UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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

GENOVA BURNS LLC
Daniel M. Stolz, Esq.
Donald W. Clarke, Esq.
Matthew I.W. Baker, Esq.
dstolz@genovaburns.com
dclarke@genovaburns.com
mbaker@genovaburns.com
110 Allen Road, Suite 304
Basking Ridge, NJ 07920
Tel: (973) 467-2700
Fax: (973) 467-8126
Local Counsel for the
Official Committee of Talc Claimants

BROWN RUDNICK LLP
David J. Molton, Esq.
Robert J. Stark, Esq.
Michael S. Winograd, Esq.
dmolton@brownrudnick.com
rstark@brownrudnick.com
mwinograd@brownrudnick.com
Seven Times Square
New York, NY 10036
Tel: (212) 209-4800
Fax: (212) 209-4801

and

Jeffrey L. Jonas, Esq.
Sunni P. Beville, Esq.
Eric R. Goodman, Esq.
jjonas@brownrudnick.com
sbeville@brownrudnick.com
egoodman@brownrudnick.com
One Financial Center
Boston, MA 02111
Tel: (617) 856-8200
Fax: (617) 856-8201
Co-Counsel for the
Official Committee of Talc Claimants

BAILEY GLASSER LLP
Brian A. Glasser, Esq.
Thomas B. Bennett, Esq.
Kevin W. Barrett, Esq.
Maggie B. Burrus, Esq.
bglasser@baileyglasser.com
tbennett@baileyglasser.com
kbarrett@baileyglasser.com
mburrus@baileyglasser.com
1055 Thomas Jefferson St. NW, Suite 540
Washington, DC 20007
Tel: (202) 463-2101
Fax: (202) 463-2103
Co-Counsel for the
Official Committee of Talc Claimants

OTTERBOURG PC
Melanie L. Cyganowski, Esq.
Adam C. Silverstein, Esq.
Jennifer S. Feeney, Esq.
mcyganowski@otterbourg.com
asilverstein@otterbourg.com
jfeeney@otterbourg.com
230 Park Avenue
New York, NY 10169
Tel: (212) 905-3628
Fax: (212) 682-6104
Co-Counsel for the
Official Committee of Talc Claimants

PARKINS & RUBIO LLP Lenard M. Parkins, Esq. Charles M. Rubio, Esq. lparkins@parkinsrubio.com crubio@parkinsrubio.com Pennzoil Place 700 Milan St., Suite 1300 Houston, TX 77002 Tel: (713) 715-1666 *Special Counsel for the Official Committee of Talc Claimants*	**MASSEY & GAIL LLP** Jonathan S. Massey, Esq. jmassey@masseygail.com 1000 Maine Ave. SW, Suite 450 Washington, DC 20024 Tel: (202) 652-4511 Fax: (312) 379-0467 *Special Counsel for the Official Committee of Talc Claimants*

In Re: **LTL MANAGEMENT, LLC,**[1] Debtor.	Chapter 11 Case No.: 21-30589 (MBK) Honorable Michael B. Kaplan Hearing: ***September 14, 2022 at 10:00 a.m***

NOTICE OF MOTION OF THE OFFICIAL COMMITTEE OF TALC CLAIMANTS TO TERMINATE THE DEBTOR'S EXCLUSIVE PERIOD PURSUANT TO 11 U.S.C. § 1121(d)(1)

PLEASE TAKE NOTICE, that ***on September 14, 2022 at 10:00 a.m****,* the undersigned, as local bankruptcy counsel for the Official Committee of Talc Claimants (the "Committee") of LTL Management LLC, ("LTL" or the "Debtor"), shall move before the Honorable Michael B. Kaplan, United States Bankruptcy Judge, at the United States Bankruptcy Court, for the District of New Jersey, Courthouse, 402 East State Street, Trenton, New Jersey 08608, seeking the entry of the order submitted herewith, and for such other relief that is just and proper.

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

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

PLEASE TAKE FURTHER NOTICE, that oral argument is requested.

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

PLEASE TAKE FURTHER NOTICE, that all objections must be in writing and filed with the Clerk of the United States Bankruptcy Court, for the District of New Jersey, Courthouse, 402 East State Street, Trenton, New Jersey 08608, and a copy thereof must simultaneously be served upon GENOVA BURNS, LLC., Attn: Daniel M. Stolz, Esq., 110 Allen Road, Suite 304, Basking Ridge, New Jersey 07920.

Respectfully submitted,

GENOVA BURNS, LLC

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

Daniel M. Stolz, Esq.
Donald W. Clarke, Esq.
110 Allen Road, Suite 304
Basking Ridge, NJ 07920
Telephone: (973) 533-0777
Facsimile: (973) 467-8126
Email: dstolz@genovaburns.com
Email: dclarke@genovaburns.com

Local Counsel to the Official Committee of Tort Claimants of LTL Management, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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

GENOVA BURNS LLC
Daniel M. Stolz, Esq.
Donald W. Clarke, Esq.
Matthew I.W. Baker, Esq.
dstolz@genovaburns.com
dclarke@genovaburns.com
mbaker@genovaburns.com
110 Allen Road, Suite 304
Basking Ridge, NJ 07920
Tel: (973) 467-2700
Fax: (973) 467-8126
Local Counsel for the
Official Committee of Talc Claimants

BROWN RUDNICK LLP
David J. Molton, Esq.
Robert J. Stark, Esq.
Michael S. Winograd, Esq.
dmolton@brownrudnick.com
rstark@brownrudnick.com
mwinograd@brownrudnick.com
Seven Times Square
New York, NY 10036
Tel: (212) 209-4800
Fax: (212) 209-4801

and

Jeffrey L. Jonas, Esq.
Sunni P. Beville, Esq.
Eric R. Goodman, Esq.
jjonas@brownrudnick.com
sbeville@brownrudnick.com
egoodman@brownrudnick.com
One Financial Center
Boston, MA 02111
Tel: (617) 856-8200
Fax: (617) 856-8201
Co-Counsel for the
Official Committee of Talc Claimants

BAILEY GLASSER LLP
Brian A. Glasser, Esq.
Thomas B. Bennett, Esq.
Kevin W. Barrett, Esq.
Maggie B. Burrus, Esq.
bglasser@baileyglasser.com
tbennett@baileyglasser.com
kbarrett@baileyglasser.com
mburrus@baileyglasser.com
1055 Thomas Jefferson St. NW, Suite 540
Washington, DC 20007
Tel: (202) 463-2101
Fax: (202) 463-2103
Co-Counsel for the
Official Committee of Talc Claimants

OTTERBOURG PC
Melanie L. Cyganowski, Esq.
Adam C. Silverstein, Esq.
Jennifer S. Feeney, Esq.
mcyganowski@otterbourg.com
asilverstein@otterbourg.com
jfeeney@otterbourg.com
230 Park Avenue
New York, NY 10169
Tel: (212) 905-3628
Fax: (212) 682-6104
Co-Counsel for the
Official Committee of Talc Claimants

PARKINS & RUBIO LLP Lenard M. Parkins, Esq. Charles M. Rubio, Esq. lparkins@parkinsrubio.com crubio@parkinsrubio.com Pennzoil Place 700 Milan St., Suite 1300 Houston, TX 77002 Tel: (713) 715-1666 *Special Counsel for the Official Committee of Talc Claimants*	**MASSEY & GAIL LLP** Jonathan S. Massey, Esq. jmassey@masseygail.com 1000 Maine Ave. SW, Suite 450 Washington, DC 20024 Tel: (202) 652-4511 Fax: (312) 379-0467 *Special Counsel for the Official Committee of Talc Claimants*

In Re: **LTL MANAGEMENT, LLC,**[1] Debtor.	Chapter 11 Case No.: 21-30589 (MBK) Honorable Michael B. Kaplan

MOTION OF THE OFFICIAL COMMITTEE OF TALC CLAIMANTS TO TERMINATE THE DEBTOR'S EXCLUSIVE PERIOD PURSUANT TO 11 U.S.C. § 1121(d)(1)

THE TCC HAS ASSERTED AND CONTINUES TO ASSERT THAT THE DEBTOR'S CHAPTER 11 CASE WAS FILED IN BAD FAITH AND SHOULD BE DISMISSED. THIS MATTER IS NOW PENDING BEFORE THE THIRD CIRCUIT. THE TCC'S CHAPTER 11 PLAN ASSUMES, *ARGUENDO*, THAT THE DEBTOR'S CHAPTER 11 CASE IS NOT DISMISSED AS A BAD FAITH FILING. THE TCC RESERVES ALL RIGHTS TO CONTINUE TO ARGUE THAT DISMISSAL IS REQUIRED UNDER THE BANKRUPTCY CODE.

The Official Committee of Talc Claimants (the "TCC") in the above captioned case, by and through its undersigned counsel, hereby submits this motion (the "Motion") seeking entry of an order substantially in the form submitted herewith (the "Order"), terminating the Debtor's exclusivity period, pursuant to section 1121(d) of chapter 11 of title 11 of the United States Code

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

(the "Bankruptcy Code"), to allow the TCC to file and prosecute a chapter 11 plan. In support of the Motion, the TCC respectfully states as follows.

INTRODUCTION

1. Terminating exclusivity is the most effective tool in the hands of the Court to encourage a fair outcome in this case and possible settlement.

2. The Debtor has now been in bankruptcy for 274 days. The Debtor has not filed a plan. The Debtor has not indicated that it has formulated a plan. The Debtor has not indicated that it has any plans to file a plan in the near future. The mediation has not been successful, notwithstanding LTL's representations to the contrary.

3. As time continues to tick with no real progress, or sign of progress in sight, LTL proposes estimation, which is sure to have only one outcome—undue delay.[2]

4. Estimation is simply a "path to nowhere" in mass tort bankruptcies where the plan is expected to include nonconsensual third-party releases or a section 524(g) injunction.[3] Estimation serves no useful purpose in a section 524(g) case—something that is evident from the plain language of the Bankruptcy Code itself, and something that case law and experience have proven true again and again. Tortfeasors use estimation to create years of delay as leverage over cash strapped and dying victims.

5. LTL's estimation gambit reflects actual malice toward cancer victims. LTL and J&J have laid bare a plain and obvious truth: they have no plan to provide fair and equitable

---

[2] Late on July 14, 2022, LTL filed its *Debtor's Verified Complaint for Injunctive Relief (I) Preliminarily Enjoining the Prosecution of the New Mexico and Mississippi State Actions and (II) Granting a Temporary Restraining Order Pending a Final Hearing* [Dkt. No. 2713], which further demonstrates the Debtor's intent to cause undue delay.

[3] *See* Official Committee of Talc Claimants' Statement in Opposition to Debtor's Request for Estimation Under Section 502(c) of the Bankruptcy Code and Statement on Proposed Next Steps in Chapter 11 Case filed on July 12, 2022 (the "TCC Estimation Objection") at ¶¶ 9-25.

compensation to tort victims with valid claims. Estimation, by design, is intended to delay this case without any possibility of benefit to this Court or the victims.

6. Such delay creates a win-win scenario for J&J. Either victims will acquiesce in a pitiful settlement J&J finds acceptable or J&J will use bankruptcy and an estimation proceeding to create years of undue delay. Delay lets J&J keep its money and avoid litigation in the tort system. J&J will not suffer any more adverse rulings or substantial judgments. The tort victims, on the other hand, will continue to suffer and die from cancer without receiving fair compensation or their day in court.

7. But there is another path. The TCC wants to move forward with a competing plan. The TCC's plan would be based on this Court's statements regarding the goals and objectives of this case. The TCC's plan would use the chapter 11 process to provide a meaningful opportunity for justice and to produce comprehensive, equitable, and timely recoveries for cancer victims. It will ensure that a consistent and objective criterion is applied to comparable talc claims. Present and future talc claimants will have viable options to obtain fair and equitable compensation in their lifetimes.

8. The TCC's plan would accomplish these goals through the creation of a trust. The trust would be funded with, among other things, an assignment of LTL's rights under the Funding Agreement and certain insurance policies. The assignment of LTL's rights under the Funding Agreement and the insurance policies will occur pursuant to section 1123(a)(5) of the Bankruptcy Code. The assignment of these rights should not be controversial given the Third Circuit's ruling in *In re Federal-Mogul Global Inc.*, 684 F.3d 355, 382 (3d Cir. 2012).

9. The TCC's plan would distribute funds through the implementation of trust distribution procedures ("TDPs")—a common tool utilized to liquidate tort claims post-

confirmation through final settlements and/or judgments. The proposed TDPs would include eligibility gating factors, a claims matrix with base and maximum values for mesothelioma and ovarian cancer claims, as well as scaling factors to account for differences in the impact of the disease on different cohorts of victims. These values and factors will ensure that a consistent and objective criterion is applied to talc claims.

10. The TCC's plan would give cancer victims a choice—enter into a final settlement with the Trust based on the TDPs values and scaling factors or, alternatively, litigate to judgment in the tort system (*i.e.*, a "tort out" election). Settlement is not compulsory and each talc claimant's jury trial rights are fully preserved. The TCC believes that the vast majority of claimants will likely elect to settle and receive compensation while they are still alive.

11. Since the TCC's plan would be consensual (in that the requisite number of creditors will vote to support it), the central issue over the confirmation of the TCC's plan will be whether the TDPs produce settlements that are "fair and equitable" and fall within the "range of reasonableness." If LTL or J&J believe that the proposed settlement values are outside the range of reasonableness, they can object, present evidence, and be heard on this issue during the confirmation trial. This Court would then have to make a ruling in the context of the confirmation of the TCC's plan. If this Court finds that the TDPs values are too high, or the procedures are improper, for any reason, the TCC could adjust the matrix values and procedures.

12. J&J and JJCI must pay the talc claims as they are allowed in accordance with the TDPs. This is required under the Funding Agreement. All final settlements entered into by the trust with talc claimants, and all talc claims liquidated to judgment in the tort system in the event

of a "tort out" election, constitutes a "Permitted Funding Use" that J&J and JJCI are required to pay.[4]

13. By creating LTL, executing the Funding Agreement, and placing LTL into bankruptcy and, importantly, under the oversight of this Court, all the tools necessary to bring this case to a successful conclusion exist. Neither LTL's nor J&J's consent is needed for this to occur. A plan that provides fair and equitable compensation for tort victims can be confirmed without LTL's and J&J's consent and over LTL's and J&J's objection. In fact, for LTL's Texas Two Step to not constitute a fraud on the tort victims, this must be true as a matter of fact and law.

14. The TCC's plan would have the support of all creditor groups. By the time of confirmation, the TCC would expect to reach settlements and consensus with all parties in interest, other than presumably LTL and J&J. By authorizing and directing the Texas Two Step, J&J has transformed itself into an insurer that provides at least $61 billion in coverage for all allowed talc claims against LTL. As an insurer, J&J may not like the TCC's plan because it requires J&J to actually honor its obligations under the Funding Agreement, but J&J made the decision to execute the Funding Agreement and place LTL into bankruptcy.

15. The TCC can move quickly and confirm its plan by the first quarter of 2023. The TCC submits that the following timeline is realistic and achievable if exclusivity is terminated in September:

August 1, 2022	Commencement of 90-day Review Period by Court-Appointed Expert Witness

[4] *See* Amended and Restated Funding Agreement at § 1 ("Permitted Funding Use" means … the funding of any amounts to satisfy: (i) Payee's Talc Related Liabilities established by a judgment of a court of competent jurisdiction or final settlement thereof at any time when there is no proceeding under the Bankruptcy Code pending with respect to Payee."). The term "Permitted Funding Use" also includes the "Payee's Talc Related Liabilities in connection with the funding of one or more trusts for the benefit of existing and future claimants created pursuant to a plan of reorganization for the Payee … regardless of whether the Payors support such plan of reorganization." *Id.*

September 16, 2022	TCC to file Plan, Disclosure Statement, and Motion to Approve Disclosure Statement and Solicitation Procedures
November 1, 2022	Hearing to Approve Disclosure Statement and Solicitation Procedures
November 22, 2022	Commencement of Mailing Disclosure Statement and Ballots
January 27, 2023	Voting Deadline
February 3, 2023	Voting Report Filed
February 28, 2023	Confirmation Hearing

The TCC's timeline includes a 90-day review period during which time the proposed matrix values and procedures in the TDPs can be reviewed and vetted by a Court-appointed expert witness. The TCC anticipates that the solicitation version of the TDPs and the Disclosure Statement will reflect the expert's input. All claimants, therefore, will receive and vote on a plan of reorganization that includes TDPs supported by the TCC ***and*** vetted by the Court-appointed expert witness.

16. The TCC has carefully evaluated all options and considered the various paths that multiple mass tort bankruptcies have taken, as well as paths designed to fairly and expeditiously bring this case to a conclusion. The TCC, of course, adheres to and does not waive its position that this bankruptcy should have been dismissed. That issue is now in the hands of the United States Court of Appeals for the Third Circuit. But if the bankruptcy is to proceed, it should proceed efficiently given the devasting consequences of delay for talc claimants. Terminating exclusivity is a powerful tool in the hands of the Court to encourage a fair outcome and possible settlement. Exclusivity will terminate eventually. Waiting eighteen (18) months serves no purpose whatsoever. Exclusivity should end now so that the TCC can file its plan of reorganization and move this case forward.

BACKGROUND

17. On October 14, 2021, days after a corporate reorganization that created LTL and allocated all talc-related liabilities to LTL through a Texas divisive merger, LTL filed a voluntary petition for chapter 11 protection in the United States Bankruptcy Court for the Western District of North Carolina (the "North Carolina Bankruptcy Court") (Dkt. No. 1).

18. On November 8, 2021, the North Carolina Bankruptcy Court entered an order (Dkt. No. 355) appointing the TCC. On November 16, 2021, the North Carolina Bankruptcy Court entered an order transferring the Case to the District of New Jersey (Dkt. No. 416), which referred the case to this Court (the "Court" or "Bankruptcy Court").

19. On December 1, 2021, the TCC filed its Motion of the Official Committee of Talc Claimants to Dismiss Debtor's Chapter 11 Case (Dkt. No. 632), seeking dismissal of this Case alleging, inter alia, that the Case was filed in bad faith (the "TCC Motion to Dismiss").

20. On January 12, 2022, the Debtor filed its first motion to extend the Exclusive Periods (Dkt. No. 1127). On February 7, 2022, the Court entered an order (Dkt. No. 1405) (the "First Extension Order") extending the Exclusive Filing Period to May 12, 2022, and the Exclusive Solicitation Period to July 11, 2022 (together, the "First Extension Period").

21. On February 25, 2022, the Court filed its Memorandum Order denying the TCC Motion to Dismiss (Dkt. No. 1572) (the "MTD Opinion"), and on March 2, 2022, the Court entered its related Order Denying Motions to Dismiss (Dkt. No. 1603) (the "MTD Order").

22. At a hearing held on March 8, 2022, the Court ordered the appointment of retired Magistrate Judge Joel Schneider and Mr. Gary Russo to serve as co-mediators in a mediation among the Debtor, TCC I, TCC II, the Future Talc Claimants' Representative, and potentially other parties, to negotiate a consensual plan of reorganization and resolve this chapter 11 case. On March 18, 2022, the Court entered the Order Establishing Mediation Protocol (Dkt. No. 1780,

amended by Dkt. No. 2300) (as amended, the "Mediation Order"). And, on May 27, 2022, the Court ordered the appointment of retired Bankruptcy Judge Donald H. Steckroch as an additional mediator (Dkt. No. 2370).

23. On March 18, 2022, the Court entered an order (Dkt. No. 1786) appointing the Future Talc Claimants' Representative (the "FTCR").

24. The TCC and other movants appealed the MTD Order, and the Court certified those appeals to the United States Court of Appeals for the Third Circuit (the "Court of Appeals") on April 4, 2022, in its *Order Certifying Direct Appeal to the United States Court of Appeals for the Third Circuit of Order Denying Motions to Dismiss* (Dkt. No. 1654). The TCC and other movants petitioned the Court of Appeals for direct appeal, and by order dated May 11, 2022, the Court of Appeals granted the petitions.

25. On April 13, 2022, the Debtor filed its Debtor's Second Motion for an Order Extending the Exclusive Periods to File a Plan of Reorganization and Solicit Acceptances Thereof (Dkt. No. 2095) (the "Second Exclusivity Motion"). On April 27, 2022, the TCC filed its Objection to the Debtor's Motion to Extend Exclusive Period (Dkt. No. 2181). During a hearing on May 4, 2022, the Court granted the Second Exclusivity Motion but noted that if the Debtor files a plan prior to the expiration of the newly extended exclusive period, the Court will give the TCC the opportunity to show cause why it should be permitted to file a competing plan.

JURISDICTION AND VENUE

26. 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). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

27. The statutory predicates for the relief requested herein are sections 105(a) and 1121(d) of the Bankruptcy Code.

RELIEF REQUESTED

28. By this Motion, the TCC seeks an order, pursuant to section 1121(d)(1) of the Bankruptcy Code, terminating the Debtor's exclusive period to file a chapter 11 plan and solicit acceptances thereof under section 1121(a) so that the TCC can file its chapter 11 plan.

ARGUMENT

29. Section 1121 of the Bankruptcy Code clearly recognizes that there comes a point in every chapter 11 case at which the parties should be placed on equal footing. *See* 11 U.S.C. § 1121; *In re Pub. Serv. Co. of New Hampshire*, 99 B.R. 155, 176 (Bankr. D.N.H. 1989) (noting that a "level playing field is essential in the present circumstances of this case to foster a consensual plan."). It is time that the playing field be leveled between LTL (and J&J) and the tens of thousands of talc claimants suffering and dying due to the actions of LTL's affiliates, J&J and JJCI.

30. LTL does not have any business to reorganize. One of the fundamental reasons for providing a debtor with exclusive periods is inapplicable in this case. Meanwhile, the resource that exclusivity takes from creditors—time—is the very resource that talc claimants can least afford to lose. Talc claimants have died (and continue to die) with their cases against LTL's affiliates J&J and JJCI on hold since this bankruptcy case was commenced and it is time to make meaningful progress toward resolving their claims.

31. This Court has itself recognized that the exclusivity periods granted to LTL cannot be allowed to continue through the statutory maximum. *See* May 4, 2022, Hr'g Tr. 89:16-18 ("Now, I don't even want to think about going to the maximum that the Code allows of 18 months.")

32. Mediation, which LTL has held out as a reason for this Court to extend the exclusive periods, has failed to produce a settlement and has not otherwise materially advanced this case. Under the current circumstances, LTL and talc claimants remain unlikely to reach an agreed settlement of talc claims, and LTL is unlikely to garner the necessary support of 75% of talc claimants for any section 524(g)-based plan it may propose. *See Pub. Serv. Co.*, 99 B.R. 155 (holding that a stalemate between debtor and state regarding rate levels that were fundamental to any plan of reorganization indicated that extension of exclusivity would not promote consensual plan of reorganization within reasonable time frame).

33. In its Second Exclusivity Motion, LTL asserted that it could not possibly have considered a plan while handling the tasks listed in its motion and certainly will need more time to do so given all that is on its plate now. The TCC has an equally full plate. Yet, because the TCC wants to progress this case for its constituents, the TCC stands ready to file a plan, a disclosure statement, and a motion to approve solicitation procedures. The TCC can do this upon the entry of an order terminating exclusivity. As set forth below, the current circumstances of this case provide ample "cause" within the meaning of section 1121(d)(1) to terminate exclusivity. The Court should terminate LTL's exclusivity periods and permit the TCC to present its plan to resolve this case.

A. Legal Standards Governing Exclusivity Under Section 1121(d)(1)

34. Section 1121 of the Bankruptcy Code describes who may file a Chapter 11 plan and the period during which that right is reserved for the debtor alone. Although section 1121(b) grants a debtor the exclusive right to file a plan during the first 120 days following the petition date, section 1121(d)(1) further provides that "the court may for cause reduce or increase" the debtor's exclusivity periods. 11 U.S.C. § 1121(d)(1).

35. The Bankruptcy Code does not define "cause" for modifying the exclusivity period, leaving the decision to the discretion of the courts on a case-by-case basis. *See In re Geriatrics Nursing Home, Inc.*, 187 B.R. 128, 132 (D.N.J. 1995) (Section 1121(d)(1) "grants great latitude to the Bankruptcy Judge in deciding, on a case-specific basis, whether to modify the exclusivity period on a showing of 'cause.'") (citing *In re Kerns*, 111 B.R. 777, 781 (S.D. Ind. 1990)); *see also In re Adelphia Commc'ns Corp.*, 352 B.R. 578, 586 (Bankr. S.D.N.Y. 2006) ("A decision to extend or terminate exclusivity for cause is within the discretion of the bankruptcy court, and is fact-specific."); *In re Lehigh Valley Prof'l Sports Club, Inc.*, No. 00–11296, 2000 WL 290187, at *2 (Bankr. E.D. Pa. Mar. 14, 2000) (relief under Section 1121(d) is committed to the sound discretion of the bankruptcy judge); *In re Sharon Steel Corp.*, 78 B.R. 762, 763-64 (Bankr. W.D. Pa. 1987) ("Congress has left the meaning of the phrase 'for cause' to be determined by the facts and circumstances in each individual case.").

36. In determining whether cause exists to terminate exclusivity, courts have identified a variety of factors to consider, including, among others: (1) whether the debtor has made progress in negotiations with stakeholders; (2) whether the debtors have demonstrated the reasonable prospect for the filing of a viable plan; (3) whether terminating exclusivity will move the case forward; and (4) the "principal parties' acrimonious relations," and whether stakeholders have lost confidence in the debtors. *See, e.g., In re Texas Extrusion Corp.*, 68 B.R. 712, 725 (N.D. Tex. 1986), *aff'd sub nom. Matter of Texas Extrusion Corp.*, 836 F.2d 217 (5th Cir. 1988), and *aff'd sub nom. Matter of Texas Extrusion Corp.*, 844 F.2d 1142 (5th Cir. 1988)*; Express One Int'l*, 194 B.R. at 100 (citing *In re Grand Traverse Dev. Co.*, 147 B.R. 418 (Bankr. W.D. Mich. 1992)); *In re McLean Indus., Inc.*, 87 B.R. 830, 834 (Bankr. S.D.N.Y. 1987); *In re Wisconsin Barge Line, Inc.,* 78 B.R. 946, 948 (Bankr. E.D. Mo. 1987).

B. The Debtor Has Failed to Make Meaningful Progress in Negotiations with Stakeholders

37. LTL has failed to make meaningful progress in negotiations with stakeholders. This is an objective fact made known to the Court. But what is worse is that LTL and J&J currently have no reason to make progress. Terminating exclusivity will change their calculus.

38. A primary purpose of a Texas Two Step bankruptcy is to create undue delay. Under the Funding Agreement—an agreement that must be rock solid for the Texas Two Step to not constitute a fraud on creditors—J&J became the ultimate insurer of LTL's talc claims. LTL is, in substance, an insured. J&J and JJCI are, in substance, the insurer. After the effective date, when a talc claim is fixed—through final settlement or judgment—against LTL, J&J and JJCI are required to pay it under the Funding Agreement. The Funding Agreement provides "coverage" for all talc-related liabilities up to an aggregate limit of at least $61 billion.

39. J&J, like any insurer, benefits from delay. Prior to bankruptcy J&J had not only suffered defeat after defeat on the merits, but it was also incurring substantial legal expenses. Bankruptcy is the perfect refuge. The Texas Two Step is designed to create a "win-win" situation for J&J. Either the victims acquiesce in a pitiful settlement J&J would find acceptable, or J&J uses bankruptcy and an estimation proceeding to create years of delay.

40. While it waits for capitulation, J&J keeps its money, avoids litigation in the tort system, and can continue to pay dividends and operate without any Bankruptcy Court oversight. J&J will not suffer any more adverse rulings or substantial judgments. The tort victims, on the other hand, will continue to suffer and die without receiving compensation. J&J currently has no incentive to reach a fair and reasonable agreement. If this case proceeds to estimation, J&J will only be emboldened as its plan to deny fair and equitable compensation to victims for years—if not a decade—comes to fruition.

41. Terminating exclusivity instantly changes this calculus. The termination of exclusivity means that LTL and J&J no longer have exclusive control of the case. J&J's master plan predicated on delay and needless litigation would instantly be in peril. Terminating exclusivity would give the cancer victims the ability to defend themselves by introducing competition and a level playing field. Absent this, the TCC does not see how any significant progress will be made given the current advantages that J&J and LTL enjoy.

C. The Debtor Has Not Shown A Reasonable Prospect of Filing a Viable Plan

42. LTL has shown no inkling of a prospect to file a viable plan. LTL's plan is delay for the sake of delay. And it is not as if LTL could not file a plan.

43. The Boy Scouts' bankruptcy offers a case study. The Boy Scouts filed for bankruptcy on February 19, 2020, facing substantial liability for sexual abuse claims. *In re Boy Scouts of America and Delaware BSA, LLC* ("Boy Scouts"), Case No. 20-10343 (LSS) (Bankr. D. Del.). Without reaching any agreements with their creditors, the Boy Scouts, which needed to emerge from bankruptcy as quickly as possible (unlike LTL here), filed their Second Amended Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC (Dkt. No. 2592), on April 13, 2021.

44. Like a section 524(g) plan, the Boy Scouts plan provided for a channeling injunction and nonconsensual releases for thousands of non-debtor entities. The Boy Scouts, represented by the same attorney that represents J&J here, formulated and filed a plan of reorganization without the benefit of any estimation proceeding. In fact, when estimation was proposed, the Boy Scouts objected to it on the grounds that it would create undue delay. *See Boy Scouts* at Dkt. Nos. 2391 & 2612. LTL's and J&J's legal counsel have the requisite expertise necessary to formulate and file a chapter 11 plan. Their clients could obviously do so now without

the benefit of any estimation proceeding. The problem is that LTL and J&J want to use delay as a weapon against cancer victims.

45. J&J's perfect plan would zero out all talc claims. J&J wants this Court to overrule the District Court's rulings in the MDL—pursuant to which the Court ruled that approximately 35,000 ovarian cancer claims could proceed, having found that the plaintiffs' general causation experts' opinions were reliable and admissible—and then summarily dispose of all the talc claims contrary to the ruling made by multiple state trial courts, state appellate courts, and juries across the country. Even under *In re G-I Holdings, Inc.*, 323 B.R. 583 (Bankr. D.N.J. 2005) this is a bridge too far.[5]

46. Even if this were permissible under title 28 of the United States Code, which it is not, such a plan could never satisfy the requirements of section 524(g) of the Bankruptcy Code because it would never garner the support of over 75% of the cancer victims whose claims would be addressed by the trust. Further, moving this case into the plan confirmation stage would mean that J&J and LTL would not get the benefit of a multi-year estimation boondoggle during which time no payments would be made to victims. J&J's incentive here is to not make progress.

D. Allowing the TCC to File a Plan Will Move the Case Forward

47. Allowing the TCC to file a plan will move the case forward. PG&E offers another case study. PG&E filed for bankruptcy in California on January 29, 2019, facing over $30 billion in tort liability based on prepetition wildfires it caused.[6] The Court in *PG&E* employed multiple tools to move the case forward. The tool that worked was terminating exclusivity.

---

5 *See* TCC Estimation Objection at ¶¶ 26-44.

6 *See* Amended Declaration of Jason P. Wells in Support of First Day Motions and Related Relief (Dkt. No. 166) filed on February 1, 2019, in *In re PG&E Corp.*, Case No. 19-30088 (DM) (Bankr. N.D. Cal.) ("*PG&E*").

48. **First**, in response to a motion filed by the tort claimants' committee,[7] the Bankruptcy Court in *PG&E* granted relief from stay to permit certain bellwether cases to go forward in state court. *Id.* at Dkt. No. 3571. In so doing, the Court took advantage of California's preference statute, which requires jury trials to be expedited for certain claimants who are over the age of 70. *See* Cal Civ. Proc. Code § 36 (West 2022). The Bankruptcy Court lifted the stay so that these cases could be heard by the San Francisco County Superior Court, which forced PG&E to defend these claims on the merits.

49. **Second**, the Bankruptcy Court in *PG&E* sent the estimation proceeding to the District Court. PG&E's plan did not include non-consensual releases.[8] Thus, it was theoretically possible for PG&E to confirm a plan that did not have the support of the tort victims by satisfying section 1129(b)(2)(B) with the aid of an estimation proceeding. However, since the estimation proceeding involved the estimation of personal injury and wrongful death claims, the Bankruptcy Court recommended that the District Court withdraw the reference. *PG&E* at Dkt. No. 3648.

50. Estimation before an Article III Court failed to produce a settlement. It was not until the Bankruptcy Court considered a **third** option—terminating exclusivity so that the tort claimants' committee could file a competing plan—that real progress was made. The tort claimants' committee in *PG&E* joined forces with certain bondholders and investors and proposed a competing plan that would have substantially diluted PG&E's existing equity holders. *Id.* at Dkt. No. 3940. The Court—recognizing the benefits to claimants that competing plans almost always produce—terminated exclusivity and permitted the committee to file its plan. *Id.* at Dkt. No. 4167. A global settlement followed eight (8) weeks later. *Id.* at Dkt. No. 5038-1.

---

7 *See PG&E* at Dkt. No. 2843.

8 PG&E could not utilize section 524(g) because it did not face asbestos liability. *See* 11 U.S.C. § 524(g)(2)(B)(i). And, in the Ninth Circuit nonconsensual non-debtor releases are not permissible, *see In re Lowenschuss*, 67 F.3d 1394, 1401 (9th Cir. 1995), thus foreclosing reliance on section 105(a).

51. This result is hardly surprising. The termination of exclusivity means that the debtor no longer has exclusive control of the case. PG&E's master plan was instantly in peril. The court's decision in *PG&E* terminating exclusivity gave the tort claimants' committee the ability to truly defend itself, introduced competition and a level playing field, and put pressure on the appropriate parties to reach a settlement. The TCC submits that similar progress may occur here if this Court levels the playing field and permits the TCC to file its plan.

E. Talc Claimants Do Not Have Confidence in the Debtor

52. Based on its favoring of estimation, the TCC has no confidence in LTL or its master J&J. The TCC submits that LTL is following the *Garlock* script by moving for estimation in a section 524(g) case—a path that is both futile and designed to run out the clock on the cancer victims.

53. All of Jones Day's Texas Two Step cases have largely followed the *Garlock* script. *Bestwall*, *Aldrich*, and *DBMP* all filed for bankruptcy following a divisional merger under Texas law. *See In re Bestwall LLC*, Case No 17-31795 in Bankr. W.D. N.C.; *In re Aldrich Pump LLC*, Case No. 20-30608 in Bankr. W.D. N.C.; *In re DBMP LLC*, Case No. 20-30080 in Bankr. W.D. N.C. All three debtors proposed estimation as their alleged path to success. All three debtors are still in bankruptcy having made no meaningful progress towards the confirmation of a plan. This is by design.

54. The TCC has no confidence in J&J at this time. LTL is J&J's servant. LTL is incapable of acting in a manner contrary to J&J's interests. LTL has no mind separate and apart from J&J as its personnel are current or former J&J employees. Expecting LTL to propose a plan that treated cancer victims fairly would be akin to expecting LTL to sue J&J. J&J, as the ultimate

decisionmaker, has no incentive to make progress here, which is why this case is and will remain stuck in a ditch until help arrives. Terminating exclusivity would result in material progress.

F. Terminating Exclusivity Will Not Prejudice the Debtor

55. Finally, terminating the exclusivity period will not prejudice LTL because it does not prevent LTL from proposing its own chapter 11 plan; instead, it simply opens the process for competing proposals and levels the playing field. *See In re R.G. Pharm., Inc.*, 374 B.R. 484, 488 (Bankr. D. Conn. 2007) ("The fact that the debtor no longer has the exclusive right to file a plan does not affect its concurrent right to file a plan."); *In re All Seasons Indus., Inc.*, 121 B.R. 1002, 1005 (Bankr. N.D. Ind. 1990) (denial of request for extension of the exclusive period is not "a death knell" for a debtor's reorganization; the debtor "remains free to take as long as it feels appropriate to develop and propose its own plan," though from that point onward, creditors have the same rights). Should LTL put forward a viable plan that can garner the support of necessary parties in interest, it will still be able to pursue that plan. The TCC is prepared to file and prosecute a plan. The Debtor's exclusivity period should be terminated to allow the plan process to go forward.

WAIVER OF MEMORANDUM OF LAW

56. The TCC respectfully requests that the Court waive the requirement to file a separate memorandum of law pursuant to D.N.J. LBR 9013-1(a)(3) because the legal basis upon which the TCC relies is incorporated herein and the Motion does not raise any novel issues of law.

NOTICE

57. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) counsel to the Debtor; (c) the Future Talc Claimants' Representative and her counsel; (d) counsel to the Debtor's non-debtor affiliates, Johnson & Johnson Consumer Inc. and Johnson & Johnson; (e) the fee

examiner appointed in this chapter 11 case and his counsel; and (f) any other party entitled to notice. The TCC respectfully submits that no further notice is required.

NO PRIOR REQUEST

58. No prior request for the relief sought in this Motion has been made to this or any other court in connection with this case.

CONCLUSION

WHEREFORE, based on the foregoing, the TCC respectfully requests that this Court (i) terminate the Debtor's exclusive period to file and solicit votes on a plan of reorganization under Section 1121(d)(1) of the Bankruptcy Code, and (ii) grant such other and further relief as the Court deems necessary and appropriate.

Respectfully submitted,

GENOVA BURNS, LLC

By: */s/ Daniel M. Stolz*

Daniel M. Stolz, Esq.
Donald W. Clarke, Esq.
110 Allen Road, Suite 304
Basking Ridge, NJ 07920
Telephone: (973) 533-0777
Facsimile: (973) 467-8126
Email: dstolz@genovaburns.com
Email: dclarke@genovaburns.com

Local Counsel to the Official Committee of Tort Claimants of LTL Management, LLC

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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

GENOVA BURNS LLC
Daniel M. Stolz, Esq.
Donald W. Clarke, Esq.
Matthew I.W. Baker, Esq.
dstolz@genovaburns.com
dclarke@genovaburns.com
mbaker@genovaburns.com
110 Allen Road, Suite 304
Basking Ridge, NJ 07920
Tel: (973) 467-2700
Fax: (973) 467-8126
Local Counsel for the
Official Committee of Talc Claimants

BROWN RUDNICK LLP
David J. Molton, Esq.
Robert J. Stark, Esq.
Michael S. Winograd, Esq.
dmolton@brownrudnick.com
rstark@brownrudnick.com
mwinograd@brownrudnick.com
Seven Times Square
New York, NY 10036
Tel: (212) 209-4800
Fax: (212) 209-4801

and

Jeffrey L. Jonas, Esq.
Sunni P. Beville, Esq.
Eric R. Goodman, Esq.
jjonas@brownrudnick.com
sbeville@brownrudnick.com
egoodman@brownrudnick.com
One Financial Center
Boston, MA 02111
Tel: (617) 856-8200
Fax: (617) 856-8201
Co-Counsel for the
Official Committee of Talc Claimants

BAILEY GLASSER LLP
Brian A. Glasser, Esq.
Thomas B. Bennett, Esq.
Kevin W. Barrett, Esq.
Maggie B. Burrus, Esq.
bglasser@baileyglasser.com
tbennett@baileyglasser.com
kbarrett@baileyglasser.com
mburrus@baileyglasser.com
1055 Thomas Jefferson St. NW, Suite 540
Washington, DC 20007
Tel: (202) 463-2101
Fax: (202) 463-2103
Co-Counsel for the
Official Committee of Talc Claimants

OTTERBOURG PC
Melanie L. Cyganowski, Esq.
Adam C. Silverstein, Esq.
Jennifer S. Feeney, Esq.
mcyganowski@otterbourg.com
asilverstein@otterbourg.com
jfeeney@otterbourg.com
230 Park Avenue
New York, NY 10169
Tel: (212) 905-3628
Fax: (212) 682-6104
Co-Counsel for the
Official Committee of Talc Claimants

PARKINS & RUBIO LLP Lenard M. Parkins, Esq. Charles M. Rubio, Esq. lparkins@parkinsrubio.com crubio@parkinsrubio.com Pennzoil Place 700 Milan St., Suite 1300 Houston, TX 77002 Tel: (713) 715-1666 *Special Counsel for the* *Official Committee of Talc Claimants*	**MASSEY & GAIL LLP** Jonathan S. Massey, Esq. jmassey@masseygail.com 1000 Maine Ave. SW, Suite 450 Washington, DC 20024 Tel: (202) 652-4511 Fax: (312) 379-0467 *Special Counsel for the* *Official Committee of Talc Claimants*

In Re: **LTL MANAGEMENT, LLC,** Debtor.	Chapter 11 Case No.: 21-30589 (MBK) Honorable Michael B. Kaplan

ORDER GRANTING MOTION OF THE OFFICIAL COMMITTEE OF TALC CLAIMANTS' TO TERMINATE THE DEBTOR'S EXCLUSIVE PERIOD PURSUANT TO 11 U.S.C. § 1121(d)(1)

The relief set forth on the following page is **ORDERED**.

This matter coming before the Court on the *Motion of the Official Committee of Talc Claimants to Terminate the Debtor's Exclusive Period Pursuant to 11 U.S.C. § 1121(d)(1)* (the "Motion")[1] filed by the Official Committee of Talc Claimants approved by this Court (the "TCC"); 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. § 1121(d)(1) for the termination of the exclusive periods granted herein; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

2. The exclusive periods of section 1121(d) of the Bankruptcy Code are hereby terminated as to the TCC.

3. The TCC may file its plan, disclosure statement and motion to approve the disclosure statement and solicitation procedures.

4. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the interpretation, implementation, or enforcement of this Order.

1 Capitalized terms not otherwise defined herein have the meanings ascribed to them in the Motion.