AMERICAN BANKRUPTCY INSTITUTE

Southeast Bankruptcy Workshop

CONCURRENT SESSION

From *Johns-Manville* to *LTL* (and Beyond?): Do Mass-Tort Bankruptcies Have a Future — and Should They?

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Bankruptcy Court Power to Release Claims Against Non-debtors

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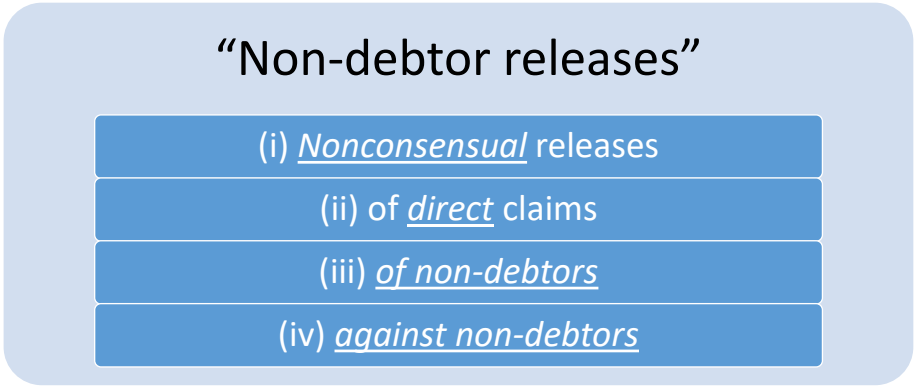
Non-debtor Releases – Key Legal Issues

- Meaning of "non-debtor releases"
- Statutory authority
- Jurisdiction (statutory)
- Constitutional issues
- Standard for approval

Meaning of "Non-debtor Releases"

Bankruptcy courts commonly approve many types of "releases" during a bankruptcy case without controversy. The term "non-debtor releases" refers only to a particular – and controversial – subcategory of those releases.



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Categories of Bankruptcy Releases/Injunctions

1. **Claims against debtor**
2. **Debtor's own claims against third parties**
   - *E.g.*, debtor sues its insurer for indemnity; fraudulent transfer claims
3. **Indemnification/contribution claims against a defendant settling with the debtor**
4. ***In rem* releases and injunctions**
   - *E.g.*, Insurance injunctions, successor liability injunctions
5. **"Derivative" claims against third parties**
   - Corporate derivative claims – *e.g.*, breach of fiduciary duty by a director
   - "Generalized claims" where plaintiff's claim against defendant arises from (i) debtor's liability to plaintiff and (ii) defendant's role with respect to the debtor – *e.g.*, veil-piercing, successor liability
6. **"Direct" claims by a non-debtor against third parties**
   - Plaintiff's injury can be directly traced to the defendant's conduct – *e.g.*, negligence, design defect

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Bankruptcy Releases/Injunctions – Legal Status

CATEGORY	LEGAL STATUS
Claims against debtor • *E.g.*, debtor owes bank $100	**Can be discharged** • 11 U.S.C. § 524(a) • Not controversial – fundamental bankruptcy power
Debtor's own claims against third parties • *E.g.*, debtor sues its insurer for indemnity under a policy • *E.g.*, fraudulent transfer claims	**Estate property; can be settled or released by the debtor with bankruptcy court approval** • Fed. R. Bankr. P. 9019; 11 U.S.C. § 1123(b)(3)(A)
Indemnification/contribution claims against a defendant settling with the debtor • Non-settling defendants cannot pursue settling defendant	**Can be enjoined in aid of settlement** • 11 U.S.C. § 105(a); Fed. R. Civ. P. 16(c)(9) • Not controversial
***In rem* releases and injunctions** • Insurance injunctions preventing diminution of policies • Successor liability injunction protecting reorganized debtor and purchasers of assets • Partnership debtor releases for individual partners	**Can be released/enjoined; bankruptcy court has exclusive jurisdiction over debtor's property** • 11 U.S.C. §§ 105(a), 541; 28 U.S.C. § 1334(e) • Not controversial

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Bankruptcy Releases/Injunctions – Legal Status (cont'd)

CATEGORY	LEGAL STATUS

"Derivative" claims against third parties
• Two categories:
  • Corporate derivative claims – *e.g.*, breach of fiduciary duty
  • "Generalized" claims – plaintiff's claim against defendant arises from (i) debtor's liability to plaintiff and (ii) defendant's role with respect to the debtor; proving the claim does not depend on defendant's actions with respect to the particular plaintiff
  • *E.g.*, veil-piercing, successor liability
	Can be settled and/or released by the debtor with bankruptcy court approval
	• Fed. R. Bankr. P. 9019; 11 U.S.C. § 1123(b)(3)(A)
	• Corporate derivative claims are estate property – release is not controversial
	• Some debate exists over whether debtors should be able to settle/release generalized claims, but the great weight of the caselaw allows (*see, e.g.*, *In re Emoral*, 740 F.3d 875 (3d Cir. 2014))

"Direct" claims by a non-debtor against third parties • Plaintiff's injury/right can be directly traced to the defendant's conduct • Proving the claim requires facts about the third-party defendant's actions as they impact the particular non-debtor plaintiff • *E.g.*, negligence, design defect	**Power to approve *consensual* releases is not controversial** • Plaintiffs can compromise their own claims • However, what counts as consent is often litigated (*e.g.*, failing to return a plan ballot; failing to affirmatively opt-out) **Nonconsensual releases** • Exculpation provisions (for conduct occurring during bankruptcy case) are treated differently from other types of nonconsensual releases of direct claims

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Statutory Bases for Non-debtor Releases

- **524(g)** – "Notwithstanding the provisions of section 524(e), [an] injunction [*regarding asbestos claims*] may bar any action directed against a third party who . . . is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of [certain enumerated relationships with the debtor]"
- **1123(a)(5)** – "Notwithstanding any otherwise applicable nonbankruptcy law, a plan shall . . . provide adequate means for the plan's implementation"
- **1123(b)(3)(A)** – Plan "may provide for the settlement or adjustment of any claim or interest belonging to the debtor or to the estate"
- **1123(b)(6)** – Plan may "include any other appropriate provision not inconsistent with the applicable provisions of [the Bankruptcy Code]"
- **1129(a)(1)** – "The court shall confirm a plan only if . . . the plan complies with the applicable provisions of [the Bankruptcy Code]"
- **105(a)** – Court may issue "any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]"

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Statutory Challenges to Non-debtor Releases

- **524(e)** – "[D]ischarge 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"
  - **Argument – release of a non-debtor is, in substance, a discharge**
    - Counter-argument – 524(e) says only that *a discharge* does not, *by itself*, release non-debtors; power to release non-debtors is separate from power to discharge the debtor (and is derived from sections 1123(a)(5), 1123(b)(3)(a), 1123(b)(6), 1129(a)(1), and/or 105(a))
- **524(g)** – "Notwithstanding the provisions of section 524(e), [an] injunction [*regarding asbestos claims*] may bar any action directed against a third party who . . . is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of [certain enumerated relationships with the debtor]"
  - **Argument – Congress codified releases in the asbestos context if more stringent procedural requirements can be met; *expressio unius* suggests releases cannot be approved outside that context**
    - Counter-argument – 524(g) contains an uncodified savings clause ("[n]othing in [the subsection enacting section 524(g)] shall be construed to modify, impair or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization"), and longstanding bankruptcy court practice of approving non-debtor releases was known to 1994 Congress when it enacted 524(g) and included that savings clause
      - *See In re Purdue Pharma L.P.*, No. 22-110-bk, slip op. at 59-60 (2d Cir. May 30, 2023) (relying on savings clause)

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Circuit split*

- Nonconsensual non-debtor releases *allowed*
  - 1st – *Monarch Life Insurance Co.* (1995)
  - 2nd – *Metromedia Fiber Network* (2005); *Purdue Pharma* (2023)
  - 3rd – *Millennium Lab Holdings II* (2019); *Lower Bucks Hospital* (2014); *Continental Airlines* (2000)
  - 4th – *Highbourne Foundation* (2014); A.H. Robins Co. (1989)
  - 6th – *Dow Corning Corp.* (2002)
  - 7th – *Airadigm Communications* (2008); *Ingersoll, Inc.* (2008)
  - 11th – *Centro Grp.* (2021); *Seaside Engineering* (2015); *Munford, Inc.* (1996)

- Nonconsensual non-debtor releases *prohibited*
  - 5th – *Pacific Lumber* (2009); *Zale Corp.* (1995)
  - 9th – *Lowenschuss* (1995)**
  - 10th – *Western Real Estate Fund* (1990)

*Caselaw citations are illustrative – list does not include all court of appeals cases in each circuit
** 9th Circuit allows exculpation provisions in chapter 11 plans – *see Blixseth* (2020) – but only of estate fiduciaries

Bankruptcy Jurisdiction (Statutory) – 'Arising In/Under'

- Several courts have concluded that jurisdiction to release/enjoin claims against non-debtors derives from 28 U.S.C. § 1334(b)'s grant of jurisdiction over "all civil proceedings *arising under* title 11" and "all civil proceedings . . . *arising in* . . . cases under title 11"
  - "A *confirmation hearing* is a proceeding that 'by its nature . . . could arise only in the context of a bankruptcy case. Bankruptcy jurisdiction exists here, therefore, as this proceeding 'arises in' this bankruptcy case."
    - *In re Boy Scouts of Am., Inc.*, 642 B.R. 504, 588-89 (Bankr. D. Del. 2022) (citations omitted) (collecting cases) (emphasis added)
  - "[A] claim to enjoin civil actions in other courts is created by *§ 105(a) of the Code* and, thus, can be said to 'arise under' the Bankruptcy Code."
    - *In re Caesars Entm't Operating Co., Inc.*, 533 B.R. 714 (Bankr. N.D. Ill. 2015) (emphasis added), *aff'd on other grounds*, 2015 WL 5920882 (N.D. Ill. Oct. 6, 2015), *rev'd on other grounds*, 808 F.3d 1186 (7th Cir.)
- The Supreme Court has expressly declined to consider whether a bankruptcy court's "arising under" or "arising in" jurisdiction is sufficient to enjoin a claim against a non-debtor
  - *See Celotex Corp.* v. *Edwards*, 514 U.S. 300, 311 n.8 (1995)

Bankruptcy Jurisdiction (Statutory) – 'Related to'

- Whether or not they conclude that they have "arising under" or "arising in" jurisdiction, bankruptcy courts typically go on to analyze whether the releases fall within 28 U.S.C. § 1134(b)'s grant of jurisdiction in "all civil proceedings . . . *related to* cases under title 11"
- Reach of "related-to" jurisdiction varies by circuit, but nearly all analyze whether the claim "could conceivably have any effect on the estate being administered in bankruptcy," or use a similar test:
  - *Pacor Inc.* v. *Higgins*, 743 F.2d 984, 994 (3d Cir. 1984); *see also, e.g.*, *In re Cuyahoga Equip. Corp.*, 980 F.2d 110, 114 (2d Cir. 1992) ("outcome might have any conceivable effect on the bankrupt estate")
  - The modern Third Circuit test is slightly narrower than the Second Circuit's — "related to" jurisdiction cannot be triggered by potential contribution or indemnity claims unless those claims arise from a contract that provides for "automatic" liability by the debtor
    - *In re Combustion Engineering, Inc.*, 391 F.3d 190, 232 (3d Cir. 2004) (if debtor's liability would require an intervening lawsuit to establish, no "related to" jurisdiction)

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Bankruptcy Jurisdiction (Statutory) – Personal Injury

- 28 U.S.C. §§ 157(b)(2)(B), (b)(2)(O), and (b)(5) limit a bankruptcy court's authority to adjudicate "personal injury tort or wrongful death claims"
  - Primarily relevant in mass tort context – not in all instances of non-debtor releases
  - Such claims cannot be liquidated or estimated by a bankruptcy court "for purposes of a distribution in a case under title 11" (as opposed to "for purposes of confirming a plan")
  - The district court may order trial of such claims in the federal district court where the bankruptcy is pending or in the federal district court in which the claim arose
    - Bankruptcy courts may also lift the automatic stay to allow the claim(s) to be adjudicated
  - Plans releasing/channeling such claims against non-debtors – particularly in the mass-tort context – often contain a "tort system out" that allows for liquidation of such claims in a nonbankruptcy court; the amount of damages found by that nonbankruptcy court is then paid as provided under the confirmed plan of reorganization

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Constitutional Issues – *Stern* v. *Marshall*

- **Bankruptcy court authority to enter a *final order* releasing non-debtor claims against non-debtors**
  - The Third Circuit has ruled that bankruptcy court *has* constitutional authority to enter a final order approving a plan containing nondebtor releases where "the existence of the releases and injunctions" is "integral to the restructuring of the debtor-creditor relationship" — *i.e.*, if releases are essential to the plan, the bankruptcy court's constitutional jurisdiction to confirm the plan gives it constitutional authority to enter a final order approving the releases
    - *Millennium Lab Holdings II, LLC*, 945 F.3d 126, 139 (3d Cir. 2019) (*cert. denied* 2020)
  - The Second Circuit has ruled that a bankruptcy court *lacks* constitutional authority to enter a final order releasing "direct claims, arising under state law, against non-debtors held by third parties who have not sought to recover on those claims in bankruptcy, or otherwise consented to a bankruptcy court's adjudication of those claims"
    - *In re Purdue Pharma, L.P.*, No. 22-110-bk, slip op. at 39-41 (2d. Cir. May 30, 2023)
  - **Increasing use of "affirmation order" from a federal district court**
    - Required in asbestos cases using § 524(g)
    - Outside of 524(g) context, use is intended to moot 28 U.S.C. § 157 and *Stern* issues

Constitutional Issues (cont'd)

- **Due Process**
  - "The [U.S.] Trustee . . . questions whether such a release, without an ability to opt-out, can comply with due process because it effectively denies claimants their day in court. But . . . the Due Process Clause does not absolutely protect against the deprivation of property; it instead ensures that a deprivation does not occur without due process. In bankruptcy, the sufficiency of process turns on the adequacy of notice and a meaningful opportunity to be heard, both of which, . . . occurred here. The Trustee's argument would essentially call into question all releases through bankruptcy, including bankruptcy discharges (which are one of the most important features of bankruptcy). We decline to so undermine such a critical component of bankruptcy." In re Purdue Pharma, L.P., Slip Op. at 78 (2d Cir. May 20, 2023)
  - Is notice constitutionally sufficient?
    - Current claimants vs. future claimants
- ***Erie* Doctrine**
  - Are non-debtor releases a form of federal common law? *See* Ralph Brubaker, *Mandatory Aggregation of Mass Tort Litigation in Bankruptcy*, 131 Yale L.J.F. 960 (2022)
- **Seventh Amendment**
  - Only protects legal, not equitable, claims
  - "Tort system out" in some plans – where claims can be liquidated in a nonbankruptcy court (including by a jury) and the amount of damages found is then paid as provided under the plan – is intended to resolve
- **Supreme Court has twice held that nonconsensual non-debtor releases confirmed by a final order are entitled to *res judicata*, but has not ruled on merits of constitutional challenges**
  - *See, e.g.*, *Travelers Indemnity* v. *Bailey* (2009)

Standard for Approving Non-debtor Releases

- Courts that allow non-debtor releases often consider a similar set of nonexclusive factors:[1]
  - Whether there is *identity of interest* between the debtor and the third party;
  - Whether the third party has made a *substantial contribution* to the debtor's reorganization;
  - Whether the release is *essential to the debtor's reorganization*;
  - Whether a *substantial majority of creditors* support the release; and
  - Whether the plan *provides a mechanism for the payment of all, or substantially all,* of the claims in the class or classes affected by the release
- Third Circuit requires only "fairness" and "necessity"[2] (though, in practice, courts evaluate these using the above factors)
- Second Circuit in *Purdue:*
  - added "claims against debtor and nondebtor are factually and legally intertwined" and "scope of releases is appropriate"
  - clarified that "essential to the reorganization" means "the debtor needs the claims to be settled in order for the *res* to be allocated rather than because the released party is somehow manipulating the process to its own advantage"
  - held that when evaluating payments to claimants "the determinative question is not whether there is full payment, but rather whether the contributed sum permits the fair resolution of the enjoined claims"

1 *See In re Dow Corning Corp.*, 280 F.3d 648, 658 (6th Cir. 2002); *In re Master Mortgage Inv. Fund, Inc.*, 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994)
2 *See In re Continental Airlines*, 203 F.3d 203, 214 (3d Cir. 2000)

DO MASS TORT BANKRUPTCIES HAVE A FUTURE AND SHOULD THEY?

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I. Introduction: Purdue Pharma, LTL Management, and 3M's Aearo – Where High Profile Mass Tort Bankruptcies Stand Today

The use of bankruptcy cases to resolve mass torts has expanded rapidly over the last three decades. In 1994, Congress added Section 524(g) to the Bankruptcy Code to provide relief to debtors facing overwhelming liability to asbestos claimants. The statute essentially endorsed the structure developed by the court in the pivotal *Johns-Manville*[1] asbestos bankruptcy case. However, Section 524(g) only applies to asbestos-related claims. Despite this limitation, bankruptcy courts have relied on Section 105(a) of the Bankruptcy Code to enter channeling injunctions for non-asbestos mass tort claims. The attention around recent high-profile mass tort bankruptcies such as *Purdue Pharma*, *LTL Management*, and *Aearo Technologies* raises the questions: do mass tort bankruptcies have a future and should they?

[1] *In re Johns-Manville Corp.,* 36 B.R. 727 (Bankr. S.D.N.Y. 1984).

A. Deepening the Divide on Nonconsensual Third-Party Releases – *Purdue Pharma*

In a decision that solidified the permissibility of nonconsensual third-party releases in the Second Circuit, on May 30, 2023, the United States Court of Appeals for the Second Circuit issued an opinion affirming the bankruptcy court's decision to confirm the debtors' plan, reversing the district court's holding that the bankruptcy court lacked the authority to approve the debtors' plan that included nonconsensual third-party releases. In affirming the validity of nonconsensual third-party releases in *Purdue Pharma,*[2] the Second Circuit announced seven factors that courts should consider when determining whether the inclusion of nonconsensual third-party releases should be approved.[3] Although the Second Circuit ultimately concluded that the bankruptcy court did not err by approving the debtors' plan, the Second Circuit clarified that "extensive discovery into the facts surrounding the claims against the released parties will most often be required" and "there may even be cases in which all factors are present, but the inclusion of third-party releases in a plan of reorganization should not be approved." *In Re Purdue Pharma L.P.*, Case No. 22-110-BK, 2023 WL 3700458, at *21 (2d Cir. May 30, 2023).

[2] *In Re Purdue Pharma L.P.,* No. 22-110-BK, 2023 WL 3700458 (2d Cir. May 30, 2023).

[3] *Id.* at *19- 21 (holding that courts should consider whether (1) "there is identity of interests between debtor and released third parties," (2) "claims against debtor and nondebtor are factually and legally intertwined," (3) "scope of releases is appropriate," (4) "releases are essential to reorganization, in that debtor needs claims to be settled in order for the res to be allocated," (5) "non-debtor contributed substantial assets to reorganization," (6) "impacted class of creditors 'overwhelmingly' voted in support of plan with releases," and (7) "plan provides for the fair payment of enjoined claims").

The Second Circuit's Opinion deepens the split among circuits regarding the permissibility of nonconsensual third-party releases of direct claims. Today, the majority of circuits allow nonconsensual third-party releases as part of a Chapter 11 plan.[4] However, the Fifth, Ninth,[5] and Tenth Circuits do not allow nonconsensual third-party releases, except in asbestos cases.[6] Further, even in circuits that allow nonconsensual third-party releases, different approval standards continue to cause uncertainty.[7] As Circuit Judge Richard Wesley accurately observed in his concurring opinion, "[a]s it stands, a nondebtor's ability to be released through bankruptcy turns on where a debtor files . . . [a]bsent direction from Congress—and, since 1994, there has been none—or the High Court, the answer is a function of geography." *In Re Purdue Pharma L.P.*, WL 3700458 at *30 (Wesley, J., concurring).[8]

[4] The United States Court of Appeals for the Second, Third, Fourth, Sixth, Seventh, and Eleventh Circuits have adopted this view.

[5] The Ninth Circuit's approach to non-consensual third-party releases is less clear. Recently in *Blixseth v. Credit Suisse*, the Ninth Circuit approved "narrow in both scope and time" provisions exculpating non-debtors. 961 F.3d 1074, 1081-82 (9th Cir. 2020). Since *Blixseth*, the US Bankruptcy Court for the Northern District of California and the US Bankruptcy Court for the Eastern District of Washington have approved third-party releases. *See In re Astria Health*, 623 B.R. 793 (Bankr. E.D. Wash. 2021); *see also In re PG & E Corp*., 617 B.R. 671 (Bankr. N.D. Cal. 2020).

[6] *See In re Pacific Lumber Co.,* 584 F.3d 229, 252 (5th Cir. 2009); *see also In re W. Real Estate Fund, Inc.,* 922 F.2d 592 (10th Cir. 1990).

[7] *Compare Patterson v. Mahwah Bergen Retail Grp., Inc.,* 636 B.R. 641 (E.D. Va. 2022) *with Behrmann v. Nat'l Heritage Found.,* 663 F.3d 704 (4th Cir. 2011).

[8] For more information on the circuit split over third-party releases, see *Infra* Section III.

B. The Financially Healthy Debtor in Bankruptcy - *LTL Management, Aearo Technologies,* and *Bestwall*

In other recent news, the Third Circuit in *LTL Management*[9] dismissed the bankruptcy petition of LTL Management, LLC ("LTL"), an entity formed to isolate talc-related personal injury liabilities of Johnson & Johnson, reasoning that LTL was not in financial distress and did not qualify for the protections of bankruptcy, potentially providing limitations on debtors created as a by-product of the now infamous "Texas Two-Step." The Texas Two-Step is a process that begins with a divisional merger under Texas law.[10] The Texas Business Code allows an entity to divide into two or more new entities while vesting the predecessor's assets in one entity and the predecessor's liabilities in the other.[11] This process protects the predecessor and the new entity that holds the predecessor's assets from personal injury liability. The second step of the Texas Two-Step is simple: file bankruptcy in a favorable district.

Accordingly, Johnson & Johnson opted to "dance the Texas Two-Step" with its consumer products subsidiary, Johnson & Johnson Consumer Inc. ("Old JJCI") for the purpose of managing liability linked to Johnson & Johnson's talc-based products. "Old JJCI" executed a divisional merger under Texas law creating LTL and New JJCI, with LTL holding all talc liabilities, and New JJCI holding virtually all of Old

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[9] *LTL Mgmt., LLC v. Those Parties Listed on Appendix A to Complaint (In re LTL Mgmt., LLC)*, 64 F.4th 84 (3d Cir. 2023).

[10] *See* Tex. Bus. Orgs. Code § 1.002(55)(A) (defining a merger as "the division of a domestic entity into two or more new domestic entities . . . or a surviving domestic entity and one or more new domestic entities").

[11] *See* Tex. Bus. Orgs. Code § 10.008(a)(9) for provisions regarding liability.

JJCI's business assets. Notably, the divisional merger included a funding agreement that gave LTL rights to funding from both New JJCI and Johnson & Johnson. Two days after the divisional merger, LTL filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Western District of North Carolina.[12] The case was transferred to the Bankruptcy Court for the District of New Jersey where the Official Committee of Talc Claimants moved to dismiss LTL's petition under section 1112(b) of the Bankruptcy Code.[13] However, the New Jersey Bankruptcy Court ultimately held that the bankruptcy petition was filed in good faith.[14]

Nevertheless, on January 30, 2023, the Third Circuit issued a unanimous opinion dismissing the Chapter 11 case as not being filed in good faith since good faith requires at least some degree of financial distress from a debtor, and "absent financial distress, there is no reason for Chapter 11 and no valid bankruptcy purpose." *In re LTL Mgmt., LLC*, 64 F.4th 84, 101 (3d Cir. 2023). Although the Third Circuit's decision does not directly address whether entities formed through the Texas Two-Step will be barred from bankruptcy protection, the decision does suggest that liability entities with funding agreements formed under the Texas Two-Step will have to delay filing for bankruptcy until they can show financial distress, perhaps making the Texas Two-Step a less popular avenue for large companies hoping to

[12] *See In re LTL Mgmt. LLC,* No. 21-30589, 2021 WL 5343945 at *1 (Bankr. W.D.N.C. Nov. 16, 2021).

[13] *In re LTL Mgmt., LLC*, 637 B.R. 396, 399-400 (Bankr. D.N.J. 2022), *rev'd and remanded*, 58 F.4th 738 (3d Cir. 2023), and *rev'd and remanded*, 64 F.4th 84 (3d Cir. 2023).

[14] *Id*. at 429.

minimize personal injury liability.[15] Yet, many unknowns continue to surround the use of the Texas Two-Step. On April 4, 2023, LTL filed a new bankruptcy petition in the United States Bankruptcy Court for the District of New Jersey. This time LTL is offering litigants $8.9 billion, compared to $2 billion in the first filing. A group of claimants and the United States Department of Justice have moved to dismiss the latest LTL bankruptcy petition.

The Texas Two-Step is not the only method companies are using to manage mass tort liabilities. Companies like 3M are simply isolating liabilities in a lone subsidiary and instructing that subsidiary to declare bankruptcy. In 2022, 3M had its subsidiary Aearo Technologies ("Aearo") file for Chapter 11 bankruptcy as a historic high of 336,000 actions were pending for defective earplugs made by Aearo. However, on June 9, 2023, the US Bankruptcy Court of the Southern District of Indiana dismissed the case. Similar to the Third Circuit's ruling in *LTL Management,* the court in *Aearo* held that the debtor's filing did not serve a valid bankruptcy purpose because the debtor is financially healthy.[16] Additionally, the court reasoned that the inquiry should be "are the problems the debtor is facing within the range of difficulties envisioned by Congress when it crafted Chapter 11." *In re Aearo Technologies LLC*, 2023 WL 3938436, at *17. However, the matter is not yet settled as the bankruptcy court has certified the decision for direct appeal to the Seventh

[15] *See generally In re LTL Mgmt., LLC*, 64 F.4th 84 (3d Cir. 2023).

[16] *In re Aearo Techs. LLC*, Case No. 22-02890-JJG-11, 2023 WL 3938436, at *17-18 (Bankr. S.D. Ind. June 9, 2023).

Circuit. Notably, the court also granted a motion to preserve the official committees[17] for the "limited purpose" of defending the appeal since the Bankruptcy Code does not specifically address when an official committee is dissolved.[18]

However, the Fourth Circuit recently confirmed that financial distress for bankrupt entities is not universally required. On June 20, 2023, the Fourth Circuit affirmed the issuance of the preliminary injunction in *In re Bestwall LLC*, holding that the debtor could extend the protections of the automatic stay to non-debtor affiliates as it sought the reorganization of mass asbestos litigation liabilities.[19] The Fourth Circuit held that the debtor's acquisition of those liabilities from non-debtor affiliates prior to its petition did not constitute impermissible manufacturing of bankruptcy jurisdiction and was a proper business decision enabling a global resolution of claims pending against an entire business enterprise—without subjecting that entire enterprise to bankruptcy.[20]

Notably, the Fourth Circuit recognized the distinction between the Third Circuit's standard for determining whether a petition was filed in bad faith—referring to *In re LTL Management, LLC*, where the debtor's petition was dismissed for a lack of financial distress—and the Fourth Circuit's application of the *Carolin*

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[17] The Official Committee of Unsecured Creditors—Related to the Use of Combat Arms Version 2 Earplug (the "CAE Committee") and numerous other law firms representing Combat Arms Version 2 Earplug plaintiffs; and the Official Committee of Unsecured Creditors – Respirator Claimants (the "Respirator Committee").

[18] *In re Aearo Techs. LLC*, No. 22-02890-JJG-11 (Bankr. S.D. Ind. June 22, 2023).

[19] *In re Bestwall LLC*, Case No. 22-1127, 2023 WL 4066848 (4th Cir. June 20, 2023).

[20] *Id* at *5-7.

standard.[21] While the issue of dismissal was not before the Fourth Circuit, it again cited *Carolin* when discussing the likelihood of Bestwall LLC's reorganization, which was deemed properly considered in the affirmative by the courts below.[22] Nevertheless, the dissent in *In re Bestwall LLC*, in line with *In re LTL Management, LLC*, argued that the effects of allowing the injunction "run directly contrary to the purpose of the Bankruptcy Code" while characterizing Georgia-Pacific's restructuring as "little more than a corporate shell game — to artificially invoke the jurisdiction of the bankruptcy court and obtain shelter from its substantial asbestos liabilities without ever having to file for bankruptcy."[23]

II. Balloting and Solicitation: Consent and Claim Valuation

Recent mass tort bankruptcy cases, specifically *Purdue Pharma*, have illuminated looming problems with defining consent and raised questions about balloting and claim valuation in mass tort bankruptcy cases.[24] While courts generally agree that consensual third-party releases are permissible and bind creditors that consent to the release, the question becomes what constitutes consent to a release. While no court has found consent when a creditor votes to reject a plan, courts are split on what is necessary to establish consent. Even courts located in the same districts are applying different standards for consent. To illustrate, in the District of

[21] *Id.* at *8.

[22] *Id.* at *10

[23] Id. at *18 (King, J., dissenting).

[24] *See Kane v. Johns-Manville Corp.*, 843 F.2d 636, 641, 647-48 (2d Cir. 1988); *see also In re Lloyd E. Mitchell, Inc.*, 373 B.R. 416, 427-28 (Bankr. D. Md. 2007).

Delaware, several bankruptcy courts have required affirmative consent meaning "[f]ailure to return a ballot is not a sufficient manifestation of consent to a third-party release." *In re Washington Mutual, Inc.*, 442 B.R. 314, 355 (Bankr. D. Del. 2011). However, recently, a Delaware Bankruptcy Court held that consent can be implied by failure to opt-out or respond to a plan.[25] While the Delaware Bankruptcy Court cautioned that "the use of opt-outs is not appropriate in every case," the court ultimately found that the use of opt-out mechanisms was a valid way of obtaining consent for consensual third-party releases.[26] Accordingly, questions concerning what constitutes consent will continue to plague the process of approving plans with third-party releases.

While the inconsistencies that surround the definition of consent are common among many bankruptcy plans that include third-party releases, difficulties with claim valuation and balloting are unique to mass tort bankruptcies. Section 524(g) of the Bankruptcy Code requires that a plan be approved by a supermajority of voting claimants in asbestos cases. However, voting to confirm a plan occurs before the individual's tort claim has been liquidated. Thus, courts typically have very little information about the individual's tort claim during the voting process. The order of this process raises questions about the appropriate voting valuation for each tort claimant. Should specific voting amounts be assigned on an individualized basis, or should all claimants have their claim valued at $1.00 for voting purposes? This

[25] *See In re Mallinckrodt PLC*, 639 B.R. 837 (Bankr. D. Del. 2022).

[26] *Id.* at 879.

inquiry highlights the larger tension in mass tort bankruptcies between efficiency and adequate representation. Should courts prioritize the efficiency of valuing all claims at $1.00 or try to adequately assign values that reflect the individual claimant's injury? Due to the difficulty in establishing appropriate voting amounts for each tort claimant, it is common for each tort claimant to have their claim valued at $1.00 solely for voting purposes.[27] Nevertheless, the bankruptcy court in *In re Quigley Co.*[28] warned that when a different voting method would change the result, "the alternative is to weigh each vote based on nature and impairment of each claimant's injury." 346 B.R. 647, 654.

The use of master ballots has also caused concern in recent mass tort bankruptcy cases. Due to the large volume of claimants, the use of master ballots has become commonplace with law firms submitting a master ballot containing the votes of all the claimants the firm represents. In *In re Imerys Talc America, Inc.*[29], the court focused on the potential for misuse associated with master ballots when a law firm submitted a master ballot representing 15,719 claimants with no due diligence or regard for whether any of the claimants had the injury required to vote on the plan.[30] Further, the firm did not ask any individual claimant how they wanted to vote on the

[27] *See Kane v. Johns-Manville Corp*., 843 F.2d 636, 641, 647-48 (2d Cir. 1988); *see also In re Lloyd E. Mitchell, Inc.*, 373 B.R. 416, 427-28 (Bankr. D. Md. 2007)); *see also In re Quigley Co*., 346 B.R. 647, 654 (Bankr. S.D.N.Y. 2006).

[28] *In re Quigley Co.,* 346 B.R. 647 (Bankr. S.D.N.Y. 2006).

[29] *In re Imerys Talc Am., Inc.,* No. 19-10289 (LSS), 2021 WL 4786093 (Bankr. D. Del. Oct. 13, 2021).

[30] *Id.* at *11.

plan.[31] Instead, the firm relied on a one page "Attorney Agreement" that granted the law firm the authority to vote on behalf of all claimants.[32] In voting, the law firm did not consider each claimant individually but instead treated all claimants together in voting to either reject or accept the plan entirely.[33] In response, the court withdrew the master ballot and cautioned the plaintiff's bar:

> It is counsel's job to make the plan understandable and (if counsel is not empowered to vote for the client) to provide advice on whether to accept or reject the plan. This is the second time this year in a mass tort case that counsel has suggested that these types of cases are too complicated for individuals to comprehend. To paraphrase my previous response: "I don't buy it."

Id. at *12. Thus, while courts continue to allow master ballots, master ballots should not be used without due diligence and consideration of each claimant or to circumvent counsel's duty to make a plan understandable.

III. Third-Party Releases: Jurisdiction, Constitutionality, and Legality

Although the Bankruptcy Code only explicitly provides for third-party releases in Section 524(g), provisions releasing or limiting the liability of non-debtor parties are often used in non-asbestos mass tort bankruptcies.[34] A consensual third-party release requires the consent of all claimants. If some claimants do not consent to the

[31] *Id.* at *9.

[32] *Id.*

[33] *Id.*

[34] *See In re Boy Scouts of Am. & Delaware BSA, LLC*, 642 B.R. 504 (Bankr. D. Del. 2022), aff'd, 650 B.R. 87 (D. Del. 2023); *see also In Re Purdue Pharma L.P.*, No. 22-110-BK, 2023 WL 3700458 (2d Cir. May 30, 2023).

release, the release is classified as nonconsensual.[35] Generally, courts agree that consensual third-party releases are legal based on the principles of contract law.[36] However, courts continue to struggle with the legality of nonconsensual third-party releases. Since the Bankruptcy Code does not explicitly prohibit or authorize the use of nonconsensual third-party releases in non-asbestos cases, courts have grappled with the apparent conflict between Section 105(a) and Section 524(e).[37]

Section 105(a) of the Bankruptcy Code provides bankruptcy courts broad equitable powers that include issuing "any order, process or judgment that is necessary or appropriate to carry out the provisions of this title," while Section 524(e) states 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." As a result, courts have struggled to reconcile Section 105(a) and Section 524(e) with some courts interpreting Section 524(e) broadly to prohibit a plan from granting a release to any party other than the debtor. However, this broad interpretation of Section 524(e) is the minority view.[38] Instead, most courts interpret Section 524(e) narrowly as

[35] *See supra* p. 4.

[36] *See In re Coram Healthcare Corp.*, 315 B.R. 321, 336 (Bankr. D. Del. 2004); *see also In re Specialty Equip. Cos., Inc.,* 3 F.3d 1043, 1047 (7th Cir. 1993).

[37] *See In re Pacific Lumber Co.*, 584 F.3d 229, 252 (5th Cir. 2009); *see also In re Zale Corp.,* 62 F.3d 746, 760 (5th Cir. 1995); *see also Abel v. West*, 932 F.2d 898 (10th Cir. 1991); *see also In re W. Real Estate Fund, Inc.*, 922 F.2d 592, 600 (10th Cir. 1990).

[38] This view is followed by the United States Court of Appeals for the Tenth and Fifth Circuits.

explaining the effect of a debtor's discharge and use the equitable powers provided by Section 105(a) to approve plans granting releases to third parties.[39]

In the Second Circuit's recent decision in *Purdue Pharma* [40], the court provided clarity on a bankruptcy court's authority to approve a plan with nonconsensual third-party releases. The Second Circuit reasoned that the bankruptcy court had the authority to approve the plan in *Purdue Pharma* that included nonconsensual third-party releases based on subject-matter jurisdiction and the Bankruptcy Code.[41] First, the Second Circuit explained that a bankruptcy court has statutory jurisdiction over anything that "might have" a conceivable effect on the *res*, including the imposition of nonconsensual releases of third-party claims.[42] Second, the Second Circuit clarified that the "residual authority" grounded in the combination of Section 105(a) and Section 1123(b) provides a bankruptcy court the power to impose nonconsensual third-party releases.[43]

In addition to the Second Circuit, the Fourth, Sixth, Seventh, Ninth, and Eleventh Circuits have explicitly allowed the use of nonconsensual third-party releases in certain circumstances. The Third Circuit has also suggested that nonconsensual third-party releases may be approved when it is "necessary to provide

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[39] *See supra* pp. 1-3.

[40] *In Re Purdue Pharma L.P.,* No. 22-110-BK, 2023 WL 3700458 (2d Cir. May 30, 2023).

[41] *Id.* at *14-17.

[42] *Id.* at *12.

[43] *Id.* at *16.

adequate consideration to a claimholder being forced to release claims against non-debtors." *In re Continental Airlines*, 203 F.3d 203, 213-14 (3d Cir. 2000). Further, multiple courts in the Third Circuit have confirmed plans that included a nonconsensual third-party release of claims, including a Delaware Bankruptcy Court in 2022.[44]

In conflict with recent bankruptcy case law allowing for nonconsensual releases of third parties, the House Committee on the Judiciary's Subcommittee on the Administrative State, Regulatory Reform, and Antitrust announced proposed legislation called the Nondebtor Release Prohibition Act of 2021 (NRPA) in July 2021.[45] The purpose of the NRPA is to limit the authority of bankruptcy courts. Specifically, under the NRPA, a bankruptcy court would no longer have the authority to approve plans that include nonconsensual releases of non-debtor third parties, except as currently provided in Section 524(g) of the Bankruptcy Code. Additionally, the NPRA would restrict, if not eliminate, the use of divisive mergers like the Texas Two-Step in Chapter 11 cases. However, since the House Judiciary Committee voted to send the NRPA to the full House of Representatives for consideration on November 3, 2021, the legislation has stalled.

[44] *See In re Mallinckrodt PLC*, 639 B.R. 837 (Bankr. D. Del. 2022).

[45] H.R.4777 - 117th Congress (2021-2022): Nondebtor Release Prohibition Act of 2021, H.R.4777, 117th Cong. (2021), https://www.congress.gov/bill/117th-congress/house-bill/4777.

IV. The Conflict Between the Seventh Amendment and Mass Tort Bankruptcies

Bankruptcy courts have overwhelmingly allowed the use of Chapter 11 to resolve mass tort claims; however, many in the media and public are unhappy, claiming that Chapter 11 is allowing big companies an "alternative justice system" where they escape accountability from juries.[46] While not an "alternative justice system," bankruptcy courts are fundamentally different than the tort system. One fundamental difference between the jurisdiction of bankruptcy courts and the tort system centers on the Seventh Amendment's right to a jury trial.

The Seventh Amendment to the United States Constitution ensures the right to a trial by jury in "suits at common law."[47] "Suits at common law" refer to actions in law, not proceedings in equity. It is generally accepted that bankruptcy relief is equitable in nature.[48] Accordingly, the Seventh Amendment does not explicitly ensure the right to a jury trial in a bankruptcy case. As a result, the question becomes whether the right to a jury trial in bankruptcy exists.

In addressing this question in *Granfinanciera, S.A.*,[49] the U.S. Supreme Court held that "[o]ur prior cases support administrative factfinding in only those situations involving 'public rights,' e. g., where the Government is involved in its sovereign

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[46] *See* Mike Spector and Dan Levine, *Special Report-Inside J&J's Secret Plan to Cap Litigation Payouts to Cancer Victims*, Feb. 4, 2022, https://www.reuters.com/article/bankruptcy-tactics-johnson-johnson-speci-idUSKBN2K91TL.

[47] *See* U.S. Const. amend. VII.

[48] *See Pepper v. Litton*, 308 U.S. 295, 304 (1939).

[49] *Granfinanciera v. Nordberg*, 492 U.S. 33 (1989).

capacity under an otherwise valid statute creating enforceable public rights. Wholly private tort, contract, and property cases, as well as a vast range of other cases, are not at all implicated." 492 U.S. 33, 51 (1989) (quoting *Atlas Roofing Co. v. OSHRC*, 430 U.S. 442, 458 (1977)). Accordingly, Congress lacks the power to strip parties of their Seventh Amendment right to a jury trial in causes of action that are "legal in nature" and a matter of "private right" such as tort, contract, and property claims.[50] However, the U.S. Supreme Court has held that by filing a proof of claim a creditor converts their private right to a public right thereby waiving their right to a jury trial.[51] Further, the *Granfinanciera* Court expressly declined to decide "whether the Seventh Amendment or Article III allows jury trials in such actions to be held before non-Article III bankruptcy judges subject to the oversight provided by the district courts pursuant to the 1984 Amendments." 492 U.S. at 64.

In 1994, Congress amended the Bankruptcy Code to resolve the circuit split regarding a bankruptcy court's authority to conduct jury trials in favor of authorizing them. However, "[t]he right to a jury trial in bankruptcy involves two separate inquiries - the existence of such a right, and the ability of a bankruptcy court to conduct a jury trial." *Scotland Guard Servs. v. Autoridad de Energia Electrica*, 179 B.R. 764, 767 (Bankr. D.P.R. 1993). Thus, while the amendment clarified the statutory authority of bankruptcy courts to conduct jury trials, it did not address how

[50] 492 U.S. at 42 n.4.

[51] *See Langenkamp v. Culp*, 498 U.S. 42 (1990).

far the bankruptcy system could go in eliminating jury rights otherwise available to claimants in the tort system.

In subsequent cases, courts have addressed the limited power of bankruptcy courts with respect to personal injury claims. A bankruptcy court may access the validity of a personal injury tort claim as a threshold matter but "absent consent of the claimants to jurisdiction of the bankruptcy court, a bankruptcy court may not hear and finally determine a personal injury tort claim."[52] However, in *In re Roman Cath. Diocese of Rockville Ctr.*, the bankruptcy court held that it has the power to disallow a proof of claim asserting a personal injury tort if the court is determining whether the claim is sustainable as a matter of law.

Accordingly, recent high-profile mass tort bankruptcy cases involving channeling injunctions, particularly in bankruptcy cases involving personal injury claims, have illuminated a new tension between the right to a jury trial and bankruptcy. Originally created under Section 524(g) of the Bankruptcy Code, a channeling injunction issued under a Chapter 11 plan aggregates all known and unknown claims and permanently enjoins claims against certain parties by funneling all claims into the settlement trust.[53] While a channeling injunction is only expressly authorized in asbestos cases, as set forth above, channeling injunctions have been approved outside of asbestos cases pursuant to Section 105(a).[54] Thus, once a

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[52] *In re Roman Cath. Diocese of Rockville Ctr.*, 650 B.R. 765, 776 (Bankr. S.D.N.Y. 2023) (citing *In re Residential Capital, LLC*, 536 B.R. 566 (Bkrtcy.S.D.N.Y. 2015)).

[53] *See* 11 U.S.C. §524(g) (1994).

[54] *See In re Dow Corning Corp.*, Case No. 95-20512 (Bankr. E.D. Mich.) (silicone breast implants); *see also In re TK Holdings, Inc.*, Case No. 17-11375 (Bankr. D. Del.) (defective airbag inflators).

company files for Chapter 11 bankruptcy and a channeling injunction is issued, claimants who have received actual or constructive notice or who are represented by a future claimants' representative can no longer file a tort claim against the company. As a result, critics of mass tort bankruptcies argue that mass tort claimants' right to a jury trial is distorted because claimants can either submit to a bankruptcy court's jurisdiction by filing a proof of claim that converts their private right (tort cause of action) to a public right forfeiting their right to a jury trial or sacrifice their tort claim entirely. The claimants that do not file a proof of claim continue to hold a private right (tort cause of action) but because of the channeling injunction, they are nevertheless stripped of their right to a jury trial. Yet, the Supreme Court in *Granfinanciera* explicitly stated that Congress lacks the authority to strip parties of their Seventh Amendment right to a jury trial in causes of action that concern private rights.[55] Thus, the question that remains is whether Congress, through the bankruptcy courts' use of Sections 524(g) and 105(a), can continue to strip parties of their Seventh Amendment right to a jury trial in matters of private rights, mainly tort causes of action.

V. Will Bankruptcy Continue to be a Viable Path for Resolving Mass Tort Cases?

Johnson & Johnson, valued at more than $400 billion, initially pledged $2 billion to its subsidiary LTL Management to resolve nearly 40,000 talc claims. As discussed *supra*, Johnson & Johnson subsidiary LTL Management's first bankruptcy

[55] 492 U.S. at 42 n.4.

case was dismissed by the Third Circuit.[56] However, for the sake of this hypothetical, imagine that a plan was confirmed in the LTL case providing $2 billion to satisfy talc claimants.[57] Without considering future claimants, administrative fees, or class variations (which would all have to be considered), each claimant would have received close to $50,000.

Now consider that before the bankruptcy filing, a jury in Missouri awarded twenty-two women, who argued that their ovarian cancer was caused by asbestos in Johnson & Johnson's baby powder, $25 million each in compensatory damages.[58] However, during the same time, over 1,500 asbestos-related lawsuits against Johnson & Johnson were dismissed. Should the litigants that had their cases dismissed, receiving no compensation, and the Missouri women, who a jury decided should receive $25 million each, be consolidated? Should both groups of litigants receive $50,000 each? Should Johnson & Johnson be allowed to cap what it must pay a personal injury claimant if it means every claimant will get paid something? Whether bankruptcy will continue to be a viable path for resolving mass tort cases depends on how courts, practitioners, the public, and Congress respond to these questions.

The arguments for and against whether bankruptcy should continue to be a viable path for resolving mass tort cases vary greatly. The strongest argument that

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[56] *In re LTL Mgmt., LLC*, 64 F.4th 84 (3d Cir. 2023).

[57] *Id.* at 106 ("The Funding Agreement merits special mention. To recap, under it LTL had the right, outside of bankruptcy, to cause J&J and New Consumer, jointly and severally, to pay it cash up to the value of New Consumer as of the petition date (estimated at $61.5 billion) to satisfy any talc-related costs and normal course expenses. Plus this value would increase as the value of New Consumer's business and assets increased.").

[58] *See Ingham v. Johnson & Johnson*, 608 S.W.3d 663, 680 (Mo. Ct. App. 2020).

bankruptcy is a suitable path for resolving mass tort cases centers on the collective action problem that plagues mass torts. In most mass tort cases, the tort claimants "race to the courthouse." The claimants that file their claims first are the only claimants that will recover. Claimants recover until the company eventually becomes insolvent and those claimants that do not file in time do not receive any compensation. Considering the hypothetical above, if all 40,000 talc claims resulted in awards of $25 million per person, Johnson & Johnson would only be able to pay 16,000 of the 40,000 claimants before they became insolvent. Following this logic, if mass tort claimants were allowed to proceed individually, even large, financially healthy companies may be unable to satisfy all their tort obligations. However, the possibility that all 40,000 claimants have claims worth $25 million is 0%. This impossibility is illustrated by the fact that 1,500 asbestos-related lawsuits were dismissed before Johnson & Johnson filed for bankruptcy.

Advocates in support of mass tort bankruptcies have also raised justifications for the use of divisional mergers such as the Texas Two-Step.[59] Since divisional mergers separate a company's assets and liabilities, advocates argue that the cost of creditors interfering with corporate operations is alleviated, simplifying the process of bankruptcy and reducing administrative expenses.[60] The divisional merger also "prevent[s] creditors from taking advantage of Chapter 11 proceedings to extract

[59] *See* Casey, Anthony Joseph and Macey, Joshua, *In Defense of Chapter 11 for Mass Torts*, UNIV. CHIC. LAW REV (Forthcoming) 1, 36-39 (2023).

[60] *Id.* at 37 ("An excessively costly bankruptcy would leave less money to pay everyone, including the tort claimants against JJCI. By allowing firms to separate their tort liabilities from their productive assets, divisional mergers reduce the costs and complexity of resolving tort claims.").

concessions."[61] Ultimately, mass tort bankruptcies, including the use of divisional mergers, simplify the process of bankruptcy, increase judicial efficiency, and reduce administrative costs.

On the other side, proponents against the use of bankruptcy cases for mass tort litigation argue that corporations are taking advantage of the automatic stay that comes with bankruptcy to delay paying tort claims.[62] Additionally, proponents argue that bankruptcy is not equipped to address the core issues raised by tort claims because tort law is fundamentally different than bankruptcy law. Professor Adam Levitin, of Georgetown University Law Center, summarized the issue in his House Judiciary Subcommittee testimony saying "[b]ankruptcy law has never dealt well with questions of moral justice—it is fundamentally a financial process that reduces all manner of obligation to cold, hard dollars, which are then allocated according to the Bankruptcy Code's priority structure. This financial logic has an unavoidable mismatch with the dignitary and expressive justice goals of tort law."[63] Further, many scholars, practitioners, and claimants, are concerned that bankruptcies that involve divisional mergers such as the Texas Two-Step are allowing corporations to avoid the full cost of tort claims and depriving tort claimants of adequate compensation.

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[61] *Id*. at 36.

[62] *See generally* Lindsey Simon, Bankruptcy Grifters, 131 YALE L.J. 1154, 1171 (2022) (raising concerns about "an emerging pattern of bankruptcy grifters who exploit nondebtor releases to obtain the benefits afforded to Chapter 11 debtors while avoiding the many accompanying obligations.").

[63] House Judiciary Subcommittee Testimony from Georgetown University Law Center Professor Levitin (Jul. 28, 2021).

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Hon. Sage M. Sigler is a U.S. Bankruptcy Judge for the Northern District of Georgia in Atlanta, appointed in March 2018. She succeeded Hon. Mary Grace Diehl, for whom she clerked after graduating from law school. Prior to her appointment to the bench, Judge Sigler was a partner in Alston & Bird LLP's Bankruptcy Group. She is an active member of ABI, IWIRC and the Bankruptcy Section of the Atlanta Bar Association, and she enjoys being a volunteer presenter for the Credit Abuse Resistance Education (CARE) program. Judge Sigler was an honoree in ABI's inaugural class of "40 Under 40" in 2017. She received her B.A. in political science from the University of Florida in 2001 and her J.D. in 2006 from Emory University School of Law, where she was the executive symposium editor of the *Emory Bankruptcy Developments Journal*.

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