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Texas Two Step and Bankruptcy vs. Mass Tort

Presented by:
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United States Court of Appeals

for the

Third Circuit

Case No. 22-2003

In re: LTL MANAGEMENT LLC,

Debtor,

*OFFICIAL COMMITTEE OF TALC CLAIMANTS,

Appellant.

*(Amended per Court's Order dated 06/10/2022)

DIRECT APPEAL FROM THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEW JERSEY IN CH. 11 NO. 21-30589 AND ADV. PRO. NO. 21-03032

BRIEF OF CERTAIN BANKRUPTCY LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF DEBTOR-APPELLEE

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INTEREST OF *AMICI CURIAE*[1]

The amici curiae, whose names and affiliations are set forth in the attached Appendix, are nationally-recognized professors of law (collectively, the "Law Professors") who teach courses and seminars in corporate governance, business law, and bankruptcy law and reorganization. The Law Professors have published numerous articles and treatises on the subject of business reorganizations and mass tort bankruptcies, provided testimony to Congress on various bankruptcy matters, and maintain a professional interest in ensuring that this Court is appropriately informed about how the bankruptcy framework is uniquely suited to address the issues affecting mass tort plaintiffs and defendants. The Law Professors' vast experience and authorship in this area of law are critically relevant to the above-referenced appeal. The Law Professors submit this brief to explain that the circumstances surrounding the filing of this bankruptcy case do not reflect a lack of good faith, and that the Bankruptcy Court did not err in denying Appellants' motion to dismiss the case.

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[1] All parties have consented to the filing of this brief. Pursuant to Federal Rule of Appellate Procedure 29, Amici state that no counsel for a party authored this brief in whole or in part. No person other than Amici or their counsel made a monetary contribution to its preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

Mass torts create a unique scale of harm and liabilities, and fairly addressing them poses substantial challenges to the U.S. legal system, particularly when the universe of all potential plaintiffs cannot be identified at a given point in time.[2] Litigation in state and federal courts of general jurisdiction (including multi-district litigation) has encountered various resolution obstacles, including (i) high transaction costs, (ii) protracted proceedings that extend for years, (iii) the inability to offer comprehensive settlement of all claims, (iv) failure to protect future claimants, and (v) insufficient means to protect parties from open-ended liability.[3] In contrast, for the past five decades, the United States Bankruptcy Code and bankruptcy courts have provided plaintiffs with substantial claims and debtors with finite resources an efficient and expeditious process to resolve their differences and create meaningful settlement funds for both current and future mass tort claimants.[4] The bankruptcy process offers a comprehensive response to collective action

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[2] *See* Samir D. Parikh, *The New Mass Torts Bargain*, 91 FORDHAM L. REV. ___ (forthcoming 2022), available at https://ssrn.com/abstract=3649611.

[3] *See id*.

[4] *See, e.g., In re Mallinckrodt PLC*, 639 B.R. 837, 850 (Bankr. D. Del. 2022); *In re PG&E Corp., 617 B.R. 671, 673* (Bankr. N.D. Cal. 2020); *In re Owens Corning*, No. 00-3837, 2006 Bankr. LEXIS 2856, at *1 (Bankr. D. Del. Oct. 19, 2006); *In re A. H. Robins Co*., 88 B.R. 742, 747 (E.D. Va. 1988); *In re Dow Corning Corp*., 211 B.R. 545, 562 n.16 (Bankr. E.D. Mich. 1997); *In re Johns-Manville Corp*., 68 B.R. 618, 627 (Bankr. S.D.N.Y. 1986).

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