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2022 Caribbean Insolvency Symposium

Mass Torts Update

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CONCURRENT SESSION

2022

AMERICAN BANKRUPTCY INSTITUTE

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Mass Torts Update

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Third Party Releases and Injunctions in Chapter 11 Plans and Class Claims

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Overview

- State of the Case Law Regarding Third Party Releases
  - Circuit Decisions
  - Other Key Decisions Nationally—Purdue and Mahwah Bergen Retail Group
- Consent Issues
- Class Claims

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Third Party Releases

- Relevant Statutes
  - **Section 524(e)** — Discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt
  - **Section 524(g)** — Permits third party releases and channeling injunctions in asbestos cases under certain circumstances
  - **Section 1123(b)(5)** — plan may modify the rights…of holders of unsecured claims…
  - **Section 1123(b)(6)** — plan may include any other appropriate provision not inconsistent with the applicable provisions of this title
  - **Section 105** — court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title

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Circuit Authority on Third Party Releases

First, Eighth and D.C. Circuits:

No clear decision

- But Monarch Life Ins. Co. v. Ropes & Gray, 65 F.3d 973 (1st Cir. 1995), could be read as supporting third party releases

Second and Seventh Circuits:

Support third party releases

- In re Metromedia Fiber Network, Inc., 416 F.3d 136 (2nd Cir. 2005)
- In re Airadigm Communications, 519 F. 3d 640 (7th Cir. 2008)
- But, In re Purdue Pharma, 2021 WL 5979108, Dec. 16, 2021, appeal pending before 2nd Circuit

Third Circuit:

Supports third party releases under limited circumstances.

- In re Millennium Lab 945 F.3d 126 (3rd Cir. 2019)

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Circuit Authority on Third Party Releases

Fourth, Sixth and Eleventh Circuits:

Support third party releases under very limited circumstances and infrequently

- Behrmann v. Nat'l Heritage Found., 663 F.3d 704 (4th Cir. 2011) (But, In re Mahwah Bergen Retail Group, 2022 WL 135398 (E.D. Va. Jan. 13, 2022)
- In re Dow Corning, 280 F.3d 648 (6th Cir. 2002)
- In re Seaside Eng'g & Surveying, 780 F.3d 1070 (11th Cir. 2015)

Fifth, Ninth and Tenth Circuits:

Reject third party releases

- In re Pac. Lumber Co., 584 F.3d 229 (5th Cir. 2009) (but see Blixeth v Credit Suisse, 961 F.3d 1074 (2020), which permits limited exculpation of third parties)
- In re W. Real Estate Fund, Inc., 922 F.2d 592 (10th Cir. 1990) (but see In re Midway Gold, 575 B.R. 475, 505 (Bankr. D. Colo. 2017))
- In re Lowenschuss, 67 F.3d 1394 (9th Cir. 1995)
- In re Am. Hardwoods, 885 F.2d 621 (9th Cir. 1989)

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- Millennium Lab (3rd Cir. 2019)
  - First circuit court to address *Stern* challenge to BK Court authority to approve
  - Debtor was subject to federal investigation of billing practices
  - Debtor entered into credit agreement without disclosing investigation
  - $1.3 billion of loan proceeds dividended to shareholders
  - Federal investigation resulted in adverse finding and $256MM fine
  - Prepackaged plan filed
  - One lender objected
  - Court holding:
    - BK Court had constitutional authority to approve confirmation of a plan including non-consensual releases when ***integral*** to restructuring of debtor-creditor relationship on the facts presented

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State of the Case Law – Recent District Court Decisions

- In re Purdue Pharma L.P., SDNY Dec. 16, 2021; 2021 WL 5979108
  - Decision disallowed the Sackler family releases. Purdue decision addressed the following issues, some in favor of supporting the third party releases and others rejecting: i) jurisdiction (yes); ii) constitutional jurisdiction to final order granting third party releases (no); and iii) statutory or other authority to issue third-party releases (no).
- In re Ascena Retail Group, EDVa Jan. 13, 2022; 2022 WL 135398
  - Decision disallowed insider and lender third party releases. After finding US Trustee had appellate standing and rejecting an equitable mootness argument, Ascena decision focused on i) lack of due process and consent; and ii) lack of constitutional jurisdiction to issue final order granting third party releases (requiring reports and recommendations going forward). As to creditor opt out right, decision compared plan procedures to those in Rule 23 class actions and settlements.

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Consensual Third Party Releases

Consensual releases of non-debtors (i.e., "third party releases") come in many forms

- Creditors consent to the proposed release by voting for the plan.
- By "opting in" or "opting out" of the release on their ballots. Under an opt in structure, releases are only granted if: (1) a ballot is returned by the creditor, and (2) the creditor checks the box to affirmatively indicate its consent to granting the third party release.
- Sometimes creditors whose votes are solicited are "deemed" to have consented to the release by failing to take any action whatsoever.

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Consent to Third Party Releases

Cases Interpreting Consent Expansively

- Indianapolis Downs LLC, 486 B.R. 286 (Bankr. D. Del. 2013)
  - Consent effective if creditor entitled to vote (a) does not vote and (b) does not opt out of release
  - Consent effective if creditor is unimpaired and does not opt out
- Southeastern Grocers, No. 18-10700-MFW (Bankr. D. Del. Mar. 27, 2018)
  - Consent effective if:
    - Voted to accept the plan
    - Unimpaired and did not timely opt out of release
    - Rejected plan but did not indicate intent to opt out of release
- Washington Mutual, 442 B.R. 314 (Bankr. D. Del. 2011)
  - Consent effective for those who vote for plan and do not opt out of release

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Non-Consensual Third Party Releases

A non-consensual release is one where a creditor has no opportunity to "opt-out" of agreeing to the release regardless of whether the creditor votes to accept or reject a plan of reorganization

If the plan receives sufficient affirmative votes and is subsequently confirmed by the Bankruptcy Court, the release becomes binding on the creditor.

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Recent Consensual Third Party Releases

Some Examples of Approved "Consent" to Third Party Releases:

- *Insys Therapeutics Inc.*, et al., Case No. 19-11563 (Bankr. D. Del. Jan. 16, 2000).
- *Melinta Therapeutics Inc.*, Case No. 19-12748 (LSS) (Bankr. D. Del. April 2, 2020).
  - Court rejected the argument that the opt out feature of the plan violated basic contract principles and therefore was not enforceable. Instead, court focused on § 1141(a), which created a "super-contract" based on principles of claim preclusion and res judicata, that is unique to federal bankruptcy law and not reliant upon state law basic contract principles.
- *Indianapolis Downs, LLC*, 486 B.R. 286 (Bankr. D. Del. 2013)
  - Unimpaired creditors are deemed to accept releases in exchange for full payment of claims
- *Cumulus Media Inc.*, No. 17-13381-SCC (Bankr. S.D.N.Y. Nov. 29, 2017)
  - Silence can constitute consent
- *Belk, Inc.*, No. 21-30630 (Bankr S.D. Tex.)
  - Plan confirmed in one day, including third party releases
  - Creditors were given about 30 days to opt out of third party release or to object to plan

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Recent Denials of "Consensual" Third Party Releases

Cases Determining Consent Restrictively:

- *In re Chassix Holdings, Inc.,* 533 B.R. 64 (Bankr. S.D.N.Y. 2015)
  - As to "creditors who were entitled to vote, but who chose to take no action at all: under the circumstances of this case it would be inappropriate to treat such inaction as a "consent" to third party releases"
  - "As to creditors and interest holders who were deemed to reject the Plan (and therefore were given no opportunity to vote or to "opt in" to the releases): it would defy common sense to conclude that those parties had "consented" to releases."
  - Unimpaired creditors cannot be deemed to consent to third party releases
- *In re SunEdison, Inc.*, 576 B.R. 453 (Bankr. S.D.N.Y. 2017)
  - Acceptance of plan may be insufficient where plan does not include opt out option
  - Consent by failure to submit a ballot is not effective

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Cases Rejecting Non-Consensual Releases

- *In re Ascena Retail Group*, EDVa Jan. 13, 2022; 2022 WL 135398. "Consent must be express," "knowing," and "voluntary." Court rejected comparison to class action settlements approved under Rule 23.
- *In re Emerge Energy Servs. LP*, Case No. 19-11563 (Bankr. D. Del., Dec. 5, 2019). Under basic contract principles, the failure to opt out of a release (in favor of non-debtor participants in the reorganization) does not represented consent.

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Consent to Third Party Releases

Claimant Status	Deemed Consent	Need Opt Out Option
Affirmatively Accept Plan	Yes- SunEdison	Yes- SunEdison
Deemed to Accept Plan (Entitled to Vote but did not Vote)	Yes-Indianapolis Downs Yes- Washington Mutual No-Chassix Holdings	Yes- Indianapolis Downs Yes- Washington Mutual No-Chassix Holdings
Deemed to Accept Plan (Unimpaired)	No- Chassix Holdings Yes-Southeastern Grocer	Yes-Southeastern Grocer
Affirmatively Reject Plan	Yes- Southeastern Grocer	Yes-Southeastern Grocer
Deemed to Reject Plan	No- Chassix Holdings	Unclear- Chassix Holdings

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Additional Points on Third Party Releases

- Does it matter which party is requesting the release?
  - Parent/subsidiary
  - Corporation/principal
  - Lender
- Select Cases to Watch
  - **Boy Scouts of America** (whether non-debtor local councils contributing to a victim fund will be afforded third party releases)
  - **Weinstein Co. Holdings, et al** (confirmation order on appeal with challenges asserted to nonconsensual third party release language in plan)
  - **Purdue Pharma/Ascena**
  - **LTC Management** Johnson & Johnson's (J&J) talc division was spun off in Sept. 2021 and on Oct. 14, 2021 filed Chapter 11 in the WDNC. Case transfers to New Jersey. The first day declaration indicates that J&J will be contributing $2 billion to the LTL Management plan in exchange for a 3rd party release.

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Class Claims

While class claims are permissible, the right to file such a claim is at the bankruptcy court's discretion. Recent trend in mass tort cases is to deny class certification to file class claims.

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Are They Legally Permissible?

Yes:

- *In re American Reserve Corp.*, 840 F.2d 487 (7th Cir. 1988)
- *Birting Fisheries v. Lane (In re Birting Fisheries)*, 92 F.3d 939 (9th Cir. 1996) Concurring with *American Reserve* that the Bankruptcy Code "should be construed to allow class claims"
- *Reid v. White Motor Corp.*, 886 F.2d 1462, 1469 (6th Cir. 1989). Allowing class proofs of claim is the more "equitable resolution"
- *The Certified Class in the Chartered Securities Litig. v. The Charter Co. (In re The Charter Co.)*, 876 F.2d 866 (11th Cir. 1989) "In light of Congress' inclusion of Rule 23 in bankruptcy proceedings [and] the clear congressional intent that the Bankruptcy Code encompass every type of claim . . . we conclude that class proofs of claim are allowable in bankruptcy"

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Are They Legally Permissible?

No:

- *In re Allegheny Int'l, Inc.*, 94 B.R. 877, 879-80 (Bankr. W.D. Pa. 1988). Holding that "on its face, section 501 does not provide for class proofs of claims," and collecting cases that have "interpreted section 501 as an exclusive list of who may file claims, thus barring class claims".
- *In re Gulfport Energy Corp.*, Case No. 20- 35562-11 (S.D. Tex.), Hearing Transcript of February 24, 2021, Exhibit C at 43:2. Holding that a "motion to strike" a class proof of claim was appropriate recourse by a debtor where an underlying class had not been sought and certified, and the purported class counsel could not demonstrate he had contacted and secured engagement agreements with any of the purported class members.
- *In re FIRSTPLUS Fin., Inc.*, 248 B.R. 60, 67 (Bankr. N.D. Tex. 2000). "A putative class representative is not, nor can he be transformed by the court into, an authorized agent within the purview of Bankruptcy Rule 3001(b)."
- *Sheftelman, v. Standard Metals Corp. (In re Standard Metals Corp.)*, 817 F.2d 625, 631 (10th Cir. 1987). "[A] class representative cannot be considered the authorized agent of all the creditors in a putative class."

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Procedural Requirement of Obtaining Pre-Filing Approval

- The decision whether to permit a class claim is discretionary.
- A purported class claimant must move to apply Bankruptcy Rule 7023 before filing a class proof of claim.

- *Reid v. White Motor Corp.*, 886 F.2d 1462 (6th Cir. 1989). Holding that a claimant who did not move to apply Bankruptcy Rule 7023 before he filed a purported class proof of claim "failed to timely petition the bankruptcy court to apply the provisions of Rules 9014 and 7023," which is a "mandatory requirement essential to filing a class proof of claim."
- *In re Craft*, 321 B.R. 189 (Bankr. N.D. Tex. 2005). ("[I]t is the view of this court that it is the burden of the class representative to raise the issue of class certification."
- *In re Computer Learning Centers, Inc.*, 344 B.R. 79 (Bankr. E.D. Va. 2006). The court denied as untimely the claimants' motion to apply Rule 7023, holding that failing to first file a motion to apply Rule 7023 before filing a class proof of claim is "an obvious defect that will . . . certainly result in disallowance of the claim."

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Factors for Determining Permissibility of Class Claim

- *In re Musicland Holding Corp.,* 362 B.R. 644 (Bankr. S.D.N.Y. 2007).

  i) whether the class was certified pre-petition;

  ii) whether the members of the putative class received notice of the bar date;

  iii) whether class certification will adversely affect the administration of the estate.

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Is Bankruptcy Rule 7023, or Portions of Rule 7023, Invalid?

- In 1964, Congress gave the Supreme Court rulemaking authority with respect to bankruptcy cases. ("Rules Enabling Act")
- 28 U.S.C. § 2075: The Rules Enabling Act provides that the Bankruptcy Rules, as well as the other federal procedural rules, "shall not abridge, enlarge, or modify any substantive right."
- Gatekeeping issue: Is the subject matter at issue a "substantive right"? See Resnick, *The Bankruptcy Rulemaking Process* , 70 Am. Bankr. L.J. 245 (1996).

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Is Bankruptcy Rule 7023, or Portions of Rule 7023, Invalid?

- As to class claims, there may be substantive rights conflicts– *i.e.*, abridgement, enlargement or modification—between Bankruptcy Rule 7023 and the numerous provisions of the Bankruptcy Code:
  i. § 501(a). "A creditor … may file a proof of claim." Allowing a putative class representative to file a class proof of claim may enlarge and modify § 501(a) and abridge the rights of class members.
  ii. § 1126(a). "The holder of a claim … may accept or reject a plan." Allowing a putative class representative to vote on a plan, on behalf of class members, may abridge and modify § 1126(a).
  iii. Rule 23(e) addresses settlement of class claims and the procedures related to those settlements. An argument exists that this portion of Rule 23 conflicts with the plan confirmation requirements set forth in § 1123(a)(3) (plan shall specify the treatment of any impaired class of claims) and § 1123(b)(5) (plan may modify the rights of creditors.
  iv. Rule 23(g): "A court that certifies a class must appoint class counsel." An argument exists that the appointment of class counsel to represent a group of creditors conflicts with §§ 327 and 1103, as the rule potentially enlarges and modifies estate professionals.
  v. Rule 23(h): The certifying court "may award reasonable attorney's fees and costs" to class counsel. In bankruptcy, if class counsel is paid from either estate assets or creditor distributions, this may enlarge and modify the universe of compensated professionals and may conflict with §§ 328 and 503(b)(4).
  vi. There is no statutory basis in the bankruptcy code for class counsel to surcharge distributions to class members. Arguably, class members have a right to receive their distributions without deduction for payment to class counsel. To the extent class members' distributions are surcharged to pay class counsel, this may abridge the rights of class members.

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Opt-In or Opt-Out

- Starting Point: Bankruptcy, as a whole, is the quintessential class action, structured as opt-in. Participation is voluntary. If a creditor with a disputed claim does not want to participate in receiving distributions from the case, it simply does not file a proof of claim.
- In contrast, Rule 23 is structured as opt-out. *See* Rules 23(c)(2), 23(e)(4) —Class action must allow class members to elect to be excluded.
- If a class proof of claim is permitted, should inclusion by class members be on an opt-in or opt-out basis?
- How should courts deal with potential class members that file proofs of claim? Is the filing of such a proof of claim by potential class members de facto opt-out?
- Courts addressing class proofs of claims in bankruptcy have not substantively focused on the opt-in/opt-out dichotomy.

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Use of the Texas "Two-Step" Divisional Merger to Shed Mass Tort Liability

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Outline

- **Background**
- **New Strategy**
- **Texas Statutes**
- **Developments in Asbestos Cases**
  - Georgia Pacific, Trane Technologies, and CertainTeed
- **Developments Talc Cases**
  - Imerys and Johnson & Johnson

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Background

- **Johnson & Johnson's Predicament**
  - Purchased talc mines and had knowledge of trace asbestos since 1966
  - Contracted with Imerys (former sub) to extract talc for use in products
  - Ovarian cancer lawsuits pile up
  - Imerys filed chapter 11 in February 2019 with $400 billion in talc claims
  - Imerys says J&J must indemnify any payment of these claims under the contract in adversary proceeding against J&J
  - During negotiations with talc victim plaintiffs in July 2021, J&J revealed it was considering "divisive merger" and bankruptcy to stay the litigation

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Mass Tort Bankruptcy

- **The Familiar Strategy**
  - File entire entity, channel all tort claims to a trust, fund the trust, get a discharge but lose equity
- **Jones Day's "Texas Two Step" Strategy**
  - Reincorporate in Texas
  - Perform a divisional merger creating a GoodCo and BadCo
  - Transfer assets to GoodCo and liabilities to BadCo
  - GoodCo enters fig leaf funding agreement
  - Put BadCo in chapter 11; equity in GoodCo safe
  - How is this not fraudulent transfer?

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Texas Business Organizations Code

- **§ 1.002 Definition**
  - (55) "Merger" [or demerger] means: (A) the division of a domestic entity into two or more new domestic entities or other organizations or into a surviving domestic entity and one or more new domestic or foreign entities or non-code organizations; or ...
- **§ 10.008(a)(2)(C)**
  - (a) When a merger takes effect: … (2) all rights, title, and interests to all real estate and other property owned by each organization that is a party to the merger is allocated to and vested, subject to any existing liens or other encumbrances on the property, in one or more of the surviving or new organizations as provided in the plan of merger without: … (C) any transfer or assignment having occurred;

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Ongoing Asbestos Cases

- **Bankr. W.D.N.C. Charlotte Division**
  - CertainTeed, Inc. performed Texas Two-Step in October 2019, spending only 4 hours as a Texas entity
    - Reincorporated in Texas
    - Performed a divisional merger creating CertainTeed LLC (GoodCo) and DBMP (BadCo)
    - Allocated assets to CertainTeed LLC and liabilities to DBMP
    - CertainTeed LLC reincorporated in Delaware
    - DBMP reincorporated in North Carolina
  - DBMP filed chapter 11 in January 2020
  - *See also In re Bestwall* (BadCo of Georgia-Pacific, filed November 2017); *In re Aldrich Pump* (BadCo of Trane Technologies, filed June 2020)

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https://www.nytimes.com/2008/06/01/sports/playmagazine/601bullfight.html

Developments in *In re Bestwall*

- 7/29/19 – W.D.N.C. Bankruptcy Judge Beyer denied claimant committee's motion to dismiss case
- 3/24/21 –Judge Beyer granted debtor's request for discovery for the sampling process to be used in the estimation proceedings
- 6/17/21 – Delaware district court Judge Connelly limited the scope of debtor's subpoenas to asbestos trusts
- 10/19/21 –Judge Beyer granted 10-month extension of ongoing estimation proceedings due to discovery issues
- 1/6/21 – W.D.N.C. district court Judge Conrad upheld injunction prohibiting actions against certain nondebtor affiliates

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Developments in *In re Aldrich Pump*

- 8/23/21 – W.D.N.C. Bankruptcy Judge Whitely entered order enjoining asbestos claimants' actions against 204 non-debtor affiliates and 182 insurers, but weighed-in on the Texas statutes and said maneuvers "'bear all of the hallmarks' of an intentional fraudulent transfer"
- 9/24/21 – Debtor filed PSA, placeholder plan, and motion to estimate; GoodCo would contribute $550 million under plan; PSA allocates bulk to future claimants and is not supported by current claimants;
- 10/15/21 – Claimants' committee filed complaint to substantively consolidate BadCo with nondebtor Goodco
  - BadCo and GoodCo moved to dismiss
  - Hearing scheduled for 3/3/2022 at 9:30 AM

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Developments in *In re DBMP*

- 8/11/21 – Judge Whitley denied claimant committee's lift stay motion because debtor has "first crack" at asserting FT claims
- 8/23/21 – Claimants' committee filed complaint to substantively consolidate BadCo with nondebtor GoodCo; BadCo and GoodCo moved to dismiss
- 12/21/21 – Judge denied Debtor's motion to approve amended funding agreement
- 1/5/21 – Debtor filed stipulation with GoodCo to amend funding agreement to address concerns raised by Judge, current claimants' committee and future claimants' representative
- 1/6/22 – Sub-con ruling postponed until hearing argument in *Aldrich Pump*

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Developments in *In re Imerys*

- 8/26/2021 – Delaware Bankruptcy Judge Silverstein denied talc claimants' representatives' motion to enjoin J&J from undertaking Texas Two-Step because:
  - Lack standing to seek an injunction in an adversary proceeding brought by the debtors to enforce J&J's contractual indemnification obligations
  - Contract rights are not "intertwined assets" like those in *Prudential Lines*
  - Not shown that alleged future action of J&J is violation of automatic stay
  - "The debtors' expectations are not a property of the estate. Neither are J&J's assets property of the estate."
- 9/21/21 – J&J filed motion to dismiss Imerys adversary complaint because Imerys seeking to "rewrite" indemnity provisions and "expand" J&J's liability

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Developments in *In re LTL Management*

- 9/20/21 – N.J. Superior Court denied talc claimants' motion for TRO/PI barring J&J from undertaking Texas Two-Step because "not yet consummated," "speculation" 10/12/21 – J&J performed Texas Two Step creating LTL Management LLC
- 10/14/21 – LTL filed chapter 11 in W.D.N.C.
- 10/25/21 – BA moved to transfer venue; Judge Whitely, on his own motion, issued order to show cause why venue should not be transferred; Plaintiffs' steering committee in the multi-district litigation of cases before the U.S. District Court for N.J. joined BA's motion
- 11/10/21 – Judge Whitely transferred case to Bankr. D.N.J.
- 1/11/22 – N.J. District Court Judge Wolfson denied talc claimants' motion to withdraw LTL's adversary suit seeking to halt talc claims against nondebtors (including J&J) from the bankruptcy court
- 2/15/22 – 4-day hearing scheduled for pending motions to dismiss chapter 11 case

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Plastronics v. Hwang Opinion

- 1/31/22 – in briefs supporting sub-con of *Aldrich Pump* with Trane operating entities, the asbestos claimants committee cited to an appeal from the E.D. Tex. to the Court of Appeals for the Fed. Cir.
- 1/12/22 – in *Plastronics v. Hwang,* the Fed. Cir. held that the Texas statutes do not permit avoidance of pre-existing contractual royalty obligations by allocating those liabilities through a divisional merger
  - "[I]n accordance with the common law," a divisional merger "cannot disadvantage the obligee."
  - Opinion cites to Judge Whitley's opinions in *DBMP* and *Aldrich Pump* and to the law review article written by the statutes' author, also in Judge Whitley's opinions.

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Questions?

- *In re LTL Management LLC*, No. 21-30589 (MBK) (Bankr. D.N.J)
- *In re Aldrich Pump LLC*, No. 20-30608 (JCW) (Bankr. W.D.N.C.)
- *In re DBMP LLC*, No. 20-30080 (JCW) (Bankr. W.D.N.C.)
- *In re Imerys Talc America, Inc.* No. 19-10289 (LSS) (Bankr. D. Del.) [did not perform Texas Two-Step]
- *In re Bestwall LLC*, No. 17-31795 (LTB) (Bankr. W.D.N.C)

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Jeffrey K. Garfinkle is a shareholder with Buchalter, PC in Irvine, Calif., where his primary practice involves the representation of secured and unsecured creditors, creditors' committees, trustees, equity receivers, debtors, and other parties in interest in a variety of bankruptcy, restructuring cases and collection matters, including out-of-court workouts. He also specializes in matters pertaining to Articles 2 and 9 of the Uniform Commercial Code and in representing purchasers of assets from bankrupt companies. Mr. Garfinkle is regarded as one of the nation's leading health care and pharmaceutical insolvency attorneys. For more than 20 years, he has served as primary U.S. insolvency, bankruptcy and collections counsel to the world's largest health care corporation. In this capacity, he has handled hundreds of health care and pharmaceutical-related bankruptcy and restructuring matters. Mr. Garfinkle also has represented committees, debtors, creditors and other parties in dozens of other health care bankruptcy cases. Mr. Garfinkle has been recognized *The Best Lawyers in America* for 2021 in the areas of Bankruptcy and Creditor/Debtor Rights and Insolvency and Reorganization Law. He is a member of the Board of Governors of the Financial Lawyers Conference and serves as Education Director for ABI's Commercial and Regulatory Law Committee. He also serves on the advisory board for the *Emory Bankruptcy Developments Journal*. Mr. Garfinkle received his B.A. in 1987 from the University of Florida and his J.D. in 1990 from Emory University School of Law.

Hon. David R. Jones is Chief U.S. Bankruptcy Judge for the Southern District of Texas in Houston, initially sworn in on Sept, 30, 2011, and named Chief Judge in 2015. Prior to becoming a judge, he was a partner in the bankruptcy group at Porter Hedges, LLP in Houston, specializing in bankruptcy and bankruptcy-related litigation. Judge Jones received his B.S. in electrical engineering from Duke University in 1983, his M.B.A. from Southern Methodist University in 1986, and his J.D. from the University of Houston in 1992, where he served as editor-in-chief of the *Houston Law Review*.

Andrew M. Troop is a partner in Pillsbury Winthrop Shaw & Pittman LLP's Insolvency & Restructuring practice in New York, where he focuses his practice on business reorganizations and debtors' and creditors' rights. He also heads the firm's Distressed Energy Opportunity Task Force, which

identifies and helps clients capitalize on opportunities across energy sources and disciplines. Mr. Troop has helped private-equity clients acquire, sell and reorganize U.S. and international portfolio companies and defend fraudulent-transfer and breach-of-duty claims. He also represents nonprofits in debtors' and creditors' rights matters. Recently, Mr. Troop was one of the lead lawyers in the successful reorganization of LyondellBasell Industries, the third-largest petrochemical company in the world. He also represented Saint Vincent Catholic Medical Centers in its chapter 11 reorganization case, as well other nonprofit, community-based service providers in both restructuring and corporate matters. Mr. Troop has an active *pro bono* practice. He has served on the board of directors for Greater Boston Legal Services for over a decade, and was honored by the Massachusetts Bar Association with its 2017 Pro Bono Publico award, which is presented to individuals who have been instrumental in developing, implementing and supporting *pro bono* programs. Mr. Troop is admitted to practice in New York and Massachusetts and is recognized by *Chambers USA* in Bankruptcy/Restructuring, is listed in *The Best Lawyers in America* for Bankruptcy and Creditor/Debtor Rights/Insolvency and Reorganization Law, Litigation – Bankruptcy from 2001-21), and is listed among *Nightingale Health Care News*'s "Top 10 Health Care Transaction Lawyers of the Year." He also co-chairs the American Bar Association's Business Bankruptcy Committee's Government Powers Subcommittee and is a coordinating editor for the *ABI Journal*'s Intensive Care column. Mr. Troop received his B.A. *cum laude* from Amherst College and his J.D. *cum laude* from Northwestern School of Law.