote, in the
9 billions of dollars.
10 Where is those billions of dollars coming out of?
11 J&J is not going to agree to pay on top of that. J&J's going
12 to say, well, we're putting aside $8.9 billion. And so
13 diversion number one doesn't meet it, and it flows into
14 diversion number two. And that is that diversion of claimant
15 support.
16 Let me say again claimant support is irrelevant to
17 any issue Your Honor is dealing with today. It's irrelevant
18 here because claimant support cannot fix the fatal flaw of a
19 bad-faith filing and no financial distress and that was what
20 the Circuit Court held.
21 And so let's look at Johnson & Johnson's false claims
22 and what we intend and expect the evidence to show about that.
23 They filed on the first day of this bankruptcy that Your Honor
24 will see an 8-K form together with the Securities and Exchange
25 Commission. There are rules and regulations for making false

1 claims in an 8-K form.
2 In their 8-K filing, Johnson & Johnson represented
3 that LTL also has secured commitments from over 60,000 current
4 claimants to support a global resolution in these terms. That
5 is their representation to the Securities and Exchange
6 Commission that they had some secured commitments from over
7 60,000 claimants.
8 They've also done so in their own website. They say
9 LTL's organization announced in April 2023 is supported by
10 60,000 current claimants. They say that publicly in a website.
11 They've told the press this. In an email statement from
12 Allison Brown, lawyer for J&J, she said, "The refiling
13 represents significant progress for the plan for efficient and
14 effective resolution that addresses the concerns raised by the
15 Third Circuit, is consistent with the Bankruptcy Code" -- and
16 here's the important part -- "and currently supported by
17 roughly 70,000 claimants and numerous law firms."
18 The conjunctive, not the disjunctive. In front of
19 Your Honor, Mr. Gordon got up and said that this is the group
20 includes -- the second filing is supported by over 60,000 talc
21 claimants. He said that as a representative of LTL in open
22 court.
23 He said, "We've also moved for the appointment of co-
24 mediators Judge Snyder and Mr. Russo. Their involvement was
25 instrumental in reaching the agreement we've reached with over

1 60,000 claimants.: He represented in open court as an officer
2 of the Court that the debtor has reached agreement with over
3 60,000 claimants. He says it's unprecedented $8.9 billion.
4 It's supported by over 60,000 claimants who have signed and
5 delivered plan support agreements and support is continuing to
6 come in.
7 Your Honor will see that not a single claimant, not a
8 single claimant has signed a plan support agreement. Not a
9 single one. And so these are the false claims. The truth, and
10 we've asked the plaintiffs' lawyers themselves about this. The
11 plaintiffs' lawyers have said that their clients have not yet
12 decided whether to approve the agreement, that they've told
13 Reuters that they, the lawyers, plan to recommend their clients
14 take the deal.
15 If we don't want to believe Reuters for reporting
16 this, we can look to the evidence that Your Honor is going to
17 have which is the sworn testimony of two of the major
18 proponents of the deal with Johnson & Johnson who signed plan
19 support agreements, Mr. Pulaski.
20 Mr. Pulaski testified under oath and was questioned,
21 "Q Does LTL have secured commitments from over 60,000 current
22 claimants to support a global resolution?
23 "A My understanding is they have commitments from attorneys
24 representing those clients, if not more. And I believe there
25 are probably more with attorneys that are going to recommend

that their clients support the agreement."

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

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

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

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

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

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

1 forthright with this Court, has not been forthright in their
2 security filings, and has not been forthright with the public.
3 Mr. Watts who was the first to sign the PSA or
4 negotiate the PSA with Johnson & Johnson said on Page 64 of his
5 deposition,
6 "Q At any point did you tell Mr. Murdica that your clients
7 had consented to the support plan, to the PSA?"
8 And let's see what he said. He said,
9 "A No. In fact, I think it would be a violation of the anti-
10 solicitation rules under the Bankruptcy Code for me to do so
11 before his term sheet is transferred into plan documents.
12 Litigation is had with respect to whether or not that's going
13 to be actually sent out for a vote."
14 And so he under oath disclaimed what they represented
15 that he did. He said it would absolutely be a violation of the
16 Bankruptcy Code for me to get pre-consent from my clients and
17 yet that's what Ms. Brown said to the press, that's what Mr.
18 Gordon said to Your Honor, and that's what they put in a public
19 filing to the SEC.
20 We asked him point-blank, because you can't do it, he
21 said it would be a violation, you have never committed to Mr.
22 Murdica or Mr. Haas who are the two people he negotiated the
23 deal with from J&J that your clients would vote in favor of the
24 plan.
25 "A True. That's true. I've committed that I will recommend

it and that's all.

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

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

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

In bankruptcy, Your Honor, the Circuit has said that

1 J&J cannot do this because it is not eligible for bankruptcy.
2 It said that the desire for settlement, "cannot displace the
3 rule that resort of Chapter 11 is appropriate, only for
4 entities facing financial distress."
5 And, therefore, Your Honor, because there's no
6 reasonable chance of success due to the fraud both ab initio
7 with the funding agreement being the basis for the reliability
8 and foundation of the Texas Two-Step, as well as the fraudulent
9 transfer of no value for the termination of the funding
10 agreement, and because they are not according to their own
11 chief financial officer, under immediate financial distress,
12 this case cannot have a preliminary injunction in favor of a
13 non-debtor or any non-debtors.
14 Fraud is not a legitimate way to manufacture
15 distress, and no one should fall for the diversions of the
16 half-trillion-dollar magician. I appreciate the Court's
17 indulgence. Thank you.
18 THE COURT: Thank you, Counsel.
19 As we go forward, I hope there's not a disconnect
20 between a lawyer's five and ten minutes and five and ten
21 minutes in real terms. But I appreciate that there's a lot to
22 get out there.
23 MS. RICHENDERFER: Good morning, Your Honor. Linda
24 Richenderfer from the Office of the United States Trustee.
25 Your Honor, we heard from Mr. Gordon today and at the

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

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

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

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

1 The burden is totally on the movant. And the movant
2 must prove likelihood of success on the merits that it is in
3 the public interest that when you balance the harms, Your Honor
4 should extend the stay or the preliminary injunction. And you
5 have to look at the irreparable harm to the ability to
6 reorganize. That's the way that they have phrased it.
7 In my opening remarks, I'm only going to focus on two
8 or three of these points. There will be a lot more in the
9 closing after Your Honor has a chance to hear the evidence.
10 Likelihood of success on the merits, remember, this is
11 likelihood of success from the non-debtor affiliates. Not LTL,
12 non-debtor affiliates.
13 So first we have the issue that we've been talking
14 about and that I've talked about during the first-day hearing,
15 number of people in favor of the plan. This is not a situation
16 where we have an RSA that the actual creditors have signed on
17 to. We have a PSA where attorneys have signed on to it, And
18 as has been mentioned, the attorneys admit it's still up to
19 their clients to vote on the plan.
20 One of the things we tried to determine during
21 discovery and Your Honor will hear evidence of this is to what
22 extent has the number been I'll call it de-duping. I don't
23 know what else to call it. I speak from experience in Imerys.
24 I can tell you how many claims were knocked out because more
25 than one attorney thought that they represented the same party.

1 Sometimes it's because the party actually did sign more than
2 one agreement. It happens.
3 And there were thousands if not tens of thousands of
4 votes that were knocked out because of that. But nobody here
5 is de-duped. I don't know whether the number is 60, 70, 80. I
6 don't know if it's 30 or 40. I don't know what it is. But we
7 also don't know how many of those people will ever be able to
8 vote on the plan because we don't know how many of those people
9 have medical records that support the fact that they should be
10 voting on this plan, or how many of these people can show that
11 they had exposure to talc products. And that's based on the
12 deposition testimony of people like Mr. Watts and Mr. Pulaski.
13 The other issue that comes up on likelihood of
14 success on the merits is will this case survive a
15 jurisdictional challenge. Will this case survive a motion to
16 dismiss? And the third issue is if this case survives the
17 challenge, will there be a channeling injunction and a case
18 where LTL and J&J tell us there's no asbestos in their product,
19 or will there be a third-party release in this plan to cover
20 the non-debtor affiliates?
21 That's an important point, Your Honor. It's an issue
22 that I'm sure Your Honor's well aware how it's pending in front
23 of the Second Circuit yet and hopefully they'll rule any day
24 now in the Purdue case. But likelihood of success on the
25 merits, we need to focus on the non-debtor affiliates. And

that last point is very important.

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

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

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

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

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

1 And then it goes to Footnote 18 where it says, quote,
2 some might read our logic to suggest LTL meet only part with
3 its funding backstop to render itself fit for renewed filing.
4 While this question is also premature, we note interested
5 parties may seek to avoid any transfer made within two years of
6 any bankruptcy filing by a debtor who receives less than a
7 reasonably equivalent value in exchange for such transfer and
8 became insolvent as a result.
9 So if the question becomes ripe, the next question
10 might be that LTL receive reasonably equivalent value in
11 exchange for forgoing its rights under the funding agreement.
12 And, Your Honor, I'll admit I skipped over some of the
13 citations to code provisions when reading that for the Court.
14 Your Honor, I would say that that footnote gives
15 people opposing what's going on in this court the game path for
16 how we proceed forward. It did not give LTL instructions, go
17 get rid of the funding agreement and then you can come back
18 into the bankruptcy court. Your Honor, it's exact opposite.
19 And so, Your Honor, to the extent that the non-debtor
20 affiliates become covered by another preliminary injunction or
21 a stay, or whatever terminology is used, Your Honor, I think I
22 its in the public interest that this Court consider whether or
23 not that is to be allowed under the scenario that is in front
24 of the Court today.
25 I would submit, Your Honor, that when one takes into

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

THE COURT: Thank you. Mr. Jonas?

MR. JONAS: Good morning, Your Honor.

THE COURT: Good morning.

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

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

THE COURT: Sensible. Thank you.

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

MR. GORDON: Yes, Your Honor.

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

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

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

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

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

JOHN KIM, PLAINTIFF'S WITNESS, SWORN

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

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

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

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

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

THE COURT: All right.

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

CROSS-EXAMINATION

BY MR. JONAS:

Q Good morning, Mr. Kim.

A Good morning, Mr. Jonas.

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

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

1 we have enough copies at least for the witness, the Court, and
2 opposing counsel. But we're doing this a little bit on the
3 fly. We didn't have a chance to pre-mark or anything like
4 that. So I would just ask your indulgence.
5 THE COURT: Absolutely. Understood.
6 MR. JONAS: We're going to have two -- we're going to
7 start with two exhibits, Your Honor. If I could have what
8 we'll mark as I guess Trial Exhibits 1 and 2.
9 THE COURT: Why don't we mark this as TCC-1 and
10 TCC-2?
11 MR. JONAS: Thank you, Your Honor. May I approach?
12 THE COURT: Yes, please. Thank you.
13 BY MR. JONAS:
14 Q Okay. Mr. Kim, I'm going to show you tow documents which
15 have been marked Exhibits TCC-1 and TCC-2. The first one I'd
16 like you to take a look at, it should be a voluntary petition
17 filed on October 14th, 2021. That was the earlier bankruptcy
18 case for LTL Management LLC. Do you see that?
19 A I do.
20 Q And if you look at Page 22 of 22, you signed that under
21 the penalty of perjury, correct?
22 A I'm sure I signed it. I'm sorry, you said Page 22 of 22?
23 Q At the top, you'll see the Court stamp. And if you look
24 at what's stamped as 22 of 22. You should see your signature
25 at the bottom.

A Yes.
Q Okay. Now just to orientate, let's look at Exhibit 2, TCC-2 which is the petition, more recent petition filed on April 4th, 2023. And if you look at Page 24 of 24, you also signed this petition under penalty of perjury, correct?
A I did.
Q Okay. Now the latest petition, that is TCC-2, which was filed at the beginning of this bankruptcy case, there is a list beginning on Page 18. And it's the list of law firms with significant talc claims. Just let me know when you get there.
A Yes, I have it.
Q Okay. And this list that you filed a few weeks ago, it doesn't have certain of the plaintiffs' law firms that were listed on the earlier bankruptcy petition, that is that commenced the first bankruptcy case. Correct?
A I believe that's true. Yes.
Q And conversely, certain plaintiffs' firm, law firms which did not appear on the prior petition now appear on this list of plaintiffs' law firms, correct?
A They do.
Q For example, the Ferrer Poirot & Wansbrough firm is listed on your latest petition, but not on the earlier petition, correct?
A I'd have to check. I'll take your word for it.
Q Okay.

A And the McDonald Worley PC firm, it's listed on your latest petition. It's not on your earlier petition, correct?
A Again, I'd have to check. I believe -- if you represent that's true, I'll believe that.
Q Okay. The Pulaski Kherker firm, it's listed on your latest petition but not on your earlier petition, correct?
A Again, same answer. I could check if you'd like me to. But I'll take -- I trust your representation.
Q The Reub Stoller & Daniel firm, listed on your latest petition, not your earlier petition, correct?
A Again, same answer. I will defer to your representation. I'd have to check to make sure.
Q The Watts Guerra firm, listed on your latest petition, not your earlier petition, correct?
A Same -- same answer.
Q Okay. Now all the firms I just mentioned, they're law firms with which LTL has entered into plan support agreements, right?
A I would have to check the plan support agreements to confirm what you said. I haven't memorized all the firms.
Q Will you accept my representation on that?
A If you say so. But again, I'd have to go check to --
Q Okay.
A -- to confirm.
Q All right. Now let's go back and look at Exhibit 1, the

1 petition filed in LTL-1. You see the Ashcraft & Gerel firm
2 listed there? Right at the second firm listed.
3 A I'm sorry. I'm trying to get to the list.
4 Q Sure. It's on Page 16 of 22.
5 A Okay.
6 Q Do you see the Ashcraft & Gerel firm?
7 A I do see that.
8 Q That firm was a member of the TCC, the Talc Claimants
9 Committee, in the first bankruptcy case. Wasn't it?
10 A I actually don't -- don't know what the composition of the
11 TCC was.
12 Q Okay. Okay. You didn't include that firm in your
13 bankruptcy petition this time around, did you?
14 A Again, I'll take your word for it. I can check if you'd
15 like me to.
16 Q The Karst Von Oiste firm that's listed, I think it's,
17 let's see, number 17. That firm was a member of the Talc
18 Claimants Committee in LTL-1, wasn't it?
19 A Again, I don't know the composition of the committee.
20 Q You didn't list that firm here, did you?
21 A Again, I'll take your -- I'll take your word for it unless
22 you want me to check.
23 MR. JONAS: I'll tell you what. Your Honor, may I
24 approach?
25 THE COURT: Sure.

1 MR. JONAS: Your Honor, I don't have enough copies.
2 So I'll just introduce it. Hopefully, it will refresh the
3 witness' recollection. It's an order appointing the Official
4 Committee of Talc claimants, again LTL-1.
5 THE COURT: Okay.
6 BY MR. JONAS:
7 Q Mr. Kim, you're looking at -- okay. You're looking at a
8 list. And you'll see it's from the North Carolina bankruptcy
9 case. And it has the representatives. And I appreciate that
10 the law firms themselves are not members. But they have
11 clients that are members of the Talc Claimants Committee and
12 they're representatives.
13 And you'll see on there, just to confirm what I've
14 represented to you, you see on there the Ashcraft & Gerel firm,
15 right?
16 A I see this on this list, yes.
17 Q And you see the Karst Von Oiste firm, don't you?
18 A I do see that on the list.
19 Q You see Weitz & Luxenberg?
20 A I do see that on this list, yes.
21 Q Do you see Kazan McClain?
22 A I do see that on the list.
23 Q And the Levy Konigsberg firm, do you see that on there?
24 A I do.
25 Q Okay. Now all of the firms I just mentioned that you,

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

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

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

A No.

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

A I disagree with that.

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

A Some people would define them differently, yes.

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

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

1 Q But you also told me that a case is something that's
2 filed, correct?
3 A Technically, a case is filed, a claim is not filed.
4 Q Okay. A case is filed, a claim is not filed. And at the
5 beginning of this case, the debtor and loiters for the debtor
6 alleged that there were approximately 60,000 talc claimants
7 that were supportive of the debtor's proposed plan, correct?
8 A We did.
9 Q And that you, I think you said that was indicated by
10 certain plan support agreements, or PSAs, which the debtor
11 Johnson & Johnson Holdco, Inc. and Johnson & Johnson entered
12 into with talc plaintiffs' lawyers, correct?
13 A That is true.
14 Q And you agree that those are not actual settlements of any
15 talc claims, correct?
16 A Correct. They're not settlements. They are just
17 indications of support for a plan to eventually lead to a
18 settlement.
19 Q The PSAs themselves simply provide that the talc
20 plaintiffs' lawyer will recommend the deal to his or her
21 clients, correct?
22 A I think the PSA doesn't actually say that. My
23 understanding is that the PSAs represent a commitment by the
24 attorney that his clients will support a plan.
25 Q You think the lawyer was binding his clients to support

the plan?
A No. I did not say that. I said the lawyer represents that his clients will support the plan.
Q Well, how could he represent that? Do you know if he spoke to his clients?
A The issue is not whether we're binding claimants to the plan. As we do in -- as a standard practice in any mass tort settlement, when we're negotiating something with a plaintiffs' counsel, we get a representation from the plaintiffs' counsel that their clients will do what the plaintiffs' lawyer says they will do.
In other words, they are representing that, you know, they will either recommend or actually have commitments or, I mean, there are various forms that that can take. But what it really means is that when you're dealing with a plaintiffs' lawyer, you have a commitment that the plaintiffs' clients will follow the recommendation. That's true for virtually every mass tort settlement we enter into.
Q Mr. Kim, I know you appreciate how important your testimony is today, correct? You appreciate that?
A I -- I think I do, yes.
Q Okay. Good, because I want to get -- this is a very important fact.
A Yes.
Q Are you saying that the lawyers that sign the PSAs

1 committed their clients to vote in favor of the plan that's
2 outlined there?
3 A No, I'm not saying that. I just explained what I'm
4 saying. I'm saying that --
5 Q Right. All it -- I'm sorry. Go ahead.
6 A I'm saying that the plaintiffs' lawyer has committed to us
7 in one form or another as if whether he's going to recommend
8 the -- the proposal to his clients, and he believes that the
9 clients will listen to his recommendation. That's one way to
10 do it.
11 Other times they have actual commitments from plaintiffs'
12 clients. But whatever form it takes, what we take is that it's
13 a representation that we believe that the claimants will
14 eventually go -- would go with the plaintiffs' lawyer's
15 recommendation, follow the recommendation, and that that's a
16 commitment to us.
17 Q Of the alleged 60,000 supporters that you had, how many of
18 them were, to use your words, commitments? How many were
19 absolute commitments from an underlying talc claimant to
20 support the plan?
21 A I don't have that number. We don't ask for that number.
22 For us, all we need to know is that the plaintiffs' lawyer is
23 committing to us that these folks, his clients will eventually
24 support a plan.
25 Q Mr. Kim, I want you to be very careful because I think

you've said a few different things. So let me try it my way. All the lawyers that -- all the plaintiffs' lawyers that signed, all they did was basically represent to you that they would advise their clients to support the plan. They would recommend that, correct?

A And that they believed that the clients will follow the recommendation. You know, things may change in the future. Again, this is -- entering into plan support agreement is not the settlement, right? There's still a lot of things that have to be done before we get to a plan and get the confirmation. There has to be a vote.

So before that happens, all we can get is a, you know, a commitment that the plaintiffs' lawyer represents to us that he believes that his clients are going to vote for the plan, or support the plan.

Q It's the case, is it not, that anyone, or all of the plaintiffs' lawyers that sign these could go to their clients, they could make a recommendation, and every one of those clients could say you know, I don't like that deal. I'm not going to vote for this plan. That could happen, could it not?

A If it went to vote, it could. And we think that, we believe that what -- so, yes. I agree with you, absolutely, because that's the way this is designed. What we said is that we have the commitments from the lawyers that their clients are going to follow their advice and vote and support the plan. We

have no reason to believe that they won't.

We've done this. This is a matter of course in many, many mass tort situations. This is the way it's done. We're not going to go and we're not going to try to get actual commitments ahead of time for this. It makes no sense to do that.

Q I appreciate that. But do you think before you tell everyone that you have the vote or you have support, that you should get a commitment?

A No. We have the support. We absolutely believe we have the support. We've talked to the lawyers who have represented these claimants. You know, I've, again -- you know, as I testified earlier, we have Jim Murdica who has been negotiating this has extensive experience with these plaintiffs' lawyers. We have done this time and time again in other situations.

Members of the -- my understanding is that members of the TCC, in trying to negotiate with us, have done the same thing. We don't get commitments from their clients before we talk to them. And so what I would say is that this is standard practice. We believe we have the commitments. It's absolutely truthful what we've said. And we believe that we have sufficient to get a plan approved.

Q Okay. Let me wrap up on this. Let me see if I've got this right. You've got 15, 16, 17, I think you've told me high teens, signatures from plaintiffs' lawyers and pieces of paper

that say they will suggest or recommend to their clients to support your plan. That's what you have, right?
A Well, again, I don't think plan support agreements say that. I think the plan support agreements say that we have the commitment of the -- of claimants.
Q A commitment of claimants.
A No, no. The -- I'm sorry. The commitment of the plaintiffs' counsel, and that we understand from representations that when they commit to this, we believe that they will come through and those votes -- and the claimants will support this plan.
Q Sir, you don't know if any one of the 16 or 17 plaintiffs' lawyers that you signed up with, you don't know if any one of them have spoken to their clients about this deal, do you?
A All I know is the representation that they made that they have looked at the plan, they've -- they believe that the plan is fair, reasonable, and that the clients will take it. And that's all I need to know at this time, at this juncture. Whether they talk to their clients, you know, they are in the best position to know what their clients would want.
Q Mr. Kim, yes or no. Do you know if any of the plaintiffs' lawyers that you've signed up with discussed the terms of your plan with their clients? Yes or no?
A No, because I did not ask for that, nor would I have.
Q You didn't ask for anything. You don't know -- let me ask

1 you, did you talk to any of the underlying clients?
2 A No. I talked to my attorney. Or I talked to attorneys
3 and that were involved in negotiations.
4 Q You haven't talked to a single one of the alleged 60,000
5 people that are going to, I guess, support your plan. You
6 haven't talked to one of them, have you?
7 A Mr. Jonas, you know that would not be appropriate.
8 Q Well, before signing a PSA with any specific talc
9 plaintiffs' lawyer, you didn't vet those underlying claims, did
10 you?
11 A I did vet them to the extent that I relied on my lawyer
12 who has significant experience dealing with these plaintiffs
13 firms and got representations from those firms, and that we had
14 asked for supporting data that had individualized names. And
15 that this is something that happens in every -- every --
16 virtually ever mass tort settlement that we enter into. That's
17 how I vetted it.
18 Q Let me ask you because you keep making reference to this
19 is how it's done in every mass tort case. Is this how it's
20 done in a mass tort bankruptcy where the first bankruptcy was
21 dismissed for bad faith, and then the company filed a new one
22 two hours later? Is that how it's done in your experience in
23 that type of bankruptcy case?
24 A Well, if there were that type of bankruptcy case, I would
25 suspect the same methodology would have been used, yes.

Q If the talc plaintiffs' lawyer told you that he had 500 claims or 5,000 claims, you wouldn't do anything to confirm the number of claims. You didn't do anything to confirm the number of claims, did you?

A The number of claims are confirmed by the reputation that that lawyer has with the lawyer that I was using to negotiate. Plus, we did ask for underlying data. Plus, you know, there is a process that would happen later on to confirm this.

When this goes to a vote or when plaintiffs will get paid, all that data, all the confirmation will happen at that time because that's when it's appropriate. At this time, it makes no sense to spend the time, the energy, the cost of trying to confirm these things up front when all we're trying to do is get the plan to a vote.

Q Let me try my question again. If a talc plaintiffs' lawyer told you that he had 500 claims or 5,000 claims, you didn't do anything to confirm the number of claims, did you?

A No, that's not true.

MS. BROWN: Your Honor, respectfully, I'm going to object. I believe this question --

MR. JONAS: I'll move on, Your Honor.

MS. BROWN: -- has been asked --

MR. JONAS: I'll move on.

MS. BROWN: Thank you.

THE COURT: I'll just give an admonition. I get the

1 points very often.
2 MR. JONAS: I know you --
3 THE COURT: I understand. So I understand where
4 you're going.
5 MR. JONAS: I apologize. Sometimes I like to make
6 sure you do, Your Honor.
7 THE COURT: Beating a dead judge. Go ahead.
8 MR. JONAS: I'll move on.
9 BY MR. JONAS:
10 Q Okay. The -- let me strike that. It is the case, is it
11 not, Mr. Kim, that some of those talc plaintiffs' lawyers have
12 backed out of the -- I think those were your words, backed out
13 of PSAs that they had signed?
14 A That is true.
15 Q And you mentioned this, but let me make sure the Court's
16 aware of it. The only information that the plan support
17 agreement requires that a talc plaintiffs' lawyer provide is
18 his or client's name, right? Name?
19 A Yes. There's a chart.
20 Q Okay. I'll tell you what. I'll lay it out for you. It's
21 name, date of birth, and the last four digits of their Social
22 Security number, right?
23 A That's what's required on the -- on the documents. But
24 again, you know, this -- that happens after numerous
25 conversations that the plaintiffs' lawyer has with the person

1 negotiating.
2 Jim Murdica who had been negotiating for the most part
3 these plans, and Jim Murdica gets -- asks a lot of questions
4 about what claimants do you have and has many discussions with
5 them beforehand.
6 Q I don't want to -- we're not here to talk about
7 Mr. Murdica. You are an officer of this debtor in this case,
8 right?
9 A I am.
10 Q And you signed the PSAs, right?
11 A I did.
12 Q Okay. So before you signed the PSA, did you ask for any
13 information relating to the plaintiffs' lawyers, any medical
14 information?
15 A No. My understanding was that the person negotiating the
16 PSAs had discussions with the plaintiffs' lawyer who was going
17 to sign the PSAs, and that there was a commitment and
18 representations from that plaintiffs' lawyer about the number
19 of claims they had.
20 We asked for other identifying information in the PSAs to
21 be attached as an attachment. That is the appropriate level of
22 inquiry we need to do, and what makes sense at the time that we
23 enter into these things.
24 Q It made sense to you, right?
25 A Because of my -- that -- my experience negotiating and

settling cases and coming to agreements in numerous mass tort settings.

Q Did you -- when you signed the PSA, did you have any information as to when the particular plaintiffs' lawyer had signed up his clients?

A Again, that's irrelevant to me because we had the representation up from that lawyer. And again, that representation is based -- is given to a person negotiating that has a lot of experience with that lawyer, knows the credibility of that lawyer. And you know, I think you asked me the question.

If someone, if any lawyer comes and says they have 500 claimants, would you take him at his word. No, of course not. There are discussions that are had. And the person negotiating has to know and do their due diligence as to what they know about the plaintiffs' lawyer that they're talking about.

Q And do you know what due diligence, to use your words, Mr. Murdica did in connection with his negotiations with the plaintiffs' lawyers?

A I've known and worked with Mr. Murdica for over 20 years. I know what he does in these types of situations. I know the questions he asks. I know the detail that he goes into. In 20 years of experience with Mr. Murdica settling 20, 30, 40 mass, major mass tort cases, I have relied on Mr. Murdica. He has not let me down on this type of information.

Q Do you know if Mr. Murdica had any medical information with respect to the underlying claimants?

A Again, just like every other claim including claims -- claimants represented by members of the TCC, we don't ask for that type of material. We don't vet it. There's no need to do it at this juncture. When it comes down to voting, whether it's a valid vote, when it comes down to payment, whether we actually have to pay these people, that's when it makes sense to do that process.

It doesn't make sense to take the effort, the cost, the time at this juncture when all we're asking for is an indication of support for a plan. We did not pay these --

THE COURT: The answer's no. The answer is no.

MR. JONAS: Sorry, Your Honor.

BY MR. JONAS:

Q Last question on this topic, and I promise I won't -- Mr. Kim, of these lists you have of claimants, you don't know if there's any duplicate claimants on those lists, do you?

A No. But what I do know is that when we -- when going through this process, we asked these plaintiffs' lawyers to only give us names of people who they are the main counsel for.

Q That was a no?

A That's a no.

Q Okay. Okay. Okay. In the first day declaration you filed in the first bankruptcy case on October 4th, 2021, you

1 state, and I'll quote, the design of the 2021 corporate
2 restructuring insures that the debtor has at least the same, if
3 not greater, ability to fund talc-related claims that -- and
4 other liabilities as old JJCI had before the restructuring.
5 You said that in your first declaration, right?
6 A I did.
7 Q And the first funding agreement, I may call it funding
8 agreement one versus funding agreement two, the first funding
9 agreement was available to LTL, the debtor here, both in and
10 outside of bankruptcy, correct?
11 A Based upon the facts and law that we knew at the time,
12 yes.
13 Q That's a yes?
14 A At that time, yes.
15 Q Under the funding agreement one, there was total value of
16 around, let me -- I think you said around $60 billion available
17 to LTL, correct?
18 A At the time of the filing, there was.
19 Q Today, under funding agreement two, the total value
20 available to LTL is tens of billions of dollars less than under
21 funding agreement one, correct?
22 A That's assuming that funding agreement one was still
23 enforceable and not void or voidable. If the Third Circuit had
24 not rendered the opinion the way it had, then that would be
25 true.

1 Q Sir, very, very important question, okay? Yes or no.
2 Today, under funding agreement two, the total value available
3 to LTL is tens of billions of dollars less than was available
4 under funding agreement one. Yes or no?
5 A That is not true.
6 Q So you think today, LTL-2 -- no, strike that. You think
7 that the debtor today under funding agreement two has available
8 to it to satisfy talc claims around $60 billion?
9 A No, that's not what I said. What I said was that it's not
10 the -- not tens of billions of dollars less because you have to
11 take into account that because of the Third Circuit decision,
12 funding agreement two was rendered void or voidable, and
13 there's material risk that it was not enforceable. So
14 therefore, if you're trying to compare those two, I think that
15 statement would not be true.
16 Q I don't want to compare anything. I just want -- let's --
17 I'll tell you what. Let's do it this way. Funding agreement
18 one, the debtor had $60-odd billion available to it to satisfy
19 my client's claims, right?
20 A Prior to the Third Circuit decision, I would say yes.
21 Q Great. Today, how much does the debtor have available to
22 it under its funding agreement to satisfy talc claims?
23 A I think there's a calculation about what the value of --
24 an internal valuation of the principal assets of Holdco which
25 is around $30 billion, plus the amounts that LTL has through

1 (indiscernible).
2 Q Well, pick a number. Is it 30, is it 40? I don't know.
3 You're the chief legal officer of the debtor, right? Let me
4 ask you a few questions. You're the chief legal officer of the
5 debtor, right?
6 A I am.
7 Q Now, do you understand that these funding agreements,
8 they're the most valuable asset of the debtor, right?
9 A That's true.
10 Q Do you understand how critically important they are to
11 talc victims who the only way they're going to be able to
12 recover effectively is under the funding agreement?
13 A I do.
14 Q Okay. So when you negotiated funding agreement two, you
15 had that in mind how critically important it was, right?
16 A Well, when we agreed to funding agreement two, I did.
17 Yes.
18 Q So did you think to yourself I better make sure I get at
19 least $60 billion of value for these people because I'm a
20 debtor in Chapter 11. I have fiduciary duties to these people.
21 And I better make sure I get them at least the same amount of
22 value. Did that go through your mind?
23 A No, because at the time that -- after the Third Circuit
24 decision, the -- it was clear, there was consensus reached that
25 the first funding agreement was void or voidable, at least the

1 J&J guarantee part of that. And so when we were entering into
2 funding agreement two, we took out this risk of enforceability
3 and put in a new agreement that would benefit all the parties.
4 Q Sir, do my clients have the same amount that they can
5 recover from under funding agreement two as under funding
6 agreement one? Yes or no?
7 A No, because of the Third Circuit decision, not because of
8 what we did.
9 Q It's the Third Circuit's fault?
10 MS. BROWN: Your Honor, I object. It's
11 argumentative.
12 THE COURT: Sustained.
13 BY MR. JONAS:
14 Q Are you saying that the Third Circuit is responsible for
15 my clients having tens of billions of dollars less that they
16 can recover from?
17 MS. BROWN: Same objection, Judge.
18 MR. JONAS: I'd like to know, Your Honor.
19 THE COURT: Overruled.
20 THE WITNESS: What I'm saying is that when the Third
21 Circuit made its decision, one of the ramifications of the
22 decision was that it frustrated the purpose of the first
23 funding agreement, rendering it void or voidable. So I don't
24 think -- the Third Circuit didn't meant do that. I don't blame
25 the Third Circuit for doing that. It's just a consequence of

1 how the Third Circuit ruled.
2 Therefore, when we were looking at this, from LTL's
3 position, we're now looking at an agreement, a funding
4 agreement which is the most valuable asset that has been
5 rendered void or voidable. And so we came up with the solution
6 to try to rectify the situation, get -- get sufficient funding
7 for the claimants, and turn to a plan, a support agreement with
8 J&J where they would provide enough liquidity to come up with
9 the -- a solution to the issue which is embodied in the
10 proposal.
11 BY MR. JONAS:
12 Q So when you gave up funding agreement one and you entered
13 into funding agreement two, you were trying to take care of my
14 clients? Is that what you're saying?
15 A Yes, absolutely, because we did not give up funding
16 agreement one. Funding agreement one became void or voidable
17 and unenforceable, particularly the J&J guarantee as a result
18 of the Third Circuit decision.
19 What we did, we took that situation and tried to come up
20 with a situation for the benefit of all parties. So we
21 exchanged an unenforceable funding agreement with an
22 enforceable funding agreement with Holdco, and a plan support
23 agreement that would provide, you know, $8.9 billion in a
24 settlement that has been -- that has the overwhelming support
25 of claimants.

Q Let me get at it another way. I want to talk about how J&J did under the funding agreements. What was J&J's liability, potential exposure or liability under funding agreement one?

A They had a void or voidable commitment under funding agreement one after the Third Circuit decision.

Q Sir, let's go back in time, okay, before I think you said the Third Circuit made a mistake. Before that happened, what was J&J's exposure, possible exposure under funding agreement one? How much?

A First, I didn't say the J&J -- that the Third Circuit made a mistake. I never -- I never said it. And if I did say that, I didn't mean to say that. But under funding agreement one, under the terms at that time, it voluntarily, without any need to -- obligation as the Third Circuit said, J&J committed to fund up to the fair market value of JJCI for the purpose of getting all the cases resolved in a bankruptcy.

Q Okay. So under funding agreement one, J&J's total exposure could have been $60 billion, right?

A At that time, knowing the facts that we knew in bankruptcy, yes.

Q Okay. Funding agreement two, today, under funding agreement two, what is J&J's total potential exposure under funding agreement two?

A So after the funding agreement one was found void or

1 voidable, and it had no exposure, it then committed to a $8.9
2 billion support agreement in order to get a plan approved to
3 resolve all talc claims, which again has the overwhelming
4 support of claimants.
5 Q J&J's exposure went from 60 billion to 8.9 billion?
6 A So --
7 Q Yes or no, sir.
8 A No. No. J&J -- no, no. J&J's exposure originally was
9 nothing. It -- without -- and again, as the Third Circuit
10 said, it voluntarily, without obligation, committed to $60
11 billion to get these claims resolved in bankruptcy. Once the
12 Third Circuit ruled, exposure then became potentially zero.
13 And so after that, in order to get a plan approved, it now has
14 an exposure of $8.9 billion in order to get a plan approved in
15 bankruptcy.
16 Q Okay. So let me ask you, was it automatic? When the
17 Third Circuit ruled, did J&J's exposure go to zero?
18 A I think when it happened, there was a material risk that
19 its exposure went to zero automatically.
20 Q Okay. Material risk. That's a good time to negotiate.
21 So tell me, when you were sitting there with J&J and you said
22 -- and they said -- they did tell you they thought their
23 exposure went to zero, right? Did they tell you that?
24 A I'm a little hesitant on attorney/client. But I will
25 answer.

Q Well, let's wait.
A Yeah.
Q Wait, because at deposition, you wouldn't answer that question. So let's see whether your counsel now for the first time wants to let you, allow you to answer these types of questions.
MS. BROWN: Well, Your Honor, I think that is also argumentative. And certainly, what was true in the deposition is true here. To the extent answering that question is going to reveal attorney/client communications, protected by work product or common interest, then Mr. Kim shouldn't reveal conversations he had with lawyers. But certainly, he should be able to answer that in the way that he understands he can do without violating the privilege.
THE WITNESS: So what I would say is my understanding -- I had numerous conversations with J&J attorneys. My understanding from going away with that was that they were asserting that the -- it was -- the contract was void or voidable because of the Third Circuit decision based on a number of legal principals that they had researched, my lawyers had researched. And we came to the conclusion there's a material risk that the contract was void or voidable.
MR. JONAS: Your Honor, I'm going to move to strike because at deposition, time and time again we were not allowed -- we were told that the only people, and I'll ask questions to

1 confirm this, that the only people that could answer questions
2 about the alleged negotiation, to say it lightly, between J&J
3 and JJCI and the debtor were between lawyers. And so they
4 could not tell us anything about those conversations.
5 So now for the first time, I guess we're going to
6 hear about it. And I think it's inappropriate. They cannot
7 use the privilege as a sword and a shield, Your Honor.
8 THE COURT: Well, okay. If I sustain your objection,
9 and his testimony's stricken, then what's the purpose in asking
10 the question.
11 MR. JONAS: Well, I didn't know when I asked the
12 question, first of all, Your Honor. So now that it's been
13 confirmed, I just, I don't think they can meet their burden
14 without answering these questions. They didn't answer in the
15 deposition. I don't think they should be able to permit it
16 here, and I don't think they can meet the burden.
17 THE COURT: I'll sustain the objection. I'll strike
18 the answer.
19 MS. BROWN: Your Honor, can I be heard on this,
20 though?
21 THE COURT: Yes.
22 MS. BROWN: His testimony here is entirely consistent
23 with what the testimony was at the deposition. He is giving
24 the testimony that he made the conclusion there was a material
25 risk. He gave testimony at the deposition as he did right here

about what his understanding was about J&J's position. Beyond that, as we asserted at the deposition, and as is true here, discussions about a legal issue were had between lawyers.

THE COURT: Mr. Jonas?

MR. JONAS: Well, let me --

THE COURT: He can testify as to his understanding.

MR. JONAS: That's fine, Your Honor. I'll keep --

THE COURT: And if you want to phrase it -- that's the bulk of it, although he referred to --

MR. JONAS: Let me try some other questions, Your Honor.

THE COURT: All right.

MR. JONAS: Maybe it will be useful.

BY MR. JONAS:

Q So who at LTL negotiated this resolution with J&J? Was it you?

A I was involved, with my counsel.

Q You were involved, with your counsel. That's the counsel -- that's Jones Day, the folks that negotiated the funding agreement one, right?

A It is.

Q Okay. And so were you the principal -- you had authority to bind LTL in connection with these negotiations?

A We did not bind LTL until the board resolution.

Q Okay. But you were authorized to go out and speak for

LTL?
A I was authorized to discuss this.
Q Okay. So tell us about the negotiation between LTL and J&J. Did you guys say hmm, okay, maybe it's voidable. How about 59 billion, give us 59 billion. And they said no, we're only going to give you 8.9.
What happened? How did you end up at 8.9 billion?
A It's a result of the PSA. There was -- so at the same time that we are discussing how to deal with this situation with the void or voidable -- I'm sorry, funding agreement and the support agreement, at the same time there were negotiations going on, of course, about a potential resolution through a plan.
And so when those resolution -- when the discussions about a potential plan resolution were being had, and a number was proposed and accepted by lawyers representing over 60,000 claimants, that number of course became the basis for a new support agreement in the bankruptcy setting.
Q Okay.
A That's where the number came from.
Q Let me try and wrap up on a little piece here. The bottom, let me see if I can get to the bottom line. The bottom line is under funding agreement one, J&J's liability could have been 60 billion. Under funding agreement two, it's 8.9 billion.

Is that right?
A With all the, you know, answers that I've given on how that came to be.
Q I find it curious that you tell me that J&J raised the issue of voidability or void because I think you said at your deposition, please tell me if I'm wrong, that you made a determination that there was a material risk that funding agreement one was void or voidable based on the Third Circuit Court of Opinions decision that LTL's first bankruptcy was filed in bad faith.
Is that right?
A That is right. But that doesn't foreclose the discussions I had with other people, and that they reached the same conclusions either at the same time or before I did. So --
Q Well, who approached who? Who -- was it J&J or was it LTL that said oh my God, the funding agreement might be void or voidable? Who raised it first?
A It was raised on a call that we were having. We have routine calls to discuss the bankruptcy. I'm not sure who raised it first. But I think we quickly -- the issue came up quickly. And then the parties went off and did research on that.
Q But you're the guy that came up with the idea, right?
A I never said that I came up with the idea.
Q Well, let me --

A I came up with an idea in my head that this is a possibility. I don't think I was the one that actually raised it with J&J. I think they also -- I think you cannot read that decision without coming to the conclusion that there was a frustration of purpose.

In fact, the Third Circuit itself pointed it out by saying that it was ironic that the funding agreement that was there to support a bankruptcy was used, you know, prevented the bankruptcy. So I think this is something that like minds think alike.

And so, you know, I don't know that I was the one that first raised the issue. I know that it was discussed very early on. And everybody had that thought already.

Q Just so you know, Mr. Kim, I read the decision a few times. Frustration of purpose never crossed my mind, just so you know that. Okay. The Third Circuit's decision was issued on or about January 30th, 2023, correct?

A Yes.

Q And prior to January 30th, 2023, you had never thought about or considered that funding agreement one might be void or voidable, right?

A That's correct.

Q And then on January 30th, the Third Circuit's decision comes down. And you think to yourself funding agreement one now could be void or voidable, right?

A That is true.
Q And your determination was based on a footnote in the Third Circuit's decision, right?
A Well, that was part of it. It was the entire decision. But the footnote was a good marker for that, yes.
Q And let me ask you, going back to when you first did funding agreement one because again, that was the most valuable asset, right?
A Yes.
Q You knew how important it was, right?
A Yes.
Q You knew it was really important to my clients, right?
A We understood it was important for everyone.
Q So when you negotiated funding agreement one, you hired great counsel, Jones Day, right?
A We did.
Q Yeah. And you really put a lot of effort into making sure that funding agreement one would be a great agreement. It would always be available to our clients, right?
A Well, in bankruptcy, yes.
Q I thought you said the funding agreement was available in and out of bankruptcy.
A Well, it's a little complicated because the funding agreement is really in two parts. There's the part where JJCI has, you know, has given up its agreement to fund up to its

1 value. And then there's the J&J basically backstop. That
2 backstop really was only intended to deal with things in
3 bankruptcy.
4 The J&J -- the JJCI portion of it, you know, is really a
5 function of the fact that we filed the divisional merger and we
6 had to take all the assets, or we wanted to have the assets of
7 JJCI.
8 Q Did J&J tell LTL that it would not honor the funding
9 agreement outside of bankruptcy after the Third Circuit's
10 decision?
11 A No, it didn't get that far because we came to a
12 resolution. We understood the funding agreement was void or
13 voidable. We never said to J&J well, you must pay us or else.
14 We both came to the conclusion, and a consensus, that the
15 funding agreement was void or voidable, possibly unenforceable.
16 There's a material risk.
17 And so what we did was we negotiated a solution. We came
18 to a consensus on a solution to it before having a need to how
19 J&J, you know, refused to fund anything.
20 Q Did you go to the TCC or any of the talc claimants, the
21 beneficiaries of funding agreement one and say hey guys, let's
22 talk about this. We've got to figure out a strategy against my
23 counter party J&J because I don't want to lose $60 billion.
24 Did you talk to any of these folks who were the beneficiaries
25 about what to do?

A I did not. I had my own counsel. And I did my own review and came to my own conclusions.

Q So you thought it was best for you, yourself, to make decision for tens of thousands of talc victims as to how to handle the funding agreement?

A I relied on, again, discussions I had with my counsel. And we came -- and this is the path we chose.

Q Did the board or anybody at LTL examine whether maybe there was a claim against your counsel to what negotiated the first funding agreement?

MS. BROWN: Your Honor, I'm going to object to the extent that implicates legal advice and exploration of legal claims. I don't think that's proper.

THE COURT: Overruled.

THE WITNESS: I think I did answer this in the deposition. So again, having been involved in putting together the funding agreement, I was aware of these issues. There was -- it was clear to me and to others that this was something that was completely unforseen and would be unforseen by all parties. And there was no question that there was no need to try to look into filing a lawsuit against counsel.

BY MR. JONAS:

Q I think everybody's going to get sick of me in about 30 seconds. So I'm going to ask one last question to wrap it up and see if I have it right. Maybe I do, maybe I don't. My

clients had the benefit of a $60 million funding agreement, the first funding agreement, right?

A At that time, yes.

Q And today, maybe, maybe, I guess if they vote in favor of a plan, they'd have the benefit of funding agreement two which I'm not sure what you said, I think you said $30 billion of value. Is that right?

A It is. But then you're missing out that there's a plan proposal on the table that a substantial number of claimants have approved, which would be $8.9 billion, which is fully funded under the funding agreement.

Q Okay. So that's my client. Now let's just make sure I got the J&J piece right. J&J was liable for up to $60 billion under funding agreement one, right?

A Again, J&J, without any obligation, put that in in order to enhance the prospects of a bankruptcy. So that was why it got put in. At some point, it becomes void or voidable because the Third Circuit decision. And then they again committed without having to, to an $8.9 billion support agreement in order to facilitate a resolution.

Q Just to wrap up, today, J&J's maximum liability is $8.9 billion, right?

A Under the support agreements that it has.

Q So with -- because of the Third Circuit's decision, J&J got off the hook for $50 billion of talc liability?

A Again, it did not get off the hook. The hook -- the agreement itself, the first funding agreement was not required by J&J. And as the Third Circuit noted, it put in that guarantee in order to facilitate a resolution of bankruptcy.

Once the -- ironically, I think it was the Third Circuit said the very -- the very provision that was supposed to help it in bankruptcy actually turned into a provision that prevented the bankruptcy, causing that guarantee to be void or voidable.

And after that, as a resolution to try to resolve all this talc claims in bankruptcy, J&J again committed $8.9 billion which was part of the PSA, part of the plan that was negotiated to try to resolve all the litigation. And that's what happened.

MR. JONAS: Your Honor, could we have a short break?

THE COURT: Sure. Let's see. It's ten to 12. My plan is to go to 1:00, take a half-hour lunch. Why don't we come back in ten minutes?

MR. JONAS: Thank you, Your Honor.

(Recess at 11:52 a.m./Reconvene at 12:06 p.m.)

THE COURT: Okay.

BY MR. JONAS:

Q Mr. Kim, on what date did the old funding agreement become inoperative and the new funding agreement become operative?

A I think the date of the termination agreement.

Q Which is what?
A It became effective right after the case, the bankruptcy case was dismissed.
Q So the funding agreement, even though this risk void/voidability occurred on January 30th, the funding agreement remained operative for the remainder of the bankruptcy case?
A That was our agreement.
Q Your agreement with whom?
A Well, because it's a termination agreement, the agreement was that it would remain operative until the termination agreement.
Q Okay. Well, on what date did you reach that -- strike that.
I take it that agreement was between LTL and J&J; right?
A I think there was a consensus among the lawyers.
Q Consensus among the lawyers. Well, lawyers don't make deals -- can't bind clients to deals; right? Clients have to do that themselves; right?
A Right. The board was apprised ahead of time that there was a termination agreement that was going to be in place and what that would mean is that everything would stay in place so that, you know, LTL would not remain bare until the termination agreement became effective, which happened as soon as the bankruptcy case was dismissed. So you'll see, I think,

I'm sure there's a packet of materials where there's a termination agreement that becomes effective right after the bankruptcy case gets dismissed.

Q So while you were -- strike that.

While you were an officer of a Chapter 11 debtor in bankruptcy with fiduciary duties to talc claimants, you had negotiated the termination of the existing funding agreement; correct?

A Well, we had authorized the termination if the bankruptcy -- again, it was all predicated upon the bankruptcy being dismissed; therefore, at that point, we would not have, you know, the bankruptcy. So all the things that go with the bankruptcy, including creditors committees, the debtor, you know, the claimants, once we're out of bankruptcy, that would all have ended. So what we agreed was that, if the bankruptcy gets terminated, then we would take these actions.

Q Okay, let me back up. I'm not being clear and I apologize.

This case, LTL I was dismissed on April 4 -- April -- I think it was April 3rd or 4th; right?

THE COURT: April 4th.

BY MR. JONAS:

Q 4th. Correct?

A I will take your word for that as well.

Q Okay. And about two hours or so after LTL I was

1 dismissed, LTL II commenced a new bankruptcy case; right?
2 A It did.
3 Q Okay. Now, that whole -- you've told about this
4 void/voidability issue, negotiation, discussion, termination
5 agreement, new funding agreement, that all didn't happen in two
6 hours; did it?
7 A The discussions around it didn't happen in the two hours,
8 the authorization for it, it was -- the authorization for it
9 specifically stated that it would not become effective until
10 the termination of the first bankruptcy.
11 Q And those -- I think you said those discussions,
12 negotiations, whatever they are, between LTL and J&J, they
13 started pretty quick after the Third Circuit decision; right?
14 A There were numerous discussions right after the Third
15 Circuit decision, yes.
16 Q Okay, so February, March. And over those months, while
17 you were an officer of a Chapter 11 debtor, you were doing a
18 new deal, a new transaction, a new arrangement with J&J to
19 terminate the existing funding agreement and enter into a new
20 funding agreement; right?
21 A I would say that there were ongoing discussions among the
22 lawyers of a variety of things that could happen, one of them
23 which was the termination of the old funding and the new
24 funding agreement, but there were discussions throughout that
25 period of how to -- how to resolve sort of the talc litigation

for everyone.
Q And so, obviously, LTL, J&J, they knew what was going on in this connection because they were involved in it; right?
A They were involved in it, yes.
Q Okay. Did you tell the creditors committee, the TCC, what was going on during this time that you were in Chapter 11?
A Not -- I did not have any conversations with the creditors committee or the TCC.
Q In fact, sir, you hid it from the Bankruptcy Court and the bankruptcy community, meaning the TCC and others, you hid that from them; didn't you?
A I --
MS. BROWN: I object, Your Honor, argumentative.
THE COURT: Overruled.
THE WITNESS: I would say, you know, these are confidential communications, we had no idea what we were going to do. We were looking at various options and we did not want to make public disclosures about this at the time that we were still involved in looking at these issues.
MR. JONAS: May I approach, Your Honor?
THE COURT: Yes, please.
MR. JONAS: I think we're on --
THE COURT: 3.
MR. JONAS: -- 3.
BY MR. JONAS:

Q Mr. Kim, I want you to take a look at what's been marked as TCC Exhibit 3. And you're familiar with this type of form, it's a monthly operating report; right?
A I am.
Q And this one is dated March 21, '23. Do you see that at the top?
A I do.
Q Okay. And this is a document that LTL, the debtor, files to advise the Court and to advise its creditors and, in this case, talc claimants how the debtor is doing, what's going on financially with the debtor; right?
A I believe that's true, yes.
Q And I want you to take a look at page, at the top it says 3 of 11, paragraph 9. And the second sentence says --
A I'm sorry --
Q I'm sorry.
A -- 3 of 11 -- oh, I see, yes.
THE COURT: It's the --
THE WITNESS: I got it.
THE COURT: -- there's a second document that has numbers.
MR. JONAS: I'm sorry --
THE WITNESS: Thank you, Your Honor.
MR. JONAS: -- I'm sorry.
BY MR. JONAS:

Q Just let me know when you're there. You'll see the first full paragraph is 8 and then it says 9.
A I see that, yes.
Q And 9, the second sentence says, "Further funding, if necessary, will be available under the funding agreement to satisfy the debtor's expenses." Do you see that?
A I do.
Q So, on March 21st, you knew on this date you would -- strike that.
On March 21st, you had had multiple discussions, conversations, whatever you want to call them, between LTL and J&J about terminating the funding agreement and doing a new funding agreement; right?
A Yeah, when the bankruptcy got dismissed.
Q Okay, but that -- on March 21st, you knew that; right?
A Yeah, when the bankruptcy got dismissed, there was a discussion of terminating the funding agreement.
Q You knew the bankruptcy was going to get dismissed within a few weeks; right?
A No. We were still at that point hopeful that we would get a stay of proceedings and seek review, cert review by the United States Supreme Court. So, you know, there was still -- we still had our plan to try to get the U.S. Supreme Court to hear it.
Q Okay, but on March 21st, notwithstanding that you knew and

1 J&J knew and JJCI knew that, if the case was dismissed, you
2 were going to terminate the existing funding agreement and you
3 were going to do a new funding agreement and you were going to
4 have -- let J&J off the hook for tens of billions of dollars,
5 you filed something with the Court letting everybody know the
6 funding agreement was still in place?
7 A In bankruptcy because, again, the plan was the termination
8 doesn't happen until the bankruptcy is dismissed. So this
9 report talking about what funds are available in bankruptcy is
10 true then, it's true now, and I'm not sure what you're getting
11 at.
12 Q Sir, with respect to -- strike that. Okay, moving on.
13 Mr. Kim, in the first bankruptcy case, Randi Ellis was
14 appointed Future Claimants Representative or FCR; correct?
15 A That is correct.
16 Q And Ms. Ellis' role as FCR was terminated on the dismissal
17 date April 4th, 2023; correct?
18 A I believe that's true. I'd have to look at the order and
19 the date of the order.
20 Q I'll represent that to you.
21 A That's fine.
22 Q The debtor is seeking to have Ms. Ellis appointed as FCR
23 again in the second bankruptcy case; correct?
24 A We are.
25 Q And I want to show you the next exhibit, the term sheet.

MR. JONAS: May I approach, Your Honor?

THE COURT: Yes, please.

THE WITNESS: Thank you.

MR. JONAS: This will be TCC-4.

THE WITNESS: Thank you.

BY MR. JONAS:

Q And, Mr. Kim, this is a term sheet for, I guess I'll call it the debtor's plan; is that fair?

A Well, it was a term sheet that was attached to the plan support agreement.

Q Okay. And this is basically outlined in the term sheet; right?

A These were terms that were proposed.

Q Okay. Now, you didn't file this -- you filed the PSA with your declaration; correct?

A Correct.

Q But you didn't file this?

A I believe that's true, yes.

Q Okay. And I want to -- and this was prepared in probably March sometime?

A I don't know when it was prepared.

Q Okay. It wasn't prepared in the two hours between the two bankruptcy cases; right?

A I doubt that, but I don't know when it was prepared.

Q Well, you have PSAs, if we went and looked, you have PSAs

dated in mid-March; right?
A There are, but I don't know what was attached or if anything was attached to them at that time.
Q So there's PSAs that don't have the term sheet attached?
A Again, I don't believe that's true, I just don't know.
Q Well, sir --
A Well, and when I say attached, I understand that people -- and I've read Mr. Murdica's testimony that he discussed these terms with everyone, but I don't know what form was there.
Q I'm going to make it easy. You -- on behalf of the debtor, you signed plan support agreements; right?
A I did.
Q Okay. My question is, the 16 or 17 plan support agreements that you signed, did they all have the term sheet attached?
A I signed a document in -- to be effective as of the -- as of the date of the bankruptcy. So they weren't physically attached when I signed it, I believe they were attached, but, again, I don't know.

Q Do you know if they were attached when the plaintiffs' law firm signed it?
A I don't know if they were attached or whether they were discussed or given to them separately, that's all.
Q Well, if they weren't attached, do you think the law firms

1 were bound to the PSA that says we're bound to the attached
2 term sheet and there's no term sheet?
3 A Again, according to Mr. Murdica, all the plaintiffs knew
4 what the terms were.
5 Q Okay. So, as early as mid-March, there's PSAs getting
6 signed up and, I guess, maybe they have a term sheet attached
7 and maybe they don't; right?
8 A Yeah, I don't know exactly what was attached.
9 Q Okay. The term sheet is the centerpiece of LTL's Chapter
10 11 plan to go forward and resolve talc claims; correct?
11 A Well, the terms are the important terms, but some of these
12 terms, as I think I explained to you in my deposition, some of
13 these are just placeholders and some are still subject to
14 negotiation.
15 Q Sir, the plan -- the term sheet is the centerpiece of the
16 Chapter 11 plan; right?
17 A No, I would say -- I disagree with that. I would say some
18 terms are material and the centerpiece, I would say some of the
19 terms in here are not the centerpiece, they're just typical
20 terms that appear in many agreements and that are necessary for
21 a plan.
22 Q Let's try it this way: Is the term sheet important in
23 this bankruptcy case?
24 A I would say most of the terms of that term sheet are
25 important, some terms are more important than others.

Q Okay. Let's take a look at page 5. At the top of this term sheet, which you were signing people up to during the pendency of the first bankruptcy case, while Ms. Ellis had a court-appointed official, she was the FCR, during that period of time, on paragraph -- on page 5, at the top, (b)(1), "Randi Ellis shall serve as claims administrator of the Talc Trust for purposes of qualifying claimants and allocating proceeds to be distributed amongst all existing and future qualifying claimants. Ms. Ellis shall utilize and supervise Archer Systems, LLC in the qualification and allocation of talc claims."

Do you see that?

A I do see that.

Q And in fact that was in March, at least the first term sheet that was attached to a PSA was in mid-March; right?

A Yes. Understand, this is a placeholder name that Mr. Murdica put in without really consultation because he thought that this was a -- she would be a good choice. But, again, this is one of these terms that is not really material and that is subject to a negotiation.

Q Sir, it may not be material to you, but are you aware -- give me a second. I'm not trying to be -- cause a firestorm, I just want to know, are you aware that it is a bankruptcy crime under 18 U.S.C. 152(6) to knowingly and fraudulently give, offer, receive, or attempt to attain any money, property,

1 remuneration, compensation, reward, advantage, or promise
2 thereof, for acting or forbearing to act in any case under
3 Title 11, are you aware of that law?
4 MS. BROWN: Your Honor, I object to this question for
5 numerous reasons, including that it's argumentative.
6 THE COURT: Overruled. Are you -- can you answer
7 that question?
8 THE WITNESS: So this is -- no, I'm not aware; it
9 makes sense to me, but I'm not aware.
10 BY MR. JONAS:
11 Q Okay. And, after you filed the second bankruptcy case on
12 April 4th, you filed a motion to have Ms. Ellis, the claims
13 administrator under your term sheet, to be reappointed as FCR;
14 correct?
15 A Correct. And, again, she's not claims administrator under
16 the term sheet. This is a placeholder put in place because Mr.
17 Murdica thought she'd make a good claims administrator. My
18 understanding is that, you know, there was no offer or
19 discussion about this. This is a placeholder and subject to
20 negotiation.
21 Q Well, when the plaintiffs' lawyers show the PSA and the
22 term sheet to their 60-odd-thousand, according to you, clients,
23 they're going to think Ms. Ellis is the claims administrator;
24 right?
25 A Yeah. I'm not sure they're going to care about that at

all.
Q I know, sir, and maybe they won't care, but we're in a formal legal proceeding and there are rules that have to be abided by. Do you understand that?
A Yeah, I don't think there's a rule about putting a placeholder name in a document.
Q Okay. You're aware that Ms. Ellis filed a declaration in support of the motion to have her appointed, reappointed as FCR; correct?
A I think I heard that at the last hearing; I don't think I've ever seen it.
Q You've never seen it. So you don't know whether Ms. Ellis disclosed her role as claims administrator in her declaration?
A I would say that assumes that she has a role as claims administrator, which she doesn't.
Q Well, let me ask it this way: Did she disclose she might be the claims administrator?
A She might or she might not. I don't think -- I don't even really know that -- I don't believe Ms. Ellis even knows that her name appears in this. You'd have to ask her.
Q How do you know that, sir? How do you know that?
A Because my understanding is that, at least from our perspective, Mr. Murdica never talked to Ms. Ellis about putting this -- about this and he had put her name is a placeholder.

Q Did you read the term sheet before you signed the PSAs?
A I did.
Q You read it carefully, I hope, right, because that's going to -- if this works, if your plan works, you're going to bind all the talc claimants; right?
A Well, the plan -- the plan will bind it, if it gets approved. And this is not part of the plan. Again, this is subject to negotiation, there are parts of this that are going to be changed when an actual plan comes together and when actual people decide that they really want these roles or that the roles are actually offered to them. So that's somewhere down the road.
Q You testified quite a bit about your, I don't know, I'll deign to call it vast experience in mass tort cases; right?
A Well, I shouldn't have used the word vast. I have a lot of experience in mass tort cases --
Q Okay.
A -- yes.
Q So you know that claims administrators oftentimes in large mass tort cases, they get paid millions of dollars, you know that; don't you?
A So I don't know that. You know, from my perspective, that's -- usually claims administrators, when we enter into a mass tort settlement, is something that the defense really has very little interest in. The defense cares about putting the

1 money into a fund and then how it gets administered and the
2 administration of that, that's generally left up to the
3 plaintiffs.
4 Q Well, let's take a look at some board minutes of March
5 16th.
6 (Crosstalk)
7 MR. JONAS: May I approach, Your Honor?
8 THE COURT: You may.
9 THE WITNESS: Thank you.
10 BY MR. JONAS:
11 Q Okay, let's just take a quick look -- I hope we're in the
12 home stretch, Mr. Kim -- at what will be, I think, TCC No. 5.
13 This is the debtor's minutes from a board of managers meeting
14 on March 16th, 2023; correct?
15 A Yes.
16 Q And you were at this meeting; right?
17 A I was.
18 Q And down below, on March 16th, 2023, the board was talking
19 about contingency planning; right?
20 A Correct.
21 Q And they talked about seeking approval from the board to
22 file another bankruptcy; right?
23 A That's one of the things that -- contingencies they were
24 looking at, yes.
25 Q Yeah. And another thing you talked about -- turn the page

1 over, please, and if you look at the fourth bullet, you talked
2 about gauging whether the future claimants representative would
3 support a further bankruptcy in the contours of a plan; right?
4 A I see that, yes.
5 Q Because you thought it was important to get the future
6 claimants representative on board with your new plan; right?
7 A No, we were not trying to get the future claimants
8 representative on board. We were having discussions to see
9 what her reaction would be if a new bankruptcy were filed.
10 Q But let me ask you what I asked you at your deposition.
11 The debtor's board thought it was important to get the FCR on
12 board to support a second bankruptcy and the contours of a
13 plan; isn't that right?
14 A If that was the question, I mean, the -- well, I think
15 getting on board would be objectionable. I don't know that we
16 tried getting her on board. We were trying to determine what
17 the -- what her views were on it.
18 Q Okay. Let's look at hopefully the last exhibit, which
19 will be a presentation on March 28th to the board.
20 MR. JONAS: May I approach, Your Honor?
21 THE COURT: Yes.
22 MR. JONAS: TCC Exhibit 6.
23 THE WITNESS: Thank you.
24 (Pause)
25 BY MR. JONAS:

Q Mr. Kim, I want to show you what's been marked as TCC-6, it's a presentation to the board of managers of LTL on March 28th; right?
A It is.
Q And you were at that board meeting too; right?
A I was.
Q And if you go to page 7 of the presentation, it has the Bates number 239, the last digits on the bottom.
A Yes.
Q It says -- the title is "Support of Future Claimants Representative." Do you see that?
A I see that.
Q And you were having separate discussions about your new plan with the FCR during the old bankruptcy case; right?
A No. We weren't actually -- at that point, it was just a support for the bankruptcy. I don't know about she was presented or discussed any plan with her.
Q Sir, the top bullet, it says, "Separate discussions have occurred with FCR."
Those discussions were about the yet-to-be-filed new bankruptcy; were they not?
A Yeah, they were about the bankruptcy, not the plan. In other words, it wasn't -- I don't think at this time we were -- we had started -- I think there were talks about starting to talk also about a plan, but at the time we were trying to her

support just on a new bankruptcy filing.
Q Really? Okay.
And it says here that she -- I guess the good news, she was supportive of a second LTL Chapter 11 case in the event the current case is dismissed; right?
A That's what this says, but, you know, eventually, she decided that she was not going to take a position on the filing.
Q But, sir, I heard what you said, but the last bullet says, "In addition, discussions are ongoing to obtain a plan support agreement from the FCR."
Do you see that?
A I do, but this is not the same plan support agreements that we would have signed by the plaintiffs' counsel, this is -- you know, if you look at the form, it would make no sense for her to sign the plan support agreement that we were looking at. I think discussions were ongoing as to what kind of -- if she would support a plan and what kind of plan she would support. But, again, nothing happened because she decided that she was not going to take a position on this.
Q But you tried to get her to take a position; did you not, sir?
A Well, we wanted to see if she was supportive of what we were trying to do.
Q Yeah. And I assume, in connection with getting her to

1 sign a plan support agreement, did you give her the term sheet?
2 A Again, there would be a different plan support agreement.
3 That plan support agreement that the plaintiffs signed would
4 not be the same plan support agreement she has. I mean, if you
5 look at the form, it would not make sense.
6 Q Did you give her the term sheet, sir?
7 A I don't believe so, but, again, I don't know.
8 Q Mr. Kim, you understand that in order for the Court to
9 grant a preliminary injunction today it has to find a
10 reasonable likelihood of success that the debtor will be able
11 to confirm a plan; correct?
12 A I believe that's -- I believe that's true. I'm not a
13 bankruptcy expert, but I've heard -- I've heard that said here
14 several times.
15 Q And do you understand that that means that this Court and
16 likely the Third Circuit Court of Appeals would have to find
17 that termination of the funding agreement was not a fraudulent
18 transfer, do you understand that?
19 A I believe that's true, yes.
20 Q Okay. And do you also understand that you would need 75
21 percent of talc claimants to approve any plan?
22 A When it came to a vote, yes, I do.
23 Q And you understand that the Official Committee of Talc
24 Claimants in this case, substantially composed of plaintiffs'
25 lawyers representing thousands or tens of thousands of talc

claimants, opposes the debtor's plan, do you understand that?
A I understand that they're a very small portion of the claimants and the vast majority of claimants support the plan.
Q Do you understand that during any stay that the debtor and J&J obtain in this case talc claimants die during that period of time?
THE COURT: Sustained.
MS. BROWN: Objection, Your Honor.
MR. JONAS: No further questions, Your Honor. Thank you.
THE COURT: Mr. Satterly, just give me an estimate. I wanted to stop at 1:00. Are we going to fit you in?
MR. SATTERLY: Yes, I'll stop at 1:00. I may be finished by 1:00, but if not, it will just be a few minutes after lunch.
THE COURT: Okay.
MR. SATTERLY: May I proceed, Your Honor?
THE COURT: Yes.

CROSS-EXAMINATION

BY MR. SATTERLY:
Q Good afternoon, Mr. Kim. Joe Satterly. You and I met many times; correct?
A We have, Mr. Satterly.
Q And I'm going to talk about specific individual claimants that Mr. Maimon mentioned earlier, but before I do that I want

to make sure I clearly understand the situation here.

LTL and J&J are separate entities; correct?

A Yes, but LTL is a subsidiary indirectly of J&J.

Q And you, upon reading the Third Circuit opinion on January 30th, in your mind, you made the decision that the funding agreement could be void or voidable; correct?

A No. I came to the conclusion that that was an issue that -- I think everyone thought that was an issue and that, after further discussions and research, then I came to the conclusion that there was a material risk that the agreement was void or voidable and unenforceable.

Q And at no point in time in February of this year are there any board minutes where you and Robert Wuesthoff and Rich Dickinson sat down and talked about whether the funding agreement was void or voidable; true?

A Not true.

Q That's not true?

A No, it's in the resolutions and it was discussed at the board meeting --

Q And --

A -- before --

MS. BROWN: Let him finish.

THE WITNESS: -- I'm sorry --

BY MR. SATTERLY:

Q I'm sorry, February?

A Maybe it's the date issue.
Q I said February.
A In February.
Q In February. I'll get to April 2nd in a little bit.
A Okay. In February, there are no board meetings, but there were staff meetings where we discussed the potential issues with the contract.
Q So let me ask the question again. In February 2022, there are no board minutes, no documents discussing the funding agreement being void or voidable?
THE COURT: February 2023?
MR. SATTERLY: February 2023, yes, Your Honor. Sorry about that.
THE COURT: Time flies.
THE WITNESS: There may be legal -- there may be documents, there are no board minutes. When you say are there any documents, I don't know how many documents could be out there that discuss this. There was a lot of research being done on this, but there were no board minutes that discussed this before --
BY MR. SATTERLY:
Q Well, let me ask a question. LTL, over the last week or so since the filing of the second bankruptcy, hasn't produced a single document in February 2023 wherein the discussion of the funding agreement being void or voidable is discussed?

A No. I think, because of the press of time, we have not been able to do a full document production review. So we tried to get as much information as we could for this hearing and we came up with the board minutes and the presentations, which you have.

Q At any point in time from January 30th until April the 4th of 2023, LTL did not get independent evaluations, separate and apart from whatever lawyers you were talking about, independent evaluations regarding the funding agreement being void or voidable; correct?

A I'm actually not sure whether there was other lawyers that were asked about this. I don't have any recollection currently, but I do recall there were -- there were -- there may have been some conversations with other lawyers, but, again, I don't recall them specifically.

Q At no point in time from January 30th of this year until the filing of the second bankruptcy did LTL come back to this Court, to Judge Kaplan, and say I want Your Honor to declare one way or the other whether or not this funding agreement is void or voidable; true?

A It's true. It did not come to the point where we needed to do that because we came to an agreement as to how to resolve the issues by entering into another funding agreement and a support agreement by J&J.

MR. SATTERLY: Move to strike everything beyond "It's

1 true."
2 THE COURT: Sustained.
3 BY MR. SATTERLY:
4 Q It's true, sir, that you have never negotiated anything
5 with regards to any of the plaintiffs' lawyers that have signed
6 this plan support agreement; true?
7 A No, that is true, I did not do the negotiations.
8 Q You never, other than maybe meeting Mr. Watts at one point
9 in time, you never sat down and negotiated anything with
10 regards to any talc claimants with him; correct?
11 A I did not.
12 Q And same with regard to Mr. Pulaski, you haven't conducted
13 any negotiations with him as well; correct?
14 A No, correct. I relied on counsel.
15 Q And I'm going to get to relied upon counsel in a minute.
16 And you have not negotiated anything on behalf of LTL with
17 any plaintiffs' lawyers with regard to talc at all; correct?
18 A Not directly with plaintiffs' lawyers, no.
19 Q Okay. And you said you relied upon counsel. The counsel
20 that you relied upon is Mr. Murdica, you said that earlier;
21 correct?
22 A Well, Mr. Murdica was doing most of the direct
23 negotiations, but my counsel at Jones Day also was involved in
24 reviewing materials as well.
25 Q And so with regards to the negotiations, though, I'm not

1 talking about just reviewing materials, with regards to the
2 negotiations with these plaintiffs' counsel, it's your
3 testimony that you relied upon Jim Murdica --
4 A Well, again, I --
5 Q -- correct?
6 A No. It depends on how you define the negotiations. We
7 were -- I included where it was being apprised routinely about
8 the state of the negotiations, asked questions, had input. So
9 I did not read -- I and Jones Day may not have been interacting
10 directly with counsel, but, you know, we were aware of the
11 negotiations and we had discussions about them.
12 Q You said earlier that it was Mr. Murdica's obligation to
13 do due diligence with regards to these plaintiffs' law firms;
14 correct?
15 A That would be one of his obligations, yes.
16 Q And Mr. Murdica at no point in time provided you a due
17 diligence report regarding his evaluations; correct?
18 A No. We discussed the things that he was doing and getting
19 periodically. So I don't know what a due diligence report is,
20 but, again, I've known Mr. Murdica for over 20 years, I've
21 worked with him. We have discussions regularly about what's
22 going on, what's being provided, who's saying what, what
23 representations are being made.
24 So, again, if that's -- you know, I'm not sure what you
25 mean by due diligence report --

Q A document, a report. Let me show you my due diligence, what I did with regards to investigating these lawyers, these law firms, what's happening with these settlements?

A And none of my dealings of over 30 years of negotiating these --

Q I didn't ask you --

A -- agreements do we ever see a due diligence report.

MR. SATTERLY: Move to strike, Your Honor, non-responsive. I didn't ask him whether something happened over 30 years.

MS. BROWN: But, Your Honor, could he at least be allowed to finish his answer, please? I think --

MR. SATTERLY: I'll let him finish, Your Honor --

MS. BROWN: -- Counsel is cutting him off --

MR. SATTERLY: -- before I move to strike.

MS. BROWN: -- multiple times.

THE COURT: Motion to strike is granted. Allow him to finish the answer.

Limit your answers, please, to yes or no when you can.

THE WITNESS: Thank you, Your Honor.

MS. BROWN: Thank you, Your Honor.

BY MR. SATTERLY:

Q Let me ask the question again, sir. Has Mr. Murdica, who is charged with the due diligence of investigating these

1 lawyers, these law firms, provided any written reports to LTL,
2 to you or anybody else at LTL?
3 A There's no --
4 Q Is that a yes or no?
5 A Would an email count? There may be emails, but no written
6 due diligence, something called -- titled due diligence report.
7 Q Did Mr. Murdica share with you any investigation with
8 regards to Mr. Watts' previous representations of having claims
9 and representing to courts that he had claims when he really
10 didn't have claims?
11 A I assume, since they didn't have claims. I've seen the
12 PSA, I've seen the chart that Mr. Watts provided; I had
13 conversations with Mr. Murdica about Mr. Watts. I'm not sure
14 what you're -- you know, is there a formal report titled a due
15 diligence report?
16 Q Sure.
17 A No.
18 Q Well, let me ask you, let me just ask you this, sir, did
19 Mr. Murdica advise you, for example, that Mr. Watts in the BP
20 litigation claimed to have 40,000 claims and it turned out that
21 he didn't?
22 MS. BROWN: Your Honor, I'm going to object as
23 assuming facts and lacking foundation.
24 MR. SATTERLY: I think it's right on point, Your
25 Honor, with regard to this due diligence that he delegated to a

1 separate entity.
2 THE COURT: Objection sustained.
3 BY MR. SATTERLY:
4 Q Did Mr. Murdica advise you as to any aspect of what he did
5 with regards to any of these lawyers?
6 A As I guess I testified several times, we -- I know that we
7 had discussions about him having discussions with lawyers,
8 about his knowledge of the reputation, of how long he's been
9 dealing with these folks, how -- you know, whether he trusted
10 them or not, what information he was getting from them.
11 So, you know, we had -- and also what is actually needed
12 at this time for our purposes and whether, you know, a process
13 should be taken later to confirm all this stuff. So we've had
14 discussions about that.
15 Q With regards to these negotiations of mass tort cases that
16 you have relied upon with regards to Mr. Murdica, you said, in
17 the past, none of them, zero, involved the entry of a
18 channeling injunction preventing individuals from filing
19 lawsuits against J&J; true?
20 A Yeah, none of them were in bankruptcy, but --
21 Q And none --
22 A -- nothing else --
23 MS. BROWN: Can you please let him finish?
24 THE WITNESS: Yeah, none of them was in bankruptcy,
25 but --

BY MR. SATTERLY:
Q Is that a true statement?
A -- so that -- yeah, so that that -- yeah, so that would be different, yes.
Q So that's a yes; correct?
A That's true.
Q Okay. And so none of the negotiations that you're referring to in the past would have prevented future individuals from making a lawsuit against J&J or any of the J&J subsidiaries through the negotiation process that Mr. Murdica engaged in with these lawyers; correct?
A I believe that's -- that's true.
Q Okay. Let me just ask a few more points before the lunch break.
The PSA, the plan support agreement, is dated March 21st; correct?
A I don't believe it's dated at all.
MR. SATTERLY: Well, Your Honor, I only have one copy of it. May I approach at lunch and we'll make copies?
COUNSEL: What number again?
MR. SATTERLY: It's -- what number do you guys want to call it?
COUNSEL: No. Who signed it?
MR. SATTERLY: Who signed it? John Kim signed it. No, this one is Johnson Law Group.

1 COUNSEL: We don't have that one. I'm sorry.
2 MR. SATTERLY: It doesn't matter, they're all the
3 same.
4 BY MR. SATTERLY:
5 Q Well, let me ask. You know the plan support agreements
6 are all the same; right?
7 A I think they are all the same, but they're not dated. The
8 signature may be dated, but they're different dates for
9 different people. So I --
10 MR. SATTERLY: May I approach, Your Honor?
11 THE COURT: Yes.
12 MR. SATTERLY: Oh, they got a whole bunch of them.
13 We'll call this 8, right? Is that 8?
14 COUNSEL: It's 7.
15 MR. SATTERLY: 7? All right.
16 May I approach again, Your Honor?
17 THE COURT: Yes, please.
18 BY MR. SATTERLY:
19 Q Do you see right below the words "Plan Support Agreement"
20 --
21 A I see, yes.
22 Q -- it says dated March 21st, 2023. Do you see that?
23 A I do see that.
24 Q Okay. And so -- and then if we go over to the page 11,
25 the signature page of this particular one is Slater Slater

1 Schulman, and it's signed on March 27th; correct?
2 A I see that, yes.
3 Q And then, if we flip over to the next page, we've got your
4 signature on the 4th of April; correct?
5 A Yes, I see that.
6 Q And, as I looked at these plan support agreements, all of
7 them have the exact same signature, I mean, verbatim, because
8 you only signed one document; correct?
9 A To be effective for the sign -- yes, because everything is
10 supposed to be effective on the date of bankruptcy.
11 Q Sure. You predated your signature a couple days
12 beforehand and just let the lawyers attach this to the
13 agreement on the 4th; correct?
14 A They were attached on the 4th or shortly thereafter.
15 Q I couldn't hear you, sir.
16 A On the 4th or shortly thereafter, they were attached.
17 Q And so that is a true statement, you signed this document
18 in advance a few days beforehand, gave it to the lawyers, and
19 then they attached it to this agreement at the time of the
20 bankruptcy; correct?
21 A I'm actually not --
22 MS. BROWN: Your Honor, I object, that misstates his
23 testimony.
24 THE WITNESS: Yeah, I'm actually not sure when I
25 signed it.

1 THE COURT: Repeat the question.
2 BY MR. SATTERLY:
3 Q You signed this document a few days before this was filed
4 in court -- or in the bankruptcy; correct?
5 MS. BROWN: Same objection, Your Honor.
6 MR. SATTERLY: Let me withdraw the question.
7 BY MR. SATTERLY:
8 Q You signed this document a few days before it's dated;
9 correct?
10 MS. BROWN: Same objection.
11 THE WITNESS: It may have been --
12 THE COURT: Overruled.
13 THE WITNESS: -- on the date that I signed it.
14 BY MR. SATTERLY:
15 Q Okay. Do you have any evidence of that?
16 A I don't -- I don't recall when I signed --
17 Q Did you do this through DocuSign or --
18 A No, this was a -- I think a hard signature.
19 Q And so, as you sit here today, you can't tell the Judge
20 exactly the date or time when you actually signed this plan
21 support agreement?
22 A I cannot, but it was effective as of the date of the
23 bankruptcy.
24 Q All right. And you signed one document, it was your
25 understanding it was going to be applicable to all of them;

1 correct?
2 A Correct.
3 Q And you did not have all the attachments, the exhibits,
4 Exhibit A, Exhibit B, a listing of cases, you didn't have all
5 that. You just signed the document; correct?
6 A I had a file of all the PSAs and all the exhibits that we
7 had. You know, the exhibits were coming in from time to time,
8 but I had a -- I did have a file of all those and, you know,
9 reviewed most of them.
10 Q So I'm confused. Are you saying, when you just signed one
11 document for all these, you reviewed everything associated with
12 all these different agreements?
13 A I knew they were there, I had a file of all the
14 agreements. I did not look at every page of every exhibit, you
15 know, but I did have it in my possession and satisfied myself
16 that they were what they were.
17 Q And you were never involved on behalf of LTL of
18 negotiating the plan support agreement. That was done by
19 Murdica; correct?
20 A That is true.
21 Q You were not even given -- let me just ask you a
22 hypothetical. If Mr. Watts emailed a plan support agreement or
23 template for one back in February, you weren't carbon copied on
24 that; were you?
25 A I was not.

Q The first time you saw this agreement was in early April; true? Let me -- early April.
A I'm not sure when I saw it. I saw templates at some point and one is attached to the declaration. Yeah, I'm not sure when I first saw it.
Q Nowhere in the plan support agreement does it say a law firm must commit its clients to follow the attorney's recommendation; true?
A I think that's true, yes.
Q And you know -- you're a lawyer; correct?
A I am a lawyer.
Q And are you licensed here in New Jersey?
A I am not.
Q Have you ever been licensed --
A No, sorry, I have what they call a provisional in-house license by the bar. So there is a provision for licensing in-house counsel in New Jersey.
Q Are you subject to the Rules of Professional Conduct in New Jersey?
A I believe I am.
Q And you know that the rules of New Jersey courts, Rule 3.3 says a lawyer shall not make a false statement of material fact or law to a tribunal?
MS. BROWN: Objection, Your Honor, to this line of questioning.

1 THE COURT: Overruled.
2 MS. BROWN: There are also ethical implications, Your
3 Honor, to making ethical claims and reading from Codes of
4 Professional Conduct. I object to the implications and to
5 these questions.
6 MR. SATTERLY: I'm just asking if he's familiar with
7 that rule.
8 THE COURT: And that limited question, just like the
9 one with the bankruptcy fraud, limited question, he can ask.
10 MS. BROWN: Thank you, Your Honor.
11 BY MR. SATTERLY:
12 Q Do you want me to ask it again?
13 A What I will say, I haven't read this specific chapter, but
14 that's generally true in most jurisdictions.
15 Q 3.3, it's a lawyer shall not knowingly make a false
16 statement of material fact or law --
17 THE COURT: Sustained.
18 MS. BROWN: Thanks, Judge.
19 BY MR. SATTERLY:
20 Q All right. Now let me ask you about Valadez.
21 Now, LTL -- this Court permitted me to bring a claim
22 against LTL in the Valadez case, you know --
23 A I am familiar with it, yes.
24 Q Okay. And the court in Alameda required LTL to put up a
25 corporate representative in the Valadez case to give testimony

and did so, LTL did so on March the 31st. Do you know that?
A I do know that.
Q And no one from the LTL board, you, Wuesthoff, or Dickinson, was that corporate representative; correct?
A Correct.
Q Okay. And you do know that a fellow named James Mittenthal was the corporate representative in the Valadez case; correct?
A He was designated as a corporate representative pursuant to the rules of the court, yes.
Q And did you meet with him -- and I'm not going to ask the substance of your discussions, but did you meet with him to educate him to be the person most qualified in the Valadez case?
A I did.
Q Okay. And you do know that in the Valadez, specifically, several retailers refused to agree to indemnification agreements allowing LTL and J&J to indemnify them?
MS. BROWN: Your Honor, that assumes facts, it's inaccurate, and it lacks foundation.
MR. SATTERLY: Well, he -- she shouldn't be able to say -- give him -- coaching him while he's on cross-examination.
THE COURT: Objection overruled. Ask the question -- can you answer the question?

THE WITNESS: Yeah, I believe that's not true.
BY MR. SATTERLY:
Q Oh, really? So Mr. Mittenthal gave false testimony for LTL on March the 31st --
THE COURT: Sustained.
BY MR. SATTERLY:
Q -- when he said several retailers refused to sign an indemnification agreement?
A No, I --
MS. BROWN: Wait, I object.
BY MR. SATTERLY:
Q Is that --
MS. BROWN: Hold on.
THE COURT: Ask the question again.
BY MR. SATTERLY:
Q Did Mr. Mittenthal, the LTL corporate representative, give false testimony on March the 31st when he said several retailers refused to sign indemnification agreements?
MS. BROWN: That's a complete inaccurate representation --
MR. SATTERLY: I'm asking him --
MS. BROWN: -- of his testimony. I object.
THE WITNESS: I dis --
THE COURT: Objection sustained. Do you know of the testimony he gave?

THE WITNESS: I do know of the testimony, yes, but that's not what the testimony was.

BY MR. SATTERLY:

Q You were not personally involved in negotiating any indemnification agreements between the prospective protected third parties, the retailers, and LTL; correct?

A There were times where I did get involved in the past. I'm not sure which retailers you're talking about now, but I have been involved in negotiations --

Q Since LTL's creation and specifically with regards to Mr. Valadez, did you negotiate with the retailers regarding any indemnification agreements?

A I'd have to know which retailers are in the Valadez case and when the negotiations happened. So there is a possibility, I just don't recall sitting here right now whether we had negotiated indemnification with these retailers three years ago, in which case I would have been involved, or whether these are new negotiations. I just don't -- you'd have to tell me more information about that -- about that --

Q As you sit here today, can you offer any personal -- do you have any personal knowledge that you were involved in negotiating any indemnification in the Valadez case?

A Again, when you say negotiations of retailers in the Valadez case, I don't know which retailers are in the Valadez case, and so I don't know when those negotiations happened.

Q It's almost 1 o'clock, I've got one last topic.
The Leavitt case, Terry Leavitt case, you're very familiar with Terry Leavitt's case; correct?
A I believe I am. You'd have to, again, remind me of sort of the details of that. I have not looked at these cases in over a year.
Q It's a case that went to verdict and you were in Oakland during that trial. Do you recall coming to Oakland?
A I was in Oakland for -- is this the one --
Q Two of them. I'm going to ask you about Leavitt and Schmitz.
A Okay.
Q You were there for both of them at least part of the time; correct?
A I believe I was at most trials, but I don't have a solid recollection of which case is which.
Q And you know because at the time back in 2019 when those cases went to verdict that you were counsel for J&J charged with overseeing the talc litigation; correct?
A I was one of the lawyers that was overseeing the talc litigation.
Q And you know that the Leavitt case, that there was a verdict in favor of the plaintiff, and the jury allocated 78 percent to J&J -- the mother ship, the big J&J -- 20 percent to JJCI, and two percent to Cypress. Do you recall that?

A I know that in various cases, I think as I testified in the first hearing, there have been all these allocations, many of them that don't make sense because they're different than others.

So I don't recall specifically the Leavitt case allocation, but I'll take your word that that's what the jury did.

Q And you know that the Leavitt case was affirmed on appeal and J&J sought review at the California Supreme Court, it was denied, and J&J and JJCI has paid that verdict, you understand that?

A I believe that's true, yes.

Q And you know that, with regard to the Schmitz case in 2019, Patricia Schmitz, there was a verdict in the summer of 2019 of approximately $12 million and it was affirmed on appeal in a published opinion and recently, as recently as a week or so ago, the Supreme Court of California denied review, you know that; correct?

A I recall that, yes.

Q And you know that -- and you know just yesterday LTL listed its largest creditors -- and Mrs. Schmitz's estate, Susan Bader was listed as one of the largest creditors; correct?

A I believe she is on that list, yes.

Q And with regard to Mrs. Schmitz, you know that J&J was

1 found jointly and severally liable, along with Colgate, because
2 of intentional misconduct; true?
3 A I'd have to go back and look at the trial. I don't
4 recall, sitting here right now.
5 Q Are you aware of the implications of what that means under
6 California law with regards to J&J, the parent company's
7 responsibility with regard to the Schmitz case?
8 MS. BROWN: Objection, Your Honor.
9 THE COURT: Sustained.
10 BY MR. SATTERLY:
11 Q Do you know whether or not the process, having been senior
12 counsel involved in all the talc litigation for all those
13 years, you know what occurs next with regards to the Schmitz
14 case?
15 MS. BROWN: Same objection.
16 THE COURT: No, he can answer that.
17 THE WITNESS: Yeah, I'm not sure what you mean by
18 what -- I mean, are you talking about further appeal or --
19 BY MR. SATTERLY:
20 Q Well, there's no further appeal --
21 A -- cert denial or --
22 Q -- I mean, but do you know what happens under California
23 procedure?
24 A I'd have to advise -- get counsel's advice on that.
25 Q Okay.

MR. SATTERLY: Your Honor, it's 1 o'clock, I have no further questions. I'm going to pass the witness formally. I'm sure they're going to probably complain that I should have said reserve, but in the interest of time, I'm going to pass the witness.

THE COURT: All right. Thank you.

Let's come back at 1:30, folks.

ALL COUNSEL: Thank you, Your Honor.

THE COURT: The usual admonitions, don't discuss your testimony with anybody.

THE WITNESS: Thank you, Your Honor.

(Recess at 1:01 p.m./Reconvened at 1:36 p.m.)

THE COURT: Are we good to go?

THE CLERK: Yes, sir.

THE COURT: Let's see.

THE CLERK: We are unmuted.

THE COURT: All right. Here we go.

All right. Thanks, everyone. Hope everyone had a good lunch. Mr. Maimon.

MR. MAIMON: May I proceed, Your Honor.

Thank you, very much.

CROSS-EXAMINATION

BY MR. MAIMON:

Q Good afternoon, Mr. Kim.

A Good afternoon, Mr. Maimon.

Q First of all, do you recall that Mr. Satterley and I tried to let a case together in Oakland that you came to watch?
A I do believe so. Again, I sometimes get the cases a little mixed up, so.
Q Right. Understandable. I'd like to start talking to you about the funding agreement, number one, the $61.5 billion funding agreement that was part of LTL 1, okay.
A Okay.
Q And that funding agreement was in place when the restructuring took place that led to the creation of LTL, correct?
A I think they were all done at the same time.
Q Understand. But it was part of that restructuring to have a funding agreement that would provide LTL with the value in the restructuring, right?
A Correct. But when you say funding agreement, again there were sort of two parts to that. There was the JJCI, the New JJCI agreement, and then the backup by J&J, the --
Q Right. But in all of the Court documents, and the Third Circuit Court of appeals, talked about the funding agreement. That's the one we're talking about, the $61.5 billion funding agreement. Right.
A I understand that, yes.
Q Okay. And part of what happened in the restructuring is Johnson & Johnson Consumer Incorporated put its talc

liabilities into LTL, right?
A Through a series of transactions, that's eventually what happened, yes.
Q And a lot of the assets went to another company, right?
A All the other assets, but except for the TA assets, went to what became New JJCI.
Q And the talc assets went where?
A I'm not sure what you mean by talc assets.
Q The baby powder line, where did it go?
A The baby powder line went to -- I'm trying to place whether there was actually be a better line at the time.
Q Well, you still --
THE COURT: Consumer products.
THE WITNESS: Consumer products.
BY MR. MAIMON:
Q Consumer products went to New JJCI, right.
A Consumer products went to New JJCI.
Q Right.
A But I don't know that there were baby powder products at that time.
Q Well, the company still continued to sell Johnson's Baby Powder as cornstarch, right?
Q Oh, the cornstarch products. Well, yes --
A Consumer.
Q -- was in the consumer group, yes.

A Okay. And part of the restructuring and having that $61.5 billion funding agreement in place was so that nobody could claim that J&J was fraudulently decreasing the value of its old business by splitting off the talc liabilities to LTL, correct?

A I think part of it. So the JJCI agreement was to make sure that the new, what would turn into LTL, had the financial backing of JJCI up to that amount. The J&J, of course, backup, was so that in bankruptcy, the asset -- that number could be preserved in bankruptcy.

Q Well, that, what you just said, is not written in that agreement, is it?

A There would be no other reason why J&J would have with that obligation in it, a backup. JJCI's value is JJCI's value. I think the issue is if you're not putting JJCI into bankruptcy and you're only putting LTL into bankruptcy, how do you stop the diminution of the JJCI assets, and so in bankruptcy, the J&J guarantee comes into play so that it doesn't. So that's the only reason to have the J&J guarantee.

MR. MAIMON: Move to strike as non-responsive. My question is, that's not in the agreement itself, Your Honor.

THE COURT: Is it in the terms of the agreement?

THE WITNESS: I'm not sure. Well, I'm not sure if that's laid out.

BY MR. MAIMON:

Q That's fine.

A I think that's the intent and maybe parts of that may be in that agreement.

Q If you're not sure, you just tell us you're not sure, okay. It's a perfectly acceptable answer. All right.

THE COURT: Mr. Kim, I know we've done this in the past.

Answer yes or no, if you can. Limit your answers to the questions, and we'll move on expeditiously.

THE WITNESS: Yes, sir.

BY MR. MAIMON:

Q Now, you testified this morning that the $61.5 billion funding agreement was LTL's largest asset when it first filed in October of '21, correct?

A True. Yes.

Q Okay. And do you still have the exhibit up with you?

A I do.

Q Take a look at Exhibit 1.

That's the voluntary petition that was filed on October 14, 2021, correct?

A Exhibit 1, yes.

Q And if you turn to Page 4 of that voluntary petition, you signed that as Chief Legal Officer, correct?

A I did.

Q And you dated it and executed it on October 14, 2021, true?

A Yes.
Q And you signed it under penalty of perjury, correct?
A I did.
Q And Mr. Gordon signed it as the attorney on the next page, Page 5, right?
A He did.
Q Okay. So now, you just told us that on that date, the funding agreement of $61.5 billion was its largest asset. Take a look on Page 4, Number 15, estimated assets.
A Yes.
Q Are you there?
A I do see that.
Q You marked the section that the estimated assets were between 1 billion and $10 billion, and you did so under penalty of perjury, correct?
A I did.
Q Okay. Thank you.
Now, you recall that in the first bankruptcy, there was a hearing in this Court on the motion to dismiss.
A I do recall that, yes.
Q And Mr. Gordon represented LTL at that hearing, correct?
A He did.
Q And he was authorized as your attorney to speak for LTL on your behalf, correct?
A He was.

1 Q Were you present in Court when Mr. Gordon, in arguing
2 against dismissal of the first LTL bankruptcy, pointed to the
3 $61.5 billion funding agreement and assured Judge Kaplan that
4 it applied outside of bankruptcy even if the bankruptcy was
5 dismissed? Were you present when he made that statement?
6 A I was.
7 Q Thank you. Were you present on September 19, 2022, when
8 Neal Katyal argued on behalf of the debtor at the Third Circuit
9 Court of Appeals?
10 A I was.
11 Q And were you there -- and he was retained to argue on
12 behalf of LTL, true?
13 A He was.
14 Q And he was authorized to speak on behalf of LTL, correct?
15 A He was.
16 Q And were you there when he told the panel of the Third
17 Circuit that the funding agreement applied outside of
18 bankruptcy?
19 A I was.
20 Q Okay. Now, you told us that when you read the Third
21 Circuit opinion on or about January 30, 2023, you first started
22 thinking that the funding agreement might be void or voidable.
23 Is that correct?
24 A That is. Correct, that discussion did come up.
25 Q Now, this morning there was some discussion between you

1 and Mr. Jonas about what exactly it was that you concluded.
2 MR. MAIMON: May I approach, Your Honor?
3 THE COURT: Yes.
4 MR. MAIMON: Thank you.
5 BY MR. MAIMON:
6 Q I'm handing you up your deposition in this case of
7 April 14, 2023.
8 * And just for identification, we'll mark this as TCC-9.
9 MR. MAIMON: Is that our next number?
10 THE COURT: Eight.
11 MR. MAIMON: Okay.
12 MS. BROWN: Mr. Maimon, could I have a copy, please?
13 MR. MAIMON: Here you go, eight.
14 BY MR. MAIMON:
15 Q Now, if you can turn to -- you'll see this is a condensed
16 transcript and there are four to a page. Do you see that?
17 A I do see that.
18 Q Go to the page where the transcript pages are 77 through
19 80.
20 A I'm there.
21 Q Now, do you see on the bottom of the previous page,
22 Page 76, Mr. Jonas asked you, "What about the Third Circuit
23 opinion made you believe that the funding agreement was void or
24 voidable?" Do you see he was asking you about that?
25 A I think --

MS. BROWN: I'm sorry, Counsel. What line are you on?

MR. MAIMON: Page 76, Line 24.

MS. BROWN: Thank you.

BY MR. MAIMON:

Q Do you see that?

A Yes.

Q Okay. And then I'd like to draw your attention to Page 78 and your answer at Lines 6 through 10. You stated under oath, "I think everyone agrees --

MS. BROWN: Your Honor --

MR. MAIMON: -- that the Third Circuit decision --

THE COURT: Wait, Mr. Maimon.

MS. BROWN: I'm just going to object. This is improper use of this deposition. He has not testified inconsistently with his deposition. If he's looking to impeach him, he knows there's a proper way to do that. I would just object to reading sections of a deposition where there's been no inconsistent testimony.

THE COURT: Mr. Maimon?

MR. MAIMON: Yes. May I proceed, Your Honor. I'll ask a new question.

BY MR. MAIMON:

Q This morning, when Mr. Jonas --

THE COURT: Sustained.

BY MR. MAIMON:
Q -- was asking you --
THE COURT: He's asking a new question.
MS. BROWN: Okay.
MR. MAIMON: I'm sorry.
THE COURT: You're asking a new question?
MR. MAIMON: Yes.
THE COURT: Yes.
BY MR. MAIMON:
Q This morning, you told Mr. Jonas that you never said that the Circuit decision was wrong. Didn't you say that this morning?
A No, no, no. I said that I did not state in my prior answer to Mr. Jonas that they had made a mistake.
Q Okay.
A I believe the Circuit decision is in error. We filed appeals and papers with our position on that. So, I just said that, or Mr. Jonas said, you said the Third Circuit made a mistake. And I responded, I don't think I said they made a mistake. They did what they did. I accept that. I think it's in error. But I didn't say that. I didn't say -- yeah, I just said -- I didn't say that it was a mistake.
Q You were of the opinion that the Third Circuit made a mistake and that the Third Circuit was wrong, true?
A I believe the Third Circuit was wrong in its decision. We

filed papers to support that.
Q The Third Circuit decision is the law, and you have given up all of your appeals on that, true?
A Yeah. And we followed the law, the Third Circuit law specifically, when we entered into the new funding arrangement and support agreement, so we're not flouting what the Third Circuit said.
THE COURT: Mr. Kim.
THE WITNESS: I'm sorry.
MR. MAIMON: Move to strike everything after --
THE COURT: Sustained.
MR. MAIMON: -- "Yes, it is the law."
THE COURT: Sustained.
MR. MAIMON: Thank you.
BY MR. MAIMON:
Q In your deposition, you said that everyone agrees that the Third Circuit was wrong.
MS. BROWN: And, Your Honor, it's the same objection. I mean, the proper way to do it is ask the question, if you get an inconsistent answer, then you go to the deposition. But he's making representations of the deposition without the predicate question, and so I just object to the way this is being done as improper.
MR. MAIMON: I'll ask it differently if that's okay, Your Honor.

1 THE COURT: All right. Thank you.
2 MS. BROWN: Thank you, Your Honor.
3 BY MR. MAIMON:
4 Q It was your opinion, Mr. Kim, as the chief legal officer
5 of LTL, that everyone agreed that the Third Circuit was wrong,
6 true?
7 A No, clearly, not the Third Circuit. But I was just trying
8 to say that the people that I consulted on this issue agreed
9 that there was an error.
10 Q And that was the Jones Day people, right?
11 A Yes.
12 Q And that was the Hogan Lovells people, right?
13 A Yes.
14 Q And the Skadden Arps people, right?
15 A Yes.
16 Q And all of you agreed that the --
17 A Well, there are others. I mean --
18 Q -- Circuit was wrong, right?
19 A I'm sure there are others, too.
20 Q You wouldn't tell us who the others were at your
21 deposition, would you?
22 MS. BROWN: Your Honor, at the deposition, we
23 instructed him to not reveal privileged communications. He
24 gave the answers of the law firms that were on the brief, which
25 is exactly what he's done today and which is consistent with

1 the privilege law.
2 THE COURT: All right. Thanks. Sustained.
3 BY MR. MAIMON:
4 Q Now, do you have Exhibit 7 up there with you? That's the
5 plan support agreement that was signed by Mr. Slater.
6 A I do.
7 Q And that was signed by Mr. Slater, if you look at Page 11,
8 on March 27, 2023, correct?
9 A I see that date is there.
10 Q But the agreement itself, the plan support agreement, is
11 dated as of March 21, 2023, correct?
12 A Well, that's what the date is on the agreement, but
13 that's -- but it was -- the date is on the agreement.
14 Q Yes, that's the date on the agreement, right?
15 A That's what it states on the first page, yes.
16 Q Okay. Now, if you turn to Exhibit 5, these are the board
17 minutes from LTL Management from five days earlier, March 16,
18 2023. Do you see that?
19 A I'm sorry. I'm sorry. I've got a bunch of exhibits up
20 here.
21 Q It's a single page.
22 A Okay. Some of these exhibits are just, they're not marked
23 with a number.
24 Q You've got the right one there.
25 MS. BROWN: You have it.

1 THE COURT: That's it.
2 BY MR. MAIMON:
3 Q Got it?
4 A Yeah, I do.
5 Q Okay. And what happened at that meeting is Mr. Prieto led
6 a discussion on contingency planning, right?
7 A Yes.
8 Q And Mr. Prieto sought approval from the board to file
9 another bankruptcy, correct?
10 A No.
11 Q Who sought approval from the board? It says, you see the
12 bullet point at the bottom of page one?
13 A I do.
14 Q It says, "Seeking approval from this board to file another
15 bankruptcy."
16 A Planning in the event we get an adverse ruling.
17 Q Right.
18 A So we were not seeking approval at this time. We were
19 raising the possibility as a contingency that we might come
20 back later to to seek approval. And if you look at the minutes
21 where we actually sought approval, you can see that. So this
22 was just a, again, contingency planning. In the event we get
23 an adverse ruling, one of the contingency plans that we were
24 looking at was whether to seek approval to the board to file
25 another bankruptcy.

Q Now, the second bullet point, and so it was contemplated on March 16, 2023. The second bullet point is amending the funding agreement, right? Or entering into new agreements, right?

A Correct. That's what it says.

Q Okay. So that we know that as of March 16th, LTL and their board were discussing amending the funding agreement or entering into new agreements, true?

A I would say we were discussing the possibility of doing that. These are all contingency plans. These are not plans that we have agreed to do or wanted or decided to do. These are contingency plans. We're looking at all contingencies trying to determine and giving the board a view of things that could happen.

Q Are you done with your answer?

A Yes.

Q Turn back to the plan support agreement, Exhibit 7.

A Okay.

Q If you take a look at the bottom, the last paragraph there, it has in bold letters, the word "term sheet." Do you see that?

A I'm sorry, where?

Q First page, bottom paragraph?

A Yes. I do see that.

Q And it says, "A copy of the term sheet is attached to this

1 agreement as Exhibit B," right?
2 A Correct.
3 Q So we know, whatever else, is that as of March 21, 2023,
4 the date of this, it says that a term sheet is attached to this
5 agreement as Exhibit B, correct?
6 A That's what it says, yes.
7 Q Okay. Let's take a look at the term sheet, which was
8 Exhibit 4.
9 And if you take a look, the first page has a section
10 called "agreement." Do you see that?
11 A Yes.
12 Q And it lists certain qualifications that the payment terms
13 are contingent on. Do you see that?
14 A I see that, yes.
15 Q Okay. And then it lists 1, 2, and I'd like to go on to
16 Page 2, the third contingency item. Do you see that?
17 A I see that.
18 Q Within the term sheet that was attached to the PSA dated
19 March 21, 2023, one contingency was, "The futures claims
20 representative agreement that she will not assign more than one
21 third of the trust corpus to qualifying future claims." That's
22 what it says.
23 A I do see that.
24 Q And that was a contingency that was put into the term
25 sheet that Mr. Murdica drafted on your behalf, true?

A Yes, as a contingency.
Q Okay. Now, let's take a look at Page 5.
Ms. Ellis, who was referred to as the FCR and it had to be that she couldn't commit more than one third of the corpus of the trust to future claims, is discussed on Page 5, Section B(1) as a claims administrator of the talc trust. Do you see that?
A I'm sorry. Could you read back that question?
Q Sure.
Page 2 refers to the future's claims representative, right?
A It does.
Q At that time, LTL 1 was -- LTL was still in bankruptcy, right?
A Well, at the time that this was being discussed, yes, we were (indiscernible) --
Q At the time that this was finalized and signed by Mr. Slater on March 27, 2023, LTL was still in bankruptcy, right?
A It's not finalized. It is not finalized. It is not effective until after the bankruptcy was dismissed. That was one of the contingents -- that was one of the conditions we had when we -- we wouldn't sign it until the bankruptcy was dismissed.
Q Go back to Page 2. Let's make sure we're on the same

wavelength. The future's claims representative agreement that she -- Do you see that?

A Yeah, it's not an agreement by the future claims representative. This is a contingency.

Q Sir, if you could listen to my questions.

MS. BROWN: Judge, could he just be allowed to answer, please?

MR. MAIMON: But he's not listening to my question.

THE WITNESS: But he said the agreement.

THE COURT: Mr. Kim, I think he's asking you just to read the agreement.

THE WITNESS: Okay.

THE COURT: All right.

MR. MAIMON: The term sheet.

THE COURT: So just read the terms.

BY MR. MAIMON:

Q Number 3, "The future claims representatives agreement that she will not assign more than one third of the trust corpus to qualifying future claims." Did I read that correctly?

A Yes.

Q It refers to the future claims representative as she, correct?

A It does.

Q Because at that point, the only future claims

representative was Randi Ellis, right?
A Yes.
Q And J&J has immediately, upon filing -- or, I'm sorry, withdrawn.
LTL, immediately upon filing this bankruptcy, moved for Ms. Ellis to be reappointed as FCR in this bankruptcy, correct?
A We did.
Q Okay. Now, so we know what that contingency was on Page 2. Let's go now to Page 5. This refers to Ms. Ellis by name here, right?
A It does.
Q And it refers to, even if it's a placeholder, first of all, you didn't draft this agreement, did you?
A I did not draft it, no.
Q Okay. It says, "Randi Ellis shall serve as claims administrator of the talc trust for purposes of qualifying claimants and allocating proceeds to be distributed among all existing and future qualifying claimants."
Do you see that?
A I do see that.
Q And so this is talking about somebody whose role it would be to say how much each contingent of the claimant pool was going to get, right?
A I'm not sure what the exact duties would be of the claims administrator.

Q Well, that's what it describes, "allocating proceeds to be distributed amongst all existing and future qualifying claimants." That's the role that it says, right?
A It is.
Q Okay.
A But allocate, I'm just quibbling with the word allocating proceeds. I'm not -- my understanding is that a claims administrator just takes proceeds, takes the chart, and determines where you fall, and then sends the money to where it's supposed to be sent.
Q Here it says, the purposes for the claims administrator of the talc trust are, quote "qualifying claimants and allocating proceeds to be distributed amongst all existing and future qualifying claimants." That's what it says, right?
MS. BROWN: And, Your Honor, I would just object to the way that's being read. I think it misstates how it's worded, and I think it speaks for -- the sentence speaks for itself.
MR. MAIMON: I can't ask a question unless we read it, Your Honor.
THE COURT: All right. I've read this paragraph. Ask the question.
MR. MAIMON: Yes.
BY MR. MAIMON:
Q How was it that J&J thought that somebody could ethically

be a FCR commit to less than one third of the proceeds going to future representatives and yet be a claims administrator whose duties it was to allocate proceeds to be distributed among all existing and future qualifying claimants?

MS. BROWN: I object, Your Honor. Lacks Foundation. Calls for speculation.

THE COURT: Sustained.

BY MR. MAIMON:

Q Now, when LTL made the motion to have Ms. Ellis appointed as FCR in this case, it did not disclose to the Court that it also put her as a placeholder prospective claims administrator whose responsibilities would be to allocate proceeds to be distributed amongst all existing and future claimants, did it?

MS. BROWN: I object, Your Honor. That misstates the testimony. It's also a duplicative questioning of what we had before on this issue. I'd object to that as well.

THE COURT: Overruled.

THE WITNESS: No. Because, again, as a placeholder, it did not mean that she was the claims administrator.

MR. MAIMON: move to strike everything after no, Your Honor.

THE COURT: Overruled.

BY MR. MAIMON:

Q When LTL moved to have Ms. Ellis appointed futures claims representative in this case, it did not disclose to the Court

that part of the agreement that it made with various law firms was that J&J's payment was contingent on that FCR agreeing not to assign more than a third of the trust corpus to qualifying future claims. You didn't disclose that, did you?

A No.

MS. BROWN: Objection, Your Honor. Misstates the evidence.

THE COURT: Sustained. The question is confusing. I'm aware of what they disclosed. Remember, I'm the trier of fact. I know the docket. Let's move forward so we can get this moving forward.

MR. MAIMON: Thank you.

BY MR. MAIMON:

Q Take a look at Exhibit 6. This is the presentation to the board of LTL on March 28, 2023. Do you have that?

A I do.

Q And this was a presentation that Mr. Prieto made, correct?

A Parts of it, yes.

Q Okay. And parts of this discuss terms that are straight out of the term sheet. For instance, Page 5, the payments. That's exactly what's provided for in the term sheet, right?

A It may be, yes, those same terms. Yes.

Q And already on March 28th, we saw Mr. Slater, if you look on Page 4, there's a report here that law firms representing thousands of claimants have signed or are expected to sign the

1 plan support agreements, right?
2 A I believe that's true, yes.
3 Q And there were signed PSAs by this time, right?
4 A We believe -- I think there were, yes.
5 Q Okay. So now we know from Exhibit 5, which were the board
6 meeting minutes of March 16th, that one of the bullet points
7 was gauging whether the future's claims representative would
8 support a further bankruptcy and the contours of a plan, right?
9 That was discussed on March 16, right?
10 A That was one of the items discussed, yes.
11 Q If we take a look at Page 7 of the PowerPoint
12 presentation, this now reports 12 days later that separate
13 discussions have occurred with the FCR, right?
14 A Yes.
15 Q You did not have those discussions with her, did you?
16 A I did not.
17 Q Who did?
18 A I'm actually not sure who was actually having discussions
19 with the FCR. I can guess.
20 Q Okay.
21 MR. MAIMON: We don't want you to guess.
22 THE COURT: Don't guess.
23 BY MR. MAIMON:
24 Q We don't want you to guess. But as the chief legal
25 officer, you didn't know who was having discussions on behalf

of the LTL with Ms. Ellis?
A I guess I had an assumption.
Q I don't want your assumption. You don't know. You can't tell us, right?
A Again, I have an assumption of who it was. I don't know that I actually know. I wasn't part of those discussions.
Q I'm not looking for your assumptions. I'm not looking for guesses, sir.
A Okay.
Q Either tell us you know or you don't know. Either one is fine.
A I have a strong assumption. I won't get into it.
Q There's also a report here for -- well, first of all, you didn't give this information, which is on Page 7, right, because you didn't speak with Ms. Ellis, right?
A That's correct.
Q Okay. There's also a statement here that the FCR is supportive of a second LTL Chapter 11 case, right?
A Yes, I see that.
Q Now, at that time, the FCR, Ms. Ellis, was the FCR in LTL 1, right?
A She was.
Q Okay. It also says here, the FCR has agreed to sign and submit a declaration in support of a new Chapter 11 case, right?

A Yeah. That's the filing of the case, yes.
Q Well, let's just read what it actually says. "FCR has agreed to sign and submit a declaration in support of a new Chapter 11 case." Those are the words, right?
A That's exactly right. The filing of a new Chapter 11 case.
Q Well, it doesn't say "filing." It says what it says. Can we agree on that?
A Sure. Yes, we can.
Q Okay. And this is phrased in the past tense, that she already has agreed, right?
A Which, yeah, did not turn out to be true.
Q And then -- well, this is what was reported to the board, right?
A Correct.
Q Okay.
A And it was later reported that it was not happening.
Q And then, later it was reported that she was unwilling to sign a declaration, right?
A That she chose not to, yeah, sign a declaration.
Q In addition to a declaration, there's a discussion here about discussions are ongoing to obtain a plan support agreement from the FCR, correct?
A Yes. Yes, I see that.
Q And the FCR, Ms. Ellis, chose not to execute that as well,

1 correct?
2 A Correct. Any plan support agreement? She did not
3 choose -- she did not submit any plan support agreement.
4 Q It has the words "Plan Support Agreement." The first
5 letter of each word is in capitals, correct?
6 A It is.
7 Q Okay. Thank you.
8 And the only -- withdrawn.
9 Now, the same day that that meeting took place of the
10 board of LTL Management, we saw that LTL Management filed its
11 monthly operating report for the period ending February 28,
12 2023. That's Exhibit 3, correct?
13 A Yeah, I'm not -- I can check the dates. I take your word
14 for it.
15 Q That's Exhibit 3. Please take it up. I just want to make
16 sure that we have accurate testimony.
17 A I do see that.
18 Q Okay. And that was one week before the dismissal of the
19 first bankruptcy and the filing of the second, right?
20 Remember, February only has 28 days this year.
21 A I believe that's correct, yes.
22 Q Okay. Now, during this time period and these discussions
23 and these board meetings that you were having, I think you told
24 Mr. Jonas that there was a discussion about terminating the old
25 funding agreement and having a new one in place, right?

A That's correct.
Q And that was a central part to the second bankruptcy, right?
A That was --
Q The new funding agreement?
A That is part of the second bankruptcy, yes.
Q And nobody suggested, among anyone that you spoke to, either at LTL or J&J, to keep the old funding agreement in place and on top of that, to make sure that you had belts and suspenders to have a new one with an $8.9 billion funding agreement, correct?
A That was never suggested or never discussed.
Q I'm not surprised. LTL did not -- withdrawn.
You spoke to Mr. Satterley a little bit about your knowledge of the ethical rules, right?
A Yes.
Q And you also recognize that here in New Jersey, it's not only a violation to violate the ethics rules yourself, but it's also a violation to urge or ask another lawyer to do so? You realize that, right?
MS. BROWN: Objection.
THE COURT: Sustained. This line of questioning is not relevant.
MS. BROWN: Thank you, Your Honor.
BY MR. MAIMON:

Q In addition to ethical obligations, you realize that as the debtor-in-possession, you had fiduciary duties to creditors, correct?

A I believe there are duties to creditors by a debtor-in-possession, yes.

Q And those duties to the creditors of LTL 1 continued up until the minute that the case was dismissed, true?

A I believe that's true.

Q Okay. As the fiduciary, you did not disclose to the TCC your plans to either terminate the old funding agreement and file another bankruptcy.

MS. BROWN: And Your Honor, I would just --

MR. MAIMON: True?

MS. BROWN: -- object as this very same question was asked by Mr. Jonas this morning. It's duplicative, cumulative, harassing.

THE COURT: We know the answer. Sustained.

BY MR. MAIMON:

Q In addition to not informing either the TCC who represented at that time the creditors to whom you owed a fiduciary duty, and not reporting it to Judge Kaplan, you did not report it to the United States Trustee's Office, either, did you?

MS. BROWN: Same objection, Your Honor.

THE COURT: Well, he did answer that before, but --

MR. MAIMON: I didn't hear an answer before.

THE WITNESS: Yeah, we did not report this to the Trustee. The transaction happened after the dismissal of the first bankruptcy.

BY MR. MAIMON:

Q I understand that's when you made it effective, but the plan was in place before the bankruptcy of LTL 1 was dismissed, true?

A Well, there were discussions about it going into effectiveness at the time that the bankruptcy gets dismissed.

Q The decision and authorization of the Board to file a new bankruptcy occurred before the first bankruptcy was dismissed, true?

A The board meeting happened, yes, before -- the authorizations happened before the bankruptcy was dismissed to be effective once the bankruptcy was dismissed.

Q Okay. So the decision by LTL to terminate the old funding agreement and file a new bankruptcy was made by the management of LTL while it had fiduciary duties in the first bankruptcy, correct?

A It's correct that the board decided that they were going to replace a funding agreement that was void or voidable or unenforceable with a better funding arrangement that also had the support agreement to dismiss -- to resolve fairly, fully, and equitably all the talc claims in the second bankruptcy that

had the support of lawyers representing over 60,000 claimants.

MR. MAIMON: Move to strike as non-responsive.

THE COURT: Granted.

MR. MAIMON: Thank you.

THE COURT: This is why I couldn't allocate 50 percent of the time to 50 percent of the time. I wouldn't know who to charge this to.

MR. MAIMON: Thank you.

THE COURT: Limit your answers, please, yes or no.

BY MR. MAIMON:

Q Did you play any role in J&J's filing of it's 8K statement in which it asserted that LTL had secured commitments from over 60,000 current claimants to support a global resolution on these terms?

MS. BROWN: Object, Your Honor.

MR. MAIMON: Did you play any role?

THE COURT: Objection sustained.

BY MR. MAIMON:

Q Did you -- withdrawn.

Did you play any role in putting onto LTL's website the statement that LTL's organization plan announced in April 2023 is supported by 60,000 current claimants? Did you have any role in putting that on LTL's Website?

A I believe I saw the statements before they were posted.

Q And did you approve them?

A Yeah, I did approve them.
Q Thank you.
MR. MAIMON: Those are all the questions I have here, Your Honor.
THE COURT: Thank you, Counsel.
Well, Mr. Placitella, we'll let Ms. Richenderfer -- I think we did that the last time.
UNIDENTIFIED SPEAKER: Okay.
THE COURT: Ms. Richenderfer.
MS. RICHENDERFER: Thank you, Your Honor. Good afternoon. Linda Richenderfer on behalf of the Office of the United States Trustee.

CROSS-EXAMINATION

BY MS. RICHENDERFER:
Q Mr. Kim, I think we've spent some time together over the last several years.
A We have.
Q Question for you. When did LTL retain Mr. Murdica to represent it?
A Mr. Murdica is not retained by LTL. Mr. Murdica is retained by Johnson and Johnson.
Q Yeah. I believe you've testified today that Mr. Murdica was negotiating the PSAs on behalf of LTL, correct?
A Oh, I would say for the benefit of LTL or with, you know, with, frankly, we had also counsel for LTL involved discussing

with Mr. Murdica. Mr. Murdica is J&J's counsel and he was doing this, and it benefitted LTL.

Q And I think several times, you referred to Mr. Murdica as LTL's counsel?

A If I did, that was a mistake. I apologize.

Q Okay.

A He's J&J's counsel.

Q Okay.

A So we can set the record clear on that.

Q So then who, on behalf of LTL, was involved in negotiating the plan support agreements?

A So, you know, when you say negotiating, so Mr. Murdica was charged with doing the actual face-to-face negotiations.

Q Right.

A He was reporting continually to attorneys of Jones Day and to myself and getting input. So he was the face of the negotiations on behalf of J&J, but he was taking, getting comments, and reporting things to LTL because, of course, there's a sort of common interest in resolving all these litigations.

Q Who was the face during the negotiations for LTL? You said Mr. Murdica was the face for J&J. Who was the face, during the negotiation of the PSAs --

A Yeah, I --

Q Yeah, I would say it's faceless because, again, we weren't

1 having direct negotiations -- people at LTL were not having
2 direct negotiations with the plaintiffs. We were, again, in
3 constant contact with Mr. Murdica being apprised of what he was
4 doing, giving comments and things like that.
5 Q Directing Mr. Murdica?
6 A Directing? I think I would say that we were having
7 consultations with Mr. Murdica.
8 Q The transaction by which J&J Consumer Incorporated or New
9 JJCI, as we referred to them in the first case, the transaction
10 by which it became HoldCo and basically transferred a great
11 number of its assets occurred in early January 2023, correct?
12 MS. BROWN: Objection, Your Honor, to the question.
13 Assumes facts.
14 MS. RICHENDERFER: I'm sorry, Your Honor. I didn't
15 hear that.
16 MS. BROWN: I object to the question, Your Honor. It
17 was lacking foundation, assuming facts.
18 MS. RICHENDERFER: Okay. Mr. --
19 THE COURT: Rephrase it, please.
20 MS. RICHENDERFER: Well, Your Honor, I am looking at
21 Mr. Kim's first day declaration. I don't know if he has it
22 there. I forget if we ever eventually marked it as an exhibit.
23 THE WITNESS: I don't know if I do.
24 THE COURT: I don't know we have it.
25 THE WITNESS: Yeah, I don't have it.

MS. RICHENDERFER: Okay.

UNIDENTIFIED SPEAKER: You want it?

MS. RICHENDERFER: I have it here, but if you have an extra copy to give the witness so that we can see exactly what the witness has already confirmed under -- I'll go on to another question while they look for that for me.

UNIDENTIFIED SPEAKER: I think we have it right here. Here you go, Linda.

MS. RICHENDERFER: Your Honor, may I approach?

THE COURT: Yes.

MS. RICHENDERFER: I apologize. This has many more pages (indiscernible) but --

THE COURT: That's all right. Thank you.

Thank you.

* And actually, I believe we had this marked as Debtor's 1.

MS. BROWN: Yes, Your Honor. I actually have a copy right here.

MS. RICHENDERFER: Okay.

BY MS. RICHENDERFER:

Q Then, I will refer you to what's been marked as Debtor's 1, but you can look at the one that's in front of you, because I don't think the debtor gave you a copy. I'm not sure. Or it's lost in the -- can you turn to Paragraph 26?

A Yes. I see that.

1 Q Okay. And my question was based on the last sentence in
2 Paragraph 26, "In December 2022, New JJCI changed its name" --
3 A I apologize. I'm sorry. Paragraph 26?
4 Q Paragraph 26. It's on Page 8 --
5 THE COURT: On Page 8.
6 BY MS. RICHENDERFER:
7 Q -- of your first day declaration that you signed.
8 A Yes.
9 Q Okay. Last sentence there. "December 2022, New JJCI
10 changed its name to Johnson and Johnson HoldCo NA, Inc., a New
11 Jersey corporation, which has been referred to today as HoldCo.
12 And in early January, 2023, HoldCo transferred its consumer
13 business assets to its parent entity."
14 A Yes, I see that.
15 Q So let me ask the question again. Prior to the Third
16 Circuit issuing its opinion at the end of January, New JJCI
17 became HoldCo and HoldCo, in early January, transferred its
18 consumer business assets to its parent.
19 A That's true.
20 Q And who is its parent?
21 A I actually don't have a corporate chart in front of me. I
22 don't know sitting here right now, but we can get that
23 information.
24 Q I believe if you look at your first day declaration, it is
25 Annex B, Page 2 of 2.

1 If you're looking, I don't know whether you have a -- yes,
2 you do have the copy that was filed on the docket, so it is
3 Page -- it's Document 4-2, Page 2 of 2, if that helps;
4 A I appreciate that.
5 Yeah, it's either Janssen Pharmaceuticals or, I believe it
6 is Janssen Pharmaceuticals. I think that line may be, yeah, I
7 think it's -- I think it looks from this chart to be Janssen
8 Pharmaceuticals, Inc.
9 Q Okay. So based on your affirmed testimony as part of your
10 first day declaration, prior to even the Third Circuit's
11 opinion being issued, HoldCo transferred its consumer business
12 to Janssen Pharmaceuticals, Inc., which appears to be the
13 parent based on the yes chart that you gave as part of your --
14 A Yes. Unrelated to the Third Circuit decision, this
15 transaction happened.
16 Q And was that ever disclosed to the Tort Claimant's
17 Committee?
18 A No, nor do I understand why it would have to be disclosed.
19 MS. RICHENDERFER: Your Honor, please, I'd like to
20 strike everything after, "No."
21 THE COURT: Just, again --
22 MS. RICHENDERFER: I know, Your Honor.
23 THE COURT: I'm the jury, so I understand it.
24 MS. RICHENDERFER: Okay.
25 THE COURT: Please limit your answers to yes or no.

BY MS. RICHENDERFER:
Q And did -- I'm going to call it LTL 1, meaning LTL, the debtor that existed prior to 1:49 p.m. on April 4th. Did LTL 1 have any funding or support agreements with Janssen Pharmaceuticals?
A I don't believe it did, no.
Q Okay. So in the original funding agreement that we've been calling funding agreement one included support from JJCI, New JJCI. And that was supported by its consumer business, which prior to the dismissal of the case was transferred to Janssen Pharmaceuticals, correct?
A I don't understand that question.
Q I think it's a pretty simple question, Mr. Kim, based on your years of experience. You've got far more --
THE COURT: Sustained. Rephrase the question, please.
BY MS. RICHENDERFER:
Q What was left in HoldCo after this transfer occurred prior to the dismissal of LTL 1?
A The non-consumer assets. And, again, it did have the support agreement. You know, the funding agreement also included J&J, so, it had the co-obligation of J&J. So prior to the Third Circuit decision, it had, you know, the resource of the funding agreement. It had the funding agreement also with J&J to support LTL.

Q Okay. So prior to the dismissal, HoldCo transfers its consumer business assets to Janssen, but your point, if I understand you, is that LTL 1 still had the funding support agreement that included J&J and now, HoldCo. Is that correct?
A Well, HoldCo is JJCI and --
Q Well --
A -- all it did was change its name.
Q I'm using the terminology that's in your affidavit here so that we can all be on the same terminology. Okay.
A I understand. I just wanted to clarify that HoldCo is the same as JJCI, it just changed its name.
Q Right.
A So it --
Q But it changed its name and gave away its consumer business, right?
A Unrelated to anything, it gave away its consumer business, but still had, at that time, prior to the Third Circuit decision, it still had the agreement, the backup of J&J.
Q That's right. But it did give away its consumer business, correct?
A It did.
Q Okay. When you were talking previously about the FCR and you were asked about the PSA, you said, oh, well, there would be a different PSA with the FCR, not the PSA that we signed with the plaintiff's attorneys.

Have you ever seen a draft PSA that the FCR would have signed?

A I don't think I saw a draft, no.

Q To your knowledge, was one ever drafted.

A I'm actually not sure. There may have been. I haven't seen it.

MS. RICHENDERFER: Your Honor, if I could just have a minute. There was something right there on the tip of my tongue and it --

BY MS. RICHENDERFER:

Q I know that the term sheet was marked previously as an exhibit. I believe it's Exhibit 4, if you want to find that there.

A Yes.

Q How many pages is the term sheet?

I know there's an annex to it, so maybe you can give us the number count for the pages of the agreement and of the term sheet, and then the pages for the annex.

A So there are eight pages to the term sheet and there are five pages to the annex.

Q Okay. Do you know how many pages the 10th amended Imerys plan of reorganization was?

A No.

MS. BROWN: Objection, Your Honor.

THE COURT: Sustained.

MS. RICHENDERFER: Well, Your Honor, if I could just respond. We're talking about something that is far removed from --

THE COURT: You can argue it --

MS. RICHENDERFER: Okay.

THE COURT: -- when the time comes.

MS. RICHENDERFER: We'll do so, Your Honor.

No further questions.

THE COURT: Thank you, Ms. Richenderfer.

Mr. Placitella.

MR. PLACITELLA: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. PLACITELLA:

Q So the good news, Mr. Kim, is the U.S. Trustee took a lot of my questions.

So I want to follow up on the line of questions that you were being asked. And late last night -- I want to try to share something.

MS. BROWN: Mr. Placitella, if it's a document, do you have a copy?

MR. PLACITELLA: I got it from you, so.

THE COURT: Well, let's see what it is.

MR. PLACITELLA: Sure.

MS. BROWN: Thank you.

MR. PLACITELLA: Okay.

Is that showing up?

THE COURT: Yes.

MR. PLACITELLA: Okay.

BY MR. PLACITELLA:

Q So last night when I was on the train --

MS. BROWN: I'm sorry I understand that's been filed on the docket. I'm just wondering if you have a hard copy of what you're about to use.

MR. PLACITELLA: No, I don't. I got it on the train last night. You sent it to me and I barely had time to read it before I came here today, so no, I don't have a hard copy.

MS. BROWN: Judge, I don't think that's necessary. If we're going to use exhibits, I'm just inquiring if there's one for me to look at.

MR. PLACITELLA: Well, they filed it, Your Honor.

THE COURT: True. But we don't have access to the document here.

MR. PLACITELLA: I'm just going to ask questions.

THE COURT: Why don't we see where the questions go?

MS. BROWN: Okay.

THE COURT: All right. And if you have a need, we'll arrange --

MR. PLACITELLA: There's no trick questions.

THE COURT: -- to pull it up.

MR. PLACITELLA: Okay.

1 MS. BROWN: Thanks, Judge.
2 BY MR. PLACITELLA:
3 Q Last night, you filed this document with the Court,
4 correct?
5 A I believe that's true, yes.
6 Q And the title of the document is "Notice of Filing
7 Supplemental Appendices." Do you see that?
8 A That's true, yes.
9 Q Okay. And what was the reason you filed that?
10 A I think over the weekend, we discovered that you had filed
11 a complaint against several entities unrelated to talc but for
12 a talc claim. And what we had done prior to filing our list of
13 protected parties is we had put together, at the request of
14 every -- I think -- I keep saying everybody.
15 We understand that the first list we had of protected
16 party was large. And the reason we did that was because we
17 didn't want any of our subsidiaries unrelated to the talc
18 litigation to get sued in various courts. We found out over
19 the weekend that you had filed a lawsuit against parties that,
20 A, have no relationship to talc --
21 Q We're going to get there.
22 A Okay.
23 Q Okay.
24 A But, again, because we had, in the first instance, to try
25 to streamline the injunction here, limited the protected

1 parties to people who actually have claims against them, when
2 you filed a lawsuit involving defendants that have nothing to
3 do with talc, or, you know, that have never been sued before,
4 we wanted to make sure that any injunction that issued would
5 then cover them. So I think we explained early on that our
6 list of protected parties was going to be limited with the
7 reservation of rights and if people started suing them that we
8 can put them into the list of protected parties.
9 And so that's what this is. This is a notice that we want
10 to expand the list because you had filed a lawsuit against
11 them.
12 Q Okay. Let's talk about that for a second.
13 A Okay.
14 Q So I got this last night and it talks about Appendix A.
15 And Appendix A are all the people who you said filed new
16 lawsuits against you, right?
17 A This is -- yeah. That was also part of the filing was we
18 had a number of other lawsuits filed --
19 Q Okay.
20 A -- that we wanted to put in the record.
21 Q And Appendix A, that's where you listed them. That's what
22 I have up here, right?
23 A Yes.
24 Q All right. You didn't list an Appendix A, the lawsuit I
25 filed against you, which was last week, not over the weekend,

1 right?
2 A I think we just found out about it last week.
3 Q You didn't list it though, did you?
4 A I think we listed the parties.
5 Q I don't think so.
6 A (Indiscernible) have the parties)?
7 Q Do you want me to flip through them?
8 A Yeah, I'd have to review the list to see what --
9 Q Okay. So I'm going to give you my copy because it was
10 late, so ignore my handwriting.
11 A It's okay.
12 Q This is the lawsuit filed by Justin Bergeron, a 32-year
13 old man with mesothelioma with two minor children. Did you
14 know that?
15 A No. I think I looked at the complaint.
16 Q Okay. And Mr. Bergeron sued Janssen and Kenvue as
17 successors-in-interest under New Jersey law for the torts of
18 JJCI, correct?
19 A I think the complaint speaks for itself. I didn't study
20 the complaint in detail. My understanding it's a talc claim
21 against Kenvue and Janssen.
22 Q Well, in Mr. Bergeron's complaint I put up on the screen,
23 that complaint -- you know, the facts in that complaint come
24 primarily from the affidavit you filed in this Court, right?
25 You read that part, correct?

A I saw references to that. Again, I didn't read the complaint thoroughly. I just looked at -- I was apprised of the lawsuit, who the defendants were, and we wanted to make sure that we covered them as protected parties.

Q Well, as you see on Page 4, on Paragraph 14, it talks about the information in the complaint coming directly from your affidavit. Do you see that?

Here, I'll blow it up in case you don't see it. Do you see that?

A Fourteen, I see.

I do see that.

Q Okay. And one of the things that was talked about -- oh, by the way, the U.S. Trustee did a lot of this so we can dial it forward. But give me a second.

It's written on Paragraph 26, "Unbeknownst to the plaintiffs, during the time the Third Circuit Court of Appeals was considering the propriety of LTL'S bankruptcy filing, New JJCI," that was who you were working for, right, before you changed the name?

A I was working for LTL.

Q Oh, okay. I'm sorry.

"New JJCI began the process of moving its assets and businesses to yet another J&J subsidiary," correct?

A That's what you say.

Q Right. What you did is you took the assets, you then

1 transferred them to the parent, which was Janssen, with the
2 notion that you were going to put it in still another
3 subsidiary called Kenvue, right?
4 MS. BROWN: Objection, Your Honor.
5 THE COURT: What's the basis?
6 MS. BROWN: It assumes facts. There's no factual
7 support for these allegations.
8 MR. PLACITELLA: I'm going to go right through it,
9 Judge.
10 MS. BROWN: And this is a complaint that he's filed
11 and it is inconsistent with the facts.
12 MR. PLACITELLA: The complaint quotes from your
13 affidavit, sir. So let's just talk to it.
14 THE COURT: Well, are you just reciting the
15 complaint? Or --
16 MR. PLACITELLA: I'm asking if my complaint correctly
17 cites his affidavit and what he believes to be true.
18 THE COURT: And what's the purpose?
19 MR. PLACITELLA: The purpose is to demonstrate here
20 that Johnson and Johnson, while the Third Circuit's decision
21 was pending, was moving assets out of Old JJCI -- out of New
22 JJCI into Janssen with the intention of then moving those
23 assets again to Kenvue. And they brought to this Court trying
24 to extend the TRO to those transfers.
25 And my client, Justin Bergeron, under New Jersey law,

has every right to proceed against Janssen and Kenvue in the chain of distribution of those assets. It wasn't me that brought this to the Court, Your Honor. They brought it to the Court late last night.

They didn't tell the Court that the reason they were doing it was because Mr. Bergeron had sued them. They just said, can't we just add these on, Judge? No big deal. And it is a big deal.

THE COURT: All right. It's more of an argument, which is fine. What specific questions --

MR. PLACITELLA: Well, can I go through the facts, please?

THE COURT: Okay. I'm trying to make sure that everybody can have an opportunity to go forward.

MR. PLACITELLA: Okay.

BY MR. PLACITELLA:

Q Sir, do you --

MS. BROWN: I'm sorry, Your Honor, and just as to the objection that we're reading unsubstantiated allegations in a complaint into the record, I object to that.

THE COURT: Why don't you ask Mr. Kim if he has knowledge of this transaction?

BY MR. PLACITELLA:

Q Sir, you just told the U.S. Trustee that you transferred the assets of New JJCI to the parent Janssen, correct?

A No. I said that that part of the transaction is what I know. What's in the affidavit is what I know. I was not involved in this transaction. This is not an LTL transaction.

You know, again, what I know is what I used to determine the value of HoldCo, which is what assets it contains.

Q Well, sir, you said in Paragraph 26 of your affidavit, in early 2023, New JJCI transferred its consumer business assets to its parent entity. That's what you said.

A Yes. That is the part of the transaction that I know. I was not involved in that transaction. The reason I know it is because I wanted to know what the value of HoldCo was at this time. But I was not involved in that transaction. That's a J&J transaction, or a Janssen transaction, and I'm at LTL. I had nothing to do with that transaction.

MR. PLACITELLA: Move to strike, Your Honor. All I asked him is if that was what was in his affidavit.

THE COURT: Well, his answer, it was in the affidavit.

MR. PLACITELLA: Okay.

BY MR. PLACITELLA:

Q Okay. It was in your affidavit and you said to its parent entity, correct?

A Yes. That's what I understood it to have transferred it to.

Q How come you didn't name the parent entity? Why did

1 people have to figure it out?
2 A As you can tell, I actually don't know what the actual
3 parent is. My understanding of the transaction is what I put
4 in my declaration. The reason I needed to know that much was
5 trying to figure out what the assets of HoldCo were at the
6 time.
7 Q So when you had Figure 1 in your affidavit, which lists
8 who the parent entity is, who did that for you if you didn't
9 know anything about it?
10 A That was done by Counsel.
11 Q Okay. And does it list here the parent entity as Janssen
12 Pharmaceuticals?
13 A We can look at it again. I believe it does.
14 Q I've got it up on the screen. Let me blow it up for you.
15 A I think it's -- the only thing that bothers me is the way
16 the lines connect suggesting that other direct subsidiaries
17 somehow might be above Johnson and Johnson -- the HoldCo
18 between Janssen and HoldCo. I don't know. I don't think
19 that's true. But that line just threw me because it's a little
20 confusing.
21 Q Well, but this is in your affidavit that you spoke to
22 under oath.
23 A It is.
24 Q Okay.
25 A But, again, what I swore to is that went into its parent.

I believe this is the right one. It's just a little confusing because of the way that the other direct subsidiaries is.

Q Okay. And the parent Janssen, last year made in sales what? $138 billion?

A I don't know.

MS. BROWN: Lacks foundation.

BY MS. PLACITELLA:

Q They're not bankrupt, are they sir?

MS. BROWN: Your Honor, I object.

THE COURT: Sustained.

BY MR. PLACITELLA:

Q Are they in financial distress?

MS. BROWN: Wait, but there's a --

THE COURT: Sustained.

MS. BROWN: -- pending objection.

THE COURT: Thank you.

MR. PLACITELLA: Okay.

BY MR. PLACITELLA:

Q Sir, do you know anything about during the pendency of the Third Circuit decision that Janssen was then going to try to transfer those same assets that started with your company to a company called Kenvue?

MS. BROWN: I object, Your Honor. This completely lacks foundation.

MR. PLACITELLA: I'm asking if he knows anything

about it.

MS. BROWN: LTL --

THE COURT: He's already testified his knowledge is limited to the asset went to the parent.

MS. BROWN: All right. Your Honor, object to this entire line of questioning. LTL owns the liability and this witness lacks foundation about other transactions within the J&J corporate family.

MR. PLACITELLA: Judge, I'll make a --

THE COURT: Proceed.

MR. PLACITELLA: -- separate submission. This is not the time for argument, but in fact SEC filing from Kenvue says that they're responsible for Johnson's Baby Powder.

THE COURT: And that may --

MR. PLACITELLA: And we'll go through --

THE COURT: Again, that's more argument.

MR. PLACITELLA: Okay.

THE COURT: Thank you.

BY MR. PLACITELLA:

Q So, just to be clear, you knew about the transfer of the assets out of HoldCo during the pendency of the Third Circuit decision, correct?

MS. BROWN: Objection, Your Honor. That misstates his testimony?

THE WITNESS: Yeah, I know the transaction. I don't

1 know when --
2 THE COURT: Overruled.
3 THE WITNESS: Yeah. I didn't learn about it until
4 afterwards.
5 BY MR. PLACITELLA:
6 Q Okay. But you don't know anything about taking those
7 assets and then moving them again?
8 A I do not.
9 Q Okay. Let me ask you a couple other questions.
10 Representation -- then I'll sit down because I'm not
11 allowed to ask you all the questions I want, good for you.
12 THE COURT: It happens. Go ahead.
13 MR. PLACITELLA: It happens. It happens.
14 BY MR. PLACITELLA:
15 Q Okay. So you represented to the Court that you had the
16 support of some 60,000 claimants, correct?
17 A Correct.
18 Q But you don't know how many of those claimants actually
19 had claims that they could make within the statute of
20 limitations, correct?
21 A Yeah. I don't know. I don't know whether any of them
22 are. Yeah, I don't know.
23 THE COURT: So the answer is yes.
24 THE WITNESS: Yes. I don't know.
25 BY MR. PLACITELLA:

Q So it could be that of the 60,000 claimants that you say support the claim, a high percentage of them could have had diagnosis or died more than two years before the LTL 1 bankruptcy, correct?

MS. BROWN: Objection, Your Honor.

THE COURT: Sustained. Speculation.

BY MR. PLACITELLA:

Q Well, your Counsel testified under oath that they don't know what claims were barred or not barred? Do you know that?

MS. BROWN: Objection, Your Honor. Misstate's testimony, lacks foundation, calls for speculation.

THE COURT: Sustained.

MR. PLACITELLA: Okay.

BY MR. PLACITELLA:

Q Do you know that -- well, here, because I don't want to misstate anything.

Mr. Watts (phonetic) is the gentleman that you say supports your proposal.

MS. BROWN: And, Your Honor, I will object here. I don't know what document this is, and I --

MR. PLACITELLA: It comes from his deposition, Counsel. You were there yesterday.

MS. BROWN: Okay. If you're referring to the transcript of somebody else's deposition --

MR. PLACITELLA: Yes, sir.

MS. BROWN: -- I don't have it memorized. And this appears to be in a PowerPoint that says, "Who is in the 60,000 count?" I would just ask Your Honor if he's going to question about a document that we provide each other with a copy.

MR. PLACITELLA: Well, you have it.

THE COURT: Mr. Placitella, let me ask you this. Can you ask the question without referring to the PowerPoint?

MR. PLACITELLA: Yeah.

BY MR. PLACITELLA:

Q Did you know that Mr. Watts testified under oath that he does not know and had not done the analysis as to how many claimants that you say support the plan inhaled baby powder and got sick versus had it applied perineal, ovarian cancer claimants? Do you know that?

MS. BROWN: Your Honor, I object as lacking foundation, calling for speculation.

THE COURT: Sustained.

BY MR. PLACITELLA:

Q Do you know that your own lawyer, Mr. -- oh, he's not your lawyer, right? Johnson's and Johnson's lawyer.

Do you know that he testified under oath that he doesn't know how many of the claimants with ovarian cancer --

MS. BROWN: Same objection.

THE COURT: Sustained.

BY MR. PLACITELLA:

Q Or did you listen to the testimony, sir?
A I did not.
Q Okay. Did you know, sir, that under Judge Wolfson's opinion --
MS. BROWN: I think it's the same objection, Judge.
MR. PLACITELLA: I'm going to ask him if he knows.
BY MR. PLACITELLA:
Q Did you ever read Judge Wolfson's Daubert decision, sir?
A I have.
MS. BROWN: Objection, Your Honor.
BY MR. PLACITELLA:
Q Yes?
A I have read the Daubert decision.
Q Okay. So you know under Judge Wolfson's Daubert decision --
THE COURT: Wait.
MR. PLACITELLA: -- that if someone inhaled Johnson and Johnson's talc and got ovarian cancer, that claim would be disallowed in this Court. You know that, correct?
THE WITNESS: No, I don't think that's what the --
THE COURT: Wait. Don't answer.
MS. BROWN: Your Honor, I object on multiple grounds, including foundation --
THE COURT: Sustained.
MS. BROWN: -- speculation.

THE COURT: The objection is sustained.

MS. BROWN: Thank you.

BY MR. PLACITELLA:

Q So as we sit here, sir, you don't really know how many of the 60,000 claimants could actually qualify to file a lawsuit.

MS. BROWN: Same objection.

MR. PLACITELLA: Correct?

THE COURT: Sustained.

MR. PLACITELLA: Basis, sir?

THE COURT: Yes.

MR. PLACITELLA: Excuse me.

THE COURT: Oh, basis.

MR. PLACITELLA: Yeah, just so I want it just --

THE COURT: Speculate.

MR. PLACITELLA: I'm just asking if he knows.

MS. BROWN: You're asking him to speculate, so I object.

MR. PLACITELLA: No, I'm just asking if he knows.

MS. BROWN: And the Judge sustained it.

UNIDENTIFIED SPEAKER: We stipulate it's speculative, how many people there are.

MR. PLACITELLA: Okay.

BY MR. PLACITELLA:

Q Since I'm not allowed to ask you any other questions about what happened with the money in Kenvue, which we'll save for

1 another time, I'm done for the day.
2 MR. PLACITELLA: Thank you, Your Honor.
3 THE COURT: Thank you, Mr. Placitella.
4 MR. RUCKDESCHEL: Judge, I have two questions.
5 THE COURT: Okay. Come on up.
6 CROSS-EXAMINATION
7 BY MR. RUCKDESCHEL:
8 Q Mr. Kim, you're a J&J shareholder, right?
9 A Yes, I am.
10 Q And you're aware that Johnson and Johnson just this
11 morning increased its dividends by 5.3 percent. Did you know
12 that?
13 A No.
14 MS. BROWN: Objection, Your Honor.
15 MR. RUCKDESCHEL: That's all I have.
16 THE COURT: Overruled.
17 UNIDENTIFIED SPEAKER: Your Honor, I also have two
18 questions.
19 THE COURT: Okay.
20 CROSS-EXAMINATION
21 BY UNIDENTIFIED SPEAKER:
22 Q Mr. Kim, what consideration did HoldCo get from Janssen
23 Pharmaceuticals for giving it its consumer product business?
24 MS. BROWN: Objection, Your Honor. Speculation.
25 THE WITNESS: I --

THE COURT: Wait. Do you know this answer?

THE WITNESS: I was not. No, I don't.

BY UNIDENTIFIED SPEAKER:

Q What have you done to investigate what consideration HoldCo received from Janssen Pharmaceuticals for giving away its valuable consumer product business?

MS. BROWN: Lacks foundation.

THE COURT: Sustained.

UNIDENTIFIED SPEAKER: I'm asking whether he has done any investigation.

BY UNIDENTIFIED SPEAKER:

Q And, Mr. Kim, since LTL determined that the funding agreement, one, with respect to Johnson and Johnson was, as you've termed it, void and voidable, what steps has LTL done to get those assets back to HoldCo?

MS. BROWN: Objection, Your Honor.

THE COURT: Overruled.

THE WITNESS: Yeah, I don't understand the question.

BY UNIDENTIFIED SPEAKER:

Q Has LTL's --

THE COURT: Wait a minute. Wait a minute. Do you need the question rephrased?

THE WITNESS: Yeah. I don't understand the question.

BY UNIDENTIFIED SPEAKER:

Q Has LTL taken any steps to attempt to have the assets that

1 HoldCo gave away to Janssen return to HoldCo so that they can
2 backstop LTL under funding agreement two?
3 MS. BROWN: I object, Your Honor. Lacks foundation,
4 misstates the record, and it's vague.
5 THE COURT: Overruled. Answer if you can.
6 THE WITNESS: Yeah, I wouldn't know what theory we
7 would even try to do that.
8 BY UNIDENTIFIED SPEAKER:
9 Q So LTL has taken no steps?
10 A There would be no steps to take.
11 Q There would be no steps to take even though you don't know
12 what theory you could potentially pursue?
13 A Well, what I said is, yeah, I can't even think of the
14 theory that that would pertain to that, that you would do that.
15 UNIDENTIFIED SPEAKER: No further questions.
16 THE COURT: All right. Thank you.
17 Redirect.
18 MS. BROWN: Thank you, Your Honor. Very briefly.
19 THE COURT: I tried.
20 THE WITNESS: Thank you.
21 REDIRECT EXAMINATION:
22 BY MS. BROWN:
23 Q Mr. Kim, how are you?
24 A Very well, thank you.
25 Q Well, a lot of questioning, but I just have a couple of

1 questions to clear something up.
2 Earlier this morning, sir, you were asked a number of
3 questions about funding agreement one and funding agreement
4 two. Do you remember those questions?
5 A I do.
6 Q Okay. And numbers were put on those funding agreements,
7 like $61.5 billion and the like, right, sir?
8 A Yeah, I recall that.
9 Q Okay. But the truth is, sir, that the value of the
10 funding agreements are driven by the talc liability, correct?
11 A It is. It would be part of that, the value.
12 Q Okay. And so, for example, J&J'S liability is limited to
13 J&J's exposure for the talc liability, correct?
14 A That would be the -- right. So when you say -- I think
15 the issues --
16 UNIDENTIFIED SPEAKER: (Indiscernible)
17 THE COURT: Leading?
18 UNIDENTIFIED SPEAKER: Both leading, yes.
19 THE COURT: Try to avoid the leading if possible.
20 MS. BROWN: I will, Your Honor. Just trying to move
21 it along. But I will, I'll ask an open-ended question.
22 BY MS. BROWN:
23 Q Mr. Kim, you were going to answer that?
24 A Yes. The opening question. Yeah, the amount of money
25 we're talking about, of course, is the maximum that is, not the

1 exposure, of liability. So it's the amount that they agreed to
2 fund not any, you know, what the exposure. I think that's what
3 the question that you're getting at is.
4 Q Well, and in terms of the liability, that was the same
5 under funding agreement one -- in terms of whether -- do you
6 have a view on whether or not the liability changed under
7 funding agreement one and funding agreement two?
8 A Well, so the talc liability, so I, yeah I see. The talc
9 liability is enormous. We don't have an aggregate number for
10 it, but it is, you know, huge. I think what I would do is
11 refer to all the testimony I gave in the prior proceeding about
12 the liability and adopt that here.
13 That liability, if anything, has gotten bigger. We know
14 that after a year of being in bankruptcy, we have at least -- I
15 think it almost doubled from what we know from unknown claims.
16 So what I would say is that the liability itself is even much
17 larger than it was when the first bankruptcy was filed.
18 Q And how does that liability relate to the value of the
19 funding agreement?
20 A Well, at the end of the day, we believe that we have
21 sufficient funds to meet the liability except for the -- so we
22 believe we're not insolvent, but we do believe that we are in
23 financial distress because of the magnitude of the liability,
24 the wild and unpredictable verdicts, the cost of the
25 litigation, which is ever increasing.

Q So putting aside the liability and the value of the funding agreements, are you familiar with commitments to fund that J&J and LTL made in the first bankruptcy and in this bankruptcy?

A I am.

Q Okay. And unlike the amount of the liability, have the commitments changed from the first bankruptcy to this bankruptcy?

A They have. They're changed in terms of where they're coming from.

Q And was the commitment in the first bankruptcy approximately $2 billion?

A Oh, well, the commitment of $2 billion was the original amount that was going to be put into a qualified trust fund. And that's changed dramatically from the $2 billion. Now, it's the $8.9 billion in the bankruptcy.

Q Okay. And so the commitment has gone from 2 billion to 8.9 billion now, correct?

A From the first qualified fund in the first bankruptcy to what is now committed in the second bankruptcy has increased to $8.9 billion.

Q Okay. Thanks very much, Mr. Kim.

MS. BROWN: I have no further questions.

THE COURT: Thank you.

Any redirect?

1 MR. SATTERLEY: I've just got a couple questions,
2 Your Honor.
3 RECROSS-EXAMINATION
4 BY MR. SATTERLEY:
5 Q Just on the point that you've made a determination that
6 the liability has doubled. You would agree that's pure
7 speculation, Mr. Kim. You haven't done an analysis of that,
8 have you?
9 A Yeah, I didn't say the -- I'm sorry. If I said the
10 liability doubled, what I meant to say was that we know that
11 the number of claims have doubled.
12 Q Well the truth of the matter is, you said just a few
13 minutes ago that the liability is now enormous, it's doubled
14 since the first bankruptcy because of the number of potential
15 claimants, correct?
16 A Yeah. I think if I said that, I was a little sloppy.
17 Q You were sloppy. You've not done even a back of the
18 envelope analysis of any of these potential claimants, correct?
19 A Again, we know who the potential claimants are and the
20 number of claimants has doubled from the first bankruptcy.
21 Q You don't have any pathology reports for a single
22 claimant, true?
23 A We don't have that for the original claimants.
24 Q You have no depositions or sworn testimony of a single
25 claimant, true?

A Again, we have --

MS. BROWN: Objection, Your Honor. Misstates the record, asked and answered.

THE COURT: Overruled.

MR. SATTERLEY: Well, Your Honor, I'm making a point.

He said it's enormous now and it's doubled. I'm just demonstrating that's incorrect testimony.

THE COURT: Accepted. Move on. Thank you.

MR. SATTERLEY: All right.

BY MR. SATTERLEY:

Q Final question. You have no expert witness evaluation of those doubled, enormous number of cases that you're saying has agreed to this plan, true?

A We have no experts, no, not yet.

MR. SATTERLEY: Thank you. Thank you, Mr. Kim.

MR. MAIMON: May I briefly, Your Honor.

THE COURT: All right.

RECROSS-EXAMINATION

BY MR. MAIMON:

Q Mr. Kim, you discussed the funding agreement with your attorney, Ms. Brown. Do you recall that?

A Yes.

Q The Third Circuit Court of Appeals on Page 24 of its opinion said still, Old Consumer was a highly valuable enterprise, estimated by LTL to be worth $61.5 billion,

1 excluding future talc liabilities, with many profitable
2 products and brands.
3 Do you recall that statement in the Third Circuit opinion?
4 A I do recall that statement.
5 Q And whether or not it's an error, J&J and LTL have
6 foregone their right to appeal anything in the Third Circuit
7 opinion, correct?
8 MS. BROWN: Objection, Your Honor.
9 THE COURT: Sustained.
10 BY MR. MAIMON:
11 Q The Third Circuit also says that with regard to funding
12 agreement number one, there were few conditions to funding and
13 no repayment obligations. Do you recall that?
14 MS. BROWN: Objection, Your Honor. This goes beyond
15 the three questions I asked about the funding agreement. I
16 object as beyond the scope.
17 MR. MAIMON: Well, this goes to the difference
18 between funding number one and funding number two, which was
19 exactly testimony that was (indiscernible).
20 THE COURT: Objection overruled.
21 BY MR. MAIMON:
22 Q Do you recall the Circuit saying that?
23 A I do recall the Circuit saying that.
24 Q And the Circuit said that the value of the payment right
25 could not drop below a floor defined as the value of new

1 Consumer measured as of the time of the divisional merger
2 estimated by LTL at $61.5 billion, right?
3 A That's the J&J guarantee portion, yes.
4 Q That was the floor, correct, sir?
5 A I read what they said. I'm not, I guess I agree that
6 there was a J&J guarantee for that amount.
7 Q That was the floor, correct?
8 A I believe that's true.
9 Q Thank you.
10 THE COURT: Thank you.
11 MR. MAIMON: That's all I have. Thank you.
12 MR. JENKINS: Nothing further, Your Honor.
13 THE COURT: Thank you, Mr. Jonas.
14 All right. Mr. Kim, you may step down.
15 THE WITNESS: Thank you.
16 (Witness dismissed)
17 THE COURT: Mr. Gordon, did you have any other
18 witnesses?
19 MR. GORDON: We do not, Your Honor, other than my
20 point earlier about deposition designations and exhibits, but
21 no further witnesses.
22 THE COURT: All right. Thank you, Mr. Kim.
23 All right.
24 MR. PLACITELLA: Are they resting? Are they resting
25 their case?

THE COURT: Are you --

MR. GORDON: I mean, subject to closing.

THE COURT: Yes. Well, yes, but you have no further testimony or evidence.

Mr. Satterley.

MR. SATTERLEY: Nothing here, Your Honor. Just respectfully to the U.S. Trustee just to ask if they're done.

THE COURT: Ms. Richenderfer.

MS. RICHENDERFER: Nothing from the U.S. Trustee, Your Honor.

THE COURT: Mr. Satterley.

MR. SATTERLEY: I would just add, Your Honor, in addition to what Mr. Gordon said, the deposition testimony Mr. Maimon referred to earlier, we're going to incorporate that into the record as long as well as some exhibits.

THE COURT: That's appropriate.

Mr. Placitella.

MR. PLACITELLA: I would offer two additional exhibits, Your Honor.

THE COURT: Yes.

MR. PLACITELLA: Mr. Bergeron's complaint and the Kenvue SEC filing.

THE COURT: Any objections?

UNIDENTIFIED SPEAKER: Not here, Your Honor.

MS. BROWN: Yes, Your Honor. We would object to two

complaints that were not the subject of any discovery that have no relevance to what's going on here in this proceeding.

THE COURT: Well, I'll accord them relevance.

Let's --

MR. PLACITELLA: Your Honor, they made it the subject of a late night application to extend the TRO.

THE COURT: I'm going to mark the -- I have -- Mr. Placitella?

MR. PLACITELLA: Yes.

THE COURT: I have the exhibit. Do you have the second document?

MR. PLACITELLA: I'm going to ask Mr. Stolz if he can get me a copy during a break.

THE COURT: All right. Thank you.

Then, I'm going to mark this Placitella 1.

MR. PLACITELLA: And I guess we should mark the notice of supplemental filing that came in last night.

THE COURT: It's on the docket.

MR. PLACITELLA: Okay.

THE COURT: Thank you.

All right. Does this mean we're ready for argument?

MR. GORDON: Your Honor, Greg Gordon on behalf of the debtor.

I think it would be helpful if we could take about a 10 minute break. Also, I wanted to note for the record, we've

probably been going four and a half hours or longer. I think the debtor's share of the time has been about 20 minutes. And the only reason I bring it to Your Honor's attention, I am worried that we're going to get pressure to shorten our presentations and we would prefer that not happened given the sort of inequality in the time that's been used.

THE COURT: Do you all have two suits like Mr. Satterley brings?

UNIDENTIFIED SPEAKER: I've got two suits, Your Honor. I'm willing to spend the night. I love Trenton. I would say that a lot of the questions were not answered. Mr. Kim likes to give speeches, so --

THE COURT: I don't want to have argument over who's dawdling, who's moving efficiently. I want to get this done today. I'll be prepared to stay as late as it takes. Kiya, is that okay.

THE CLERK: I'm okay with this.

THE COURT: Okay. So let's take a break.

(Recess at 2:55 p.m./Reconvened at 3:08 p.m.)

MR. GORDON: So Your Honor --

THE CLERK: Yes. Yes, Your Honor.

THE COURT: All right. Thank you.

MR. GORDON: Thank you, Your Honor. Greg Gordon on behalf of the debtor. We actually have two PowerPoints, Your Honor. I'm going to do one, and then Ms. Brown is going to do

one. And we're going to go through them, I think, fairly rapidly.

And I will say as a forewarning that there are some video clips from the deposition. We've tried to keep them under five minutes. I'm not even sure how many there are at this point, but we'll go through them as quickly as --

THE COURT: All right. Thank you.

UNIDENTIFIED SPEAKER: We have two.

MR. GORDON: There are two video clips?

UNIDENTIFIED SPEAKER: About five minutes.

MR. GORDON: Okay. All right. Next slide, please.

So, Your Honor, in our view, there are three primary issues in this proceeding. Number one is whether the debtor has a realistic opportunity to --

MR. SATTERLEY: Is it possible, Your Honor, just to get a copy so we can follow along like Ms. Brown was suggesting earlier when something is displayed. We could follow along maybe.

UNIDENTIFIED SPEAKER: Sure.

MR. SATTERLEY: Save me from having to write notes and transfer out stuff.

(Counsel confer)

UNIDENTIFIED SPEAKER: May I approach, Your Honor?

THE COURT: Yeah. Please. Thank you.

MR. SATTERLEY: Pretty heavy and thick, Your Honor.

THE COURT: They use good paper.

Mr. SATTERLEY: This is both, right?

THE COURT: Thank you.

(Counsel confer)

MR. GORDON: So we'll try again. You know, it's funny. Since COVID, I don't do much in the way of paper anymore, so I'm not used to it when people ask for paper. Okay.

THE COURT: Continue.

MR. GORDON: So, Your Honor, there are, in our view, three primary issues that are raised by the relief we're seeking. Number one, which has probably been the focus of most of what you've heard today already, is whether the debtor has a realistic opportunity to successfully reorganize.

Number two are the talc claims against the protected parties, including allegedly direct and independent claims which we heard about today, fundamentally the same claims against Old JJCI and now the debtor. And this is going to take a little bit of a recap of what you heard before, but we're going to do it in a really summary fashion.

And then will ending the stay and preliminary injunction and joining actions against the protected parties thwart the objectives of the case? And we think the answer to all three of these questions, as indicated on the slide, is yes.

1 Next slide, please.
2 So in our view, a stay of the litigation is required,
3 and it's required for multiple reasons. And number one is that
4 the debtor has broad support for its reorganization. And I'm
5 going to come back to this, but think about what you heard
6 today and think about the assertions that were made by this
7 group of law firms back a week ago about how the support's not
8 real; it's a lie. I don't think you heard anything today that
9 suggests that anything that we've said to Your Honor wasn't
10 true.
11 The second point is -- and, again, we're going to
12 come back to this. There's been no improper conduct. There's
13 been no fraudulent transfer. There's just been lots of
14 accusations, lots of innuendo, but no facts.
15 And I think it's clear and it will be clear from the
16 record that continued litigation outside of this case would
17 jeopardize what we're trying to do inside this case which is to
18 equitably resolve all the claims here, treat the claims in an
19 equivalent manner. And from your earlier opinion, if the stay
20 is not extended to the protected parties, it's difficult to
21 envision how a successful reorganization can be achieved in
22 this case. And I would say that that finding has the same
23 vitality today as it did when you made it back in 2022.
24 Next slide, please.
25 These are just -- this is just the outline of what

I'm going to discuss. And obviously I'm going to go through some factual background. Some of this I'm going to do very quickly. And then I'll go through the legal arguments.

Next slide. Next, please.

So I want to focus on some things here, because you've heard a lot. Again, a number of accusations and innuendos suggesting that the fact that we were actually continuing or engaging in negotiations with the plaintiffs or with plaintiffs' firms and utilizing the mediators was somehow improper.

So if you recall, Your Honor, back in March of 2022, in the first case you referred the parties to mediation. And then you amended that order in May. And what's important about the order -- I went back and looked at it -- is that order obligated the parties to make a good-faith attempt to settle. And it also said that the parties were required to make reasonable efforts to attend all mediation sessions.

And that order remained in effect all the way through March '23. And in March '23, Your Honor entered a text order. In it, you terminated the mediation and the mediators and the estimator. But in that order, you also encouraged the parties to continue any settlement efforts following the termination of the mediation.

And per Your Honor's orders, the debtor continued settlement efforts during this full period. I don't think

1 there's any basis for anyone to argue that following Your
2 Honor's order is somehow a violation of law, a breach of
3 fiduciary duty, unethical conduct, whatever.
4 Next slide, please.
5 As Your Honor knows from what you've already heard,
6 the negotiations achieved a significant degree of success.
7 After all this time, they ultimately generated significant
8 support from law firms. And there's been lots of argument by
9 the other side about, well, you're really misstating or you're
10 exaggerating. It's really not the claimant's support. It's
11 technically the lawyer's, right?
12 But you've heard Mr. Kim testify, and you're going to
13 see in a deposition from Mr. Murdica that the way this was
14 done, the commitments were made are a standard practice in mass
15 torts. I've certainly seen it in every asbestos case I've been
16 in. I think Mr. Molton did the exact thing in the Boy Scouts
17 case, representing claimants who settled in that case.
18 But to suggest that there's some problem in
19 representing support because we haven't produced affidavits
20 from claimants or we haven't verified specifically the
21 claimants themselves supported or we haven't ourselves talked
22 with claimants, which we can't do because they're represented
23 by counsel, that somehow it means that support isn't there.
24 So where we are at this point, Your Honor -- and,
25 again, this is all in the record -- 15 firms signed plan

1 support agreements. These firms represent more than 55,000
2 claimants. And the reason -- you've heard 60,000 and then
3 57,000 and 55,000. We've taken into account that there are, I
4 think, two agreements that have been rescinded since what we've
5 talked about before. But we're at more than 55,000. And these
6 are ones that signed plan support agreements.
7 And, importantly, of those there are over 600
8 mesothelioma claimants. And that's important, because Your
9 Honor may recall that at the outset of the first case there
10 were 400. Now we're at 600. I think I said last week we're
11 still working on trying to figure out what the denominators are
12 here. And hopefully in short order we'll be able to provide a
13 bit more information on that. We're trying to get a handle on
14 that.
15 But, you know, we're at a point where we believe the
16 support is very substantial (indiscernible) with the support we
17 have from people who haven't executed -- haven't yet executed
18 plan support agreements. So we do have documentation. It's
19 real. We think we're approaching or exceeding 75 percent based
20 not only on the signed agreements but also on commitments we
21 have that are not yet the subject of agreements. And I'm going
22 to come back to that in a little more detail.
23 And it's interesting. I think Mr. Maimon said today
24 that, you know, this claimant support is a diversion. It's
25 irrelevant. And it's interesting to hear him say that when the

1 plaintiffs have pretty much spent all their time, both today
2 and in discovery, focusing on this very issue, trying to show
3 that the support doesn't exist, trying to show that there's a
4 huge amount of opposition. And they haven't been able to deny
5 this -- these facts or support their view that there's a
6 substantial amount of dissent.
7 Next slide, please.
8 Just trying to provide more detail on this, Your
9 Honor. This is a chart that just shows the firms that have
10 signed. It also shows the approximate numbers of claims.
11 And if you go to the right of this, you'll see not
12 only total numbers but we've also tried to report the filed
13 claims and the unfiled in the last two columns. Because,
14 again, I think there's been this sort of innuendo that, well,
15 if they weren't filed before, they're not real or somehow you
16 don't really have any of the filed claims. Well, here we're
17 showing you that out of the 40,000 or approximately 38,000, I
18 guess, that existed at the time of the first filing, we've got
19 16,000 of those with commitments from their lawyers through the
20 PSAs. And, again, we have more support that we believe have
21 where the PSAs have not yet been executed.
22 Next slide, please.
23 Now, you've heard a lot about Mr. Murdica. He's in
24 the courtroom today. He's at Barnes & Thornburg, and he's the
25 counsel for J&J who's led the efforts. You heard that --

1 Mr. Kim testify about him. And he's been working on this since
2 2019. We've been somewhat inpatient with Mr. Murdica to
3 deliver faster, but he's done a great job gathering support.
4 But he's -- and you'll see this from his deposition.
5 He's been instrumental in 20 prior mass tort settlements and
6 often with the same firms. And what's important about this is
7 it completely undermines these firms' views that these claims
8 aren't real, because you don't have the substantiation you
9 should have.
10 And you'll see from Mr. Murdica's deposition, he
11 makes clear that the way this support has been generated is the
12 way it's done in all mass torts and that he trusts the
13 representations made by these firms, because he's worked with
14 them before. He's settled many cases with them before.
15 There's a relationship there. And that's extremely important.
16 So his testimony is that at this point we have over
17 70,000 claimants through law firms that he has commitments
18 from, perhaps as high as 80,000. And he believes if the vote
19 occurred today, we would surpass the 75 percent threshold. And
20 he also believes, based on the commitments that he has, that we
21 have over half of the filed claims.
22 You saw about, I think, 40 percent or so on the chart
23 for the executed agreements. We believe based on other
24 commitments we're over half of all filed claims. And, again,
25 it's based on -- you'll see from his deposition he has a high

1 degree of confidence in this, because these are firms that he's
2 worked with. He's done it in a way that's consistent with the
3 course of dealing and the course of conduct he's had with
4 this -- these same firms for many years across many different
5 torts.
6 Next slide, please.
7 Okay. And then here's one of the videos. That's
8 Mr. Murdica, as you can probably tell.
9 (Video deposition of Jim Murdica Played)
10 MR. GORDON: Okay. Next slide.
11 So, Your Honor, you may recall from the last hearing,
12 Mr. Watts came up to the podium. His deposition was taken as
13 well, as I indicated earlier.
14 He is counsel for close to 17,000 talc claims,
15 including approximately 500 mesothelioma claims. He has
16 medical records for over 14,000 claims, and he has a robust
17 process to check the legitimacy of the claims. You're going to
18 see from the record that he was extensively involved in
19 negotiating the plan support agreement and also involved in
20 negotiating a term sheet.
21 This settlement, I think you'll hear, is -- from his
22 perspective, this $8.9 billion settlement an historic one.
23 It's a one-time opportunity for claimants who would otherwise
24 continue to suffer with delay in the tort system and never
25 receive any recovery to actually receive a recovery. He views

it, and you heard him say this last week, as a material improvement over prior settlement offers. He believes it's the best one available.

And in his experience, his view is that 97 to 99 percent of his clients will accept the settlement or clients generally will accept the settlement if recommended by their lawyers. And he'll also confirm that there are a significant number of firms not yet heard from who have expressed support or not yet -- who've become public, have expressed support.

So next slide, please.

So here's the next video clip, Your Honor.

(Video Deposition of Mikal Watts Played)

MR. GORDON: Next slide, please.

So, Your Honor, as you've heard, we have these plan support agreements. You'll see these are all in the record now. Also in the record are claimant lists, redacted claimant lists that go along with them.

And the commitments reflected in these agreements are important. The parties to those agreements, and we're one of the parties, have committed to negotiate, finalize, and file a plan by May 14th. They've all agreed to support relief to stay and/or enjoin the talc litigation during the pendency of the bankruptcy case, so there's an opportunity to actually resolve the claims here. And they've also agreed to do all things necessary -- reasonably necessary to confirm a plan, including

voting, supporting approval of a disclosure statement, supporting voting procedures for the solicitation process. And there are other commitments reflected in the agreements as well, all of which are intended to provide overall support for an expedited plan process to get to a vote to see, as Mr. Watts said, whether we have a plan or we don't have a plan based on how the vote comes out.

Next slide, please.

So, Your Honor, this is just an outline of the plan terms. You've heard this, I think. This is just what was in the plan support agreement, the $8.9 billion I described the last time. Unlike the last time, we've laid out now the actual installment payments over the 25-year period which we didn't provide the detail before.

You'll see an amount -- there is an amount allocated for the governmental claims, the state AGs. And there is the one-third -- no more than one-third is proposed as an allocation for futures.

But, again, as I think Mr. Kim testified to, these are the broad outlines of the plan, the broad outlines of the economics. There's more work to be done, and there's more work to be done not only with the claimants who have signed up to support the plan but also the ones that haven't, and we're working on that.

Next slide, please.

1 I thought it would make sense, Your Honor, to provide
2 a timeline of what we're thinking. And we describe this as
3 illustrative, because we don't know exactly how things are
4 going to unfold. But this one assumes that we file the plan on
5 May 14th. That's the deadline in the plan support agreement.
6 We would hope to file even sooner than that if possible. We've
7 got drafts in the works, and we've got a lot of people working
8 on the final pieces of the plan.
9 But we're anticipating that we're going to file a
10 motion in the -- well, really in the next day or two to start
11 setting the process for a disclosure statement hearing. And
12 you can see what we're proposing in terms of a timeline for
13 that with objections as soon as June the 5th. So that
14 obviously assumes we're going to be filing a disclosure
15 statement very quickly.
16 And then we're proposing a -- under this timeline a
17 hearing on the adequacy of the disclosure statement by
18 mid-June. And then we've got -- the next box, we set it up as
19 a range. And the reason for the range -- and Your Honor
20 probably has a lot of experience with this -- it depends really
21 on the contours of the noticing program.
22 And in these mass tort cases, as Your Honor probably
23 knows, we typically have for due process purposes a very broad
24 program that goes out on several levels. It's not -- you know,
25 in the old days, it used to be you'd publish in The Wall Street

1 Journal and The New York Times and local newspapers. And of
2 course we'll do that. We'll do the print media. But there's
3 also all the social media and everything else. And that's got
4 to be developed.
5 So we are in the process right now of engaging an
6 expert to assist with this, and we're working with that expert
7 right now to sort of nail this down. But so we have sort of
8 a -- you know, we have sort of a very optimistic schedule for
9 that. Another one -- in other words, one that's expedited and
10 one that's longer.
11 But under either scenario, it seems to us if we move
12 quickly, we shorten some of the time periods, we could actually
13 get the confirmation by mid-August or perhaps late October.
14 And the good news, in both events we're seeing this happening
15 this year. That's kind of what we're looking at.
16 And, obviously, again, this is illustrative. And
17 we'll be talking to other parties about this and how to do it.
18 But this reflects our preliminary thinking at this point on a
19 plan process.
20 Next slide, please.
21 So, Your Honor, you've heard a lot about the
22 financing arrangements, and I think Your Honor's aware from the
23 documentation, the way this was done, that there was -- there's
24 a termination agreement that had the effect of terminating the
25 initial funding agreement Your Honor was well familiar with.

1 And there was a related intercompany loan agreement between New
2 JJCI and J&J that was also terminated. And then they were
3 replaced by the two new agreements which you heard a fair
4 amount about today, the new funding agreement and the New J&J
5 support agreement.
6 Next slide, please.
7 So just to provide some of the details, and this is
8 laid out in Mr. Kim's declaration, the funding agreement is
9 between HoldCo and the debtor. And Your Honor knows, I think,
10 from what you've heard that HoldCo is the new name for New
11 JJCI. And, of course, it has the in-bankruptcy component and
12 the outside-bankruptcy component like the initial funding
13 agreement. And I should say, this funding agreement in a lot
14 of respects is very similar to the first one.
15 But in a bankruptcy case, HoldCo would provide backup
16 funding for the costs of the case. And that's -- I say backup
17 because that's in instances where the debtor's cash flow isn't
18 sufficient. And I'll come back to that. And then also funding
19 for a talc trust on terms consistent with the plan support
20 agreements. And, again -- well, in this case, if there's
21 insufficient cash and the debtor's assets are insufficient.
22 And then outside a Chapter 11, it's operative where
23 HoldCo would provide funding for all costs, and those would
24 include judgments and settlements. But, again, in the event
25 the debtor's cash flow is insufficient to do that.

1 And unlike the first funding agreement, J&J is not a
2 party. It's not an obligor. It's not a party at all under
3 this new funding agreement.
4 Next slide, please.
5 Then we have the J&J support agreement. There's
6 actually three parties to that agreement: J&J, HoldCo, and the
7 debtor. And here, J&J is committed to pay HoldCo's trust
8 funding obligation under the funding agreement if HoldCo fails
9 to do that on a timely basis. HoldCo then is obligated
10 promptly to reimburse J&J. And if it doesn't do that, then the
11 obligation -- that obligation to reimburse is deemed a
12 financing that's covered by a loan by J&J.
13 This agreement is operative only in the Chapter 11
14 case, and it's effective only upon approval by the Court.
15 Those are the -- what I would describe as sort of the key
16 aspects of the J&J support agreement.
17 Next slide, please.
18 There's been a lot of contentiousness about this
19 issue. We believe -- the debtor believes that this new
20 financing arrangement follows the Third Circuit guidance. And
21 it -- you know, it's interesting. I guess there's just a
22 fundamental disagreement about what the Third Circuit said in
23 this respect and particularly as to the so-called footnote 18.
24 And the other side's position seems to be that the Third
25 Circuit was saying absolutely no way can the funding agreement

1 ever be changed, period, end of story.
2 And our reading is that's not what it says. It
3 actually anticipated the possibility it would be changed but
4 pointed out, correctly we believe, it would be subject to
5 fraudulent transfer review.
6 But if you go back to the opinion, in our view, what
7 the Third Circuit did was they found that LTL was not in
8 financial distress in the period prior to the filing because of
9 the funding agreement. And they focus in particular on the
10 co-obligation of J&J. And as was pointed out -- somebody read
11 the language in court this morning which they said provided the
12 debtor with direct access to J&J's strong balance sheet.
13 After making that finding, they had to acknowledge
14 the irony of their ruling. The fact that J&J, which had no
15 obligation to provide that support, provided it, it was
16 provided for the purposes of facilitating a bankruptcy. Yet
17 the Third Circuit determined it had exactly the opposite
18 effect. It made bankruptcy unavailable for LTL.
19 And, again, the third bullet just goes back to what I
20 said. In our view, footnote 18 is an indication by the Third
21 Circuit that they foresaw the possibility of a second
22 bankruptcy filing. And they said without the funding backstop
23 altogether but noted the applicability of fraudulent transfer
24 law.
25 And, importantly, they referred specifically to the

1 issue of reasonably equivalent value but also to the question
2 of solvency. And we know that under fraudulent transfer law,
3 it takes both. It's got to be lack of reasonably equivalent
4 value and the entity is rendered insolvent. And in our view,
5 the other side tends to just gloss over that and just focus on
6 reasonably equivalent value.
7 Next slide, please.
8 So I want to address these points, because obviously
9 a essential piece of the arguments the other side is advancing
10 is that this case should be dismissed. Therefore, there is no
11 possibility of a successful reorganization. Therefore, there
12 should be no injunction.
13 We believe the debtor is in financial distress. Our
14 view is that the Third Circuit would have been of the same
15 opinion based on the evidence Your Honor heard about all the
16 impacts of the talc claims on the Old JJCI business but for the
17 J&J support. And, you know, they talked about making it a $61
18 billion ATM machine or words to that effect.
19 Well, that support -- that access to the J&J balance
20 sheet no longer exists outside of bankruptcy. Under the
21 funding agreement, the sole sources of funding are the debtor's
22 assets, which Your Honor knows very well what those are. They
23 include the subsidiary, RAM. And then the assets of HoldCo.
24 And HoldCo is an entity -- it is called HoldCo now
25 because it is primary a holding company. It has $400 million

in cash. It has rights to dividends from the subsidiaries that it has interest in, although those dividends are uncertain in timing and amount.

And I think it's important to note -- and we'll get into this more at the appropriate time -- that HoldCo's assets are otherwise illiquid. And as a consequence, the debtor and HoldCo may need to be liquidated in order to pay talc liability.

Again, we know from the prior record that the talc litigation and its related costs were literally massive. They were increasing at an extraordinary scale. And, I mean, Your Honor remembers. I think we had a chart. I think Ms. Brown put it together. It was like a circle showing all the things that were bearing down on the company.

You know, it wasn't just the personal injury claims. It was the governmental entities. It was the Canadian class actions. It was a whole variety of problems. It was -- state attorneys general investigations, congressional investigations, securities fraud actions and the like. It was many, many things.

And, of course, maybe one of the worst aspects of it was the episodic plaintiff verdicts in huge amounts. And, of course, the Ingham was the one big example of that.

Next slide, please.

But in our view, the debtor is not insolvent. I

1 think at the last hearing, the first day hearing, yeah, you
2 heard a lot about, well, nobody is saying what the value of
3 HoldCo is. Well, that's all in the record now. Based on
4 valuations, we have the value of HoldCo as 30 billion.
5 Again, it's an entity that it has interest in
6 subsidiaries, primarily foreign. But in the view of the
7 company, it has sufficient value to cover the liability. So
8 from a balance sheet perspective, in our view it's not
9 insolvent. But Your Honor probably remembers that the Third
10 Circuit itself drew a distinction between insolvency and
11 financial distress and indicated that insolvency is not
12 required, noting there is a difference.
13 Next slide, please.
14 So here's just a little bit more on HoldCo itself.
15 The subsidiaries in which it holds ownership interest are
16 largely foreign based, and they're operating in treasury
17 companies. Most of the value is held in a Apsis subsidiary.
18 That's a French company. And it holds a 36.1 percent interest
19 in an Irish company called Gh Biotech Holdings Limited. And
20 then there are other companies that are owned by HoldCo that --
21 the ones that are listed, there's Janssen Sciences. Then there
22 are distributors and medical devices companies and other
23 entities.
24 But, importantly, what's reflected at the bottom is
25 the most recent valuations we have reflect a total value of

1 these entities at about $30 billion.
2 Next slide, please.
3 So on the fraudulent transfer allegation, you know,
4 we've heard from the beginning that this is the largest
5 fraudulent transfer that's ever occurred in the history of the
6 United States. But we don't believe there's a basis to find
7 either an actual or a constructive fraudulent transfer. I
8 don't think there's any question based on the financing
9 arrangements that are in place that the debtor has sufficient
10 funding or sufficient resources to fund the agreed plan. And
11 in that case, both the funding agreement and the J&J support
12 agreement are available to provide funding. Again, as I've
13 said before, we believe the debtor has sufficient asset value
14 to cover talc costs outside of bankruptcy, again based on the
15 assets of HoldCo and the debtor.
16 And then the other point I wanted to make here --
17 and, obviously, there's a major disagreement over this, but you
18 heard Mr. Kim answer many, many questions in response on this
19 issue. We believe -- the debtor believes that there was a
20 serious question, and I think Mr. Kim characterized it as a
21 material risk, that in the wake of the Third Circuit ruling the
22 funding agreement would no longer be enforceable.
23 And, you know, fundamentally, the thinking is that
24 the way the court ruled was not reasonably foreseeable. It had
25 the effect of frustrating the central purpose of the funding

1 agreements. We don't believe it was reasonably foreseeable to
2 affect -- to expect that the Third Circuit would find that the
3 funding agreement had the exact opposite effect of what it was
4 intended to do.
5 It was intended to facilitate a bankruptcy. It
6 wasn't intended to make a bankruptcy unavailable. Yet, that's
7 where we ended up.
8 THE COURT: Well, let me ask this --
9 MR. GORDON: Yeah.
10 THE COURT: -- Mr. Gordon. One of the arguments
11 that's been put forward is that the funding agreement clearly
12 provided for a mechanism of payment outside of a bankruptcy.
13 MR. GORDON: Correct.
14 THE COURT: So how can it not be reasonably
15 foreseeable to have a situation where the debtor is outside of
16 a bankruptcy as a result of a dismissal of the case by this
17 Court or the reversal? How is that not foreseeable, and why
18 would it make it void or voidable?
19 MR. GORDON: Well, the point I'm making -- that's a
20 really good question, Your Honor. The point I'm making is I'm
21 not saying that a dismissal was not reasonably foreseeable.
22 Obviously, we -- the --
23 THE COURT: Well, I didn't see it coming, but go
24 ahead.
25 MR. GORDON: Well, I'm just saying -- I'm talking

about in a more general way. For example, the case -- let's just say we were still here three years later and weren't making much progress. You could see the case being dismissed. The debtor might dismiss at some point, saying there's just no hope.

So we -- there was a recognition that a dismissal could occur. The point I'm making is that nobody could have expected that the dismissal would be based on the existence of an agreement that was intended to facilitate the bankruptcy. And that's, to us, what raised a material question as to whether the fundamental purpose of that agreement was frustrated, affecting its enforceability, whether there was really any consideration received, for example, by J&J in making its commitment, because its commitment was intended to facilitate a bankruptcy.

And Your Honor may remember this, but I remember it very well. In North Carolina, we were always being criticized in these funding agreements on the basis that what's to stop the (indiscernible) from dividending all its assets up to the parent. And one of the big justifications or thinking behind this funding agreement or the J&J support was just to take that issue off the table.

And, again, it was to facilitate a filing to get parties beyond concerns about fraudulent transfer and then move forward to try to confirm a plan. And the tables were

1 completely turned on us where the Third Circuit came back and
2 said that's exactly the opposite of what you intended. In
3 fact, it's what disqualified you. We recognize the irony in
4 our opinion, but that's where we are based on financial
5 distress.
6 Did I answer your question, Your Honor?
7 THE COURT: It's an answer.
8 MR. GORDON: I wasn't asking you to comment whether
9 it was a good answer, of course.
10 You know, I think the -- you know, the other thing I
11 want to say about this is one reason we're getting into this
12 point is I think it takes off the table the idea of there's
13 some problem with reasonably equivalent value. Because from
14 our perspective, we weren't just in a situation where we were
15 saying we're just giving up something for nothing. We had a
16 concern that there was a material issue about enforceability.
17 And in return for eliminating that risk, we got a new funding
18 agreement and a new support agreement which provided the debtor
19 with the ability, in our view, to satisfy claims both inside
20 the bankruptcy and outside the bankruptcy.
21 And so, from our perspective, there was sufficient
22 value to pay claims both before and after. And I should
23 comment on that. I should pause and comment for a second,
24 because there were a lot of questions today about a $60 billion
25 funding agreement versus a $30 billion funding agreement, and

you allowed all this value to go away. That's really not correct.

The value of the funding agreement is equal to the amount of the liability. And so in other words, there's just not -- there's not an obligation to pay 60 billion. There was an obligation to provide backup support to cover talc liability.

And the reason I make that point, it goes to just what I've been saying. LTL was of the view that under the first funding agreement it had sufficient resources to cover its talc liability. It feels the exact same way under the second funding agreement. And to suggest that there's been some huge transfer of value out that creates a fraudulent conveyance we believe mischaracterizes the way those agreements work.

Value is equal to the liability. It's not $60 billion. It's whatever the liability is. And that hasn't changed. So I did want to clarify that.

Next slide, please. So I wanted to come back on the no improper conduct. And I realize I addressed this in my opening, but --

Oh, let me go back -- go back to that prior slide, please.

I got -- there's one other point I thought I should make that's very important. And that's the last bullet. And

1 this also really undercuts, I think, all the vitriol we're
2 hearing about what happened and how this is a fraud and it's
3 criminal liability.
4 There's no harm to claimants outside bankruptcy for
5 the additional reason that -- and you heard them say it two or
6 three times today. Their position is J&J is jointly and
7 severally liable on the talc claims. And so they're going
8 to -- if this case were be -- to be dismissed, and we'd go back
9 in the tort system, based on their own arguments there's more
10 than enough to cover, because in their position J&J has joint
11 and several liability.
12 That, to me, is sort of separate and apart from the
13 fraudulent transfer analysis. But it goes to the point of this
14 doesn't harm anybody. So these allegations that great harm's
15 been done, you didn't consult with our clients, how could you
16 do this while you're a Chapter 11 debtor, to me there's just no
17 foundation for that based on what their position is in the
18 litigation outside.
19 And what happens, of course, is if J&J pays, it's
20 still a problem for HoldCo, because HoldCo has the obligation
21 to cover the liability, as Your Honor remembers before, because
22 it assumed it. But from the outside perspective, in other
23 words, the perspective of the claimants, they get paid under
24 that theory.
25 Next slide, please.

1 So on the improper conduct, again, it's -- what made
2 me think of it, in our view, no harm has been done to the
3 claimants. And, in fact, in our view, all the actions we've
4 taken we've taken to benefit them. We believe that we've been
5 comporting with our fiduciary duties, because we continue to
6 believe that a resolution in the bankruptcy is in the best
7 interest of the claimants.
8 Your Honor sees now from the documents from Mr. Kim
9 we are engaging in contingency planning. We were at a time
10 where although the Third Circuit had ruled, we had re-hearing
11 petitions pending. We filed motions for stay. It wasn't clear
12 whether the case was going to be dismissed or not, and we were
13 planning for either scenario. We were planning for the
14 possibility that as this plan was coming to fruition, we could
15 proceed in the initial bankruptcy case. But if not, we could
16 proceed potentially in a second bankruptcy case.
17 Again, we don't think we've defied the Third Circuit,
18 because we think, you know, we've read carefully what they've
19 said. There have been no improper negotiations. And this is
20 interesting, because we answered these questions in the
21 depositions about the negotiations and when they occurred and
22 why we did them.
23 When we asked questions of the other side, like
24 Mr. Molton about whether he was doing the same thing, all those
25 questions were cut off. And the reason they were, we believe,

is because they were doing the same thing. I mean, they were doing what Your Honor asked as well which is to continue negotiating.

There's no evidence of any side deals. There's no evidence that we fabricated anything. The only improper actions that have occurred -- and you'll see this in the record -- is that the firms who oppose the plan have been engaging in threats and intimidation.

And you saw today with the witness with a number of times with Mr. Kim he was asked, are you familiar with Title 18 of the Bankruptcy Code? Are you familiar with the New Jersey rule that says you're not supposed to basically lie to a tribunal? And there's just -- in our view, the record's very clear there's a concerted effort by this group of firms who represents a minority of plaintiffs to effectively disenfranchise the group. They're going to do everything in their power to stop this case from even getting to a vote.

And that's what would test ultimately their allegations that the support isn't there. Take it to a vote. If that's what you really think, let's go to a vote.

Next slide, please. Next. Next slide, please.

So, Your Honor, I'm just going to --

I'm sorry. The one before that. My mistake.

So, Your Honor, this is very much short -- and you remember all this. There's the corporate history that we went

through. You know that the division was transferred to a predecessor of JJCI and that the liability for the baby products assets was picked up at that point and it traveled all the way through in various restructurings that occurred through 2015.

Next slide, please.

You know from the evidence we presented before that the liabilities included Shower to Shower. And I won't go through the details, but we had, I think, a 10-K filing. There was correspondence, and there was an annual report, all of which reflected the fact that the transfer occurred, I think, at the end of 1977. And that Shower to Shower liability also ultimately became the responsibility of Old JJCI through a -- through the series of restructurings.

Next slide, please.

The other thing I wanted to remind Your Honor of is that on top of that -- because we -- there was a lot of disputes about this. There was also the established course of performance that had been in place since literally 1979 or '78 where all the costs related to talc were ultimately born by JJCI. And this is just some of the detail of how the accounting was handled and how things work.

I mean, you may have a vague memory of this. You may have wanted to wipe it out of your memory banks. But this largely went back to Mr. Lisman who testified about the course

of performance.

Next slide, please.

And, of course, Your Honor made findings based on the record as it was about the fact that Old JJCI had assumed the responsibility for the talc liabilities, including the Shower to Shower liability.

Next slide, please.

And you may remember that Judge Whitley, before he transferred the case here, made a similar finding with respect to Old JJCI assuming the responsibility for the talc liability back in 1979.

Next slide, please.

Again, I'm going to breeze through these. This is important for the PI motion, because it goes to the point of whether the claims are basically one and the same. And there were allegations made by the plaintiffs back in the first trial and even going back to North Carolina that the claims were different. You've heard today even I think from Mr. Placitella and others, they're independent, they're separate.

But we showed you various pleadings that had been filed before the first case where the parties just treated J&J and Old JJCI interchangeably. This is an example from the MDL master complaint.

Next slide, please.

Here's another one from a complaint, Anderson vs.

1 Borg-Warner.
2 Next slide, please.
3 Similar one. And this is one I always remember from
4 the court in South Carolina where the judge basically had the
5 same view that these were the same. And he says if you think
6 anybody in any of these cases is going to allow the stay
7 against liability on behalf of Old JJCI to somehow affect the
8 evidence that's going to be received whether that evidence was
9 from J&J, Old Johnson, or New Johnson, that is a very different
10 kettle of fish, and I can tell you right now that's not going
11 to happen in this case as far as I'm concerned.
12 Again, to point out the way these cases were being
13 tried. And they were being tried as if J&J and Old JJCI were
14 interchangeable.
15 Next slide, please.
16 This is -- again, I won't spend much time on this.
17 This was one of Mr. Satterley's cases. And, again, expressing
18 a similar view. This was the Van Klive case that was pending
19 shortly before the first bankruptcy filing.
20 Next slide, please.
21 Also same thing here from Mr. Satterley, same case,
22 Van Klive.
23 Next slide.
24 And then we had some excerpts from the Ingham case as
25 well where, again, like so many of the complaints, they just

aggregated all the allegations against the Johnson & Johnson defendants. They made -- drew no distinction between J&J or Old JJCI. No distinction between their conduct. No distinction between theories of liability.

In fact, the only difference that ever occurred was the amount of punitive damages that might be awarded, and that's because those were based on the amount of the respective entity's net worth. Had nothing to do with whether the claims were different or whether the legal theories on which they were based were different.

Next slide, please.

And, again, both Your Honor in your opinion and Judge Whitley in his basically found the claims were the same. As you put it, the talc claims against the protected parties involved the same products, the same time periods, the same alleged injuries, and the same evidence. And Judge Whitley's finding was very similar a few months before that.

Next slide, please. Again, I'll go through these very quickly. Next.

I think you remember the issue about indemnification and the evidence that was submitted with respect to the retailers. Here's an example of language in one of the guarantees that had been executed in connection with the sale of talc products.

And, Your Honor, let me know if I'm going too fast.

I just feel like --

THE COURT: Oh, you can't be going too fast.

MR. GORDON: I'm trying to go as fast as I can. Next slide, please.

MR. SATTERLEY: Only 50 more slides.

MR. GORDON: And, again, we had a list of all the tenders, a summary list of all the tenders that had been received from retailers.

Next slide.

We gave you an example of what a letter looked like where the company would accept a tender from the retailer, so you get a sense for how that worked.

Next slide, please.

Then briefly on the insurance policies. Again, another summary exhibit that showed there are about 450 shared insurance policies, the defense cost indemnity payments on claims against J&J, and the retailers would erode coverage under those policies.

Next slide, please.

And here's some of the operative language that makes clear that the insureds included subsidiaries of J&J as well as the retailers.

Next slide. Okay. All right. Next slide.

Again, I'm going to go through these quickly, Your Honor, because you've been through this at least three times, I

1 think, in this case. So we think you have ample authority, as
2 you've said, to extend the stay under Section 362(a), to do
3 that under 105(a), and to issue a preliminary injunction. And
4 you had, I think, cited the McCartney case which cites the
5 Robins case with approval.
6 Next slide, please.
7 Again, this comes from you. There's a three-step
8 inquiry in connection with the motion: whether the Court has
9 jurisdiction, whether the stay applies or should be extended,
10 and whether the Court should issue a preliminary injunction.
11 Next slide. Next, please.
12 So we believe that the jurisdiction is clear. Your
13 Honor is familiar with the three aspects of jurisdiction: the
14 arising under, arising in, or related to.
15 Next slide.
16 I think we've actually added to this list a bit.
17 There is a long list of asbestos cases where the stay has been
18 extended in analogous circumstances. And we haven't been able
19 to find -- well, maybe we could say Aearo. I don't know. But
20 in any event, our experience has always been these are granted.
21 In fact, my experience until this case, and I guess a couple of
22 others, was it was retained. They weren't even contested to
23 extend these. But lots of authority for extending the stay in
24 these circumstances.
25 Next slide, please.

We believe there's arising under, because the automatic stay is a substantive right. And we cited cases that support that proposition.

Next slide.

Arising in. Again, it has no existence outside of the bankruptcy case. This is a preliminary injunction and a request to extend the stay within the case for the purposes of the case. We think, therefore, the Court has arising-in jurisdiction.

Next slide.

And at a minimum, the Court has related-to jurisdiction, because the -- you know, these claims could conceivably have an effect on the estate. And, in fact, they could have a very serious effect, because they impact our ability to actually achieve the reorganization that we are seeking to achieve.

Next slide, please.

And this is just some -- here again, Your Honor, I think, found this related-to jurisdiction existed, you know, due to the impact on the claims we're seeking to resolve as well as the potential impact on the insurance coverage.

Next slide.

And we believe there's clearly a potential -- or there's clearly an adverse effect on the estate if the litigation were allowed to proceed. And in various ways, it

would impact the estate. Again, number one on our list is just the impairment of our ability to resolve cases in bankruptcy when the same claims are being adjudicated outside of bankruptcy.

You have the indemnification obligations which have the effect of making judgments against the protected parties, effectively judgments against the debtor. You have the potential loss of insurance. And then you have the collateral estoppel and evidentiary prejudice risks, all of which I think Your Honor recognized in your earlier opinions.

Next slide, please.

And, again, I think Your Honor put it well. You said it's difficult to envision how successful reorganization could be achieved in this case without extending the stay. And, again, Judge Whitley made a very similar finding during the time -- the short time he had the case in North Carolina.

Next slide, please.

We think it's clear that Your Honor has jurisdiction to enjoin the claims, whether they're deemed direct, derivative, independent, because of the impact they would have on the estate. And, you know, we've cited Judge Beyer from the Bestwall opinion that found that exactly. And we've also cited the Mallinckrodt case where again with respect to independent liability the Court reached the same conclusion.

Next slide. All right. Next, please.

1 And, again, this just lays out the law a bit.
2 Section 362(a)(1). And, you know, here the Colonial Realty
3 case makes clear that 362(a)(1) must encompass cases in which
4 the debtor is not a defendant. Otherwise, some of the language
5 would be mere surplusage.
6 Next slide.
7 The automatic stay has the effect of centralizing the
8 claims against the debtor in the bankruptcy case. And when the
9 claims against protected parties are the same, that central
10 purpose of the automatic stay would be defeated. I mean, we
11 need to have the claims here so that they can be resolved here.
12 Next slide, please.
13 Again, there's support for extending the automatic
14 stay in unusual circumstances. That comes from the Third
15 Circuit's McCartney decision.
16 Next.
17 You know, we've seen various courts talk about what
18 the unusual circumstances are. And from Robins, probably the
19 number one description of it is where there's such an identity
20 of interests that the debtor would be said to be the real party
21 in interest or the real party defendant and that a judgment
22 would have the effect -- a judgment against a third party would
23 have the effect of being a judgment against the debtor. And
24 then just more generally, you see it like in Philadelphia
25 newspapers, a third-party action would have an adverse impact

on the debtor's ability to achieve a reorganization.

Next slide, please.

Identity of interest.

Next.

So, Your Honor, we think the record makes clear that the debtor is the real party in interest. Old JJCI had the responsibility for all talc liability. LTL now has that responsibility. It's indemnified the protected parties. There's an identity of claims. There's an identity of issues. And they're all -- the allegations against JJCI and J&J are inextricably intertwined in the sense that they seek the same damages and the same relief, and they do that against protected parties -- the same damages and relief against protected parties they would seek against the debtor.

Next slide.

And I think Your Honor found this again in your opinion. Same product, same time periods. I think I went through that before. And I think you found there was a basis for that. No basis to deny the corporate transactions and indemnity agreements that left the debtor ultimately responsible for talc liability.

Next, please.

You had similar rulings by Judge Whitley in the DBMP and Aldrich where he found that the debtor was the real party defendant. Because, again, in those cases, he viewed the

1 claims as basically the same.
2 Next slide.
3 And, again, just more case law on this point about
4 the direct or independent claims should be stayed. And you can
5 see Mallinckrodt, the Grace case, American Film Technologies
6 and the Ms. Kipps case.
7 Next slide, please.
8 We had some argument the last time about whether
9 these indemnification agreements were of a type that would be
10 viewed as creating a problem sufficient to warrant a stay, and
11 there was discussion about automatic liability, whether
12 there -- there's automatic liability or not. From our view,
13 the agreements are clear that the debtor has liability if, in
14 fact, the liability against the retailers is based on the sale
15 of products that were manufactured by LTL's predecessors. And
16 we have some cites there to the Dow Corning case, the re cite.
17 Next slide, please. All right. Next.
18 And here again, this just kind of sums up the
19 findings Your Honor made on the point about the impact
20 continued litigation would have on the reorganization. You
21 noted the liquidation of the pending tort claims and the
22 problem that would occur. You noted the potential depletion of
23 insurance coverage. You noted the potential impact on
24 mediation efforts and negotiations and the diversion of funds
25 and resources toward defense costs rather than towards a trust

to fund a plan.

And I think the third point is even more significant now given that we have a plan in prospect. And we have a lot of work to do in the next several weeks and beyond to finalize that plan and push forward to take that plan to a vote, to see if we can consummate a trust and reorganize in a fashion that we believe is beneficial to everyone.

Next slide, please.

This again provides some additional support on the point about the shared insurance coverage and the fact that the fact there is shared insurance coverage supports extending the stay.

Next slide.

And, you know, there was some arguing the last time about how this really wasn't important, because the insurers were disputing coverage. But as we pointed out, and I think Your Honor ultimately found, there's been no determination at this point in time whether coverage is available or not or the extent to which it's available. And there's just no reason not to protect this insurance, because it's potentially very valuable at a time when it's -- the extent of the availability of that coverage has not been determined.

THE COURT: The $8.9 billion proposal, that's not dependent on insurance coverage?

MR. GORDON: No, Your Honor.

THE COURT: So that's outside of the funds that would be available?

MR. GORDON: Right. That's correct.

Next slide, please.

You know, and I should mention while you're asking me about that, Mr. Watts referred to it. There's also a provision that says that if there's additional funds that would be made available through Imerys, those are on top of the 8.9. So I did want to make that clear. There was maybe one question this morning that seemed to reflect maybe a misunderstanding about that, so I didn't want to --

THE COURT: So in other words, if there's a recovery in the Imerys case --

MR. GORDON: Yeah. Because there's an overlap in the claimants. And you may remember that Mr. Watts, I think, pointed that out when he came to the podium at the first hearing.

THE COURT: That's what I'm confused on is I thought there was a potential obligation, indemnification obligations in Imerys.

MR. GORDON: Correct.

THE COURT: So we don't know if that's materially --

MR. GORDON: We don't --

THE COURT: Which way the dollars are flowing.

MR. GORDON: Well, we don't know how that's going to

work. We believe -- the way I think about it, putting aside the complexity of indemnification, we have Imerys sitting in bankruptcy with Cyprus. The claims have been filed against that by most of the same parties related to the same talc. And what I'm saying is if there's a recovery in that case to the same talc claimants, that would be on top of the recovery in this case.

THE COURT: Okay.

MR. GORDON: In other words, the --

THE COURT: They're not going to get it in both cases.

MR. GORDON: Yeah. We're not saying we get the money. We're putting up the 8.9. If we were to win and get money out of Imerys, we get to keep it, it would go to the claimants.

THE COURT: Okay.

MR. GORDON: Okay. And this is just saying, again, our insurance hasn't been exhausted, and it hasn't -- the extent of coverage hasn't been determined.

Next slide, please.

Your Honor recognized potential collateral estoppel, res judicata, and evidentiary prejudice risks of continued litigation. And I -- again, we think the record supports that finding again.

Next slide. All right. I'm getting towards the end

here, I think. Next slide. Preliminary injunction. Next.

So, you know, the standards here are somewhat different. You know, from the Grace case, the standard for a grant of a stay is generally whether the litigation could interfere with the reorganization, whether it could diminish the debtor's ability to formulate a plan. And it's, again, from the McKellan (phonetic) case, same thing. Standard for a grant of the stay is generally whether the litigation could interfere with the reorganization. For the reasons I've already indicated, we think interference is clear here.

Next slide.

Again, I think we've seen this before. These injunctions have been issued many times.

Next.

We believe you have the authority under Section 105 to enjoin direct and independent claims based on -- or allegedly based on non-debtor conduct. And, again, we cited a number of cases which Your Honor is familiar with.

Next slide.

We have the traditional preliminary injunction factors. I'll just go through these quickly.

Next slide. And next.

(Audio skip from 4:20:41 p.m. to 4:20:44 p.m.)

MR. GORDON: -- Your Honor is familiar with this proposition that establishing the reorganization is likely to

be successful is not intended to be a particularly high standard. You'll see that from Bestwall and this Solidus Networks case and other cases as well.

Next slide.

We believe the case has a proper reorganizational purpose. In fact, we note that even the Third Circuit referenced our good intentions with respect to the bankruptcy filing. But you'll see from these other courts as well they recognize the good-faith purpose of attempting to resolve mass tort liability in a bankruptcy case.

Next slide.

We believe we can successfully reorganize. And we think our case on this prong is even stronger than it was the last time Your Honor heard from us on the preliminary injunction matters because of the plan support we have and not only through the executed agreements but also the support you heard -- or the commitments that Mr. Murdica indicated he had from other firms as well. We have the principal economic terms. We have an agreement on those. And Your Honor probably knows from other mass tort cases that's probably the number one issue that has to be resolved before anything can happen.

And I think there's reasons to think this reorganization will be successful just given the size of the amount. It's historic. It's unprecedented. We think the changes are good that the momentum in favor of the plan is

1 going to continue to build.
2 And, again, we're going to move very quickly on the
3 plan process. So I think the Court's going to know if we're
4 permitted to move forward and we can keep these cases in front
5 of this Court that you're going to find out really relatively
6 quickly whether we're a go on a plan or not.
7 And as I said before, and I won't repeat it, we
8 believe the second filing does comply with the good-faith
9 standard for filing as articulated by the Third Circuit in its
10 recent opinion.
11 Next, please.
12 Again, I'm not going to repeat this, but the
13 claimants' support is real. It's interesting; you didn't
14 really hear much today so far, maybe we'll hear more, about the
15 claimant counts anymore. And, again, I think the evidence has
16 only served to confirm that the support is even more
17 significant than we indicated at the last hearing, and the
18 opposition is smaller than was represented by the other side.
19 And, again, we are going to make every effort to broaden the
20 support and to finalize the plan and move forward.
21 Next slide, please.
22 And you can see, again, Mr. Maimon indicated this is
23 all just a side show. It's a diversion. But the fact there's
24 significant claimant support is very important. It's very
25 important for this factor. It's very important, I think, for

1 demonstrating our good faith.
2 And just to be dismissive of that, I think, is just
3 false. It's exceedingly important to Your Honor's
4 consideration, I think, of this motion and other matters that
5 come before you as hopefully we move down the road towards a
6 plan of reorganization.
7 Next slide, please. Irreparable harm. Next.
8 Again, this sort of goes back to what I talked about
9 before. It's hard to imagine how you can reorganize if at the
10 same time you're trying to resolve the claims here the claims
11 are proceeding outside of this court.
12 And if you think about it now, Your Honor, you know,
13 in a situation now where we have substantial support, and we're
14 moving forward, imagine the distraction that would arise if the
15 litigation is allowed to proceed outside of this court.
16 Because it's going to put -- I think it's going to create this
17 scenario where claimants who might otherwise be prepared to
18 move forward might say, well, let me wait and see what happens
19 in this case. Or maybe I want to see how this appeal turns
20 out. You know, maybe I should just wait for this.
21 And that -- to me, it's an enormous distraction. Not
22 to mention from the company's perspective all the time we would
23 have to spend as this litigation would literally be restarting
24 in thousands of cases and all the work that would have to be
25 devoted to that at a time that's so critical to us, because

1 we're under an extremely tight deadline to get a plan moving
2 forward.
3 And I know Your Honor expects from us -- you want us
4 to give our maximum effort to move this process as fast as we
5 can. So to me, this is even a bigger issue for us in this case
6 than it was in the last case given where we are in this case.
7 Next slide.
8 Other harms are the ones we've already talked about:
9 impacts on insurance, evidentiary prejudice, res judicata,
10 indemnification obligations. So I won't repeat those.
11 Next, please.
12 I did want to point out, I think Mr. Kim alluded to
13 this earlier, that we have modified the protected parties list.
14 Because we have heard some criticism about, you know, how you
15 can just put in literally hundreds of J&J affiliates. That
16 seems overly broad.
17 From my perspective, that wasn't really an issue,
18 because if nobody's intending to sue those affiliates, there's
19 no harm. But by the same token, I can't really say we have to
20 have the relief, that we need the relief, because they haven't
21 been sued. So we've tried to reduce the list of affiliates
22 down to the companies that have been named.
23 And you heard in the back and forth with
24 Mr. Placitella that in addition to the four we had on our
25 original list, which were Old JJCI, J&J, HoldCo, and J&J

1 Canada, we've added Janssen Pharmaceutical and Kenvue, because
2 they've now been identified for the first time as defendants in
3 talc litigation. And then, of course, we have the retailers
4 and the indemnified parties. We have not included the
5 insurers.
6 So we have attempted to modify the list somewhat to
7 address some of the criticisms that were made to the initial
8 list of protected parties.
9 Next slide, please. Next, please.
10 I think the balance of the harms, in our view,
11 ultimately comes down to the issue I've been emphasizing, which
12 is absent an injunction, we think our ability to succeed with
13 this plan will be, if not defeated, altogether substantially
14 undermined. We also continue to believe strongly that
15 resolution in bankruptcy is better for the claimants. It's
16 more efficient. It's more equitable to the claimants.
17 I mean, what we see is a situation in the tort system
18 where the large majority get nothing. And you're going to see
19 in the record, by the way, Your Honor, that that's reflected in
20 the record of what we -- what came out in the depositions. The
21 large majority get nothing.
22 I think the plaintiffs' firms hope that while
23 occasionally we might hit the ultimate home run, get a big
24 recovery for the claimant and ourselves. But what about all
25 the others who get nothing? And the benefit of a plan is they

all get something, and they all get equivalent payments based on their circumstances.

So we continue to believe that this is in their best interests. And, again, the tort system and the record bears this out based on the deposition. There's substantial delay. You heard it from Mr. Watts. There's substantial uncertainty and a high prospect of no recovery at all.

Next slide.

And, again, I won't spend much time on this. You may remember that Mr. Mullin -- or Dr. Mullin of Bates White had issued a report in the prior proceedings about the benefits of a resolution through bankruptcy. And here's some of the significant points he made about the benefits of trust resolution, including at the bottom just the cost is so much less. The cost of processing and paying claims is so much less than the cost of litigation in the tort system.

Next slide.

And, again, just the way these -- the trust would work, this is just really important in our view that there's common set of rules, common set of criteria. Similarly situated claimants are treated the same. There's assurances for the future claimants that they get treated in the same way as currents.

And that's one of the benefits that I see of this plan proposal that it literally provides for payments over a

1 25-year period, which I would think would provide the future
2 claimants with comfort that the money is going to be there. It
3 won't all be spent on current claims or claims that come to
4 fruition before a future claimant's claim arises.
5 Next slide, please.
6 Again, just sort of more of the same from courts
7 noting the benefits of trust resolution in addition to Your
8 Honor. Judge Beyer in Bestwall and the Federal-Mogul decision.
9 Recognition by the Third Circuit of the benefits of the trusts.
10 Next slide.
11 And, again, these are all things you've heard before,
12 and these are the findings that you made based on the evidence
13 before with respect to these issues. And, again, we believe
14 the evidence in the record, which includes evidence from the
15 prior record, supports the same findings this time around.
16 Next slide. Public interest. Next.
17 THE COURT: We're getting close.
18 MR. GORDON: I'm getting close. It's good, because
19 I'm sort of tired of standing right now. It's been a long few
20 days.
21 (Counsel confer)
22 MR. GORDON: So, Your Honor, these slides just point
23 out that a successful reorganization, many courts have
24 recognized that that's in the public interest if it can be
25 accomplished. And I would say it's especially so in mass tort

cases where you can resolve literally thousands of claims or, in this case, tens of thousand of claims in a uniform manner and in an equitable manner.

Next slide.

MR. SATTERLEY: Our slide show only goes to 94, so that's why we don't have those. I did not --

THE COURT: They win.

MR. GORDON: Well, these are the key slides too.

UNIDENTIFIED SPEAKER: We have one. We'll share with you.

MR. SATTERLEY: That's okay.

MR. GORDON: Sorry about that.

MR. SATTERLEY: Proceed on to --

MR. GORDON: Sorry. And, again, this is from your, I think, prior ruling with respect to public interest. And, again, we think the basis for your finding then, it equally applies now.

Next slide.

So I'm at the conclusion. So, Your Honor, just to go through the basics on the stay and the preliminary injunction, we think the record's clear that the debtor is responsible for all the talc liability. The claims at their core -- you can call them independent or separate with respect to protected parties, but at their core they're all the same. It's the same legal theory, same injury, same time period, same damages.

The claims have been indemnified by the debtor. The debtor has shared insurance. There's a potential that insurance would be diminished.

And then if you think about where we are, we're in a good place. Recent negotiations, in our view, have created a window of opportunity to effectuate the largest mass tort bankruptcy resolution ever. In our view, that opportunity will be lost absent a stay and injunction. And it shouldn't be lost, in our view, because a group of law firms who represent a minority of the claimants want to prevent the majority of claimants from having the ability to decide for themselves whether to approve the plan that's been put together.

And that's all we're really asking. We want -- we're asking for the ability to get to a vote, to provide the claimants with an opportunity to decide for themselves. And we believe that in order to do that, we need the stay and injunction that we've requested.

THE COURT: All right.

MR. GORDON: So we are -- we do ask Your Honor to grant the motion. But I know Ms. Brown's got some additional slides.

THE COURT: Thank you, Mr. Gordon.

MR. GORDON: Thank you.

THE COURT: Ms. Brown?

MS. BROWN: Thank you, Your Honor. And if I could

ask for the Court's indulgence for just two minutes while I make sure the slides are there --

THE COURT: Yes.

MS. BROWN: -- and just get a clicker. Would that be okay?

THE COURT: That's fine.

MS. BROWN: Thank you so much.

(Counsel confer)

MS. BROWN: Okay, Your Honor. Thank you. I think we're set up.

(Counsel confer)

MS. BROWN: May I approach with a copy? Thank you. Thank you, Your Honor.

May I proceed, Your Honor?

THE COURT: Please.

MS. BROWN: Thank you very much. Judge, we are back before you now. I think it's only --

(Counsel confer)

THE COURT: Here, you can -- if you want to use --

MS. BROWN: Or use this --

THE COURT: Yeah.

MR. SATTERLEY: Well, this one has Mr. Valadez in it, and I think I need to read what she's going to say about Mr. Valadez. So I'm sorry. And I didn't know we were going to do both the general and Valadez at the same time. But however

Your Honor wants to proceed.

This 50-point -- 50-page PowerPoint seems a little excessive since we've already seen a hundred, but -- and it's 5:00 at night. But I got two suits, and I'm willing to come back tomorrow, Your Honor.

THE COURT: Well, no. I have other -- I do have other cases just --

MS. BROWN: I talk fast, Judge. I talk really fast.

THE COURT: Okay.

MS. BROWN: I'm going to fly through this, Your Honor, and certainly not duplicate anything Mr. Gordon did. Your Honor, we are back before you now. It has only been a week but an incredible amount of discovery has happened, as Your Honor knows, because we had to drag you into some of it.

But at the end of more than five depositions, multiple meet and confers and exchange of documents, what is clear, Your Honor, is that the overwhelming evidence demonstrates the likelihood of success of reorganization here. The evidence in the record now for the support of firms who will recommend to claimants to support the plan, Your Honor, is substantiated. It's real. And it's supported by testimony and documents, whereas the evidence of opposition to the plan that Your Honor heard from the now TCC members last week is not substantiated and through multiple depositions has no support in the record.

1 Your Honor heard, of course, through the testimony of
2 Mr. Kim by his declaration that what is on the table here is an
3 unprecedented proposal. It would be the largest asbestos
4 bankruptcy case settlement ever, Your Honor, including an --
5 for all of these companies who intentionally put asbestos in
6 their products, Your Honor. And, of course, the Court is very
7 familiar that J&J has never wavered in its position that
8 cosmetic talc is safe, does not contain asbestos, and does not
9 cause cancer.
10 But nevertheless, Your Honor, this settlement is
11 historic, and it is far more than settlements that had been
12 made throughout the years, including by members of the TCC.
13 What has come out in the discovery over just the last few days,
14 Your Honor, is evidence including a proposal made by
15 Mr. Birchfield of Beasley Allen to resolve all of the ovarian
16 cancer claims, both the current and the future, through the
17 Imerys bankruptcy for $3.25 billion, Your Honor, back in 2020.
18 And, of course, as Your Honor knows, as we just looked at, this
19 settlement encompasses more claims but is more than double what
20 Mr. Birchfield himself offered just a few years ago.
21 We heard, Your Honor, when we were here just a few
22 weeks ago from Mr. Molton that there was vehement opposition to
23 the plan, that there were over 100 law firms representing
24 40,000 claimants who were going to oppose this plan. But, Your
25 Honor, here before you a week later and all these depositions

1 and documents later, we don't know who they are.
2 What we do know from some depositions, including that
3 of Mr. Birchfield, is that they include unfiled cases.
4 Mr. Birchfield testified that he believes of the 40,000 cases
5 that Mr. Molton represented would be in opposition, about 5,000
6 of them are unfiled, and they're cases that Mr. Birchfield
7 would not recommend filing in the tort system.
8 But beyond that, Your Honor, we don't know much more.
9 We don't know for -- we know there are no written agreements --
10 at least Mr. Birchfield was not aware of any written agreements
11 to oppose the plan or any written agreements that co-counsel
12 might have to oppose a settlement on these terms. And, Your
13 Honor, when we asked Mr. Molton about the identity of the 100
14 law firms or the 40,000 claimants he represented to the Court
15 would be in opposition to the plan, numerous privileges were
16 asserted, including the attorney/client privilege, the attorney
17 work product privilege. We'll talk a little bit later about
18 the mediation privilege, the settlement privilege, the common
19 interest privilege that was asserted during that deposition,
20 Your Honor.
21 But we have no evidence in the record of who these
22 firms are or who -- any documentary evidence that there are 100
23 firms with 40,000 claimants that are, indeed, objectors to the
24 plan. That, of course, is in stark contrast to the evidence
25 Mr. Gordon reviewed with the Court that came in through the

1 plan support agreements that we have of lawyers who have
2 committed to recommend to their clients that they will support
3 this historic settlement, through the testimony of lawyers who
4 have provided hours and hours of testimony about their
5 evaluation of this deal and how they think it is historic and
6 the best for plaintiffs.
7 You heard, Your Honor, last week allegation that J&J
8 and LTL's conduct is rotten and that not one talc claimant has
9 agreed to this deal, that Mr. Molton hadn't seen a lawyer
10 affidavit, that these were unsubstantiating (sic) claims that
11 the debtor and, indeed, also J&J were making up, Your Honor.
12 But what we've heard through discovery, Your Honor, and what
13 you heard a little bit about here today is that the process
14 that was filed -- that was followed here to substantiate the
15 support that we have for the plan is the very same process that
16 has been followed through a number of different other events,
17 including, as Mr. Haas testified, at least three times in his
18 dealings with Mr. Birchfield in trying to reach a global
19 resolution of these claims over the years.
20 Mr. Haas testified that here in terms of the
21 information we required, in terms of our dealings with the
22 plaintiffs' lawyers, we followed the exact same process that we
23 have in the past. So, for example, in the past in negotiating
24 with the plaintiffs, affidavits had not been required. There
25 had not been representations about what clients said or agreed

1 to. And, of course, that's exactly the same scenario that went
2 on here.
3 As Mr. Gordon mentioned and Mr. Haas testified that
4 when he gets -- he gives his word in a settlement negotiation,
5 he keeps it. And you heard on the very first day from both
6 Mr. Birchfield and from Mr. Watts that Mr. Haas gave his word
7 that there would be no side deals and that Mr. Birchfield and
8 Mr. Watts agreed that, in their point of view, they're aware of
9 no side deals. No evidence has come in over the past week,
10 Your Honor, that anything improper or untoward or any side deal
11 or side cut is going on here.
12 You heard and you saw testimony and Mr. Gordon's
13 presentation, Your Honor, about Mr. Murdica's confidence as the
14 person who has been negotiating most closely with the
15 plaintiffs on -- the plaintiffs' lawyers on the other side.
16 His confidence based on 20 years of doing this type of work, of
17 negotiating with some of these very same plaintiffs' lawyers
18 that he's confident when representations are made to him by
19 these particular professionals that they'll be kept. And when
20 they say in the past that their claimants will support a deal,
21 that's what they're going to do. And you heard his confidence
22 in that video clip, Your Honor, that if the plan were to go to
23 a vote today, more than 75 percent of the claimants would
24 approve it.
25 Importantly, Your Honor, one of the things that was

1 revealed in discovery were some of the terms of the offer that
2 Mr. Birchfield made to resolve all of the current and future
3 ovarian claims back in 2020 for $3.25 billion. And what's
4 critical and what's important here, Judge, is that this
5 proposed settlement agreement tracks almost perfectly with some
6 of the provisions put forth in the plan support agreement and
7 the term sheet.
8 So, for example, Your Honor -- and we'll take a look
9 at the language in a second, this master settlement agreement
10 provides that the identification of the plaintiffs would come
11 through a spreadsheet, just like the ones that we have in this
12 case and that we produced to the other side that contains
13 identifying information like social security number, first
14 name, last name, and in our case also the type of disease.
15 Certainly, there were no client affidavits that were required
16 or declarations about conversations with plaintiffs that were
17 required under Mr. Birchfield's proposal.
18 We heard in discovery, Your Honor, a fair amount of
19 criticism about the proposed lien administrator in the term
20 sheet and the PSA. In fact, it's the same one that was
21 contained in the proposal that Mr. Birchfield sent in 2020.
22 And, of course, what Mr. Birchfield recognized in the proposal
23 he made for less than half of the amount of the current
24 proposal is that a channeling injunction was needed to be able
25 to -- to provide for and resolve these claims for not just

1 current claims but, of course, future claims as well.
2 And Your Honor has heard, and I won't repeat it here,
3 how it -- how especially important it is in a case like this
4 where the latency period on the two diseases that plaintiffs
5 claim are associated with cosmetic talc have latency periods of
6 anywhere from 20 to 30, all the way up to 60 years, Your Honor.
7 This is some of the actual language, Your Honor, from
8 the proposal that came from the other side a few years ago.
9 You can see that the way that you would evidence the agreement
10 would be through an Excel spreadsheet that -- listing the
11 claimants. Again, that's, of course, exactly what we did here.
12 And we have some testimony, Your Honor, on that as
13 well. Mr. Birchfield was good enough to sit for a deposition
14 and explain to us that, exactly as the agreement reads, yes,
15 the way we would provide consent would be through a spreadsheet
16 with the current claims. And he would not, Your Honor, require
17 affidavits that we've heard so much questioning about,
18 commitments through conversations with claimants or anything
19 like that.
20 You'll recall, Your Honor, when we were here last
21 week, those were some of the very same criticisms that we heard
22 of our proposal was that we didn't have affidavits and
23 conversations with claimants. And I think we even heard that
24 in some of the questioning with Mr. Kim this morning. But
25 Mr. Birchfield made clear that this is standard practice and

1 the practice he followed as well.
2 Your Honor, we also heard a fair amount of
3 suggestions last week that some misconduct or something
4 untoward happened in terms of LTL and J&J's continued effort to
5 try and resolve this case even after the Third Circuit's ruling
6 on January 30th. There was a suggestion that there was
7 something wrong about the parties continuing to negotiate,
8 continuing to try to find a way to reach a resolution.
9 And, of course, as this Court well knows, the Court
10 urged the parties to continue informal settlement discussions
11 even when the Court was discharging the mediators and the
12 estimator and other court professionals. And the Court urged
13 the parties to continue these discussions, recognizing the
14 importance of trying to resolve this litigation.
15 And, Your Honor, we asked -- even though our
16 deponents were truthful and accurate and honest about those
17 continued efforts, Your Honor, we asked the TCC about their own
18 efforts, about what they were doing during that time period.
19 Mr. Molton was deposed late last night. And this was another
20 effort -- another example, Your Honor, of this sort of sword
21 and shield use of the privilege. Because when we asked about
22 the TCC's efforts to continue to settle, to resolve the case
23 after the 30th of January, all of these privileges were
24 asserted, and Mr. Molton was instructed not to answer.
25 Here, the instructions, Judge, went beyond

1 attorney/client, attorney work product. They reached
2 mediation. Which as the Court will remember, I had actually
3 argued in opposition to Mr. Haas' deposition. And the Court
4 found, of course, that was not appropriate, and Mr. Haas sat
5 for a deposition.
6 But the TCC invoked that, and Mr. Molton didn't
7 answer questions. Settlement privilege was also invoked, and
8 an instruction not to answer was given.
9 But perhaps, most importantly to draw to the Court's
10 attention, and I think it was referenced earlier, was a common
11 interest with the United States Trustee that was invoked. And
12 here's some of the details on that, Your Honor.
13 In fact, this questioning, and Your Honor will see it
14 in the deposition, happened a number of times throughout the
15 deposition, so much so that Mr. Storner (phonetic) went back to
16 it at the end of the deposition to just confirm that, in fact,
17 counsel for Mr. Molton was asserting a common interest with the
18 United States Trustee's Office for the period of time after the
19 Third Circuit decision and up to and including the filing of
20 the second bankruptcy. And, again, as you'll see there,
21 Mr. Molton was instructed, maybe for the twelfth time, that
22 there was a common interest between two parties, the U.S.
23 Trustee and the TCC, co-litigants, and that there was going to
24 be an instruction not to answer the substance of communications
25 with the U.S. Trustee.

1 And, Your Honor, we also heard today some suggestions
2 that something improper was going on with Ms. Ellis, Your
3 Honor. And as the Court knows and as the Court instructed, all
4 parties continued to do what they could to resolve the case.
5 We have no idea about the discussions that went on between the
6 TCC and the FCR, because they similarly instructed Mr. Molton
7 not to answer those questions, Your Honor. We were complete
8 and truthful when those questions were asked of Mr. Kim,
9 Mr. Murdica, Mr. Haas.
10 And I would just remind the Court about the
11 endorsement that came from the TCC when Ms. Ellis was
12 appointed, how folks stood up here and sang her praises and
13 said what an important day it was for the first woman future
14 claims representative in the entire history of future claim
15 representatives in the United States, Your Honor. That the TCC
16 was, of course, in support of that.
17 And all of a sudden this morning, Your Honor, we --
18 and throughout the depositions, we have heard suggestive,
19 threatening questioning about something improper happening in
20 terms of dealings with the FCR. Your Honor, there is no basis
21 in the record, in the truth to suggest that. This is a team of
22 lawyers who were in favor of her just a few months ago, Your
23 Honor, that have now, all of a sudden, refused to answer
24 questions about their own discussions with her and are starting
25 to ask questions, Your Honor, and make suggestions that are

1 wholly inappropriate and, we believe, unsupported by the
2 record.
3 Your Honor, I want to talk a little bit about what
4 has been reinforced in this short window of discovery. And
5 I'll do it quickly, because this was the subject, as Your Honor
6 knows quite clearly, of the motion to dismiss hearing.
7 But our discovery over the last few days has only
8 reinforced what this Court found last year and what is the
9 truth. The tort system has failed the plaintiffs in this
10 litigation, Your Honor. This is a slide that we used in the
11 motion to dismiss hearing, and these facts are well familiar to
12 the Court.
13 If we just look at the cases in the MDL, almost
14 40,000 cases pending in the MDL at the time of our motion to
15 dismiss hearing last year. Only 1,000 of them even got to the
16 point of filling out what we call a plaintiff profile form.
17 Only 30 of those were selected for discovery work up, some
18 discrete depositions, Your Honor, and more involved written
19 discovery. Only six of them were selected to have expert
20 discovery and start getting ready for trials. And at the time
21 of the bankruptcy, Your Honor, even though the MDL had been in
22 existence for over five years, no cases had gone to trial at
23 all.
24 And that's not wholly unrepresentative of what things
25 looked like out in the larger state court system where the

1 state court system didn't have any more success, so to speak,
2 Your Honor, with getting cases through jury trials. At the
3 time of the bankruptcy filing, Your Honor, again almost, you
4 know, 40,000 cases pending everywhere.
5 Forty-six cases went to trial. Of those, only 38
6 went to an actual verdict. Of those, the overwhelming majority
7 were either won by defendants in front of a jury, were won by
8 defendants on appeal. A small handful of them remain on appeal
9 at the time of the bankruptcy filing. A handful of them were
10 resolved on appeal. But only two final plaintiff's verdicts
11 all the way through the appeal process were paid out and
12 finalized, Your Honor. And that would include the Ingham
13 verdicts that we spent so much time talking about in the motion
14 to dismiss hearing.
15 Your Honor saw these stats and know that post that
16 Ingham decision where that jury awarded almost $5 billion to 22
17 plaintiffs, the plaintiffs' bar went on a losing streak for
18 five years of ovarian cancer cases, a mistrial, a defense
19 verdict, and then four straight unanimous defense verdicts,
20 including in a multi-plaintiff case in the City of St. Louis.
21 And, Your Honor, we heard from Mr. Birchfield both in
22 court last week and through his press releases that he is
23 opposed to this deal, Your Honor. He doesn't think it's enough
24 money. And he was here last week and showed the Court a chart
25 with the medical expenses that he thinks are sort of the

1 average for his cases.
2 But what I think is important and what we talked to
3 Mr. Birchfield about a little bit in his deposition and what
4 was left out of this slide, Your Honor, is that the plaintiffs
5 in each one of these cases received zero dollars. And that's
6 either because a jury returned a defense verdict or because the
7 case was reversed on appeal. And so while the slide was used,
8 of course, for the point of medical expenses that were being
9 asked of a jury, the reality is the majority of those juries
10 and appellate -- the totality of the jury and the appellate
11 courts came back with zero dollars, Your Honor.
12 THE COURT: So doesn't that go to what Judge Ambro
13 was saying in the Third Circuit that the -- I should have taken
14 into account these verdicts and potential settlements in
15 calculating distress?
16 MS. BROWN: Well, Your Honor, I think the issue is we
17 could win 50 trials in a row and then get hit with an Ingham
18 verdict. The problem with the tort system is the lottery-like
19 jury verdicts. Two issues actually, Judge. One is the
20 lottery-like verdicts where you could go on for ten years --
21 even if you only had one Ingham verdict for ten years -- we
22 submitted that information to the Court.
23 But also, Your Honor, it's the cost of defense. It's
24 the cost of -- my colleagues agree. It's the cost of defense,
25 Your Honor, of just paying lawyers like me and a lot of other

1 lawyers like me to do all the discovery in these cases, to try
2 these cases that are going on all at the same time. The volume
3 is enormous.
4 And the testimony was that those costs just to defend
5 could reach $190 billion. And that's money that's going to no
6 claimant at all. I mean, that's just the side cost to lawyers
7 to be able to get the cases to a place where we can defend
8 ourselves. So there's an enormous waste of money in the tort
9 system if what your objective is, is to compensate plaintiffs.
10 And the risk of financial distress, Your Honor, comes not just
11 from an Ingham-type verdict but from the cost of having lawyers
12 defend the cases.
13 And so, Your Honor, these are just a little more
14 details on the cases and the verdicts that we went through with
15 Mr. Birchfield. But, you know, Mr. Birchfield, to his absolute
16 credit, was perfectly honest with us and was asked, you know,
17 with respect to the 11,000 or so claims that Beasley Allen
18 represents, they have tried only 11 cases. They haven't
19 settled a case. And they haven't recovered a dime for
20 claimants in the last ten years.
21 And that is no disrespect, Your Honor, to
22 Mr. Birchfield or to his firm. I have litigated against these
23 folks, and they are good lawyers. The science does not support
24 these claims, Your Honor. And when the truth gets to juries
25 around the country, they are resoundingly rejecting these

1 claims.
2 And the Beasley Allen inventory is a perfect example
3 of that, Your Honor. Ten years, 11 cases, small number -- I'd
4 say -- we did the math yesterday. It's something like .000009
5 percent of the cases got to a jury. And when they did, every
6 single one of those women went home with zero dollars.
7 And, Your Honor, the concern -- and we've raised it
8 in the past. The concern is that while the tort system is not
9 benefitting the plaintiffs themselves, there is a perverse
10 incentive for the lawyers to want to remain in the tort system.
11 And in addition, you know, to the percentage of
12 recovery they can get on a lottery-type verdict, there is
13 something called a common benefit fund. And one was created in
14 the multi-district litigation, Your Honor. And it doesn't
15 exist, of course, in bankruptcy. But in the MDL here in New
16 Jersey, a common benefit fund was created so that if you are
17 doing work for the benefit of the entire litigation, you have
18 the ability to essentially tax everybody else's settlements or
19 verdicts or resolutions.
20 The percentage that the common benefit fund was
21 established here in New Jersey was 12 percent, Your Honor. It
22 changed a little bit over time, but it started at 12 percent.
23 And Mr. Birchfield agreed that given their leadership role,
24 Beasley Allen stood to recover the bulk of that 12 percent tax
25 on any settlements or recovery in the MDL.

And so if you just assume for a moment, Judge, that -- you know, take the $6.5 billion that is allocated to the ovarian claims in the term sheet here, and let's say that was a tort system recovery. In bankruptcy, that $6.5 billion is going to the claimants with the, you know, attorney's fees coming out of it. But in the tort system, the $6.5 billion is being sort of taxed twice to the benefit of the lawyers. There's fees coming out of it, and then there's a common benefit fund, 12 percent tax, that here would amount to $780 million.

And we talked about this perverse incentive in the past, but it's very hard to look at these kind of structural processes that exist in the tort system like the common benefit fund and think that this is something that is not incentivizing lawyers to want to stay there as opposed to resolve claims in a bankruptcy with a historic settlement number on the table.

Mr. Gordon touched on this a little bit before, but we really have here -- and you've seen it on display here today, Judge. You know, this is a situation of the tail wagging the dog in terms of some of the most vocal opponents in this case. Just take some of the folks, including Mr. Satterley -- he won't mind if I pick on him a little bit, Judge.

MR. SATTERLEY: Don't worry. I'll pick back.

MS. BROWN: I know. But he's here, Judge, very

1 loudly and very vocally opposing this and taking a lot of time
2 up. You know, no disrespect. But he has 13 filed claims, Your
3 Honor. I mean, we are talking about numbers, if you look at
4 Mr. Murdica's testimony, some of the information Mr. Gordon put
5 up, we're looking at, you know, 80 -- maybe 80,000, 90,000
6 claimants or so.
7 THE COURT: But these claims listed, are they
8 primarily meso claims?
9 MS. BROWN: Correct, Your Honor. Mr. Satterley
10 represents, as far as I know on the filed claims, exclusively
11 mesothelioma. Mr. Konigsberg, mesothelioma, 100. I'm sorry.
12 Mr. Maimon from Levy Konigsberg and Mr. Block also from the
13 same firm.
14 And so this really is a situation -- we have
15 Mr. Birchfield, the leadership of the MDL. And there are, you
16 know, sort of issues we discussed with that. And then we have
17 a small minority of claims that are voicing enormous
18 opposition, Your Honor.
19 We believe, Your Honor, that at this point in time --
20 you saw Mr. Gordon's timeline of events. We are so close,
21 Judge. Mr. Gordon's timeline has a plan being proposed in just
22 a few weeks in the middle of May.
23 Our focus right now should be on finalizing a plan
24 and getting a plan to go through all of the appropriate
25 channels so that we can get it out for a vote. We have a short

window of time to do this. We've set forth the self-imposed deadline as close to May 14th as we can get, Your Honor.

And to touch briefly on the issue that we were before Your Honor with just last week, this issue of lifting the stay for one of Mr. Satterley's 13 clients at a time when the debtor should be singularly focused on getting the Court this plan. You have to consider stats like this. Mr. Satterley's cases, you will not be surprised, Your Honor, are some of the longest cases in this litigation. The average ovarian cancer trial is about 25 days. Mr. Satterley more than doubles that, most of those cases in Alameda County, Your Honor, where -- California where most of the judges do four days a week, 9 to 2.

These trials go on for an enormous amount of time. And so if you just look at it this way, Your Honor, the Valadez trial that Mr. Satterley is asking for the stay to be lifted would still be going well past the time period that we are targeting trying to finalize this plan and get it to Your Honor.

I want to also respond briefly, Your Honor, to what I heard was the Court's suggestion about a potential way to allow some discovery to continue in these cases short of trials continuing. And having been on the front line of these discovery efforts for the past five years, I want to put on the record and give the Court some statistics about what really goes on when the idea of something like a corporate

1 representative deposition or a company witness deposition is
2 made available.
3 Here are some statistics of what has happened in our
4 litigation, Your Honor, over the past five or so years. One
5 hundred and five Johnson & Johnson or JJCI -- and I think these
6 stats even include the most recent LTL witness -- have been
7 deposed. One hundred and five individuals from one of the
8 company defendants.
9 Fifty corporate representatives. And Your Honor, of
10 course, well knows what that means is those individuals had to
11 be educated on a list of sometimes 100 topics. And there's the
12 stat more than 1,000 topics were identified. Forty-seven
13 different witnesses. And you see, you know, it's like a
14 third -- more than a third of a year of testimony and nearly
15 40,000 pages of testimony.
16 Specifically, when you start thinking about the
17 Valadez case, Your Honor, it's important to know the Kazan
18 McClain firm has been particularly aggressive and robust in --
19 MR. SATTERLEY: Your Honor, I want to object. First
20 of all, none of this is in the record. This is so far outside
21 the record. I don't -- we have time limits, and Ms. Brown is
22 now -- she's going to go way out of the record in a little bit,
23 because I've looked at her sides.
24 There needs to be some rules of evidence,
25 something -- we need to have some federal rules of evidence and

some arguments based upon the evidence. Otherwise, I'm going to need hours to respond to all of this stuff. So I object to this, Your Honor.

THE COURT: All right.

MS. BROWN: Your Honor, I'm responding in three slides to something that the Court raised with us on one of the meet and confer -- the discovery calls we had with the Court. And it fits squarely in connection with this motion, Your Honor.

MR. SATTERLEY: But --

MS. BROWN: I mean, are moving -- can I just finish, please? We are moving, Your Honor, for all of the reasons articulated by Mr. Gordon and myself, for the stay to be extended so that all of discovery and all of the trials are stopped, and we can focus on what should be the singular priority is getting this plan out to a vote.

But we hear the Court. We hear the Court that you may be inclined to allow some portion of discovery to go forward, and this information is critical as the Court tries to weigh whether or not that is going to harm the debtor and potentially put a reorganization plan in jeopardy.

MR. SATTERLEY: If I may respond, please?

MS. BROWN: And so I have two more slides on this issue, Your Honor.

THE COURT: Mr. Satterley?

MS. BROWN: Yes. First of all, there's -- most of the remaining slides are outside the record. This slide right here, she already went past -- 105 company witnesses, 50 corporate representatives, 1,000 topics, 47 different -- it's so far outside the record. I object --

THE COURT: Mr. Satterley, this -- these slides aren't part of the record. This is argument. I wouldn't have even --

MR. SATTERLEY: But argument's got to be --

THE COURT: You just repeated them again to me. I was already past them.

MR. SATTERLEY: I know. But argument has got to be based upon the record, Your Honor. And a lot of this -- I've sat by and listened to a lot of argument not based upon the record, just attorney argument. And so I want to object for the record. I know it's late in the day, but I think fairness to my clients require that Your Honor's decision be based upon actual evidence and not just argument.

THE COURT: All right. Please continue. I don't need to see the slides. Just make the arguments --

MS. BROWN: Okay.

THE COURT: -- as far as the -- I assume you're focusing on the merits of the automatic stay with respect to the general -- my comments as to my initial inclinations.

MS. BROWN: Exactly right, Your Honor. And in the

interest of efficiency, I was also attempting to do the second part of the Valadez argument which I'll -- I've sort of folded into one section here. And I think it squarely fits in both, Your Honor, because these -- we talked last week about the corporate representative deposition notices that Mr. Satterley issued in the Valadez case and how they went squarely to issues in the bankruptcy, LTL's ability to pay, who LTL is, LTL's history.

And this really gives the Court a flavor for how broad those categories can be. This (indiscernible) notice meant that Johnson & Johnson and JJCI had to take an individual person and educate them on a 110 categories for depositions that in some cases, Your Honor, lasted four, five, even six days.

And when you look at the categories of topics that are requested, they are always duplicative. These are two notices a month -- or a few weeks apart that --

THE COURT: Move past it. I can't even read it. It's too small.

MS. BROWN: Okay. Sorry, Judge. That are identical. The questioning in a corporate representative deposition, Your Honor, we just gave you a flavor here, oftentimes is well outside of the notice. And we are required -- the attention -- to the extent the Court would allow corporate representative depositions to move forward in a short time period, Your Honor,

they're not one or two-hour depositions. They are multi-day depositions with a hundred topics that someone has to be educated on with reams of documents that are, you know, probably now back to being done in person but for a while we were doing them on Zoom. It is an enormous undertaking, Your Honor.

Very quickly, Judge, I want to touch on just two points that have come up in the opposition -- the reply papers in the Valadez case. One of the discovery issues, Your Honor, that I raised with the Court last week that remains to be completed before we could ever even get to a trial in Valadez is a ruling on our motion to compel.

We talked about the pericardial mesothelioma, the most rare mesothelioma that Mr. Emory (sic) Valadez has, how only 15 people a year get that disease, and the efforts of the Stanford physicians to get Emory genetically tested. Unbeknownst to me as I stood before the Court last week but known to Mr. Satterley is that Emory was finally recently genetically tested at Stanford. Very limited panel, Your Honor. And it revealed a genetic mutation. It revealed a RAD51C variant of unknown significance, Your Honor. That is critical to our experts in understanding the genetic reasons or the familial cancer syndrome that Emory Valadez likely has.

And plaintiffs were absolutely dishonest with the Court in their papers, Your Honor, when they suggested there is

1 no scientific literature associating this mutation with
2 mesothelioma, because the evidence is actually just the
3 opposite, Your Honor. This is a significant gene in malignant
4 mesothelioma.
5 And so one of the big issues in the Valadez case that
6 would take an enormous amount of time and briefing would be
7 whether or not they're still going to stand on preventing us of
8 getting our own genetic testing, whether our experts can now
9 opine on this significant mutation as it relates to the type of
10 mesothelioma that Emory Valadez has.
11 Two more slides, Your Honor, and I will sit down.
12 And I appreciate the Court's indulgence in listening to a
13 number of these points that I'm addressing here.
14 But in addition to apparently undergoing genetic
15 testing, something else happened after we were with Your Honor
16 just last week. Emory Valadez -- Emory Hernandez is another
17 name they go by -- the evening after the hearing when I showed
18 the Court the picture of Emory, removed all Facebook posts,
19 completely shut down all social media and took everything down.
20 And I wonder, Your Honor, why that was. When I
21 looked back at the information that was shared with the world
22 through social media from this particular individual, I wonder
23 why it was that after the April 11th hearing Emory decided to
24 make -- to take all of that away. And I think, Your Honor, it
25 might be this.

1 Mr. Satterley stood up that day in court in fierce
2 opposition to a potential resolution, in strong advocacy for
3 proceeding with a trial for one of his 13 plaintiffs and he
4 said for most people suffering and dying of cancer, it's not
5 about the money; most of the time it's about justice. And just
6 a few weeks ago, what Emory Valadez posted on February 27th at
7 a time where we were issuing deposition notices in the Valadez
8 case was that I want money, not feelings.
9 And what I would suggest to the Court is that we need
10 to let the claimants vote, Your Honor, that the only people we
11 have heard from advocating for jury trials are people who stand
12 to benefit from those jury trials, Your Honor. When we look at
13 the record of what actual claimants have got, actual claimants
14 who want and need and whose family needs compensation, those
15 folks have not been compensated through the tort system, Your
16 Honor.
17 And so I echo Mr. Gordon's priority on getting this
18 plan done in a short period of time and putting it out to the
19 claimants so that if people would prefer to take compensation
20 over decades and decades in the tort system with an enormous
21 risk that they would go home with nothing, it's their choice to
22 do so.
23 And so, Your Honor, for reasons that I articulated
24 last week, the stay should not be lifted for one out of tens of
25 thousands of claimants. If the Court is inclined to allow any

limited discovery, we would ask for the opportunity to brief that, Your Honor, because there are particular areas that we believe are particularly burdensome to the debtor, and we would request the opportunity to further address that with the Court. Thanks very much, Judge.

THE COURT: All right. Thank you.

Hold on one second, folks. Is there anyone else who wishes to speak to the Court in favor of the injunctions?

UNIDENTIFIED SPEAKER: The injunctions, did Your Honor say?

THE COURT: In favor of continuing the restraints in the injunctions.

UNIDENTIFIED SPEAKER: Oh, okay.

THE COURT: In other words, supporting the debtor.

MR. WATTS: Your Honor, if I could take four minutes.

THE COURT: Okay.

MR. WATTS: I do not intent to become the ham and cheese between these two, so let me just do this. I was shocked by the difference between the tone of the informational brief and what actually came out in the depositions, and I just want to call out some things you haven't heard.

Number one, the cross-examination that the debtor committed fraud by manipulating the list of the counsel, I will tell you that two members of the TCC and LTL 1 support the deal and did not apply for the TCC in LTL 2. Instead, I'm just

notifying you that those of us who support the plan are organizing an ad hoc committee which we will tell the Court about.

Number two, there was a comment today about a "alleged negotiation" that they couldn't pursue because their claims are privileged. I think you saw in the video. I was at my ranch yesterday. I was by myself. I did not have a lawyer. I sat for what was supposed to be two hours, then became four. And I kept answering questions until it was four hours and 27 minutes and did not refuse to answer one.

So that's something I think the Court needs to understand. There was no sword by this person who negotiated the deal.

Number three, the innuendo that the Court is going to see in the depositions with respect to how these negotiations occurred, you're going to hear all sorts of innuendo against Mr. Murdica who likes to fish on fishing yachts and every once in a while does it with lawyers. Turns out Mr. Birchfield does as well. As an officer of the court, I'll tell you that this was negotiated in the Barnes & Thornborough (sic) conference room, and I've never been on a fishing yacht with Mr. Murdica.

Off the record, you heard a comment about something that happened to me 13 years ago. I'm happy to tell you all about it. There is a gentleman in federal prison, and I am not. I would just caution counsel that it's real easy to ring

1 sanctimonious about let Mr. Valadez go because of the merits of
2 jury verdicts under the Seventh Amendment, but it would be
3 unfortunate for that same mouth to desecrate verdicts under the
4 Sixth.
5 Now, with respect to the settlement process, there
6 was no attempt to hide this from the TCC. There were SEC
7 problems with it getting out, and so there was a decision that
8 I recommended that was made to make people sign an NDA before
9 they could hear about what was going on. I could not get
10 Mr. Birchfield to do that. I don't criticize him for it. But
11 that's why it was there.
12 One more comment with respect to the settlement and
13 the Birchfield deposition. In addition to the 3.25 billion
14 that was pitched back in 2020 that I was familiar with at the
15 time, I will tell you, and you know a lot about the mediation
16 that your mediators did last summer, that this deal that was
17 negotiated was materially better than whatever disconnect these
18 two gentlemen had.
19 I'm sitting in the negotiations. There was very
20 clearly a disconnect between one side that thought it was worth
21 a certain amount of money and the other side that thought they
22 could pay it over time. This negotiation got that net present
23 value up front where 12.08 billion was paid over time with a
24 net present value of $8.9 billion.
25 The payments were accelerated under the first year,

one at 30 days, one after a year, to get 5.9 billion paid so that all the existings could be paid.

MR. SATTERLEY: Your Honor, I want to object to all this hearsay.

MR. WATTS: This is in the record.

MR. SATTERLEY: Wait a second. This --

THE COURT: Wait.

MR. SATTERLEY: I just want to object to all this hearsay. And, obviously, he was deposed yesterday. I asked him a lot of questions. But I think a lot of this is hearsay within hearsay, double hearsay, triple hearsay. I just want to make that record.

THE COURT: Well, sustained. Just --

MR. WATTS: It's going to be in the deposition.

THE COURT: -- speak to arguments --

MR. WATTS: Sure. It's --

THE COURT: -- not other testimony.

MR. WATTS: The point is, is the testimony you're going to see is going to show this improvement that occurred during this. And, of course, we'll go from there.

You heard today about the TCC supports the plan. Until before Friday, the two members of the TCC that have more cases than the rest of them have agreed to support the plan. So what's left of the TCC doesn't support the plan. But when you add up all the votes, they are in favor of the plan.

1 Lastly, with respect to this argument that you heard
2 last week and you heard again this week that it's lawyers
3 supporting the plan and not their clients, I would just
4 reiterate the discussion there. But I've been through this out
5 in California with respect to the solicitation rules, and there
6 are very clear guidelines that I don't need to educate the
7 Court on with respect to what has to happen. And so that's why
8 this process is being done so that we comply with Rule 3017(d),
9 11 U.S.C. Section 1125(b), Rule 3017(c), 11 U.S.C. Section
10 1126(b).
11 Lastly, deduping. It has been done before.
12 Mr. Birchfield recommended it. We sent Excels. They are
13 deduping. That's one.
14 Number two, with respect to who should be voting,
15 there's very robust discussion in all of these depositions as
16 to the quality of Mr. Birchfield's docket, as to the process
17 that my docket is underway and Mr. Pulaski's and the like.
18 That's a decision for another day.
19 What I would tell the Court is this. What we tried
20 to do and what I'm encouraging the Court is it was not lost on
21 me the heat that was coming my way when I stood up and said we
22 were negotiating this. But part of what we got is there shall
23 be plan documents by May the 14th so this Court can consider
24 the motions and what's going to be appropriate quickly so we
25 can get a vote done.

Out in California four years ago, the voting took 45 days. I very much commend to the Court the timeline that was proposed that we should be done with this vote by the end of the summer. And then you can have final confirmation motions and hear all the evidence if the vote goes the way I think the evidence most certainly is going to show that it does.

So I appreciate the Court's time. Thank you.

THE COURT: Thank you, Mr. Watts.

All right. The Court needs, and probably others, to take ten minutes. And then we'll continue. I assume there's --

(Recess at 5:23 p.m./Reconvened at 5:35 p.m.)

THE COURT: I'm ready. Kiya, are you ready?

THE CLERK: Yes, Your Honor.

THE COURT: Okay. Sounds like, feels like about 35 minutes.

MR. JONAS: 32. Your Honor, Jeff Jonas from Brown Rudnick for the official committee of Talc claimants. I just want to say, Your Honor, it has been really a difficult week I know for everybody on both sides of the aisle but I just want to thank my co-counsels obviously from Brown Rudnick, Mr. Molton and Mr. Winograd, also Susan Sieger-Grimm was here with us, Otterbourg, Melanie Cyganowski, Richard Haddad and David Castleman who's here. Of course, Mr. Stolz and Mr. John Massey, all proposed counsel for the official committee of Talc

1 claimants and I also want to thank our members, Your Honor, who
2 in very short order have already had meetings and have already
3 started to put the time that's necessary in and so I want to
4 thank all those parties, Your Honor.
5 With that, Your Honor, before I get to the slides, I
6 just wanted to give a quick few responses to some of what I
7 heard on the other side that aren't covered by the slides. And
8 first, Your Honor, I just have to say because it seems so apt
9 that this truly is a case of the emperor not wearing any
10 clothes. You've heard the testimony. You've heard, and let me
11 tell you why that it is, Your Honor. You know and this goes
12 back to what Mr. Molton has been criticized for saying that
13 there's something rotten and it just doesn't smell right.
14 And I agree with that, Your Honor. We've had a lot
15 of talk from Mr. Gordon about rushing to a plan and letting
16 people vote and I'll get to that of course, Your Honor. But at
17 its core, and I think rather than speeches, the evidence speaks
18 to it. You heard Mr. Kim, and you'll form your own view as to
19 what the facts are but to me, it was crystal clear that this
20 new bankruptcy case is based on a fraud and it proves one of
21 the things that we complained about throughout LTL 1 which was
22 that this debtor is controlled by Johnson & Johnson. This
23 debtor does Johnson & Johnson's bidding.
24 And the reason I say there's a fraud here is because,
25 and it's so incredibly contorted, that that's why I say the

1 emperor isn't wearing any clothes, because they had to contort
2 themselves to get to where we are today. They had to rely,
3 they had to find a way and rely on a theory, I don't know when
4 the last time you had a frustration of purpose case, Your
5 Honor. I've never had one. So unlike Mr. Kim when I read the
6 Third Circuit's opinion it frankly didn't occur to me that my
7 God, the whole funding agreement is void or voidable to use
8 their term.
9 So what really happened? You heard it. They got
10 together with their masters, the LTL got together with their
11 masters at J&J and they said how do we fix this? We're J&J.
12 We're exposed for 60 billion bucks now outside of bankruptcy
13 and to use what they would probably say, we've got these crazy
14 tort lawyers coming after us and we're hanging fire on 60
15 billion bucks. So they said what do we do? Ah, frustration of
16 purpose. See that footnote in that decision by the Third
17 Circuit which found that the first case was filed in bad faith.
18 On that basis, we can void the agreement and reduce Johnson &
19 Johnson's exposure by $50 billion. That's what you heard.
20 And that Your Honor, I don't think we need anymore
21 than that. We can talk about votes and plans. I'll tell you
22 why I think they're doing that. I mean it's obvious. But
23 that's it. If you find that in fact what I'm saying is correct
24 which I think the evidence supports, I think you should sua
25 sponte dismiss the case right now. We asked you to do that

1 last time and you said I don't have any evidence.
2 Okay, you've got all the evidence you need, Your
3 Honor. We had a debtor who had a fiduciary duty to us and
4 frankly, respectfully, Your Honor, not only did they put one
5 over on us, they put one over on you. They used the cover of
6 the bankruptcy process while under the cover of the bankruptcy
7 process. As a debtor, they were planning this fraud. They had
8 it all lined up. They negotiated the termination and a new
9 funding agreement. They had the petition ready. And within
10 two hours of the dismissal, bang, they're back in and here we
11 are.
12 Why? Not only did they want to eliminate Johnson &
13 Johnson's massive exposure, they wanted to do something else.
14 They didn't give up on trying to "beat the tort system" or beat
15 the tort lawyers. They said aha, we'll go, well, I'll get to
16 that. We'll give it another shot. Let's see if we can -- in
17 my opinion they're trying to outrun respectfully if you don't
18 do as we ask, and either dismiss the case or deny the PI, even
19 if you deny the PI but don't dismiss the case, they're trying
20 to outrun the appellate process. Again, respectfully, Your
21 Honor, we believe no matter, if you don't do as we suggest, we
22 think we're going to win on appeal. Because we think the Third
23 Circuit will be outraged, outraged by what happened here. And
24 if that's the case, we'll win but it will be too late. They're
25 trying to outrun them. That's why they've got this great time

1 table, May, June, they're going to be out of bankruptcy.
2 They'll let people vote. That doesn't work.
3 First of all, you can't outrun your fraud and you
4 shouldn't be able to outrun the appellate system. And so I
5 would just say, Your Honor, and I do want to get to the slides
6 because the way we've had this case on fast, it's important
7 that I get the record in through some of the slides. But just
8 sitting here and thinking about it, I just, you know we heard
9 all about lots of different things. Mr. Molton, my partner is
10 not answering questions and Mr. Birchfield, his cases haven't
11 been successful. What does that got to do with anything?
12 We had the debtor in the box answering questions, has
13 proven a record, on the basis of which this case should be
14 dismissed right now. And if you don't dismiss the case, you
15 should absolutely not give a PI because I don't think without
16 good faith for starters, I don't think a PI should be granted.
17 And if they want to try this, let them run for luck, but they
18 shouldn't get the benefit of a PI.
19 So that's my first kind of off the cuff comment.
20 Second, Your Honor, they made a big deal about your order
21 encouraged the parties to continue their settlement efforts. I
22 thought that was funny. Because what they interpret that to
23 mean, not to continue their settlement efforts with all the
24 folks that were spending lots of time trying to settle with
25 them, they went out and found some new folks who allegedly have

1 all kind of claims. I'm not going to disparage them.
2 And when I say allegedly, it's not in an effort to
3 disparage, I don't know. All they are, are names on a piece of
4 paper right now. Even they don't know. They didn't talk to
5 their clients about this plan. They don't have, some of them
6 don't have medical records. They don't have cases. They're
7 just claims.
8 So whatever they are, they are. It's not for me to
9 cast dispersions on them. But the point is they went out, they
10 didn't follow your order to continue the settlement efforts.
11 They went out and found a new paradigm. They went out and
12 found some people and said wow, we'll do it and run around
13 those other people. Those people have been too tough for us.
14 So I don't think that qualifies under your order is what was
15 intended.
16 Third, Your Honor, again the arrogance of J&J is just
17 incredible. Not only everything we've heard today, we heard on
18 one of Mr. Gordon's slide, it's a one time offer. Never going
19 to get better. Take it or lose it. That's not the way the
20 system is supposed to work, Your Honor. It's not the way the
21 tort system is supposed to work. It's not the way the
22 bankruptcy system is supposed to work.
23 Four, Your Honor, it's a little bit of deja vu from
24 when I was here in LTL 1 and I know, well, I shouldn't say I
25 know, I think you always try to do the right thing and I think

you would like to see the right thing get done here and you may believe that the right thing is to get some money to some people. But please, Your Honor, the ends can't justify the means. They can't.

If you find, as I hope you will and I think you should that there was a fundamental fraud here, a breach of fiduciary duties, they pulled one over on us. They pulled one over on you. If you find that, it doesn't matter what they're promising. They can pay all the money in the world, it won't fix the fraud that happened here.

And last, Your Honor, as I said, and then I'll go to my slides, there has been a whole bunch of slides, lots of slides about my partner, Mr. Molton and Mr. Birchfield and ad hominem attacks against them. I just, I don't think it's relevant. I don't think it has anything to do with what we're here for. And with that, Your Honor, let me turn to my slides.

First, Your Honor, I want to talk about the likelihood of success on the merits and the lack of financial distress. You heard here, you heard testimony that LTL 2 is not insolvent. This is another pin that Mr. Kim dances on the head of. He said we're not insolvent but we're in financial distress. They can't be insolvent because then there would be even more clear fraudulent transfer so they don't want to be insolvent but they've got to be in financial distress.

So even with the termination of the 2021 funding

1 agreement, we know based on the testimony that LTL has not been
2 solvent. Go to the next slide. As to financial distress, LTL
3 is actually better positioned now then Old JJCI. That's what
4 Mr. Kim said. The question was, is it true today, that the
5 debtor, LTL has at least the same if not greater ability to
6 fund Talc related claims and other liabilities as Old JJCI had
7 before the prior restructuring. I believe it is. So I don't
8 think they've improved their argument that they're now in
9 financial distress.
10 Next slide. And they still have at least as you
11 heard the testimony, at least $30 billion available to pay Talc
12 claims. So again, there's no immediacy, no urgency here and
13 LTL still hasn't shown any difference in the tort system
14 litigation since the last time. Mr. Kim, because it has
15 sufficient funds to pay off its debts currently as they come
16 due. And the says, I would include even prior to our, we
17 disagree with the Third Circuit on whether it was in financial
18 distress during LTL 1.
19 THE COURT: Mr. Jonas, can I ask you a question?
20 MR. JONAS: Please, Your Honor.
21 THE COURT: Because I had trouble reconciling this in
22 LTL 1 and the issue doesn't go away. I'm reading from the
23 committee's brief and it speaks to the settlement being
24 illusory. The $8.9 billion payment isn't enough when you take
25 into account the billions that are due to governmental units on

the Deceptive Trade Practices claims. The billions, and I'm using your language or your firm language, the billions that are due for indemnification, the billions that are due on copays to the insurance claims. Lot of billions are thrown here that aren't covered by the 8.9.

MR. JONAS: Uh-hum.

THE COURT: So how do, and the committee and others make arguments that there's no financial distress and there has been huge fraudulent transfer.

MR. JONAS: Uh-hum.

THE COURT: It sounds like financial distress when you hear all these billions that are being thrown in your own words about beyond the 8.9 billion. The billions for mesos, the billions for other ovarian, the billions of estate, the billions on insurance.

MR. JONAS: Sure. I can respond to that.

THE COURT: So it's either these are real potential liabilities which suggest distress or they're not and it's much lower and then maybe there's not an insolvency. How is it reconciled?

MR. JONAS: Sure. Let me, I think there's two responses to that, Your Honor. First, I don't think you can in this context any way, I don't think, there are separate arguments here, okay. First there's the fraudulent transfer argument and second there's somewhat separately a financial

1 distress argument. But I think they're related in the
2 following way which is I don't think you can commit a
3 fraudulent act or commit a fraudulent transfer and say oh my
4 God, now we're in financial distress. And so then you begin to
5 use, and I'll just play this out, you say well, now they don't
6 have 60 billion.
7 Now, they only have 30 billion and if I add up a
8 bunch of billions that you're throwing at me, maybe it's pick a
9 number, 15, 20 billion and therefore now they're in financial
10 distress. What I would say to that is, it's, you've turned it
11 on its head and I would argue an improper way because you
12 can't, you can't create financial distress in a fraudulent way.
13 So I would argue, first of all, I'm not sure that the Third
14 Circuit Court of Appeals would accept that if in fact the total
15 claims are 15 billion and they have the wherewithal of 30
16 billion, I don't know if that's financial distress. Frankly,
17 Your Honor, I argue it's probably not.
18 And so that, I just I think that's the way you have
19 to look at it. I don't think you can, it's unfair to match
20 whatever these claims might be --
21 THE COURT: Well, just seems to be an inconsistency
22 to argue that there's no distress because of the wherewithal of
23 the company but in a couple of paragraphs later suggest that
24 the 8.9 billion can't approach covering the liabilities that
25 are out there in the billions.

MR. JONAS: Well, --

THE COURT: And I don't know and I agree, I respect the Third Circuit opinion. It's not, if a company is worth 30 billion on paper and it owes 15 billion and has to write a check, not every company can do that without liquidating. Is that distress? We all know there are different situations. Book value isn't the only way of looking at it.

MR. JONAS: Yeah, I agree. I guess what I would say to that, Your Honor, is, I don't want to say don't put too much weight on what we said in our papers but we were trying to make a point which is they're extolling the virtues of an $8.9 billion settlement and I think the point we were trying to make is that this isn't just to settle the OC claims, which at one point in time in ancient history we were talking about.

There's a lot more here. This settlement gets them off the hook for everything now, futures, mesos, OC's, et cetera, et cetera, states, there was, and again I'm not trying to put on evidence as far as I know, in all the prior discussions, I don't think the states ever were kind of wrapped into a settlement number at least in the prior. So the point we were trying to make, Your Honor, is don't be fooled by an $8.9 billion number that the biggest amount ever funded to a trust in history, yadda, yadda, yadda. The point is there's a lot, you've got to look under the hood a little bit. And yes, there's more, you know there's more there. I can't, and I'm

not here to tell you exactly what that number is and I'm not here to necessarily say as against $30 billion that's evidence of financial distress.

I think it's a fundamentally unfair inquiry to use the 30 billion when they got there by committing, you know a fraudulent act. So that's how I would respond to that, Your Honor.

THE COURT: All right, fair enough.

MR. JONAS: Mike, can we go to slide eight?

MR. WINOGRAD: Sure.

MR. JONAS: On this point exactly, Your Honor, LTL failed to manufacture financial distress and it's still not in financial distress and you don't have to believe me. So I think we have their witness that answers your question where he was asked, this is the CFO, Mr. Dickinson, can you personally identify any financial consequence to LTL from terminating the 2021 funding agreement, yes or no. No, I cannot. Next question, Mr. Dickinson, as the chief financial officer of LTL, can you identify anything that was different about LTL's financial condition on April 3rd as compared to April 4th? I cannot.

So at least the CFO is telling us he doesn't think they're in financial distress or worse off. That's what the evidence shows. Next slide. Actually, let's go to 10, Mike. I won't speak to the slide exactly, Your Honor. I'll just say

this. We don't believe and I think the evidence now shows that they still setting everything else aside, they still have not met the requirement per the Third Circuit of being in financial distress independent of everything else.

Slide 11, Mike and the next one. Your Honor, this goes to my kind of fundamental point that I freelanced with at the beginning. They cannot create subject matter jurisdiction. And we quote a number of cases here that go to this point. They, they cannot manufacture subject matter jurisdiction by engaging in fraud, that's, and I've tried to back up my comments if you will with a little bit of law including combustion engineering where the Third Circuit rejected any suggestion that a debtor could create subject matter jurisdiction by agreement.

Next slide 13. Your Honor, termination of the 2021 funding agreement is avoidable as a fraudulent transfer. They've admitted that intent of terminating the 2021 funding agreement was to create financial distress, trying to find a basis in which to be before this Court. Mr. Kim, you'll see in the last comment in his declaration, debtor believes its prefiling financial condition is sufficiently distressed to satisfy the standard established by the Third Circuit and obviously that was the result of terminating the first funding agreement.

Next slide. Termination of the 2021 funding

1 agreement again is avoidable because these are a couple
2 examples where at least, at least somewhat prior to today,
3 J&J's counsel refused to answer questions on this topic
4 claiming privilege. Mr. Haas was asked when did you first
5 obtain any knowledge that J&J and LTL were going to terminate
6 the '21 funding agreement. Ms. Vonn (phonetic) gave an
7 instruction. He himself said yeah, that calls for an attorney
8 client privilege information and my role as litigation counsel
9 of J&J so it's not an appropriate inquiry.
10 Similarly, later on, Mr. Haas, are you aware, yes or
11 no, of whether J&J and LTL agreed to terminate the 2021 funding
12 agreement while the first LTL bankruptcy was still pending. I
13 object privilege instruction not to answer. Again, Your Honor,
14 we really have, I think we have enough facts to conclude my, to
15 reach my summary of what I think happened but we have very
16 little facts.
17 My first question to Mr. Kim at his deposition was
18 did J&J call you and say they were going to void the agreement?
19 Of course I didn't get an answer. He says he came up, it's
20 like the gang that can't shoot straight. He says he came up
21 with the idea. Well, why would you call your counterparty and
22 suggest that the agreement is voidable? I have no idea. Do we
23 have an answer? No answer, none at all.
24 Your Honor -- slide 15, Mike. Objectively,
25 termination of the '21 funding agreement is bad for LTL and

1 it's good for J&J. But again, and I think the answer to that
2 is why? Well, you had lawyers on both sides of the
3 transaction. Mr. Haas', J&J lead litigation counsel, and he
4 was on both sides of the transaction. He says, when he was
5 asked, sir, do you represent at this time in any capacity LTL?
6 Of course I do. They're a subsidiary of Johnson & Johnson,
7 wholly owned. Well, sure if you have lawyers on both side of
8 the transaction, I can surmise what's going to happen.
9 Later on, you'll see on the left hand side, Ms. Brown
10 asserted well, he has a common interest with LTL. Common
11 interest between LTL and J&J. It's interesting, you see on my
12 next slide before I even heard the testimony of Mr. Kim, I
13 used, I used the analogy LTL was an empty chair with respect to
14 the restructuring. J&J negotiated on both sides. Mr. Kim used
15 the word faceless. He said well, when you were asked about who
16 was negotiating for LTL, on the PSA agreements, he said we were
17 faceless because all that was done by J&J or J&J's lawyer.
18 And that's seen here on slide 16 regarding the PSA's.
19 Question, who negotiated this PSA on behalf of LTL? I know Mr.
20 Kim signed it. Who negotiated? The witness, and this was Mr.
21 Murdica. I don't have any information that would implicate a
22 privilege. Same thing with Mr. Kim.
23 Again, Your Honor, LTL claims that the Third
24 Circuit's opinion may have created a risk that the '21 funding
25 agreement is void or unenforceable. That is clearly contrived.

1 LTL's CFO testified when asked, let me rephrase the question.
2 Other than what is shown here in the minutes about what Mr.
3 Prieto said to you about the risk of the '21 funding agreement
4 being potentially void, avoidable, do you have any other
5 information about that?
6 Once again, going to defer to the minute notes, that
7 could have been more than Mr. Prieto, I'm going to defer to the
8 minute notes. Okay. No business person at JJCI or J&J ever
9 told you as a business person that the funding agreement was
10 void or voidable, correct? Correct.
11 In fact, Your Honor, as I've suggested but now proven
12 out by the evidence on the slide, it looks like no one at LTL
13 even put the ultimate question to J&J about the funding
14 agreement. Question to Mr. Haas. Do you recall any
15 conversations concerning without going into the substance of
16 those conversations, do you recall any conversations concerning
17 the enforceability of the '21 funding agreement prior to the
18 Third Circuit decision? And there's a number of questions and
19 answers. Down below, I do not recall having conversations
20 about the agreement being void or voidable.
21 And on the right hand side, Mr. Kim, which party
22 wanted to declare it void? His answer, consistent with what he
23 said today. I would say there was a consensus reached that
24 there was a material risk that the funding agreement was
25 unenforceable because it was void or voidable.

1 That's not how parties to a contract talk. That's
2 not how we expected our fiduciary, the debtor in this case to
3 protect our interests. To put it quite bluntly, Your Honor,
4 that $61 billion, that was our money and they gave it away.
5 Didn't ask us. As far as we can tell, didn't negotiate it. He
6 listened to his master and they restructured it in a way that
7 was best for J&J.
8 I'm going to go ahead, Your Honor, ah, to slide 21.
9 Your Honor, the 2021 funding agreement provided LTL with over
10 $61 billion in funding to pay Talc claims inside or outside of
11 bankruptcy. So yes, Your Honor, it was clearly my client's
12 expectation when the case got dismissed, the funding agreement
13 would be available to ultimately satisfy claims. Were we
14 somehow misguided in that thinking? Was that unreasonable? I
15 don't think so. Because Mr. Gordon told this Court whether
16 there was no case filed or whether the case is filed or
17 dismissed, the money is available for that purpose.
18 Mr. Katyal, Katyal, to the Third Circuit said I
19 understand that the funding agreement does have provisions for
20 funding outside of bankruptcy. And I think it was Judge Ambro
21 but I'm not sure. The Court said yeah, that's what I thought.
22 So we've now had 18 months of bankruptcy. We've now had two
23 courts issue decisions critical for my clients and I don't
24 know, Your Honor, was that based, I don't think there were
25 misrepresentations made at the time that they were made. But

now all of a sudden, we don't have the benefit of it.

And clearly, whether some of the earlier decisions in this case might have been different had the Court known how this was going to turn out. Your Honor -- slide 23. Your Honor, as you know, Section 548(a), the actual intent standard doesn't require insolvency. And we believe that avoidance of the April 4th transactions and restoration of the '21 funding agreement are required under the Bankruptcy Code. Once restored, the 2021 funding agreement mandates dismissal under the Third Circuit's opinion and LTL cannot evade the Circuit's mandate by committing the fraud they committed in this case.

Your Honor -- next slide. The LTL, this bankruptcy is even filled with more bad faith than the first bankruptcy. The Third Circuit dismissed the first bankruptcy for lack of good faith. We believe that LTL's fraud means that LTL's second bankruptcy has even less good faith. The fraud was orchestrated while LTL 1 was a debtor in possession. It certainly was not an ordinary course transaction. Just like LTL cannot create subject matter jurisdiction by engaging the fraudulent transfer. LTL cannot create good faith by engaging in a fraudulent transfer.

Slide 26, Mike. Your Honor, the question here, another question here, although as I've mentioned I think I've been pretty clear, I don't think you even get to it, but if you do and you consider the PI on its merits, the question is

1 whether there's a reasonable likelihood of a successful plan.
2 And they've asserted, the debtors asserted that it has support
3 of roughly 70,000 claimants. And before we go down this path,
4 Your Honor, I just want to say it one more time. We think we
5 can win on the standard but I think it's wholly inappropriate
6 to even go there.
7 Again, whether or not you dismiss the case, I think
8 the evidence is abundantly clear that there is a lack of good
9 faith in this case and if you require us to file a formal
10 motion to dismiss, we plan on doing it. We plan on doing it
11 soon but a PI should not issue on this record, Your Honor. And
12 you know we've made, we've tried to make much of this, Your
13 Honor, in terms of the fact that while they claim that there
14 are 70,000 claimants that support the plan, the fact of the
15 matter is, and we can go to slide 28, they have no idea how
16 many Talc claimants each of the support firms represent. Mr.
17 Kim says he's relied unverified statements from the firms and
18 Mr. Murdica, you can see it here and I think you heard it again
19 today, he said well, we rely on the statements of counsel. I
20 rely on Mr. Murdica.
21 As we said, Your Honor, we think there's quite a bit
22 of unfiled claims, to the extent you find that to be important
23 versus claims that have been filed. And Your Honor, critically
24 on slide 31, as I think we've brought out pretty clear, Mr.
25 Murdica simply relied on the law firms without further

1 verification. You'll see the testimony at his deposition. He
2 was asked did you request any diligence or evidence of that
3 representation and he said that's not the way this works.
4 And then you'll see also, question, did the lawyers
5 who told you that their claimants would support this claim, did
6 they say they had commitments from their claimants to support
7 the terms? Answer, I don't know what, that I can make a
8 blanket statement for all of that. And when they make a
9 representation to me that their claimants are going to support
10 the plan, or in the past, when their claimants are going to
11 support a settlement, they've always followed through. And I
12 think we brought this out, Your Honor. The fact of the matter
13 of is, not one actual claimant has committed to support this
14 claim. They've got a lot of lawyers. They've got to talk to
15 their clients. They're going to recommend that they support
16 the plan. But not one actual voter, and you heard Mr. Kim say
17 this, I asked him. Not one voter has said he's going to, he or
18 she is going to support this plan.
19 Your Honor, we've also talked about the very limited
20 information that has been provided about particular claimants.
21 You'll see on slide 33 quite a bit of this was redacted before
22 we got it but this is what an actual, not sure you saw this
23 earlier, this is what an actual signed PSA, this is the March
24 27th PSA that was signed. This is what it looks like.
25 Obviously here we just have the first names listed but it's

very limited information.

And let's go to slide 35, Mike. Again, here's some testimony, Your Honor, particularly Mr. Watts, you'll see on the left hand side. All I've committed is that I'm going to recommend it to them. Also, later what I can't commit to the Court is I have ordered records, this is as to records for his client's medical records. I have ordered all of them. I've got a ton of them going back internally. We're having them analyzed at this point and we'll certainly have the data at some point.

Your Honor, slide 37. I did not negotiate with or obtain the support of a substantial number of claimants. Over 100 law firms have pledged to defeat the plan. Four of the law firms that have signed PSA's, do not have a single filed Talc lawsuit against J&J, LTL or any of their affiliates including the Watts' firm. Sixty to 70,000 claimant number is unreliable. As I said, all of the MDL leadership, and concluding all of the MDL leadership opposed the plan, represent over 40,000 claimants and the majority of the cases that have been filed in state and federal courts around the country.

Your Honor, you've seen first hand unfortunately the acrimony between the parties, the odds of a consensual plan here are low. The mass tort bar is galvanized behind defeating J&J particular giving the maneuvering since the Third Circuit

1 ruling. In any event, Your Honor, as we show on slide 38,
2 J&J's plan faces lengthy appeals. It does have independent
3 liability which can't be channeled under 524(g) and we cite the
4 Combustion Engineering case. Next slide.
5 Let's go to slide 40, Mike. But again, Your Honor,
6 whether or not the plan is confirmed, part of the game here for
7 J&J is just getting more time. They've gotten too much time
8 already, Your Honor, and it's time to bring this to a close.
9 We thought that would be the case after the Third Circuit
10 ruling. I guess we got that wrong. But we would urge, Your
11 Honor, to finally bring this somewhat ugly chapter to a close.
12 As for irreparable harm, Your Honor, slide 42, the
13 only harm articulated by LTL is that litigation could go
14 forwarded against responsible parties as Mr. Kim testified.
15 Having all this ancillary litigation on the same claims, same
16 product with the same plaintiffs would clearly be a detriment
17 to the ability to reorganize. Yet, Your Honor, next slide, an
18 injunction would cause irreparable harm to Talc claimants.
19 Talc claimants died during LTL's first bankruptcy without
20 having their day in court because of the injunction issued by
21 the Court.
22 Continuation of the injunction would cause further
23 mortal delay. A solvent Fortune 500 company being subject to
24 litigation in the tort system for selling products that
25 contains asbestosis is not irreparable harm. Title 11 does not

1 affect any right to trial by jury that an individual has under
2 applicable nonbankruptcy law with regard to a personal injury,
3 a wrongful death tort claim.
4 This Court cannot and should not strip Talc claimants
5 of finally of their right to a jury trial. J&J should be held
6 accountable in the Court system. We've talked, Your Honor, on
7 slide 45 in terms of balancing the harms, particularly
8 continuing to protect J&J with an injunction while Talc
9 claimants suffer which would be irreparable harm.
10 Your Honor, we think that once the April 4th
11 transactions are voided, LTL will again have access to over $61
12 billion to pay Talc claims. And in contrast continuing to
13 prevent Talc claimants from exercising their rights is causing
14 irreparable harm, Your Honor. People are dying. Protecting
15 J&J discourages settlement discussions because it means that
16 they have no incentive to further negotiate in good faith.
17 Your Honor, in trying to wrap up, on slide 47, I just
18 wanted to highlight some comments made by the Third Circuit and
19 I think it's relevant to whether LTL can build a record
20 supporting a stay. Third Circuit said it is not obvious LTL
21 must indemnify J&J's for the latter's independent post 1979
22 conduct that is the basis of a verdict rendered against it.
23 Liabilities and obligations of every kind and description which
24 are allocated on the books or records of J&J as pertaining to
25 its baby division and lastly, it is also not clear, the

1 indemnity should be read to reach punitive damage verdicts
2 rendered against J&J for its own conduct.
3 Your Honor, as for public interest on slide 49, and
4 we'll certainly let the UST speak to this directly. We believe
5 that granting an injunction would be contrary to the public
6 interest. The Third Circuit ordered that LTL's case be
7 dismissed and granting, and you should not grant an injunction
8 and reward a party for committing fraud. And we believe that
9 this entire second bankruptcy is a clear attempt to circumvent
10 the Third Circuit's ruling. I think that's almost admitted.
11 The public interest is not served by parties
12 disregarding rulings made by a Circuit Court and the
13 continuation of this case has the potential to undermine public
14 confidence in the judicial system. Slide 50, and again I'll
15 let the UST speak to it directly. Their papers state that to
16 subject these victims to any additional delay would be
17 unconscionable, especially when balanced against LTL's slim to
18 nonexistent prospect for reorganization.
19 So Your Honor, in closing, I come back to what I
20 started. The emperor really is not wearing any clothes.
21 There's some great lawyers on the other side. There's a mega
22 corporation that can spend all the money in the world and they
23 can make up whatever they want to make up about why things are
24 the way they are but at base, Your Honor, and I think the
25 evidence, the evidence, not speeches, nothing else, the

evidence shows what happened here. There was a fraud. There was a fraud committed on Talc claimants. On one day they had something. The next day they didn't. Why? Allegedly because of a Circuit Court of Appeals decision? It's ridiculous on its face, Your Honor. And we would ask that you dismiss this case. If you don't dismiss this case and you want to take it up on our motion to dismiss it will be filed in short order, we would ask that you not countenance this and not grant any further injunctive relief.

Your Honor, may I ask permission? I don't like to do this but I have a trial tomorrow in Indianapolis on a motion to dismiss in the Aearo case which relates to 3M and if I don't leave --

THE COURT: Good bye.

MR. JONAS: Thank you, Your Honor. I appreciate.

THE COURT: Just jealous.

MR. JONAS: Thank you, Your Honor.

THE COURT: Travel safely.

MR. JONAS: Thank you, Your Honor.

UNIDENTIFIED SPEAKER: All right, point of order, maybe the US Trustee would go next.

THE COURT: Ms. Richenderfer, do you want to go? I'm going to take, I just want people to come up. I'll take from whomever.

UNIDENTIFIED SPEAKER: You should always go before me

anyhow.

UNIDENTIFIED SPEAKER: I was going to invite the US Trustee to go and then Mr. Birchfield and then myself and Mr. Meyner (phonetic).

UNIDENTIFIED SPEAKER: (indiscernible)

UNIDENTIFIED SPEAKER: Oh, I'm sorry.

THE COURT: Folks?

UNIDENTIFIED SPEAKER: I apologize, Your Honor.

THE COURT: This is getting a little bit absurd.

MS. RICHENDERFER: I plan on going next.

THE COURT: It's twenty after six. In your presentations, I will ask that you try not to be repetitive of points that have been made incessantly. I get it. So Ms. Richenderfer.

MS. RICHENDERFER: Thank you, Your Honor. I apologize in advance because some of this is going to seem a little out of order because I am going to try to jump around in my notes and cover territory that has already been covered. I'll try as best as I can. Your Honor, to prepare for a bankruptcy it's not unusual to find out that the debtor prepetition sat down, entered into a restriction support agreement with certain of its largest creditors, entered into arrangements with the secured lenders, its shareholders, its equity, all sorts of important parties, all sorts of important players in its bankruptcy. Gets itself set ready to go and

1 walks into court the first day with everything in place.
2 And Your Honor, I know you've seen it, I've seen it
3 and it usually ruins my weekend because everyone likes to file
4 on Sunday night and so I end up working on the weekend to go
5 over all that.
6 J&J, I'm sorry, LTL, that really was just I'm tired.
7 LTL is trying to do that here but they're forgetting there's a
8 big fly in the ointment here, Your Honor. They were already in
9 bankruptcy. There were certain boundaries on what LTL could do
10 and not do prior to walking in the door the second time. We
11 have here a debtor that never had any operations and for its
12 very short time period that has been in existence, I guess it's
13 about, is it even two years at this point, I can't remember
14 when it incorporated.
15 But during its short existence, it has been in
16 bankruptcy continually except for two days at the beginning and
17 two hours and 11 minutes in between. And during that time, it
18 owed a fiduciary duty to all of its creditors and there is the
19 Bankruptcy Code that tells it what it can and cannot do. And
20 so this is not like the normal bankruptcy filing where you know
21 we walk in, we have the first days and we have the agreements.
22 I by no means of suggesting that there's something
23 wrong with the PSA's, Your Honor. I'm focusing right now on a
24 funding agreement. I'm focusing right now on having Holdco or
25 JJCI at one point in time having the consumer business. Prior

1 to the end of, prior to the end of January so before the Third
2 Circuit issued its ruling, that consumer business evaporates
3 which means therefore that LTL becomes more dependent on J&J's
4 ability to step up to the plate under the joint and several
5 liability agreement that was the 2021 funding agreement.
6 And it doesn't tell anybody, doesn't tell anybody
7 that that has happened and the Third Circuit issues its opinion
8 and for some reason the Third Circuit that says no, you can't
9 do this. You didn't do this in good faith. They think that's
10 a sign to go back and get rid of the assets. It's astonishing
11 to me how getting rid of assets that occurred and overlapped
12 with the first bankruptcy, maybe documents were signed in two
13 hours and 11 minutes, I don't know. I don't think they were
14 docusigned. Maybe they were sitting there already signed and
15 somebody had to staple the pages together.
16 But this was negotiated while they were still in
17 bankruptcy and I'm focusing right now, Your Honor, on the
18 funding agreements. You asked Mr. Jonas about assets of the
19 debtor. The second time around, LTL walked into this Court
20 with a new funding agreement that says that it will get money
21 for Holdco and Holdco can get a loan from J&J. Holdco no
22 longer has consumer business assets. And it walked in with the
23 fraudulent conveyance claim. And if the debtor doesn't want to
24 bring it, I'm sure the committee will look into bringing it.
25 But it walked into this courtroom with 52 billion or

whatever, I can't do the math this late at night in claims for a fraudulent conveyance. And as Mr. Jonas pointed out, under 548, there's two provisions in there. They don't have to prove insolvency under 548, I'm going to get it wrong now, --

THE COURT: A.

MS. RICHENDERFER: 8(2)(a). Thank you, Your Honor. They don't have to prove insolvency. You have to prove intent and I think we've already heard an awful lot because they intended to get rid of that agreement. Mr. Kim was very clear. They intended to get rid of that agreement and they did. They got rid of that agreement. May have been based on bad, legal advice. I don't know because I just don't understand how void or voidable, I mean if it's voidable, that means that one of the two parties has to take a step to make a void. If it's void, then when did it become void? Was it void ab initio? Did it become void because the Third Circuit said you're not suffering financial distress. I don't know when allegedly it became void. But if it's voidable, one of the two parties has to take a step and Mr. Kim doesn't define when that occurred, just people were talking about it and then next thing you know there's no agreements that are in place.

These are all issues that go to the success on the merits, Your Honor. They go to issues that will probably be in front of this Court maybe on May 3rd, I don't know. I guess it depends on how fast we all can move on appropriate motions to

1 dismiss. But those are issues that are going to be back in
2 front of this Court. But when LTL 2.0 came in, it had a lot of
3 money. And the difference is this, Your Honor. If we assume,
4 and I'll assume for the sake of argument, that they have 60,000
5 claimants all tied up because their attorneys are going to send
6 in ballots signing their names. That's what happened in Imerys
7 and we ended up with a huge amount of votes that gone thrown
8 out for one reason or another. One being absolutely no proof
9 of the claimant themselves, 15,000 of them having a claim and
10 other votes got thrown out because multiple law firms were
11 submitting ballots and it wasn't that the claimants were
12 signing two ballots, it was at two different law firms were
13 submitting a ballot for the same person.
14 So let's just assume that they do have 60,000 claims.
15 I don't know if that's claimants tied up. I don't know if it's
16 75 percent or not, Your Honor. I really don't know. Because
17 of the overwhelming number of claims that Mr. Watts has
18 acquired since the first filing. I don't know whether or not
19 anybody else has equally acquired the same number of claims.
20 But there's also the State Attorney Generals has
21 substantial claims. And I heard reference made to claims
22 against Imerys and Cypress. Well, I'll tell you this, Your
23 Honor. There have been adversary proceedings pending since,
24 see 2019 is when Imerys filed so probably 2020, adversary
25 proceedings by Imerys against Johnson & Johnson for

1 indemnification claims and also seeking coverage under these
2 insurance policies that are part of the monies that may or may
3 not end up in the pot here for this case.
4 And I will tell you that both Imerys and Cypress also
5 believe they have huge indemnification claims against Johnson &
6 Johnson. And I believe it was one of the counsel for the
7 debtor, Your Honor, made a comment about how well, you know if
8 claims get covered in the Imerys case. Your Honor, I went back
9 and I looked and of the 12 primary law firms, that have signed
10 PSA's, all but two of them either had no votes submitted in the
11 Imerys case or had their votes thrown out because there were
12 other law firms claiming the particular claimant as their
13 client.
14 So I don't see that there's going to be a lot of
15 overlap between people that are going to try to get paid
16 through the Imerys trust and people that are going to try to
17 get paid through the J&J or the LTL trust. And we started off
18 this case back in October 2021 with a pot of money that I will
19 admit is larger than what I can even comprehend. We now in LTL
20 2.0 have a pot plan, meaning here it is, here's the cutoff. So
21 all of you tort claimants, all you State Attorney Generals,
22 anybody seeking indemnification from us, insurance carriers,
23 Blue Cross, Blue Shield, here it is. Divvy it up.
24 There's a huge difference between the two. And
25 that's the problem here, the pot plan. There might still be

money here but they gave away an awful lot while they were still in bankruptcy and I think that's just the most important point, one of the most important points from my office is that what was the conduct while they were still in bankruptcy. And we were relying on them in their capacity as fiduciaries for the debtor's estate.

This time around, Your Honor, not only do we have the debtors coming into the Court with that hanging over their heads, we have the debtors coming to the Court with the Third Circuit's opinion hanging over their heads. I will never comprehend how they believed that that gave them permission to get rid of the 2021 funding agreement, how they thought that Judge Ambro was telling them to do that.

And maybe when this is all over and done with we can have a drink sometime with Judge Ambro and see if that was really what he had in mind when he wrote that opinion and put (indiscernible) got in there.

(Laughter)

MS. RICHENDERFER: I didn't know I was going to get such a laugh on that one.

(Laughter)

THE COURT: I'll ask at the Third Circuit conference coming up.

MS. RICHENDERFER: Okay, Your Honor. And then when all this is over, they'll have a drink with you. Then you can

1 tell us what Judge Ambro says. But I know that Footnote 18
2 talks about fraudulent conveyances, which to me is saying don't
3 do it. But I guess minds can differ, that's why lawyers have
4 jobs, because we all disagree about how to interpret things.
5 It's beyond challenge that funding agreement one was
6 available in or outside of bankruptcy. Mr. Jonas already told
7 you, I think, about the colloquy that went forth between, it
8 was Judge Ambro who asked the question, and appellate counsel
9 for the debtor at first said that it wasn't available outside
10 of bankruptcy.
11 And then one of the co-counsel whispered in his ear
12 and he went up and he corrected himself. And Judge Ambro said
13 yes, I know that. I mean, Judge Ambro asked that question
14 knowing the answer, and he got the wrong answer and then got
15 corrected. So that agreement was available in or out of
16 bankruptcy.
17 Your Honor, the plan. And Your Honor saw me asking
18 questions of Mr. Kim about this. A plan in a case like this is
19 going to be 50, 60, 70 pages long. That's not even including
20 TDP's, that's not even including the trust agreement. I know
21 Your Honor is very well aware of this whole process. You've
22 had asbestos cases. You know how long these things are. You
23 know how heavily, heavily, heavily negotiated they are.
24 Because this means real dollar and cents.
25 And to take that term sheet and get it into a real

1 plan that each one of the law firms assigned a PSA is going to
2 say okay, that's it, that's what I agree to, that's what I
3 agree to support, we're a long way from that point, Your Honor.
4 We are a long way.
5 You know, I come from the Emerest (phonetic) case
6 where here we are going on, it will be four years. It is four
7 years, that's right. It was in February of 2019 that it filed.
8 Nowhere near it. It's the details. The devil is in
9 the details in these plans. And that's where reasonable people
10 differ. And so the time line that they set out, I'd love to
11 see a plan on May 14th. I have a feeling though it's going to
12 look like what I saw in Emerest, which was plan number one that
13 was so bereft of details that you didn't even know where to
14 begin in drafting your objection to it. And it wasn't until we
15 got to the tenth amended plan that it finally was in a state
16 where it could go out for solicitation.
17 So I believe there will be something that we will see
18 filed on May 14th. But I really question whether it is going
19 to be something that all of us, including Your Honor, will feel
20 is appropriate to send out to the claimants for them to vote
21 on. I mean, we haven't even had major discussions like okay,
22 how are they going to do the voting. I mean, that can take
23 days of arguments about do you send it to their attorneys, how
24 do you make sure that they get it, how do you make sure that if
25 they want to vote themselves, they get to vote.

1 So Your Honor, I'm just saying all of this because I
2 think that there's been a heavy emphasis by the debtor on let
3 us go forward, we're going to get this wrapped up like this.
4 And that is not going to occur here. Reality -- I just want to
5 bring a sense of reality into all of this.
6 And I go back to my opening statement, Your Honor.
7 There are four elements that need to be proved here. And most
8 of what I just said goes to element number one, success on the
9 merits. I haven't heard anything discussed as to why J&J and
10 its other nine debtor affiliates get a channeling injunction or
11 why they get a third party release, whatever it ends up being.
12 And I go to the fourth element which is the public
13 interest. And the public interest is in not allowing opinions
14 of the Third Circuit Court of Appeals to be ignored in this
15 fashion. To be twisted and turned around in this fashion. And
16 it is not in holding up people who have not been able to go
17 forward with their claims in the meantime.
18 The details on the claims I've left up to the
19 Committee and plaintiff's counsel that are here to discuss.
20 But the public interest is not allowing J&J to keep them again
21 from their day in court. Thank you, Your Honor.
22 THE COURT: Thank you, Ms. Richenderfer. So you can
23 come up, whoever is next. It is 6:36. I am telling you all
24 now, and adjust your arguments accordingly, I am adjourning at
25 7:30. I owe it to my staff for their health and their safety.

1 Let's get it done.
2 MR. BIRCHFIELD: Good evening, Your Honor. Andy
3 Birchfield, Beasley Allen. I know it's late in the day and I
4 appreciate you giving us this opportunity to be heard. J&J
5 began the day, LTL began the day denigrating me personally in
6 their opening, and my law firm. And they ended their day in
7 their closing denigrating me personally and my law firm. Why?
8 To what end? What relevance does that have to this proceeding?
9 I think there we may have evidence of true
10 frustration of purpose. It's not me. It's not me. There is a
11 committed team, a leadership team of a large member of lawyers
12 and we have held together and we have held firm. And because
13 we have held together and we have held firm that frustrates
14 J&J's purpose of using the bankruptcy process to coerce
15 plaintiffs to accept deeply discounted values.
16 And as part of the presentation you were given some
17 quotes from my deposition. Part of those, a significant
18 portion of that dealt with a proposed agreement, a proposal, a
19 draft proposal from September of 2020. And it was suggested
20 that that proposal was for all ovarian cancer claimants for
21 3.25 billion. I don't know what relevance, or I don't know
22 where 408 is here. But you will have the deposition and you
23 will have the agreement. And I'm going to --
24 I urge you, Your Honor, look at the agreement. See
25 if the total payments under that agreement are 3.25 or 5.5

billion. I urge you to review that agreement and see if that is for ovarian cancer claimants only or does it include mesothelioma claimants, does it include A.G. claimants. It does not. It is ovarian cancer claimants only.

Look at that agreement. See if it is not a voluntary opt-in proposal for a private QSF outside of bankruptcy. Only a portion would have been involved in the Emerest and a contribution into the Emerest bankruptcy. Look at that agreement, see if it was accurately portrayed to Your Honor here.

I also want you to remember, Your Honor, and I know you do, from the first proceeding you had an enormous amount of time that was spent on the spike, the huge spike in new claims. There was a tremendous amount of time spent on. So what is the difference, what is the difference in the number of claims pending in September of 2020 and what is pending today. So when every proposal, our leadership team on behalf of the ovarian cancer claimants, we have been committed, we have been committed from day one and we have held together and we have encouraged all the lawyers, all the lawyers across the country to hold together, to hold together in insisting that J&J pay reasonable values for their claimants.

There is a big difference in the number of claims that would have been, current claims that would have been existed in 2020 and what there are today.

1 THE COURT: What is the difference? We started with
2 38,000 in the MDL, 3,000 in the State and four or 500 meso
3 claims. And now if, just by 40,000 are opposed and 60,000,
4 we're at 100,000 or more. Why in a year and a half?
5 MR. BIRCHFIELD: Because there is a difference
6 between filed claims and claims that may be valid claims that
7 are in lawyer's offices. So since LTL filed its bankruptcy
8 there could be no new claims. But law firms, they are
9 following the process.
10 What they would do, they would get a client to come
11 into their office, they would begin to investigation that claim
12 and they would look at the statute of limitations. When is the
13 statute of limitations? They would gather medical records and
14 they would evaluate that claim and determine whether or not
15 that claim should be filed or not.
16 And so all of that was put on hold in October of 2021
17 when J&J filed bankruptcy. And so there could be no new filed
18 claims. But claimants who have used baby powder for years or
19 decades were still getting ovarian cancer claims. So those
20 claims are still coming into lawyer's offices. They're still
21 being evaluated. Their medical records should still be
22 gathered on those claims, but they're not filed.
23 THE COURT: But then shouldn't the Court take that
24 into account for potential liabilities? And when we go back to
25 financial distress, that in a year and a half we've had 100

1 percent increase in claims?
2 MR. BIRCHFIELD: I mean, yes, Your Honor, I think you
3 should take that into consideration. It does not rise to the
4 level of putting J&J in financial distress. It doesn't. There
5 are a significant --
6 THE COURT: Not J&J --
7 MR. BIRCHFIELD: LTL. LTL in the position of
8 financial distress. Are there claims? Yes. There are claims.
9 Will there be more claims in the future? Yes. Does it rise to
10 the level, have they offered a showing that that rises to the
11 level of financial distress? It does not.
12 And Your Honor, I think one of the things that J&J,
13 LTL's presentation, because you had both today, one of the
14 things that it does show, I mean, they say that there is no
15 threat in the tort system, we're only facing 11 trials per
16 year. So that's why it's going to take claimants thousands of
17 years to be heard. And so there is no threat.
18 If that were the case, they made a significant
19 presentation about how the mass tort system has failed
20 plaintiffs. Your Honor, they're urging the Court to weigh in
21 on that policy, the policy matter of mass tort settlements in
22 bankruptcy court versus MDLs. The mass tort MDL system has
23 worked, it does work. If --
24 THE COURT: Right. And for today's purposes I'm not
25 -- This isn't a motion to dismiss --

MR. BIRCHFIELD: Yes, Your Honor.

THE COURT: -- in its current form.

MR. BIRCHFIELD: So one of the things -- I mean, another issue, another issue here is what they're saying, if you look at, if you take their argument, if you take their argument then we would not have had a tobacco settlement. The initial claims, if a company has the wherewithal to avoid paying through settlements or taking verdicts and through appeal, if they can avoid a global settlement for 10 years then case over. They are entitled to bankruptcy.

Tobacco, the tobacco cases, you are talking decades where the tobacco companies were resisting that, resisting any liability. They were taking the same position that J&J is taking here. No liability. But yet they ended up in a $200 billion settlement. So the mass tort system works.

I must address the issue of the losing streak. You have that. You have losing streaks, you have winning streaks in virtually every mass tort. I mean, in the Vioxx litigation you had a couple of wins, you had a significant number of losses. No claimant was paid. No claimants were paid for nearly seven or eight years, until there was a global settlement paid.

It would be the equivalent here. Except J&J is stopping short and they're saying cut us out of the tort system, give us a steeply discounted settlement for the

claimants here. And I urge you not to do that.

Ms. Brown showed this list of wins and how those were vacated. J&J got the benefit. They got the benefit of a Supreme Court decision in BMS that vacated those verdicts, significant verdicts. Verdicts of 72 million, 110 million.

THE COURT: For jurisdiction.

MR. BIRCHFIELD: On personal jurisdictional grounds. Not the merits. And those cases are re-filed and pending today. J&J, and she pointed out that J&J was on a winning streak. They were winning those last few cases. J&J engaged in highly aggressive out of bounds trial tactics. Tactics that ended up with criminal contempt charges against J&J and its medical officer and a guilty plea. That is not a sustainable method of litigation. That's why we are here in the bankruptcy. That's why they're asking for the preliminary injunction.

And Your Honor, I want to turn to one last point. And that is to respond to J&J's position, why not just let the claimants vote. And they're going to be, and my colleagues are going to address, you can't vote because this is not a legitimate bankruptcy.

THE COURT: We'll they'll get to it once you sit down.

MR. BIRCHFIELD: Yes, yes. So I'm not going to touch that.

THE COURT: You're going to get notes soon.

MR. BIRCHFIELD: But here's what the other, here's what I want to address. One of the things that is clear, one of the things that is clear is J&J's effort here to stuff the ballot box. All of our proposals, you look at the proposal that they submit in my deposition, it is for ovarian cancer cases that are supported by the science that Judge Wolfson adopted in her Daubert decision. Here they are expanding that to a lot of other claims that are not included. It's an effort to stuff the ballot box. They should not be granted that delay. Thank you, Your Honor.

THE COURT: Fair enough. Thank you, Mr. Birchfield. Mr. Satterley.

MR. SATTERLEY: May it please the Court, Joe Satterley, Kazan McClain Satterley and Greenwood. I don't have 150 slides like the debtor's counsel. I promise I have zero slides. I'm only going to be a few minutes. On behalf of Anthony Valadez I would request Your Honor to lift the stay so we can proceed to trial. I'm not going to respond to all the attacks on him or me. I'll get back to the balance of interest in just a few minutes.

From my perspective, she had a slide that said I had 13 cases. I don't know if that's true. I don't know if I have 14, 15, 20, 30. All I know is from my perspective this is a manufactured cram-down to protect J&J's reputation. That's all

1 it is. In the first trial, which I was here for every single
2 day, they tried this as a tort reform. They had slides of
3 advertising, lawyer advertising, how much they spend. And one
4 of the slides was Mr. Onder's slide. And they tried to say
5 Your Honor, you could fix this system.
6 And Your Honor wrote an opinion on February 25th,
7 refusing to grant the motion to dismiss. And in March, on
8 March the 19th Mr. Watts signed up his first talc case. I saw
9 him on March the 30th here in this courthouse 11 days later. I
10 didn't know he signed up his first case 11 days beforehand.
11 But the record, we took his deposition and he admitted he
12 didn't get involved in trying to collect cases until after Your
13 Honor denied the motion to dismiss.
14 And then from March 19th of 2022 until the day before
15 yesterday, because he said he signed up his last talc case the
16 day before yesterday, he signed up 16,925 cases of which 500
17 are meso. Now, I've been handling mesothelioma victims,
18 clients for 26, 27 years, actually as a paralegal for 30 years
19 beforehand. There's only 2,500 mesos a year. It's virtually
20 impossible for him to have signed up 500 mesotheliomas.
21 And when we asked have you obtained the medical
22 records, have you obtained and confirmed the pathology? We've
23 ordered them. We got good people that's going to look through
24 them. We're going to analyze them. And Mr. Block asked, can
25 you even say there's 1,000 confirmed cases? We got people who

are looking at them.

So what's happening here, Your Honor, is after the Third Circuit reversed Your Honor's decision on January 3rd, Mr. Watts on February the 26th, and this is in the record yesterday, emailed Mr. Murdica and said here's a template for what I did before on February 26th, almost 26 days later. And from February the 26th there's not any additional written negotiations. There's not any response emails that have been produced. I asked counsel and they say they did everything orally.

And so what do we have here? As the U.S. Trustee said, this is not a plan. This term sheet, when I asked Mr. Watts about the mesothelioma, I said did you negotiate this? No, I didn't have anything to do with it. Who wrote it? Mr. Murdica. Well, you know how much Mr. Valadez would be entitled to under this plan that Mr. Murdica wrote and there was no negotiations whatsoever between J&J, LTL and anybody? Mr. Valadez would be entitled to $50,000 under this plan. $50,000.

So I would say to Your Honor that this is a manufacturing attempt to cram-down. They have said today that Mr. Murdica has been involved for 20 or 30 years negotiating cases and settling cases. They're free to settle with anybody they want at any point in time.

But what they're not free to do is to do a cram-down to force people that want their day in court, to have their day

in court under the constitution. And that's just not permitted. None of the negotiations that Mr. Murdica has done in the last 20 or 30 years and end it with a channeling injunction what they're seeking out today.

Now let me just turn -- I have a lot of other notes but we've got other people who want to talk. Let me just turn to Mr. Valadez. The Valadez case, you know, counsel showed some pictures from Facebook. I've never been on Mr. Valadez' Facebook page. I didn't even know he had a Facebook page. I assume they got them off his Facebook page, I assume they're accurate. I have no idea.

But it doesn't seem surprising to me that someone like Mr. Valadez, who's been suffering with this disease for over a year, in a wheelchair and had his trial yanked from him by an improper bankruptcy, that maybe -- And also probably the PR, the press release where $8.9 billion is going to be given, he probably had to answer questions from friends. Oh, are you going to get money? I have no idea. I know I had to answer questions from clients and colleagues about this.

And so it doesn't surprise me at all that there might be something about financial issues with this. But this isn't a settlement. And it isn't about J&J saying it's all good.

THE COURT: Mr. Satterley, let me ask you a question, if I may.

MR. SATTERLEY: Yes.

THE COURT: On Mr. Valadez' case.

MR. SATTERLEY: Yes.

THE COURT: In your view, what remains to be undertaken?

MR. SATTERLEY: We were prepared to be ready for trial within eight days of the TRO being entered on the 5th of --

THE COURT: You showed me lists of depositions that had to be taken. Do they still have to be taken? I'm trying to get a handle --

MR. SATTERLEY: Sure.

THE COURT: -- objectively on what remains.

MR. SATTERLEY: Sure, sure. And I was going to request, Your Honor, probably eight to 10 days. Maybe a little bit longer depending upon the expert witness's schedule. Quite frankly, Judge Seabolt was doing a great job managing the docket every single week. And he's prepared to resume again tomorrow morning. Tomorrow at three o'clock. Tomorrow at three o'clock we have, which is six o'clock eastern time, we're scheduled to have another case management conference where I tell him what Your Honor says to do or not to do.

So, Your Honor, I think that we got derailed by the bankruptcy, the unexpected bankruptcy. But we can get back on track in a very quick time frame, whether it be 10 days, two weeks. And Judge Seabolt is, you know, he practiced for 43

1 years before he went on the bench and I'm sure he can manage
2 this case. All the other things that they raised last time and
3 today about Valadez, they're jury questions. They're jury
4 questions.
5 They got a great defense. They took a picture, the
6 back of a picture and went on the internet and found some --
7 the photograph was only on certain years. As I said before,
8 they're basically calling five people liars. That's a jury
9 question. If they're so confident that they're going to win
10 this case, let's go do it.
11 The bottom line, the balancing of interest, and I'm
12 going to end with this. I'm going to end with two things. The
13 balancing of interest and the irreparable harm I can't imagine
14 they would be more dramatic. Because on the one hand you have
15 somebody dying and living the last few days of their life. And
16 the other side of the balancing is we may have to pay lawyer
17 fees some money to go defend this case and potentially get a
18 defense verdict if they're really that good. If the evidence
19 is really on their side.
20 That's the balancing. There's no disruption. The
21 only disruption they're concerned about, to be candid, which
22 the Third Circuit said you can't consider, is protecting their
23 reputation.
24 The last point I'll make, Your Honor, and I've got a
25 lot of other notes but I know a lot of folks want to say, is

Mr. Kim said today oh, it's double, we got enormous, enormous. There's no real evidence of that. Unfiled, unverified, unknowns is not doubling on the back of an envelope. It's not enormous liability. Don't fall for those arguments, because I think -- I just don't think it's right under law.

You know, a long time ago somebody told me when the law is not on your side argue the facts. When the facts are not on your side, you know, attack the plaintiff's counsel. When the plaintiff's counsel is not necessarily a bad guy, attack the plaintiff. Well, that's what's happening here.

The law is not on their side, the facts are not on their side, they attack me and say somehow I'm doing -- my trials are too long because we go half days four days a week. Or I take too many depositions because I'm a zealous advocate. And now when they can't attack me because I'm genuinely a pretty nice guy, they're going to attack Mr. Valadez. You know, I urge Your Honor to not grant the preliminary injunction for all my clients. But specifically to lift the stay and allow the Valadez case to proceed. Thank you, Your Honor.

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

MR. MAIMON: Your Honor, while Ms. Davis Jones is coming up to the podium, I just wanted to let the Court know I've done a little bit of a head count here just so you have an idea that myself, Mr. Thompson, Mr. Placitella, Mr. Simon, Ms. Johnson, Ms. Davis Jones obviously, and Ms. Parfitt all would

like to be heard.

THE COURT: Divided by 35 minutes. And you could do the math as easy as I can.

MR. MAIMON: Two minutes.

THE COURT: Thank you. Ms. Jones.

MS. JONES: Good evening, Your Honor. Laura Davis Jones on behalf of Arnold and Itkin. Your Honor, I'm representing thousands of ovarian cancer claimants.

Your Honor, we filed an opposition to the motion for preliminary injunction on Sunday, and I trust Your Honor has reviewed that opposition and I won't repeat it. Your Honor, I would like to highlight two points that are made in our papers. And with the support of the evidence today, we submit that this motion should be denied.

Your Honor, as has been said a couple times, this is a manufactured situation. It's a Chapter 11 designed attempt to overrun and sidestep the rulings of the Third Circuit. By the P.I. motion the debtor is asking for equitable relief, relief that should be denied since the debtors have unclean hands and cannot establish a reasonable likelihood of a successful reorganization.

As to unclean hands, Your Honor, the debtor's actions in manufacturing the financial distress the Third Circuit found lacking in the first LTL qualifies as unconscionable. This is especially so when the debtor now seeks to use the financial

1 distress those actions created as a pretext for a new Chapter
2 11 case that enables it to seek broad equitable relief against
3 the very talc claimants that were harmed by their actions.
4 The actions of the debtor J&J, in creating the
5 faceless debtor's new financial distress are directly related
6 to the requested preliminary injunction. But for those
7 actions, this Chapter 11 case could not have been filed.
8 Without a Chapter 11 case there would be no basis for any
9 equity relief that is sought in this motion.
10 The talc claimants would be free to pursue or settle
11 their claims against the debtor J&J and other protected
12 parties. Without the improper conduct to create financial
13 stress, the debtor could not have sought such an injunction.
14 The Court should bar such relief under the Unclean Hands
15 Doctrine.
16 Your Honor, as to my second point, the debtor cannot
17 establish a reasonable likelihood of a successful
18 reorganization if the debtor and J&J require a plan with a
19 channeling injunction that includes all of the "protected
20 parties" and "debtor talc claims". Such an injunction would be
21 beyond the permissible scope of a channeling injunction under
22 524(g)(4) of the Code.
23 Under the plain language of 524(g)(4) neither
24 retailers nor indemnified parties are among the parties for
25 whom can favor a channeling injunction may be issued under

1 Section 524(g)(4). Neither a party's status as a retailer nor
2 a party's status as an indemnified party qualifies the party
3 for inclusion in any of the four categories of the statutorily
4 defined relationships set forth in Sections 1 through 4 of
5 Section 524(g)(4)(ii) so as to qualify claims against that
6 party for inclusion in a third party channeling injunction.
7 The fact that such parties may have contractual indemnification
8 rights against the debtor does not change that result.
9 Your Honor, we would, given the lateness of the hour,
10 I'd ask Your Honor to look closely at the opposition that we've
11 put before the Court. We've spent only two pages describing
12 the Grace case which was mentioned earlier by Mr. Gordon. But
13 I was debtor's counsel in Grace all the way up since 2001. And
14 his recitation of what happened in Grace is not exactly on
15 point. Your Honor, we spent some time, as I said, a couple
16 pages in our opposition that I'd ask you to look at.
17 Your Honor, the proposed injunction goes well beyond
18 the stridency of 524(g). And Combustion Engineering instructs
19 us that 105 cannot be used to expand the injunction. Your
20 Honor, as I heard counsel discuss their debt presentations, and
21 I think Mr. Jonas said this too, all I could think of Your
22 Honor, is here we go with the end justifies the means. That,
23 Your Honor, is not the law of this Circuit and indeed has not
24 been sanctioned by the Third Circuit. Precedent is critical
25 and instructive and controlling.

Your Honor, the same is true whether there's one claimant complaining about this. There were comments made earlier that there's only 100 people complaining, or 15 people complaining, what have you. I'm standing here with thousands of ovarian cancer claimants. But that issue aside, Your Honor, the issue is the same whether it's one or thousands of us. We found that argument, Your Honor, to be ridiculous and frankly offensive. And Your Honor, we'd ask that the motion for preliminary injunction be denied. Thank you, Your Honor.

THE COURT: Thank you, Ms. Jones. Mr. Placitella.

MR. PLACITELLA: If I'm more than two minutes, you give me the hook, Your Honor.

THE COURT: Your colleagues will do that. Go ahead.

MR. PLACITELLA: Janssen and Kenvue are not protected parties under this Court's TRO and there's no basis in law or fact to enjoin plaintiffs from proceeding against them, including Mr. Burgeron (phonetic). They asked in the middle of the night, they submitted a pleading sticking Janssen and Kenvue with a pleading with no facts whatsoever. And I asked Mr. Kim, why did you do it? He said it was a knee jerk reaction. You filed a lawsuit, we figured we could go to Judge Kaplan, he'd fix it for us.

But there has been no proof today. I asked Mr. Kim, what do you know about Kenvue? Nothing. What do you know about Janssen? Nothing. So they have not satisfied their

burden of proof to impose an injunction as it relates to those parties. LTL has no -- There was no issue about shared insurance, indemnity claims, all these things that they're talking about. LTL has no standing to make arguments about Kenvue or Janssen. There's nothing to support jurisdiction respectfully of this Court concerning those claims.

And whether Janssen and Kenvue are responsible to Mr. Burgeron who's dying of cancer with two minor children is something for the trial Court to determine under law of the State of New Jersey. And if J&J or LTL or whoever -- Forget it. They have nothing to say about it. If Kenvue or Janssen think that's wrong, they can go to the appellate courts. But that's a matter of State law, it's not a matter for this Court. Thank you very much for hearing me.

THE COURT: Thank you, Mr. Placitella.

MR. SIMON: Good evening, Your Honor. My name is Jeffrey Simon and I filed a pro hac yesterday. May I be heard with a few brief remarks?

THE COURT: Absolutely.

MR. SIMON: Thank you. As I said, my name is Jeffrey Simon. I'm losing my voice, but I'm with the law firm of Simon Greenstone Panatier and we are a firm that specializes in mass tort litigation and particularly mesothelioma litigation. I personally have been trying mesothelioma cases for over 30 years. Our firm has tried many talc related mesothelioma

1 cases, including several against Johnson & Johnson and I
2 personally have tried several myself.
3 Our firm represents hundreds of people with
4 mesothelioma who would have claims against Johnson & Johnson in
5 the tort system if given the opportunity to pursue them. And
6 we object, join in the objections which have been heard. And I
7 would note that we are among over 40 firms that filed formal
8 objections to the relief that the debtor and the non-debtor
9 parent seek.
10 I'm going to talk fast. I have a somewhat unique
11 perspective and Your Honor will decide if it's meaningful or
12 not. I'm a professor of mass tort litigation at SNU Law School
13 and I teach about your opinion from March 4th, 2022. And I
14 teach about the Third Circuit opinion regarding it. And I read
15 your opinion many times. And when I read it I --
16 THE COURT: When can I be a guest lecturer?
17 MR. SIMON: You can. You can. I agreed with a lot
18 of where you described the complexities of coming up with
19 resolution methodologies in mass tort litigation that are fair
20 and equitable to all the parties, and the struggles that
21 various types of Courts have had over the years to apply them.
22 You know, the only area where I respectfully departed from your
23 conclusion was how then we should reason our way through the
24 issues that were before you. So be it.
25 Having said that, the Third Circuit opinion set forth

1 some core truths that really were no different than your
2 reasoning. It was just some difference in how they chose to
3 apply them. And I'd like to just comment on two. One of them
4 at page 40 was Congress designed Chapter 11 to give those
5 businesses teetering on the verge of a fatal financial plummet
6 an opportunity to reorganize on solid ground and try again.
7 Not to give profitable enterprises an opportunity to evade
8 contractual or other liability.
9 Respectfully, LTL is not teetering on the verge of a
10 fatal financial plummet. I don't even think they're contending
11 that they are. And J&J is not either. And because that is
12 true, because LTL has never paid a dollar in the tort system in
13 terms of a settlement or a judgment, what is before us now is
14 the kind of distortion of Chapter 11 that I believe the Third
15 Circuit said let's not countenance that. We're not here for
16 that.
17 They have terrific lawyers and they make impassioned
18 arguments about how the mass tort system is broken. But
19 bankruptcy courts are courts of limited jurisdiction and it is
20 not their job to resolve those kinds of policy questions about
21 the pros and cons of the mass tort litigation system.
22 And I would make the point that it is now self
23 evident, it is not even in dispute that Johnson & Johnson is
24 extremely adept and astute in resolving mass torts in the tort
25 system. Mr. Kim said it is standard practice. He testified

that Mr. Murdica has assisted him in the resolution of 20, 30, 40 mass torts in the system. They know how to do this and they're free to do so, which says too much about why only this one for which they seek bankruptcy protection.

Having said that, at the end of the day Your Honor knows what issues to balance and you've heard them. And I don't want to be presumptuous or repetitive. But I would take Your Honor back to some observations you made in your March 4th, 2022 opinion which were dead-on. Which is that history has taught us in mass tort litigation that resolution by forced proxy is usually the least equitable and least effective. That's what we saw when we tried the class action structures. Not me personally, but Amchem Products and Ortiz.

What works is informed free choice of each claimant to decide based on counsel whether or not to move forward with their claim in the tort system, risk dismissal on motion, settle, or attempt to try their case to verdict. And bankruptcy courts are not set up to circumvent that system, which is what they're trying to do here.

With that, unless you have any questions, which I bet you don't, thank you for your time and consideration of my remarks.

THE COURT: Thank you, counsel. Appreciate it. Mr. Maimon.

MR. MAIMON: Thank you, Your Honor. May it please

1 the Court. I'd like to start off by answering a question that
2 Your Honor put to Mr. Jonas. And it reminds me of the song
3 that our grand kids sing, a billions here, billions there,
4 billions everywhere. How is that not financial distress? Your
5 Honor asked that question. And I'll answer that question
6 straight on from a legal perspective, because Your Honor is not
7 sitting here as a CPA, as a financial advisor. Your Honor is
8 sitting here as a jurist.
9 The same record that existed in LTL 1 exists in LTL 2
10 with regard to the debtor. But the Circuit said no, they're
11 not in financial distress. The billions that were there
12 before, billions in claims are here again. That they're here
13 now and the Circuit said no financial distress. And that was
14 assuming what Kim admitted was a floor of $61.5 billion.
15 And that is why, at page 55 of the Circuit Court's
16 opinion it said what if time shows with the progression of
17 litigation outside of bankruptcy that cash available under the
18 funding agreement cannot adequately address talc liability.
19 Perhaps at that time LTL could show it belonged in bankruptcy.
20 That was the context of the footnote that the Circuit dropped
21 about them getting rid of the funding agreement.
22 But they said there's going to be litigation and
23 we're going to see what happens. They circumvented it and they
24 completely threw it out. The proof of financial stability and
25 no financial distress is from Mr. Kim's own words where he

said, "we have sufficient funds to meet the liability." There can be no financial distress according to the Circuit's reasoning if they have sufficient funds to meet the liability.

And so they must advance the ridiculous notion that the Circuit got it wrong but we've made -- And that they could never have reasonably anticipated it. But if you look at the appellate briefs that were filed on behalf of the appellants, the appellants raised this very issue. That by virtue of the $61.5 billion funding agreement there is no financial distress.

And so with only the hubris and conceit that a half trillion dollar company can have, they thumb their nose and they say no one could have expected that Judge Ambro and his panel mates would have been so stupid to accept such an argument. That is if not so outrageous, it would be laughable.

The frauds here, the 51, $61.5 billion that was there to justify the Texas two-step has now gone and it crumbles of its own accord. Mr. Gordon said that it was provided to facilitate bankruptcy. No. According to Mr. Kim in his sworn testimony, it was provided to save the Texas two-step from a claim of fraudulent transfer. The termination of the funding agreement for absolutely zero value in exchange is a fraud. And as the U.S. Attorney's Office pointed out today, the disgorgement by Holdco of the consumer business is likewise.

You can't create financial distress through fraud and there is none here. And so what does that bring us to? That

1 brings us to the diversions for which they have no answer. The
2 billions of dollars that Your Honor asked about perhaps the
3 third party payers are there. But they're not considered to be
4 somebody who's going to get money through their plan. The
5 billions of dollars for the indemnity claims that the U.S.
6 Attorney confirmed is a claim against J&J. That's not there.
7 That's the illusory sensational headline of $8.9 billion.
8 Not only that. The false claims that J&J has made
9 about claimant support is also a diversion. And I'll answer
10 your question, Your Honor. Should you take into account new
11 claims? If there were evidence of new claims perhaps the Court
12 could take it into account. But all the Court has in front of
13 it are lists of names. Lists of names where the attorneys who
14 represent them have admitted under oath that they haven't even
15 looked at those people's medical records to see if they
16 actually have the diseases that they called on the phone about.
17 Mr. Kim says no, no, no, no, no, we have commitments
18 from lawyers that their clients will follow their
19 recommendations. He says, we take the representation that
20 claimants will follow the recommendations and will come with
21 us. The lawyer's commitments that the clients would support
22 the plan. Contrast that, Your Honor, with Mr. Watts' --
23 THE COURT: He's not here. I wish he were.
24 MR. MAIMON: -- assurances that he follows the
25 ethical rules. He follows the bankruptcy rule, that there's no

1 claimant support at this point in time. There is none.
2 Because to get it would be a violation of the anti solicitation
3 rule. He said it's not my job, it's not my role, it's not my
4 right to give consent. That's a client's right. He said he
5 did not even send the term sheet to the clients because that
6 would be improper.
7 And so there's nothing for these clients and these
8 claimants to support. He said it's the obligation of the
9 lawyer to account for a client's unique situation, particular
10 objective and interest in making settlement decisions. And he
11 said to fatally doom the diversion here. That is why this is a
12 proposal. This is not an agreement to settle. There is no
13 claimant support, and he said it.
14 He was honest and said I can't tell you what the
15 analysis of the medical records for my clients has said. I
16 don't know. I know that I have listed 500 mesotheliomas, but I
17 can't tell you if any of them have a confirming pathology
18 report.
19 How could Your Honor take that into account, a list
20 of names? Mr. Birchfield doesn't have a list of names. We
21 don't have lists of names. That's not something that the Court
22 should take into account. And Mr. Kim's suggestion, Mr. Kim's
23 suggestion that the claimants have committed and the lawyers
24 have committed their clients to vote in favor of the plan would
25 be unethical. It would be unethical. And yet he says we do it

1 time and time again.
2 I don't know if J&J really does it time and time
3 again, because I believe Mr. Watts that he never does it
4 because it's unethical. But doing something time and time
5 again doesn't make it right. And therefore they say the best
6 argument we have, Your Honor, the best argument we have is Jim
7 Murdica trusts these firms. He believes that the clients will
8 follow them and he believes that over 50 percent of the filed
9 claims will go along with it.
10 Shorthand, we know we've got their support because
11 these lawyers have come through for us in the past. That
12 cannot be a basis for this Court's opinion that Jim Murdica
13 trusts somebody, or Jim Murdica believes somebody. That would
14 be, with all due respect, an abdication of this Court's role to
15 put everyone at the mercy of what Jim Murdica trusts and
16 believes.
17 Mr. Watts, according to J&J this was said. Mr. Watts
18 testified at his deposition that according to J&J this was a
19 one-time opportunity and they will not settle outside of
20 bankruptcy. So I understand Mr. Watts and I sympathize with
21 the position that he's put in. That if his clients want
22 compensation instead of waiting, they should be able to do
23 that. I agree. We agree. But we do not agree that they
24 should be able to do that by depriving other claimants of their
25 Seventh Amendment rights. But that is exactly the threat that

1 Johnson & Johnson makes and it should not be countenanced.
2 Because right now all of our claimants, all claimants
3 are being held captive in this court by a TRO and a preliminary
4 injunction. Somebody whose claim is being held captive may
5 feel that they are under duress to accept anything that's
6 offered and not risk, maybe I get out, maybe I don't. But the
7 threat to lawyers that we will not settle your cases unless you
8 support our efforts to deny others their jury rights should not
9 be countenanced by this Court.
10 The last point that I have, Your Honor, and I
11 appreciate the opportunity. The excuse that it's only a small
12 minority of people who oppose this, the small minority excuse.
13 This is not only in the name of, words of my colleague,
14 unacceptable, this is abhorrent. The excuse that it's been,
15 that the use of this excuse to abuse minority rights in the
16 past has been an abhorrence that our country and our Court
17 should not countenance. How many does it take to make it
18 wrong? Does it take 13, does it take 100, does it take 1,000?
19 How many does it take to make it wrong?
20 The Third Circuit started and ended the following
21 way. We start and stay with good faith. Good intentions such
22 as to protect the J&J brand or comprehensively resolve
23 litigation do not suffice alone. What counts to access the
24 bankruptcy code safe harbor is to meet its intended purposes.
25 Only a punitive debtor in financial distress can do it. LTL

was not. That's why they dismissed.

In Your Honor's words, in Your Honor's words at the first day hearing, the world is watching. We have every confidence that Your Honor will do the right thing. Thank you, Your Honor.

THE COURT: Thank you, counsel.

MS. PARFITT: Your Honor, good evening and thank you for the opportunity to speak. Your Honor, I haven't had a chance to be before you up until now, but my name is Michelle Parfitt and I co-lead the multi district litigation along with Leigh O'Dell.

I've listened today and I've listened for the last 18 months and I do have a few remarks. And if you will indulge me. And I'm trying to be very conscientious of the needs of my other colleagues.

Your Honor, when I heard Ms. Brown say that the tort system is broken, it has failed, the tort system has not failed. It has been a system of justice that has been embraced by both sides of the table. It has been a system of justice that has worked for centuries. It is a system of justice that provides choices, rights, and liberties. One has to ask why, why does LTL seek to retreat to the bankruptcy system?

They have a system of justice that they have embraced, but here today in this case they retreat to the bankruptcy system. To say it's perverse, is perverse the fact

that the Honorable Judge Wolfson for the last seven years governed the multi-district litigation and put attorneys to task to prove the case, to prove the science before we were able to embark on a liability of the case we were to prove the science of the case. Not a check box on a bankruptcy form, but to prove what diseases are related to what exposures.

And Judge Wolfson, after a very lengthy Daubert proceeding, and after years of preparing for that determined that there were certain cancers, certain epithelial ovarian cancers that could be caused by and were caused by exposure to talcum powder. Not uterine cancer, not vaginal cancer, not cervical cancer, not categorically gynecological cancers, but ovarian cancers.

What they seek to do is to come into the bankruptcy court, keep our clients there, provide them with a checklist of broad ranges of mesothelioma, asbestos exposure, broad ranges of gynecological cancers. You asked Mr. Birchfield why the increase of cases? You know why there's an increase of cases, Your Honor, at 60, 70,000? Ask what kinds of cancers are those? Is it a grab bag or are they cancers that are proved by the science? Perverse, the word perverse is used. What's perverse is for a half trillion dollar corporation to retreat to the bankruptcy system claiming the need for refuge and protection for their company.

Dishonestly, that was used too. Dishonest people,

1 dishonest claimants. What's dishonest is to sell and
2 manufacture to consumers around the world a product that
3 contained asbestos and they knew was not safe for 100 more
4 years. That's dishonest.
5 Time. Your Honor, our claimants don't have time.
6 J&J has all the time in the world. They can spend five years
7 working through the different formulas and time lines for a
8 bankruptcy system. Our clients have spoken. We are their
9 voices. They have said give us at least the right, the choice
10 to go into a tort system. At least give us the right to speak.
11 Don't force us into a system we never asked to be in. For
12 those that choose, that's a good right, that is their choice.
13 For those that believe the tort system can be fair.
14 If J&J believes what they say, that they want to give
15 our claimants fair and reasonable compensation, you can do that
16 in a tort system. You can do it in a trial, outside of a
17 trial, in a resolution or not. You don't need to cram the
18 people into a bankruptcy system under a false premise that you
19 are insolvent or that you have financial distress.
20 THE COURT: All right, counsel.
21 MS. PARFITT: Thank you.
22 THE COURT: Thank you.
23 MS. JOHNSON: Good evening, Your Honor. Ericka
24 Johnson from Womble Bond Dickinson on behalf of the Ad Hoc
25 Committee of State Attorney Generals. I rise just to raise a

1 discrete issue with respect to the likelihood of success.
2 Your Honor has heard it's premised on a plan that's
3 to be formed and drafted consistent with the term sheet that
4 was admitted to evidence today. You've also heard Your Honor
5 that that term sheet was negotiated by J&J on the one hand and
6 primarily one plaintiff attorney on the other hand. They came
7 up with a number for total talc liability. It's unclear what
8 the basis for that number was.
9 They also allocated that amount for claimants that
10 weren't part of the negotiation, including the amount that's to
11 be allocated for government claims. Again, it's unclear what
12 the basis was for that allocation. And I didn't want our
13 silence throughout today or debtor's arguments to suggest that
14 there is an agreement with respect to the amount other parties
15 have allocated to the government claims. There's no agreement
16 that the $400 million that's allocated for all government
17 claims is sufficient.
18 Your Honor keeps hearing that there's a resolution.
19 But as Your Honor knows, settlement requires a meeting of the
20 minds. The states weren't consulted in negotiating the term
21 sheet, they haven't agreed that the debtor's liability for all
22 government claims is capped at $400 million. I also want to
23 note Your Honor, that contrary to debtor's assertion that they
24 can come and develop a plan, confirm a plan in short order is
25 just not close to reality.

First of all, that plan has to be drafted. But it also can't be solicited if it's unconfirmable. And as Your Honor knows that you can't provide for a dissenting class with materially different treatment, especially when a company, as they assert, is solvent. And under that term sheet, that's what's proposed here.

It would be materially different treatment likely for the government claims, which constitutes unfair discrimination, and such a plan cannot be confirmed. Thank you, Your Honor.

THE COURT: All right, thank you. I think, you have a minute and a half. Give it your best shot.

UNIDENTIFIED SPEAKER: Well, Your Honor, I'm going to defer to Mr. Thompson and I ask the Court's -- Give him it's indulgence.

THE COURT: I can't --

MR. THOMPSON: This is a $10 million case at a minimum and I would like to be heard.

THE COURT: Counsel, the Court's been very indulgent and I owe it to my employees and the staff here. I'm sorry.

MR. THOMPSON: Your Honor, if LTL 1 from the Third Circuit stands for anything, it's that Your Honor cannot fill in evidentiary gaps in the proof submitted by the defendant, by the debtor here. The debtor has the burden to show that they are in imminent financial distress such that they need the relief of the Code. They have failed.

1 You have to take their testimony at its word. You
2 can't fill it in. What have they admitted? They admitted
3 they're not insolvent, they can pay their liabilities as they
4 come due. They have not estimated their aggregate liability so
5 they can't say we've got too much debt and not enough assets.
6 The CFO admitted to me in deposition in this case two days ago
7 that they've done no analysis of how much it would take to fund
8 their liability in the tort system for the next year, the next
9 three years or at any time.
10 There is no estimate or evidence before this Court
11 that they are unable to fund the stream of payments required to
12 be in the tort system. I asked the CFO specifically and he
13 said there's no such analysis that he's aware of. Nobody has
14 done it. And he's the CFO. There's not a shred of evidence
15 before this Court that they can't meet their liabilities as
16 they come due. In fact, the testimony is contrary to that.
17 And what LTL 1 says is you can't go beyond the record and fill
18 that in yourself.
19 And so the last thing I'll say, because I know you're
20 trying to get done. And I have more things and I wish I could
21 say them all, is Your Honor last week suggested that you were
22 inclined to potentially continue some sort of injunction for a
23 brief period of time. That would be an abuse of discretion.
24 Johnson & Johnson cannot obtain permanent relief. It can't buy
25 its way into permanent relief, it's definitely not distressed

1 itself. New Jersey law prevents the indemnity contract that it
2 bases related to jurisdiction on.
3 They admit that the shared insurance doesn't really
4 exist, or it's highly contingent at best. They can't get
5 permanent relief and they can't get temporary relief because of
6 it. And In Re Piccadilly Circus, In Re Marsh which are both
7 cited in the papers I filed for Mr. Crouch, specifically deal
8 with this.
9 In In Re Marsh they found it an abuse of discretion
10 to delay for 60 days the imposition of the jurisdictional
11 ruling that there wasn't a jurisdictional basis to hold the
12 case so that the debtor could more orderly liquidate. And
13 Piccadilly Circus says the prospect of a successful resolution
14 cannot override the jurisdictional concerns. You cannot say
15 there will be a settlement and we'll come back and say that
16 it's okay to be here now. It's not okay to be here now.
17 The debtor is praying on Your Honor's belief in the
18 bankruptcy system which is a good thing for a bankruptcy judge
19 to have. It's a good thing. And I applaud Your Honor for the
20 thoughtful, I disagreed with, but 50 page decisions that you
21 entered in LTL 1, the analysis that was done and for certifying
22 the issue to the Third Circuit. The Third Circuit said the
23 record is not there.
24 And when I asked John Kim in deposition before this
25 hearing, what's the evidence of financial distress of LTL that

you have today, he said it's the same as I testified to before and that His Honor found before. And I clarified, this is at page 205 and 206 of his deposition. I said, you're saying the bankruptcy Court's findings. He said, that's right. And those are findings that the Circuit Court found were not supported by the evidence. You can't fill in their case for them. They didn't submit evidence and they can't, because if they submitted that evidence they'd be admitting fraud. Thank you, Your Honor.

THE COURT: Thank you.

ATTORNEY: I have one sentence.

THE COURT: One sentence I can fit.

ATTORNEY: All of the arguments that they made today are policy arguments and they're the kind of arguments that you make when the law is not on your side and the Third Circuit did not just kibosh your whole scheme. This Court does not have subject matter jurisdiction. The Third Circuit said so. Start and stay with good faith. They are not in good faith. I'm not yelling at you, Judge. Thank you for hearing me.

THE COURT: No, I understand. All right, folks. Thank you very much. Long day. I'm not giving a ruling right now. I understand what's going on in California. I will give a ruling, I will read a ruling into the record probably a condensed version Thursday at, I don't know, we'll call it noon, high noon. All right? We'll set up a Zoom.

MR. SATTERLEY: Can I just ask for Judge Seabolt's -- So there's not going to be anything on Valadez tomorrow at all. That will be Thursday.

THE COURT: Correct. Move the conference to Thursday afternoon.

MR. SATTERLEY: Okay. Yes, Your Honor.

MR. MOLTON: Judge, can I make, just for the purpose of going forward.

THE COURT: Yes.

MR. MOLTON: You haven't heard from me today except for the fact that, as you predicted, I protected my client's attorney/client privilege and my deposition was short. But I guess that's why they did it, they wanted to use it for that purpose.

In any event, we intend to file. David Molton, by the way, for the proposed counsel for the Talc Claimants Committee. We propose, we are intending to file and contemplate filing a motion to dismiss. Nothing surprising in that. Hopefully by the end of this week we'll be talking with Jones Day about scheduling and looking forward to getting that on your calendar in accordance with the Bankruptcy Rules within the time frame as required. Thank you, Judge.

THE COURT: Understood. Thank you.

MR. GORDON: Your Honor, I'm sorry, there's one other loose end quickly.

THE COURT: Yes.

MR. GORDON: We talked about finalizing the rest of the record, so we've got to get that to you before Thursday. So we'll work on that. We still have to get to you the exhibits and the deposition designations because you should have the full record --

THE COURT: See what you could do. That's why I'm -- That's why I pushed it to Thursday.

MR. GORDON: Okay. We appreciate it, Your Honor.

THE COURT: All right. Thank you all. Get home safely, or wherever you're going.

ATTORNEY: Everybody clean up your --

THE COURT: Yes. And this isn't Yankee Stadium.

* * * * *

C E R T I F I C A T I O N

We, DIPTI PATEL, TRACEY WILLIAMS, KAREN WATSON, LIESL SPRINGER and TRACY GRIBBEN, court approved transcribers, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter and to the best of our ability.

/s/ Dipti Patel
DIPTI PATEL

/s/ Tracey Williams
TRACEY WILLIAMS

/s/ Karen Watson
KAREN WATSON

/s/ Liesl Springer
LIESL SPRINGER

/s/ Tracy Gribben
TRACY GRIBBEN

J&J COURT TRANSCRIBERS, INC. DATE: April 20, 2023

In the Matter Of:

In Re: LTL Management, LLC

RICHARD DICKINSON

April 17, 2023

LEXITAS™

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY
----------X
In Re:

LTL MANAGEMENT, LLC,

Debtor.

Case No. 21-30589 (MBK)
----------X

CONFIDENTIAL

VIDEOTAPED DEPOSITION OF RICHARD DICKINSON

DATE: April 17, 2023

TIME: 10:02 a.m.

PLACE: ***REMOTE***

BEFORE: Rebecca Schaumloffel, RPR, CCR-NJ

JOB NO: 2023-893393

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ALSO PRESENT:

Deane Carstensen, Lexitas
John Kim, Esq.

* * *

R. DICKINSON

THE VIDEOGRAPHER: We are now on the record. Today's date is April 14, 2023, and the time right now is 10:04 a.m. Eastern Daylight Time.

This is the video deposition of Richard Dickinson in the matter of LTL Management, LLC, filed in the United States Bankruptcy Court, District of New Jersey, case number 23-12825 (MBK).

This deposition is taking place via web video conference with all participants attending remotely.

My name is Dean Carstensen. I'm the videographer representing Lexitas.

Counsel will be noted on the stenographic record.

And our court reporter today is Rebecca Schaumloffel, also representing Lexitas.

The court reporter can now swear in the witness and then we may proceed.

THE COURT REPORTER: And just to

R. DICKINSON

note: Today's date is April 17, 2023.

RICHARD DICKINSON, called as a witness, having been first duly sworn by a Notary Public of the States of New York, New Jersey, and Pennsylvania was examined and testified as follows:

MR. JONES: Lydell, excuse me, just for a second.

Mr. Dickinson, excuse me, as well.

We have a standing agreement with the committee in these cases about provisional confidentiality of the transcript. It should be marked as confidential pursuant to that agreement.

We will be making new designations of confidentiality within 24 hours of receiving the final transcript, but anyone on the call now who will not abide by provisional confidentiality should sign off. I

R. DICKINSON

know Mr. Sponder is going to make a statement, and that's fine.

But, others, please sign off if you're not willing to abide by provisional confidentiality.

Thank you very much.

MR. SPONDER: Hi. This is Jeff Sponder from the office of the United States Trustee.

Judge Kaplan made a ruling on this past Thursday carving out the United States Trustee from the District of New Jersey, confidentiality or protective order, and the United States Trustee did not sign on to the prior case, LTL I one Protective Order.

Thank you.

MR. BENSON: All right. I think we can get started.

EXAMINATION BY

MR. BENSON:

Q. Good morning, Mr. Dickinson.

A. Good morning.

R. DICKINSON

Q. Can you hear me okay?

A. I can.

Q. All right. My name is Lydell Benson. I'm an attorney with Brown Rudnick. Brown Rudnick, we represent the Official Committee of Talc Claimants.

How are you doing this morning?

A. I'm doing great. How are you?

Q. I'm doing well.

Are you represented by counsel this morning?

A. I am.

Q. Could you please state your full name for the record?

A. Richard Frank Dickinson.

Q. Mr. Dickinson, you were deposed in connection with LTL's first bankruptcy, correct?

A. That is correct.

Q. By Jeff Jonas, right?

A. And others, correct.

Q. And was that your first deposition?

A. Yes.

R. DICKINSON

Q. Was that the last time you were deposed?

A. That is.

Q. Okay. Well, given that, let me go over a few housekeeping matters for today's deposition.

The court reporter will take down my questions and your answers, so it's critical that you provide verbal responses to my questions. Sometimes deponents will nod their head or respond with uh-hum or mh-hmm or hm-hmmm. I will correct you if that happens, but if you can try your best to give verbal responses, that would be great.

It's also critical that only one of us are speaking at a time, including your counsel when we might be engaged in the back and forth. So I will do my best to allow you to finish answering your question and I would ask that you allow me to finish asking my question before you begin.

Is that clear?

A. Yes. Mr. Benson, it's a little muffled at times to hear you.

R. DICKINSON

Q. How about now?

A. I think that's better, but...

Q. Okay, I'll try my best.

THE COURT REPORTER: I was going to say the same thing. You were going in and out.

MR. BENSON: Okay. How about now?

THE COURT REPORTER: Now seems okay.

MR. BENSON: Okay, good.

MR. BLOCK: If you just keep your voice up, I think that will be fine.

MR. BENSON: Okay, I can do that.

BY MR. BENSON:

Q. Mr. Dickinson, if you do not understand a question, please ask for clarification. If you cannot hear my question or if I'm not speaking loud enough, you know, as you just did, please let me know and I will try my best to raise my voice.

I may ask a bad question. If I

R. DICKINSON

do, just let me know; I will try to rephrase it, have it read back.

You understand that today you are giving testimony under oath?

A. I do.

Q. You understand that means that you are legally obligated to answer these questions truthfully?

A. I do.

Q. So we are seeking complete information that encompasses all of your knowledge on the subjects that we will cover today. And the purpose is for you to provide complete and truthful answers.

Is there any reason that you're aware of that you cannot testify completely and honestly today?

A. No.

Q. You are welcome to ask for a break, but I do ask that if I'm in the middle of a question or if I have a pending question, that you just let me finish that before the break. You don't need to give me a reason why, that's totally fine.

R. DICKINSON

Is that understood?

A. Thank you for that, Mr. Benson. Yes, it's understood.

Q. All right. If during the deposition, you remember something that changes a previous answer, please -- so you can correct your prior answer.

Also, you may hear objections to certain questions, which is fine. In the event that that happens, you should still do the best that you can to answer my question. If you are instructed not to answer, it's up to you to take that advice of counsel.

And, again, just to reorient you, just because we are taking a remote deposition, what we'll do is I'll call out documents, for example, tab 1, and the doc tech will put the document on the screen as we went through earlier.

THE COURT REPORTER: Excuse me, whoever is not speaking, please mute yourself. Thank you.

I muted them.

Q. Mr. Dickinson, if I say LTL I or

R. DICKINSON

LTL's first bankruptcy, can we agree that I'm referring to the bankruptcy filed on October 14, 2021?

A. Yes.

Q. And if I say LTL II or LTL second bankruptcy, can we agree that I'm referring to the LTL's bankruptcy filed on April 4, 2023?

A. Yes.

Q. Great. Mr. Dickinson, where are you located right now?

A. I'm in New Brunswick, New Jersey.

Q. Okay. Is there anyone else in the room with you?

A. No.

Q. I take it you are at your office?

A. I am.

Q. Okay. So I assume you have other materials in the room with you, your computer, the mouse, notepads or notes, and things like that?

A. That is correct.

Q. Do you have any other documents in the room with you right now or at your ready?

R. DICKINSON

So...

Q. Sir, could you identify any financial consequence to LTL from terminating the 2021 Funding Agreement?

A. I'm going to defer to Mr. Kim and the legal team for that answer.

Q. So you, personally, cannot identify any financial consequence to LTL from terminating the 2021 Funding Agreement, true?

MR. JONES: Object as asked and answered.

A. No.

Q. No, you cannot?

A. I already answered that question.

Q. Sir, I just don't want to have a double negative. You said no. And I was just trying -- so we're going to have to do that again.

Mr. Dickinson, can you, personally, identify any financial consequence to LTL from terminating the 2021 Funding Agreement, yes or no?

A. No, I cannot.

R. DICKINSON

Mr. Prieto told you.

But you can answer the question about other persons.

BY MR. BLOCK:

Q. Let me rephrase the question.

Other than what is shown here in the minutes about what Mr. Prieto said to you about the risk that the 2021 Funding Agreement was potentially void or voidable, do you have any other information about that?

A. Once again, I'm going to defer to the meeting minutes. There could have been -- more than Mr. Prieto, but I'm going defer to the meeting minutes, resolutions, and the presentations.

Q. Okay. No businessperson at JJCI or J&J ever told you as a businessperson that the 2021 Funding Agreement was void or voidable, correct?

A. That is correct.

Q. No businessperson at J&J or JJCI ever told you that they thought the 2021 Funding Agreement was unenforceable, correct?

MR. JONES: Are you defining

R. DICKINSON

"businesspersons" other than lawyers?

MR. BLOCK: Let's have the question read back.

Yes, of course.

MR. JONES: All right. There are business lawyers who are credentialed with a JD, Mr. Block.

MR. BLOCK: Let's just have the question read back so we can get a clean answer.

Actually, let me it ask again. I think it will be quicker.

Sorry, Madam reporter.

BY MR. BLOCK:

Q. Sir, can you hear me okay?

A. I can.

Q. Okay. Mr. Dickinson, no businessperson at J&J or JJCI ever told you that they believed that the 2021 Funding Agreement was unenforceable, correct?

A. Correct.

MR. JONES: Object -- you may share that which is not a privileged communication with counsel, if there

R. DICKINSON

its liabilities on April 3, 2023?

A. Mr. Ruckdeschel, with all due respect, I already answered that question.

Q. You didn't, sir. You said --

A. I did answer that question. I just -- I referred you to the document that you make your own conclusion, you know, from the document that was within the -- imbedded in the presentation and in our MOR filings.

Q. On April 3 of 2023, was LPL able to meet its liabilities as they came due?

A. Yes.

Q. All right. On April 4, after the restructuring, was LTL able to meet its liabilities as they came due?

A. Yes.

Q. All right. Now, sir, with respect to the restructuring -- I'm sorry, strike that question.

With respect to the dismissal of the first bankruptcy, after the dismissal order was entered on January 30th, I believe, of 2023, did LTL perform any evaluation as to how much money it would take to fund a return

R. DICKINSON

to litigating talc claims in the tort system over the following 12 months?

A. I didn't see any written estimation or nor do I know of any.

Q. All right. And would that -- that would be the same with respect to if I expanded that period over the next -- did LTL, after the January 30 dismissal order from the Third Circuit, did LTL perform any evaluation of how much cash flow it would require to manage its talc liabilities in the tort system over the next three years?

A. I didn't see anything in writing, nor did I do it.

Q. All right. And you are not aware of any evaluation that was performed -- you, the CFO of LTL, are not aware of any evaluation that was performed to ascertain what the expected cash flow demands would be of returning these cases to the tort system.

Fair?

A. That is fair, Mr. Ruckdeschel.

MR. RUCKDESCHEL: All right.

And I have no further questions.

EXHIBIT 4-FILED UNDER SEAL

EXHIBIT 5-FILED UNDER SEAL

EXHIBIT 6-FILED UNDER SEAL

EXHIBIT 7-FILED UNDER SEAL

EXHIBIT 8-FILED UNDER SEAL

Nos. 22-2003, 22-2004, 22-2005, 22-2006, 22-2007,
22-2008, 22-2009, 22-2010, 22-2011

IN THE

United States Court of Appeals for the Third Circuit

IN RE: LTL MANAGEMENT LLC,

Debtor

*OFFICIAL COMMITTEE OF TALC CLAIMANTS,

Appellant

*(Amended per Court's Order dated 06/10/2022)

On direct appeal from the United States Bankruptcy Court
for the District of New Jersey, No. 21-30589, Adv. Proc. No. 21-3023

MOTION TO STAY THE MANDATE

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March 22, 2023

Counsel for LTL Management LLC

13 context, noting that limiting such dismissals to "extraordinary cases is particularly appropriate" given that lack of good faith is an express statutory ground for later denying plan confirmation in Chapter 13, *see* 11 U.S.C. § 1325(a)(3), and Chapter 11, *see id.* § 1129(a)(3), both. *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 375 n.11 (2007). Bankruptcy courts "should be more reluctant to dismiss a petition for lack of good faith than to reject a plan for lack of good faith." *Id.* (citation omitted). Even if the Supreme Court does not entirely jettison the good-faith requirement, it is likely to be persuaded that this Court's standard is a bridge too far.

B. LTL's petition for certiorari will present a substantial question regarding the standard of review that an appellate court applies to a bankruptcy court's good-faith findings.

The panel decision also creates a split regarding the standard of review that an appellate court applies in assessing good faith. The panel treated good faith as "essentially[] a conclusion of law" reviewed de novo without any deference to the Bankruptcy Court. Op. 33 (quoting *BEPCO*, 589 F.3d at 616). It "likewise" treated the Bankruptcy Court's finding of financial distress the same, giving it a "fresh look." Op. 33. The panel "[w]eigh[ed] the totality of facts and circumstances" itself, leading it to reject the Bankruptcy Court's conclusion that Old JJCI—rather than LTL—was the proper focus of the financial-distress analysis even though the funding agreement was part of the bankruptcy-driven

restructuring, and the restructuring was a "single integrated transaction" to resolve Old JJCI's talc liabilities. Op. 43-44. And the panel "evaluate[d] the financial condition of LTL" for itself, concluding it would "not accept [the bankruptcy court's] projections of future liability." Op. 45-46. By contrast, other courts of appeals review a bankruptcy court's good-faith finding under "the clearly erroneous standard." *Premier Auto. Servs.*, 492 F.3d at 279; *see also In re Brazos Emergency Physicians Ass'n, P.A.*, 471 F. App'x 393, 394 (5th Cir. 2012); *In re Cedar Shore Resort, Inc.*, 235 F.3d at 379; *In re Trident Assocs. Ltd. P'ship*, 52 F.3d 127, 132 (6th Cir. 1995); *In re Marsch*, 36 F.3d at 828.

Here, again, the Court's analysis is likely wrong and there is a reasonable possibility it will be reversed by the Supreme Court. *See Nara*, 494 F.3d at 1133. The instances in which the Supreme Court has "articulated a standard of deference for appellate review of district-court determinations reflect an accommodation of the respective institutional advantages of trial and appellate courts." *Salve Regina Coll. v. Russell*, 499 U.S. 225, 233 (1991). "[A] federal appellate court [has the] primary function as an expositor of law," *Miller v. Fenton*, 474 U.S. 104, 114 (1985), and is therefore best-suited to resolve questions that "contribute to the clarity of legal doctrine," *Salve Regina*, 499 U.S. at 233. But a second (and in many cases, third) round of de novo consideration imposes added costs on judges and litigants alike, and it is ill-suited to occasions when an appellate court's

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:	.	Case No. 21-30589(MBK)
LTL MANAGEMENT LLC,	.	
Debtor.	.	
LTL MANAGEMENT, LLC,	.	Adversary No. 21-03032(MBK)
Plaintiff,	.	
v.	.	Clarkson S. Fisher U.S. Courthouse 402 East State Street Trenton, NJ 08608
THOSE PARTIES LISTED ON APPENDIX A TO THE COMPLAINT, ET AL.,	.	
Defendants.	.	Friday, February 18, 2022 9:01 a.m.

TRANSCRIPT OF TRIAL DAY FIVE
BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

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* * * * *

1 movants' own experts on this point. Again, Mr. Burian, the LTL
2 transaction's a single pre-planned integrated transaction
3 comprised of five related interdependent steps. He said it
4 again, it's a single transaction and the debtor was created for
5 one purpose, bankruptcy.
6 And, again, Mr. Diaz, the defined term he used to
7 cover both the restructuring and the bankruptcy was "integrated
8 transaction series." And, in fact, he went on to say ignoring
9 JJCI's financial distress is the purposely -- or purposefully
10 misapprehend the facts that led to this bankruptcy proceeding.
11 You would be misapprehending the facts, ignoring the facts.
12 It's interesting, notwithstanding that, he did not analysis of
13 -- he did not focus on Old JJCI. He focused on J&J because
14 that's what the movants asked him to do.
15 And Mr. Burian, just to go on, basically said, well,
16 not only does his report basically contradict what you're
17 hearing from the movants that Old JJCI is irrelevant, he spent
18 17 slides in his report on the issue of whether Old JJCI was in
19 financial distress. And, of course, if you look at this
20 adjusted income chart that he used, this is the chart that
21 makes very plain that he ignored talc litigation costs. So you
22 look at 2020 and 2021, he has the adjusted income going up and
23 he has it going up because he hasn't accounted for any of the
24 talc litigation costs. That's how he got there.
25 So I think Your Honor's pretty well aware the basics

of the corporate restructuring. At this point, this is just a depiction of it that we put together before. The one thing I would note, of course, is, you know, the funding agreement here is different from all the other cases in the sense that it includes also a Johnson & Johnson, the ultimate parent, agreeing to obligate itself to the extent of the value of Old JJCI. So you have basically two sources of asset availability to LTL.

So Mr. Molton yesterday, again, used the phrase BadCo that LTL is a BadCo. Otherwise, I think until that, the movants were pretty careful in not using that term. I mean you saw that Mr. Diaz referred to it as I think a talc powder company or something like that. But here we know that it actually does, aside from the funding agreement or in addition to the funding agreement, it has significant assets.

And, of course, it came into this court with an agreement from J&J and New JJCI to -- for them to advance under the funding agreement $2 billion to be deposited in a QSF. And, of course, we've put that off. You know, we filed a motion to have Your Honor approve that. We put that off at the request of the other side.

But, again, you heard in the testimony I think from Mr. Kim that that was done to show the good faith. And I think Mr. Wuesthoff said the same thing, to show the good faith here that we're serious, that we're willing to put up a lot of money

as a start here just to not even have to argue about this issue of whether there's undercapitalization or unfairness or harm. We just wanted to be past that issue. We want to get to the guts of this case, which is to negotiate an agreement on a resolution of the talc claims.

Now the funding agreement, I want to spend a little time on this because it's obviously extremely important to understanding what the situation is. But, again, you have two payors here. You have not only JJCI, but you have J&J. And part of the reason for that, Your Honor, is that in the other cases, we heard complaints about, w ell, but we're worried that the entity, the obligor, the payor in those cases is going to be dividending assets away -- dividending assets up to the parent. At the end of the day, we're going to be left with an empty bag.

And, you know, we try to learn from the other cases. And so we thought let's take that issue off the table. We'll actually have an obligation from the ultimate parent. So that was based on learning that we had received from the North Carolina cases, and frankly, you know, we've been criticized greatly for forum shopping and filing in North Carolina. But part of the thinking was that we have a jurisdiction that's actually confronted some of these issues. We tried to learn from those issue and actually address some of those issues in how things were designed in connection with the restructuring.

1 Also, I should just point out because of all the time
2 that was spent trying to suggest some nefarious connection
3 between the corporate restructuring and the spinoff, the fact
4 that J&J is now including as a payor or isn't included as a
5 payor in this funding agreement should eliminate any concern
6 about that because it doesn't matter. If assets are spun out,
7 if that actually occurs, a transaction like that occurs,
8 there's full protection because J&J is sitting there with an
9 obligation to pay up to the value of Old JJCI.
10 And what's important, unlike the other cases, this
11 funding agreement sets the floor on the value. It sets a
12 floor. So whatever the value was basically the day because the
13 restructuring, that value is locked in. So it can only go up.
14 It can't go down. That's unlike other cases where it's
15 potentially the payor based on developments with its business
16 operations or what have you, you know, could suffer some
17 diminution in value. That can't happen here.
18 There's another reason for doing this, again, to try
19 to eliminate some of the objections and concerns that we heard
20 with respect to the earlier funding agreements.
21 THE COURT: Mr. Gordon, you said value of Old JJCI.
22 It's the value of New JJCI, is it not, under the funding
23 agreement?
24 MR. GORDON: Well, no, it's the value of Old JJCI.
25 Actually, whatever that -- I hope I'm getting this right. It's

whatever that value was basically at the time that the restructuring occurred. Let me just -- maybe my nomenclature's off.

THE COURT: I thought it's the 60 billion cap --

MR. GORDON: Correct. It's the value of Old JJCI.

THE COURT: Right.

MR. GORDON: But Mr. Prieto pointed out excluding the talc liability. So it's the value whatever it was on the day before excluding the talc liability. That's the whole idea with these funding agreements. It's to basically to be able to say to the Court, to say to the parties, look, you haven't been hurt because the entity that was standing behind or the value of assets that were effectively standing behind the liability or were available to pay the liability, that value is fully preserved through that funding agreement. So what that was is fully preserved.

The only difference is is that instead of having the company there, you have a funding agreement that provides direct right to those assets through this funding agreement.

THE COURT: All right.

MR. GORDON: Did I answer your question, Your Honor?

THE COURT: Yeah. I guess I have to take a look back. I thought the language of the funding agreement, it references the value of New JJCI. And I've seen it stated differently --

MR. GORDON: Yeah.

THE COURT: -- in different briefs.

MR. GORDON: Yeah. I think what you're referring -- and these are good questions, Your Honor. This is complicated, so I appreciate your asking me. I think what you're referring to is the fact that, again, we tried to make clear in this funding agreement that if the value of New JJCI actually goes up post the transaction, then the value under the funding agreement also goes up.

And that goes to my point about it sets a floor based on the value of what Old JJCI was in the moment in time before this transaction minus or excluding the talc costs. And then if that value goes up, the estate would get the benefit of that value, as well.

THE COURT: Okay. Thank you.

MR. GORDON: And I just wanted to point out also in this slide, and I think Your Honor's probably seen there's literally no conditions or any material conditions on the permitted funding uses under this document. I'll come back to this.

So I did want to focus on permitted funding use because the other side I think has fashioned a new argument that we hadn't heard before with respect to the funding agreement. So there's basically two different scenarios where funding is available.

The first is funding in the tort system. And as you would expect, what that funding says is that the payors are obligated to pay the liabilities to the extent they're established by a judgement or a settlement in the tort system. That's what you would expect and that's what happens. You want funds available to pay settlements, to pay judgments in the tort system. So it makes very clear this is what we're talking about if there's no proceeding in bankruptcy. Whether there was no case filed or whether the case is filed or dismissed, the money's available for that purpose.

And you can imagine, Your Honor, by the way, the hue and cry you would have heard if this provision weren't in there because they would have said that we've manipulated the whole system because you filed bankruptcy and now you're going to tell the Court you can't dismiss our case because there's no money available if we go back in the tort system.

So this is there to protect the claimants. It's there to assure this isn't treated or consider a fraudulent conveyance. The idea was and the intent was the claimants are covered either way in bankruptcy or outside.

Now where the criticism I think has been focused is on this provision. And this talks about how the funding is used if a bankruptcy case is commenced. And what it talks about is if the payors are obligated to pay the liabilities in connection with the funding of one or more trusts for the

1 benefit of claimants created pursuant to a plan that's
2 confirmed by a final non-appealable order of the bankruptcy
3 court and, to the extent required, the district court.
4 And all that -- you know, the other side has said
5 that puts the claimants in a worse position. It puts a variety
6 of limitations and conditions on the funding. It's not fair.
7 It doesn't exist in the tort system. And I would say to that,
8 Your Honor, all this does is recognize the way the rules and
9 the law work in bankruptcy. The idea is that if you have a
10 bankruptcy case, the intent is to ultimately reach a plan or
11 reorganization and then you want the funding available to fund
12 the trust. This is what has happened in every asbestos case,
13 Your Honor. This is where these cases end up.
14 And you heard some hypotheticals. I think Mr. Diaz
15 said, well, what if the stay were lifted -- if the stay is
16 lifted and somebody's allowed to go back and collect a
17 judgment, the money wouldn't be available. That's technically
18 correct, but we wouldn't expect that to happen in a bankruptcy
19 case.
20 The way I think about it is in these mass tort cases,
21 you either have a bankruptcy case or you don't. And if you
22 don't have a bankruptcy case, then you have the money available
23 to you to pay the judgments and the settlements in the tort
24 system. And if you do have a bankruptcy case, it's available
25 for when you need it which is in connection with a plan.

AMENDED AND RESTATED FUNDING AGREEMENT

This AMENDED AND RESTATED FUNDING AGREEMENT, dated October 12, 2021 (as it may be amended, restated, modified or supplemented from time to time, this "Agreement"), is by and among JOHNSON & JOHNSON, a New Jersey corporation ("J&J"), JOHNSON & JOHNSON CONSUMER INC., a New Jersey corporation ("JJCI"), and LTL MANAGEMENT LLC, a North Carolina limited liability company ("LTL").

RECITALS

A. On the date hereof, but prior to the execution of this Agreement, in contemplation of the divisional merger (the "Divisional Merger") of Chenango Zero LLC, a Texas limited liability company ("Chenango"), pursuant to Chapter 10 of the Texas Business Organizations Code, J&J and Currahee Holding Company Inc., a New Jersey corporation ("Currahee"), as payors, and Chenango, as payee, executed and delivered a funding agreement dated as of October 12, 2021 (the "Original Funding Agreement").

B. Immediately following the execution and delivery of the Original Funding Agreement, Currahee, in its capacity as the sole member of Chenango approved a Plan of Divisional Merger contemplating the Divisional Merger (the "Plan of Divisional Merger").

C. At the effective time of the Divisional Merger, (1) certain property of Chenango as set forth on Schedule 5(b)(i) to the Plan of Divisional Merger and certain liabilities and obligations of Chenango as set forth on Schedule 5(c)(i) to the Plan of Divisional Merger (collectively, the "Allocated Assets and Liabilities") were allocated to a new Texas limited liability company created upon the effectiveness of the Divisional Merger ("Chenango One"), (2) the remaining property, liabilities and obligations of Chenango were allocated to another new Texas limited liability company created upon effectiveness of the Divisional Merger ("Chenango Two"), and (3) Chenango ceased to exist.

D. Pursuant to the Original Funding Agreement, J&J and Currahee agreed, on a joint and several basis, to provide funding to Chenango sufficient to pay the costs of operations of Chenango's business and other liabilities and obligations included in the Allocated Assets and Liabilities as and when they become due.

E. The Allocated Assets and Liabilities included the rights and obligations of Chenango under the Original Funding Agreement, and, at the effective time of the Divisional Merger, pursuant to the terms of the Plan of Divisional Merger, the rights and obligations of Chenango under the Original Funding Agreement were allocated to Chenango One such that, following the effectiveness of the Divisional Merger, Chenango One had assets having a value at least equal to its liabilities and had financial capacity sufficient to satisfy its obligations as they become due in the ordinary course of business, including any Talc Related Liabilities.

F. Following the Divisional Merger, (1) Chenango One effected a conversion (the "NC Conversion") into a North Carolina limited liability company and changed its name to "LTL Management LLC" and (2) Chenango Two effected a merger (the "TX-to-NJ Merger") with and into Currahee, which changed its name to "Johnson & Johnson Consumer Inc."

G. Payors and Payee desire to amend and restate the Original Funding Agreement to reflect that the Divisional Merger, the NC Conversion and the TX-to-NJ Merger have occurred and that JJCI, now a New Jersey corporation having the name "Johnson & Johnson Consumer Inc.," and Payee, now a North Carolina limited liability company having the name "LTL Management LLC," are the parties to such agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. Definitions. As used in this Agreement, the following terms have the meanings herein specified unless the context otherwise requires:

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"Agreement" has the meaning specified in the first paragraph hereof.

"Allocated Assets and Liabilities" has the meaning specified in the recitals to this Agreement.

"Bankruptcy Case" means any voluntary case under chapter 11 of the Bankruptcy Code commenced by the Payee in the Bankruptcy Court.

"Bankruptcy Code" means title 11 of the United States Code, as amended from time to time and any successor statute and all rules and regulations promulgated thereunder.

"Bankruptcy Court" means the United States Bankruptcy Court where the Bankruptcy Case is commenced.

"Base Rate" means, for any day, a fluctuating interest rate per annum as shall be in effect from time to time, which rate per annum shall at all times be equal to the Federal Funds Effective Rate in effect from time to time, determined one Business Day in arrears, plus 1/2 of 1% per annum.

"Board" means: (a) with respect to a corporation, the board of directors of the corporation or any committee thereof; (b) with respect to a partnership, the board of directors, the managing member or members or the board of managers, as applicable, of the general partner of the partnership; (c) with respect to a limited liability company, the managing member or members or the board of managers, as applicable, of the limited liability company; and (d) with respect to any other Person, the board or committee of such Person serving a similar function.

"Business Day" means each day other than a Saturday, a Sunday or a day on which banking institutions in Charlotte, North Carolina or at a place of payment are authorized by law, regulation or executive order to remain closed.

"Capital Stock" means: (a) in the case of a corporation, corporate stock; (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person; but excluding (in each case of (a) through (d) above) any debt securities convertible into such equity securities.

"Chenango" has the meaning specified in recitals to this Agreement.

"Chenango One" has the meaning specified in the recitals to this Agreement.

"Chenango Two" has the meaning specified in the recitals to this Agreement.

"Contractual Obligation" means, as to any Person, any obligation or similar provision of any security issued by such Person or any agreement, instrument or other undertaking (excluding this Agreement) to which such Person is a party or by which it or any of its property is bound.

"Currahee" has the meaning specified in first paragraph of this Agreement.

"Default" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"District Court" means the United States District Court in the district of the Bankruptcy Court.

"Divisional Merger" has the meaning specified in the recitals to this Agreement.

"Event of Default" has the meaning specified in Section 6.

"Federal Funds Effective Rate" means, for any period, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York.

"Funding Account" means the account of the Payee listed on Schedule 2 to this Agreement, into which the proceeds of all Payments made under this Agreement shall be deposited, or such other account designated in writing by the Payee to the Payors from time to time.

"Funding Date" has the meaning specified in Section 2(b).

"Funding Request" has the meaning specified in Section 2(b).

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, in effect from time to time, consistently applied.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"J&J" has the meaning specified in first paragraph of this Agreement.

"JJCI" has the meaning specified in first paragraph of this Agreement.

"JJCI Value" means the greater of:

(a) the fair market value of the businesses and other assets (including equity interests) held by Chenango, as determined (i) immediately prior to the effective time of the Divisional Merger, (ii) assuming the Allocated Assets and Liabilities are not held by Chenango, and (iii) based on the aggregate amount that would be received upon a sale of such businesses and other assets in one or more (as would maximize the aggregate amount) market transactions between prudent parties, acting at arms' length, under no compulsion to act and having reasonable knowledge of relevant information concerning such businesses and other assets; and

(b) the sum of:

(i) the fair market value of the businesses and other assets (including equity interests) held by Chenango Two or, after the TX-to-NJ Merger, JJCI, as determined (A) as of the applicable calculation date, (B) assuming neither Chenango Two nor, after the TX-to-NJ Merger, JJCI has any obligations under this Agreement, and (C) based on the aggregate amount that would be received upon a sale of such businesses and other assets in one or more (as would maximize the aggregate amount) market transactions between prudent parties, acting at arms' length, under no compulsion to act and having reasonable knowledge of relevant information concerning such businesses and other assets; and

(ii) the fair market value of any businesses or other assets (including equity interests) held by Chenango Two or, after the TX-to-NJ Merger, JJCI that, following the effective time of the Divisional Merger and prior to the applicable calculation date, are distributed by Chenango Two or, after the TX-to-NJ Merger, JJCI to its members, as determined (A) at the time of such distribution and (B) based on the aggregate amount that would be received upon a sale of such businesses or other assets in one or more (as would maximize the aggregate amount) market transactions between prudent parties, acting at arms' length,

under no compulsion to act and having reasonable knowledge of relevant information concerning such businesses or other assets.

"LTL" has the meaning specified in the first paragraph of this Agreement.

"NC Conversion" has the meaning specified in the recitals to this Agreement.

"Organizational Documents" means: (a) with respect to any corporation, its certificate or articles of incorporation and bylaws; (b) with respect to any limited liability company, its certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation of such entity.

"Original Funding Agreement" has the meaning specified in the recitals to this Agreement.

"Payee" means LTL Management LLC, a North Carolina limited liability company.

"Payee Affiliate" means any controlled Affiliate of the Payee.

"Payee Material Adverse Effect" means: (a) a material impairment of the rights and remedies of the Payors under this Agreement, or of the ability of the Payee to perform its material obligations under this Agreement; or (b) a material adverse effect upon the legality, validity or enforceability of this Agreement against the Payee.

"Payment" has the meaning specified in Section 2(a).

"Payor Affiliate" means any Affiliate of a Payor, excluding the Payee and any Payee Affiliate.

"Payor Material Adverse Effect" means with respect to a Payor: (a) a material adverse change in, or a material adverse effect upon, the business, assets, liabilities (actual or contingent) or financial condition of such Payor and its Subsidiaries, taken as a whole; (b) a material impairment of the rights and remedies of the Payee under this Agreement, or of the ability of such Payor to perform its material obligations under this Agreement; or (c) a material adverse effect upon the legality, validity or enforceability of this Agreement against such Payor.

"Payors" means J&J and JJCI.

"Permitted Funding Use" means each of the following:

(a) the payment of any and all costs and expenses of the Payee incurred in the normal course of its business (including the payment of any indemnification or other obligations of the Payee owing to any managers or officers of the Payee) at any time

when there is no proceeding under the Bankruptcy Code pending with respect to the Payee;

(b) the payment of any and all costs and expenses of the Payee incurred during the pendency of any Bankruptcy Case, including the costs of administering the Bankruptcy Case and any and all other costs and expenses of the Payee incurred in the normal course of its business (including the payment of any indemnification or other obligations of the Payee owing to any managers or officers of the Payee);

(c) the funding of any amounts to satisfy:

(i) the Payee's Talc Related Liabilities established by a judgment of a court of competent jurisdiction or final settlement thereof at any time when there is no proceeding under the Bankruptcy Code pending with respect to the Payee;

(ii) following the commencement of any Bankruptcy Case, the Payee's Talc Related Liabilities in connection with the funding of one or more trusts for the benefit of existing and future claimants created pursuant to a plan of reorganization for the Payee confirmed by a final, nonappealable order of the Bankruptcy Court and, to the extent required, the District Court (for the avoidance of doubt, regardless of whether such plan of reorganization provides that the Payors will receive protection pursuant to section 105 or section 524(g) of the Bankruptcy Code and regardless of whether the Payors support such plan of reorganization); and

(iii) in the case of either (i) or (ii), any ancillary costs and expenses of the Payee associated with such Talc Related Liabilities and any litigation thereof, including the costs of any appeals;

(d) the funding of any amounts necessary to cause the Funding Account to contain at least $5,000,000 at such time;

(e) the funding of any obligations of the Payee owed to any Payor or Payor Affiliate, including any indemnification or other obligations of the Payee under any agreement provided for in the Plan of Divisional Merger; and

(f) the payment of any and all costs and expenses of the Payee incurred in connection with the pursuit of available remedies to collect any unfunded Payments due and owing to the Payee or otherwise to enforce the performance by the Payors, or either of them, of any provision of this Agreement;

in the case of clauses (a) through (e) above, solely to the extent that any cash distributions theretofore received by the Payee from its Subsidiaries are insufficient to pay such costs and expenses and fund such amounts and obligations in full and further, in the case of clause (c)(ii) above, solely to the extent the Payee's other assets are insufficient to satisfy the Payee's Talc Related Liabilities in connection with the funding of such trust or trusts.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization, or government or any agency or political subdivision thereof.

"Plan of Divisional Merger" has the meaning specified in the recitals to this Agreement.

"SEC" means the Securities and Exchange Commission.

"Subsidiary" means, with respect to any Person, any other Person a majority of the outstanding Voting Stock of which is owned or controlled by such Person or by one or more other Subsidiaries of such Person and that is consolidated in such Person's accounts.

"Talc Related Liabilities" has the meaning specified in Schedule 1 to this Agreement.

"TX-to-NJ Merger" has the meaning specified in the recitals to this Agreement.

"Voting Stock" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of such Person.

2. Funding Obligations and Procedures.

(a) Funding Obligations. The Payors hereby agree, on the terms and conditions set forth in this Agreement, upon the request of the Payee from time to time in accordance with the requirements of Section 2(b), to make payments to the Payee (each, a "Payment"), the proceeds of which shall be used by the Payee for a Permitted Funding Use. Nothing in this Agreement shall obligate the Payors to (i) make Payments under this Agreement that in the aggregate exceed the lesser of (A) the JJCI Value and (B) the aggregate amount of all Permitted Funding Uses or (ii) make any individual Payment under this Agreement that exceeds the amount requested by the Payee in the applicable Funding Request. The JJCI Value shall be calculated at, and only at, any date on which (x) the Payors refuse to make a requested Payment under this Agreement based on clause (i) of the immediately preceding sentence and (y) the Payments made by the Payors under this Agreement prior to such date, together with the requested Payment, are in the aggregate not in excess of the aggregate amount of all Permitted Funding Uses.

(b) Funding Requests. To request a Payment, the Payee shall deliver to the Payors a written request (which written request may be a .pdf delivered via email) for such Payment in a form reasonably acceptable to the Payors and signed by the Payee (each, a "Funding Request"). Each Funding Request shall specify (i) the amount of the requested Payment, which shall be no less than $500,000, and (ii) the date of the requested Payment, which shall be the date that is at least five Business Days following the delivery of such Funding Request (each such date, a "Funding Date"). Each Funding Request by the Payee shall constitute a representation and warranty by the Payee that the conditions set forth in Section 2(d) have been satisfied. Except as required to comply with the minimum requirements in Section 2(b)(i), the Payee shall not deliver a Funding Request for an amount in excess of the aggregate amount necessary for the Payee to fund all current Permitted Funding Uses and all projected Permitted Funding Uses over the 30 days following the date of such Funding Request.

(c) Payments. Subject only to the satisfaction of the conditions set forth in Section 2(d), on or before any Funding Date, the Payors shall pay or cause to be paid to the Payee an amount equal to the amount of the requested Payment specified in the applicable Funding Request. All Payments shall be made by wire or other transfer of immediately available funds, in United States dollars, to the Funding Account. In the event that the Payors do not make any Payment within the time period required by this Section 2(c), the amount of the requested Payment shall bear interest at a rate per annum equal to the Base Rate *plus* 2% until such Payment is made and the Payors shall include any interest accruing pursuant to this Section 2(c) in the next Payment made to the Payee.

(d) Conditions to Payments. The Payors' obligation to make any Payment is subject to the satisfaction of the following conditions as of the date of the Funding Request relating to such Payment: (i) the representations and warranties of the Payee set forth in Section 3(b) shall be true and correct without regard to the impact of any Bankruptcy Case, including any notices or other actions that may be required therein; and (ii) there shall have been no violation by the Payee of the covenant set forth in Section 5.

3. Representations and Warranties.

(a) Representations and Warranties of the Payor. Each Payor represents and warrants to the Payee that:

(i) Existence, Qualification and Power. Such Payor (A) is duly organized or formed, validly existing and, as applicable, in good standing under the laws of its jurisdiction of incorporation or organization, (B) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (I) own or lease its material assets and carry on its business and (II) execute, deliver and perform its obligations under this Agreement, and (C) is duly qualified and is licensed and, as applicable, in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (B)(I) or (C), to the extent that failure to do so could not reasonably be expected to have a Payor Material Adverse Effect with respect to such Payor.

(ii) Authorization; No Contravention. The execution, delivery and performance by such Payor of this Agreement has been duly authorized by all necessary corporate or other organizational action, and does not and will not (A) contravene the terms of its Organizational Documents, (B) conflict with or result in any breach or contravention of, or the creation of any lien under, or require any payment to be made under (I) any Contractual Obligation to which it is a party or affecting it or its properties or (II) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which it or its property is subject, or (C) violate any applicable law; except in each case referred to in clause (B) or (C), to the extent the failure to do so could not reasonably be expected to have a Payor Material Adverse Effect with respect to such Payor.

(iii) Governmental Authorization; Other Consents. No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance of this Agreement by, or enforcement of this Agreement against, such Payor.

(iv) Binding Effect. This Agreement has been duly executed and delivered by such Payor. This Agreement constitutes a legal, valid and binding obligation of such Payor, enforceable against such Payor in accordance with its terms, except to the extent such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally and by equitable principles.

(b) Representations and Warranties of the Payee. The Payee represents and warrants to the Payors that:

(i) Existence, Qualification and Power. The Payee (A) is duly organized or formed, validly existing and, as applicable, in good standing under the laws of its jurisdiction of incorporation or organization, (B) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (I) own or lease its material assets and carry on its business and (II) execute, deliver and perform its obligations under this Agreement and (C) is duly qualified and is licensed and, as applicable, in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (B)(I) or (C), to the extent that failure to do so could not reasonably be expected to have a Payee Material Adverse Effect.

(ii) Authorization; No Contravention. The execution, delivery and performance by the Payee of this Agreement has been duly authorized by all necessary corporate or other organizational action, and does not and will not (A) contravene the terms of its Organizational Documents, (B) conflict with or result in any breach or contravention of, or the creation of any lien under, or require any payment to be made under (I) any Contractual Obligation to which it is a party or affecting it or its properties or (II) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which it or its property is subject, or (C) violate any applicable law; except in each case referred to in clause (B) or (C), to the extent the failure to do so could not reasonably be expected to have a Payee Material Adverse Effect.

(iii) Governmental Authorization; Other Consents. No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance of this Agreement by, or enforcement of this Agreement against, the Payee.

(iv) Binding Effect. This Agreement has been duly executed and delivered by the Payee. This Agreement constitutes a legal, valid and binding obligation of the Payee, enforceable against the Payee in accordance with its terms, except to the extent such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally and by equitable principles.

4. Covenants of the Payors.

(a) Provision of Financial Information.

(i) No later than 90 days after the end of each fiscal year (in the case of annual financial statements) and 60 days after the end of each fiscal quarter other than the last fiscal quarter (in the case of quarterly financial statements), (A) J&J will furnish to the Payee audited annual and unaudited quarterly consolidated financial statements of J&J prepared in accordance with GAAP, subject, with respect to quarterly financial statements, normal year-end audit adjustments, and (B) Currahee will furnish to the Payee unaudited annual and quarterly income statements and balance sheets of Currahee prepared in accordance with GAAP and Currahee's historical cost basis of its subsidiaries, subject to the absence of notes to the financial statements and related disclosures and, with respect to quarterly financial statements, normal year-end adjustments.

(ii) By accepting such financial information, the Payee will be deemed to have represented to and agreed with the Payor furnishing such financial information that: (A) it will not use the information in violation of applicable securities laws or regulations; and (B) it will not communicate the information to any Person, including in any aggregated or converted form, and will keep the information confidential, other than where disclosure of such information is required by law, regulation or legal process (in which case the Payee shall, to the extent permitted by law, notify such Payor promptly thereof); *provided*, *however*, that the Payee may deliver a copy thereof to counsel for any official committee of claimants and any future claimants' representative appointed in any Bankruptcy Case on a confidential basis under a protective order entered in such Bankruptcy Case.

(iii) Notwithstanding the foregoing, but subject to the last sentence of this Section 4(a)(iii), the financial information required to be furnished as described in Section 4(a)(i) may be, rather than that of a Payor, those of any direct or indirect parent of such Payor. Notwithstanding the foregoing, a Payor may fulfill the requirement to furnish such financial information by filing the information with the SEC within the applicable time periods required by the SEC. Subject to the last sentence of this Section 4(a)(iii), a Payor will be deemed to have satisfied the requirements of Section 4(a)(i) if any direct or indirect parent of such Payor has filed such reports containing the required information with the SEC within the applicable time periods required by the SEC and such reports are publicly available. To the extent a direct or indirect parent of a Payor furnishes financial information pursuant to the first sentence of this Section 4(a)(iii) or such parent files a report with the SEC pursuant to the third sentence of this Section 4(a)(iii), and if the financial information so furnished relates to such direct or indirect parent of such Payor, the same shall be accompanied by consolidating information that explains in reasonable detail the difference between the information relating to such parent, on the one

hand, and the information relating to such Payor and its Subsidiaries on a standalone basis, on the other hand.

(b) Successor to J&J upon Consolidation or Merger.

(i) Subject to the provisions of Sections 4(b)(ii) and 4(b)(iii), nothing contained in this Agreement shall prevent any consolidation or merger of J&J with or into any Person, or successive consolidations or mergers in which J&J or its successor or successors shall be a party or parties, or shall prevent any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all the property of J&J (for the avoidance of doubt, calculated by including any equity interests held by J&J), to any Person; *provided*, *however*, that J&J hereby covenants and agrees, that, if the surviving Person, acquiring Person or lessee is a Person other than J&J, upon any such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition, all of J&J's funding obligations under this Agreement and the observance of all other covenants and conditions of this Agreement to be performed by J&J, shall be expressly assumed, by an amendment to this Agreement or such other documentation in form reasonably satisfactory to the Payee executed and delivered to the Payee, by the Person formed by such consolidation, or into which J&J shall have been merged, or by the Person which shall have acquired or leased such property. This covenant will not apply to (A) a merger of J&J with an Affiliate thereof solely for the purpose of reincorporating J&J in another jurisdiction within the United States, (B) any conversion of J&J from an entity formed under the laws of one state to the same type of entity formed under the laws of another state, or (C) any conversion of J&J from a limited liability company to a corporation, from a corporation to a limited liability company, from a limited liability company to a limited partnership or a similar conversion, whether the converting entity and the converted entity are formed under the laws of the same state or the converting entity is formed under the laws of one state and the converted entity is formed of the laws of a different state. Notwithstanding the foregoing, this Section 4(b)(i) will not apply to any consolidation or merger, or any sale, assignment, transfer, conveyance, lease or other disposition of assets, between or among J&J and its Subsidiaries.

(ii) Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets, of J&J (for the avoidance of doubt, calculated by including any equity interests held by J&J) in a transaction that is subject to, and that complies with, the provisions of the preceding clause (i), the successor Person formed by such consolidation with J&J or into which J&J is merged, or to which such sale, assignment, transfer, lease, conveyance or other disposition is made, shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Agreement referring to J&J, including as a Payor, shall refer instead to the successor Person and not to J&J), and may exercise every right and power of, J&J, including as a Payor, under this Agreement with the same effect as if such successor Person had been named herein. In the event of a succession in compliance with this Section 4(b)(ii), the predecessor Person shall be relieved from every obligation and covenant under this Agreement upon the consummation of such succession.

(iii) Any consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition referred to in the preceding clause (i) shall not be permitted

under this Agreement unless immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing.

5. Covenants of the Payee. The Payee shall not use the proceeds of any Payment made under this Agreement for any purpose other than a Permitted Funding Use. The Payee will perform its indemnification obligations under the agreements provided for in the Plan of Divisional Merger in all material respects, subject, in the event that a proceeding under the Bankruptcy Code is pending with respect to the Payee, to the resulting automatic stay under section 362 of the Bankruptcy Code.

6. Events of Default. Each of the following events constitutes an "Event of Default":

(a) the Payors default in the funding obligations pursuant to Section 2 and such default continues for a period of 10 Business Days;

(b) a Payor defaults in the performance of, or breaches, any covenant or representation or warranty of such Payor in this Agreement (other than a covenant or representation or warranty which is specifically dealt with elsewhere in this Section 6) and such default or breach continues for a period of 30 days, or, in the case of any failure to comply with Section 4(a) of this Agreement, 60 days, in each case after there has been given, by registered or certified mail, to such Payor by the Payee a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(c) a Payor, pursuant to or within the meaning of the Bankruptcy Code or any similar federal or state law for the relief of debtors, (i) commences a voluntary case, (ii) consents to the entry of an order for relief against it in an involuntary case, (iii) consents to the appointment of a custodian of it or for all or substantially all of its property, (iv) makes a general assignment for the benefit of its creditors, or (v) generally is not paying its debts as they become due; and

(d) a court of competent jurisdiction enters an order or decree under the Bankruptcy Code or any similar federal or state law for the relief of debtors that (i) is for relief against a Payor, (ii) appoints a custodian of a Payor for all or substantially all of the property of a Payor, or (iii) orders the liquidation of a Payor, and, in each case of (i) through (iii) above, such order or decree remains unstayed and in effect for 60 consecutive days.

Upon becoming aware of any Default or Event of Default, a Payor shall promptly deliver to the Payee a statement specifying such Default or Event of Default.

7. Remedies. Upon the occurrence of any Event of Default, and at any time thereafter during the continuance of any such Event of Default, the Payee may pursue any available remedy to collect any unfunded Payments due and owing to the Payee or to enforce the performance of any provision of this Agreement.

8. Notices. All notices required under this Agreement, including each Funding Request and any approval of or objection to a Funding Request, shall be delivered to the applicable party to this Agreement at the address set forth below. Unless otherwise specified herein, delivery of any such notice by email, facsimile or other electronic transmission (including .pdf) shall be effective as delivery of a manually executed counterpart thereof.

Payors:

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933
Attention: Michelle Ryan, Treasurer
Email: mryan1@its.jnj.com

Johnson & Johnson Consumer Inc.
199 Grandview Road
Skillman, NJ 08558
Attention: Michelle Goodridge, President
Email: mgoodrid@its.jnj.com

Payee:

LTL Management LLC
501 George Street
New Brunswick, NJ 08933
Attention: Robert Wuesthoff, President
Email: rwhuestho@its.jnj.com

with a copy to:

LTL Management LLC
501 George Street
New Brunswick, NJ 08933
Attention: John Kim, Chief Legal Officer
Email: JKim8@its.jnj.com

9. Governing Law; Submission to Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina. Any legal proceeding seeking to enforce any provision of, or based on any matter arising under, this Agreement may be brought: (a) at any time there is not a proceeding under the Bankruptcy Code pending with respect to the Payee, in state or federal court in Charlotte, North Carolina; or (b) at any time there is a proceeding under the Bankruptcy Code pending with respect to the Payee, in the Bankruptcy Court. Each Payor and the Payee hereby irrevocably and unconditionally submit to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such legal proceeding.

10. No Implied Waiver; Amendments. No failure or delay on the part of the Payee to exercise any right, power or privilege under this Agreement, and no course of dealing between the Payors, or either of them, on the one hand, and the Payee, on the other hand, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No notice to or demand on the Payors, or either of them, in any case shall entitle the Payors, or either of them, to any other or further notice or demand in similar or other circumstances, or constitute a waiver of the right of the holder of this Agreement to any other or further action in any circumstances without notice or demand. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law. No amendment or waiver of any provision of this Agreement, nor consent to any departure by the Payee therefrom, shall in any event be effective unless the same shall be in writing, specifically refer to this Agreement, and be signed by the Payors and the Payee, and then such amendment or waiver shall be effective only in the specific instance and for the specific purpose for which given. A waiver on any such occasion shall not be construed as a bar to, or waiver of, any such right or remedy on any future occasion.

11. Counterparts; Entire Agreement; Electronic Execution. This Agreement may be executed in separate counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire contract among the parties hereto relating to the subject matter hereof and supersedes, in its entirety, the Original Funding Agreement and any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by each party hereto and each party hereto shall have received counterparts hereof which, when taken together, bear the signatures of each of party hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement.

12. Severability. If any one or more of the provisions contained in this Agreement are invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of all the remaining provisions will not in any way be affected or impaired. If any one or more provisions contained in this Agreement are deemed invalid, illegal or unenforceable because of their scope or breadth, such provisions shall be reformed and replaced with provisions whose scope and breadth are valid under applicable law.

13. Transfer; Assignment. This Agreement shall be binding upon each Payor and its successors and assigns, and the terms and provisions of this Agreement shall inure to the benefit of the Payee and its successors and assigns. A Payor's rights and obligations under this Agreement may not be assigned without the prior written consent of the Payee; *provided, however*, that no such consent of the Payee shall be required in connection with any transfer effectuated in compliance with Section 4(b). The Payee's rights and obligations under this Agreement may not be assigned without the prior written consent of the Payors. Any purported assignment of rights or obligations under this Agreement other than as permitted by this Section 13 shall be null and void.

14. Construction. The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. The word "including" means without limitation by reason of enumeration. The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless specifically stated otherwise, all references to Sections and Schedules are to the Sections and Schedules of or to this Agreement.

15. Rights of Parties. This Agreement shall not confer any rights or remedies upon any Person other than the parties hereto and their respective successors and permitted assigns.

16. Joint and Several Obligations. Obligations of the Payors under this Agreement are joint and several.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

JOHNSON & JOHNSON, a New Jersey corporation, as a Payor

By: _____
Michelle Ryan,
Treasurer

JOHNSON & JOHNSON CONSUMER INC., a New Jersey corporation, as a Payor

By: _____
Michelle Goodridge,
President

LTL MANAGEMENT LLC, a North Carolina limited liability company, as the Payee

By: _____
Robert Wuesthoff,
President

[Signature Page to A&R Funding Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

JOHNSON & JOHNSON, a New Jersey corporation, as a Payor

By: _____
Michelle Ryan,
Treasurer

JOHNSON & JOHNSON CONSUMER INC., a New Jersey corporation, as a Payor

By: Michelle N Goodridge
Michelle Goodridge,
President

LTL MANAGEMENT LLC, a North Carolina limited liability company, as the Payee

By: _____
Robert Wuesthoff,
President

[Signature Page to A&R Funding Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

JOHNSON & JOHNSON, a New Jersey corporation, as a Payor

By: _____
Michelle Ryan,
Treasurer

JOHNSON & JOHNSON CONSUMER INC., a New Jersey corporation, as a Payor

By: _____
Michelle Goodridge,
President

LTL MANAGEMENT LLC, a North Carolina limited liability company, as the Payee

By: _____
Robert Wuesthoff,
President

[Signature Page to A&R Funding Agreement]

SCHEDULE 1

Definition of Talc Related Liabilities

For purposes of this Agreement, "Talc Related Liabilities" means all Liabilities (as defined below) of the Payee related in any way to injury or damage, or alleged injury or damage, sustained or incurred in the purchase or use of, or exposure to, talc, including talc contained in any product, or to the risk of, or responsibility for, any such damage or injury, including such Liabilities based on the contamination, or alleged contamination, of talc, including talc contained in any product, with asbestos or any other material.

Capitalized terms that are used in this Schedule 1 have the following meanings:

(a) "Cause of Action" means any claim, judgment, cause of action, counterclaim, crossclaim, third party claim, defense, indemnity claim, reimbursement claim, contribution claim, subrogation claim, right of set off, right of recovery, recoupment, right under any settlement Contract and similar right, whether choate or inchoate, known or unknown, contingent or noncontingent.

(b) "Contract" means any contract, agreement, arrangement, lease, indenture, mortgage, deed of trust, evidence of indebtedness, License, Plan, guarantee, understanding, course of dealing or performance, instrument, bid, order, proposal, demand, offer or acceptance, whether written or oral.

(c) "Governmental Authority" means any national, central, federal, state, provincial, municipal, local or other domestic, foreign or supranational governmental, legislative, administrative or regulatory authority, agency, court, arbitration tribunal, board, department or commission, or other governmental or regulatory entity, including any competent governmental authority responsible for the determination, assessment or collection of taxes.

(d) "Law" means any national, central, federal, state, provincial, municipal, local or other domestic, foreign or supranational statute, law, ordinance, decree, order, injunction, rule, regulation, directive, constitution, code, edict, writ, judgment, opinion, decree, injunction, stipulation, award or other document or pronouncement having the effect of law (including common law) of any Governmental Authority, including rules and regulations of any regulatory or self-regulatory authority with which compliance is required by any of the foregoing.

(e) "Liability" shall mean any claim, demand, offer, acceptance, action, suit, liability or obligation of any kind, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, choate or inchoate, asserted or unasserted, known or unknown, including (i) those arising or that may arise under any past, present or future Law or Contract or pursuant to any Cause of Action or Proceeding and (ii) all claims for economic or noneconomic damages or injuries of any type or nature whatsoever (including claims for physical, mental and emotional pain and suffering, loss

of enjoyment of life, loss of society or consortium and wrongful death, as well as claims for damage to property and punitive damages).

(f) "License" means any license, sublicense, agreement, covenant not to sue or permission.

(g) "Person" means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, benefit plan, unincorporated organization, business, syndicate, sole proprietorship, association, organization, labor union or other entity or Governmental Authority.

(h) "Plan" means, with respect to any Person, (i) any "employee benefit plan" (as defined in Section 3(3) of ERISA), (ii) all specified fringe benefit plans as defined in Section 6039(D) of the Internal Revenue Code, and (iii) any other plan, program, policy, agreement or arrangement, whether or not in writing, relating to compensation, employee benefits, severance, change in control, retention, deferred compensation, equity, employment, consulting, vacation, sick leave, paid time off, salary continuation, disability, hospitalization, medical insurance, life insurance, scholarship programs, incentive compensation or bonus compensation, in each case that is sponsored, maintained or contributed to or required to be sponsored, maintained or contributed to by, or otherwise covering, such Person.

(i) "Proceeding" means any action, appeal, arbitration, assessment, cancellation, charge, citation, claim, complaint, concurrent use, controversy, contested matter, demand, grievance, hearing, inquiry, interference, investigation, litigation (including class actions and multidistrict litigation), mediation, opposition, re-examination, summons, subpoena or suit, or other case or proceeding, whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private, commenced, brought, conducted or heard by or before, under the supervision or direction of, or otherwise involving, any Governmental Authority or arbitrator or other agreed-upon tribunal or dispute resolution mechanism.

SCHEDULE 2

Funding Account

LTL Management LLC
Account Number: 237025463987
ABA/Routing Number: 053000196
Swift: BOFAUS3N

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re LTL MANAGEMENT LLC,[1] Debtor.	Chapter 11 Case No. 21-30589 (JCW)

DECLARATION OF JOHN K. KIM
IN SUPPORT OF FIRST DAY PLEADINGS

John K. Kim, being first duly sworn, deposes and states as follows:

1. I am the Chief Legal Officer of LTL Management LLC, a North Carolina limited liability company (the "Debtor") and the debtor in the above-captioned chapter 11 case. I have held this position with the Debtor since its formation on October 12, 2021.

2. I am employed by Johnson & Johnson Services, Inc. ("J&J Services"), a non-debtor affiliate of the Debtor and a subsidiary of the Debtor's ultimate non-debtor parent company, Johnson & Johnson ("J&J"). Just prior to my role as the Chief Legal Officer of the Debtor, I was J&J's Assistant General Counsel, Practice Group Lead for the Product Liability Litigation Group. In that role, I was responsible for product liability litigation globally. I began my employment with J&J and its affiliates in 2001 as a Senior Counsel in the Litigation Group, handling a variety of cases ranging from commercial disputes and international arbitrations to product liability litigation.

3. Prior to my employment with J&J and its affiliates, I was associated with the law firm of Simpson Thacher & Bartlett in its Litigation Group from 1989 to 2001, where I

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

handled a number of complex litigation engagements, including bankruptcy proceedings, anti-trust disputes, insurance coverage arbitrations and securities actions.

4. I earned a Juris Doctor degree from Fordham University School of Law in 1989 and a Bachelor of Arts degree from Tufts University in 1985.

5. On the date hereof (the "Petition Date"), the Debtor filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code, as well as certain motions and other pleadings (collectively, the "First Day Pleadings").

6. I submit this Declaration to support the First Day Pleadings and provide certain information about the Debtor, its decision to commence this chapter 11 case and its objectives for this case. I have reviewed each of the First Day Pleadings, and it is my belief that the relief sought therein is necessary to (a) avoid immediate and irreparable harm to the Debtor, (b) maximize and preserve the value of the Debtor's chapter 11 estate, (c) assist in the smooth transition of the Debtor into chapter 11 and/or (d) promote the efficient administration of this case.

7. As the Chief Legal Officer, I am familiar with the Debtor's day-to-day operations, assets, financial condition, business affairs and books and records. Except as otherwise indicated, all facts and statements set forth in this Declaration are based upon: (a) my personal knowledge; (b) information supplied to me by other members of the Debtor's management, professionals or employees; (c) my review of relevant documents; and/or (d) my opinion based upon my experience and knowledge of the Debtor's assets, liabilities and financial condition. If called upon to testify, I could and would testify to the facts and opinions set forth herein.

8. Section I of this Declaration provides an overview of the Debtor's history and corporate structure. Section II describes the corporate restructuring that was completed on October 12, 2021. Section III describes the circumstances surrounding the commencement of this chapter 11 case and the Debtor's objectives for this case. Section IV sets forth relevant facts in support of the First Day Pleadings.

I. THE DEBTOR'S HISTORY AND CORPORATE STRUCTURE

9. The Debtor traces its roots back to Johnson & Johnson Baby Products Company ("J&J Baby Products"), a New Jersey company incorporated in 1970 as a wholly-owned subsidiary of J&J.

10. J&J, a New Jersey company incorporated in 1887, first began selling JOHNSON'S® Baby Powder in 1894, launching its baby care line of products. In 1972, J&J established a formal operating division for its baby products business, which included JOHNSON'S® Baby Powder. In 1979, J&J transferred all its assets associated with the Baby Products division to J&J Baby Products. In connection with this transfer, J&J Baby Products assumed all liabilities associated with the Baby Products division. Following this transaction, J&J no longer manufactured or sold baby products, including JOHNSON'S® Baby Powder.

11. In 1981, J&J Baby Products transferred all its assets, except those assets allocated to its diaper programs, to Omni Education Corporation ("Omni"), a wholly-owned subsidiary of J&J Baby Products. In turn, Omni assumed all liabilities of J&J Baby Products except those liabilities related to its diaper program. Immediately following the transaction, J&J Baby Products merged into another subsidiary of J&J and was renamed Personal Products Company, and Omni changed its name to Johnson & Johnson Baby Products Company.[2]

[2] In 1989, Personal Products Company changed its name to McNeil-PPC, Inc.

12. In 1988, Johnson & Johnson Baby Products Company transferred all its assets in respect of its baby products business to Johnson & Johnson Dental Products Company, which assumed all of its liabilities and was renamed Johnson & Johnson Consumer Products, Inc.

13. In 1997, Johnson & Johnson Consumer Products, Inc. changed its name to Johnson and Johnson Consumer Companies, Inc. ("J&J Consumer Companies").

14. In 2015, J&J Consumer Companies merged with and into an affiliate, which then merged into McNeil-PPC, Inc. The resulting entity was renamed Johnson & Johnson Consumer Inc. (including all former names and historical forms, "Old JJCI").

15. Following these intercompany transactions, Old JJCI became responsible for all claims alleging that JOHNSON'S® Baby Powder and other talc-containing products cause cancer or other diseases.

16. In 2021, Old JJCI implemented a corporate restructuring (the "2021 Corporate Restructuring"), which was completed on October 12, 2021. As a result of that restructuring: Old JJCI ceased to exist and two new entities were created: (a) the Debtor in this case, which was initially formed as a Texas limited liability company and then converted into a North Carolina limited liability company; and (b) another entity, which was initially formed as a Texas limited liability company and then merged into a New Jersey corporation that was its direct parent (as well as the direct parent of the Debtor), whereupon this entity changed its name to "Johnson & Johnson Consumer Inc." ("New JJCI"). As a result of the 2021 Corporate Restructuring, the Debtor holds certain of Old JJCI's assets and is solely responsible for the talc-related liabilities of Old JJCI and New JJCI holds all other assets of Old JJCI and is solely responsible for all other liabilities of Old JJCI.

17. New JJCI is the direct parent of the Debtor; and the Debtor is the direct parent of Royalty A&M LLC ("Royalty A&M"), a North Carolina limited liability company. A chart depicting the Debtor's corporate structure is attached to this Declaration as Annex 1.

18. The Debtor was formed to manage and defend thousands of talc-related claims and to oversee the operations of its subsidiary, Royalty A&M. Royalty A&M owns a portfolio of royalty revenue streams, including royalty revenue streams based on third-party sales of LACTAID®, MYLANTA® / MYLICON® and ROGAINE® products. It plans to review royalty monetization opportunities in the Healthcare industry and grow its business by reinvesting the income from these existing royalty revenue streams into both the acquisition of additional external royalty revenue streams as well as financings to third parties secured by similar royalty streams.

19. New JJCI manufactures and sells a broad range of products used in the baby care, beauty, oral care, wound care and women's health care fields, as well as over-the-counter pharmaceutical products. The Debtor's ultimate parent company, J&J, is a holding company that through its operating subsidiaries conducts business in virtually all countries in the world, focused primarily on products related to human health and well-being. J&J is a global innovator and leader in public health and has been at the forefront of healthcare innovation for over 130 years. That innovation includes novel oncology, immunology and vaccine products, including its COVID-19 vaccine that it developed and supplied at non-profit pricing. J&J's shares of common stock are publicly traded under the symbol JNJ on the New York Stock Exchange.

II. THE 2021 CORPORATE RESTRUCTURING

20. As described above, Old JJCI and its affiliates have engaged in multiple restructurings through the years to achieve business and operational objectives. Since it was

formed in 1970, Old JJCI has merged with other companies, been repositioned in its corporate family and acquired and transferred a number of assets.

21. Most recently, Old JJCI implemented the 2021 Corporate Restructuring to enable the Debtor to globally resolve talc-related claims through a chapter 11 reorganization without subjecting the entire Old JJCI enterprise to a bankruptcy proceeding. A key objective of this restructuring was to make certain that the Debtor has the same, if not greater, ability to fund the costs of defending and resolving present and future talc-related claims as Old JJCI did prior to the restructuring. This was achieved through the establishment of a funding agreement between the Debtor, on the one hand, and J&J and New JJCI (on a joint and several basis) on the other, which is in addition to the value of and revenues generated by Royalty A&M, the Debtor's wholly-owned operating subsidiary.

22. The 2021 Corporate Restructuring was effectuated through a series of steps. On October 11, 2021, Old JJCI organized Royalty A&M as a direct subsidiary and, in exchange for full ownership of Royalty A&M's equity, contributed to it $367.1 million. Subsequently, Royalty A&M used those funds to acquire certain royalty streams from Old JJCI and certain of its affiliates. That same day, the following transactions were effected, in sequence:

- Old JJCI's then-direct parent, Janssen Pharmaceuticals, Inc., organized Currahee Holding Company Inc. ("Currahee"), contributing to it all of the issued and outstanding stock of Old JJCI, whereupon Currahee became the direct parent of Old JJCI; and
- Currahee organized Chenango Zero LLC, a Texas limited liability company, as its wholly owned subsidiary.

23. On October 12, 2021, the remaining transactions in the 2021 Corporate Restructuring occurred in the following sequence:

- Old JJCI merged with and into Chenango Zero LLC, with Chenango Zero LLC as the surviving entity;
- J&J and Currahee, as payors (on a joint and several basis), and Chenango Zero LLC, as payee, entered into a funding agreement (as amended from time to time, the "Funding Agreement");
- Old JJCI effected a divisional merger under Chapter 10, Subchapter A of the Texas Business Organizations Code;
  - Upon the effectiveness of the divisional merger, (a) Old JJCI ceased to exist; (b) two new Texas limited liability companies—Chenango One LLC and Chenango Two LLC—were created; and (c) all of the assets and liabilities of Old JJCI were allocated between Chenango One LLC and Chenango Two LLC, as described below;
- Immediately following the effectiveness of the divisional merger, (a) Chenango One LLC and Chenango Two LLC entered into certain agreements, including a divisional merger support agreement that, among other things, provides that Chenango One LLC will indemnify and hold harmless Chenango Two LLC and its affiliates for any losses, liabilities or other damages relating to claims against Chenango Two LLC and its affiliates in respect of the assets and liabilities of Chenango Two LLC, including talc-related liabilities and (b) Chenango One LLC entered into

certain agreement with other affiliates, including the secondment and services agreements discussed further below;

- Following the effectiveness of the divisional merger, (a) Chenango Two LLC merged with and into Currahee, with Currahee as the surviving entity, which then changed its name to "Johnson and Johnson Consumer Inc."; and (b) Chenago One LLC converted from a Texas Limited liability company into a North Carolina limited liability company and changed its name to "LTL Management LLC";
- Among its agreements with non-debtor affiliates, the Debtor entered into a divisional merger support agreement with New JJCI (which was initially entered into between Chenango One LLC and Chenango Two LLC immediately after the divisional merger) that, among other things, provides that the Debtor will indemnify and hold harmless New JJCI and its affiliates for any losses, liabilities or other damages relating to claims against New JJCI and its affiliates in respect of the Debtor's assets or liabilities, including the Debtor's talc-related liabilities; and
- Finally, the Funding Agreement, the divisional merger support agreement and the other intercompany agreements, including the secondment and services agreements discussed further below (which were initially entered into between Chenango One LLC and non-debtor affiliates prior to the divisional merger), were amended and restated to reflect the names of

the parties to those agreements at the conclusion of the 2021 Corporate Restructuring.[3]

24. Pursuant to the divisional merger, the Debtor became solely responsible for Old JJCI's liabilities arising from talc-related claims against it (other than claims for which the exclusive remedy is provided under a workers' compensation statute or similar laws), and the defense of those claims. In addition, the Debtor received the following assets:

(a) A bank account and approximately $6 million in cash;

(b) Old JJCI's rights and interests as payee under the Funding Agreement;

(c) All contracts of Old JJCI related to its talc-related litigation, including settlement agreements, interests in qualified settlement trusts, indemnity rights, service contracts and engagement and retention contracts, if any;

(d) All equity interests in Royalty A&M;

(e) Causes of action that relate to the assets and liabilities allocated to the Debtor;

(f) Privileges that relate to the assets and liabilities allocated to the Debtor; and

(g) Records that relate to the assets and liabilities allocated to the Debtor.

25. Pursuant to the divisional merger, the predecessor to New JJCI received all other assets and liabilities of Old JJCI, and became solely responsible for those other liabilities.

26. As I mentioned above, the design of the 2021 Corporate Restructuring ensures that the Debtor has at least the same, if not greater, ability to fund talc-related claims and

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[3] A copy of the Funding Agreement in effect as of the Petition Date (without its Schedule 2 that includes confidential bank account information) is attached hereto as Annex 2. The summary of the terms of the Funding Agreement in this Declaration is provided for the convenience of the Court and parties in interest and is qualified in all respects by the more detailed terms contained in the Funding Agreement.

other liabilities as Old JJCI had before the restructuring. The Debtor received the equity of Royalty A&M, which the Debtor has projected will generate approximately $50 million in revenue per year over the next five years. The Debtor estimates the fair market value of its interest in Royalty A&M to be approximately $367.1 million as of the Petition Date. In addition, as noted, as part of the 2021 Corporate Restructuring, the Debtor received $6 million in cash and became party to the Funding Agreement with New JJCI and J&J. In total, therefore, the Debtor's value is approximately $373.1 million, without taking into account the Funding Agreement with New JJCI and J&J.

27. Significantly, the Funding Agreement imposes no repayment obligation on the Debtor; it is not a loan. It obligates New JJCI and J&J, on a joint and several basis, to provide funding, up to the full value of New JJCI, to pay for costs and expenses of the Debtor incurred in the normal course of its business (a) at any time when there is no bankruptcy case and (b) during the pendency of any chapter 11 case, including the costs of administering the chapter 11 case, in both situations to the extent that any cash distributions received by the Debtor from Royalty A&M are insufficient to pay such costs and expenses. In addition, the Funding Agreement requires New JJCI and J&J to, up to the full value of New JJCI, fund amounts necessary (a) to satisfy the Debtor's talc-related liabilities at any time when there is no bankruptcy case and (b) in the event of a chapter 11 filing, to provide the funding for a trust, in both situations to the extent that any cash distributions received by the Debtor from Royalty A&M are insufficient to pay such costs and expenses and further, in the case of the funding of a trust, the Debtor's other assets are insufficient to provide that funding.

28. In addition, J&J and New JJCI have committed to fund as early as January 31, 2022 a North Carolina trust (the "QSF Trust") that will constitute a "qualified

settlement fund" with an aggregate amount of $2 billion for the payment of current and future talc-related claims asserted against or related to the Debtor. These funds will be dedicated exclusively for use in paying such claims. Although J&J and JJCI have no obligation to make this contribution, they have agreed to do so as a pre-funding of Permitted Funding Uses (as such term is defined in the Funding Agreement) under the Funding Agreement. The funds in the QSF Trust will be immediately available for the Debtor's eventual use when and as needed to resolve its talc-related claims.

29. To ensure that the Debtor has access to services it needs to effectively operate its business, in connection with the 2021 Corporate Restructuring, the Debtor entered into a services agreements (the "Services Agreements") with J&J Services. Pursuant to the Services Agreement, J&J Services has agreed to provide the Debtor with certain corporate and administrative services, including treasury and procurement, corporate finance, accounting, human resources, information technology, legal, risk management, tax and other support services. In addition, the Debtor and J&J Services entered into a secondment agreement pursuant to which J&J Services has agreed to second to the Debtor certain of its employees, including the Debtor's Chief Legal Officer, on a full-time basis to manage the Debtor's business.

30. Royalty A&M similarly has agreements it needs to conduct its business. In particular, Royalty A&M has entered into a services agreement with J&J Services pursuant to which J&J Services has agreed to provide certain corporate and administrative services and an intercompany loan facility agreement with J&J. Under the loan facility agreement, Royal A&M has the ability to borrow up to $50 million from J&J on terms consistent with those provided to other J&J affiliates. In addition, Royalty A&M has entered into a services agreement with the Debtor pursuant to which the Debtor will provide ongoing access to and support from the

Debtor's chief executive officer and chief financial officer (in their capacities as officers of Royalty A&M) to perform their roles as such, including supporting Royalty A&M's operations, tracking, administering and auditing any royalty streams or other sources of income, and providing strategic planning and analysis, including to seek out opportunities to invest in additional external royalty revenue streams.

III. EVENTS LEADING TO THE COMMENCEMENT OF THIS CASE AND THE DEBTOR'S OBJECTIVES FOR ITS CHAPTER 11 REORGANIZATION

A. Cosmetic Talc Litigation Against the Debtor

31. As described more fully in the *Informational Brief of LTL Management LLC* (the "Informational Brief"), filed concurrently with this Declaration, this chapter 11 case has been precipitated by the filings of thousands of cosmetic talc lawsuits against Old JJCI and J&J. The Debtor believes, for the reasons set forth in the Informational Brief, that these claims have no valid scientific basis, as Old JJCI's talc products never contained asbestos and the safety of cosmetic-grade talc has been confirmed by dozens of peer-reviewed studies and multiple regulatory and scientific bodies for decades. Nevertheless, the number of claims has continued to increase, and the Debtor anticipates that the litigation and its associated burdens will continue for decades more.

32. Cosmetic talc litigation against the Debtor, Old JJCI and J&J focused primarily on JOHNSON'S® Baby Powder as the purported cause of ovarian cancer and mesothelioma. JOHNSON'S® Baby Powder has been used by hundreds of millions of people worldwide for over 125 years.

33. The Debtor traces its history to J&J's Baby Products business that was acquired by Old JJCI from J&J in 1979. Old JJCI continued to sell these talc-based products following this acquisition. On May 19, 2020, Old JJCI announced it would permanently

discontinue its line of talc-based Baby Powder in the U.S. and Canada. The decision was based on business considerations, including lack of sales due to misinformation about the safety of Old JJCI's talc-based Baby Powder.

34. Prior to 2010, only a small number of isolated cases involving cosmetic talc had been filed against Old JJCI and J&J. These cases alleged a range of claims, including talcosis due to substantial misuse of Johnson's Baby Powder, mesothelioma, dermatitis, and rashes.

35. The number of claims began to skyrocket after the *Berg* (2013) and *Fox* (2016) trials. *Berg v. J&J*, filed in December 2009, was the first case alleging ovarian cancer as a result of genital exposure to Old JJCI's cosmetic talc-based products. The jury found for the plaintiff, but awarded no damages. By the end of 2015, there were over thirteen hundred ovarian cancer lawsuits filed against Old JJCI and J&J.

36. In February 2016, the first St. Louis ovarian cancer case, *Fox*, went to trial. The jury awarded the plaintiff $72 million dollars. While ultimately overturned on appeal, the verdict sparked even more interest on the part of plaintiff lawyers. Five more cases were tried in that venue over the next year and a half, resulting in plaintiff verdicts totaling more than $235 million dollars (in addition to a defense verdict and a mistrial). All of those verdicts subsequently were reversed on appeal.

37. New filings alleging that JOHNSON'S® Baby Powder caused mesothelioma also dramatically increased. At the time of the *Fox* trial, there were only six mesothelioma cases naming Old JJCI or J&J as a defendant and alleging JOHNSON'S® Baby Powder as a cause of the plaintiff's disease. Within two months of the *Fox* trial, that number had increased to 23 mesothelioma cases. By the beginning of 2017, more than 100 mesothelioma

cases had been filed naming Old JJCI or J&J as a defendant. The number of mesothelioma cases steadily grew in the years that followed

B. <u>The Costs and Burdens of the Cosmetic Talc Litigation</u>

38. Prior to the Petition Date, roughly 1,300 ovarian cancer and over 250 mesothelioma cases were dismissed without payment, and Old JJCI achieved 16 key defense verdicts, including in four trials in 2021 alone. Old JJCI also succeeded in obtaining reversals of many plaintiff verdicts on appeal. Despite these results, Old JJCI was also subject to a number of plaintiff verdicts involving unpredictable and wildly divergent compensatory and punitive damages awards.

39. Notably, all of the ovarian cancer plaintiff verdicts to date have been reversed on appeal with the exception of *Ingham.* Although the verdict in that case was reversed in part and reduced, the total damages award was still $2.243 billion. The St. Louis, Missouri trial court had improperly permitted the consolidation of 22 ovarian cancer plaintiffs, 17 of whom were non-residents, for a single trial. The jury found defendants Old JJCI and J&J liable for every claim. The jury awarded compensatory damages in the aggregate amount of $550 million and punitive damages in the aggregate amount $4.1 billion. On appeal, the punitive damages award was later reduced to $1.6 billion.

40. Prior to the commencement of this case, Old JJCI incurred nearly $1 billion in defending personal injury lawsuits relating to alleged talc exposure, nearly all of which was spent in only the last five years. In the months prior to the Petition Date, Old JJCI was paying anywhere from $10 million to $20 million in defense costs on a monthly basis. In addition to these costs, Old JJCI paid approximately $3.5 billion in indemnity in connection with settlements and verdicts.

41. Cosmetic talc litigation against the Debtor was anticipated to continue for decades more and grow, as were the extraordinary costs of defending and resolving tens of thousands of expected claims. Beyond the sudden influx of ovarian cancer claims, plaintiffs were filing mesothelioma claims, alleging in the case of mesothelioma claims that Old JJCI's cosmetic talc products contained asbestos, which the Debtor disputes. Plaintiff experts estimate that the latency period for mesothelioma can be as long as 60 years and have begun to allege extended latency periods for ovarian cancer allegedly caused by asbestos exposure. As a result, even though Old JJCI stopped selling its talc-based JOHNSON'S® Baby Powder in North America in 2020, individuals who develop mesothelioma in 2080 and beyond could sue the Debtor, potentially drawing out the litigation to the end of this century.

42. As of the Petition Date, there were approximately 38,000 ovarian cancer cases pending against the Debtor, including approximately 35,000 cases pending in a federal multi-district litigation in New Jersey, and approximately 3,300 cases in multiple state court jurisdictions across the country.

43. Moreover, the number of ovarian cancer cases skyrocketed. In 2014, Old JJCI was served with 46 ovarian cancer complaints. In 2017—just three years later—that number was nearly 5,000. This acceleration in ovarian cancer claims asserted against Old JJCI showed no signs of abating. As of the Petition Date, Old JJCI had been served with over 12,300 ovarian cancer complaints in just the first ten and a half months of 2021.

44. In addition to the ovarian claims, more than 430 mesothelioma cases were pending against the Debtor on the Petition Date. These claims, like the ovarian cancer claims, spanned the U.S. with cases pending in New Jersey, California, Illinois, Missouri, New York, and Ohio.

45. The Debtor expects that, absent its bankruptcy filing, thousands of additional ovarian cancer and mesothelioma cases would have been filed against it for decades to come.

C. The Debtor's Insurance Coverage and Related Litigation

46. The Debtor believes it has insurance coverage for its talc-related liabilities. In particular, the Debtor has access to certain primary and excess liability insurance policies that cover, among other things, defense and/or indemnity costs related to talc bodily injury claims, subject to the terms of the policies.[4] I provide below a general overview of the Debtor's insurance coverage.

47. Aetna Casualty and Surety Company ("Travelers")[5] issued primary general liability policies to J&J (which policies cover the Debtor) for the period 1957 to 1980 (the "Travelers Policies"). The combined limits of the Travelers Policies (not accounting for deductibles or erosion/exhaustion of limits) total more than $214 million per occurrence and $293 million in the aggregate. The deductibles increase over time, starting at a minimal level and increasing to $5 million per occurrence by 1977. The limits of the Travelers Policies before 1973 are not eroded by defense costs; under later policies, defense costs erode limits.

48. From 1957 to 1985, Travelers also provided excess liability coverage to J&J that covers the Debtor. The combined aggregate limits of those policies total approximately $563 million.

49. From 1973 to 1985, a variety of other insurers issued excess policies that cover the Debtor. Those insurers include subsidiaries or affiliates of the following companies:

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4 The policies that cover the Debtor were issued to J&J as the Named Insured. Those policies cover the period when Old JJCI was operated as a business unit of J&J, as well as during the period when Old JJCI was a subsidiary of J&J.

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

American International Group, Allstate Insurance Company, The Hartford, Home Insurance Company, Nationwide Indemnity Company, and North River Insurance Company. The combined limits of those excess policies total more than $1.09 billion in the aggregate. Certain of the insurers that issued these excess policies are insolvent (including, in particular, Home Insurance Company).

50. From 1981 to 1985, American Motorists Insurance Company ("AMICO") issued primary coverage that covers the Debtor (the "AMICO Policies"). AMICO is insolvent, having been placed into liquidation in 2013. The Debtor currently believes that the applicable limits of the AMICO Polices were exhausted by payments made by AMICO on claims while it was still solvent.

51. From 1973 through 1985, Middlesex Insurance Company ("Middlesex"), a captive insurance company that is a wholly-owned subsidiary of J&J, issued policies that cover J&J and the Debtor. Those policies insured J&J and Old JJCI for large deductibles under the Travelers Policies and the AMICO Policies. From 1977 to 1985, Middlesex also issued excess insurance policies that cover J&J and Old JJCI. After 1985, Middlesex issued liability coverage to J&J and the Debtor. As described below, there is a dispute between J&J, the Debtor, and Middlesex, on the one hand, and the third-party insurers (i.e., insurers other than the Middlesex captive), on the other hand, regarding the applicability and extent of coverage the Middlesex policies provide, as well as the potentially applicable Middlesex coverage limits, including in particular with respect to post-1985 Middlesex policies.

52. In total, the limits of solvent primary and excess insurance policies issued to J&J by third-party insurers that potentially cover talc-related liabilities are in excess of $1.95 billion.

53. J&J and Old JJCI tendered talc-related claims to the third-party insurers. To date, none of those insurers has acknowledged its coverage obligations, defended Old JJCI or J&J, paid its costs of defense, or indemnified J&J or Old JJCI for settlements or judgments. Instead, the third-party insurers have asserted coverage defenses.

54. In May 2019, certain of the Debtor's third party insurers filed a lawsuit against Old JJCI and J&J, along with Middlesex, in the Superior Court of Middlesex County (Docket No. MID-L-003563-19) (the "New Jersey Coverage Action"), seeking a declaratory judgment regarding the parties' respective obligations under the plaintiff insurers' policies including, in particular, the plaintiff insurers' duties to pay defense and indemnity costs to, among other things, Old JJCI. The insurer plaintiffs filed a Second Amended Complaint on June 22, 2020, which is currently the operative complaint. J&J, Old JJCI, and Middlesex filed answers to the Second Amended Complaint on July 31, 2020, and asserted counterclaims, as well as cross-claims against certain defendants. Travelers and certain other insurers filed Cross-Claims against J&J, Old JJCI, and Middlesex, to which J&J, Old JJCI, and Middlesex responded later in 2020. The New Jersey Coverage Action remains pending.

D. Chapter 11 Filings by Talc Suppliers

55. In February 2019, Old JJCI's talc supplier, Imerys Talc America, Inc. and two of its affiliates, Imerys Talc Vermont, Inc. and Imerys Talc Canada, Inc. (collectively, "Imerys") filed voluntary petitions under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "Imerys Bankruptcy"). Imerys has potential liability for personal injury claims arising from exposure to talc it sold to customers, including Old JJCI. In its bankruptcy case, Imerys has contended that it has claims against Old JJCI and J&J for indemnification and joint insurance proceeds. The Debtor and J&J dispute those claims.

56. Cyprus Mines Corporation and its parent company (together, "Cyprus"), which had owned certain Imerys talc mines, filed in the Imerys Bankruptcy an adversary proceeding against Old JJCI, J&J, Imerys Talc America, Inc. and Imerys Talc Vermont, Inc. seeking a declaration of indemnity under certain contractual agreements. The Debtor and J&J deny that any indemnification is owed. In February 2021, Cyprus Mines Corporation filed its own voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware.

57. In July 2021, Imerys Talc America, Inc. and Imerys Talc Vermont, Inc. filed an adversary proceeding against Old JJCI and J&J in the Imerys Bankruptcy seeking declaratory judgments with respect to certain indemnity agreements with Imerys. The Debtor and J&J contest the claims in the adversary complaint.

E. The Decision to File This Case

58. After consideration of the cost, burden, uncertainty and anticipated duration of the cosmetic talc litigation, the Debtor determined that the filing of a chapter 11 case in this Court was prudent and necessary. The Debtor further concluded that this chapter 11 case offered the only alternative for equitably and permanently resolving all current and future talc-related claims against it. As I described above, Old JJCI was the subject of a virtual tidal wave of claims during the last five years and the significant number of claims that were being filed against it were anticipated to continue unabated, if not increase, for decades more. In addition, the lottery-like results of the litigation created substantial uncertainty and were inhibiting Old JJCI's ability to fully focus on its business operations.

59. The Debtor's goal in this case is to negotiate, obtain approval of and ultimately consummate a plan of reorganization that would, among other things, (a) establish and fund a trust to resolve and pay current and future talc-related claims and (b) provide for the

issuance of an injunction that will permanently protect the Debtor, its affiliates and certain other parties from further talc-related claims arising from products manufactured and/or sold by Old JJCI, or for which Old JJCI may otherwise have had legal responsibility, pursuant to sections 105(a) and/or 524(g) of the Bankruptcy Code.

60. The Debtor is prepared to commit the necessary resources to reach an agreement with representatives of current and future claimants on a fair and equitable plan of reorganization as soon as possible. In that regard, the Debtor seeks to engage in good faith negotiations to reach a consensual resolution of this chapter 11 case with representatives for current and future claimants as soon as they are appointed and willing to begin discussions.

F. Automatic Stay of Prosecution of Talc-Related Claims

61. As I discussed above, as a result of the 2021 Corporate Restructuring the Debtor became responsible for all of Old JJCI's talc-related liability related in any way to injury or damage, or alleged injury or damage, sustained or incurred in the purchase or use of, or exposure to, talc, including talc contained in any product, or to the risk of, or responsibility for, any such damage or injury, except for any liabilities for which the exclusive remedy is provided under a workers' compensation statute or act ("Talc-Related Liabilities"). As I understand it, because any claims in respect of Talc-Related Liabilities against Old JJCI (which no longer exists) would be efforts to recover on account of claims against the Debtor, they are automatically stayed under the Bankruptcy Code. See Aldrich Pump LLC v. Those Parties to Actions Listed on Appendix A to Complaint (In re Aldrich Pump LLC), 2021 WL 3729335, at *30-32 (Bankr. W.D.N.C. Aug. 23, 2021); DBMP LLC v. Those Parties Listed on Appendix A to Complaint (In re DBMP LLC), 2021 WL 3552350, at *27-28 (Bankr. W.D.N.C. Aug. 11, 2021).

62. It is my further understanding that any such talc-related claims (collectively, the "Debtor Talc Claims") are likewise automatically stayed as to other parties. Aldrich Pump, 2021 WL 3729335, at *30-32; DBMP, 2021 WL 3552350, at *27-28. In particular, any claims that seek to hold third parties liable for the Debtor Talc Claims—such as fraudulent transfer, alter ego and successor liability—are property of the Debtor's estate and subject to the automatic stay. Aldrich Pump, 2021 WL 3729335, at *31-32; DBMP, 2021 WL 3552350, at *28.

63. Claims that seek to recover against insurers who have provided insurance to the Debtor are subject to the automatic stay. Aldrich Pump, 2021 WL 3729335, at *32. Similarly, the assertion of the Debtor Talc Claims against J&J or its non-debtor affiliates is also automatically stayed. These claims would deplete available insurance coverage that J&J and its non-debtor affiliates share with the Debtor. In addition, I understand that actions against parties who share such an identity of interests with the debtor that the debtor is, in effect, the real-party defendant are likewise automatically stayed. The Debtor owes indemnity or is otherwise responsible or otherwise agreed to be responsible or is alleged to be contractually responsible for the Debtor Talc Claims asserted against J&J or any of its non-debtor affiliates, retailers who sold Old JJCI's talc-containing products and certain other parties. In view of these agreements and obligations, I believe that such an identity of interests exists. Aldrich Pump, 2021 WL 3729335, at *30-31; DBMP, 2021 WL 3552350, at *27.

IV. FIRST DAY PLEADINGS

64. Concurrently with the filing of this chapter 11 case, the Debtor filed First Day Pleadings requesting various forms of relief.

65. The Debtor will move for entry of an order scheduling an expedited hearing on certain of the First Day Pleadings.[6] The Debtor anticipates that the Court will conduct a hearing (the "First Day Hearing") as soon after the commencement of its chapter 11 case as the Court's schedule will permit, at which the Court will hear and consider certain of the First Day Pleadings. The Debtor also anticipates that the Court will consider the remainder of the First Day Pleadings at a later time. The First Day Pleadings that the Debtor anticipates will be heard at the First Day Hearing are described in Section IV.A and IV.B, below. The remaining First Day Pleadings are described in Section IV.C, below.

66. Generally, the purpose of the First Day Pleadings is to: (a) obtain authorization for the continued use of the Debtor's bank account; (b) obtain authorization to establish and fund a qualified settlement fund; and (c) establish procedures for the smooth and efficient administration of this chapter 11 case. I have reviewed each of the First Day Pleadings, including the exhibits thereto, and I believe that the relief sought in each of the First Day Pleadings is tailored to meet the goals described above and, ultimately, will be critical to the Debtor's ability to achieve a successful reorganization.

A. The Case Administration Motions

Appointment of Claims, Noticing and Voting Agent

67. The Debtor will seek the entry of an order appointing Epiq Corporate Restructuring, LLC ("Epiq") as claims, noticing and ballot agent in this chapter 11 case. I understand that Epiq may, among other things: (a) prepare and serve all notices required in the Debtor's chapter 11 case, including the notice of the commencement of this case and the meeting of creditors pursuant to section 341 of the Bankruptcy Code; (b) maintain the official

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6 Capitalized terms used below in the descriptions of the First Day Pleadings and not otherwise defined herein have the meanings given to them in the applicable First Day Pleadings.

claims register; and (c) assist with the mailing and tabulation of ballots in connection with any vote to accept or reject any plan or plans proposed in this chapter 11 case. Two engagement proposals were obtained and reviewed to ensure selection through a competitive process. The Debtor submits, based on all engagement proposals obtained and reviewed, that Epiq's rates are competitive and reasonable given Epiq's quality of services and expertise.

Entry of an Order Establishing Certain Notice, Case Management and Administrative Procedures

68. The Debtor will request that the Court enter an order establishing certain notice, case management and administrative procedures (collectively, the "Case Management Procedures") to facilitate the orderly administration of the Debtor's chapter 11 case while ensuring that appropriate notice is provided to parties who express an interest in the chapter 11 case and those directly affected by a request for relief.

69. The Debtor believes that implementation of the Case Management Procedures, among other things, will facilitate service of Court Filings and Orders in a manner that will maximize the efficiency and orderly administration of the chapter 11 case, ensure that appropriate notice is provided to parties in interest and alleviate the significant administrative burden and cost that otherwise could be imposed on the Debtor's estate, parties in interest, the Court and the Clerk of Court due to (a) the substantial number of parties in interest expected to be involved and (b) the number of Court Filings anticipated in the Debtor's chapter 11 case.

List of the Top Law Firms With Talc Cases Against the Debtor in Lieu of the List of the 20 Largest Unsecured Creditors and Notice Procedures for Talc Claimants

70. I understand that the Top 20 List primarily would be used by the Bankruptcy Administrator to understand the types and amounts of unsecured claims against the debtor and thus evaluate prospective candidates to serve on an official committee in the debtor's case. I further understand that an official committee of talc claimants is expected to be

appointed. Because committees in mass tort chapter 11 cases typically consists of plaintiff law firms acting on behalf of individual talc claimants, the Debtor will seek authority to file and provide the Bankruptcy Administrator with a list of the 30 law firms with the most significant representations of claimants, based on the volume of filings or other related factors, across the major types of claims faced by the Debtor (a "Top Talc Counsel List"), in lieu of listing the individual talc claimants with the largest unsecured claims against the Debtor on a "Top 20" list of unsecured creditors. The Debtor believes that providing the Bankruptcy Administrator with a Top Talc Counsel List would better facilitate the Bankruptcy Administrator's evaluation of members of an official committee of talc claimants.

71. The Debtor also will seek Court approval for certain notice procedures relating to individuals (collectively, the "Talc Claimants") who are claimants in talc-related personal injury lawsuits or other proceedings involving the Debtor, including to (a) serve all notices, mailings, filed documents and other communications relating to its chapter 11 case, including, without limitation, pleadings, in any contested matter or otherwise, seeking relief that could directly impact Talc Claimants' rights and obligations in this chapter 11 case, on Talc Claimants in care of their counsel (collectively, the "Talc Firms") at such counsel's address, as further described in the Motion; and (b) list the names, addresses and other contact information, as applicable, of the Talc Firms in any creditor or service lists, including the creditor matrix provided to the Court or filed in this case, in lieu of listing the contact information of individual Talc Claimants. To date, the Debtor has communicated solely with the Talc Firms regarding the talc-related claims against the Debtor. The Debtor in many cases cannot be sure that it has the current addresses (or any addresses) for the Talc Claimants. Further, consistent with the rules of professional conduct, communicating with an adversary in litigation generally is conducted

through counsel. The Debtor therefore believes that providing notice to Talc Claimants through the Talc Firms, in accordance with past practice, is much more reliable and consistent with the rules of professional conduct.

72. The notice procedures proposed in the Motion provide for an effective and appropriate noticing process for the Talc Claimants. Further, implementing the proposed Notice Procedures would alleviate the administrative burden and expense of gathering current contact information for each of the Talc Claimants, which, in many cases, is not readily available or is difficult to verify. The Debtor has access to the names and addresses of the counsel for the Talc Claimants (including counsel of record in pending lawsuits), but the names and addresses of a significant number of individual Talc Claimants themselves are not readily available. It would be extremely burdensome, costly and time-consuming for the Debtor to attempt to obtain this information. In addition, any contact information for the individual Talc Claimants the Debtor has or is able to obtain may be outdated and unreliable. Consequently, providing notice in this chapter 11 case in accordance with the Notice Procedures will be more efficient and reliable than providing notice to the individual Talc Claimants directly.

Extension of Time to File Schedules

73. The Debtor believes it will need additional time beyond the time period allotted under the Bankruptcy Code to assemble all of the information necessary to complete and file the required schedules of assets and liabilities and statement of financial affairs (collectively, the "Schedules"). The Debtor will need the additional time because of (a) the size and complexity of this chapter 11 case and (b) the volume of materials that must be compiled and reviewed by the Debtor's limited staff to complete the Schedules during the hectic early days of this restructuring. Because the Debtor's chapter 11 case will involve tens of thousands of

claimants and other parties in interest, it is my understanding that the Debtor would need to collect, review and assemble a substantial amount of information to complete the Schedules.

74. Given (a) the large number of claimants and (b) the critical matters that the Debtor and its professionals were required to address prior to the commencement of this chapter 11 case, the Debtor was not in a position to complete the Schedules by the Petition Date, even with the assistance of professionals. The Debtor further estimates that, with the many critical matters to be addressed in the early days of this case, the Debtor will require more than 14 days after the Petition Date to complete the Schedules.

75. The additional time requested is important to help ensure that the Schedules are as accurate as possible. Given the volume of information that is provided in the Schedules, and the fact that the information must be accurate as of the Petition Date, additional time to complete the Schedules will help ensure that the relevant information is fully collected and evaluated and can be incorporated into the relevant filings. Rushing to complete the Schedules soon after the Petition Date, on the other hand, could compromise their completeness. Accordingly, the Debtor will seek to extend the deadline by which it must file its Schedules to 46 days after the Petition Date, which is November 29, 2021, without prejudice to the Debtor's right to seek a further extension for cause.

B. <u>Request to Continue Using Bank Account and Related Relief</u>

76. The Debtor will seek approval of the continued use of its prepetition bank account, as well as authority to open and close bank accounts during the chapter 11 case, as necessary or appropriate. In the ordinary course of business, the Debtor maintains a bank account at Bank of America in Charlotte, North Carolina (the "<u>Bank Account</u>"). All payments and other funds that are received by the Debtor are deposited into that account, including cash payments from New JJCI and J&J under the Funding Agreement. The Bank Account also serves

as a disbursement account and is used to pay all of the Debtor's costs and expenses, including professional fees.

77. In addition, the Debtor will request authority for Bank of America, and any other bank to charge, and the Debtor to pay or honor, both prepetition and postpetition service and other fees, costs, charges and expenses to which a bank may be entitled under the terms of and in accordance with its contractual arrangements with the Debtor. Further, the Debtor will request that the Court authorize Bank of America and any other bank to charge back returned items to the Bank Account in the ordinary course of business. The Debtor requires this relief to minimize disruption to its Bank Account and to assist in accomplishing a smooth transition to, and operation in, chapter 11.

78. The Bank Account is insured by the United States through the Federal Deposit Insurance Corporation (the "FDIC") and is maintained at Bank of America, a large, well-known and well-capitalized institution. Therefore, the Debtor will seek a waiver of section 345(b) of the Bankruptcy Code in this case to the extent that the funds maintained in the Bank Account or any other domestic accounts during this chapter 11 case exceed the amount insured by the FDIC or the Federal Savings & Loan Insurance Corporation.

79. To protect against the possible inadvertent payment of prepetition claims, the Debtor will advise Bank of America not to honor checks issued prior to the Petition Date, except as otherwise expressly permitted by an order of the Court and directed by the Debtor. The Debtor has the capacity to draw the necessary distinctions between prepetition and postpetition obligations and payments without closing the Bank Account and opening a new one.

80. In the ordinary course of its business, the Debtor uses certain business forms (collectively, and as they may be modified, the "Business Forms"). The Debtor will

request that it not be required to include the legend "D.I.P.," or any other debtor in possession designation, and the corresponding bankruptcy case number, on its Business Forms because such alteration is not necessary in this case. The Debtor has few business relationships, and the parties it conducts business with (such as law firms) are expected to be well aware of the Debtor's status as a debtor in possession.

C. Anticipated First Day Pleadings to Be Heard at a Later Hearing

Establishment of a Qualified Settlement Fund for Payment of Talc Claims

81. As mentioned above, and to promote a prompt resolution of this chapter 11 case and avoid unnecessary litigation regarding any alleged harm suffered by claimants as a result of the 2021 Corporate Restructuring, the Debtor will seek approval of the establishment and funding of the QSF Trust, which J&J and New JJCI have agreed to fund under the Funding Agreement as early as January 31, 2022. The QSF Trust will constitute a "qualified settlement fund" and will be funded with an aggregate amount of $2 billion to resolve or satisfy current and future talc-related claims asserted against or related to the Debtor but excluding any such claims pursuant to which amounts will be paid or incurred to, or at the direction of, any government or governmental entity (collectively, the "QSF Talc Claims").

82. By agreeing to fund the QSF Trust at this time, New JJCI and J&J are committing to provide funding when they are not required to do so under the Funding Agreement. The funding of the QSF Trust will be considered as pre-funding for Permitted Funding Uses (as such term is defined in the Funding Agreement) and treated as a Payment (as such term is defined in the Funding Agreement) for all purposes. In addition, to the extent permissible under the terms of the Trust Agreement, a Permitted Funding Use, including funding for a Talc Trust included in a chapter 11 plan in the Chapter 11 Case, shall first be paid by the disbursement of funds from the QSF Trust to the full extent such funds are available therefor

before additional funds are sought by the Debtor under the Funding Agreement for such Permitted Funding Use. The establishment of the QSF Trust will not otherwise affect the Debtor's rights or J&J's and New JJCI's obligations under the Funding Agreement in any way.

83. The Debtor believes that establishing the QSF Trust by Court order will be beneficial to all parties. Specifically, it will (a) benefit the Debtor and the talc claimants by placing a significant amount of funds in an irrevocable trust for the benefit of holders of QSF Talc Claims and (b) as with most qualified settlement funds, benefit the direct or indirect owners of the Debtor by giving rise to certain tax benefits. Although the same funding from J&J and New JJCI would be available to the Debtor in the future under the Funding Agreement even without this arrangement, obtaining and segregating $2 billion now (a) should eliminate any doubt regarding the Debtor's financial ability to pay legitimate claims, (b) will assist in funding any Talc Trust set forth in a chapter 11 plan of reorganization in this chapter 11 case and (c) inures to the benefit of talc claimants and the Debtor's estate.

Motion to Seal Confidential Commercial Information in Connection with QSF Motion

84. In connection with the QSF Motion, the Debtor attached the Trust Agreement establishing the QSF Trust as a North Carolina trust without the Fee Agreement, which establishes the amount and terms of the Trustee's compensation, as an exhibit. The Debtor understands that while the Trust Agreement requires the disclosure of certain information with respect to the Trustee's compensation and any expense reimbursement on an annual basis, the Trustee considers the specific terms of the Fee Agreement to be confidential and proprietary commercial information. Disclosure of such information could result in competitive harm to the Trustee. As a result, the Debtor will request authorization to file the Fee Agreement under seal and will further request that, to the extent a hearing is held on the QSF Motion that requires the

disclosure of the terms of the Fee Agreement, any such portion of the hearing be conducted in camera.

Procedures for Engaging Ordinary Course Professionals

85. The Debtor will call upon certain professionals in the ordinary course of its business (the "Ordinary Course Professionals") to provide professional services to assist the Debtor's members and management in the performance of their duties and responsibilities in the ordinary course of the Debtor's business. These Ordinary Course Professionals provide valuable assistance in addressing issues of importance to the Debtor and its business in connection with the management of the Debtor's talc litigation.

86. The Debtor desires to employ the Ordinary Course Professionals, as and when requested by the Debtor, to render professional services to its estate in the same manner and for the same general purposes as such services were provided to Johnson & Johnson Consumer Inc. prior to the Petition Date. To avoid potential disruptions, it is important that the Debtor has the ability to employ the Ordinary Course Professionals (e.g., for defense counsel, to provide services related to the cases they have been defending), many of whom are familiar with the Debtor's history, business and affairs, including the thousands of pending litigation matters.

87. Although the Ordinary Course Professionals identified to date are counsel in talc litigation that I understand is expected to remain stayed under section 362 of the Bankruptcy Code, services from these professionals may be needed from time to time. For example, the Debtor may require services in talc litigation relating to filing stay notices, addressing potential stay violations, monitoring dockets and providing information about these cases that is not available from any other source. However, without assurance that the Debtor is authorized to use and pay these parties, I believe that many Ordinary Course Professionals may

be reluctant to assist the Debtor when needed. Therefore, the Debtor will request approval of certain procedures for the engagement and compensation of Ordinary Course Professionals.

CONCLUSION

88. For all the reasons described herein and in the First Day Pleadings, I respectfully request that the Court grant the relief requested in each of the First Day Pleadings.

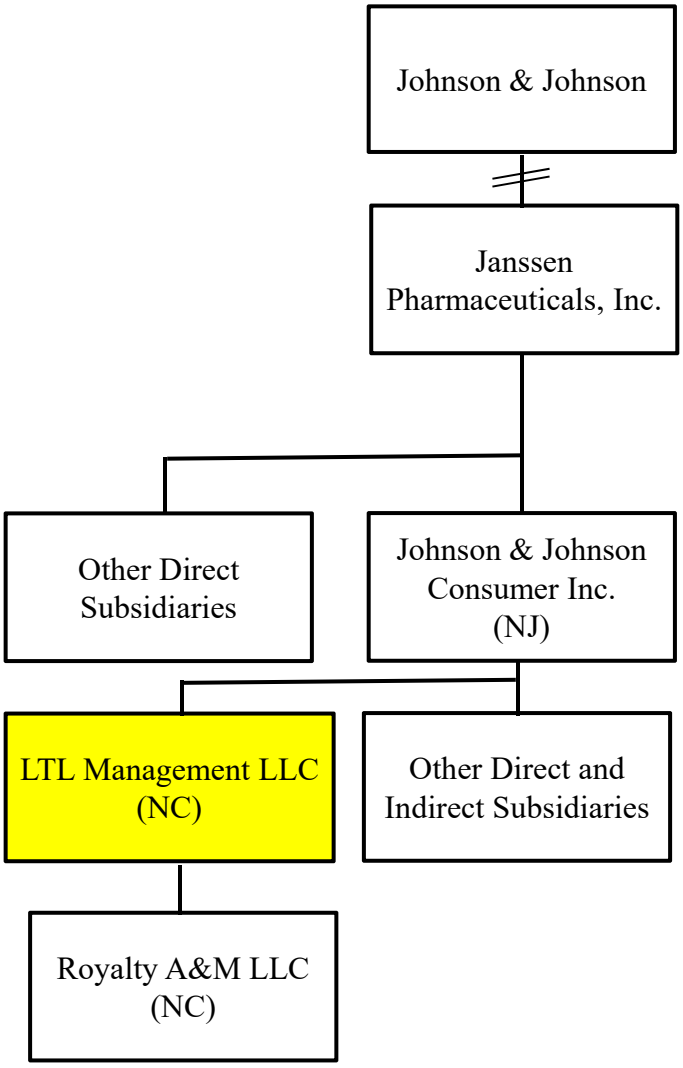
Dated: October 14, 2021

/s/ John K. Kim
John K. Kim

ANNEX 1

Debtor's Corporate Structure Chart

Organizational Structure of LTL Management LLC



Key

Debtor

Non-Debtor

ANNEX 2

Funding Agreement

AMENDED AND RESTATED FUNDING AGREEMENT

This AMENDED AND RESTATED FUNDING AGREEMENT, dated October 12, 2021 (as it may be amended, restated, modified or supplemented from time to time, this "Agreement"), is by and among JOHNSON & JOHNSON, a New Jersey corporation ("J&J"), JOHNSON & JOHNSON CONSUMER INC., a New Jersey corporation ("JJCI"), and LTL MANAGEMENT LLC, a North Carolina limited liability company ("LTL").

RECITALS

A. On the date hereof, but prior to the execution of this Agreement, in contemplation of the divisional merger (the "Divisional Merger") of Chenango Zero LLC, a Texas limited liability company ("Chenango"), pursuant to Chapter 10 of the Texas Business Organizations Code, J&J and Currahee Holding Company Inc., a New Jersey corporation ("Currahee"), as payors, and Chenango, as payee, executed and delivered a funding agreement dated as of October 12, 2021 (the "Original Funding Agreement").

B. Immediately following the execution and delivery of the Original Funding Agreement, Currahee, in its capacity as the sole member of Chenango approved a Plan of Divisional Merger contemplating the Divisional Merger (the "Plan of Divisional Merger").

C. At the effective time of the Divisional Merger, (1) certain property of Chenango as set forth on Schedule 5(b)(i) to the Plan of Divisional Merger and certain liabilities and obligations of Chenango as set forth on Schedule 5(c)(i) to the Plan of Divisional Merger (collectively, the "Allocated Assets and Liabilities") were allocated to a new Texas limited liability company created upon the effectiveness of the Divisional Merger ("Chenango One"), (2) the remaining property, liabilities and obligations of Chenango were allocated to another new Texas limited liability company created upon effectiveness of the Divisional Merger ("Chenango Two"), and (3) Chenango ceased to exist.

D. Pursuant to the Original Funding Agreement, J&J and Currahee agreed, on a joint and several basis, to provide funding to Chenango sufficient to pay the costs of operations of Chenango's business and other liabilities and obligations included in the Allocated Assets and Liabilities as and when they become due.

E. The Allocated Assets and Liabilities included the rights and obligations of Chenango under the Original Funding Agreement, and, at the effective time of the Divisional Merger, pursuant to the terms of the Plan of Divisional Merger, the rights and obligations of Chenango under the Original Funding Agreement were allocated to Chenango One such that, following the effectiveness of the Divisional Merger, Chenango One had assets having a value at least equal to its liabilities and had financial capacity sufficient to satisfy its obligations as they become due in the ordinary course of business, including any Talc Related Liabilities.

F. Following the Divisional Merger, (1) Chenango One effected a conversion (the "NC Conversion") into a North Carolina limited liability company and changed its name to "LTL Management LLC" and (2) Chenango Two effected a merger (the "TX-to-NJ Merger") with and into Currahee, which changed its name to "Johnson & Johnson Consumer Inc."

G. Payors and Payee desire to amend and restate the Original Funding Agreement to reflect that the Divisional Merger, the NC Conversion and the TX-to-NJ Merger have occurred and that JJCI, now a New Jersey corporation having the name "Johnson & Johnson Consumer Inc.," and Payee, now a North Carolina limited liability company having the name "LTL Management LLC," are the parties to such agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the parties hereto agree as follows:

1. Definitions. As used in this Agreement, the following terms have the meanings herein specified unless the context otherwise requires:

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, "control," as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. For purposes of this definition, the terms "controlling," "controlled by" and "under common control with" have correlative meanings.

"Agreement" has the meaning specified in the first paragraph hereof.

"Allocated Assets and Liabilities" has the meaning specified in the recitals to this Agreement.

"Bankruptcy Case" means any voluntary case under chapter 11 of the Bankruptcy Code commenced by the Payee in the Bankruptcy Court.

"Bankruptcy Code" means title 11 of the United States Code, as amended from time to time and any successor statute and all rules and regulations promulgated thereunder.

"Bankruptcy Court" means the United States Bankruptcy Court where the Bankruptcy Case is commenced.

"Base Rate" means, for any day, a fluctuating interest rate per annum as shall be in effect from time to time, which rate per annum shall at all times be equal to the Federal Funds Effective Rate in effect from time to time, determined one Business Day in arrears, plus 1/2 of 1% per annum.

"Board" means: (a) with respect to a corporation, the board of directors of the corporation or any committee thereof; (b) with respect to a partnership, the board of directors, the managing member or members or the board of managers, as applicable, of the general partner of the partnership; (c) with respect to a limited liability company, the managing member or members or the board of managers, as applicable, of the limited liability company; and (d) with respect to any other Person, the board or committee of such Person serving a similar function.

"Business Day" means each day other than a Saturday, a Sunday or a day on which banking institutions in Charlotte, North Carolina or at a place of payment are authorized by law, regulation or executive order to remain closed.

"Capital Stock" means: (a) in the case of a corporation, corporate stock; (b) in the case of an association or business entity, any and all shares, interests, participations, rights or other equivalents (however designated) of corporate stock; (c) in the case of a partnership or limited liability company, partnership or membership interests (whether general or limited); and (d) any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, the issuing Person; but excluding (in each case of (a) through (d) above) any debt securities convertible into such equity securities.

"Chenango" has the meaning specified in recitals to this Agreement.

"Chenango One" has the meaning specified in the recitals to this Agreement.

"Chenango Two" has the meaning specified in the recitals to this Agreement.

"Contractual Obligation" means, as to any Person, any obligation or similar provision of any security issued by such Person or any agreement, instrument or other undertaking (excluding this Agreement) to which such Person is a party or by which it or any of its property is bound.

"Currahee" has the meaning specified in first paragraph of this Agreement.

"Default" means any event that is, or with the passage of time or the giving of notice or both would be, an Event of Default.

"District Court" means the United States District Court in the district of the Bankruptcy Court.

"Divisional Merger" has the meaning specified in the recitals to this Agreement.

"Event of Default" has the meaning specified in Section 6.

"Federal Funds Effective Rate" means, for any period, a fluctuating interest rate equal for each day during such period to the weighted average of the rates on overnight Federal Funds transactions with members of the Federal Reserve System arranged by Federal Funds brokers, as published for such day (or, if such day is not a Business Day, for the next preceding Business Day) by the Federal Reserve Bank of New York.

"Funding Account" means the account of the Payee listed on Schedule 2 to this Agreement, into which the proceeds of all Payments made under this Agreement shall be deposited, or such other account designated in writing by the Payee to the Payors from time to time.

"Funding Date" has the meaning specified in Section 2(b).

"Funding Request" has the meaning specified in Section 2(b).

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, in effect from time to time, consistently applied.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"J&J" has the meaning specified in first paragraph of this Agreement.

"JJCI" has the meaning specified in first paragraph of this Agreement.

"JJCI Value" means the greater of:

(a) the fair market value of the businesses and other assets (including equity interests) held by Chenango, as determined (i) immediately prior to the effective time of the Divisional Merger, (ii) assuming the Allocated Assets and Liabilities are not held by Chenango, and (iii) based on the aggregate amount that would be received upon a sale of such businesses and other assets in one or more (as would maximize the aggregate amount) market transactions between prudent parties, acting at arms' length, under no compulsion to act and having reasonable knowledge of relevant information concerning such businesses and other assets; and

(b) the sum of:

(i) the fair market value of the businesses and other assets (including equity interests) held by Chenango Two or, after the TX-to-NJ Merger, JJCI, as determined (A) as of the applicable calculation date, (B) assuming neither Chenango Two nor, after the TX-to-NJ Merger, JJCI has any obligations under this Agreement, and (C) based on the aggregate amount that would be received upon a sale of such businesses and other assets in one or more (as would maximize the aggregate amount) market transactions between prudent parties, acting at arms' length, under no compulsion to act and having reasonable knowledge of relevant information concerning such businesses and other assets; and

(ii) the fair market value of any businesses or other assets (including equity interests) held by Chenango Two or, after the TX-to-NJ Merger, JJCI that, following the effective time of the Divisional Merger and prior to the applicable calculation date, are distributed by Chenango Two or, after the TX-to-NJ Merger, JJCI to its members, as determined (A) at the time of such distribution and (B) based on the aggregate amount that would be received upon a sale of such businesses or other assets in one or more (as would maximize the aggregate amount) market transactions between prudent parties, acting at arms' length,

under no compulsion to act and having reasonable knowledge of relevant information concerning such businesses or other assets.

"LTL" has the meaning specified in the first paragraph of this Agreement.

"NC Conversion" has the meaning specified in the recitals to this Agreement.

"Organizational Documents" means: (a) with respect to any corporation, its certificate or articles of incorporation and bylaws; (b) with respect to any limited liability company, its certificate or articles of formation or organization and operating agreement; and (c) with respect to any partnership, joint venture, trust or other form of business entity, the partnership, joint venture or other applicable agreement of formation or organization and any agreement, instrument, filing or notice with respect thereto filed in connection with its formation or organization with the applicable Governmental Authority in the jurisdiction of its formation or organization and, if applicable, any certificate or articles of formation of such entity.

"Original Funding Agreement" has the meaning specified in the recitals to this Agreement.

"Payee" means LTL Management LLC, a North Carolina limited liability company.

"Payee Affiliate" means any controlled Affiliate of the Payee.

"Payee Material Adverse Effect" means: (a) a material impairment of the rights and remedies of the Payors under this Agreement, or of the ability of the Payee to perform its material obligations under this Agreement; or (b) a material adverse effect upon the legality, validity or enforceability of this Agreement against the Payee.

"Payment" has the meaning specified in Section 2(a).

"Payor Affiliate" means any Affiliate of a Payor, excluding the Payee and any Payee Affiliate.

"Payor Material Adverse Effect" means with respect to a Payor: (a) a material adverse change in, or a material adverse effect upon, the business, assets, liabilities (actual or contingent) or financial condition of such Payor and its Subsidiaries, taken as a whole; (b) a material impairment of the rights and remedies of the Payee under this Agreement, or of the ability of such Payor to perform its material obligations under this Agreement; or (c) a material adverse effect upon the legality, validity or enforceability of this Agreement against such Payor.

"Payors" means J&J and JJCI.

"Permitted Funding Use" means each of the following:

(a) the payment of any and all costs and expenses of the Payee incurred in the normal course of its business (including the payment of any indemnification or other obligations of the Payee owing to any managers or officers of the Payee) at any time

when there is no proceeding under the Bankruptcy Code pending with respect to the Payee;

(b) the payment of any and all costs and expenses of the Payee incurred during the pendency of any Bankruptcy Case, including the costs of administering the Bankruptcy Case and any and all other costs and expenses of the Payee incurred in the normal course of its business (including the payment of any indemnification or other obligations of the Payee owing to any managers or officers of the Payee);

(c) the funding of any amounts to satisfy:

(i) the Payee's Talc Related Liabilities established by a judgment of a court of competent jurisdiction or final settlement thereof at any time when there is no proceeding under the Bankruptcy Code pending with respect to the Payee;

(ii) following the commencement of any Bankruptcy Case, the Payee's Talc Related Liabilities in connection with the funding of one or more trusts for the benefit of existing and future claimants created pursuant to a plan of reorganization for the Payee confirmed by a final, nonappealable order of the Bankruptcy Court and, to the extent required, the District Court (for the avoidance of doubt, regardless of whether such plan of reorganization provides that the Payors will receive protection pursuant to section 105 or section 524(g) of the Bankruptcy Code and regardless of whether the Payors support such plan of reorganization); and

(iii) in the case of either (i) or (ii), any ancillary costs and expenses of the Payee associated with such Talc Related Liabilities and any litigation thereof, including the costs of any appeals;

(d) the funding of any amounts necessary to cause the Funding Account to contain at least $5,000,000 at such time;

(e) the funding of any obligations of the Payee owed to any Payor or Payor Affiliate, including any indemnification or other obligations of the Payee under any agreement provided for in the Plan of Divisional Merger; and

(f) the payment of any and all costs and expenses of the Payee incurred in connection with the pursuit of available remedies to collect any unfunded Payments due and owing to the Payee or otherwise to enforce the performance by the Payors, or either of them, of any provision of this Agreement;

in the case of clauses (a) through (e) above, solely to the extent that any cash distributions theretofore received by the Payee from its Subsidiaries are insufficient to pay such costs and expenses and fund such amounts and obligations in full and further, in the case of clause (c)(ii) above, solely to the extent the Payee's other assets are insufficient to satisfy the Payee's Talc Related Liabilities in connection with the funding of such trust or trusts.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization, or government or any agency or political subdivision thereof.

"Plan of Divisional Merger" has the meaning specified in the recitals to this Agreement.

"SEC" means the Securities and Exchange Commission.

"Subsidiary" means, with respect to any Person, any other Person a majority of the outstanding Voting Stock of which is owned or controlled by such Person or by one or more other Subsidiaries of such Person and that is consolidated in such Person's accounts.

"Talc Related Liabilities" has the meaning specified in Schedule 1 to this Agreement.

"TX-to-NJ Merger" has the meaning specified in the recitals to this Agreement.

"Voting Stock" of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board of such Person.

2. Funding Obligations and Procedures.

(a) Funding Obligations. The Payors hereby agree, on the terms and conditions set forth in this Agreement, upon the request of the Payee from time to time in accordance with the requirements of Section 2(b), to make payments to the Payee (each, a "Payment"), the proceeds of which shall be used by the Payee for a Permitted Funding Use. Nothing in this Agreement shall obligate the Payors to (i) make Payments under this Agreement that in the aggregate exceed the lesser of (A) the JJCI Value and (B) the aggregate amount of all Permitted Funding Uses or (ii) make any individual Payment under this Agreement that exceeds the amount requested by the Payee in the applicable Funding Request. The JJCI Value shall be calculated at, and only at, any date on which (x) the Payors refuse to make a requested Payment under this Agreement based on clause (i) of the immediately preceding sentence and (y) the Payments made by the Payors under this Agreement prior to such date, together with the requested Payment, are in the aggregate not in excess of the aggregate amount of all Permitted Funding Uses.

(b) Funding Requests. To request a Payment, the Payee shall deliver to the Payors a written request (which written request may be a .pdf delivered via email) for such Payment in a form reasonably acceptable to the Payors and signed by the Payee (each, a "Funding Request"). Each Funding Request shall specify (i) the amount of the requested Payment, which shall be no less than $500,000, and (ii) the date of the requested Payment, which shall be the date that is at least five Business Days following the delivery of such Funding Request (each such date, a "Funding Date"). Each Funding Request by the Payee shall constitute a representation and warranty by the Payee that the conditions set forth in Section 2(d) have been satisfied. Except as required to comply with the minimum requirements in Section 2(b)(i), the Payee shall not deliver a Funding Request for an amount in excess of the aggregate amount necessary for the Payee to fund all current Permitted Funding Uses and all projected Permitted Funding Uses over the 30 days following the date of such Funding Request.

(c) Payments. Subject only to the satisfaction of the conditions set forth in Section 2(d), on or before any Funding Date, the Payors shall pay or cause to be paid to the Payee an amount equal to the amount of the requested Payment specified in the applicable Funding Request. All Payments shall be made by wire or other transfer of immediately available funds, in United States dollars, to the Funding Account. In the event that the Payors do not make any Payment within the time period required by this Section 2(c), the amount of the requested Payment shall bear interest at a rate per annum equal to the Base Rate *plus* 2% until such Payment is made and the Payors shall include any interest accruing pursuant to this Section 2(c) in the next Payment made to the Payee.

(d) Conditions to Payments. The Payors' obligation to make any Payment is subject to the satisfaction of the following conditions as of the date of the Funding Request relating to such Payment: (i) the representations and warranties of the Payee set forth in Section 3(b) shall be true and correct without regard to the impact of any Bankruptcy Case, including any notices or other actions that may be required therein; and (ii) there shall have been no violation by the Payee of the covenant set forth in Section 5.

3. Representations and Warranties.

(a) Representations and Warranties of the Payor. Each Payor represents and warrants to the Payee that:

(i) Existence, Qualification and Power. Such Payor (A) is duly organized or formed, validly existing and, as applicable, in good standing under the laws of its jurisdiction of incorporation or organization, (B) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (I) own or lease its material assets and carry on its business and (II) execute, deliver and perform its obligations under this Agreement, and (C) is duly qualified and is licensed and, as applicable, in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (B)(I) or (C), to the extent that failure to do so could not reasonably be expected to have a Payor Material Adverse Effect with respect to such Payor.

(ii) Authorization; No Contravention. The execution, delivery and performance by such Payor of this Agreement has been duly authorized by all necessary corporate or other organizational action, and does not and will not (A) contravene the terms of its Organizational Documents, (B) conflict with or result in any breach or contravention of, or the creation of any lien under, or require any payment to be made under (I) any Contractual Obligation to which it is a party or affecting it or its properties or (II) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which it or its property is subject, or (C) violate any applicable law; except in each case referred to in clause (B) or (C), to the extent the failure to do so could not reasonably be expected to have a Payor Material Adverse Effect with respect to such Payor.

(iii) Governmental Authorization; Other Consents. No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance of this Agreement by, or enforcement of this Agreement against, such Payor.

(iv) Binding Effect. This Agreement has been duly executed and delivered by such Payor. This Agreement constitutes a legal, valid and binding obligation of such Payor, enforceable against such Payor in accordance with its terms, except to the extent such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally and by equitable principles.

(b) Representations and Warranties of the Payee. The Payee represents and warrants to the Payors that:

(i) Existence, Qualification and Power. The Payee (A) is duly organized or formed, validly existing and, as applicable, in good standing under the laws of its jurisdiction of incorporation or organization, (B) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (I) own or lease its material assets and carry on its business and (II) execute, deliver and perform its obligations under this Agreement and (C) is duly qualified and is licensed and, as applicable, in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (B)(I) or (C), to the extent that failure to do so could not reasonably be expected to have a Payee Material Adverse Effect.

(ii) Authorization; No Contravention. The execution, delivery and performance by the Payee of this Agreement has been duly authorized by all necessary corporate or other organizational action, and does not and will not (A) contravene the terms of its Organizational Documents, (B) conflict with or result in any breach or contravention of, or the creation of any lien under, or require any payment to be made under (I) any Contractual Obligation to which it is a party or affecting it or its properties or (II) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which it or its property is subject, or (C) violate any applicable law; except in each case referred to in clause (B) or (C), to the extent the failure to do so could not reasonably be expected to have a Payee Material Adverse Effect.

(iii) Governmental Authorization; Other Consents. No approval, consent, exemption, authorization or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with the execution, delivery or performance of this Agreement by, or enforcement of this Agreement against, the Payee.

(iv) Binding Effect. This Agreement has been duly executed and delivered by the Payee. This Agreement constitutes a legal, valid and binding obligation of the Payee, enforceable against the Payee in accordance with its terms, except to the extent such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally and by equitable principles.

4. Covenants of the Payors.

(a) Provision of Financial Information.

(i) No later than 90 days after the end of each fiscal year (in the case of annual financial statements) and 60 days after the end of each fiscal quarter other than the last fiscal quarter (in the case of quarterly financial statements), (A) J&J will furnish to the Payee audited annual and unaudited quarterly consolidated financial statements of J&J prepared in accordance with GAAP, subject, with respect to quarterly financial statements, normal year-end audit adjustments, and (B) Currahee will furnish to the Payee unaudited annual and quarterly income statements and balance sheets of Currahee prepared in accordance with GAAP and Currahee's historical cost basis of its subsidiaries, subject to the absence of notes to the financial statements and related disclosures and, with respect to quarterly financial statements, normal year-end adjustments.

(ii) By accepting such financial information, the Payee will be deemed to have represented to and agreed with the Payor furnishing such financial information that: (A) it will not use the information in violation of applicable securities laws or regulations; and (B) it will not communicate the information to any Person, including in any aggregated or converted form, and will keep the information confidential, other than where disclosure of such information is required by law, regulation or legal process (in which case the Payee shall, to the extent permitted by law, notify such Payor promptly thereof); *provided*, *however*, that the Payee may deliver a copy thereof to counsel for any official committee of claimants and any future claimants' representative appointed in any Bankruptcy Case on a confidential basis under a protective order entered in such Bankruptcy Case.

(iii) Notwithstanding the foregoing, but subject to the last sentence of this Section 4(a)(iii), the financial information required to be furnished as described in Section 4(a)(i) may be, rather than that of a Payor, those of any direct or indirect parent of such Payor. Notwithstanding the foregoing, a Payor may fulfill the requirement to furnish such financial information by filing the information with the SEC within the applicable time periods required by the SEC. Subject to the last sentence of this Section 4(a)(iii), a Payor will be deemed to have satisfied the requirements of Section 4(a)(i) if any direct or indirect parent of such Payor has filed such reports containing the required information with the SEC within the applicable time periods required by the SEC and such reports are publicly available. To the extent a direct or indirect parent of a Payor furnishes financial information pursuant to the first sentence of this Section 4(a)(iii) or such parent files a report with the SEC pursuant to the third sentence of this Section 4(a)(iii), and if the financial information so furnished relates to such direct or indirect parent of such Payor, the same shall be accompanied by consolidating information that explains in reasonable detail the difference between the information relating to such parent, on the one

hand, and the information relating to such Payor and its Subsidiaries on a standalone basis, on the other hand.

(b) Successor to J&J upon Consolidation or Merger.

(i) Subject to the provisions of Sections 4(b)(ii) and 4(b)(iii), nothing contained in this Agreement shall prevent any consolidation or merger of J&J with or into any Person, or successive consolidations or mergers in which J&J or its successor or successors shall be a party or parties, or shall prevent any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all the property of J&J (for the avoidance of doubt, calculated by including any equity interests held by J&J), to any Person; *provided*, *however*, that J&J hereby covenants and agrees, that, if the surviving Person, acquiring Person or lessee is a Person other than J&J, upon any such consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition, all of J&J's funding obligations under this Agreement and the observance of all other covenants and conditions of this Agreement to be performed by J&J, shall be expressly assumed, by an amendment to this Agreement or such other documentation in form reasonably satisfactory to the Payee executed and delivered to the Payee, by the Person formed by such consolidation, or into which J&J shall have been merged, or by the Person which shall have acquired or leased such property. This covenant will not apply to (A) a merger of J&J with an Affiliate thereof solely for the purpose of reincorporating J&J in another jurisdiction within the United States, (B) any conversion of J&J from an entity formed under the laws of one state to the same type of entity formed under the laws of another state, or (C) any conversion of J&J from a limited liability company to a corporation, from a corporation to a limited liability company, from a limited liability company to a limited partnership or a similar conversion, whether the converting entity and the converted entity are formed under the laws of the same state or the converting entity is formed under the laws of one state and the converted entity is formed of the laws of a different state. Notwithstanding the foregoing, this Section 4(b)(i) will not apply to any consolidation or merger, or any sale, assignment, transfer, conveyance, lease or other disposition of assets, between or among J&J and its Subsidiaries.

(ii) Upon any consolidation or merger, or any sale, assignment, transfer, lease, conveyance or other disposition of all or substantially all of the assets, of J&J (for the avoidance of doubt, calculated by including any equity interests held by J&J) in a transaction that is subject to, and that complies with, the provisions of the preceding clause (i), the successor Person formed by such consolidation with J&J or into which J&J is merged, or to which such sale, assignment, transfer, lease, conveyance or other disposition is made, shall succeed to, and be substituted for (so that from and after the date of such consolidation, merger, sale, lease, conveyance or other disposition, the provisions of this Agreement referring to J&J, including as a Payor, shall refer instead to the successor Person and not to J&J), and may exercise every right and power of, J&J, including as a Payor, under this Agreement with the same effect as if such successor Person had been named herein. In the event of a succession in compliance with this Section 4(b)(ii), the predecessor Person shall be relieved from every obligation and covenant under this Agreement upon the consummation of such succession.

(iii) Any consolidation, merger, sale, assignment, transfer, lease, conveyance or other disposition referred to in the preceding clause (i) shall not be permitted

under this Agreement unless immediately after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing.

5. Covenants of the Payee. The Payee shall not use the proceeds of any Payment made under this Agreement for any purpose other than a Permitted Funding Use. The Payee will perform its indemnification obligations under the agreements provided for in the Plan of Divisional Merger in all material respects, subject, in the event that a proceeding under the Bankruptcy Code is pending with respect to the Payee, to the resulting automatic stay under section 362 of the Bankruptcy Code.

6. Events of Default. Each of the following events constitutes an "Event of Default":

(a) the Payors default in the funding obligations pursuant to Section 2 and such default continues for a period of 10 Business Days;

(b) a Payor defaults in the performance of, or breaches, any covenant or representation or warranty of such Payor in this Agreement (other than a covenant or representation or warranty which is specifically dealt with elsewhere in this Section 6) and such default or breach continues for a period of 30 days, or, in the case of any failure to comply with Section 4(a) of this Agreement, 60 days, in each case after there has been given, by registered or certified mail, to such Payor by the Payee a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;

(c) a Payor, pursuant to or within the meaning of the Bankruptcy Code or any similar federal or state law for the relief of debtors, (i) commences a voluntary case, (ii) consents to the entry of an order for relief against it in an involuntary case, (iii) consents to the appointment of a custodian of it or for all or substantially all of its property, (iv) makes a general assignment for the benefit of its creditors, or (v) generally is not paying its debts as they become due; and

(d) a court of competent jurisdiction enters an order or decree under the Bankruptcy Code or any similar federal or state law for the relief of debtors that (i) is for relief against a Payor, (ii) appoints a custodian of a Payor for all or substantially all of the property of a Payor, or (iii) orders the liquidation of a Payor, and, in each case of (i) through (iii) above, such order or decree remains unstayed and in effect for 60 consecutive days.

Upon becoming aware of any Default or Event of Default, a Payor shall promptly deliver to the Payee a statement specifying such Default or Event of Default.

7. Remedies. Upon the occurrence of any Event of Default, and at any time thereafter during the continuance of any such Event of Default, the Payee may pursue any available remedy to collect any unfunded Payments due and owing to the Payee or to enforce the performance of any provision of this Agreement.

8. Notices. All notices required under this Agreement, including each Funding Request and any approval of or objection to a Funding Request, shall be delivered to the applicable party to this Agreement at the address set forth below. Unless otherwise specified herein, delivery of any such notice by email, facsimile or other electronic transmission (including .pdf) shall be effective as delivery of a manually executed counterpart thereof.

Payors:

Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933
Attention: Michelle Ryan, Treasurer
Email: mryan1@its.jnj.com

Johnson & Johnson Consumer Inc.
199 Grandview Road
Skillman, NJ 08558
Attention: Michelle Goodridge, President
Email: mgoodrid@its.jnj.com

Payee:

LTL Management LLC
501 George Street
New Brunswick, NJ 08933
Attention: Robert Wuesthoff, President
Email: rwhuestho@its.jnj.com

with a copy to:

LTL Management LLC
501 George Street
New Brunswick, NJ 08933
Attention: John Kim, Chief Legal Officer
Email: JKim8@its.jnj.com

9. Governing Law; Submission to Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the State of North Carolina. Any legal proceeding seeking to enforce any provision of, or based on any matter arising under, this Agreement may be brought: (a) at any time there is not a proceeding under the Bankruptcy Code pending with respect to the Payee, in state or federal court in Charlotte, North Carolina; or (b) at any time there is a proceeding under the Bankruptcy Code pending with respect to the Payee, in the Bankruptcy Court. Each Payor and the Payee hereby irrevocably and unconditionally submit to the jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such legal proceeding.

10. No Implied Waiver; Amendments. No failure or delay on the part of the Payee to exercise any right, power or privilege under this Agreement, and no course of dealing between the Payors, or either of them, on the one hand, and the Payee, on the other hand, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege under this Agreement preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No notice to or demand on the Payors, or either of them, in any case shall entitle the Payors, or either of them, to any other or further notice or demand in similar or other circumstances, or constitute a waiver of the right of the holder of this Agreement to any other or further action in any circumstances without notice or demand. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by law. No amendment or waiver of any provision of this Agreement, nor consent to any departure by the Payee therefrom, shall in any event be effective unless the same shall be in writing, specifically refer to this Agreement, and be signed by the Payors and the Payee, and then such amendment or waiver shall be effective only in the specific instance and for the specific purpose for which given. A waiver on any such occasion shall not be construed as a bar to, or waiver of, any such right or remedy on any future occasion.

11. Counterparts; Entire Agreement; Electronic Execution. This Agreement may be executed in separate counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement constitutes the entire contract among the parties hereto relating to the subject matter hereof and supersedes, in its entirety, the Original Funding Agreement and any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. This Agreement shall become effective when it shall have been executed by each party hereto and each party hereto shall have received counterparts hereof which, when taken together, bear the signatures of each of party hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy, .pdf or any other electronic means that reproduces an image of the actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement.

12. Severability. If any one or more of the provisions contained in this Agreement are invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of all the remaining provisions will not in any way be affected or impaired. If any one or more provisions contained in this Agreement are deemed invalid, illegal or unenforceable because of their scope or breadth, such provisions shall be reformed and replaced with provisions whose scope and breadth are valid under applicable law.

13. Transfer; Assignment. This Agreement shall be binding upon each Payor and its successors and assigns, and the terms and provisions of this Agreement shall inure to the benefit of the Payee and its successors and assigns. A Payor's rights and obligations under this Agreement may not be assigned without the prior written consent of the Payee; *provided*, *however*, that no such consent of the Payee shall be required in connection with any transfer effectuated in compliance with Section 4(b). The Payee's rights and obligations under this Agreement may not be assigned without the prior written consent of the Payors. Any purported assignment of rights or obligations under this Agreement other than as permitted by this Section 13 shall be null and void.

14. Construction. The descriptive headings herein are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. The word "including" means without limitation by reason of enumeration. The words "hereof," "herein" and "hereunder" and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement. Unless specifically stated otherwise, all references to Sections and Schedules are to the Sections and Schedules of or to this Agreement.

15. Rights of Parties. This Agreement shall not confer any rights or remedies upon any Person other than the parties hereto and their respective successors and permitted assigns.

16. Joint and Several Obligations. Obligations of the Payors under this Agreement are joint and several.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

JOHNSON & JOHNSON, a New Jersey corporation, as a Payor

By: _____
Michelle Ryan,
Treasurer

JOHNSON & JOHNSON CONSUMER INC., a New Jersey corporation, as a Payor

By: _____
Michelle Goodridge,
President

LTL MANAGEMENT LLC, a North Carolina limited liability company, as the Payee

By: _____
Robert Wuesthoff,
President

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

JOHNSON & JOHNSON, a New Jersey corporation, as a Payor

By: _____
Michelle Ryan,
Treasurer

JOHNSON & JOHNSON CONSUMER INC., a New Jersey corporation, as a Payor

By: Michelle W Goodridge
Michelle Goodridge,
President

LTL MANAGEMENT LLC, a North Carolina limited liability company, as the Payee

By: _____
Robert Wuesthoff,
President

[Signature Page to A&R Funding Agreement]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

JOHNSON & JOHNSON, a New Jersey corporation, as a Payor

By: _____
Michelle Ryan,
Treasurer

JOHNSON & JOHNSON CONSUMER INC., a New Jersey corporation, as a Payor

By: _____
Michelle Goodridge,
President

LTL MANAGEMENT LLC, a North Carolina limited liability company, as the Payee

By: _____
Robert Wuesthoff,
President

SCHEDULE 1

Definition of Talc Related Liabilities

For purposes of this Agreement, "Talc Related Liabilities" means all Liabilities (as defined below) of the Payee related in any way to injury or damage, or alleged injury or damage, sustained or incurred in the purchase or use of, or exposure to, talc, including talc contained in any product, or to the risk of, or responsibility for, any such damage or injury, including such Liabilities based on the contamination, or alleged contamination, of talc, including talc contained in any product, with asbestos or any other material.

Capitalized terms that are used in this Schedule 1 have the following meanings:

(a) "Cause of Action" means any claim, judgment, cause of action, counterclaim, crossclaim, third party claim, defense, indemnity claim, reimbursement claim, contribution claim, subrogation claim, right of set off, right of recovery, recoupment, right under any settlement Contract and similar right, whether choate or inchoate, known or unknown, contingent or noncontingent.

(b) "Contract" means any contract, agreement, arrangement, lease, indenture, mortgage, deed of trust, evidence of indebtedness, License, Plan, guarantee, understanding, course of dealing or performance, instrument, bid, order, proposal, demand, offer or acceptance, whether written or oral.

(c) "Governmental Authority" means any national, central, federal, state, provincial, municipal, local or other domestic, foreign or supranational governmental, legislative, administrative or regulatory authority, agency, court, arbitration tribunal, board, department or commission, or other governmental or regulatory entity, including any competent governmental authority responsible for the determination, assessment or collection of taxes.

(d) "Law" means any national, central, federal, state, provincial, municipal, local or other domestic, foreign or supranational statute, law, ordinance, decree, order, injunction, rule, regulation, directive, constitution, code, edict, writ, judgment, opinion, decree, injunction, stipulation, award or other document or pronouncement having the effect of law (including common law) of any Governmental Authority, including rules and regulations of any regulatory or self-regulatory authority with which compliance is required by any of the foregoing.

(e) "Liability" shall mean any claim, demand, offer, acceptance, action, suit, liability or obligation of any kind, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, choate or inchoate, asserted or unasserted, known or unknown, including (i) those arising or that may arise under any past, present or future Law or Contract or pursuant to any Cause of Action or Proceeding and (ii) all claims for economic or noneconomic damages or injuries of any type or nature whatsoever (including claims for physical, mental and emotional pain and suffering, loss

of enjoyment of life, loss of society or consortium and wrongful death, as well as claims for damage to property and punitive damages).

(f) "License" means any license, sublicense, agreement, covenant not to sue or permission.

(g) "Person" means any individual, corporation (including any non-profit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, benefit plan, unincorporated organization, business, syndicate, sole proprietorship, association, organization, labor union or other entity or Governmental Authority.

(h) "Plan" means, with respect to any Person, (i) any "employee benefit plan" (as defined in Section 3(3) of ERISA), (ii) all specified fringe benefit plans as defined in Section 6039(D) of the Internal Revenue Code, and (iii) any other plan, program, policy, agreement or arrangement, whether or not in writing, relating to compensation, employee benefits, severance, change in control, retention, deferred compensation, equity, employment, consulting, vacation, sick leave, paid time off, salary continuation, disability, hospitalization, medical insurance, life insurance, scholarship programs, incentive compensation or bonus compensation, in each case that is sponsored, maintained or contributed to or required to be sponsored, maintained or contributed to by, or otherwise covering, such Person.

(i) "Proceeding" means any action, appeal, arbitration, assessment, cancellation, charge, citation, claim, complaint, concurrent use, controversy, contested matter, demand, grievance, hearing, inquiry, interference, investigation, litigation (including class actions and multidistrict litigation), mediation, opposition, re-examination, summons, subpoena or suit, or other case or proceeding, whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private, commenced, brought, conducted or heard by or before, under the supervision or direction of, or otherwise involving, any Governmental Authority or arbitrator or other agreed-upon tribunal or dispute resolution mechanism.

EXHIBIT 13-FILED UNDER SEAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

IN RE: LTL MANAGEMENT LLC, Debtor, OFFICIAL COMMITTEE OF TALC CLAIMANTS, Appellant.	Case No. 22-2003/22-2004 21400 U.S. Courthouse 601 Market Street Philadelphia, PA 19106 Monday, September 19, 2022
IN RE LTL MANAGEMENT LLC, Debtor. LTL MANAGEMENT, LLC. v. THOSE PARTIES LISTED ON APPENDIX A TO COMPLAINT AND JOHN AND JANE DOES 1-1000 OFFICIAL COMMITTEE OF TALC CLAIMANTS, Appellant.	Case No. 22-2005
IN RE: LTL MANAGEMENT LLC, Debtor. OFFICIAL COMMITTEE OF TALC CLAIMANTS, ET AL. Appellants.	Case No. 22-2006/22-2007
IN RE: LTL MANAGEMENT LLC, Debtor. LTL MANAGEMENT LLC v. THIRD PARTIES LISTED ON APPENDIX A TO COMPLAINT AND JOHN AND JANE DOES 1-1000, OFFICIAL COMMITTEE OF TALC CLAIMANTS, ET AL.	Case No. 22-2008

OFFICIAL COMMITTEE OF TALC .
CLAIMANTS, ET AL. .
Appellants. .
. . . . . .
IN RE: . Case No. 22-2009
.
LTL MANAGEMENT LLC, .
Debtor. .
.
ARNOLD & ITKIN LLP, ON BEHALF .
OF CERTAIN PERSONAL INJURY .
CLAIMANTS REPRESENTED BY .
ARNOLD & ITKIN, .
Appellant. .
. . . . . .
IN RE: . Case No. 22-2010
.
LTL MANAGEMENT LLC, .
Debtor. .
.
AYLSTOCK WITKIN KRIES & .
OVERHOLTZ PLLC, ON BEHALF OF .
MORE THAN THREE THOUSAND .
HOLDERS OF TALC CLAIMS, .
Appellant. .
. . . . . .
IN RE: . Case No. 22-2011
.
LTL MANAGEMENT LLC, .
Debtor. .
.
LTL MANAGEMENT LLC .
.
v. .
.
THOSE PARTIES LISTED ON .
APPENDIX A TO COMPLAINT AND .
JOHN AND JANE DOES 1-1000 .
.
AYLSTOCK WITKIN KRIES & .
OVERHOLTZ, PLLC., ON BEHALF OF.
MORE THAN THREE THOUSAND .
HOLDERS OF TALC CLAIMS, .
Appellant .
. . . . . .

TRANSCRIPT OF ORAL ARGUMENT
BEFORE
THE HONORABLE JUDGE THOMAS L. AMBRO
UNITED STATES THIRD CIRCUIT JUDGE
THE HONORABLE L. FELIPE RESTREPO
UNITED STATES THIRD CIRCUIT JUDGE
THE HONORABLE JULIO M. FUENTES
UNITED STATES THIRD CIRCUIT JUDGE

APPEARANCES:

For the Appellants:

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1 MR. KATYAL: We are very sympathetic to exactly that
2 argument, Your Honor. So refer to three points. One is you're
3 exactly right that the ordinary course is a subsidiary would
4 declare bankruptcy. That's your own opinion joined by Judge
5 Fuentes in In re Owens Corning back in 2005. That's exactly
6 what happened. That's what this Court approved.
7 Second, we're not here defending something in the
8 absence of a funding agreement. If there is no funding
9 agreement, that valid bankruptcy purposes that Judge Kaplan
10 isolated those four look very different. They look like
11 litigation advantages.
12 But here, if you were to ask what is the litigation
13 advantage that is served that could somehow dwarf Judge
14 Kaplan's four different findings of valid purpose, it would be
15 -- you're hard pressed to do so because this deal gives -- this
16 restructuring and this petition gives actually more to the
17 claimants, now all the claimants including future claimants.
18 And that's what Congress is telling you've got to do.
19 THE COURT: This funding agreement has a bifurcation.
20 It will fund in bankruptcy and out of bankruptcy. Isn't that
21 correct?
22 MR. KATYAL: I believe it only funds in bankruptcy.
23 I mean --
24 THE COURT: So what's it do outside of bankruptcy?
25 MR. KATYAL: I don't think it has any life outside of

THE COURT: They're pointing out the gateway provision that you have to file a bankruptcy in good faith. And they're claiming that this was not done. So that's what we're talking about. That's the primary issue today.

MR. KATYAL: And if that's what they're isolating, we think Judge Kaplan found four different reasons why that -- why the valid purpose of bankruptcy has been served.

THE COURT: One just fact question, in terms of the proposal made here to deal with the liabilities of LTL and the funding, were those types of proposals, any variation of that made in connection with the MDL litigation?

MR. KATYAL: I don't believe the funding agreement had anything to do with the MDL litigation. Rather, as the Court found in --

THE COURT: Yeah, I'm just saying the concept.

MR. KATYAL: Yeah, I don't know about the concept. I mean I think the only thing I'm aware of is the Court's finding in A15 relying on their own expert that this was a single integrated transaction and so -- with the restructuring and funding agreement.

Now you had asked before, Your Honor, I just have to slightly correct something. I understand that the funding agreement does have provisions for funding outside of bankruptcy.

THE COURT: Yeah, that's what I thought.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

MONTHLY OPERATING REPORT

GLOBAL NOTES AND STATEMENTS OF LIMITATIONS AND DISCLAIMERS REGARDING THE DEBTOR'S MONTHLY OPERATING REPORT

LTL Management LLC, the debtor (the "**Debtor**") in the above-referenced chapter 11 case (the "**Chapter 11 Case**"), with the assistance of its advisors, is filing this Monthly Operating Report ("**MOR**") with the United States Bankruptcy Court for the District of New Jersey (the "**Bankruptcy Court**"), pursuant to section 521 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "**Bankruptcy Code**") and Rule 1007 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

These *Global Notes and Statements of Limitations and Disclaimers Regarding the Debtor's Monthly Operating Report* (the "**Global Notes**") pertain to, are incorporated by reference in, and comprise an integral part of the MOR. The Global Notes should be referred to, considered, and reviewed in connection with any review of the MOR.

The MOR does not purport to represent financial statements prepared in accordance with Generally Accepted Accounting Principles in the United States ("**GAAP**"), nor is it intended to be fully reconciled with the financial statements of the Debtor.

1. **General Methodology**: The Debtor is filing this MOR to comply with the applicable reporting requirements in the Chapter 11 Case. The financial information contained herein is unaudited, limited in scope, and as such, has not been subjected to procedures that would typically be applied to financial statements in accordance with GAAP. The MOR should not be relied on by any person for information relating to current or future financial condition, events, or performance of the Debtor or its affiliates, as the results of operations contained herein are not necessarily indicative of results that may be expected from any other period or for the full year, and may not necessarily reflect the combined results of operations, financial position, and schedule of receipts and disbursements in the future. There can be no assurance that such information is complete, and the MOR may be subject to revision. The Global Notes should be referred to, and referenced in connection with, any review of the MOR.

2. **Basis of Presentation**: The Debtor is maintaining its books and records in accordance with GAAP and the information furnished in this MOR uses the Debtor's accrual method of accounting. In preparing the MOR, the Debtor relied on financial data derived from its books and records that was available at the time of preparation. Nevertheless, in preparing this MOR, the Debtor made reasonable efforts to supplement the information set forth in its books and records with additional information concerning transactions that may not have been identified therein. Subsequent information may result in material changes to the MOR and errors or omissions may exist.

3. **Reporting Period**: Unless otherwise noted herein, the MOR generally reflects the Debtor's books and records and financial activity occurring during the applicable reporting period. Except as otherwise noted, no adjustments have been made for activity occurring after the close of the reporting period. The Debtor maintains its books and records on a 52-week schedule, which accounts for month-end utilizing a 4-4-5 week method, rather than on a calendar month basis. As a result, the reporting period for this MOR is from January 30, 2023 to February 26, 2023.

4. **Accuracy**: The financial information disclosed herein was not prepared in accordance with federal or state securities laws or other applicable non-bankruptcy law or in lieu of complying with any periodic reporting requirements thereunder. Persons and entities trading in or otherwise purchasing, selling, or transferring the claims against the Debtor should evaluate this financial information in light of the purposes for which it was prepared. The Debtor is not liable for and undertakes no responsibility for any evaluations of the Debtor based on this financial information or any other information.

5. **Receipts, Accounts Receivable, Postpetition Payables and Funding Agreement**: The Debtor is party to a funding agreement (the "**Funding Agreement**") with Johnson & Johnson Consumer Inc. ("**New JJCI**") and Johnson & Johnson (together with New JJCI, the "**Payors**"). A copy of the Funding Agreement is attached as Annex 2 to the Declaration of John K. Kim in Support of First Day Pleadings [Dkt. 5] (the "**First Day Declaration**"). Among other things, the Funding Agreement obligates the Payors, on a joint and several basis, to provide funding, up to the full value of New JJCI, to pay for costs and expenses of the Debtor incurred in the normal course of its business during the pendency of any chapter 11 case, including the costs of administering the chapter 11 case. The terms of the Funding Agreement are described in detail in the First Day Declaration. The Funding Agreement imposes no repayment obligation on the Debtor. The amount reported in part 1.b represents fulfillment of the Debtor's funding request by the Payors pursuant to the Funding Agreement. The amount reported in part 2.a. represents: (a) the amount of proposed funding of a qualified settlement fund for payment of talc claims, which, if approved, will be considered pre-funding for Permitted Funding Uses (as such term is defined in the Funding Agreement) and treated as a Payment (as such term is defined in the Funding Agreement) for all purposes; (b) the estimated funding under the Funding Agreement in respect of the accrued amount of postpetition Debtor's and certain of the Official Committee of Talc Claimants' retained professionals' fees during the reporting period, as well as the fees with respect to the Court-appointed expert and his professionals; (c) the estimated funding under the Funding Agreement in respect of amounts payable by the Debtor under the Debtor's secondment agreement (the "**Secondment Agreement**") with Johnson & Johnson Services, Inc. ("**J&J Services**") and the Debtor's services agreement (the "**Services Agreement**") with J&J Services; and (d) the estimated funding under the Funding Agreement, if any, in respect of amounts payable by the Debtor to the Debtor's independent manager. The postpetition payable amount reported in part 2.f. includes the amounts described in (b) and (c) of the immediately preceding sentence. The amount of postpetition professional fees and expenses for retained professionals includes the total amount of fees and expenses set forth in a filed monthly fee statement. Postpetition professional fees remain subject to further reconciliation and, as to retained professionals, the requirements of the *Order Establishing Procedures for Interim Compensation and Reimbursement of Retained Professionals* [Dkt. 761], and the Debtor reserves all rights to object to any fees and expenses requested by any professional. The amount in part 2.a. does not reflect any other amounts that the Debtor may be entitled to under the Funding Agreement. The Services Agreement and the Secondment Agreement are described in the First Day Declaration.

6. **Total Current Assets and Total Assets**: The amount reported in part 2.d. represents the amount of the Debtor's accounts receivable reported in part 2.a. plus the amount of the Debtor's cash as of February 26, 2023. The amount reported as a Prepaid Expense in the Debtor's balance sheet represents retainers paid to Ernst & Young and Cassels Brock & Blackwell LLP for their roles in the proceedings commenced on December 17, 2021, pursuant to Part IV of the Companies' Creditors Arrangement Act (Canada) R.S.C. 1985, c. C-36s (the "**Canadian Proceedings**"). See Dkt. 546. There is a *de minimis* receivable on account of reimbursement due from Patterson Belknap Webb & Tyler LLP and Lighthouse Technologies, Inc. as a result of certain amounts paid by the Debtor that were subsequently determined not to have been owed. No amounts are reported in part 2.e. with respect to certain pre-petition amounts paid by Johnson & Johnson on behalf of the Debtor on which Johnson & Johnson is also obligated, because the Debtor believes it will owe Johnson & Johnson in respect of those amounts pursuant to an indemnity or otherwise. Such amounts are included in the Debtor's balance sheet as a liability in the Liabilities Subject to Compromise line item. This line item is discussed further below in the note regarding Prepetition Unsecured Debt, Liabilities Subject to Compromise, and Due to Affiliate. Any additional amounts available to the Debtor under the Funding Agreement are not reflected in the reported assets. The amount reported on the balance sheet as Due from Subsidiary represents the amount due from Royalty A&M LLC ("**RAM**") to the Debtor in connection with the Secondment Agreement.

7. **Prepetition Unsecured Debt, Liabilities Subject to Compromise ("LSTC") and Due to Affiliate**: The Due to Affiliate line item in the attached balance sheet represents amounts due to J&J Services from the Debtor in connection with the Secondment and/or Services Agreements and are reported in parts 2.f., 2.j. and 2.n. The amount reported in part 2.m. and as LSTC in the attached balance sheet represents the total amount of prepetition professionals fees on the Debtor's books and records. This amount differs from the total amount reported by professionals in their retention applications. The total amount reported by professionals exceeds the amount reflected in the Debtor's books and records, and may include amounts not invoiced to the Debtor as of the commencement of the Chapter 11 Case or other amounts potentially not payable by the Debtor. Amounts reported as Prepetition Unsecured Debt or LSTC do not include any amount for the Debtor's talc-related liability. Prepetition liabilities that are subject to compromise

under ASC 852 are preliminary and may be subject to, among other things, future adjustments depending on Court actions, further developments with respect to disputed claims, rejection of executory contracts, continued reconciliation or other events.

8. **Insurance**: The Debtor is an additional insured on various types of insurance maintained by its ultimate parent company, Johnson & Johnson (collectively, the "**J&J Insurance Policies**"). Insurance coverage includes workers' compensation coverage, casualty/property insurance and general liability insurance as reported in part 7.i.

9. **Amounts Reported in Part 4:** The Debtor did not have income during the reporting period. However, the Debtor received funding of $4,200,000 under the Funding Agreement, which has been reflected as a contra expense in part 4.f, pursuant to the Funding Agreement. Further funding, if necessary, will be available under the Funding Agreement to satisfy the Debtor's expenses, including those reported in part 4. See notes regarding Receipts, Accounts Receivable, Postpetition Payables and Funding Agreement above. The amount reported in part 4.f. reflects amounts incurred under the Services Agreement. These expenses are also reported in the attached Statement of Operations (Profit or Loss Statement). The amount reported in part 4.e. as general and administrative expenses represents amounts incurred under the Secondment Agreement. The amount reported in part 4.j. represents the estimated accrued amount of postpetition professionals' fees during the reporting period and includes postpetition professionals' fees for the Debtor's and the Official Committee of Talc Claimants' retained professionals. ASC 852 requires expenses and income directly associated with the Chapter 11 Case to be reported separately in the income statement as reorganization items. Reorganization items primarily include expenses related to legal advisory and representation services, other professional consulting and advisory services, and changes in liabilities subject to compromise recognized as there are changes in amounts expected to be allowed as claims. Nothing contained in this MOR shall constitute a waiver of the Debtor's rights or an admission with respect to the Chapter 11 Case, including, but not limited to, matters involving objections to claims, equitable subordination, defenses, characterization or re-characterization of contracts, assumption or rejection of contracts under the provisions of chapter 3 of Title 11 of the Bankruptcy Code and/or causes of action under the provisions of chapter 5 of the Bankruptcy Code or any other relevant applicable laws to recover assets or avoid transfers.

10. **Professional Fees and Expenses:** On November 4, 2021, the United States Bankruptcy Court for the Western District of North Carolina entered an order authorizing the Debtor to employ Epiq Corporate Restructuring, LLC ("Epiq") as Claims, Noticing and Ballot Agent [Dkt. 320]. Although Epiq is not a professional of the Debtor and is not subject to the compensation procedures for retained professionals, the Debtor has included amounts paid to Epiq in part 5.a. In addition, the amount reported for Sills Cummis & Gross P.C. in part 5.b. as paid cumulative reflects a refund of $1,585.00 received by the Debtor for amounts inadvertently charged to the Debtor. The amount in part 5.c includes amounts that the Debtor paid to Ernst & Young in connection with its role in the Canadian Proceedings, as well as amounts that the Debtor paid to the court-appointed Fee Examiner [Dkt. 1922] and his counsel [Dkts. 1966, 1967] in connection with the Chapter 11 Case. The amount in part 5.c does not include amounts paid to the court-appointed Federal Rule of Evidence 706 expert [Dkt. 2881].

11. **Intercompany Transactions and Balances:** Prior to the Petition Date (and subsequent to the Petition Date), the Debtor engaged (and continues to engage) in certain intercompany transactions. Intercompany transactions between the Debtor and its non-Debtor affiliate entities are reported in the statement of cash receipts and disbursements, the balance sheet and statement of income (loss) contained herein.

12. **Reservation of Rights:** The Debtor reserves all rights to amend or supplement the MOR in all respects, as may be necessary or appropriate, but shall be under no obligation to do so. Nothing contained in this MOR shall constitute a waiver of the Debtor's rights or an admission with respect to the Chapter 11 Case.

In re **LTL Management LLC** **Case No.** **21-30589 (MBK)**
Debtor **Reporting Period:** **January 30 - February 26, 2023**

DEBTOR'S SCHEDULE OF CASH RECEIPTS AND DISBURSEMENTS

Dollars in Millions		LTL Management LLC Acct. 3987
Receipts		
Intercompany Receipts	$	4.20
Receipts from Subsidiary		-
Other Receipts		-
Total Receipts		**4.20**
Operating Expenses		
G&A		(0.00)
Income Tax		-
Total Operating Expense		**(0.00)**
Non-Operating Expenses		
Professional Fees		(2.78)
Intercompany Transfers		-
UST Fees		-
Total Non-Operating Expenses		**(2.78)**
Total Disbursements		**(2.78)**
Change in Cash		
Beginning Cash (Book)		14.37
Net Cash Flow		1.42
Ending Cash (Book)	**$**	**15.78**

In re **LTL Management LLC** **Case No.** **21-30589 (MBK)**
Debtor **Reporting Period:** **January 30 - February 26, 2023**

LTL Management LLC

Balance Sheet
(Dollars in Millions)

Assets	October 14, 2021	February 26, 2023
Current Assets		
Cash	$ 6.00	$ 15.78
Prepaid Expense	-	0.12
All Other Miscellaneous Receivables	-	0.01
Due From Subsidiary	-	0.04
Due From Parent	2,000.00	2,010.25
Total Current Assets	2,006.00	2,026.19
Investment in Subsidiary	367.13	367.13
Total Assets	$ 2,373.13	$ 2,393.32
Liabilities & Shareholders Equity		
Accounts Payable & Accrued Liabilities	-	21.13
Due to Affiliate	-	0.40
Liabilities Subject to Compromise	8.28	8.06
Total Liabilities	$ 8.28	$ 29.59
Shareholders Equity		
Paid in Capital	2,373.13	2,373.13
Accumulated Deficit	(8.28)	(9.40)
Total Shareholders Equity	$ 2,364.85	$ 2,363.73
Total Liabilities & Shareholders Equity	$ 2,373.13	$ 2,393.32

In re **LTL Management LLC** **Case No.** **21-30589 (MBK)**
Debtor **Reporting Period:** **January 30 - February 26, 2023**

LTL Management LLC

Statement of Operations (Profit or Loss Statement)
(Dollars in Millions)

	October 14, 2021 - February 26, 2023	January 30, 2023 - February 26, 2023
Income		
Total Income	$ -	$ -
Expenses		
Financial Services	0.16	0.01
General & Administrative	1.58	0.07
Other Postpetition Legal Expenses	1.47	-
Contra Expense	(127.80)	(4.20)
Earnings Before Reorganization Items	**124.58**	**4.12**
Reorganization Items		
Legal Expenses	134.83	8.77
Income/(Loss) Before Provision for Taxes	(10.25)	(4.65)
Provision for Taxes on Income/(Loss)	-	-
Net Income/(Loss)	$ (10.25)	$ (4.65)

In re LTL Management LLC — Case No. 21-30589 (MBK)
Debtor — Reporting Period: January 30 - February 26, 2023

Cash Disbursement Schedule

Date	Counterparty		Amount
i. Professional Fee Disbursements			
2/1/2023	Houlihan Lokey Capital, Inc.	$	140,000.00
2/3/2023	Bailey Glasser LLP	$	52,903.63
2/3/2023	Otterbourg PC	$	216,113.67
2/3/2023	Randi S. Ellis LLC	$	31,644.00
2/3/2023	Walsh Pizzi O'Reilly Falanga LLP	$	165,672.18
2/8/2023	Anderson Kill PC	$	91,222.19
2/8/2023	Blake Cassels Graydon LLP	$	4,141.23
2/8/2023	Massey Gail LLP	$	25,440.00
2/10/2023	Weil, Gotshal Manges, LLP	$	20,852.00
2/21/2023	Bates White, LLC	$	414,472.00
2/21/2023	Berkeley Research Group LLC	$	50,185.60
2/21/2023	Bernstein Shur Sawyer & Nelson P.A.	$	109,495.60
2/21/2023	Blake Cassels Graydon LLP	$	4,040.91
2/21/2023	Butler Snow LLP	$	2,566.25
2/21/2023	Irwin Fritchie Urquhart Moore & Daniels LLC	$	16,362.06
2/21/2023	Miller Thomson LLP in Trust	$	33,658.95
2/21/2023	MoloLamken LLP	$	9,400.00
2/21/2023	Patterson Belknap Webb & Tyler LLP	$	10,324.58
2/21/2023	Shook Hardy Bacon LLP	$	29,707.80
2/21/2023	Skadden Arps Slate Meagher Flom, LLC	$	161,631.23
2/21/2023	Traurig Law LLC	$	612.00
2/21/2023	Wollmuth Maher Deutsch LLP	$	101,257.73
2/22/2023	McCarter English, LLP	$	24,274.40
2/22/2023	Parkins Lee Rubio LLP	$	38,751.00
2/23/2023	AlixPartners, LLP	$	28,731.20
2/23/2023	Bailey Glasser LLP	$	116,845.02
2/23/2023	Epiq Corporate Restructuring LLC	$	49,717.65
2/23/2023	FTI Consulting, Inc.	$	707,566.35
2/23/2023	Orrick, Herrington & Sutcliffe, LLP	$	50,969.27
2/23/2023	The Brattle Group Inc.	$	69,708.00
Total Professional Fee Disbursements		**$**	**2,778,266.50**
ii. Miscellaneous Other Disbursements			
2/10/2023	Alliance Technologies LLC	$	3,389.50
2/21/2023	Triality LLC	$	1,460.00
Total Miscellaneous Other Disbursements		**$**	**4,849.50**
Total Cash Disbursements		**$**	**2,783,116.00**

Account Activity Report

Company: LTL Management LLC
Requestor :
Run Date : 27-Feb-2023 11:43:26 EST
Query Range: 29-Jan-2023 - 27-Feb-2023

Bank of America, North Carolina |
Account | LTL Management LLC (USD)

Date	Description	Transaction	Amount	Ledger Balance
23-Feb-2023	WIRE TYPE:BOOK OUT DATE:022323 T	Outgoing Internl Money Trnsfr (491)	(707,566.35)	15,784,310.65
23-Feb-2023	WIRE TYPE:BOOK OUT DATE:022323 T	Outgoing Internl Money Trnsfr (491)	(28,731.20)	16,491,877.00
23-Feb-2023	WIRE TYPE:WIRE OUT DATE:022323 T	Outgoing Money Transfer Debit (495)	(116,845.02)	16,520,608.20
23-Feb-2023	WIRE TYPE:WIRE OUT DATE:022323 T	Outgoing Money Transfer Debit (495)	(69,708.00)	16,637,453.22
23-Feb-2023	WIRE TYPE:WIRE OUT DATE:022323 T	Outgoing Money Transfer Debit (495)	(50,969.27)	16,707,161.22
23-Feb-2023	WIRE TYPE:WIRE OUT DATE:022323 T	Outgoing Money Transfer Debit (495)	(49,717.65)	16,758,130.49
22-Feb-2023	WIRE TYPE:WIRE OUT DATE:022223 T	Outgoing Money Transfer Debit (495)	(38,751.00)	16,807,848.14
22-Feb-2023	WIRE TYPE:WIRE OUT DATE:022223 T	Outgoing Money Transfer Debit (495)	(24,274.40)	16,846,599.14
21-Feb-2023	WIRE TYPE:BOOK IN DATE:022123 TI	Incoming Internl Money Trnsfr (191)	4,200,000.00	16,870,873.54
21-Feb-2023	WIRE TYPE:BOOK OUT DATE:022123 T	Outgoing Internl Money Trnsfr (491)	(1,460.00)	12,670,873.54
21-Feb-2023	WIRE TYPE:WIRE OUT DATE:022123 T	Outgoing Money Transfer Debit (495)	(414,472.00)	12,672,333.54
21-Feb-2023	WIRE TYPE:WIRE OUT DATE:022123 T	Outgoing Money Transfer Debit (495)	(161,631.23)	13,086,805.54
21-Feb-2023	WIRE TYPE:WIRE OUT DATE:022123 T	Outgoing Money Transfer Debit (495)	(109,495.60)	13,248,436.77
21-Feb-2023	WIRE TYPE:WIRE OUT DATE:022123 T	Outgoing Money Transfer Debit (495)	(101,257.73)	13,357,932.37
21-Feb-2023	WIRE TYPE:WIRE OUT DATE:022123 T	Outgoing Money Transfer Debit (495)	(50,185.60)	13,459,190.10
21-Feb-2023	WIRE TYPE:WIRE OUT DATE:022123 T	Outgoing Money Transfer Debit (495)	(29,707.80)	13,509,375.70
21-Feb-2023	WIRE TYPE:WIRE OUT DATE:022123 T	Outgoing Money Transfer Debit (495)	(16,362.06)	13,539,083.50
21-Feb-2023	WIRE TYPE:WIRE OUT DATE:022123 T	Outgoing Money Transfer Debit (495)	(10,324.58)	13,555,445.56
21-Feb-2023	WIRE TYPE:WIRE OUT DATE:022123 T	Outgoing Money Transfer Debit (495)	(9,400.00)	13,565,770.14
21-Feb-2023	WIRE TYPE:WIRE OUT DATE:022123 T	Outgoing Money Transfer Debit (495)	(2,566.25)	13,575,170.14
21-Feb-2023	WIRE TYPE:WIRE OUT DATE:022123 T	Outgoing Money Transfer Debit (495)	(612.00)	13,577,736.39
21-Feb-2023	WIRE TYPE:FX OUT DATE:022123 TIM	International Money Trnsfr DR (508)	(33,658.95)	13,578,348.39
21-Feb-2023	WIRE TYPE:FX OUT DATE:022123 TIM	International Money Trnsfr DR (508)	(4,040.91)	13,612,007.34
10-Feb-2023	WIRE TYPE:BOOK OUT DATE:021023 T	Outgoing Internl Money Trnsfr (491)	(3,389.50)	13,616,048.25
10-Feb-2023	WIRE TYPE:WIRE OUT DATE:021023 T	Outgoing Money Transfer Debit (495)	(20,852.00)	13,619,437.75
08-Feb-2023	WIRE TYPE:WIRE OUT DATE:020823 T	Outgoing Money Transfer Debit (495)	(91,222.19)	13,640,289.75
08-Feb-2023	WIRE TYPE:WIRE OUT DATE:020823	Outgoing Money Transfer Debit (495)	(25,440.00)	13,731,511.94

	T			
08-Feb-2023	WIRE TYPE:FX OUT DATE:020823 TIM	International Money Trnsfr DR (508)	(4,141.23)	13,756,951.94
03-Feb-2023	WIRE TYPE:WIRE OUT DATE:020323 T	Outgoing Money Transfer Debit (495)	(216,113.67)	13,761,093.17
03-Feb-2023	WIRE TYPE:WIRE OUT DATE:020323 T	Outgoing Money Transfer Debit (495)	(165,672.18)	13,977,206.84
03-Feb-2023	WIRE TYPE:WIRE OUT DATE:020323 T	Outgoing Money Transfer Debit (495)	(52,903.63)	14,142,879.02
03-Feb-2023	WIRE TYPE:WIRE OUT DATE:020323 T	Outgoing Money Transfer Debit (495)	(31,644.00)	14,195,782.65
01-Feb-2023	WIRE TYPE:BOOK OUT DATE:020123 T	Outgoing Internl Money Trnsfr (491)	(140,000.00)	14,227,426.65

In re **LTL Management LLC** **Case No.** **21-30589 (MBK)**
Debtor **Reporting Period:** **January 30 - February 26, 2023**

Royalty A&M LLC

Balance Sheet
(Dollars in Millions)

Assets	October 14, 2021	February 26, 2023
Current Assets		
Cash	$ -	$ 39.68
Other Receivable – Royalties[1]	-	29.26
Total Current Assets	-	68.94
Intangible Assets, Net of Amortization	367.13	333.21
Total Assets	$ 367.13	$ 402.14
Liabilities & Shareholders Equity		
Accrued Liabilities	-	-
Due to LTL Mgmt.	-	0.03
Due to Affiliate	-	0.00
Accrued Taxes	-	-
Total Liabilities	$ -	$ 0.03
Shareholders Equity		
Paid in Capital	367.13	367.13
Retained Earnings	-	34.98
Total Shareholders Equity	$ 367.13	$ 402.11
Total Liabilities & Shareholders Equity	$ 367.13	$ 402.14

[1] Amounts reported are estimates, and subject to reconciliation to future sales results.

In re **LTL Management LLC** **Case No.** **21-30589 (MBK)**
Debtor **Reporting Period:** **January 30 - February 26, 2023**

Royalty A&M LLC

Statement of Earnings
(Dollars in Millions)

	October 14, 2021 - February 26, 2023	January 30, 2023 - February 26, 2023
Royalty Income	$ 99.71	$ 3.39
Financial Services	0.13	0.00
General & Administrative	1.17	0.02
Intangibles Amortization	63.42	2.22
	-	
Income Before Provision for Taxes	34.98	1.14
Provision for Taxes on Income	-	-
Net Income	$ 34.98	$ 1.14

EXHIBIT 16-FILED UNDER SEAL

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

IN RE:	Case No. 23-12825(MBK)
LTL MANAGEMENT LLC,	Clarkson S. Fisher U.S. Courthouse 402 East State Street Trenton, NJ 08608
Debtor.	April 11, 2023 9:59 a.m.

TRANSCRIPT OF MOTION BY MOVANT ANTHONY HERNANDEZ VALADEZ FOR AN ORDER (I) GRANTING RELIEF FROM THE AUTOMATIC STAY, SECOND AMENDED EX PARTE TEMPORARY RESTRAINING ORDER, AND ANTICIPATED PRELIMINARY INJUNCTION, AND (II) WAITING THE FOURTEEN DAY STAY UNDER FEDERAL RULE OF BANKRUPTCY PROCEDURE 4001(A)(3) [71]; DEBTOR'S MOTION FOR AN ORDER EXTENDING THE TIME WITHIN WHICH IT MUST FILE ITS (I) SCHEDULES OF ASSETS AND LIABILITIES AND (II) STATEMENT OF FINANCIAL AFFAIRS [14]; DEBTOR'S MOTION FOR AN ORDER: (I) APPROVING THE CONTINUED USE OF ITS BANK ACCOUNT AND BUSINESS FORMS AND (II) AUTHORIZING THE DEBTOR'S BANK TO CHARGE CERTAIN FEES AND OTHER AMOUNTS [13]; DEBTOR'S APPLICATION PURSUANT TO 28 U.S.C. § 156(C) AND 11 U.S.C. § 105(A) FOR ENTRY OF AN ORDER AUTHORIZING THE APPOINTMENT OF EPIQ CORPORATE RESTRUCTURING, LLC AS CLAIMS AND NOTICING AGENT NUNC PRO TUNC TO THE PETITION DATE [11]; DEBTOR'S APPLICATION FOR DESIGNATION AS COMPLEX CHAPTER 11 CASE [6]; DEBTOR'S MOTION FOR AN ORDER SUSPENDING ENTRY AND SERVICE OF STANDARD NOTICE OF COMMENCEMENT [5]; DEBTOR'S 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; AND (III) APPROVING THE FORM AND MANNER OF NOTICE OF COMMENCEMENT OF THIS CASE [10]; DEBTOR'S MOTION PURSUANT TO 11 U.S.C. § 1505 FOR AN ORDER AUTHORIZING IT TO ACT AS FOREIGN REPRESENTATIVE ON BEHALF OF THE DEBTOR'S ESTATE [12]
BEFORE THE HONORABLE MICHAEL B. KAPLAN
UNITED STATES BANKRUPTCY COURT JUDGE

Audio Operator: Wendy Quiles

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

J&J COURT TRANSCRIBERS, INC.
268 Evergreen Avenue
Hamilton, New Jersey 08619
E-mail: jjcourt@jjcourt.com

(609) 586-2311 Fax No. (609) 587-3599

APPEARANCES:

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For Ad Hoc Committee of Certain Talc Claimants and Ad Hoc Committee of Creditors:	Genova Burns LLC By: DANIEL M. STOLZ, ESQ. 494 Broad Street Newark, NJ 07102
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For Anthony Hernandez Valadez:	Kazan McClain Satterley & Greenwood By: JOSEPH SATTERLEY, ESQ. 55 Harrison St. Suite 400 Oakland, CA 94607
For the Office of the United States Trustee:	Office of the United States Trustee By: LINDA RICHENDERFER, ESQ. JEFF SPONDER, ESQ. J. Caleb Boggs Federal Building 844 King Street, Suite 2207 Lockbox 35 Wilmington, DE 19801

APPEARANCES CONT'D:

For Various Talc Claimants:	Maune Raichle Hartley Frency & Mudd, LLC By: CLAYTON L. THOMPSON, ESQ. 150 West 30th Street, Suite 201 New York, NY 10001 Levy Konigsberg, LLP By: JEROME H. BLOCK, ESQ. MOSHE MAIMON, ESQ. 101 Grovers Mill Road, Suite 105 Lawrence Township, NJ 08648 Simon Greenstone Panatier, PC By: LEAH CYLIA KAGAN, ESQ. 1201 Elm Street, Suite 3400 Dallas, TX 75720
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For Paul Crouch, individually and on behalf of Estate of Cynthia Lorraine Crouch:	Ruckdeschel Law Firm, LLC By: JONATHAN RUCKDESCHEL, ESQ. 8357 Main Street Ellicott City, MD 21043
For the Ad Hoc Committee of Attorney Generals:	Womble Bond Dickinson BY: ERICKA JOHNSON, ESQ. 1313 North Market Street Suite 1200 Wilmington, DE, US 19801

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(Proceedings commenced at 9:59 a.m.)

THE COURT: We have new technology here. Everything is supposed to work better, more enhanced. Not just for you all.

Well, okay. Good morning, again. This is the LTL Management LLC matter and -- log in.

All right. We have a full plate on for today. A number of matters. If I may, I'd like to take the liberty of making a few preliminary comments.

My goal today is really to listen. Listen to presentations, listen to arguments from all parties. Because that's the intent, I am going to be somewhat generous in allowing the use of the PowerPoints, the presentations, the hyperbole, all of it. I want to hear from you all about this case and the respective positions.

I've read a lot. We hear a lot. But this is where it's important. In that regard, I'm cognizant that there's been a significant amount of vitriol, ad hominem attacks, lawyer versus lawyer, lawyers versus the Court, directed at Johnson and Johnson, directed at groups. That's unfortunate.

I think we all need to a degree to have a bit of a thin skin. I like to think the Court has a thick -- a thin skin -- a thicker skin. Wrong analogy. A thicker skin. Some may be familiar. I was a mayor of a small town in North Jersey and there came a point in time when I would say more than half

J&J Consumer, Inc., well known as old JJCI, prior to the first bankruptcy filing. So I don't plan to go over those things again today.

But I did want to provide an update on corporate structure. And what I wanted to focus on was the fact that, and Your Honor probably saw this in the papers that we filed, in December of last year, the debtor's parent company, J&J Consumer, Inc., which we were referring to in the old case as New JJCI, changed its name to Johnson and Johnson HoldCo (NA), Inc., which I'll refer to today as HoldCo.

And in early January 2023, HoldCo distributed its consumer business, it's consumer health business, that is, to its parent company. So that is a change that's occurred with respect to corporate structure. And although that business, as Your Honor knows I think, represented a substantial portion of HoldCo's assets, HoldCo does continue to have significant value. And we mentioned in the papers that, among other things, it holds $400 million in cash. It also holds interest in foreign subsidiaries that have a material value. And it seems, based on the papers we've seen filed in the last few days, that the other parties are overlooking the fact that that other value exists.

Then I want to address, Your Honor, why LTL has filed for bankruptcy a second time. And as with the first case, Your Honor, I would say the purpose of the filing remains the same.

The Code conspicuously does not contain any particular insolvency requirement. LTL is financially distressed. As a result, bankruptcy is available to it. LTL is not insolvent. As a result, there is no basis for a fraudulent transfer claim.

So to conclude, Your Honor, the second Chapter 11 case, this case, has drawn substantial support. It's supported by the unprecedented $8.9 billion financial commitment by LTL and J&J. It's supported by over 60,000 claimants who have signed and delivered plan support agreements, and support is continuing to come in. This claimant's support validates the good faith basis of this filing. It validates the proper purpose of this proceeding.

The Court should not permit a group of firms who represent a minority of the claimants to hijack this case before it can even begin. That is especially the case given the utter absence of factual support for the inflammatory and defamatory accusations this group of firms is making.

Thank you, Your Honor.

THE COURT: Thank you, Mr. Gordon. Before we hear from the Ad Hoc group and other plaintiffs, is there anyone supporting the debtor's position as far as an introductory statement?

MR. WATTS: Good morning, Your Honor.

THE COURT: Good morning.

Trustee's Office, and we'll make sure that you can get a copy of it.

We are moving as quickly as quickly as we can, Your Honor. With any luck, we'll have at least a Tort Claimants Committee by the next hearing which is on the 18th, but I can't promise that. And I have no unsecured creditor information yet from the debtor, so I don't know when that committee, if one will be appointed. It may be that there's no interest; I don't know. But I do know there were a lot of parties who never got paid in the first case before it was dismissed.

The interviewing in fact is going to start tomorrow just so people are aware of that.

Your Honor, I think that's leading up to my first point that I did want to make before the Court was that we are very concerned about their request to move forward to appoint the FCR and the mediators by the April 18th hearing or I guess on the April 18th hearing when we will not yet have a formal committee yet formed.

And so I don't know whether the request is going to be heard later today or not. I didn't meant to jump ahead if it is, but we would request that the FCR, the mediators, that that be delayed until after we can get a committee in place who can also be heard on those topics which are extremely important.

Your Honor, I think that they are very important, and

I'm ad libbing here a little bit because from what I'm hearing today about the timetable, there seems to have been some activity during the first case that is now being carried over that really benefitted the second case. And I think that we're going to have to get some clearer understanding of where the first case ended and where the second case started because it doesn't seem like the first case ended at 1:49 on April 4th and that the second case started 2 hours and 11 minutes later. It seems like there was a large overlap, a month, two months. To me, that's still a large overlap between the two cases.

Your Honor, we are told that I think Mr. Gordon said two-thirds of the claimants are represented by parties that have signed on to plan support agreements. I think it was two-thirds, so we'll say 66 percent. And it was 60- or 70,000 claimants.

Your Honor, I'm struggling with reconciling that because I've gone back and there are 18 firms that were listed in the first case as part of the top 30 firms that are not listed for the second case. And there are of the top 30 firms that were listed in the first case, only five of them are purported signatories to this plan or this support agreement, whatever it's being called. I'm not quite sure.

And I think that of the top 18 that were identified in this case, there are 11 who purportedly are not part of any

1 plan support agreement or whatever it is that they're calling
2 it. Your Honor, my point is this, that we heard several times
3 Mr. Gordon state that it's this large majority of the claimants
4 and that it's two-thirds of the claimants.
5 Your Honor, I don't know how the math works out. I
6 really don't. And I will tell you this, that Mr. Watts' firm
7 didn't appear in the first list. Now all of a sudden, it's on
8 the second list. Mr. Watts also made statements about being
9 involved in the Imerys case. Your Honor may or may not know
10 that I along with one of my other trial attorneys in the
11 Delaware office have been the trial attorneys from the United
12 States Trustee's Office on that case since day one. He did not
13 vote. He had no claimants that voted in that case when the
14 first plan was up.
15 I don't know what positions he's playing in these
16 cases. I did hear him identify a number of claimants which is
17 one of the concerns of the U.S. Trustee's Office. Where are
18 these claimants coming from and who are these claimants?
19 Because we just can't reconcile them with the numbers that we
20 had that we were discussing and that were in front of us in the
21 first case. And I can't reconcile some of the statements with
22 things that I know about from the Imerys case.
23 I know the attorneys there very well. I know who's
24 involved in that case. I know who voted in that case. I
25 myself checked. There were no votes that were made in that

case on the first plan, which eventually was not -- I think it fell short by three percent. But there were no votes submitted on behalf of his firm, so I don't know what his role is in all of this.

But I will say this, I don't know where the 67 or 60,000 or 70,000 come from. It's certainly something that we'll be looking into when we vote to form the Talc Claimants Committee here. I wonder where the numbers are. And I was very interested in the math that was just done because that's presuming that all 60- or 70,000 of these claimants that we're told are represented by these firms. It's assuming that they're going to get past the stage of filling out the questionnaire that they'll have to get through.

And I don't know because most of those claimants evidently did not file a lawsuit because otherwise they would have been accounted for in the first case, in the list of top 30 law firms. So I don't know where these other law firms are coming from. I have asked debtors to give us a list of the complete top 30 which is what we normally get. I believe they're working on it. I don't have it yet, though. And we're marching forward. And Your Honor will be hearing from us later when we get to certain motions that are before Your Honor today.

I just want to make those points and make sure that

this case, that we don't get off on some of the tangents and that we look at who the true parties in interest here are, Your Honor and that we hear from them. And as to the 60- or 70,000 claimants, I don't know where that number comes from. I can't reconcile it with what we heard in the first case. Thank you, Your Honor.

THE COURT: I appreciate your concerns. The Court shares much of it. And we'll await.

Mr. Ruckdeschel, I can give you four and a half minutes.

MR. RUCKDESCHEL: Your Honor, thank you very much. Jonathan Ruckdeschel on behalf of Paul Crouch, individually, and as the Executor of his mother's estate. And I will meet that deadline.

Your Honor, the filing as we've heard and I'm going to try and not repeat things that have been said before, but the overall scheme here is taking state law rights of claimants sickened by Johnson & Johnson's asbestos-contaminated products, unrestricted state law rights that had access with respect to Johnson & Johnson Consumer to at least $61 billion of assets and, with respect to Johnson & Johnson, an unlimited pot of assets and to transform them into restricted rights against an artificially limited pot of money that will be created by this plan.

So we would request that they list the top creditors. And we would also, I think, inquire as to how did they create this new list and why are the attorneys -- I mean, really, it makes me think of collusion. The folks that are on this list now are the folks that have met privately over the last few weeks that supposedly got their clients to agree to a deal.

So Mr. Maimon is going to speak more to this point, but we would rely upon our papers and request that the motion be denied and a list of creditors be named.

THE COURT: All right. Thank you.

Ms. Richenderfer, Mr. Maimon, you can go in a circle.

MS. RICHENDERFER: Your Honor, to give some context to the statements that were just made, in the first case, the top 30, 18 of the 30 firms that were listed in the first case are not part of the top 18 that were listed in the second case. If I add 18 -- Your Honor, that takes me way beyond 30, I guess, is what I'm trying to do here, quickly, the math in my head.

So there were eight firms listed in the top 18 for this case that appear nowhere on the list for the first case. So we are rather confused as to where these names are coming from. And I think I stated before, they're talking about other factors that they used to create the list. I don't know what that means. That's why we sent it out to everyone that we could find.

And I would suggest, Your Honor, and I know maybe others may disagree with me, but if there is a judgment out there that has not yet been paid by the debtor, I think that goes on the unsecured creditor list. Or maybe it's a secured creditor. I don't know.

To me, the list of top 30 firms are people who represent claimants who may have filed lawsuits, but they don't have judgments yet. They don't have verdicts. They don't have settlements yet.

If there is something that is -- substantiates a claim, the four corners of a claim, then I think that goes on the unsecured creditors list. So I would suggest that to Your Honor as something maybe to bridge the gap here, because I think somebody that's holding a judgment goes on the unsecured creditors list. Somebody who has a settlement that was never paid goes on the unsecured creditors list as an individual. And that the top law firms are something that's been created when we have these toxic tort cases so that we can get the law firms that have the, hopefully, highest number of claimants involved in the case, get them involved with the matter.

But there is some inconsistency here, Your Honor, in what got put on the top list in the first case and what's even on the 18 list here for the second case.

But to reiterate, it's out there for the entire world. It's on the website. And if anybody has trouble, they

can always call me in the Wilmington U.S. Trustee's office or Mr. Sponder -- he's going to kill me -- in the Newark County U.S. Trustee's office.

Thank you, Your Honor.

THE COURT: All right. Thank you.

MR. MAIMON: Thank you, Your Honor. May it please the Court. My name is Moshe Maimon from the law firm of Levy Konigsberg, and I appreciate the opportunity that Your Honor has given me to address this issue with regard to LTL's motion to list top law firms with talc claims.

The -- as our papers make clear, the Federal Rules of Bankruptcy, the statutes, the case law require the listing of the 20 largest creditors. And the U.S. Trustee's office raises an interesting issue, which is the distinction between secured creditors and non-secured creditors, because in this bankruptcy and subject to verdicts and judgments there are both secured creditors and non-secured creditors.

There are plaintiffs, the Johnson plaintiffs out in California, a prime example of an unsecured creditor with a $20 million liquidated claim against Johnson & Johnson, and yet that is nowhere in the debtor's papers, and they wonder why we don't like their list.

There are secured creditors verdicts. Mr. Satterley, the heirs of Mrs. Schmitz, the heirs of Mr. Barden, the heirs of Mr. Ronning (phonetic), who are secured creditors, and yet

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, DC 20549

FORM 8-K

CURRENT REPORT
Pursuant to Section 13 or 15(d) of The
Securities Exchange Act of 1934

Date of report (Date of earliest event reported):
April 4, 2023

Johnson & Johnson

(Exact name of registrant as specified in its charter)

New Jersey (State or Other Jurisdiction of Incorporation)	1-3215 (Commission File Number)	22-1024240 (IRS Employer Identification No.)

One Johnson & Johnson Plaza, New Brunswick, New Jersey 08933
(Address of Principal Executive Offices)
(Zip Code)
Registrant's telephone number, including area code:
732-524-0400

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).
Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, Par Value $1.00	JNJ	New York Stock Exchange
0.650% Notes Due May 2024	JNJ24C	New York Stock Exchange
5.50% Notes Due November 2024	JNJ24BP	New York Stock Exchange
1.150% Notes Due November 2028	JNJ28	New York Stock Exchange
1.650% Notes Due May 2035	JNJ35	New York Stock Exchange

Item 7.01 Regulation FD Disclosure

On April 4, 2023, the Company announced that its wholly owned subsidiary LTL Management LLC (LTL) has re-filed for voluntary Chapter 11 bankruptcy protection to obtain approval of a reorganization plan that will efficiently resolve all current and future claims arising from cosmetic talc litigation against the Company and its affiliates in North America. The Company has agreed to contribute up to the present value of $8.9 billion over 25 years (nominal value approximately $12 billion) to resolve the North America talc claims, resulting in a first fiscal quarter charge of $6.9 billion above the $2 billion previously committed in connection with LTL's initial bankruptcy filing in October 2021. Johnson & Johnson and its other affiliates did not file for bankruptcy protection and will continue to operate their businesses as usual. The press release further discussing this announcement is attached below as Exhibit 99.1.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits.

Exhibit No.	Description of Exhibit
99.1	Press Release dated April 4, 2023.
104	The cover page from this Current Report on Form 8-K, formatted in Inline XBRL.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Johnson & Johnson
(Registrant)

Date: April 4, 2023

By: /s/ Robert J. Decker, Jr.
Robert J. Decker, Jr.
Controller and Chief Accounting Officer
(Principal Accounting Officer)

Exhibit 99.1

News Release

Contacts:

Investor Relations:
investor-relations@its.jnj.com

Media Relations:
media-relations@its.jnj.com

Johnson & Johnson Subsidiary LTL Management LLC ("LTL") Re-Files for Voluntary Chapter 11 to Equitably Resolve All Current and Future Talc Claims

LTL's Reorganization Plan Has Significant Support From Claimants

The Plan Includes LTL's Present Value Commitment of $8.9 Billion Payable Over 25 Years For Complete Resolution

NEW BRUNSWICK, N.J., APRIL 4, 2023, - Johnson & Johnson (NYSE:JNJ) (the Company) today announced that its subsidiary LTL Management LLC (LTL) has re-filed for voluntary Chapter 11 bankruptcy protection to obtain approval of a reorganization plan that will equitably and efficiently resolve all claims arising from cosmetic talc litigation against the Company and its affiliates in North America. To that end, the Company has agreed to contribute up to a present value of $8.9 billion, payable over 25 years, to resolve all the current and future talc claims, which is an increase of $6.9 billion over the $2 billion previously committed in connection with LTL's initial bankruptcy filing in October 2021. LTL also has secured commitments from over 60,000 current claimants to support a global resolution on these terms.

Importantly, neither LTL's original filing nor this re-filing is an admission of wrongdoing, nor an indication that the Company has changed its longstanding position that its talcum powder products are safe. Johnson & Johnson and its other affiliates did not file for bankruptcy protection and will continue to operate their businesses as usual.

"The Company continues to believe that these claims are specious and lack scientific merit," said Erik Haas, Worldwide Vice President of Litigation, Johnson & Johnson. "However, as the Bankruptcy Court recognized, resolving these cases in the tort system would take decades and impose significant costs on LTL and the system, with most claimants never receiving any compensation. Resolving this matter through the proposed reorganization plan is both more equitable and more efficient, allows claimants to be compensated in a timely manner, and enables the Company to remain focused on our commitment to profoundly and positively impact health for humanity."

John Kim, Chief Legal Officer of LTL, said, "Notwithstanding the lack of scientific validity to these claims, plaintiff trial lawyers continue to relentlessly advertise for talc claims, supported by millions of dollars of litigation financing, all in the hopes of a massive return on investment. LTL's goal has always been to resolve these claims quickly, efficiently and fairly for the claimants, both pending and future, and not incentivize abuse of the legal system. We filed the original action in good faith, and, heeding the Third Circuit's guidance, have filed this new case to effectuate that intent."

The Company has won the vast majority of cosmetic talc-related jury trials that have been litigated to date and reiterates that none of the talc-related claims against the Company have merit. The claims are premised on the allegation that cosmetic talc causes ovarian cancer and mesothelioma, a position that has been rejected by independent experts, as well

as governmental and regulatory bodies, for decades. More than 40 years of studies by medical experts around the world continue to support the safety of cosmetic talc. Nonetheless, resolving this matter as quickly and efficiently as possible is in the best interests of the Company and all stakeholders.

Last year, the United States Bankruptcy Court for the District of New Jersey ruled that LTL commenced its initial bankruptcy case in good faith, expressing the "strong conviction that the bankruptcy court is the optimal venue for redressing the harms of both present and future talc claimants in this case—ensuring a meaningful, timely, and equitable recovery." On appellate review, the United States Court of Appeals for the Third Circuit agreed that bankruptcy is "an appropriate forum for a debtor to address mass tort liability." However, the Third Circuit also concluded that the support the Company provided to LTL in advance of the filing required the dismissal of the original bankruptcy case. The refiled case addresses the Third Circuit's concerns and relies on well-established legal precedent to obtain the equitable resolution available only in bankruptcy.

LTL's Chapter 11 case was filed in the U.S. Bankruptcy Court for the District of New Jersey. Additional information is available on www.FactsAboutTalc.com and www.LTLManagementInformation.com. Court filings and information about LTL's Chapter 11 case are available on a separate website administered by its claims agent, Epiq, at https://dm.epiq11.com/LTL; by calling Epiq representatives at (855) 675-3078 from the U.S. or (503) 520-4497 from international locations; or by emailing Epiq at LTLinfo@epiqglobal.com.

About Johnson & Johnson
At Johnson & Johnson, we believe good health is the foundation of vibrant lives, thriving communities and forward progress. That's why for more than 135 years, we have aimed to keep people well at every age and every stage of life. Today, as the world's largest, most diversified healthcare products company, we are committed to using our reach and size for good. We strive to improve access and affordability, create healthier communities, and put a healthy mind, body and environment within reach of everyone, everywhere. We are blending our heart, science and ingenuity to profoundly impact health for humanity. Learn more at www.jnj.com. Follow us at @JNJNews.

Cautions Concerning Forward-Looking Statements
This press release contains "forward-looking statements" as defined in the Private Securities Litigation Reform Act of 1995 regarding the voluntary Chapter 11 bankruptcy filing by LTL Management LLC. The reader is cautioned not to rely on these forward-looking statements. The information contained in this press release is for informational purposes only and should not be construed as a commitment by the Company to engage in any specific strategy or course of action. Due to the inherent uncertainty of litigation, the Company cannot predict the timing, ultimate outcome or financial impact of this matter, or any other ongoing or future litigation. The forward-looking statements in this press release are based on current expectations of future events. If underlying assumptions prove inaccurate or known or unknown risks or uncertainties materialize, actual results could vary materially from the expectations and projections of LTL Management LLC and/or Johnson & Johnson. Risks and uncertainties include, but are not limited to: significant adverse litigation or government action, including related to product liability claims; economic factors, such as interest rate and currency exchange rate fluctuations; competition, including technological advances, new products and patents attained by competitors; challenges inherent in new product research and development, including uncertainty of clinical success and obtaining regulatory approvals; uncertainty of commercial success for new and existing products; challenges to patents; the impact of patent expirations; the ability of the company to successfully execute strategic plans; the impact of business combinations and divestitures; manufacturing difficulties or delays, internally or within the supply chain; product efficacy or safety concerns resulting in product recalls or regulatory action; changes to applicable laws and regulations, including tax laws and global health care reforms; trends toward health care cost containment; changes in behavior and spending patterns of purchasers of health care products and services; financial instability of international economies and legal systems and sovereign risk; increased scrutiny of the health care industry by government agencies. A further list and descriptions of these risks, uncertainties and other factors can be found in Johnson & Johnson's Annual Report on Form 10-K for the fiscal year ended January 1, 2023, including in the sections captioned "Cautionary Note Regarding Forward-Looking Statements" and "Item 1A. Risk Factors," and in Johnson & Johnson's subsequent Quarterly Reports on Form 10-Q and other filings with the Securities and Exchange Commission.

Copies of these filings are available online at www.sec.gov, www.jnj.com or on request from Johnson & Johnson. Any forward-looking statement made in this release speaks only as of the date of this release. Neither of LTL Management LLC nor Johnson & Johnson undertakes to update any forward-looking statement as a result of new information or future events or developments. The Company expressly disclaims all liability in respect to actions taken or not taken based on any or all the contents of this press release.

EXHIBIT 19-FILED UNDER SEAL

EXHIBIT 20-FILED UNDER SEAL

EXHIBIT 21-FILED UNDER SEAL

EXHIBIT 22-FILED UNDER SEAL

Nos. 22-2003, 22-2004, 22-2005, 22-2006, 22-2007,
22-2008, 22-2009, 22-2010, 22-2011

IN THE

United States Court of Appeals for the Third Circuit

IN RE: LTL MANAGEMENT, LLC,

Debtor

*OFFICIAL COMMITTEE OF TALC CLAIMANTS

Appellant

*(Amended per Court's Order dated 06/10/2022)

On direct appeal from the United States Bankruptcy Court
for the District of New Jersey, No. 21-30589, Adv. Proc. No. 21-3023

BRIEF FOR DEBTOR-APPELLEE

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Counsel for Debtor-Appellee

August 15, 2022

Of course, Old JJCI could not just saddle LTL with its talc-related debts, give New JJCI all of its assets, and call it a day. Old JJCI made sure that LTL had the same, if not a greater, ability to resolve present and future talc claims. A450. LTL, New JJCI, and J&J entered into a funding agreement whereby New JJCI would pay the administrative costs in LTL's contemplated bankruptcy case and any talc-related-liability costs after LTL exhausted its own assets, up to New JJCI's estimated $61 billion full enterprise value. A450-456, 105-127. And though the agreement sets a floor of Old JJCI's enterprise value at the time of the divisional merger, the agreement's value is expected to increase as New JJCI's value increases post-restructuring. A5-6 & n.5, 3085-87, 4232, 4235, 4316, 4319. J&J and New JJCI also agreed to advance a total of $2 billion into a qualified settlement fund for the exclusive payment of talc claims. A454-455.

III. PROCEDURAL HISTORY

On October 14, 2021, LTL filed for chapter 11 relief in the Western District of North Carolina. A291. LTL also commenced an adversary action against Claimants seeking confirmation that the automatic bankruptcy stay applies to talc claims asserted against LTL's affiliates—including J&J and New JJCI—as well as LTL's insurers and third-party retailers, or entry of a preliminary injunction enjoining those claims. A3798.

Finally, claimants make a host of arguments directed at the perceived injustices of bankruptcy proceedings that haven't happened yet. Claimants suggest, for example, that LTL's proposed bankruptcy plan will not pay them enough. But "[m]any statutory prerequisites designed to ensure fairness must be met before a trust is formed and a channeling injunction entered under § 524(g)." *W.R. Grace I*, 900 F.3d at 130. Chief among them is that claimants "must approve of any plan employing a § 524(g) trust by a 75% super majority." A32; *see* 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb). LTL has a strong incentive to negotiate a plan that will receive strong support from Claimants; if the bankruptcy fails, LTL will be forced to return to the tort system on future claims.

Some claimants and the U.S. Trustee vaguely suggest either that the funding agreement was a fraudulent conveyance or that some future conveyance may place assets out of LTL's creditors' reach. *See* U.S. Trustee Br. 21; TCC Br. 33. This was one of Claimants principal arguments below, but they now all but abandon it. That is likely because the funding agreement is plainly not fraudulent, because there is no question that LTL will satisfy its obligations, and, most importantly, because this is a question that can be resolved through an adversary proceeding if there are any colorable claims to be made on LTL's behalf. *See* 11 U.S.C.

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successor in interest to Old JJCI and, consequently, Debtor substitutes for Old JJCI in all federal actions as a matter of law." A29.

§ 544(b); *Buncher Co. v. Official Comm. of Unsecured Creditors of Genfarm Ltd. P'ship IV*, 229 F.3d 245, 250 (3d Cir. 2000) ("The purpose of fraudulent conveyance law is to make available to creditors those assets of the debtor that are rightfully a part of the bankruptcy estate, even if they have been transferred away."). Claimants have had the opportunity to seek to unwind the funding agreement as a fraudulent transfer, but have conspicuously declined to do so. The same goes for any hypothetical future transfer by LTL, New JJCI, and J&J. *See* A4325 (New JJCI and J&J submitting themselves to bankruptcy court jurisdiction to enforce the funding agreement). The Bankruptcy Court will always have jurisdiction to protect against fraudulent conveyances.

Claimants object that funding will be "largely unavailable until there is a confirmed plan after appeals are exhausted." TCC Br. 22; *see also* A&I Br. 21. That is also true of tort suits: Defendants typically post a bond to secure any judgment entered against them and do not pay until appeals are exhausted. *See, e.g.*, Fed. R. Civ. P. 62(b). Claimants' objection to this feature of the funding agreement is an objection to a feature of tort litigation outside of the bankruptcy system.

Claimants also suggest that LTL will seek to "pressur[e] claimants to settle by threatening" to delay the bankruptcy proceedings. A&I Br. 16; *see also* TCC Br. 49. But Claimants do not cite any evidence of LTL using the bankruptcy

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 22-2003, 22-2004, 22-2005, 22-2006, 22-0007,
22-2008, 22-2009, 22-2010, 22-2011

In re: LTL MANAGEMENT, LLC
Debtor

LTL MANAGEMENT, LLC

v.

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

*OFFICIAL COMMITTEE OF TALC CLAIMANTS,
Appellant in case Nos. 22-2003, 22-2004 and 22-2005

*OFFICIAL COMMITTEE OF TALC CLAIMANTS; PATRICIA COOK;
EVAN PLOTKIN; RANDY DEROUEN; KRISTIE DOYLE,
as estate representative of Dan Doyle; KATHERINE TOLLEFSON;
TONYA WHETSEL, as estate representative of Brandon Wetsel;
GIOVANNI SOSA; JAN DEBORAH MICHELSON-BOYLE,
Appellants in case Nos. 22-2006, 22-2007 and 22-2008

ARNOLD & ITKIN LLP, on behalf of certain personal injury
claimants represented by Arnold & Itkin,
Appellant in case No. 22-2009

AYLSTOCK WITKIN KREIS & OVERHOLTZ PLLC, on behalf of more
than three thousand holders of talc claims,
Appellant in case Nos. 22-2010 and 22-2011

*(Amended per Court's Order dated 06/10/2022)

Appeal from the United States Bankruptcy Court
for the District of New Jersey
(District Court No.: 21-bk-30589; 21-ap-03032)
Bankruptcy Judge: Honorable Michael B. Kaplan

Argued September 19, 2022

Before AMBRO, RESTREPO, and FUENTES, Circuit Judges

JUDGMENT

These cases came to be heard on the record before the United States Bankruptcy Court for the District of New Jersey and were argued on September 19, 2022.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this Court that the order of the Bankruptcy Court entered March 2, 2022 is reversed and the case is remanded with the instruction to dismiss Appellee's Chapter 11 petition. The order of the Bankruptcy Court entered March 4, 2022 is vacated as moot. Costs taxed against the Appellee.

All of the above in accordance with the Opinion of this Court.

ATTEST:

s/ Patricia S. Dodszuweit
Clerk

Dated: January 30, 2023

Certified as a true copy and issued in lieu of a formal mandate on 03/31/2023

Teste: Patricia S. Dodszuweit
Clerk, U.S. Court of Appeals for the Third Circuit

UNITED STATES BANKRUPTCY COURT **DISTRICT OF NEW JERSEY**	
Caption in Compliance with D.N.J. LBR 9004-1(b) **GENOVA BURNS LLC** Daniel M. Stolz, Esq. Donald W. Clarke, Esq. dstolz@genovaburns.com dclarke@genovaburns.com 110 Allen Road, Suite 304 Basking Ridge, NJ 07920 Tel: (973) 467-2700 Fax: (973) 467-8126 *Proposed Local Counsel to the Official Committee of Talc Claimants*	**BROWN RUDNICK LLP** David J. Molton, Esq. Robert J. Stark, Esq. Michael S. Winograd, Esq. Eric R. Goodman, Esq. dmolton@brownrudnick.com rstark@brownrudnick.com mwinograd@brownrudnick.com egoodman@brownrudnick.com Seven Times Square New York, NY 10036 Tel: (212) 209-4800 Fax: (212) 209-4801 and Jeffrey L. Jonas, Esq. Sunni P. Beville, Esq. jjonas@brownrudnick.com sbeville@brownrudnick.com One Financial Center Boston, MA 02111 Tel: (617) 856-8200 Fax: (617) 856-8201 *Proposed Co-Counsel for the Official Committee of Talc Claimants*
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In re: **LTL MANAGEMENT LLC,** [1] Debtor.	Chapter 11 Case No.: 23-12825 (MBK) Honorable Michael B. Kaplan

ORDER DISMISSING SECOND BANKRUPTCY PETITION OF
LTL MANAGEMENT, LLC

The relief set forth on the following page is hereby **ORDERED.**

[1] The last four digits of the Debtor's taxpayer identification number are 6622. The Debtor's address is 501 George Street, New Brunswick, New Jersey 08933.

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Debtor: LTL Management, LLC

Case No.: 23-12825 -MBK

Caption: Order Dismissing Second Bankruptcy Petition of LTL Management, LLC

This matter having come before the Court upon the motion of the Official Committee of Talc Claimants (the "Committee") of LTL Management LLC, ("LTL" or the "Debtor"), seeking to dismiss the second Chapter 11 case filed by LTL Management, LLC (the "Motion"), and the Court having reviewed the Motion and any opposition thereto, and finding good cause for the entry of the within Order;

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Chapter 11 case filed by LTL Management, LLC, bearing case number 23-12825 (MBK), is hereby **DISMISSED**.
2. The within Order shall be deemed served on all parties upon its ECF filing.