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

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

MOTION OF THE COALITION OF
COUNSEL FOR JUSTICE FOR TALC CLAIMANTS TO
DISMISS THE CHAPTER 11 CASE PURSUANT TO 11 U.S.C. § 1112(b)

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING. REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

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

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The Coalition of Counsel for Justice for Talc Claimants (the "Coalition"),[1] by and through its counsel, respectfully submits this motion (the "Motion") seeking the entry of an order, substantially in the form attached hereto as **Exhibit A**, dismissing the above-captioned chapter 11 case (the "Chapter 11 Case") pursuant to section 1112(b) of the Bankruptcy Code. In support of this Motion, the Coalition respectfully states as follows.

PRELIMINARY STATEMENT

1. This is a fraudulent bankruptcy case filed to enable a Fortune 50 company to evade liability for causing serious injury and death to thousands of women with ovarian cancer.

2. For decades, Johnson & Johnson ("J&J") knowingly exposed women and babies to the carcinogenic, asbestos-laced talcum powder in its Johnson's Baby Powder and Shower to Shower products. Rather than face its victims in the civil justice system, J&J is attempting to escape its liability through the bankruptcy case of its freshly manufactured subsidiary, Red River Talc, LLC ("Red River" or the "Debtor"). Specifically, J&J is seeking to obtain a release for its own independent talc liabilities[2]—relief that is well outside the scope of section 524(g).

3. This is not the first time J&J has attempted such a maneuver. J&J's first two attempts to resolve its own mass tort liabilities through a subsidiary's bankruptcy case ("LTL 1.0" and "LTL 2.0," respectively) were each dismissed for having been filed in bad faith because of the

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

[2] *See Prepackaged Chapter 11 Plan of Reorganization of the Debtor* (the "Plan") at § 1.1.22 (definition of "Channeled Talc Personal Injury Claims"), § 1.1.40 (definition of "Debtor Corporate Parties"), § 1.1.108 (definition of "Protected Party"), § 1.1.113 (definition of "Released Parties"); § 1.1.135 (definition of "Talc Personal Injury Claim"), § 11.2 (Releases), and § 11.3.1 (Channeling Injunction).

lack of financial distress of the debtor entity.[3] Undeterred, J&J is at it again, hoping that it will have better luck in a new venue. But nothing has changed regarding the basic facts.

4. The newly created debtor vehicle, Red River, lacks genuine financial distress, just as LTL did.[4] Like LTL, Red River has never had any business that could be rehabilitated. What has changed, however, is the state of the law, and not in J&J's favor. J&J's first two bankruptcies were filed prior to the Supreme Court's decision in *Harrington v. Purdue Pharma L.P.*, 603 U.S. —, 144 S.Ct. 2071 (2024). Post-*Purdue*, non-consensual releases of a non-debtor's independent tort liability cannot be granted by any Court, no matter the quantum of claimant support.

5. J&J is still free to settle with individual talc victims, but it cannot use bankruptcy to force a settlement on those victims who want their day in court. Yet that is precisely what J&J's so-called "prepackaged" Plan purports to do. The centerpiece of J&J's third bite at the bankruptcy apple is a release that is expressly forbidden by *Purdue*.

6. Taken together, these points mean that Red River's bankruptcy case must be dismissed under section 1112(b) of the Bankruptcy Code for cause. The case was not filed in good faith because it was filed solely for the benefit of J&J. Filing for bankruptcy in an attempt to obtain patently prohibited and otherwise unattainable relief is the epitome of corporate abuse of chapter 11 bankruptcy.

7. Likewise, the case must be dismissed because there is no confirmable plan. J&J will not permit any plan that does not give it the very type of release prohibited by the Supreme Court's *Purdue* decision. Additionally, this third bankruptcy case is still plagued with the same

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[3] *See In re LTL Mgmt. LLC* ("LTL 1.0"), 64 F.4th 84 (3d Cir. 2023); *In re LTL Mgmt. LLC* ("LTL 2.0"), 652 B.R. 433 (Bankr. D.N.J. 2023), *aff'd*, 2024 WL 3540467 (3d Cir. July 25, 2024).

[4] To the extent there is any financial distress, it is all manufactured by J&J for the purpose of the case and should be disregarded; self-inflicted financial distress in anticipation of bankruptcy is itself a hallmark of bad faith.

basic problem that sank J&J's first two attempts: Red River lacks genuine financial distress, which underscores the fact that it lacks any valid reorganizational purpose in chapter 11.

8. J&J knows all of this, of course. Its strategy is not ***really*** about getting a plan confirmed, but instead about "delay to underpay." Delay also creates the leverage that J&J seeks to force talc victims to accept a lowball settlement that it could argue passes muster under *Purdue* as being "consensual," even though it would be coerced by J&J's abuse of process.

9. J&J will claim that its prepackaged plan has the support of a supermajority of talc victims and argue that the Court should let the case play out. Do not be fooled. Most of the talc victims that support J&J's plan have non-compensable claims for assorted non-ovarian gynecological cancers. These are claims that lack any scientific linkage to talc and for which J&J has never previously paid a judgment or settlement. In short, these are negative value claims; the cost of litigating them would exceed any recovery (which would be zero given the state of scientific evidence). Yet J&J has knowingly and fraudulent bought the votes of the holders of these negative value, non-compensable claims by offering a $1,500 Quickpay payment, thereby creating the impression that there is substantial support for its Plan, such that this case should progress.

10. If this case progresses, the Coalition expects to challenge the allowance of the non-compensable, non-ovarian gynecological cancer claims for voting purposes, but there is no reason this case should come to that. Instead, Red River's bankruptcy should be dismissed immediately. Letting this case unfold, rather than dismissing it immediately, gives J&J exactly what it wants, namely the ability to "delay to underpay."

11. The bankruptcy system is intended to give relief to honest but unfortunate debtors. Red River is neither, nor is J&J. They are attempting to hijack the bankruptcy system to escape the civil justice system and force a lowball settlement on tort victims through delay. Permitting

such an abuse would undermine the basic integrity of the bankruptcy system. The only way to avoid that is to immediately dismiss this case and sanction the Debtor and J&J for their serial bad faith filings.

LEGAL AND FACTUAL BACKGROUND

12. J&J's bankruptcy ploy reflects an ongoing effort by wealthy companies to use bankruptcy to resolve their own independent tort liability for amounts of their own choosing. J&J's scheme, however, really is not a "bankruptcy strategy." It is a "litigation tactic" designed to create delay and leverage—the epitome of bad faith, which is cause for dismissal. To understand this case and J&J's true objectives, it is helpful to begin with lessons learned in prior bankruptcy cases involving asbestos.

A. Lessons Learned in Prior Asbestos Bankruptcy Cases

13. Section 524(g), which permits companies facing asbestos liability to resolve current and future claims in bankruptcy, requires a consensual plan. Section 524(g) does not contain any cramdown mechanism that permits a debtor to confirm a plan that includes a channeling injunction in the absence of overwhelming claimant support.[5] And section 524(g) does not permit the channeling of a non-debtor party's independent liability. *See infra* at ¶¶ 61-71.

14. Companies with business operations that have filed for bankruptcy due to asbestos liability have often spent years in bankruptcy. *See*, *e.g.*, *In re Garlock Sealing Techs., LLC*, Case No. 10-BK-31607 (Bankr. W.D.N.C.) (debtor exited bankruptcy after seven years). Section 524(g) creates a dynamic that is both beneficial and problematic for companies with asbestos liability.

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[5] *In re Federal-Mogul Global Inc.*, 684 F.3d 355, 361 (3d Cir. 2012) (discussing the absence of a cramdown provision for § 524(g)).

15. On the one hand, while the company is in bankruptcy, it typically does not pay any defenses costs, settlements, or judgments due to the automatic stay. Thus, while the company is in bankruptcy, no victims are paid. Many victims have died waiting for asbestos bankruptcy cases to end. A company with asbestos liability may view its time in bankruptcy as beneficial (*i.e.*, a significant cost savings), while victims view it as harmful (*i.e.*, justice delayed is justice denied).

16. On the other hand, real companies, with operating assets and employees, need to reorganize. They cannot stay in bankruptcy forever. The waiting game can only go on for so long. Eventually, to exit bankruptcy, the company must reach a deal that the plaintiffs with valid claims think is fair and equitable to confirm a plan that resolves current and future asbestos liabilities in a manner consistent with section 524(g).

17. Of course, a company with asbestos liability (like J&J) would prefer to get the benefits of a multi-year litigation holiday without also being pressured to reach a deal acceptable to the plaintiffs. Any company with asbestos or other mass tort liability would prefer to use bankruptcy to enjoin litigation against it if it could also avoid subjecting itself to the onus of being a debtor in bankruptcy.

18. The Holy Grail that companies with mass tort liability have long sought is the ability to avail themselves of the benefits of a bankruptcy without suffering any of the burdens of bankruptcy. This is what J&J's bankruptcy strategy attempts to accomplish, and it is also central to why this case has been filed in bad faith.

B. <u>The Texas Two-Step Strategy</u>

19. J&J's strategy is to get the benefits of bankruptcy without the pressure to reach a fair and equitable deal with its victims. J&J is attempting to avoid the dynamic created by section 524(g) by fabricating a non-operating debtor that has no need to exit bankruptcy.

20. J&J's planned structure was not designed to facilitate a reorganization or any legitimate bankruptcy purpose for this non-operating debtor. Rather, it was designed to create a situation where tort victims are trapped in an interminable bankruptcy with the aim of forcing them to accept whatever terms J&J dictates. It is a litigation weapon designed to prevent victims from suing wealthy and profitable companies that are not in financial distress.

21. The method J&J has used to implement its strategy is the so-called "<u>Texas Two-Step</u>"—*i.e.*, a divisive merger under Texas law that splits a company into a GoodCo, assigned the valuable operating assets, and a non-operating BadCo, assigned the disfavored liabilities, followed by a bankruptcy filing by BadCo. This sort of divisional merger bears the hallmarks of a fraudulent transfer, stripping out the assets and leaving creditors to pursue an empty shell company.

22. The Texas divisive merger statute, however, does not sanction fraud. The Texas statute does not "abridge any right or rights of any creditor under existing law." Tex. Bus. Org. Code § 10.901. When a party undertakes a "divisional merger" that is fraudulent, creditors can assert an array of rights and remedies under state law.

23. These rights and remedies include, *inter alia*, fraudulent transfer claims,[6] the use of the doctrine of successor liability to hold the company that is a mere continuation of the tortfeasor's business fully liable for the tort claims,[7] and the use of the alter ego doctrine to hold the parent liable for the tort claims (in cases where the parent was not already independently liable

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6 *See*, *e.g.*, *Official Comm. of Asbestos Personal Injury Claimants v. DBMP LLC*, No. 21-03023-JCW (Bankr. W.D.N.C. July 7, 2022), Hr'g Tr. (Beville Decl. at Ex. 39) at 23-25 (holding that it would be "contrary to all Anglo-American notions of fraudulent conveyance law" for the victims of a fraudulent divisional merger conducted under Texas law to have "no recourse" against the entity that received the operating assets).

7 *See*, *e.g.*, *Kelly v. Corizon Health Inc.*, No. 2:22-cv-10589, 2022 WL 16575763 (E.D. Mich. Nov. 1, 2022) (holding tort victims impacted by a fraudulent divisional merger conducted under Texas law can hold the company that receives the operating assets liable under state law doctrines of successor liability); *Jackson v. Corizon Health Inc.*, 2:19-cv-13382, 2022 WL 16575691 (E.D. Mich. Nov. 1, 2022) (same).

for such claims).[8] Legal advisors, directors and officers can also be sued for aiding and abetting the fraud.[9]

24. The Texas Two-Step's solution to the risk of the challenges to the divisional merger fraud is for the GoodCo to provide a funding agreement to the BadCo equal to the value of the assets that were assigned to the GoodCo. When creditors assert that the divisional merger was fraudulent, the debtor points to the funding agreement and says that no one was harmed because the full value of the assets that were taken is still available to pay claims. Tellingly, no funding agreement in a Texas Two-Step case has ever been enforced over the payor's objection.

25. Some funding agreements have been drafted so that if the payor loses control over the payee (or cannot prevent the payee from settling tort claims that trigger the payor's obligation to fund), then the payor is excused from performing its obligations.[10] In other words, the funding agreement is "as good as gold" whenever parties need to face a Court and proclaim that no fraud occurred. But the funding agreement suddenly becomes a nullity—*i.e.*, an unenforceable financial accommodation[11]—whenever parties attempt to enforce it against the payor.

26. The Texas Two-Step was first deployed in the Western District of North Carolina—the same Court that oversaw the *Garlock* bankruptcy. And, it has been remarkedly successful in achieving the objective of creating lethal delay.

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8 *See*, *e.g.*, *U.S. v. Jon-T Chemicals, Inc.*, 768 F.2d 686, 691-92 (5th Cir. 1985); *In re SMTC Mfg. of Texas*, 421 B.R. 251, 321 (Bankr. W.D. Tex. 2009).

9 *See*, *e.g.*, *In re Rest. Dev. Grp., Inc.*, 397 B.R. 891, 894 (Bankr. N.D. Ill. 2008) (denying motion to dismiss a claim against former attorneys of a restaurant company who allegedly engaged in a scheme to defraud the company's creditors); *Banco Popular N. Am. v. Gandi*, 876 A.2d 253, 263 (N.J. 2005) (creditors may bring claims against one who assists another in executing a fraudulent transfer); *Thornwood, Inc. v. Jenner & Block*, 344 Ill. App. 3d 15, 799 N.E.2d 756 (1st Dist. 2003) (refusing to dismiss claim against a law firm for aiding and abetting a client's fraudulent scheme).

10 *See In re Aearo Techs., LLC*, Case No. 23-02890-JJG (Bankr. S.D. Ind. July 26, 2022) (Dkt. No. 11 at Exhibit B).

11 *See* 11 U.S.C. § 365(c)(2).

27. The *Bestwall* case, another Texas Two-Step, was filed on November 2, 2017. *In re Bestwall LLC*, Case No. 17-31795 (LTB) (W.D.N.C). The primary objective was to halt asbestos litigation against Georgia-Pacific—a global producer of paper products that was not insolvent. The Court entered an injunction preventing litigation against Georgia-Pacific and its non-debtor affiliates from going forward during Bestwall's bankruptcy.

28. Since Bestwall filed for bankruptcy, Georgia-Pacific has not paid any judgments or settlements or needed to incur defense costs. Bestwall, a non-operating company like Red River, has had no reason to exit bankruptcy and has now been in bankruptcy for nearly 7 years and counting. The primary objective of Bestwall's case, like J&J's objective here, is to secure a discharge of Georgia-Pacific's tort liability even though Georgia-Pacific is not a debtor. It has nothing to do with reorganizing a going concern. It is nothing more than a litigation tactic designed to deprive victims of their Constitutional rights while keeping all the leverage in the hands of the debtor and its parent.

C. <u>J&J's Failed Bankruptcy Attempts</u>

29. Like Georgia-Pacific, J&J was searching for a way to halt litigation against it in the civil justice system. Courts have found J&J liable for its own independent conduct regarding talc products. Courts have also found that J&J knew about the presence of asbestos in its talc products for several decades and, notwithstanding this knowledge, avoided adopting accurate measures for detecting asbestos, sought to discredit scientists who published unfavorable studies, and chose not to replace the talc in its products with cornstarch because it would be more costly to do so. *See*, *e.g.*, *Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 721 (Mo. Ct. App. 2020).

30. With the tide of talc litigation turning against it, J&J hired Jones Day—the creator of the Two-Step bankruptcy strategy and the firm that represents Georgia-Pacific a/k/a Bestwall. Following Jones Day's advice, J&J decided to move forward with its own Texas Two-Step.

31. J&J caused Johnson & Johnson Consumer, Inc. ("JJCI" or "Old JJCI"), a New Jersey operating subsidiary of J&J that has produced J&J's talc products, Johnson's Baby Powder and Shower to Shower, since 1979,[12] to move to Texas and undertake a divisional merger. *In re LTL Mgmt., LLC* ("LTL I"), 64 F.4th 84, 93, 94 n.1 (3d Cir. 2023).

32. In the divisional merger, Old JJCI split into a GoodCo ("New JJCI") and a BadCo, LTL Management, LLC ("LTL"). New JJCI was assigned JJCI's entire consumer healthcare business (worth at least $61 billion), while LTL was assigned JJCI's talc liabilities and a funding agreement with J&J and New JJCI that *purported* to make the entire value of JJCI (at least $61 billion) available to LTL to pay talc claims, with J&J as the primary payor.

33. Through the divisional merger, J&J stripped JJCI, which by then had been named as a defendant (along with J&J) in thousands of talc lawsuits, of assets worth at least $61 billion, making the first step of the bankruptcy strategy arguably the largest fraudulent transfer in United States history. In contrast, the Sackler family and Bernie Madoff were accused of taking $11 billion and $20 billion, respectively.

34. Critically, LTL was never assigned any of J&J's own, independent talc liabilities as part of the divisional merger; it only assumed the talc liabilities of Old JJCI, which are distinct from those of J&J. Following the divisional merger, New JJCI moved back to New Jersey and continued to operate the consumer healthcare business as normal under the JJCI name, until it was later funneled to a company called Kenvue, Inc. ("Kenvue"), which operates this business to this day. *See* Beville Decl. at Ex. 8. Immediately after the divisional merger, LTL moved to North Carolina and filed for bankruptcy in the Western District of North Carolina.

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[12] Prior to 1979, J&J produced the talc products itself, and its name has been on the products for the entire time they have been sold.

35. Once in bankruptcy, LTL moved for an injunction to prevent talc litigation from going forward against J&J—an injunction that it claimed was essential. From its first day in bankruptcy, LTL's objective was to obtain a release and discharge of J&J's own independent talc liability, not merely to deal with the talc liabilities of Old JJCI that had been assigned to it. But LTL's first bankruptcy case did not go according to J&J's plan.

36. ***First***, the United States Bankruptcy Court for the Western District of North Carolina ordered LTL's first bankruptcy case moved to the District of New Jersey after finding that LTL had used the Texas Two Step to improperly manufacture venue in North Carolina.[13] This deprived LTL of venue before the Bankruptcy Court in North Carolina.

37. ***Second***, the United States Bankruptcy Court for the District of New Jersey took at face value LTL's representations that the Funding Agreement made JJCI's market value (at least $61 billion) available to pay talc claims. *In re LTL Mgmt., LLC*, 637 B.R. 396, 423 (Bankr. D.N.J. 2022). The New Jersey Bankruptcy Court also took at face value LTL's representations that such funding was available under a creditor plan that did not release or discharge J&J from its talc liability.[14]

38. ***Third***, the United States Court of Appeals for the Third Circuit also credited LTL's representations about the Funding Agreement, finding that it was equivalent to an "ATM" that made over $61 billion available to pay talc claims on demand. *In re LTL Mgmt., LLC*, 64 F.4th 84, 109 (3d Cir. 2023).

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13 *See Order Transferring Case to the District of New Jersey* (Beville Decl. at Ex. 33) at 10 (finding that "the Debtor is trying to manufacture venue and is attempting to outsmart the purpose of the statute" and that "the Debtor is not just forum shopping; the Debtor is manufacturing forum and creating a venue to file bankruptcy.").

14 *Id.* at 424 (finding that the resources available under the Funding Agreement were "available upon confirmation of a plan—whether or not the plan is acceptable to J&J or New JJCI, and whether or not the plan offers payors protections under § 524(g).")

39. The Third Circuit decided to "take J&J and LTL at their word" and held that LTL was not in financial distress and, therefore, could not show that LTL's bankruptcy petition served "a valid bankruptcy purpose and was filed in good faith under Code § 1112(b)." *Id.* at 109-110. LTL's first bankruptcy was a failure from J&J's perspective.

40. In response to the Third Circuit's ruling, J&J determined that the mistake it had made was providing LTL with an overly generous Funding Agreement, such that LTL was not financially distressed. Not to be deterred, as soon as its first bankruptcy was dismissed, J&J and LTL replaced the $61 billion Funding Agreement with a new set of agreements worth approximately $30 billion and then LTL immediately re-filed for bankruptcy.

41. J&J's second bankruptcy scheme also did not work out as planned. The tort claimants' committee moved to dismiss LTL's second bankruptcy filing for lack of good faith. This time the New Jersey Bankruptcy Court found cause for dismissal. *See In re LTL Mgmt., LLC*, 652 B.R. 433 (Bankr. D.N.J. 2003), *aff'd*, 2024 WL 3540467 (3d Cir. July 25, 2024).

42. Even after giving away close to $31 billion in alleged funding to pay talc claims, LTL still could not show that it was in financial distress. *Id.* at 456. After LTL was thrown out of Bankruptcy Court a second time, all stays and injunctions terminated, and the talc victims' access to the civil justice system was restored. The Third Circuit affirmed the New Jersey Bankruptcy Court's ruling on July 25, 2024. *See In re LTL Mgmt., LLC*, No. 23-2971, 2024 WL 3540467 (3d Cir. July 25, 2024).

D. Events Leading to J&J's Third Bankruptcy

43. Prior to 2023, the law firms involved in talc litigation were well known. In 2017 the Joint Panel on Multidistrict Litigation established a multidistrict litigation, *In re: J&J Talcum Powder Marketing, Sales Practices, and Products Litigation*, MDL 2738 (the "MDL").

44. The MDL has Court-appointed leadership to represent the interests of women suffering or who had died from ovarian cancer due to their talcum powder exposure. Leadership has remained aligned with the hundreds of firms representing women with ovarian cancer, zealously prosecuting these cases in the MDL for almost eight years. At the time of the first bankruptcy, the MDL was on the verge of trial with its first ovarian cancer case.

45. Law firms that historically specialize in representing claimants with mesothelioma were also aligned. Every successful verdict against J&J and JJCI—whether involving ovarian cancer or mesothelioma—laid bare the fact that J&J's talc products contained the presence of asbestos and could cause both mesothelioma and ovarian cancer.

46. During the late stages of LTL's first bankruptcy a new group of law firms emerged (the "Supporting Law Firms"). Prior to 2023, some of the Supporting Law Firms had never filed a single talc lawsuit against J&J or any of its affiliates. Nor had these firms participated in a single proceeding in the MDL over its eight-year history, including the *Daubert* proceedings where the general causation issues addressing talc exposure and ovarian cancer were heard and considered and expert opinions were held admissible.[15]

47. Many of the Supporting Law Firms set out to sign up as many "talc claimants" as possible regardless of their illness. Most of their clients hold non-ovarian gynecological cancer claims ("Gynecological Claims") for which there is presently no expert evidence that could be presented to a jury on the issue of causation. These claims are "non-compensable."

[15] *In re Johnson & Johnson*, 509 F. Supp. 3d 116, 135-162 (D.N.J. 2019) (holding admissible the following opinions of the plaintiffs' experts: (i) there is a link between use of talcum powder and ovarian cancer, (ii) the use of talc could cause inflammation and oxidative stress, (iii) talc products contained asbestos, (iv) talc users were exposed to asbestos, and (v) general causation between the use of talc products and ovarian cancer).

48. The claimant may have suffered an injury, but she has no legal basis to connect it to talc, much less to seek compensation from J&J or Red River. This contrasts with the holders of ovarian cancer claims ("Ovarian Claims"), who have won multi-billion-dollar judgments against J&J and its affiliates after jury trials. *See Ingham v. Johnson & Johnson*, 608 S.W.3d 663 (Mo. Ct. App. 2020), *cert. denied*, *Johnson & Johnson v. Ingham*, 141 S.Ct. 2716 (2021).

49. There is no doubt as to why the Supporting Law Firms want to represent holders of non-compensable claims or why they would spend funds amassing large inventories of those claims. Their motivation is purely financial and is key to understanding J&J's third bankruptcy attempt. Holders of non-compensable claims, and the law firms that represent them, have a clear interest in facilitating a settlement ***in bankruptcy***.

50. ***Outside of bankruptcy***, their claims have no value. If they litigate now, they will lose because they cannot come forward with evidence showing a causal link between the non-ovarian gynecological cancers and exposure to J&J's talc products—*i.e.*, this evidence does not exist. As J&J's lawyer, James Murdica, testified, J&J has been steadfast in its unwillingness to pay anything to settle their claims outside of bankruptcy.[16] The law firms that decided to invest in J&J's bankruptcy scheme have always needed a path to payment that avoids the civil justice system. From J&J's perspective, this was a positive development.

51. At first glance, a tortfeasor would seem to have little incentive to settle with someone whose claim is unenforceable. But to launch its third bankruptcy, J&J needed votes to secure its ability to put a newly concocted subsidiary into bankruptcy and try to force a release of J&J's independent tort liability on objecting talc victims who hold legitimate, compensable claims.

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16 *See* LTL 2.0 Jun. 28, 2023 Hr'g Tr. (Beville Decl. at Ex. 2) at 111:13-111:17 ("Johnson and Johnson never knowingly paid on a claim for a non-ovarian gynecological cancer.").

52. Hence the bases of the bargain: garnering support for its illicit efforts from non-compensable claims offers substantial value to J&J. The flood of non-compensable claims provided J&J with the very partner that it needs to make a third run at bankruptcy.

53. The Supporting Law Firms need a bankruptcy settlement designed to pay non-compensable claims with minimal scrutiny so they can collect their contingency fees. The ideal settlement process would be one that they control—*i.e.*, they will select the trustee or appoint themselves to the trust advisory committee. Thus, J&J can assert the appearance of claimant support for its third bankruptcy case in exchange for paying non-compensable claims.

54. A deal was struck. J&J proposed a plan that would enable the Supporting Law Firms to monetize the negative value, non-compensable claims. There would be no need to file cases. There would be no need to try any individual cases.

55. The firms could simply present their claims (with little evidentiary support beyond a simple declaration) to their chosen trustee (who, conveniently, they would oversee) and get paid. The settlement and plan structure would enable holders of non-compensable claims to be paid (albeit at low amounts per individual)[17] and thereby ensure that the law firms that represent them receive a contingency fee payment for an otherwise negative value claim.

56. With the support of these "creditors," J&J could claim that it enjoys the support of most talc claimants and use that to push the Court to allow the bankruptcy case to proceed. J&J's plan effectively tries to leverage the support of holders of non-compensable claims to silence the holders of compensable, scientifically supported Ovarian Claims.

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[17] While each individual payment to the holder of a non-compensable claim is low (*i.e.*, $1,500), the cumulative amount is substantial (particularly when future claims are taken into account).

57. The *quid pro quo* is that holders of non-compensable claims get paid and J&J uses their "votes" to extinguish the compensable claims (current and future) by forcing them to accept the settlement J&J wants—*i.e.,* no more civil justice system, no more verdicts, no more Article III judges and state court judges permitting experts to testify, and no payments that approach fair value for ovarian cancers. Most of the "votes" cast in favor of J&J's Plan were cast by holders of non-compensable claims. Based on this history, it is clear that this bankruptcy is a bad-faith, third effort to accomplish what the law does not permit.

E. The Problems with J&J's Third Bankruptcy Case

58. In a typical chapter 11 bankruptcy case, the debtor is an operating company that seeks to confirm a plan that can survive appeal as quickly as possible in order to exit bankruptcy and go back to its business. That is not what is afoot here.

59. J&J's apparent goal is to use bankruptcy to impose delay on the holders of Ovarian Claims, which lets it avoid paying judgments and further exhaust victims. The problems with this case, from a technical bankruptcy standpoint, are legion, but ultimately boil down to the fact that J&J, as a non-debtor, cannot obtain a discharge or its equivalent in this bankruptcy case with or without section 524(g).

60. **First**, J&J cannot obtain a discharge or its equivalent outside a section 524(g) injunction. Fifth Circuit case law dating back over 30 years holds that a non-debtor is not entitled to a discharge under section 524(e), which provides that the "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." 11 U.S.C. § 524(e).[18] The Fifth Circuit has always been a hostile jurisdiction to parties seeking

[18] *See Bank of N.Y. Tr. Co. v. 9 Official Unsecured Creditors' Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009); *In re Coho Resources, Inc.*, 345 F.3d 338, 342 (5th Cir. 2003); *Hall v. Nat'l Gypsum Co.*, 105 F.3d 225, 229 (5th Cir. 1997); *Feld v. Zale Corp.*, 62 F.3d 746 (5th Cir. 1995); *Matter of Edgeworth*, 993 F.2d 51, 53–54 (5th Cir. 1993).

nonconsensual non-debtor releases. Fifth Circuit case law is not going to change considering the Supreme Court's ruling in *Purdue*, which confirmed that the Fifth Circuit's longstanding interpretation of the Bankruptcy Code on this issue is and has always been correct.

61. **Second**, a section 524(g) injunction cannot be used to discharge or resolve J&J's or Kenvue's independent talc liability. *See In re Quigley Co*., 676 F.3d 45, 60 (2d Cir. 2012) (holding claims against non-debtor based on presence of its name and logo on the debtor's products based on "apparent manufacturer" theory of liability fell outside the scope of section 524(g)); *In re Combustion Eng'g, Inc*., 391 F.3d 190, 233 (3d Cir. 2004) (sections 105(a) and 524(g) do not authorize a channeling injunction over independent, non-derivative third-party actions against non-debtors); *see also Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 147 (2009) (the "Court of Appeal" understood that "§ 524(g)" was "not intended to reach non-derivative claims").[19]

62. Section 524(g) has no effect on the independent liability of a non-debtor that does not and cannot receive a discharge in a bankruptcy of another entity. J&J cannot obtain the release or discharge it demands, which means that there will never be a "final order" in this case that triggers J&J's obligation to pay.[20]

63. Section 524(g)(4)(A)(ii)—which is the part of section 524(g) that authorizes a Court to enjoin asbestos claims against non-debtor third parties—provides that the third party must be "alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the

[19] By its terms as relevant here, section 524(g) imposes an injunction as a supplement to a debtor's discharge (§ 524(g)(1)(A)) to pay claims against a debtor that will be channeled to a trust (§ 524(g)(2)(B)(i)(I)) and can be extended to a parent or affiliate only to the extent that the parent or affiliate's liability is "alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor [and if certain other enumerated requirements are met]" (§ 524(g)(4)(A)(ii)). Thus, section 524(g) has no effect on the independent liability of a non-debtor that does not and cannot receive a discharge in a bankruptcy of another entity (§ 524(e)).

[20] *See* Plan at § 1.1.63 (definition of "Final Order"), § 4.1 ("Talc Personal Injury Trust" established on the "Effective Date"), § 4.9 (Contribution of Certain Assets), and § 8.2 ("Conditions Precedent to the Effective Date of the Plan" include the "Confirmation Order" becoming a "Final Order").

debtor," and the "alleged liability of such third party" must "arise by reason of" one of the requirements enumerated in subsections (I) through (IV). 11 U.S.C. § 524(g)(4)(A)(ii).

64. Courts have interpreted the phrase "claims against[] or demands on the debtor" to mean that the non-debtor third-party's liability must be ***derivative*** of the debtor's liability and ***not independent*** of the debtor's liability.[21] When non-debtor parties, including those within the debtor's corporate family, face liability based on their own ***independent conduct*** they cannot obtain a discharge of such liability under section 524(g). To obtain a discharge of its own independent asbestos liability, a company must commence its own bankruptcy proceeding.

65. Here, the relevant allegations related to J&J's talc liability are based entirely on its own independent conduct. They allege, among other things, (i) J&J's failure to warn customers that it was selling products that it knew contained asbestos and posed significant health risks, (ii) J&J's breach of warranty (expressed and implied) based on the fact that J&J knew that its products were not safe for their reasonably anticipated and intended use, (iii) civil conspiracy based on J&J's own fraudulent, willful, and malicious conduct, (iv) concert of action based on J&J's decision to suppress information regarding the risk of cancer posed to women using its talc products, and (v) defective manufacture and design based on J&J's failure to adopt reasonable and safer designs for its products (*i.e.*, J&J could have used cornstarch instead of contaminated talc).

66. The list goes on, but the point is that this is **not** a situation where J&J's talc liability fits within the scope of section 524(g)(4)(A)(ii). J&J demands a discharge that includes claims

[21] *See Quigley*, 676 F.3d at 60 (holding claims against non-debtor relying on presence of its name and logo on the debtor's products, based on "apparent manufacturer" theory of liability, fell outside the scope of section 524(g)); *Combustion Eng'g*, 391 F.3d at 233 (sections 105(a) and 524(g) do not authorize a channeling injunction over independent, non-derivative third-party actions against non-debtors).

based on its own, independent, fraudulent, willful, and malicious misconduct. Section 524(g) does not provide for this.

67. Kenvue's talc liability is also outside the scope of section 524(g)(4)(A)(ii).[22] Kenvue is alleged to be liable as the successor to Old JJCI based on the doctrine of successor liability. Successor liability is not a cause of action. It cannot be asserted by or on behalf of a company whose operating assets were transferred to a successor entity.[23]

68. Rather, successor liability is an equitable remedy or theory of liability that enables claimants (who themselves suffered an injury) to recover from a successor "when the successor

[22] J&J agreed to indemnify Kenvue for talc claims. Thus, if Kenvue cannot get a discharge, J&J cannot get a full discharge, which is why J&J will not provide any funding for a trust in this case unless Kenvue, along with other parties to whom J&J may owe an obligation to indemnify, are released.

[23] *See*, *e.g.*, *Robbins v. Physicians for Women's Health, LLC*, 90 A.3d 925 (Conn. 2014) ("[W]hile successor liability may give a party an alternative entity from whom to recover, the doctrine does not convert the claim to an in rem action running against the property being sold. Nor does the claim have an existence independent of the underlying liability of the entity that sold the assets."); *Alesco Preferred Funding VIII, Ltd. v. ACP RE, Ltd.*, 74 Misc. 3d 1230(A), 164 N.Y.S. 3d 808 (N.Y. Sup. Ct., N.Y. Cty. Apr. 11, 2022) ("alter-ego and successor liability claims" cannot be "maintained as separate and distinct causes of action in New York"), *aff'd* 209 A.D.3d 558 (1st Dep't 2022); *Featherston v. Katchko & Sons Constr. Servs., Inc.*, 244 A.3d 621, 733 (Conn. App. Ct. 2020) ("Successor liability is a theory of liability to be alleged in support of a claim rather than raised as an independent claim."); *Getintent USA, Inc. v. Sileo, LLC*, No. 650980/2019, 2019 WL 4962549, at *3 (N.Y. Sup. Ct., N.Y. Cty. Oct. 8, 2019) ("The third cause of action for successor liability is also dismissed … as successor liability does not constitute an independent cause of action but is merely a theory of recovery on an underlying liability"); *Columbia State Bank v. Invicta Law Group PLLC*, 402 P.3d 330, 332 (Wash. Ct. App. 2017) ("a claim for successor liability follows an underlying cause of action" and "merely exists to extend 'the liability on that cause of action to a corporation that would not otherwise be liable.'"); *Brown Bark III, L.P. v. Haver*, 219 Cal. App. 4th 809, 823, 162 Cal. Rptr. 3d 9, 20 (Cal. Ct. App. 2013) ("[S]uccessor liability is not a separate claim independent of Brown Bark's breach of contract claims. To the contrary, successor liability is an equitable doctrine that applies when a purchasing corporation is merely a continuation of the selling corporation or the asset sale was fraudulently entered to escape debts and liabilities."); 19 C.J.S. CORPORATIONS § 901 (2023) ("Successor liability does not create a new cause of action against the purchaser of a corporate predecessor so much as it transfers the liability of the predecessor to the purchaser."); *but see In re Emoral, Inc.*, 740 F.3d 875, 880-82 (3d Cir. 2014) (applying New York law and holding that successor liability is a "cause of action" as opposed to "an *equitable remedy*"). Since *Emoral* was decided in 2014, New York courts have held that successor liability is a remedy and is not a cause of action. *See Alesco*, 164 N.Y.S. 3d 808; *Getintent USA*, 2019 WL 4962549. To the extent that *Emoral* was based on an *Erie* guess, the Third Circuit guessed wrong. If *Emoral* were decided today, the Third Circuit could not reach the conclusion that it did and claim to be following applicable New York state law under section 541(a).

may be considered a mere continuation of the predecessor" or "when the transaction was fraudulent." *Mozingo v. Correct Mfg. Corp.*, 752 F.2d 168, 174 (5th Cir. 1985). The cause of action is the underlying tort claims held by the claimant. State law simply makes the successor liable for the tort claim when certain conditions are met.

69. Here, Kenvue checks the "mere continuation" or "fraudulent transaction" box. The doctrine of successor liability extends whatever talc liability Old JJCI had prior to the divisional merger to Kenvue. This issue was recently litigated in a lawsuit in Illinois where the jury found Kenvue responsible for 70% of the damages.[24]

70. It is important to recognize that LTL and/or Red River do not have claims against Kenvue based on the doctrine of successor liability.[25] Nor is Kenvue's talc liability derivative of LTL's or Red River's talc liability. Properly understood, the doctrine of successor liability is an equitable remedy that makes Kenvue liable to talc victims because Kenvue is a mere continuation

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[24] *See* Beville Decl. at Ex. 34 (Verdict Form & Jury Instructions) ("We, the jury, find for Stephanie Salcedo, as Administrator of the Estate of Theresa Garcia, deceased, against the following defendant or defendants: Johnson & Johnson YES; LLT Management LLC NO; Johnson & Johnson Holdco (NA) Inc. (Successor) YES; ***<u>Kenvue, Inc. (Successor) YES</u>***. …. Assuming that 100% represents the total combined legal responsibility of all entities that proximately caused Theresa Garcia's injury and death, we find the percentage of legal responsibility attributable to each as follows: Johnson & Johnson 15%; LLT Management LLC 0%; Johnson & Johnson Holdco (NA) Inc. 15%; ***<u>Kenvue, Inc. 70%</u>***") (emphasis supplied); *accord Kelly*, 2022 WL 16575763; *Jackson*, 2022 WL 16575691.

[25] A debtor can only assert a cause of action under section 541(a) if the cause of action was one that the debtor could have asserted on its own behalf as of the commencement of the case under applicable state law. *See Butner v. United States*, 440 U.S. 48, 55 (1979); *Matters of Educators Grp. Health Trust*, 25 F.3d 1281, 1284 (5th Cir. 1994). State law is determined by rulings made by state courts. *See West v. Am. Tel. & Tel. Co.*, 311 U.S. 223, 236 (1940); *Erie R.R. Co. v. Tompkins*, 306 U.S. 103 (1938).

of the company that was once called "JJCI" or "Old JJCI."[26] All talc claims against Kenvue fall outside the scope of section 524(g)(4)(A)(ii).[27]

71. The fact that section 524(g) cannot be used to discharge J&J and Kenvue of their own talc liabilities should not be surprising. Section 524(g) was not created to facilitate a fraudulent bankruptcy case like this one. Section 524(g) is modeled after the trust/injunction in the *Johns-Manville* case where the trust was funded, in part, with 80% of the reorganized debtor's common stock. *See* H.R. Rep. No. 27692 at § 111. Because of this, the value of the trust's assets depended on the market's belief that the reorganized debtor was shielded from liability for future claims. Even a high-level comparison of this case to *Johns-Manville* (and the asbestos bankruptcies of the other corporate enterprises that have placed themselves into bankruptcy) shows that what J&J is attempting here is simply not right.

72. **Third**, Fifth Circuit case law is also hostile to attempts to use bankruptcy to gain a litigation advantage, which is exactly what this case is. *See Matter of Little Creek Dev. Co.*, 779 F.2d 1068 (5th Cir. 1986). Courts in the Fifth Circuit have rejected attempts to use bankruptcy to gain control over and settle derivative claims asserted against a debtor's insiders and affiliates.[28]

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[26] J&J structured the initial divisive merger in such a way that Old JJCI "ceased to exist." *See* Beville Decl. at Ex. 40 (Declaration of John K. Kim) at ¶ 16. Old JJCI is not and has never been a debtor. Red River has no successors.

[27] Even if Kenvue could somehow show that its talc liability is derivative of Red River's talc liability, it could not show that such liability "arises by reason of" the requirements set forth in subsections I through IV of section 524(g)(4)(A)(ii). Kenvue (I) has never owned a financial interest in Red River, a past or present affiliate of Red River, or a predecessor in interest of Red River; (II) it was not involved in the management of Red River or a predecessor in interest of Red River; (III) it has not provided insurance to Red River; and (IV) it was not involved in any transaction changing the corporate structure of Red River or a related party.

[28] *See In re Brazos Emergency Physicians Ass'n*, 471 Fed. Appx. 393, 394 (5th Cir. June 22, 2012); *In re Antelope Techs., Inc.*, 431 Fed. Appx. 272, 275 (5th Cir. June 24, 2011); *Investors Group, LLC v. Pottorff*, 518 B.R. 380, 384 (Bankr. N.D. Tex. 2014).

Similarly, using bankruptcy to suppress the value of tort claims asserted against a non-debtor should be rejected as an illegitimate use of chapter 11. It is the epitome of bad faith.

73. **Fourth**, non-compensable claims must be disallowed and cannot be permitted to vote on a chapter 11 plan. Only "allowed claims" count for purposes of determining class acceptance under section 1126(c). 11 U.S.C. § 1126(c). To be "allowed," a claim must be enforceable "against the debtor" under "applicable law." 11 U.S.C. § 502(b)(1). J&J cannot conjure up thousands of claims that are unenforceable under applicable law, promise to pay them $1,500 if they vote yes, and then use those votes to declare class acceptance that it can lever to keep the case going. The Bankruptcy Code does not permit such shenanigans.

74. **Fifth**, J&J's proposed process to have every claim vote at $1 is inequitable. Ovarian cancer claims have been proven through jury trials and settlements to have substantial value such that the "amount" of the claims far exceed the non-ovarian gynecological claims for which there is no evidentiary link to J&J's talc products.

75. The Bankruptcy Code protects holders of large, compensable claims from being deemed to be part of an accepting class where, as here, the debtor effectively pays a large number of holders of small, non-compensable claims to vote for a plan. For such class of claims to be an accepting class, claimants who hold "at least two-thirds in amount" of the claims in such class must vote to accept the plan. 11 U.S.C. § 1126(c).

76. The "amount" of the claims is a significant requirement that poses a substantial roadblock to confirmation, which the Debtor tries to overcome by using a "one claim, one dollar" voting strategy. In the context of this case, where J&J is effectively stuffing the ballot box with non-compensable claims, acceptance is not just a question of ***numerosity***. It is also a question of

value. Ovarian cancer claims have more value and are larger in amount than the gynecological claims J&J has cobbled together to overwhelm the only impaired class in this bankruptcy.

77. The "value issue" does not disappear under section 524(g). Section 524(g) does not come into play until the debtor has first achieved compliance with section 1129. *See* 11 U.S.C. § 524(g)(1)(A). A plan cannot be confirmed under section 1129 without the acceptance of "at least one class of claims that is impaired." 11 U.S.C. § 1129(b)(10). The only impaired class of claims under J&J's plan is Class 4—"Channeled Talc Personal Injury Claims."

78. Section 524(g) cannot be tapped unless at least two-thirds in ***amount*** of the talc claims in Class 4 have voted to accept the plan. J&J tries to circumvent this requirement—or read it out of the Code entirely—by asking the Court to estimate all talc claims in Class 4 at $1 for the purpose of determining whether the class is an accepting class. But to do so ignores the reality—as reflected in J&J's own past treatment of Gynecological Claims and Ovarian Claims—that not every claim has the same worth. Under J&J's logic, acceptance is just a question of numerosity.

79. This path necessarily leads to estimation. To ensure that voting power is properly aligned with ultimate claim value, this Court will have to estimate and value all the talc claims in Class 4 for voting purposes. *See Quigley*, 346 B.R. at 654 (votes must be estimated based on the "nature and impairment of each claimant's injury" so that "holders of relatively small claims" cannot disenfranchise "the more severely impaired who hold larger claims.").

80. Estimation will be mandatory under section 502(c) because it will have to take place before J&J's Plan can be confirmed—*i.e.*, to avoid undue delay in the "administration of the case." 11 U.S.C. § 502(c). The Court cannot determine if Class 4 is an accepting class without first establishing the value(s) of the talc claims in that Class for voting purposes. And the Court cannot

determine whether the Plan satisfies section 1129 without first determining if Class 4 is an accepting class. J&J's Plan cannot be confirmed without an estimation proceeding.

81. Estimation will involve discovery. And estimation will effectively put before this Court issues like causation (*i.e.*, can holders of claims based on non-ovarian gynecological cancers with no scientific link to talc vote and, if so, how should they be valued) and damages (*e.g.*, how much is the life of a young mother worth whose children watch her suffer and die from ovarian cancer).

82. These are issues that the parties have spent years litigating in the MDL and the tort system. Further, the results of any estimation proceeding could be considered material information that must be included in any disclosure statement. How can anyone vote on a Plan without knowing how their claims are being valued and whether those values align with values in the tort system? The answer is they cannot.

83. **Sixth**, J&J's classification scheme does not work either. The Code mandates that each claim in a particular class receive the "same treatment." 11 U.S.C. § 1123(a)(4). Tort claims receive the same treatment when they are valued and paid in a manner consistent with how they would be valued and paid in the tort system.[29] The most "conspicuous inequality" or form of differing treatment that the Code prohibits is providing for different payment percentages to members in a single class. *In re AOV Indus., Inc.*, 792 F.2d 1140, 1152 (D.C. Cir. 1986).

84. Accordingly, a debtor cannot put all tort claims into a single class and create a system under which a favored sub-group is paid 100% of the value of its claims and a disfavored sub-group is paid 5% of the value of its claims. But this is precisely what J&J's Plan does. Talc

[29] *See In re W.R. Grace & Co.*, 729 F.3d 311, 327 (3d Cir. 2013) (following *In re Joint E. & S. Dist. Asbestos Litig.*, 982 F.2d 721, 749 (2d Cir. 1992)).

claims that the tort system values at zero dollars will receive $1,500 (a recovery of over 1500%), and talc claims involving ovarian cancer will receive an average recovery of less than 5%.

85. Compliance with section 1123(a)(4)'s same treatment requirement is mandatory. J&J will not cure the section 1123(a)(4) violation by increasing the payment percentage for ovarian cancer claims. That would cost tens of billions of dollars, which J&J has adamantly refused to pay. The point of this case is to suppress tort claim values and underpay legitimate tort victims in amounts satisfactory to J&J but woefully inadequate to compensate J&J victims for their injuries.

86. The other option to eliminate the section 1123(a)(4) issue would be to place ovarian cancer claims in a separate class, but then J&J would have to obtain the support of 75% of the ovarian cancer claims to satisfy section 524(g).[30] Section 524(g) does not contain any cross-class cramdown mechanism that permits a debtor to confirm a plan that includes a channeling injunction in the absence of overwhelming claimant support from every affected class.[31]

87. **Seventh**, J&J cannot solicit votes based on false and misleading information. *See* 11 U.S.C. § 1125(b). Yet the materials upon which J&J's solicited votes on its plan are nothing more than a propaganda piece. The Debtor's letter in support of its plan alone proves this point.

88. The Debtor claims that "holders of qualifying ovarian cancer claims would likely receive an average recovery of between $75,000 and $150,000 on each claim." But this is mathematically impossible. Given the number of current and future claims that qualify for the $1,500 payment, holders of ovarian cancer claims will not receive an average recovery of between $75,000 and $150,000 on each claim. J&J's cash contributions, which will be paid over the next 25 years, do not provide for sufficient funding to reach these values.

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30 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb).

31 *Federal-Mogul*, 684 F.3d at 361 (discussing the absence of a cramdown provision for § 524(g)).

89. The Debtor goes on to assert that the "anticipated amounts to be paid under the Plan would substantially exceed recoveries claimants received in litigation in the tort system." The Debtor then repeats J&J's favorite talking point about how J&J claims to "have prevailed in 16 of the 17 cases, with plaintiffs in those 16 cases recovering no money."

90. But this is inaccurate. The truth is that in the past thirteen months J&J has lost ***four major trials*** in California,[32] Illinois,[33] Oregon,[34] and South Carolina[35] with each jury finding that its talc products contained asbestos.[36] Newly published scientific evidence is further confirmation of the science getting stronger.[37]

91. To evade the civil justice system, all J&J needs is for this Court to enjoin all talc litigation against it for years and years. If the Court does not dismiss this case and the Debtor must cure its disclosure statement and voting issues, the Debtor will be firmly entrenched in bankruptcy and claimants will continue to die without compensation for their injuries. J&J will have won, even if it merely achieves delay, regardless of whether it can confirm a plan that can survive appeal. J&J's improper solicitation is another basis on which to dismiss this case.

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[32] Brendan Pierson, *J&J must pay $18.8 million to California Cancer Patient in Baby Powder Suit*, Reuters, July 18, 2023, https://www.reuters.com/legal/jj-must-pay-188-mln-california-cancer-patient-baby-powder-suit-2023-07-18/. *See* Beville Decl. at Ex. 36.

[33] Cailey Gleeson, *Court Orders Johnson & Johnson and Kenvue to pay $45 million in Talcum Baby Powder Lawsuit*, Apr. 22, 2024, https://www.forbes.com/sites/caileygleeson/2024/04/20/court-orders-johnson--johnson-and-kenvue-to-pay-45-million-in-talcum-baby-powder-lawsuit/. *See* Beville Decl. at Ex. 35.

[34] Brendan Pierson, *J&J must pay $260 million in latest talc trial, Oregon jury says*, Reuters, June 4, 2024, https://www.reuters.com/legal/jj-must-pay-260-million-latest-talc-trial-oregon-jury-says-2024-06-04/. *See* Beville Decl. at Ex. 37.

[35] BeLynn Hollers, *South Carolina Jury Awards $63.4 Million to Johnson & Johnson Asbestos Victim*, Business Wire August 15, 2024, https://www.businesswire.com/news/home/20240815967067/en/South-Carolina-Jury-Awards-63.4-Million-to-Johnson-Johnson-Asbestos-Victim. *See* Beville Decl. at Ex. 38.

[36] As with any jury verdict, these findings are subject to judicial review and appeal by J&J.

[37] Katie M O'Brien et al., *Intimate Care Products and Incidence of Hormone-Related Cancers: A Quantitative Bias Analysis*, J. OF CLINICAL ONCOLOGY, May 2024. *See* Beville Decl. at Ex. 3.

92. Again, to assume that J&J needs to confirm a plan that survives an appeal is to miss the point of this case entirely. J&J does not need any plan to go effective to create years of delay. J&J's goal is to use delay to evade paying for its tortious behavior until its exhausted ovarian cancer victims die or finally concede to J&J's coercion and agree to whatever paltry offer J&J deigns to make. This is not how the bankruptcy system is supposed to work. It is meant to help and rehabilitate honest, but unfortunate debtors, not to relieve wealthy non-debtors of having to face their accusers in the civil justice system. This case presents a clear effort to make an end-around the trial courts and juries who will hear the evidence and hold J&J accountable for the harm it has caused. This is a bad faith use of the bankruptcy system. This case should be dismissed.

JURISDICTION

93. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicate for the relief requested herein is section 1112(b).

RELIEF REQUESTED

94. By this Motion, the Coalition seeks an order dismissing the Chapter 11 Case pursuant to section 1112(b) of the Bankruptcy Code.

ARGUMENT

95. The Court should dismiss this Chapter 11 Case for cause. Section 1112(b)(1) of the Bankruptcy Code provides that a chapter 11 case may be dismissed "for cause":

> Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1); *see also In re Ford Steel, LLC*, 629 B.R. 871, 879 (Bankr. S.D. Tex. 2021) (the "inquiry under § 1112 is case-specific") (quotation omitted).

96. The Bankruptcy Code does not define "cause," but provides a non-exhaustive enumerated list of examples. 11 U.S.C. § 1112(b)(4). Here, at least three reasons establish "cause" that requires dismissal: (I) the Debtor's prosecution of this case for the benefit of J&J is a bad faith use of the bankruptcy system; (II) the Debtor cannot effectuate or confirm a plan within a reasonable time (or ever); and (III) the Debtor is not in financial distress or improperly manufactured such distress solely for bankruptcy purposes, such that it should be disregarded.

I. Prosecuting This Case Solely to Benefit J&J Constitutes Bad Faith

97. Although not an enumerated "cause" for dismissal under section 1112(b), "a finding of bad faith may serve as cause for dismissal." *Little Creek*, 779 F.2d at 1071 ("Every bankruptcy statute since 1898 has incorporated literally, or by judicial interpretation, a standard of good faith for the commencement, prosecution, and confirmation of bankruptcy proceedings.").[38]

98. Bankruptcy has two "twin objectives[:] 'preserving going concerns and maximizing property available to satisfy creditors.'" *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 50 (2008) (quoting 203 *North LaSalle*, 526 U.S. at 453 (1999)).

99. Obtaining relief for a non-debtor entity is not a legitimate use of bankruptcy. All the more so when the relief would "permanently and forever" foreclose current and future tort claimants from recovering from a wealthy, Fortune 50, triple A-rated company that has not and will not place "virtually all its assets on the table for its creditors." *See Purdue*, 144 S.Ct. at 2078.

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[38] *In re HONX, Inc.*, No. 22-90035, 2022 WL 17984313, at *1 (Bankr. S.D. Tex. Dec. 28, 2022); *In re Dunes Hotel Assocs.*, No. C/A 94-75715, 1997 WL 33344253, at *16 (Bankr. D.S.C. Sept. 26, 1997), *aff'd* 245 B.R. 492 (D.S.C. 2000) (dismissing case where debtor's continued prosecution of the case was solely to terminate a lease for the benefit of its owners).

Here, the Debtor cannot show any legitimate objective for being in chapter 11; its Chapter 11 Case is undertaken solely for the benefit of non-debtor J&J and its non-debtor affiliates.

A. The Debtor Has No Going Concern to Preserve or Reorganize

100. ***First***, the Debtor has no "going concerns" to preserve. *Fla. Dep't of Revenue*, 554 U.S. at 50; *see In re 15375 Mem'l Corp*., 589 F.3d 605, 619 (3d Cir. 2009) (finding the debtor did not maintain a going concern where it had no employees, office, or business other than the handling of certain litigation); *In re Zamora-Quezada*, 622 B.R. 865, 885-86 (Bankr. S.D. Tex. 2017) (debtor ineligible for Chapter 11 where, among other things, debtor's "few assets," "virtually no income," and lack of additional business prospects raised the question of "what is [the] Debtor being rehabilitated for").

101. Red River is not an operating entity, but a liability dump specially created to serve as a bankruptcy vehicle. The Debtor conducts no operations. It has no employees, office, or business. Instead, it merely holds a limited royalty stream and a funding agreement that have no synergistic going-concern value. Its sole function is to handle talc claims in bankruptcy. This Debtor cannot credibly contend that it is in bankruptcy to preserve a going concern.

B. This Case Does Not Maximize Value for Creditors

102. ***Second***, maximizing value for creditors is another key objective of chapter 11, but this Chapter 11 Case does nothing to maximize value for creditors. *Fla. Dep't of Revenue*, 554 U.S. at 50. To the contrary, it is nothing other than a litigation tactic designed to suppress the value of valid claims. Two cases—one from the Fifth Circuit and one from the Third Circuit (where J&J's first and second bankruptcy cases were filed)—illustrate this point.

103. The **first** case is *In re Antelope Technologies, Inc*., 431 Fed. Appx. 272, 275 (5th Cir. June 24, 2011). In *Antelope*, the company's management and insiders, who were defendants in a shareholder derivative lawsuit, placed the company into bankruptcy so that the company could

assert that the lawsuit was an asset owned by the company in bankruptcy. *In re Antelope Techs., Inc.*, No. 07-31159-H3-11, 2010 WL 2901017, at *9 (S.D. Tex. July 21, 2010).

104. The company, acting at the defendants' direction and control, then proposed a chapter 11 plan that conveniently released the derivative claims. 431 Fed. App'x at 273. The Bankruptcy Court confirmed the company's plan, which then went effective and was fully implemented. *Id*. On appeal, the District Court "vacated the [confirmation] order" and held that the chapter 11 petition was filed as a litigation tactic—*i.e.*, a scheme to gain control over the litigation against the insiders—and, therefore, was not "filed in good faith." *Id.*

105. On remand, the Bankruptcy Court dismissed the case as not having been "filed in good faith" based on, *inter alia*, the "terms of the proposed plan," which provided the litigation targets with releases. *Id.* The Bankruptcy Court went so far as to describe the scheme to control the litigation and release the defendants as "illegal" and "unethical." *Antelope*, 2010 WL 2901017, at *5. When bankruptcy is used for this purpose, value for creditors is destroyed rather than maximized.

106. The **second** case is *In re 15375 Memorial Corp*., 589 F.3d 605 (3d Cir. 2009), which involved a similar fact pattern, except the parties who controlled the debtor were trying to use bankruptcy to thwart litigation involving alter ego claims rather than a derivative lawsuit.

107. In *Memorial*, the debtors' insiders and affiliates faced "alter ego claims" arising from their operation of oil wells, which caused pollutants to enter and contaminate drinking water. *Id*. at 612. To thwart this litigation, the debtors' parent caused the non-operating debtors to file for bankruptcy. Once in bankruptcy, the debtors asserted that "any alter ego claims" against their insiders and affiliates were "property of their estate" and could not be asserted by the plaintiffs who were injured by the affiliates' and insiders' misconduct. *Id*. at 614. The plaintiff moved to

dismiss the debtors' cases for lack of good faith, but the Bankruptcy Court refused to do so. *Id*. at 616.

108. To support its decision to keep the cases, the Bankruptcy Court referred to (a) the benefits of the "automatic stay," (b) the ability of bankruptcy to "centralize" claims into a single "forum," (c) establishing a "bar date to set the number of claims," (d) the ability to create a "known universe of claims," (e) the ability to test whether the plaintiffs had "any legally cognizable claim[s]," (f) the ability to "analyze potentially applicable insurance policies," (g) the fact that certain insurance policies "may respond" to claims, (h) the ability to commence "substantive communications with insurers," (i) the ability to negotiate and propose a settlement of estate claims against insiders (at an amount the insiders were willing to pay), (j) the ability to formulate a plan, and (k) the ability to "continue to manage and search for assets." *Id*. at 620.

109. Although, on its face, this looked like an "extensive list of activities," the District Court and the Third Circuit both held that the Bankruptcy Court erred in failing to dismiss the cases for lack of good faith. *Id.* The problem was that neither the Bankruptcy Court nor the debtors could explain how any of these itemized activities ***maximized value*** for creditors "that would otherwise be unavailable to creditors outside of bankruptcy." *Id*.

110. Regarding the use of bankruptcy to attempt to settle estate claims against insiders, the Third Circuit found that the debtors' decision-maker clearly "lacked an incentive to vigorously negotiate" on the debtors' behalf against the defendants/insiders—*i.e.*, the alter ego claims had more value in the hands of the plaintiff (who believed in its claims) than in the hands of the debtors who were controlled by the defendants. *Id*. at 624.

111. The Third Circuit found that if the debtors and their affiliates "had their way," then the plaintiff "would be left without any opportunity to litigate its alter ego claims" against the non-

debtor affiliates/insiders and, "conveniently, for the [affiliates/insiders]," the debtors "would not bring the claims because they do not believe the claims have value." *Id*. at 626.

112. The Third Circuit faulted the Bankruptcy Court for failing to consider the obvious fact that the debtors were "*primarily concerned*" with protecting their affiliates and insiders and not "*[d]ebtors]*." *Id*. at 624 (emphasis in original). The Third Circuit held that the debtors' petitions "were filed primarily as a litigation tactic" so that its affiliates and insiders could "avoid liability" in civil litigation and, therefore, did not serve "a valid bankruptcy purpose" by preserving a going concern or maximizing the value of the debtors' estates. *Id*. at 619.

113. As with this Chapter 11 Case, the debtors in *Antelope* and *Memorial*, were controlled by non-debtor affiliates or insiders that were trying to use the bankruptcy of a shell company to thwart litigation against themselves. The only difference with this Chapter 11 Case is that the debtors in *Antelope* and *Memorial* could argue that the causes of action asserted against the non-debtor affiliates and insiders were estate claims. Here, the talc claims against J&J and Kenvue are not estate causes of action. *See supra* ¶¶ 67-70. They are independent claims asserted by individuals injured or killed by exposure to J&J's talc products and are available to creditors outside of this Chapter 11 Case.

114. This distinction does not change the fact that in either circumstance using bankruptcy to thwart litigation against non-debtor parties does nothing to maximize value for creditors. As in *Memorial*, if Red River and J&J have their way, then current and future talc claimants will be left without any opportunity to litigate their talc claims against J&J and its non-debtor affiliates and insiders. Conveniently for J&J, these talc claimants would be forced to settle based exclusively on J&J's views about the merits of their claims.

115. As the Bankruptcy Court in *Antelope* clearly understood on remand, these schemes to control litigation against and release non-debtor defendants are "unethical." *Antelope*, 2010 WL 2901017, at *5. After the Bankruptcy Court dismissed the case, the parties who masterminded this failed scheme appealed to the Fifth Circuit and argued that it was improper for the District Court and the Bankruptcy Court to have disturbed the terms of "[a] fully-implemented plan of reorganization" under the "equitable mootness" doctrine. 431 Fed. App'x at 274.

116. But the Fifth Circuit rejected this argument. *Id.* The Fifth Circuit held that there "is a compelling interest in refusing to apply equitable mootness" where, as here, "the petition was not filed in good faith." *Id.* Not even a confirmation order and a fully implemented plan can shield parties who use bankruptcy to gain leverage in pending litigation from justice and accountability—which is why J&J will not pay a penny to any trust unless and until a final, non-appealable order is entered in this case discharging it of its independent talc liability. *See supra* fn. 21.

117. It is easy to see why manufactured bankruptcies like this one do not maximize value for creditors "that would otherwise be unavailable to creditors outside of bankruptcy." *Memorial*, 589 F.3d at 620. When 3M attempted a similar maneuver in 2022, seeking to piggyback on the bankruptcy of its non-operating subsidiary, Aearo Technologies, it asserted that a $1 billion settlement of mass tort claims was "only" possible inside of bankruptcy.[39]

118. But after the subsidiary's bankruptcy case was dismissed for cause, *see In re Aearo Techs., LLC*, Case No. 22-02890-JJG-11, 2023 WL 3938436 (Bankr. S.D. Ind. June 9, 2023), 3M quickly settled for $6 billion outside of bankruptcy.

[39] *See In re Aearo Techs. LLC*, Case No. 22-02890-JJG-11 (Bankr. S.D. Ind. July 26, 2022) (Dkt. No. 12) (Informational Brief of Aearo Technologies LLC at Section V).

119. The only parties that could argue that the value of their claims is maximized by this bankruptcy are holders of non-compensable claims who are unlikely to see any recoveries in the tort system, as there is currently no evidence connecting their harms with talc. Claims for which a debtor owes no compensation are not allowable as they are not enforceable against the debtor. Thus, the holders of non-compensable claims are not entitled to reap a windfall in bankruptcy, particularly when doing so means that holders of compensable claims will be foreclosed from seeking justice and reasonable compensation for their injuries. This case is a litigation tactic designed to suppress the values of legitimate, compensable claims.

C. Seeking a Release or Discharge for a Non-Debtor Is an Improper and Bad Faith Use of Bankruptcy

120. ***Third***, filing for bankruptcy to obtain a release or discharge for a solvent Fortune 50 company is a patently improper use of bankruptcy that reflects a lack of good faith. That has long been the case in the Fifth Circuit, but it is now unquestionably the law of the land in the wake of the Supreme Court's decision in *Purdue*. *See Purdue*, 144 S.Ct. 2071.

121. J&J's attempt to use bankruptcy to evade its independent talc liability closely resembles the playbook that the Sackler family followed with Purdue Pharma. J&J's plan is in many respects more offensive than the plan and settlement in *Purdue*. Critically, J&J is attempting this scheme in a Circuit that has never permitted non-consensual non-debtor releases, and this effort comes after the Supreme Court's *Purdue* decision, which prohibits non-consensual non-debtor releases. Attempting to use bankruptcy for a clearly prohibited purpose is the very essence of a bad faith bankruptcy filing. The parallels between J&J's scheme and Purdue are striking.

122. Purdue "sits at the center of [the opioid epidemic]." *Id*. at 2074. Its signature product—"OxyContin"—was "the most prescribed brand-name narcotic medication" in the United States. *Id*. at 2078. "The company's success propelled [its owners,] the Sacklers[,] onto

the lists 'of the top twenty wealthiest families in America,' with an estimated net worth of $14 billion." *Id*.

123. Similarly, J&J sits at the center of talc litigation, which aims to address the harm caused by J&J's decision to knowingly sell consumer products contaminated with asbestos and causing cancer. The scent of its signature product—J&J baby powder—is associated with newborn babies in the United States and globally. J&J's success and brand recognition provided the Johnson family with generational wealth (estimated to exceed $16 billion).

124. Purdue came under "scrutiny" for "misbranding OxyContin." *Id*. "Thousands of civil lawsuits followed as individuals, families, and governments within and outside the United States sought damages from Purdue and the Sacklers for injuries allegedly caused by their deceptive marketing practices." *Id*. In response, the Sacklers removed "approximately $11 billion" from Purdue, leaving it in a "weakened financial" state. *Id*. at 2079.

125. J&J also came under scrutiny for misbranding its talc products. Thousands of civil lawsuits followed as individuals, families, and governments within and outside the United States sought damages from J&J for injuries allegedly caused by J&J's deceptive marketing practices. In response, J&J removed over $61 billion in operating assets from JJCI, transferred the assets that generate income from recognizable brands such as Tylenol® to newly formed Kenvue, formed a shell subsidiary and gave it the talc liabilities, and then placed the shell company into bankruptcy.

126. Despite being named as defendants in hundreds of lawsuits, the Sacklers refused to file for bankruptcy themselves, but sought to piggyback on Purdue's bankruptcy filing. Thus, Purdue proposed a plan keyed to a settlement with the Sacklers that was contingent upon a release that would bar current and future third-party claims against the Sacklers, including "claims for fraud and willful misconduct." *Id*.

127. That release—effectively a discharge—"would not just prevent suits against [Purdue's] officers and directors but would run in favor of hundreds, if not thousands, of Sackler family members and entities under their control." *Id*. In return, the Sacklers promised to return $6 billion (or 54% of the money they took from Purdue) through payments spread out over 10 years. *Id*. This created a path for individual victims to recover between $3,500 and $48,000. *Id*.

128. Likewise, J&J has refused to file for bankruptcy itself, and instead sought to piggyback on a made-for-bankruptcy debtor entity. J&J then directed the debtor it controls to propose a plan and a settlement with it contingent upon a release that would bar current and future talc claims against J&J, including claims for fraud and willful misconduct.

129. That release—effectively a discharge—would not just prevent suits against J&J and its officers and directors but would run in favor of thousands of other parties. Under J&J's plan, the term "Protected Parties" is defined to include, *inter alia*, all the "Debtor Corporate Parties" listed on Schedule 1 and their respective Representatives, and a long list of retailers and other persons listed on Schedule 3. *See* Plan at §§ 1.1.40 & 1.1.108. Even Walmart Inc. and Target Corporation will get a release without making any contribution to the estate.

130. In return, J&J promised to pay approximately $7 billion on a net present value basis (less than 11% of the $61 billion in assets taken from JJCI) through payments spread out over 25 years. Through this path, individual victims suffering from ovarian cancer will recover only a small fraction of their damages.

131. Purdue solicited votes on its proposed plan. *Purdue*, 144 S.Ct. at 2079. "Thousands of opioid victims voted against the plan," and "many pleaded with the bankruptcy court not to wipe out their claims against the Sacklers without their consent." *Id*. But the *Purdue* Bankruptcy

Court decided that it had the power to bar them from asserting claims against the Sacklers in the civil justice system to facilitate the settlement negotiated by the Sacklers. *Id*. at 2080.

132. J&J claims to have solicited votes on its proposed Plan, although it did so without using a Court-approved disclosure statement. Thousands of talc claimants with compensable claims voted against the Plan and are now urging this Court not to wipe out their claims against J&J without their consent. J&J is asking this Court to steamroll its victims through a hurry-up bankruptcy and forever enjoin them from seeking compensation from J&J and Kenvue in the civil justice system.

133. The Supreme Court reversed the confirmation of the *Purdue* plan, holding that the release of the Sacklers was unauthorized. The Supreme Court said "no" to the Sackler discharge. The Supreme Court found, consistent with long-standing Fifth Circuit precedent, that "a discharge operates only for the benefit of the debtor against its creditors and 'does not affect the liability of any other entity.' § 524(e)." *Id*. at 2081.

134. The Sacklers did not file "for bankruptcy" and did not place "virtually all their assets on the table for distribution to creditors," and yet they sought what essentially amounted "to a discharge" that would "permanently and forever" foreclose opioid claims against them "without the consent of those affected." *Id*. J&J now seeks exactly what the Supreme Court ruled the Sacklers could not get.

135. The Supreme Court held that the Bankruptcy Code does not authorize such a discharge for non-debtors or suggest that the opioid claims could be "bargained away without the consent of those affected, as if the claims were somehow Purdue's own property." *Id*. at 2084. Nonetheless, this is J&J's goal.

136. The Supreme Court found that while "bankruptcy law may serve to address some collective-action problems," it does not provide "a bankruptcy court with a roving commission to resolve all such problems that happen its way, blind to the role other mechanisms (legislation, class actions, multi-district litigation, consensual settlements, among others) play in addressing them." *Id*. The Supreme Court refused to permit a bankruptcy discharge to extinguish claims for wrongful death and fraud asserted by the victims against the Sacklers in a case where the Sacklers had "not agreed to place anything approaching their full assets on the table for opioid victims." *Id.* at 2085.

137. The outcome in *Purdue* controls in this Chapter 11 Case. J&J has not filed for bankruptcy. J&J has not placed virtually all its assets on the table for distribution to talc claimants. Yet it seeks what essentially amounts to a discharge that would permanently and forever foreclose talc claims against it without the consent of those affected. *Purdue* prohibits this Court from granting non-debtor J&J a release or discharge that extinguishes its own liability for bodily injury, wrongful death and fraud asserted by the talc claimants.

138. J&J's bankruptcy scheme is not only a perversion of the bankruptcy system, but it is simply not viable after the Supreme Court's *Purdue* decision. Attempting to use the bankruptcy system for such a patently forbidden purpose indicates a lack of good faith. Until J&J decides to file for bankruptcy itself, it must deal with its talc liability through other mechanisms, such as the MDL and consensual settlements. Seeking a release or discharge for a non-debtor for its own liability is not a proper objective of a chapter 11 case. This Court must dismiss this Chapter 11 Case for lack of good faith.

II. <u>The Debtor Cannot Propose a Confirmable Plan Within a Reasonable Period of Time</u>

139. The absence of "a reasonable possibility of a successful reorganization within a reasonable period of time" is also independent cause for dismissal under section 1112(b). *In re Am. Capital Equip., LLC*, 688 F.3d 145, 161 (3d Cir. 2012); *see In re Timbers of Inwood Forest*

Associates, Ltd., 808 F.2d 363, 371 (5th Cir. 1987) (acknowledging that § 1112(b) provides a remedy of dismissal or conversion where there is no "reasonable possibility of successful reorganization within a reasonable time"), *aff'd*, 484 U.S. 365 (1988).

140. The Debtor's objective is to create a case in which the tort claimants are trapped in bankruptcy indefinitely and J&J continues to operate outside of bankruptcy. This is bad faith. The only way that the Debtor can counter the obvious fact that its bankruptcy is designed to create lethal delay is for the Debtor to contend that it can somehow confirm a plan of reorganization within a reasonable period of time.

141. But the Debtor cannot make this showing. The only plan J&J will permit the Debtor to propose is one that includes a channeling injunction and/or third-party releases protecting J&J from current and future talc claims for J&J's own, independent liability. Given the Supreme Court's ruling in *Purdue* prohibiting non-consensual non-debtor releases, no such plan will be confirmable here in any time period, much less a reasonable one. This is cause for dismissal.

A. <u>Section 524(g) Cannot be Used to Discharge J&J of Its Talc Liability</u>

142. When the sole path to reorganization that a debtor pursues depends on a legal impossibility, there is cause for dismissal. That is the situation here.

143. J&J cannot resolve its own independent talc liability under section 524(g). *See supra* ¶¶ 61-71. And *Purdue* forecloses the possibility of a non-consensual release of J&J for its independent liability. J&J will not permit a plan that does not release it of its own independent liability, and such a release is forbidden under *Purdue*.

144. J&J's machination has been tried before, unsuccessfully. *See In re Quigley Co., Inc.*, 676 F.3d 45 (2d Cir. 2012). In *Quigley*, a subsidiary of Pfizer that made an asbestos product called "Insulag" filed for bankruptcy and tried to confirm a plan that discharged Pfizer of its

asbestos liability. Insulag was "used as an insulator in high heat environments." *Id.* at 47. The product, which was marketed using Pfizer's "name, logo, and trademark," contained asbestos. *Id.*

145. Plaintiffs filed asbestos-related suits against Quigley and Pfizer. The lawsuits against Pfizer sought to hold Pfizer liable in connection with products containing asbestos and manufactured by Quigley under an "apparent manufacturer" theory of liability as set out in the Restatement (Second) of Torts § 400. The lawsuits alleged that "Pfizer's logo appeared on Quigley's advertising and the packages of Quigley's asbestos-containing products." *Id*.

146. Under the Restatement (Second) of Torts § 400, "[o]ne who puts out as his own product a chattel manufactured by another is subject to the same liability as though he were its manufacturer." *Id*. (quotations omitted). The plaintiffs argued that Pfizer could be held liable for the asbestos claims "based on Pfizer's own conduct in permitting its label to be affixed to Quigley products containing asbestos and to the Quigley advertising." *Id*.

147. In response to this litigation, Pfizer directed Quigley to file for bankruptcy and propose a chapter 11 plan that included a section 524(g) injunction. Pfizer, like J&J, was simply too wealthy and solvent to qualify for bankruptcy and, like J&J, Pfizer did not want to deal with the hassles of being a chapter 11 debtor. Nevertheless, Pfizer tried to get the benefit of a chapter 11 discharge through Quigley's bankruptcy case. The issue was whether section 524(g) could be used to bar the asbestos claims against Pfizer when Pfizer was not a debtor. The answer was "no."

148. The Second Circuit analyzed section 524(g)(4)(A)(ii), which is the part of section 524(g) that authorizes a Court to enjoin asbestos claims against non-debtor third parties. *Id.* at 59. Pfizer tried to fit its asbestos liability into section 524(g)(4)(A)(ii)(I)—liability arising by reasons of "the third party's ownership of a financial interest in the debtor, a part or present affiliate of the debtor, or a predecessor in interest of the debtor." *Id.*

149. Pfizer argued that its liability fell within this subsection because "but for" its ownership of Quigley, its name and logo would not have been used on the asbestos-containing products. *Id*. In rejecting this argument, the Second Circuit found that Pfizer's liability as an "apparent manufacturer" under § 400 hinged on the presence of its name and logo on the products. *Id.* at 60. Pfizer's ownership of Quigley was "legally irrelevant." *Id*. Rather, what got Pfizer into trouble was its ***own*** conduct—namely, the fact that it permitted its name and logo to be used on the products that contained asbestos and placed consumers at risk of bodily injury and death.

150. Since Johnson's Baby Powder hit the market in 1894, every bottle ever sold has included Johnson's name, logo, and/or trademark. If Quigley could not be used as a vehicle to obtain a discharge for Pfizer, Red River cannot be used as a vehicle to obtain a discharge for J&J.

151. Further, as explained above, the claims against J&J go well beyond the use of its name, logo, and trademarks. J&J is alleged to have knowingly sold products used on women that contained asbestos and affirmatively taken actions to suppress information regarding the risk of developing fatal cancers from using its talc products. When juries find J&J liable, and award punitive damages based on J&J's outrageous and malicious conduct, they are doing so based on J&J's own, independent conduct. Those claims and jury determinations do not involve liability that is derivative of the Debtor.

152. The Second Circuit's ruling in *Quigley* was not unique. The Third Circuit reached essentially the same conclusion in *In re Combustion Engineering, Inc*., 391 F.3d 190, 233 (3d Cir. 2004), when it held that sections 105(a) and 524(g) do not authorize a channeling injunction over independent, non-derivative third-party actions against non-debtors.

153. Since section 524(g) was enacted, no Court of Appeals has suggested that section 524(g) can be used to channel the independent, non-derivative liability of a non-debtor to

a trust. There is no reason why or basis for any Court to reach a different conclusion. Section 524(g) was never intended to channel the independent, non-derivative liability, particularly of wealthy, solvent non-debtor entities.

154. Notwithstanding these legal impediments, for J&J's Plan to go effective (and for J&J to pay a penny to talc claimants under its plan), this Court must find that section 524(g) can be used to channel the independent, non-derivative liability of J&J and Kenvue.[40] That is impossible. J&J, however, will never permit the Debtor to propose a plan that does not achieve that goal and the ovarian cancer claimants will never consent to release J&J's independent liability as crafted in J&J's Plan. This means that there is no settlement and, therefore, there is no viable plan, which is cause for dismissal.

B. If Section 524(g) Can Discharge J&J of Its Talc Liability, Then Section 524(g) <u>Must be Declared Unconstitutional and this Case Must be Dismissed</u>

155. Assuming, *arguendo*, that this Court somehow finds that section 524(g) can be used to discharge J&J of its talc liability, section 524(g) must be declared unconstitutional. Should that occur, J&J's Plan based on the application of section 524(g) to a host of non-debtor parties cannot be confirmed and this case must be dismissed.

156. The Fifth Amendment provides that "[n]o person" shall be "deprived" of "property" without "due process of law" and "without just compensation." U.S. Const. amend. V.[41] A cause of action is a property right protected by the Fifth Amendment.[42]

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[40] J&J is also seeking to discharge hundreds of retailers and other non-debtor parties under the Plan even though there is no statutory basis under section 524(g) or any other part of the Bankruptcy Code to support such relief. *See* 11 U.S.C. § 524(g)(4)(A)(ii)(I)-(IV).

[41] The Fourteenth Amendment also provides that "[n]o state" shall "deprive any person" of "property[] without due process of law." *Id.* at amend. XIV.

[42] *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 807, 813 (1985) (a "chose in action is a constitutionally recognized property interest possessed by each of the plaintiffs"); *Dallas Cabana, Inc.*

157. Indeed, to protect the right to sue, every citizen of the United States is entitled to free access to its judicial tribunals in every State of the Union."[43] This makes sense because no right, whether a property right or liberty right, has meaning if it cannot be judicially enforced.[44]

158. It follows that a cause of action asserted by an ovarian cancer claimant against J&J and Kenvue to recover damages for the personal injury and/or wrongful death (*i.e.*, the ultimate deprivation of liberty) suffered by her constitutes a property right protected by the Fifth Amendment that includes the right to access our judicial tribunals, appear and be heard therein, and seek appropriate relief.

159. Due process in bankruptcy requires that when a party receives a discharge of its liabilities, that party's assets must be distributed in a manner that is "consonant with a ***fair***, ***reasonable***, and ***equitable*** distribution of those assets."[45] Our bankruptcy laws have never allowed

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v. Hyatt Corp., 441 F.2d 865, 868, n.9 (5th Cir. 1971) ("A 'cause of action' is an asset or a property right of the individual to whom it belongs."); *see also Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982) ("[A] cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause.") (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)); Adam J. Levitin, *The Constitutional Problem of Nondebtor Releases in Bankruptcy*, 91 FORDHAM L. REV. 429, 440 (2022) (Nonconsensual nondebtor releases are inconsistent with … due process requirements. Creditors who have direct claims against nondebtors have property interests: their direct claims are 'choses in action.' Like other types of property interests, these choses in action are protected by the Due Process Clause.").

[43] *Slaughter-House Cases*, 83 U.S. 36, 79 (1873) (Every citizen "has the right of free access to … courts of justice in the several States."); *Crandall v. Nevada*, 73 U.S. 35, 48 (1867) ("[E]very citizen of the United States … is entitled to free access … to its judicial tribunals."); *see Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 846 (1999) ("[O]ne is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he [or she] has not been made a party by service of process …, it being 'our deeply-rooted historic tradition that everyone should have his [or her] own day in court.'") (quoting *Hansberry v. Lee*, 311 U.S. 32, 40 (1940) and *Martin v. Wilks*, 490 U.S. 755, 762 (1989)).

[44] *See Marbury v. Madison*, 5 U.S. 137, 163 (1803) ("[I]t is settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and every injury its proper redress.").

[45] *Kuehner v. Irving Tr. Co.*, 299 U.S. 445, 452 (1937) (emphasis added); *see R.F.C. v. Denver & R.G.W.R. Co.*, 328 U.S. 495, 533 (1946) ("[T]he provisions for confirmation by the courts over the creditors' objection are within the bankruptcy powers of Congress … so long as the creditor gets all the value of his lien and his share of any free assets.").

a party to receive a discharge unless creditors receive the ***full*** value of the debtor-estate's non-exempt assets, and they share that value on a ***fair*** basis.[46]

160. Here, J&J's plan does not provide for a "fair and full" surrender of J&J's property. *Purdue*, 144 S.Ct. at 2086. J&J—a non-debtor—is proposing to receive a discharge, retain billions in value for itself and its shareholders, while its creditors are paid a tiny fraction of the value of their claims against J&J and its non-debtor affiliates.

161. The funds J&J is proposing to contribute over the course of the next 25 years (assuming a "final order" is entered) will be disproportionately paid to holders of non-compensable claims under TDPs that are designed to circumvent the Code's priority and distribution scheme. This is not an "equitable distribution"—non-compensable claims should not diminish the funds available to pay ovarian cancer claimants.

162. The concept of "fairness" reflected in the Bankruptcy Code also implies that objecting creditors should be paid in full before equity holders "receive or retain" any property and that the plan not "discriminate unfairly" with respect to each class of claims. 11 U.S.C. § 1129(b). Yet Red River will retain its non-operating existence and J&J will retain all its assets while being relieved of its obligations for its own talc liabilities.

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[46] *See Purdue*, 144 S.Ct. at 2086 ("Every bankruptcy law … from 1800 until 1978 [has] generally reserved the benefits of discharge to the debtor who offered a 'fair and full surrender of [its] property.") (quoting *Sturges v. Crowninshield*, 4 Wheat. 122, 176 (1819), and citing *Central Va. Community College v. Katz*, 546 U. S. 356, 363–364 (2006); Bankruptcy Act of 1800, §5, 2 Stat. 23 (repealed 1803); Act of Aug. 19, 1841, §3, 5 Stat. 442–443 (repealed 1843); Act of Mar. 2, 1867, §§11, 29, 14 Stat. 521, 531–532 (repealed 1878); Bankruptcy Act of 1898, §§7, 14, 30 Stat. 548, 550 (repealed 1978)).

163. Further, just compensation requires that a party losing her property must receive a valuation of the property being taken and compensation that is equal to the value being lost.[47] But under J&J's plan, creditors will not be permitted to test the value of their claims against J&J.

164. There is no valuation process included and, therefore, no mechanism to determine if ovarian cancer claimants will be "put in as good position pecuniarily" as they would have occupied if their causes of action were not taken from them. *Id.*

165. The lynchpin of J&J's plan is that talc claimants will be paid far less than they can recover in actions against J&J while being barred from pursuing their claims against J&J in the civil justice system. Their rights are being taken from them without any determination of the value of those rights. This is neither fair nor reasonable.

166. Further, J&J is paying in settlement billions ***less*** than it removed from JJCI and ***less*** than the full value of J&J, just as the Sacklers did with Purdue. For claimants with claims against both J&J and JJCI, it is possible that J&J is paying ***nothing***, as it is obligated to cover only payments that Red River cannot pay on its own. This contrived mechanism comes from a Fortune 50 company that could pay all these claims in full, now. Yet, J&J will only allow Red River to make a partial payment to creditors over the next 25 years. Property rights are being taken without any meaningful form of notice,[48] and literally nothing is being provided in the form of compensation.

[47] *See U.S. v. Miller*, 317 U.S. 369, 374 (1943) (noting in the context of condemnation of property: "[Just] compensation means the full and perfect equivalent in money of the property taken. The owner is to be put in as good position pecuniarily as he would have occupied if his property had not been taken.").

[48] *See Martin*, 490 U.S. at 762; Levitin, 91 FORDHAM L. REV. at 439-440 ("Notice alone is not sufficient due process. Due process also prohibits parties from being deprived of property without getting their proverbial 'day in court' in some form.").

167. The due process violation is more profound for future claimants. Unlike in *Johns-Manville* and other mass tort cases, J&J has not conceded liability. The history of judgments against J&J is just now being written. "[T]he Court and stockholders" do not have "the benefit of data from 15 years of tort litigation [by the tortfeasor]" from which claim values can be ascertained. *See LTL Mgmt.*, 64 F.3d at 103 fn. 13. Future claimants may enjoy the benefit of new scientific studies providing further support for a causal connection between their disease and exposure to J&J's talc products.

168. What is being taken from them under J&J's plan is unconscionable. In J&J's perfect world—*i.e.*, the world that J&J's plan seeks to impose—a future claimant who can definitively prove ten years from now that her life was cut short by J&J's products may be handed a check for a paltry amount and told that she has no right to seek justice or compensation from J&J before any Court. This is inequitable.

169. The policy that J&J seeks to write through its bankruptcy maneuvers is that J&J gets to decide how much it pays for the harms that it caused. And that women who say "no" and refuse to consent to this must be enjoined. But this is not how the civil justice system works—at least not as contemplated by the Constitution. This is a company that caused serious injury and death to women with ovarian cancer and is not itself even standing in the Bankruptcy Court but, through Red River's filing, seeks to reap bankruptcy's benefits.

170. If section 524(g) is read to permit such an unlawful taking of property rights, then that section is unconstitutional. Without section 524(g) as a basis for enjoining claims against J&J and its affiliates, this case must be dismissed as J&J's Plan based on that section cannot be confirmed. This Court need not reach this Constitutional issue to dismiss this case for cause under section 1112(b). Interpretations of statutes that render them unconstitutional should be

disfavored.[49] This Court need only follow established Supreme Court and Circuit case law and dismiss this case for the fraud and abusive bad faith that it clearly is.

171. But if section 524(g) does permit an unlawful taking here, it is section 524(g) that must yield. The United States has a "deep-rooted historic tradition that everyone should have his own day in court." *Martin*, 490 U.S. at 762. Fundamental rights are protected in bankruptcy. *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 192 (1902) (Congress may "prescribe … regulations concerning discharge in bankruptcy" that are compatible with "fundamental law").

172. "The right to sue and defend in the courts … lies at the foundation of orderly government." *Chamber v. Baltimore & O.R. Co*., 207 U.S. 142, 148 (1907). "It is one of the highest and most essential privileges of citizenship," particularly when the lawsuit involves the death of a citizen. *Id*. This is not a right that J&J, or Congress by enacting section 524(g), has the power to take away.

III. **<u>Prior Dismissals for Lack of Financial Distress Support Dismissal of this Case</u>**

173. J&J's contrived bankruptcy cases have already been dismissed twice for lack of financial distress.[50] J&J—or the made-for-bankruptcy entity through which J&J has sought to obtain a discharge of its liabilities—is now a serial filer of bad faith cases, which is another fact that shows abuse and supports dismissal. *See Matter of Elmwood Dev. Co.*, 964 F.2d 508, 513 (5th Cir. 1992) ("serial chapter 11 petition" properly dismissed as not filed in "good faith").[51]

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[49] *See Blanchette v. Connecticut Gen. Ins. Corp*., 419 U.S. 102, 134 (1974) ("[W]hen a statute is ambiguous, construction should go in the direction of constitutional policy.") (quotation omitted).

[50] *See In re LTL Mgmt., LLC*, No. 23-2971, 2024 WL 3540467, at *2 (3d Cir. July 25, 2024) (good faith and a valid bankruptcy purpose require a "debtor in financial distress"); *In re LTL Mgmt., LLC*, 64 F.4th 84, 111 (3d Cir. 2023) (chapter 11 is "only for entities facing financing distress.").

[51] *In re Parson*, 632 B.R. 613, 617 (Bankr. N.D. Tex. 2021) (the debtor's history with "creditors prior to bankruptcy is also particularly instructive" with regard to the debtor's motives and the "Court's analysis on dismissal."); *In re Jordan*, 598 B.R. 396, 406–07 (Bankr. E.D. La. 2019) ("While a debtor's serial filings do not necessarily constitute bad faith, a debtor's prepetition conduct, including his conduct in

174. To address its prior dismissals for lack of financial distress, J&J caused the termination of the Funding Agreements that ostensibly kept LTL from staying in bankruptcy, and penned a new Funding Agreement that provides funding to facilitate the new settlement. J&J's position is essentially that if its "made-for-bankruptcy entity" was not in financial distress beforehand, it is now.

175. But if the Debtor in this Chapter 11 Case is in financial distress, such distress is a function of fraud and coercive manipulation of a subsidiary by its parent. J&J cannot manufacture jurisdiction or financial distress by committing 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.

176. 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. Ldt. 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. A debtor cannot create subject matter jurisdiction by agreement. *See Combustion Eng'g*, 391 F.3d at 238.

177. So too, a debtor cannot overcome lack of genuine financial distress by self-inflicting financial distress. *See LTL Mgmt.*, 64 F.4th at 110. As the Seventh Circuit held in *In re South Beach Securities, Inc.*, 606 F.3d 366 (7th Cir. 2010), "[t]he public has an interest in limiting the use of bankruptcy for the purposes for which it was intended" and not "as a vehicle by which solvent firms" can avoid their debts. *Id.* at 371. The "object of bankruptcy is to adjust the rights

prior cases, is a valid consideration in determining a debtor's good faith in filing a subsequent case."); *see also In re Casse*, 198 F.3d 327, 342 (2d Cir. 1999) (having dismissed prior chapter 11 case on basis of the debtor's bad faith serial filings, the Bankruptcy Court was justified in treating the debtor's subsequent chapter 11 filings as void ab initio); *In re D&G Constr. Dean Gonzalez, LLC*, 635 B.R. 232, 240 (Bankr. E.D.N.Y. 2021) ("serial filers" of "bad faith" bankruptcy proceedings can be barred from re-filing cases and obtaining the benefit of the automatic stay).

of creditors of a ***bankrupt company***," and not "to allow a solvent company" to try to lighten its own burdens. *Id*. (emphasis added).

178. If Red River and/or J&J take the position that they ***finally did it***—*i.e.*, they finally created a debtor that is in financial distress—then the obvious remedy is to unwind the fraudulent surrender of the Funding Agreements and the transactions that created such distress or simply dismiss this case so that the claimants here can pursue their recoveries from J&J and Kenvue unimpaired by J&J's latest bankruptcy machination.

179. The solution is not to reward a party so craven that it would attempt to circumvent rulings made by the Third Circuit and the New Jersey Bankruptcy Court by destroying assets and then running to a new Court (in a different Circuit) in hopes of finding a more sympathetic ear.

180. J&J's tactics should fare no better in the Fifth Circuit than the Third Circuit. Orchestrating fraudulent transfers and then filing for bankruptcy to control and settle the causes of action that arise from such fraud constitutes bad faith under *Antelope* and *Memorial*.

181. As noted above, the insiders in *Antelope* tried to use bankruptcy to control and settle the shareholder derivative claims against them. 431 Fed. App'x at 273. The affiliates and insiders in *Memorial* tried to use bankruptcy to control and settle the alter ego claims against them. 589 F.3d at 626.

182. In each case, the insiders' abusive schemes involved placing a debtor they controlled into bankruptcy, arguing that the lawsuits against them were property of that debtor's estate under section 541(a)—effectively placing the litigation targets in the position of being both the ***plaintiff*** and the ***defendant***—and then trying to extinguish the lawsuits through an insider settlement at a price that they deemed fair.

183. J&J's abusive scheme involves placing a made-for-bankruptcy, non-operating shell entity that it controls into bankruptcy, arguing that all talc claims against it and other non-debtor parties can be discharged under section 524(g), and then trying to effectuate that discharge through a settlement at a price that J&J deems fair. This is the definition of bad faith in both the Fifth and Third Circuits. Either Red River is not in financial distress or J&J committed fraud and is now trying to use that fraud to force settlements on tort victims who do not consent. Either is "cause" for dismissal.

184. What is troubling is J&J's lack of shame. J&J's Plan is unconfirmable. Its disclosure statement is a farce. There seems to be no limit to what J&J will do to avoid facing lawsuits by the women with debilitating and fatal injuries caused by J&J. J&J has the resources to settle outside bankruptcy just as 3M did. Yet J&J continues to misuse the automatic stay to delay all litigation, so it can impose what it wants to pay for the harm it caused without any evaluation of the actual amount it should pay to its injured, dying, and deceased victims.

185. Women suffering from ovarian cancer or the families of unfortunate women who have died have rights. Those rights include the right to seek justice and compensation in a civil court for injuries sustained. Our Courts exist to provide a forum where such rights can be exercised. This is not an aspiration. It is the foundation of civil justice.

186. J&J and the Supporting Law Firms should not prevail under law or equity. Endorsing J&J's bankruptcy manipulations would fundamentally undermine the integrity of the bankruptcy system and the civil justice system by providing a roadmap for corporations and wealthy individuals to avoid mass-tort liability. Bankruptcy relief is for companies in genuine financial distress. It is not a weapon to inflict harm on dying and injured women.

NOTICE

187. Notice of this Motion has been served on: (a) the U.S. Trustee; (b) counsel to the Debtor; and (c) all persons who have formally appeared in this Chapter 11 Case and requested service pursuant to Bankruptcy Rule 2002. Considering the nature of the relief requested herein, the Coalition respectfully submits that no other or further notice need be provided.

NO PRIOR REQUEST

188. No prior request for the relief sought in this Motion has been made to this or any other Court in connection with this Chapter 11 Case.

CONCLUSION

WHEREFORE, based on the foregoing, the Coalition respectfully requests that the Court grant the Motion, dismiss the Chapter 11 Case for cause, and grant such other and further relief as the Court deems necessary and appropriate.

Dated: September 21, 2024

Respectfully submitted,

STUTZMAN, BROMBERG, ESSERMAN & PLIFKA, PC

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CERTIFICATE OF SERVICE

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

/s/ Peter C. D'Apice
Peter C. D'Apice

<u>EXHIBIT A</u>

PROPOSED ORDER

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

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

ORDER DISMISSING CHAPTER 11 CASE

This matter, having come before the Court upon the *Motion of the Coalition of Counsel for Justice for Talc Claimants to Dismiss the Chapter 11 Case Pursuant to 11 U.S.C. § 1112(b)* (the "Motion")[2] filed by the Coalition of Counsel for Justice for Talc Claimants (the "Coalition"); the Court having reviewed the Motion and having heard the statements of counsel and the evidence introduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court having found that (a) the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (b) venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (d) cause exists within the meaning of 11 U.S.C. § 1112(b) for dismissal of the Chapter 11 Case; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

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

2 Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

IT IS HEREBY ORDERED AS FOLLOWS:

1. Dismissal. This Chapter 11 Case shall be dismissed pursuant to section 1112(b) of the Bankruptcy Code.

2. Statute of Limitations. Pursuant to sections 105(a) and 108(c) of the Bankruptcy Code, this Order shall toll the expiration of any period under any applicable non-bankruptcy law, any order ordered in a non-bankruptcy proceeding, or any agreement that fixes a period under which a plaintiff is required to commence or continue a civil action in a court other than this Court on any claim asserted against the Debtor and their current or former insiders or affiliates until the later of: (a) the end of such period; or (b) sixty (60) days after notice of this Order.

3. Closing the Chapter 11 Case. This Court directs that the Clerk of this Court to close this Chapter 11 Case promptly following the filing of a notice by the Coalition, with the prior written acknowledgement from the U.S. Trustee, that there is no objection to the closing of the case and confirming the completion of the following conditions: (a) all monthly operating reports of the Debtor have been filed, (b) all fees due and owing in the Chapter 11 Case to the Clerk of this Court and/or the U.S. Trustee pursuant to 28 U.S.C. § 1930 have been paid in full, (c) notice of the Appeal Exhaustion Date (as defined below) has been filed with this Court, and (d) all amounts requested pursuant to a Final Fee Application (as defined below) or a Post Dismissal Fee Application (all as defined below) have been paid by the Debtor or, if not paid, determined by this Court not to be allowable. The date that the parties jointly file a notice with the Court indicating that all appellate proceedings, including proceedings for review or otherwise before the U.S. Supreme Court, involving this Order ("Appeals") are exhausted or resolved, or that the parties will not pursue the Appeals shall hereinafter be referred to as the "Appeal Exhaustion Date."

4. Procedures for Final Allowance of Fees and Expenses. All professionals retained pursuant to sections 105, 327, 328 or 1103 of the Bankruptcy Code ("Retained Professionals"), seeking compensation pursuant to sections 330 or 331 of the Bankruptcy Code shall file and serve monthly, interim and final fee applications for periods through and including the date of this Order within thirty (30) days of the date of this Order (the "Final Fee Applications"); and shall file and serve any fee applications for periods from the date of this Order through and including the Appeal Exhaustion Date ("Post-Dismissal Fee Applications" and together with the Final Fee Applications, the "Fee Applications") within thirty (30) days of the Appeal Exhaustion Date. The Fee Applications shall be in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of this Court, and any Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals (the "Compensation Procedures Order"). Any objections to the Fee Applications shall be filed and served on counsel for the Debtor and the entity submitting the application to which an objection is being filed no later than twenty-one (21) days following the filing of such Fee Application. The Court will schedule hearings, at the Court's convenience, to consider the Fee Applications and issue orders allowing the professional fees and expenses of the Retained Professionals.

5. Compensation Procedures Order; Reimbursement Requests; Post-Dismissal Monthly Fees. The Compensation Procedures Order shall remain in full force and effect through and including the Appeal Exhaustion Date, including as to requests for reimbursement of expenses incurred by members of the Committee and their representatives (a "Reimbursement Request") and the submission and payment of monthly fee statements by Retained Professionals. After the Appeal Exhaustion Date, the Compensation Procedures Order shall remain in effect as to the submission and payment of Fee Applications.

6. Limited Continued Existence of the Committee. Any official committee of tort claimants (the "Committee") shall remain in existence after the date of this Order solely to pursue or defend any Appeals, and its Retained Professionals shall be authorized to continue to perform services on the Committee's behalf and communicate with its constituents concerning the pursuit or defense of any Appeals. On the Appeal Exhaustion Date, the Committee shall be automatically dissolved, and all members and professionals retained by the Committee shall be discharged from all duties, responsibilities, and obligations arising from, or related to the Committee. Following such dissolution, any attorney-client privilege and similar rights previously held by the Committee shall remain in existence and shall be enforceable by any person or entity that was a member of the Committee as of its dissolution (directly or indirectly through their respective counsel or other representative). Notwithstanding anything contained herein to the contrary, the Committee, Committee members and their representatives and the Committee's Retained Professionals shall be authorized to seek payment of fees and reimbursement of expenses in accordance with this Order.

7. Services of Claims Agent. The claims and noticing agent appoint in this Chapter 11 Case (the "Claims Agent") is authorized to assist the Debtor with service of this Order. On or about thirty (30) days after the entry of this Order, the Debtors' claims and noticing agent, shall (a) forward to the Clerk of the Court an electronic version of all imaged claims; (b) upload the creditor mailing list into CM/ECF; and (c) docket a combined final claims register containing claims against the Debtor. The Claims Agent shall be discharged from all duties, responsibilities, and obligations as the Debtor's claims and noticing agent in this Chapter 11 Case following the conclusion of such services pursuant to this Order and the closing of this Chapter 11 Case. The Claims Agent shall be entitled to payment and reimbursement of its fees and costs. The Claims

Agent is authorized to take all actions necessary and appropriate to effectuate the terms of this Order.

8. Payment of Quarterly Fees. Not later than thirty (30) days after the date of this Order, the Debtor shall pay to the U.S. Trustee any quarterly fees owed through the date of the date of this Orde pursuant to 28 U.S.C. § 1930(a)(6). Any disbursements, including but not limited to, the payments of professional fees and expenses by the Debtor between the date of this Order through and including the Appeal Exhaustion Date must be reported on the Debtor's final report and shall subject to the payment of fees owed pursuant to 28 U.S.C. § 1930.

9. Continued Effect of Confidentiality Orders. Notwithstanding any other provision of this Dismissal Order, any obligations arising under confidentiality agreements, joint interest agreements, and protective orders, if any, entered into during the Chapter 11 Case in connection with the Chapter 11 Case shall remain in full force and effect in accordance with their terms.

10. Notice. On or before seven (7) days following the date of this Order, the Debtor shall serve notice of this Order (including a copy of this Order) pursuant to Bankruptcy Rules 2002(f)(2) and 2002(k) on the Committee, the U.S. Trustee, the Master Service List, all entities that have requested notice pursuant to Bankruptcy Rule 2002, and such additional persons and entities deemed appropriate by the Debtor.

11. Retained Jurisdiction. Notwithstanding the dismissal of the Chapter 11 Case, this Court shall retain jurisdiction to hear and determine all matters arising from or related to the Chapter 11 Case, including without limitation, certification of any appeal of this Order, the interpretation, implementation, or enforcement of this Order and the Court's prior orders, and to hear and consider any objection to a Fee Application.

12. Immediate Effectiveness. Notwithstanding any provisions in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

Signed: _________, 2024

Honorable Christopher López
United States Bankruptcy Judge