UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

WOLLMUTH MAHER & DEUTSCH LLP
Paul R. DeFilippo, Esq.
500 Fifth Avenue
New York, New York 10110
Telephone: (212) 382-3300
Facsimile: (212) 382-0050
pdefilippo@wmd-law.com

JONES DAY
Gregory M. Gordon, Esq.
Brad B. Erens, Esq.
Dan B. Prieto, Esq.
Amanda Rush, Esq.
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
gmgordon@jonesday.com
bberens@jonesday.com
dbprieto@jonesday.com
asrush@jonesday.com
(Admitted *pro hac vice*)

ATTORNEYS FOR DEBTOR

In re:	Chapter 11
LTL MANAGEMENT LLC,[1]	Case No.: 21-30589 (MBK)
Debtor.	Judge: Michael B. Kaplan
	Hearing Date and Time: January 18, 2023 at 10:00 a.m.

NOTICE OF DEBTOR'S MOTION FOR AN ORDER DIRECTING PLAINTIFF LAW FIRMS TO DISCLOSE THIRD-PARTY FUNDING ARRANGEMENTS

PLEASE TAKE NOTICE that, on January 18, 2023 at 10:00 a.m. (prevailing Eastern Time) or as soon thereafter as counsel may be heard, LTL Management LLC, the above-captioned debtor (the "Debtor") by and through its counsel, shall move before the

[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.

Honorable Michael B. Kaplan, United States Bankruptcy Judge, at the United States Bankruptcy Court, Clarkson S. Fisher U.S. Courthouse, 402 East State Street, Trenton, New Jersey 08608, for the entry of an order, pursuant to section 105 of the Bankruptcy Code, directing the plaintiff law firms representing claimants on the Official Committee of Talc Claimants to disclose to the Court and certain parties their financing arrangements with third parties that are secured, in whole or part, by the firms' contingency fees on talc claims against the Debtor or its affiliates.

PLEASE TAKE FURTHER NOTICE that, pursuant to D.N.J. LBR 9013-2, responsive papers, if any, must be filed with the Clerk of the Bankruptcy Court, Clarkson S. Fisher Courthouse, 402 East State Street, Trenton, New Jersey 08608, and served upon (a) the Debtor's undersigned counsel, (b) counsel to the Official Committee of Talc Claimants, (c) the Future Claimants' Representative and her counsel, (d) the Office of the United States Trustee for the District of New Jersey, (e) the Fee Examiner and his counsel, and (f) any other party entitled to notice no later than seven (7) days prior to the hearing.

PLEASE TAKE FURTHER NOTICE that, unless an objection is timely filed and served, the Motion will be deemed uncontested in accordance with D.N.J. LBR 9013-3(d) and the requested relief may be granted without a hearing.

Dated: December 28, 2022

WOLLMUTH MAHER & DEUTSCH LLP

/s/ Paul R. DeFilippo

Paul R. DeFilippo, Esq.
James N. Lawlor, Esq.
Joseph F. Pacelli, Esq. (*pro hac vice*)
500 Fifth Avenue
New York, New York 10110
Telephone: (212) 382-3300
Facsimile: (212) 382-0050
pdefilippo@wmd-law.com
jlawlor@wmd-law.com
jpacelli@wmd-law.com

JONES DAY
Gregory M. Gordon, Esq.
Brad B. Erens, Esq.
Dan B. Prieto, Esq.
Amanda Rush, Esq.
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
gmgordon@jonesday.com
bberens@jonesday.com
dbprieto@jonesday.com
asrush@jonesday.com
(Admitted *pro hac vice*)

ATTORNEYS FOR DEBTOR

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

WOLLMUTH MAHER & DEUTSCH LLP
Paul R. DeFilippo, Esq.
500 Fifth Avenue
New York, New York 10110
Telephone: (212) 382-3300
Facsimile: (212) 382-0050
pdefilippo@wmd-law.com

JONES DAY
Gregory M. Gordon, Esq.
Brad B. Erens, Esq.
Dan B. Prieto, Esq.
Amanda Rush, Esq.
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
gmgordon@jonesday.com
bberens@jonesday.com
dbprieto@jonesday.com
asrush@jonesday.com
(Admitted *pro hac vice*)

ATTORNEYS FOR DEBTOR

In re:	Chapter 11
LTL MANAGEMENT LLC,[1]	Case No.: 21-30589 (MBK)
Debtor.	Judge: Michael B. Kaplan
	Hearing Date and Time: January 18, 2023 at 10:00 a.m.

DEBTOR'S MOTION FOR AN ORDER DIRECTING PLAINTIFF LAW FIRMS TO DISCLOSE THIRD-PARTY FUNDING ARRANGEMENTS

LTL Management LLC, the debtor in the above-captioned case (the "Debtor"), moves the Court, pursuant to section 105 of the Bankruptcy Code, for an order directing the

[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.

plaintiff law firms representing claimants on the Official Committee of Talc Claimants (collectively, the "Plaintiff Law Firms") to disclose to the Court, the co-mediators, the Court-appointed expert,[2] the Debtor, the Official Committee of Talc Claimants (the "TCC"), and the legal representative for future talc claimants (the "FCR") any financing arrangements with third parties that are secured, in whole or part, by the firms' contingency fees on talc claims against the Debtor. In support of this Motion, the Debtor states as follows:

Preliminary Statement

The Debtor continues to believe that a consensual resolution of this chapter 11 case is in the best interest of all parties. To achieve that outcome, the Debtor, the TCC, the FCR, and other parties are currently engaged in a court-ordered mediation to reach agreement on a consensual plan of reorganization. To succeed, the interests that will influence or determine the resolution of the claims at issue must be identified. Those interests include the interests held by parties who have extended funding to the Plaintiff Law Firms that is collateralized, in whole or in part, by the firms' fees on those claims. Consistent with recent precedent and the local rules of this District, the Court should order that these funding arrangements be disclosed to facilitate a consensual resolution that is in the best interests of the claimants.

Each of the Plaintiff Law Firms represents a member of the TCC and numerous other claimants who assert talc-related claims against the Debtor or its affiliates. The Debtor just recently became aware that the Plaintiff Law Firms obtained proxy agreements (and, in one instance, a retention agreement) from the talc claimants who are members of the TCC,

[2] See *Order Appointing Expert Pursuant to Federal Rule of Evidence 706* [Dkt. 2881] (the "Expert Order").

authorizing the Plaintiff Law Firms to vote and act for them in this case.[3] As a result, the Plaintiff Law Firms are effectively acting as members of the TCC.

Upon information and belief, some or all of the Plaintiff Law Firms have entered into financing arrangements with third parties (collectively, the "Funders") to provide financial support to the firms to fund talc litigation against the Debtor and its affiliates. Further, upon information and belief, these loans are for significant amounts and are collateralized, in whole or part, by the Plaintiff Law Firms' contingency fees on talc claims against the Debtor.

As courts and commentators have recognized, third-party litigation funding may impact a law firm's decisions about litigation. Disclosure of the terms of the funding agreements and the outstanding amounts of any loans will show the extent that the Funders (i) are the real parties in interest with actual control over decisions made in this case, (ii) have the right to be consulted about or influence such decisions, or (iii) have extended financing on terms that create an impediment to a resolution of this bankruptcy case that is in the best interests of the claimants.

For these reasons, the terms of these arrangements with the Plaintiff Law Firms are highly relevant to the ongoing negotiations to resolve this case and the Plaintiff Law Firms' role on the TCC. This information should also be disclosed as a necessary corollary to the court-ordered mediation to ensure that all salient parties are involved—and their interests are afforded appropriate weight—in ongoing negotiations of a consensual plan of reorganization.

Indeed, this disclosure is necessary to afford claimants the assurance that the mediation prioritizes their interests, and any agreement takes account of those interests, notwithstanding the presence of this financing. Funders do not have the same ethical and

---

[3] See *Reply of the Official Committee of Talc Claimants in Further Support of Its Motion Confirming Procedures for the Reimbursement of Expenses Incurred by Committee Member Representatives* [Dkt. 3504] ¶ 10 (the "TCC Expense Reimbursement Reply").

fiduciary obligations to talc claimants as the Plaintiff Law Firms. Consequently, transparency about who is making or influencing decisions is necessary to determine if the Plaintiff Law Firms or their Funders are the real parties in interest and whether the Plaintiff Law Firms are able to make decisions solely based on the claimants' best interests or if those decisions are influenced by the Plaintiff Law Firms' own interests or those of their Funders.

This Motion seeks limited disclosures of information that will be provided only to the Court, certain parties participating in the mediation, and the Court-appointed expert, and the disclosures will be treated as confidential under the Court's protective order entered in this case. Any burden on the Plaintiff Law Firms will be minimal, and any confidentiality concerns will be addressed. For all these reasons, which are more fully discussed below, the Debtor respectfully submits that the Court should direct the Plaintiff Law Firms to disclose the requested information about third party funding arrangements.

Jurisdiction and Venue

1. This Court has subject matter jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtor is authorized to continue to manage its property and operate its business as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

Background

2. On October 14, 2021 (the "Petition Date"), the Debtor commenced this reorganization case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Western District of North Carolina (the "NC Bankruptcy Court"). On November 16, 2021, the NC Bankruptcy Court entered an order

[Dkt. 416] transferring the case to the District of New Jersey, which referred the case to this Court.

3. On November 8, 2021, the NC Bankruptcy Court entered an order [Dkt. 355] forming the TCC. The TCC is comprised of 11 members, including the following talc claimants represented by the Plaintiff Law Firms: (a) Rebecca Love represented by Ashcraft & Gerel, LLP; (b) Alishia Landrum represented by Beasley Allen Law Firm; (c) Kellie Brewer represented by Fears Nachawati Law Firm; (d) Tonya Whetsel represented by Karst von Oiste LLP; (e) Kristie Doyle represented by Kazan, McClain, Satterley & Greenwood PLC; (f) William A. Henry represented by Levin Papantonio Rafferty; (g) Randy Derouen represented by Levy Konigsberg LLP; (h) Darlene Evans represented by OnderLaw, LLC; (i) April Fair represented by Robinson Calcagnie, Inc.; and (j) Patricia Cook represented by Weitz & Luxenberg, PC.

4. The talc claimants who are members of the TCC, pursuant to proxy or retention agreements, have authorized the Plaintiff Law Firms "to vote and act for his or her client in accordance with the TCC's bylaws, subject at all times to the Individual Member's retention of the ultimate decision on how to vote on any particular matter." See TCC Expense Reimbursement Reply ¶ 10. Although the TCC disclosed these proxy arrangements to the U.S. Trustee in early December 2021, the Debtor was not aware of them, and the TCC did not publicly disclose their existence until recently when the TCC filed the TCC Expense Reimbursement Reply.[4]

[4] The Debtor reserves all rights with respect to these proxy arrangements, including whether they are appropriate or enforceable in this chapter 11 case.

5. On March 18, 2022, the Court entered an order [Dkt. 1786] appointing Randi S. Ellis as the FCR.

6. The Debtor's records reflect that the Plaintiff Law Firms represented the following number of talc claimants as of the Petition Date: (a) Ashcraft & Gerel, LLP – approximately 1,940 ovarian cancer claimants; (b) Beasley Allen Law Firm – approximately 5,690 ovarian cancer claimants; (c) Fears Nachawati Law Firm – approximately 3,500 ovarian cancer claimants; (d) Karst von Oiste LLP – approximately 19 mesothelioma claimants; (e) Kazan, McClain, Satterley & Greenwood PLC – approximately 14 mesothelioma claimants; (f) Levin Papantonio Rafferty – approximately 190 ovarian cancer claimants; (g) Levy Konigsberg LLP – approximately 90 mesothelioma claimants; (h) OnderLaw, LLC – approximately 9,640 ovarian cancer claimants; (i) Robinson Calcagnie, Inc. – approximately 1,060 ovarian cancer claimants; and (j) Weitz & Luxenberg, PC – approximately 250 ovarian cancer claimants and approximately 220 mesothelioma claimants.

7. Upon information and belief, certain of the Plaintiff Law Firms entered into financing arrangements with the Funders to provide financial support to the firms to pursue talc claims against the Debtor. Upon information and belief, the outstanding amounts of these loans are significant and are collateralized, in whole or part, by the Plaintiff Law Firms' contingency fees on talc claims against the Debtor.

8. The Court entered the *Order Establishing Mediation Protocol* [Dkt. 1780] on March 18, 2022, which it amended by an order [Dkt. 2300] entered on May 16, 2022 (as amended, the "Mediation Order"). The Court appointed the Honorable Joel Schneider and Gary Russo to serve as co-mediators to mediate a comprehensive resolution of issues in this chapter 11 case, including the terms of a chapter 11 plan. On May 27, 2022, the Court entered an order

[Dkt. 2370] appointing a third co-mediator, Judge Donald Steckroth, to assist in the mediation process.

9. The Debtor, the TCC, the FCR, and others are parties to the ongoing mediation, in which certain of the Plaintiff Law Firms have been directly involved. To date, no settlement has been reached.

10. At a hearing held on July 28, 2022, the Court, following briefing by the parties, ruled that an aggregate estimation of the Debtor's talc liability was necessary. See July 28, 2022 Hr'g Tr. 5:18-22 ("I am ruling today that the administration of this case and, in particular, the pursuit of an efficient, fair, and **transparent plan process, including adequate disclosures to all parties in interest**, requires a reasonable estimate of claims under 502(c).") (emphasis added). In particular, the Court noted:

> I remain hopeful that fixing an estimate of the aggregate volume and liability of the claims, both present and future, will facilitate the plan negotiation process and, hopefully, even settlement in advance of that through continued mediation efforts.

Id. at 5:13-17. To aid the estimation process, the Court ruled that it would appoint an expert pursuant to Rule 706 of the Federal Rules of Evidence. Id. at 7:4-10. On August 15, 2022, the Court entered the Expert Order. Pursuant to the Expert Order, Mr. Kenneth R. Feinberg (the "Court-Appointed Expert") was appointed as the court's expert pursuant to Federal Rule of Evidence 706 and directed to issue a report "estimating the volume and values of current and future ovarian and mesothelioma claims for which the Debtor may be liable . . . ." Expert Order ¶ 2. The Debtor continues to believe the estimation process will facilitate mediation by, among other things, requiring the parties to provide support for their respective positions, better understand the positions of the other parties, and focus on the central issue in this case—the extent of the Debtor's liability for talc claims.

Relief Requested

11. By this Motion, the Debtor seeks an order, substantially in the form attached hereto as Exhibit A (the "Proposed Order"), directing the Plaintiff Law Firms to disclose the following information to the Court, the co-mediators, the Court-Appointed Expert, the Debtor, the TCC, and the FCR:

a. an executed copy of any agreement pursuant to which a Plaintiff Law Firm has (i) received a loan, financing, capital advance, or other monetary contribution from a third party, and (ii) granted a security interest of any kind to such third party concerning any talc-related claim the Plaintiff Law Firm has pursued, is pursuing, or may pursue on behalf of a client or clients against the Debtor, the Debtor's affiliates, and/or the Debtor's predecessors (each, a "Litigation Funding Agreement");[5]

b. the name and address of any Funders;

c. the aggregate amounts received by each Plaintiff Law Firm, and any outstanding amounts it owes, under each Litigation Funding Agreement; and

d. a final copy of (1) any Uniform Commercial Code financing statement (or amendments thereto) that has been filed in any jurisdiction concerning each Litigation Funding Arrangement and (2) any final notice, filing, or other document (or amendments thereto) that is used to perfect or protect a security interest concerning any Litigation Funding Agreement.

12. This information will not be publicly filed and will be subject to the *Agreed Protective Order Governing Confidential Information* [Dkt. 948] (the "Protective Order").

[5] Loans provided to law firms secured, in whole or part, by recoveries on talc claims raise the same concerns and issues as traditional third party litigation financing where the funding is provided solely to pursue particular litigation claims.

Basis for Relief Requested

13. The Court, pursuant to section 105 of the Bankruptcy Code, has authority to require disclosure of information from the Plaintiff Law Firms necessary for the orderly administration of this chapter 11 case and the ongoing mediation. Section 105(a) states in part that "the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Section 105(d) of the Bankruptcy Code states:

> The court, on its own motion or on the request of a party in interest, (1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the cases; and (2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically . . . .

11 U.S.C. § 105(d). The United States District Court for the District of New Jersey has found that section 105 authorizes a court to require disclosures from plaintiff law firms representing tort claimants. Baron & Budd, P.C. v. Unsecured Asbestos Claimants Committee (In re Congoleum Corp.), 321 B.R. 147, 166 (D.N.J. 2005) (finding section 105 and Bankruptcy Rule 2019 authorized court to require plaintiff law firms to disclose fee sharing, co-counsel and referral relationships due to concerns regarding potential conflicts of interest).

14. In addition, it is well settled that this Court has the inherent authority to manage its docket to promote the orderly, expeditious and economical disposition of its cases. Dietz v. Bouldin, 579 U.S. 40, 47 (2016) ("This Court has also held that district courts have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases."); see also Landis v. North Am. Co., 299 U.S. 248, 254-255 (1936) ("[T]he power to stay proceedings is incidental to the power inherent in every court to

control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance.").

15. The Court likewise has the inherent authority to set the procedures and process for mediation (as it has done already) to ensure that the prospects for a successful result are maximized. Directing the Plaintiff Law Firms to disclose this information about Litigation Funding Agreements will enable the Court and the parties to determine whether the proper parties are participating in the mediation and whether other factors may be influencing or affecting the decisions of the mediation participants.

16. The local rules of the District Court, which are generally applicable to bankruptcy cases,[6] require disclosure of third-party litigation financing. Local Rule 7.1.1 requires disclosure of the following information

> regarding any person or entity that is not a party and is providing funding for some or all of the attorneys' fees and expenses for the litigation on a non-recourse basis in exchange for (1) a contingent financial interest based upon the results of the litigation or (2) a non-monetary result that is not in the nature of a personal or bank loan, or insurance:
>
> > The identity of the funder(s), including the name, address, and if a legal entity, its place of formation;
> >
> > Whether the funder's approval is necessary for litigation decisions or settlement decisions in the action and if the answer is in the affirmative, the nature of the terms and conditions relating to that approval; and
> >
> > A brief description of the financial interest.

[6] See D.N.J. L. Civ. R. 1.1(a) ("The following Rules . . . are applicable in all proceedings when not inconsistent therewith.").

D.N.J. L. Civ. R. 7.1.1(a). This rule also permits parties to seek additional discovery of the terms of any funding agreement based on a showing of good cause and makes clear a court is not precluded from ordering other relief.[7]

17. The Plaintiff Law Firms play an important role in this chapter 11 case. They are involved in the ongoing mediation and, as recently disclosed, are making decisions on behalf of the TCC members pursuant to proxy arrangements. Currently, the Court, the mediators, the Court-Appointed Expert, the Debtor, and the FCR have no visibility as to the existence or terms of any Litigation Funding Agreements that may dictate or influence the Plaintiff Law Firms' positions or actions in this case. The requested disclosures will shed light on whether the Plaintiff Law Firms' decisions on behalf of TCC members, including in mediation, are impacted by the terms of the Litigation Funding Agreements, and whether the participation of the Funders in settlement discussions is necessary or appropriate.[8]

18. The basic disclosures regarding the Litigation Funding Agreements will permit the Court and the parties to determine if the Funders have the right to be consulted about or have influence over decisions in this case or have actual control over such decisions. They will also reveal if the Funders have a security interest in the proceeds of, or the Plaintiff Law Firms' contingency fees related to, the talc claims. In addition, the amount of the outstanding

---

[7] See D.N.J. L. Civ. R. 7.1.1(b) ("The parties may seek additional discovery of the terms of any such agreement upon a showing of good cause that the non-party has authority to make material litigation decisions or settlement decisions, the interests of parties or the class (if applicable) are not being promoted or protected, or conflicts of interest exist, or such other disclosure is necessary to any issue in the case."); D.N.J. L. Civ. R. 7.1.1(c) ("Nothing herein precludes the Court from ordering such other relief as may be appropriate.").

[8] Indeed, disclosure of agreements that involve grants of economic interests by potential committee members is an important factor for the United States Trustee to consider before appointing a creditor to serve on an official committee. See U.S. Trustee Prog. Pol. & Pract. Man. § 3-4.2 ("[T]he United States Trustee should also determine whether a potential committee member . . . . is an . . . agent of a creditor with authority to act rather than the creditor itself . . . [or] executed any agreement limiting its ability to act as a fiduciary"), available at www.justice.gov/ust/united-states-trustee-program-policy-and-practices-manual.

loan balances under the Litigations Funding Agreements will illuminate the extent of any influence or control the Funders may have over decisions made by the Plaintiff Law Firms.

19. The importance of the information about Litigation Funding Agreements is beyond dispute. Courts and commentators have long recognized that third-party financing arrangements may impact lawyers' decisions in litigation and provide litigation funders with control or influence over those decisions.[9] The local rule of the District Court described above, which was issued in 2021, is not an outlier. As of 2018, six federal courts of appeals and 24 district courts had third-party funding disclosure requirements. See MEETING OF THE ADVISORY COMMITTEE ON CIVIL RULES AGENDA BOOK 209, 210 Philadelphia, P.A. (Apr. 10, 2018) (reporting survey results showing that "[s]ix U.S. Courts of Appeals have local rules which require identifying litigation funders" and that "of the 94 federal district courts in the United States, 24 – or roughly 25% of all U.S. District Courts – require disclosure of the identity of litigation funders in a civil case").[10] In fact, on December 8, 2022, the United States Court of Appeals for the Federal Circuit upheld the need to comply with a standing order entered by the

---

[9] Boling v. Prospect Funding Holdings, LLC, 771 F. App'x 562, 579-80 (6th Cir. Apr. 25, 2019) (concluding upon review of litigation funding agreement between plaintiff and financier that "the terms of the Agreements effectively give [the litigation funders] substantial control over the litigation" and noting that "these kinds of conditions raise quite reasonable concerns about whether a plaintiff can truly operate independently in litigation."); Cobra Int'l, Inc. v. BCNY Int'l, Inc., 2013 WL 11311345, at *2-3 (S.D. Fla. Nov. 4, 2013) (ordering production of litigation funding agreement after citing defendant's arguments that it should have opportunity to test plaintiff's averments that the person or entity funding prosecution of the lawsuit is not making decisions in the lawsuit and is not interfering with the independence and professional judgment of plaintiff's counsel); Latif Zaman, *ABA Outlines Best Practices for Third-Party Litigation Funding* (Dec. 10, 2020), https://www.americanbar.org/groups/business_law/publications/committee_newsletters/consumer/2020/2020211/third-party/ ("critics of litigation funding such as the U.S. Chamber of Commerce, a prominent business lobby, have proposed mandatory disclosure of third-party funding agreements in civil litigation").

[10] The International Court of Arbitration to the International Chamber of Commerce ("ICC") has also adopted similar disclosure requirements. Effective January 1, 2021, Article 11(7) requires parties to disclose the "existence and identity of any non-party which has entered into an arrangement for the funding of claims or defenses and under which it has an economic interest in the outcome of the arbitration." 2021 Arbitration Rules, ICC, https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/#article_11 (last visited December 2, 2022).

United States District Court for the District of Delaware requiring disclosure of third-party litigation funding arrangements. See generally In re Nimitz Technologies LLC, 2022 WL 17494845 (Fed. Cir. Dec. 8, 2022).

20. Similarly, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") recognize the importance of disclosures regarding third party financing arrangements. Bankruptcy Rule 2019 requires disclosure of a "disclosable economic interest" by certain groups, committees, and entities that consist of or represent multiple creditors that are acting in concert to advance their common interests. Fed. R. Bankr. P. 2019. A "disclosable economic interest" is defined broadly to mean "any claim, **interest**, pledge, **lien**, option, participation, derivative instrument, or any other **right** or derivative right **granting the holder an economic interest that is affected by the value**, acquisition, **or disposition of a claim** or interest." Fed. R. Bankr. P. 2019(a)(1) (emphases added); see also In re Archdiocese of Saint Paul and Minneapolis, No. 15-30125 (RJK) (Bankr. D. Minn.), Feb. 23, 2017 Hr'g Tr. 36:8-24, Dkt. 987 (requiring plaintiff law firm to disclose fee arrangements with each of its clients because firm had "a huge economic interest in the case").[11]

21. Given the circumstances of this chapter 11 case, in which Plaintiff Law Firms effectively act as members of the TCC, represent multiple talc claimants with alleged claims against the Debtor, and actively participate in the mediation, section 105 of the Bankruptcy Code, the Court's inherent authority to control its docket and set the process for

[11] The definition of disclosable economic interest "is intended to be sufficiently broad to cover **any economic interest that could affect the legal and strategic positions a stakeholder takes in a chapter 9 or chapter 11 case**." 2011 Advisory Committee Note to Fed. R. Bankr. 2019 (emphasis added). Indeed, a broad reading of "disclosable economic interest" is entirely consistent with the purpose of Bankruptcy Rule 2019 generally. As Judge Silverstein has remarked: "The purpose of Rule 2019 is transparency; transparency with respect to the economic interests of groups is necessary so that other parties in interest and the Court can evaluate the positions the group advocates in a proper context. It is to understand the agenda of the group." See In re Boy Scouts of Am., No. 20 10343 (LSS) (Bankr. D. Del.), Oct. 16, 2020 Hr'g Tr. 9:8-13, Dkt. 1544.

mediation, and the District Court's Local Rule 7.1.1, consistent with the requirements of Bankruptcy Rule 2019,[12] all provide the Court with ample authority to order the requested disclosures regarding the Litigation Funding Agreements. The disclosures will permit the Court, the mediators, the Court-Appointed Expert, the Debtor, the TCC, and the FCR to understand the full extent of economic interests involved in the mediation and this chapter 11 case in general. They will assist the Court and parties in determining if the Plaintiff Law Firms have the ability to comply with their ethical and fiduciary obligations to their clients and the TCC, a concern heightened by the fact that the Funders owe no duties to the TCC or the talc claimants yet may dictate or influence the Plaintiff Law Firms' decisions. And, the disclosures will permit the parties to determine if all parties necessary to achieving a consensual resolution of this chapter 11 case are participating in the mediation.

22. Finally, the disclosures sought pursuant to this Motion are narrowly tailored to minimize any burden on the Plaintiff Law Firms. The information should be readily available and simple for the Plaintiff Law Firms to provide. Further, the information will be shared with only a few parties and the Court, and any confidentiality concerns should be satisfied by subjecting the information to the terms of the Protective Order. The requested disclosures should not be burdensome to the Plaintiff Law Firms or raise confidentiality issues.

---

[12] The disclosure of potentially conflicting economic interests held by creditors was a key concern addressed by the amendment of Bankruptcy Rule 2019 in 2011 (which amendment included the addition of the "disclosable economic interest" term and disclosure requirement). In its September 2010 report proposing the amendments, the Judicial Conference Committee on Rules of Practice indicated that the amendments "expand disclosure requirements to facilitate openness and transparency by revealing potentially divergent economic interests within groups of creditors or equity security holders and on the part of putative representatives of other stakeholders." *Report of the Judicial Conference Committee on Rules of Practice and Procedure to the Chief Justice of the United States and Members of the Judicial Conference of the United States*, 7 (Sept. 2010).

Waiver of Memorandum of Law

23. The Debtor 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 Debtor relies is fully incorporated herein.

Notice

24. Notice of this Motion has been provided to (a) the Office of the United States Trustee for the District of New Jersey, (b) counsel to the TCC, (c) counsel to the Debtor's non-debtor affiliates, Johnson & Johnson Consumer Inc. and Johnson & Johnson, (d) the FCR and her counsel, (e) the Fee Examiner and his counsel, (f) the Plaintiff Law Firms, (g) the co-mediators, (h) the Court-Appointed Expert, and (i) any other party entitled to notice. The Debtor respectfully submits that no further notice is required.

No Prior Request

25. No prior request for the relief sought in this Motion has been made to this or any other court in connection with this chapter 11 case.

WHEREFORE, the Debtor respectfully requests that the Court enter an order substantially in the form attached hereto as Exhibit A granting: (a) the relief requested herein; and (b) such other and further relief to the Debtor as the Court may deem proper.

Dated: December 28, 2022

WOLLMUTH MAHER & DEUTSCH LLP

/s/ Paul R. DeFilippo

Paul R. DeFilippo, Esq.
James N. Lawlor, Esq.
Joseph F. Pacelli, Esq. (*pro hac vice*)
500 Fifth Avenue
New York, New York 10110
Telephone: (212) 382-3300
Facsimile: (212) 382-0050
pdefilippo@wmd-law.com
jlawlor@wmd-law.com
jpacelli@wmd-law.com

JONES DAY
Gregory M. Gordon, Esq.
Brad B. Erens, Esq.
Dan B. Prieto, Esq.
Amanda Rush, Esq.
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
gmgordon@jonesday.com
bberens@jonesday.com
dbprieto@jonesday.com
asrush@jonesday.com
(Admitted *pro hac vice*)

ATTORNEYS FOR DEBTOR

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

WOLLMUTH MAHER & DEUTSCH LLP
Paul R. DeFilippo, Esq.
500 Fifth Avenue
New York, New York 10110
Telephone: (212) 382-3300
Facsimile: (212) 382-0050
pdefilippo@wmd-law.com

JONES DAY
Gregory M. Gordon, Esq.
Brad B. Erens, Esq.
Dan B. Prieto, Esq.
Amanda Rush, Esq.
2727 N. Harwood Street
Dallas, Texas 75201
Telephone: (214) 220-3939
Facsimile: (214) 969-5100
gmgordon@jonesday.com
bberens@jonesday.com
dbprieto@jonesday.com
asrush@jonesday.com
(Admitted *pro hac vice*)

ATTORNEYS FOR DEBTOR

In re: LTL MANAGEMENT LLC,[1] Debtor.	Chapter 11 Case No.: 21-30589 Judge: Michael B. Kaplan **Hearing Date and Time:** January 18, 2023 at 10:00 a.m.

ORDER DIRECTING PLAINTIFF
LAW FIRMS TO DISCLOSE THIRD-PARTY FUNDING ARRANGEMENTS

The relief set forth on the following pages is hereby **ORDERED**.

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

This matter coming before the Court on the *Debtor's Motion for an Order Directing Plaintiff Law Firms to Disclose Third-Party Funding Arrangements* (the "Motion"),[1] filed by the above-captioned debtor (the "Debtor"); the Court having reviewed the Motion and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court finding that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), (d) notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED.

2. Within 14 days after entry of this Order, the Plaintiff Law Firms shall disclose the following information to the Court, the co-mediators, the Court-Appointed Expert, the Debtor, the TCC, and the FCR:

   a. an executed copy of any agreement pursuant to which a Plaintiff Law Firm has (i) received a loan, financing, capital advance, or other monetary contribution from a third party, and (ii) granted a security interest of any kind to such third party concerning any talc-related claim the Plaintiff Law Firm has pursued, is pursuing, or may pursue on behalf of a client or clients against the Debtor, the Debtor's affiliates, and/or the Debtor's predecessors (each, a "Litigation Funding Agreement");

   b. the name and address of any Funders;

[1] Capitalized terms not otherwise defined herein have the meanings given to them in the Motion.

c. the aggregate amounts received by each Plaintiff Law Firm, and any outstanding amounts it owes, under each Litigation Funding Agreement; and

d. a final copy of (1) any Uniform Commercial Code financing statement (or amendments thereto) that has been filed in any jurisdiction concerning each Litigation Funding Arrangement and (2) any final notice, filing, or other document (or amendments thereto) that is used to perfect or protect a security interest concerning any Litigation Funding Agreement.

3. Disclosures made by a Plaintiff Law Firm pursuant to this Order shall be treated as "Confidential" pursuant to the *Agreed Protective Order Governing Confidential Information* [Dkt. 948] and shall not be publicly filed without further order of the Court.

4. This Order shall be immediately effective and enforceable upon its entry.

5. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation or enforcement of this Order.