



APPEARANCES (Cont'd):

For the Official  
Committee of Talc  
Claimants 1:

Brown Rudnik, LLP  
By: DAVID J. MOLTON, ESQ.  
7 Times Square  
New York, NY 10036

Genova Burns LLC  
By: DANIEL M. STOLZ, ESQ.  
110 Allen Road, Suite 304  
Basking Ridge, NJ 07920

For Ad Hoc Committee of  
States Holding Consumer  
Protection Claims:

Womble Bond Dickinson LLP  
By: ERICKA FREDRICKS JOHNSON, ESQ.  
222 Delaware Avenue, Suite 1501  
Wilmington, DE 19801

For Anthony Valdez:

Kazan McClain Satterley & Greenwood  
BY: JOSEPH SATTERLEY, ESQ.  
55 Harrison Street, Suite 400  
Oakland, CA 94607

State of New Mexico,  
and State of  
Mississippi:

Gibbons  
BY: ROBERT K. MALONE, ESQ.  
One Gateway Center  
Newark, New Jersey 07102-5310

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1 (Proceedings commenced at 9:58 a.m.)

2 THE COURT: All right. We will start today's LTL  
3 Management, LLC, calendar. Wendy, you can hear, correct?

4 COURTROOM DEPUTY: Yes.

5 THE COURT: Okay. Great. And it looks like all  
6 technology is working for now.

7 Let's start. We have essentially three matters. We  
8 have the New Mexico, Mississippi issues. We have the fee  
9 applications and we have the discovery dispute.

10 Let me start with the discovery dispute with respect  
11 to Mr. Satterley's clients. That way, Mr. Satterley, if you  
12 don't want to stay, you can leave after that.

13 MR. SATTERLEY: Excellent, Your Honor. Thank you so  
14 much.

15 Good morning, Your Honor. Joe Satterley of Kazan  
16 McClain Satterley and Greenwood on behalf of Anthony Valadez.

17 I appreciate Your Honor hearing us today. This  
18 matter --

19 COURTROOM DEPUTY: Mr. Satterley, we're having a  
20 slight issue with the broadcast for the Zoom. Can you give me  
21 just a minute?

22 THE COURT: Sure.

23 I knew it was too easy.

24 MR. GORDON: I don't think it really matters if  
25 people can't hear Mr. Satterley anyway.

1 (Laughter)

2 MR. SATTERLEY: That's been J&J's strategy all along.

3 THE COURT: Strategy all along.

4 (Laughter)

5 COURTROOM DEPUTY: And we are off privacy, Judge.

6 THE COURT: Yeah. This isn't -- but I'm not

7 connected so --

8 COURTROOM DEPUTY: Did that just hang us up?

9 THE COURT: It's never been connected. Should I  
10 connect?

11 COURTROOM DEPUTY: (indiscernible) usually hangs us  
12 up.

13 Okay. Give us just a sec.

14 THE COURT: Okay.

15 COURTROOM DEPUTY: We'll dial right back in.

16 THE COURT: Do you want me to connect?

17 COURTROOM DEPUTY: We have to dial in.

18 (Pause)

19 MR. SATTERLEY: May I proceed?

20 THE COURT: Are we ready to go?

21 COURTROOM DEPUTY: We're ready.

22 THE COURT: Have at it.

23 MR. SATTERLEY: Once again, Your Honor, Joe Satterley  
24 at Kazan McClain Satterley and Greenwood on behalf of Anthony  
25 Hernandez Valadez.

1 I appreciate Your Honor hearing this discovery issue  
2 this morning. By way of background, following Your Honor's  
3 July 28, 2022, ruling, allowing Mr. Valadez to move for an  
4 expedited trial date, we did that. We followed Your Honor's  
5 direction with regard to that.

6 Judge Jo-Lynne Lee of Alameda County had a hearing on  
7 August 26th, issued a ruling, found sufficient evidence to  
8 grant a preference trial, set the trial for November 7, 2022.  
9 Attached in our Docket filing 2973 is Exhibit A, the minutes  
10 from that proceeding. And Judge Lee, during that hearing, had  
11 a question. She said, basically, I'm going to grant your  
12 motion for a trial but is J&J allowed relief from stay to work  
13 up their case? And she put in the minute order, "Counsel shall  
14 meet and confer to discuss stipulations for extension of  
15 statutory deadlines with regard to discovery motions, expert  
16 designations, authorizations. Where necessary, counsel shall  
17 obtain further clarification or further leave from the  
18 bankruptcy court as to what, if any, additional order is needed  
19 in order for the parties to adequately prepare this matter for  
20 trial by November 7th."

21 So based upon Judge Lee's questions and her minutes,  
22 I immediately met and conferred with counts for the protected  
23 parties, J&J and the retailers. I wrote a letter to them  
24 requesting that we stipulate to work up the case and counsel  
25 advised me that they had, other than Mr. Valadez's deposition,

1 which he was deposed yesterday, and he's going to be  
2 cross-examined today, and a little pathology issue, they're not  
3 inclined to do anything to work up the case. And so based upon  
4 their decision not to work up the case, they wrote the letter  
5 and I responded to the letter.

6           And I would say that if Your Honor would simply enter  
7 the order as tendered, that it would allow the case to be  
8 worked up for trial in the event that the Third Circuit grants  
9 relief. Obviously, their letter says that I want to go to  
10 trial no matter what the Third Circuit does. And as I've said  
11 repeatedly, consistently, only if there is relief granted by  
12 the Third Circuit should the case go to trial, I mean,  
13 obviously, based upon the posture of the case. And otherwise,  
14 if Your Honor doesn't allow the case to be prepared, Your  
15 Honor's order of July 28th would be rendered meaningless  
16 because what would occur is I'm prepared to go to trial. I'd  
17 like to try this case tomorrow.

18           But J&J would go to Judge Lee and say Judge Kaplan  
19 did not allow us to work up the case. The automatic stay  
20 prevented us from doing anything other than a few little things  
21 here. So we need to push this trial out from November 7th to  
22 January or February. And so, as I advised Your Honor  
23 previously in April, I disclosed many of the witnesses in the  
24 case, declarations from treating doctors, medical records,  
25 expert witnesses. I wrote letters requesting to negotiate.

1 J&J has refused to negotiate. J&J has refused to take  
2 discovery. J&J has refused to prepare this case. And, quite  
3 frankly, I believe the trial is not difficult to prepare.

4           Having tried six of these cases, I already know what  
5 the witnesses are going to look like. It's going to be the  
6 same witnesses, many of whom that they've called in every  
7 single case. I mean, Matt Sanchez, their mineralogist is in  
8 every single mesothelioma case for J&J. They'll call a  
9 pathologist to say something about pathology. They'll call a  
10 epidemiologists to say the epidemiology is not sufficient.  
11 They might -- sometimes they try to call somebody to talk about  
12 genetics. So my point in that regard is this is not a  
13 complicated case to be prepared. It won't be much of a burden  
14 on the non-debtor protected parties.

15           And so for all the reasons set forth in my letter, I  
16 would request Your Honor to enter the proposed order. As I  
17 said, if the Third Circuit doesn't grant relief, we won't go to  
18 trial. I mean, we'll -- and Your Honor will obviously control  
19 what goes forward and we'll come back to Your Honor for  
20 additional relief prior to the trial of November 7th. I think  
21 there's another omnibus hearing at the end of October,  
22 October 25th?

23           THE COURT: October 25th.

24           MR. SATTERLEY: And so we certainly, before the  
25 trial, we can come back to Your Honor and get the final stamp

1 of approval that we can go to trial.

2 THE COURT: All right. Thank you, Counsel.

3 MR. SATTERLEY: Thank you, Your Honor.

4 THE COURT: Mr. Gordon.

5 MR. SATTERLEY: And I encourage you to listen to  
6 Mr. Gordon.

7 THE COURT: I listen to everyone.

8 MR. GORDON: Good morning, Your Honor.

9 THE COURT: Good morning.

10 MR. GORDON: Greg Gordon, Jones Day, on behalf of the  
11 debtor.

12 So I think it's clear, Your Honor, both from the  
13 letters and from Mr. Satterley's remarks this morning that  
14 there's clearly a disconnect between the parties on this. And  
15 I think it goes back to the ruling Your Honor initially made  
16 with respect to this matter. And we even went through a  
17 process, Your Honor may recall, where we submitted competing  
18 orders with respect to the very issue I think that's being  
19 raised today.

20 We had understood that Your Honor, in your order, was  
21 basically permitting Mr. Satterley to do two things. One, to  
22 seek a preferential trial setting which he's done, and two, to  
23 pursue discovery but only for the purpose of preserving  
24 evidence. I think Your Honor, I thought was clear that you had  
25 indicated you didn't want any evidence to be lost. And we've



1 now moved well beyond that. I mean, now what we're to is a  
2 situation where Mr. Satterley is saying that, no, it's not just  
3 to preserve evidence. And that's already been done by the way.  
4 I don't think there's any issue about preservation of evidence.

5           Now, it's a matter of, we have to prepare for trial.  
6 So even though we're in this bankruptcy case, we believe the  
7 stay is in place, we have a preliminary injunction order in  
8 place. For one particular case that Mr. Satterley wants to  
9 move to the front of the line, we now have to devote time and  
10 attention to preparing for that case. And it's in a scenario  
11 where, from my perspective, it's really unfair to us because  
12 we're facing a situation that no matter what the timing of the  
13 Third Circuit ruling is, assuming that the appeal is  
14 successful, we have to be prepared to go to trial on  
15 November 7th.

16           So if the ruling came down November 5, we have to be  
17 ready for trial on November 6th or October 25. And that just  
18 seems unfair. It seems contrary to what Your Honor ordered.  
19 Now, what we've proposed is that we'd be willing to agree that  
20 we'll go to trial 90 days after any ruling by the Third Circuit  
21 that basically green lights this trial. That's shorter than we  
22 would normally agree. My understanding is in these  
23 preferential situations, normally, a defendant has 120 days,  
24 maybe more. We're saying we can get ready in 90 days. And  
25 that'll put us in a position where we don't have to spend time

1 now during the bankruptcy case preparing to work this up.

2           It still puts Mr. Satterley in the position where his  
3 client is probably at the front of the line. I mean, it's  
4 literally within 90 days of a court ruling. And that's what we  
5 would propose as an alternative to address this issue. We  
6 don't see any harm with respect to that. This party, you know,  
7 this plaintiff has its preference.

8           There have been issues raised in the past by  
9 Mr. Satterley about the potential loss of pain and suffering  
10 damages if this plaintiff were to die before trial. My  
11 understanding is the law in California has been changed.  
12 That's no longer an issue. So we don't see any harm.

13           So, again, we would respectfully request that the  
14 Court not require us at this stage to gear up for trial, to  
15 work with our experts, to work up this case, which we have to  
16 do, that we shouldn't have to do that now. But we will agree,  
17 in turn, to give Mr. Satterley the preference he wants. We  
18 just need to have a 90-day window post a Third Circuit ruling.

19           THE COURT: Thank you, Mr. Gordon.

20           Mr. Satterley.

21           MR. SATTERLEY: Yes. Briefly, Your Honor.

22           Your Honor said on Page 21 of the transcript of  
23 July 28th, "I'm hoping not to slow down the progress of the  
24 case Mr. Satterley presented." The law firm defending the  
25 case, King and Spalding, is the main law firm for J&J in all

1 California actions. Mr. King appeared yesterday at  
2 Mr. Valadez's deposition. There's nothing -- Mr. Calfo is lead  
3 trial counsel. I've tried cases against him at King and  
4 Spalding. They are not doing anything with regards to the LTL  
5 and the bankruptcy. They are trial counsel in California and  
6 have been for many years.

7           So there's absolutely no harm to the debtor or the  
8 protected parties, for that matter, to allow this case to be  
9 worked up in the fashion. What counsel proposes of 90 days  
10 after ruling by the Third Circuit will virtually ensure that  
11 Mr. Valadez who's 23 years of age will not be able to be  
12 present during his trial. Undisputed declarations submitted to  
13 both this Court and to the Alameda court from his treating  
14 doctors gives him six months to live from earlier in the year,  
15 I think it was May.

16           And so to grant the relief that LTL is requesting for  
17 the protected parties, J&J and the retailers, would essentially  
18 harm Mr. Valadez because he wouldn't be able to participate in  
19 his trial. And I think that the the whole point of Your  
20 Honor's relief of July 28th was to allow Mr. Valadez to prepare  
21 his case with regards to, you know, our earlier trial date.  
22 Once again, if the Third Circuit doesn't rule, what Judge Lee  
23 will do as she did end the Vincent Hill case is push the case  
24 out. If not November 7th, until December 7th, if the Third  
25 Circuit doesn't rule. So there's already procedures in place

1 to ensure that nothing's going to happen with regards to that  
2 trial until the Third Circuit decides.

3 Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Satterley.

5 And I appreciate how difficult this issue is for the  
6 plaintiff. The goal in my original order was, as has been  
7 stated, to preserve the evidence. To ensure the integrity of  
8 the trial from an evidentiary standpoint and also to allow the  
9 plaintiff to enter the queue, so to speak, to be able to place  
10 itself in a position where, depending upon how the Circuit  
11 rules, it could move forward expeditiously as opposed to months  
12 and months later, or being placed at the end of a queue, given  
13 that it's a recent complaint being filed.

14 That was the sole limit and extent of the relief I  
15 granted. And that's the limit of what I'm prepared to do. I  
16 didn't want to be placed in a position where I'm choosing  
17 between plaintiffs on who gets to go first and who gets to move  
18 and have their day in court first, whose condition warrants it  
19 over others. It can be an extensive issue being raised and I  
20 didn't want to be placed in that position. I think other  
21 judges have felt the same way on those issues.

22 I am prepared to allow you to continue rescheduling  
23 at the state court, certainly, rescheduling the trial to keep  
24 it close without coming back to this Court. And, frankly, I  
25 would say it can be rescheduled so that there's at least, I'm

1 not overwhelmed with the 90 days -- 60 days after the Third  
2 Circuit, if it were to rule that way, either overrules the  
3 dismissal motion or overrules the preliminary injunction  
4 ruling, to allow a scheduling, so to keep it within place.

5 But my goal, and let me just emphasize, the goal was  
6 to preserve the evidence to ensure that, given the plaintiff's  
7 distress physically, that there would be no question that there  
8 could be testimony preserved.

9 MR. SATTERLEY: I appreciate Your Honor's point of  
10 clarification. If the Third Circuit decides quickly, I would  
11 hope that we would be able to maintain the November 7th trial  
12 date because, you know, as my current proposal is that, you  
13 know, expert discovery goes all the way to the end of October.  
14 So I hope that Your Honor is not saying that you're somehow  
15 vacating the current trial date.

16 THE COURT: No, I don't have the authority to vacate  
17 the state court --

18 MR. SATTERLEY: Okay.

19 THE COURT: -- order. I would leave that issue for  
20 the state court. If defendants are going to come in and they  
21 want to argue that they need more time, they're entitled to do  
22 that and the state court's entitled to rule on that.

23 MR. SATTERLEY: I understand, Your Honor.

24 THE COURT: I'm just saying, going forward, depending  
25 upon how long it takes for the Circuit to decide one way or the

1 other, I don't want you to feel that you're under a compulsion  
2 to come back before me to get permission or for the state court  
3 to be unsure whether they can continue.

4 MR. SATTERLEY: One other point of dispute that I've  
5 raised in the letter is that we were seeking to also preserve  
6 evidence of J&J and we sought out to identify what efforts  
7 they're doing to preserve evidence that we've requested. And  
8 they've resisted that as well.

9 THE COURT: That's more of an issue for the state  
10 court. That's not tied to the plaintiff's condition.

11 MR. SATTERLEY: No. But we don't want to lose  
12 evidence that J&J or the retailers have, for example, the  
13 retailers maintain records regarding individual documents that  
14 relate to that individual.

15 THE COURT: I would assume that all the defendants  
16 are on notice of their obligations to preserve evidence.

17 MR. SATTERLEY: But, and we're seeking -- but I'll  
18 address that with Judge Lee.

19 THE COURT: That's correct.

20 MR. SATTERLEY: Okay. Thank you, Your Honor.

21 THE COURT: All right.

22 Mr. Gordon.

23 MR. GORDON: Greg Gordon on behalf of the debtor.

24 I just want to be sure now that we're clear. What I  
25 heard was that Your Honor is saying that we should be allowed

1 at least 60 days post. The stay should work in a way where  
2 we'd have at least 60 days post a ruling favorable to the  
3 appellants in order to have time to prepare for trial. And I  
4 just wanted to put that on the record to make sure that  
5 we're --

6 THE COURT: Yes.

7 MR. GORDON: -- hearing that correctly.

8 THE COURT: Well, we're talking about the first date.  
9 I mean, we're arguing about something that's unlikely to occur  
10 that, certainly, there's a November 7th trial date. There's a  
11 ruling, and either way, and you all would have to address  
12 what's the impact if it goes on back or if there's an  
13 application to have it -- does that free it up or not?

14 MR. GORDON: Right.

15 THE COURT: But I think we used the extreme, that if  
16 the ruling comes down November 5th, I can't see compelling J&J  
17 to go to trial in two days. So I was looking for a shorter  
18 window. And as far as adjourning it, I'm asking the state  
19 court to bear in mind that J&J should have at least a 60-day  
20 window and future adjournments.

21 MR. GORDON: Right. The reason I rise is because the  
22 first point Mr. Satterley made was, well, I want to keep the  
23 November 7th date. Well, we're already going to be within 60  
24 days of the November 7th date.

25 THE COURT: Well, I took that to mean for me to

1 vacate that date. I don't have the authority to vacate the  
2 date. That's a trial date. I let the state court -- the state  
3 court has the authority to choose it. I'm not touching that  
4 date. But going forward, in rescheduling, I'm placing on the  
5 record my views that J&J should have at least 60 days to  
6 prepare. I think that's reasonable.

7 MR. GORDON: Right. And as I read the state court's  
8 order, I mean, the state court understands full well that  
9 there's a stay and a preliminary injunction, that the court has  
10 to look to this Court for guidance in that respect in any  
11 event.

12 THE COURT: And, again, I'm not going anywhere. If  
13 the need for further clarity should change, Mr. Satterley, we  
14 could have a telephone conference call and discuss what's  
15 reasonable going forward.

16 MR. SATTERLEY: Yes, Your Honor. And I just want to  
17 clarify what Your Honor says, California state judge, once the  
18 stay is lifted would control her docket because I've had many  
19 trials, or at least three trials, where 30 days a trial was  
20 given because of the condition of the plaintiff.

21 So I would request, basically, Your Honor defers, you  
22 know, telling the state court what to do other than what you've  
23 already done.

24 THE COURT: Well, I've put my feelings on the record.  
25 If it turns out that it's going to make it an issue, somebody's



1 going to come back in front of me and then it'll be a question  
2 of what authority I have.

3 MR. SATTERLEY: I mean, the frustrating part, Your  
4 Honor, J&J has repeatedly come to this Court and other courts  
5 and said these cases are frivolous and have no merit but  
6 they're afraid to go to trial. And I know Your Honor's order,  
7 I've read Your Honor's order, and Your Honor's order said that  
8 you believe that you could provide a better outcome for  
9 individuals. But I've been doing this for 25 years  
10 representing mesothelioma victims, and quite frankly, I have  
11 had success for my clients and I would request that Your Honor  
12 take into consideration the totality of the circumstances and  
13 the harms to the debtor, the non-debtors and the harm to  
14 Mr. Valadez. I know Your Honor has ruled, but I just can't  
15 imagine why J&J would be afraid to go to trial.

16 MR. GORDON: Your Honor, Greg Gordon.

17 I just can't let that go.

18 THE COURT: Of course not.

19 MR. GORDON: No one's afraid to go to trial. That's  
20 not what this is about.

21 MR. SATTERLEY: Then, stipulate. Let's go to trial.

22 MR. GORDON: That's not what this is about at all.

23 This is about a bankruptcy proceeding and preserving the  
24 integrity --

25 THE COURT: All right.

1 MR. GORDON: -- of the bankruptcy proceeding.

2 THE COURT: Thank you.

3 I'm letting my initial order stand. I've placed my  
4 comments on the record. Depending upon how quickly or not the  
5 Circuit acts, most of this is moot which is why I don't think  
6 we need to address it at this juncture. But if we need to, I'm  
7 giving assurances to all sides, I'm here and we can have  
8 another conversation.

9 MR. SATTERLEY: Appreciate it, Your Honor. Thank  
10 you.

11 THE COURT: Thank you. All right.

12 The next matter or matters. Let's address all of the  
13 interim fee applications.

14 Mr. Keach, I've had the benefit of reviewing your  
15 report.

16 (Electronic voice: This meeting is being recorded.)

17 THE COURT: That was you. All right.

18 And let me first ask Mr. Keach. Good morning.

19 MR. KEACH: Good morning, Your Honor.

20 THE COURT: Is there anything you wish to add to your  
21 report?

22 MR. KEACH: No, nothing further, Your Honor. I am  
23 aware of the additional discussions between the debtor and  
24 Cooley regarding an additional voluntary reduction by Cooley.  
25 I believe Cooley, represented by counsel, is present and can

1 comment on that.

2 I have no comment other than to say, obviously, if  
3 Cooley wants to add to its reduction list, that's up to it.  
4 But I have nothing further to add to the report and happy to  
5 answer any questions the Court may have.

6 THE COURT: Thank you. No, I don't have any  
7 additional questions with respect to your report. It was  
8 exhaustive as was I'm sure the effort and very thorough. I  
9 appreciate the energies you've put into this task and it's an  
10 unpalatable task, as always, addressing professional fees. I  
11 thank you for the report.

12 Let me ask for clarification from the parties. There  
13 were two objections filed by the debtor, an initial objection  
14 and a supplementary, focused primarily on the Cooley fees for  
15 the, at the time, TCC2. And then, there was an objection to  
16 the objection that was filed. So have those issues been  
17 resolved to the debtor's satisfaction? Or are they still  
18 pending?

19 MR. GORDON: Greg Gordon again on behalf of the  
20 debtor.

21 With respect to Cooley, yes, our objection has been  
22 resolved, as Mr. Keach indicated. We appreciate the  
23 cooperation of Cooley. Cooley did, based on our discussions,  
24 agree to a further reduction in their fees on top of the work  
25 that Mr. Keach did and we're very appreciative of his work as

1 well. But the debtor is resolved with respect to Cooley.

2           Now, what is open is the issue, we also raised an  
3 objection about fees incurred in connection with the TCC  
4 website. And there, Your Honor, our concern is that we had  
5 back and forth with the TCC a few months ago about the website  
6 and its purpose and raised a concern at that time that it  
7 shouldn't be used for advocacy purposes, or if it was, the  
8 debtor's estate should not be required to pay for that. And  
9 that came up in the context, Your Honor may recall, with the  
10 FTI fee application.

11           And the site is now up and running. The very first  
12 page of the site is very strong advocacy, makes a number of  
13 points that are contrary to Your Honor's findings without even  
14 mentioning that that's the case. And so we lodged an objection  
15 with respect to fees incurred in connection with that because  
16 we feel strongly that that's not proper. We feel it's contrary  
17 to representations that the Committee made to the Court that it  
18 would not use the website in that manner.

19           Now, I will say that we've had a meet and confer with  
20 Committee counsel about the website and I think there's a  
21 commitment on both sides, and Ms. Beville can correct me if I'm  
22 wrong, to meet and confer, to see if we can address the  
23 company's concerns with respect to the website. And I wanted  
24 to raise that because number one, we appreciate that there's a  
25 willingness to engage on that, and number two, it may make

1 sense, therefore, to adjourn our objection with respect to fees  
2 incurred in connection with that site and sort of roll that  
3 issue into the meet and confer with respect to the substance of  
4 the site itself.

5 THE COURT: All right. Let me hear from counsel for  
6 the Committee.

7 And, Mr. Gordon, when you refer to the fees, we're  
8 speaking of FTI's fees as to work on that site?

9 MR. GORDON: Yes. And it wasn't only FTI's fees. I  
10 think the objection was broader. Any professional's fees  
11 incurred in connection with the establishment of that site.  
12 And I should say one other thing before Ms. Beville comes up  
13 here just to state it again for the record.

14 The debtor remains very concerned about the level of  
15 professional fees in this case. And this is an issue Your  
16 Honor knows that we've raised from time to time. I know the  
17 Committee counsel has sort of chastised me in the past for  
18 raising it even to the point of saying that our concerns are  
19 laughable. But, you know, fees are supposed to be reasonable  
20 and this case is running at a rate that's a multiple of the  
21 other cases that we're involved in. I mean, the Committee fees  
22 in the aggregate I think were about five times higher than the  
23 fees of committees in the other cases for a comparable time  
24 period. And, frankly, have been substantially in excess of the  
25 debtor's fees, even double I think in the second -- double our

1 fees in the second interim fee period.

2           So we very much appreciate the work of Mr. Keach. We  
3 think he's doing a fine job. But we feel we continue to have  
4 an obligation also to keep our eyes on the fees and just wanted  
5 to say for the benefit of the Court and the parties that we  
6 remain very concerned at the level of fees that are accruing in  
7 this case.

8           THE COURT: Understood. Thank you.

9           Ms. Beville.

10          MR. KEACH: Your Honor, if I may while you're waiting  
11 for Counsel.

12          THE COURT: Yes.

13          MR. KEACH: Just to address the issue that Mr. Gordon  
14 raised. I do not want to get into confidential exchanges I've  
15 had with the professionals, but suffice to say that some of the  
16 issues that Your Honor raised with respect to the  
17 communications issue and the media monitoring issues came up  
18 during my discussions with professionals. Certainly, I've  
19 raised issues regarding the benefit of some of those services  
20 and have reserved rights in some of the reductions that you're  
21 already seeing, you know, probably reflect some of those  
22 concerns.

23                 In terms of the overall fees issue, first let me say  
24 that the professionals in the case have been nothing but  
25 cooperative. They have always responded promptly to my

1 requests. The discussions and negotiations we've had that have  
2 led to reduction have been professionally conducted and I  
3 commend all of them for their cooperation in the process.

4 I think there are always efficiencies to be obtained  
5 in the future on both sides of the case and I'll continue to  
6 work towards that effort. But for this fee period alone, and I  
7 normally don't focus on this because I don't have targets or  
8 goals, but there are just shy of \$4.7 million in fee reductions  
9 in this particular fee period and I can tell you in a decade of  
10 doing this, that's a pretty extraordinary number. So,  
11 obviously, we should continue to work for greater efficiencies  
12 in the case. I think both sides share that goal. And I'm  
13 happy to respond further as the Court requires.

14 THE COURT: Thank you, Mr. Keach.  
15 Counsel.

16 MS. BEVILLE: Good morning, Your Honor. Sunni  
17 Beville from Brown Rudnick on behalf of the TCC.

18 Just to put a finer point on it, the fees that have  
19 been identified by the debtors in connection with the website  
20 go to the creation of the website, all of the work put in  
21 invested into that. And that amounts to, at least as reported  
22 to me by the debtor, about \$50,000 in fees. About 40,000 from  
23 FTI and the remainder among some of the law firms.

24 There was extensive argument, Your Honor, at the  
25 May 24th hearing in connection with FTI's retention regarding

1 the statutory duty of the Committee to provide information to  
2 claimants. And at that hearing, Your Honor, there was an  
3 acknowledgment that facilitating that communication through a  
4 website is appropriate. And from that point on, Your Honor,  
5 FTI did work to create that website.

6           The fees that were incurred for that work, as we  
7 heard from Mr. Keach, were subject to review by the fee  
8 examiner subject to the discussions in resolving the  
9 reasonableness of the fees and the benefit to the estate. And  
10 I just want to make note to reinforce what Mr. Keach just  
11 stated to the Court. In his report at Docket Entry  
12 Number 2958, provides that among the issues it considered in  
13 reviewing the fees was whether or not the necessity of certain  
14 services. And so I just want to emphasize that I think this  
15 issue was addressed and contemplated by Mr. Keach's review and  
16 the reduction of fees for FTI was approximately \$140,000, for  
17 Brown Rudnick about \$260,000. And so I would submit that no  
18 further reduction in fees is warranted especially when you view  
19 the \$50,000 in fees for creating a website that was essentially  
20 acknowledged by the Court as an appropriate exercise.

21           I think the issue here really, Your Honor, is not the  
22 fees incurred in creating the website, but it's the content of  
23 the website that the debtors have some concerns. I'd just like  
24 to make note, Your Honor, that based on the conversation I've  
25 had with debtor's counsel, there are a few places in the



1 website where there is concern. It's not the website itself.  
2 The website itself provides basic information to creditors,  
3 information, FAQs, what is a Chapter 11, what is the process,  
4 how is the MDL impacted, includes a calendar, for example,  
5 there's a link to the oral argument for the Third Circuit. It  
6 is making information that might be otherwise located in  
7 different places fully available to creditors in one site.

8           So I don't think there's a dispute that the website  
9 itself should be taken down or should not have been created in  
10 the first instance. And I just want to make note, Your Honor,  
11 that we have received since the site went live dozens of  
12 inquiries from victims with questions about the case or their  
13 claims. And so I do think the website is serving its purpose,  
14 which is to give voice to victims. So I don't believe here  
15 that a further reduction in fees is appropriate in this  
16 context.

17           With that being said, Your Honor, as I did indicate  
18 to debtor's counsel during the previous meet and confer, we are  
19 willing to engage with the debtor in conversation if there is  
20 specific language or a paragraph or two that needs to be  
21 discussed, we're happy to make revisions. I've already been in  
22 conversations in reviewing the website to see if there's some  
23 changes we can make to identify if something's been a TCC  
24 position versus an order of the Court to alleviate any  
25 confusion that may potentially be caused.

1           So, Your Honor, from the TCC perspective, I believe  
2 that the fees have been addressed. I'm confident that we can  
3 resolve any concerns the debtor has regarding specific language  
4 or verbiage on the website. And if not, Your Honor, the debtor  
5 indicated to me that it can file a motion with the Court  
6 seeking guidance or asking the Court to direct the Committee to  
7 make any further changes as necessary.

8           I would hope, Your Honor, that that wouldn't be  
9 necessary, but I think that is an avenue available to the  
10 debtor. But the TCC view is no further reduction in fees is  
11 warranted.

12           THE COURT: All right. Thank you.

13           MR. MOLTON: Your Honor, good afternoon.

14           THE COURT: Yes, Mr. Molton.

15           MR. MOLTON: David Molton for the Committee. I  
16 didn't intend to stand, but in light of Mr. Gordon's gratuitous  
17 comments which weren't necessary for what's in front of Your  
18 Honor, I have to.

19           Maybe it was me he referred to when I possibly stood  
20 up earlier and talked about that their complaint about fees of  
21 the victims committees was laughable. Or maybe it was one of  
22 my colleagues. I don't quite remember. Maybe Mr. Gordon has  
23 it. But I continue to believe that. If that was me, I would  
24 continue to affirm it if that was one of my colleagues.

25           I just find it just incredible that the debtor

1 continues to pound victims and the efforts of those victims  
2 through their official committees to seek justice and fair  
3 representation in this case. And Mr. Gordon mentioned in the  
4 prior matter in front of you, preserving the integrity of these  
5 bankruptcy proceedings. We're all for that. And the issue of  
6 the integrity of this specific proceeding, as everybody knows  
7 in this courtroom, probably will be a subject of discussion  
8 Monday afternoon in the Third Circuit.

9           So in any event, Judge, I know Mr. Gordon likes to  
10 talk about aggregate fees of the victims committees. There  
11 were two committees. No fault of anybody here. No fault of  
12 Your Honor. No fault of -- that's just the way that it  
13 happened. And those two committees engaged for a while in a  
14 full motion to dismiss, many other issues, and then once the  
15 second committee disappeared, we had a lot of work through this  
16 case up to this point. And I think Your Honor, himself,  
17 remarked that you've, you know, this has been in terms of  
18 filings, many, many, many multiples of filings of cases you've  
19 seen, including significant cases that have been here. And I  
20 know that Mr. Gordon, when he puts together his aggregate, look  
21 at the debtor's fees compared to all the victims committees  
22 fees, doesn't include Johnson and Johnson's fees, the people  
23 sitting back here and the work that they're doing, their  
24 professionals, in aid of the debtor's efforts here.

25           In any event, Judge, we have a fee examiner. That

1 fee examiner is doing a lot of work to make sure that all the  
2 fees by all the professionals in this case are value additive.  
3 And when he finds that they're not, he talks to us, he talks to  
4 them, he talks to everybody else. And to the extent that folks  
5 are able professionally to come to agreement, they are. I know  
6 Mr. Keach has put his stamp of approval on everything that's  
7 been in front of Your Honor. And, Judge, I think that's  
8 enough. And to continue to complain about the cost of a  
9 bankruptcy that they created and put us in, to me, yes, is  
10 laughable and disingenuous.

11 And I just have to say that. Thank you.

12 THE COURT: All right. Thank you, Mr. Molton.

13 Mr. Gordon.

14 MR. GORDON: So Greg Gordon, again, on behalf of the  
15 debtor.

16 Your Honor, with respect to the website, I don't  
17 think it's fair to say that our concern is just -- to minimize  
18 our concern is just sort of language and we just have to  
19 address the language. The concern is much stronger than that  
20 which is what is the fundamental purpose of this website? And  
21 Ms. Beville is certainly accurate when she says it has pieces  
22 to it that are more of what you would expect with a committee  
23 website. Yes, it has a calendar. Yes, it has some Q and A and  
24 things like that. But the very first page is advocacy. Very  
25 first page indicates it's for the -- that the website is for

1 the purpose of the claimants and the press.

2           To me, it's exactly what the Court said shouldn't  
3 happen unless they wanted to pay for that on their own nickel.  
4 And that's why we raised the concern. They have statements on  
5 the front page about LTL being a dummy entity. It filed with  
6 no proper reorganizational purpose. It's very inflammatory.  
7 It's very concerning to us because it's an official website of  
8 a committee that to us is potentially poisoning the well with  
9 claimants if we do reach an agreement in this case. Now, we  
10 have a website that on page one has inflammatory remarks like  
11 that.

12           So we have a very strong objection to it, not just on  
13 the language, but what is the fundamental purpose? Why is the  
14 first page written that way? Why is it the first thing that  
15 comes up makes statements like that, that completely are  
16 contrary to what Your Honor found based on the evidence  
17 following a full week of hearings.

18           And so I don't think it's appropriate just to be  
19 dismissive of the objection, dismissive of the fees, and I  
20 would just suggest, since the Committee's indicated a  
21 willingness to meet and confer, that we roll this fee issue in  
22 as well. Now, I will admit that we don't really know the  
23 extent to which Mr. Keach may have addressed this issue  
24 because, you know, his reports are very well done, but it's  
25 hard to sort of break it down.

1           That, finally, and maybe we'll be satisfied that the  
2 fee issue has been addressed. But we do have a broader issue.  
3 It is of deep concern to us. I mean, is this advocacy for  
4 purposes of the press because we're seeing it in a lot of  
5 different places and they can obviously do that outside of the  
6 estate, but to have it on this official website and to impose  
7 that cost on us from our perspective is very inappropriate and  
8 needs to be addressed.

9           THE COURT: All right. Thank you, Mr. Gordon.

10           I've heard enough on this issue. I don't view the  
11 website issue as a fee issue. I respect Mr. Keach and I  
12 believe he's looked at it and he did take into account the  
13 issues. I have reviewed the website. I have concerns. I  
14 think there are content -- it is a content issue. It is not a  
15 fee issue. And I think the parties should be able to address  
16 the content through disclaimers, precautionary language to  
17 ensure that it's not inflammatory one side or the other, that  
18 it's more neutral and informational as opposed to a source of  
19 advocacy.

20           I am confident the parties can do that. And if not,  
21 as with all matters, I'm certainly here to help address it if  
22 it need be. But I'm encouraged that the parties will speak and  
23 meet and confer. I don't think it needs to be rolled over when  
24 we look at the fees that were necessary to create the website  
25 itself. The actual fees that are in dispute are more *de*

1 *minimis* as compared to what's being approved.

2 Overall, I am deferring. It would be nonsensical for  
3 the Court to at least initially not defer to the fee examiner  
4 who spent hundreds of hours on this, as opposed to what an  
5 individual judge can competently do.

6 I have looked at the fees and the fee applications.  
7 I am concerned. And I'm going to say it now, for all  
8 professionals, virtually all professionals, the layering, the  
9 staffing, the duplication. It is striking what has taken place  
10 and thus the need to make adjustments which Mr. Keach did and  
11 sought. But I would ask that all counsel understand that the  
12 Court is still looking at it. We have until the day I enter  
13 final orders, it's an issue.

14 And it's part of professionalism and I'm including  
15 not just services, but disbursements, the lunches, the hotels.  
16 I know you all are coming down to Philly next week. I assume  
17 some of you are staying over in hotels. I know the Red Roof  
18 Inn charges only \$69 on Route 1. Don't ask me why I know that.

19 But at least be cognizant. As we've seen, the public  
20 is concerned. The Court is concerned. There are other eyes on  
21 what's done here and let's ensure that we're doing it in a  
22 professional manner. Thank you.

23 As far as the interim, I'm accepting Mr. Keach's  
24 recommendations and will be entering the orders on the interim  
25 unless of course I'm told not to. Mr. Stolz?

1 MR. STOLZ: One order, Your Honor.

2 THE COURT: Excuse me. One order. A single order on  
3 them all.

4 MR. KEACH: And, Your Honor, Robert Keach, the fee  
5 examiner. We have amended the order to take into account the  
6 additional Cooley agreement as well as the comment by the U.S.  
7 Trustee's office that makes it clear that the order doesn't  
8 encompass the Committee's members separate request for  
9 expenses, which will be handled outside of the fee application  
10 process.

11 And we'll upload that amended order today to Your  
12 Honor's (indiscernible).

13 THE COURT: Thank you. And we will enter that order.  
14 We had a glitch because of automated entry of orders where we  
15 had to vacate orders because they were granted in advance of a  
16 hearing. We're good. We're not that good.

17 But we'll wait for the order. Thank you, Mr. Keach.  
18 Thank you, counsel.

19 MR. KEACH: Thank you, Your Honor.

20 THE COURT: We'll move on to the injunctive relief  
21 sought by the debtor with respect to the State of Mississippi  
22 and the State of New Mexico.

23 MR. GORDON: Greg Gordon, again, on behalf of the  
24 debtor, Your Honor.

25 I wanted to raise a preliminary matter on this if I



1 could.

2 THE COURT: Yes.

3 MR. GORDON: And I did talk to Mr. Malone before the  
4 hearing so I'm not doing anything that will be a surprise to  
5 him. But there was a development yesterday that I want Your  
6 Honor to be aware of which we think impacts on the hearing  
7 today. There actually have been a couple of developments since  
8 the motion was filed.

9 But the one yesterday was in the New Mexico action.  
10 The New Mexico state court heard argument on a discovery  
11 dispute and actually made a decision, or rendered a decision at  
12 the conclusion of the argument. And the decision was that, as  
13 I understand it, the Court sided with J&J with respect to the  
14 discovery dispute. And more importantly, for purposes of  
15 today, entered what's effectively a 45-day stay of the  
16 discovery in that case for purposes of allowing the parties to  
17 engage in additional briefing with respect to the issues.  
18 There's like a 20-day period for the company to brief the  
19 issues and then a 20-day response period and then a five-day  
20 reply period.

21 So I wanted Your Honor to know that in the New Mexico  
22 proceeding, although there was a scheduling order in place that  
23 as I recall was leading to a trial in either April or May of  
24 next year, that's up in the air now. There's this 45-day stay  
25 period.

1           The other thing I'll just note, which is so direct to  
2 what I'm going to raise right now, is that in the Mississippi  
3 case, there was an expert report that was submitted that  
4 included a case study of an individual plaintiff among the 40  
5 or 38,000 plaintiffs in the MDL. And it just kind of shows the  
6 intertwining of the issues that we raised in our papers so I  
7 wanted to bring that to Your Honor's attention.

8           But we're in a situation here, Your Honor, where we  
9 have an agreed order in place that basically imposes a stay  
10 pending the entry of an order by this Court on the motion. And  
11 what I suggested to Mr. Malone was, in light of developments  
12 yesterday, the fact that we already have a 45-day stay in place  
13 in New Mexico, in light of the fact that we have argument in  
14 the Third Circuit on Monday and a ruling expected within, I  
15 think, 30 to 45 or 60 days thereafter, that we really should  
16 maintain the status quo.

17           In other words, continue the order that we have in  
18 place or not have an order entered with respect to this  
19 particular matter for about the same period of time. And that  
20 actually fits with our schedule in the case because we have an  
21 omnibus hearing I think next set for October 25.

22           THE COURT: October 25th. Correct.

23           MR. GORDON: Which is about 41 or 42 days from today.

24           So I just rise initially here to ask Your Honor to  
25 enter that as the relief. It seems to us that makes sense in

1 view of the developments yesterday, in view of the fact that a  
2 ruling in the Third Circuit is imminent, and in view of the  
3 fact that the issues that we're going to have to present to  
4 Your Honor today are basically the same issues that are  
5 currently under review by the Third Circuit.

6           So we'd ask for that relief preliminarily, but  
7 otherwise we're prepared to go forward if that's not  
8 acceptable.

9           THE COURT: All right. Thank you, Mr. Gordon.  
10           Mr. Malone, your thoughts.

11           MR. MALONE: Good morning, Your Honor. Robert  
12 Malone, Gibbons firm, appearing on behalf of the States of New  
13 Mexico and Mississippi.

14           Your Honor, that is not acceptable to the two states  
15 for various reasons, unless of course they want to dissolve the  
16 TRO and if they want to, you know, kick off the hearing. But  
17 as far as any further delay, I think both states believe at  
18 this point in time, it's time to move on. One party's delay is  
19 another person's due process at this point. And if, whether  
20 people win or lose today, it's probably going to go up at least  
21 one or two more levels on appeal. This is not something that's  
22 going to be resolved properly by this Court.

23           So with respect to the hearing, we're prepared to go  
24 forward but we'll wait to see what Your Honor prefers to do.

25           THE COURT: Well, I've certainly -- the Court's

1 prepared. I'm prepared to go forward. In retrospect, down the  
2 road, it may seem that we've wasted time today, but everybody's  
3 here and the arguments are ready. It's been briefed. It's not  
4 complex. We've had some of these issues before in this case.  
5 My inclination would be to move forward.

6 MR. MALONE: Your Honor, just so there's  
7 clarification. There's no stay in Mississippi. But also with  
8 respect to what happened in New Mexico, yesterday, the Supreme  
9 Court did not agree with either side. It was kind of a neutral  
10 status quo. It was not taking the side of J&J or taking the  
11 side of the State of New Mexico. It was that they wanted to  
12 stay so that people would brief the issue and present it. That  
13 was the sole purpose for that stay.

14 THE COURT: I'll let others handicap the rulings.  
15 Why don't we address the issues that are before the Court  
16 today. And in that regard, Mr. Gordon, let me have a sense of  
17 what's expected for today as far as witnesses, arguments, and  
18 the like, and the inevitable PowerPoint. So --

19 MR. GORDON: The PowerPoint is inevitable, Your  
20 Honor. You know, I did have one on the website, too, which I  
21 decided to forego. I'm sure you appreciate that and all the  
22 parties appreciate it.

23 So in terms of the evidence, we have declarations,  
24 obviously, that we submitted in connection with the motion. We  
25 had one from Mr. Kim and we are also referring to the previous

1 declarations he had submitted in the case in connection with  
2 the PI motion and the initial first day declarations. So  
3 Mr. Kim is here. We would move those declarations into  
4 evidence, and that is our evidence in support of the motion,  
5 Your Honor.

6 THE COURT: All right. It would make sense before  
7 oral argument to have the evidence. Mr. Malone, what's your  
8 intention, do you wish to cross-examine?

9 MR. MALONE: Well, Your Honor, I think that that's  
10 the way we should proceed. If you want to put the evidence  
11 forward and then we can pursue oral argument after we've gotten  
12 through those steps.

13 THE COURT: Then, you're not calling any other  
14 witnesses, I gather.

15 MR. GORDON: No, Your Honor.

16 THE COURT: Mr. Malone, do you seek to call a  
17 witness?

18 MR. MALONE: No, Your Honor.

19 THE COURT: Do you seek --

20 MR. MALONE: And in fact --

21 THE COURT: Do you seek to cross-examine Mr. Kim?

22 MR. MALONE: No, we do not. And I'll state for the  
23 record the reasons therefore.

24 As Your Honor is aware, this is a contested matter  
25 under Rule 9014 which would of course trigger Part 7 of the

1 Rules. It is an evidentiary hearing under the rules here.  
2 They're putting forward the declaration. It would be a fool's  
3 errand for me to cross-examine a witness since no discovery was  
4 taken. Be as it may, they can move it into evidence and then  
5 I'll make my further comments with respect to the weight that  
6 it should be accorded if at all.

7 Thank you.

8 THE COURT: All right. Thank you.

9 Then Mr. Gordon, you're submitting the declarations  
10 into evidence?

11 MR. GORDON: Yes, Your Honor.

12 THE COURT: All right.

13 Do we have paper copies or do we just want to  
14 reference, do you have the docket entries? They've been on the  
15 docket?

16 MR. GORDON: Correct.

17 MR. MALONE: But they're seeking to move it into  
18 evidence. Once they seek to move it in, I'll express my  
19 objection.

20 THE COURT: All right. I just want to clarify for  
21 the record the specific documents that are going into the  
22 record. Do we have docket entries for them?

23 MR. GORDON: I can get you those, Your Honor.

24 THE COURT: All right. Thank you.

25 (Pause)

1 MR. GORDON: So, Your Honor, the one. We're looking  
2 for the other two. The most recent one, the declaration of  
3 Mr. Kim in support of the verified complaint and the  
4 preliminary injunction motion in this matter, is at Docket 5 in  
5 the adversary proceeding. And this is Adversary  
6 Proceeding 22-01231. Again, Docket Number 5.

7 THE COURT: And then you would be looking for the  
8 affidavits or declarations in the other adversary proceedings.

9 MR. GORDON: Well, two things. One would be the  
10 first-day declaration from Mr. Kim, which is probably within  
11 the first 10 docket numbers in the case. And then the other is  
12 the declaration of Mr. Kim in support of the motion for  
13 preliminary injunction in the initial adversary proceeding in  
14 the case. It related to the various defendants, the one that's  
15 on appeal. Those are the other two.

16 Okay. So the -- and I'm sorry for the delay here,  
17 Your Honor.

18 THE COURT: That's all right.

19 MR. GORDON: So Mr. Kim's declaration in the  
20 preliminary injunction proceeding is at Docket Number 3.

21 THE COURT: Three in the main case?

22 MR. GORDON: No, this is in the adversary proceeding.

23 THE COURT: Oh, in the adversary proceeding, rather.  
24 Right.

25 MR. GORDON: This is Adversary Proceeding

1 Number 21-03032.

2 THE COURT: Two one -- I'm sorry. 21-03032.

3 MR. GORDON: 03032.

4 THE COURT: All right. And then the first-day  
5 declaration in the underlying case.

6 MR. GORDON: Number 5 in the main case.

7 Thank you.

8 So that one is -- the first-day declaration is  
9 Number 5 in the main case, Your Honor.

10 THE COURT: Thank you.

11 Mr. Malone, you're familiar with the documents that I  
12 referenced?

13 MR. MALONE: Your Honor, I am familiar with those  
14 documents and, again, stating back to the fact that this is  
15 supposed to be an evidentiary hearing, no discovery was  
16 afforded to our side, we want our objection noted on the  
17 record. But with respect to the certifications, Your Honor, I  
18 do have certain objections that I think will need to be placed  
19 on this record.

20 Number one, and I'll go really mainly because this is  
21 the one that bootstraps every other declaration. I think the  
22 more pertinent one is that found at Docket 5, which is in  
23 support of the adversary proceeding, and that is that Mr. Kim's  
24 declaration is rife with hearsay and what purports to be his  
25 opinions. I don't know if they're offering these as legal



1 opinions or they're offering him as his own layman's opinions  
2 with respect to the supposed (indiscernible) effect of the  
3 state's continuation of their state law consumer protection  
4 statutes and based on the actions of the States of New Mexico  
5 and Mississippi against non-debtor defendants here.

6           Mr. Kim's attempt to justify those opinions in an  
7 oblique manner, again, referring to the debtor's supposed  
8 indemnification obligations to those non-debtors in a general  
9 manner is without any foundation. There's been no foundation  
10 with respect to any of the statements that have been made by  
11 him.

12           We could start by just going through a couple of  
13 things by example. Paragraph 4, it states that "My review of  
14 the relevant documents and my opinion are based upon  
15 experience, knowledge," and it's also with respect to  
16 "information supplied to him by other members of management."  
17 That's clearly hearsay. So for this Court to take into that  
18 consideration, that is, those statements shouldn't come in.

19           The rest of this is a lot of times net opinions. I  
20 don't know how he can opine with respect to what other non-  
21 debtors. He can't speak for anyone, but LTL. He can't speak  
22 as to what the meaning of certain statutes are. He's not a  
23 Mississippi lawyer. He's not a New Mexico lawyer. So his  
24 opinions that he expresses here I think cannot be given the  
25 weight that they're trying to give it.

1 Paragraph 16, for example, you know, "Thus, the  
2 Mississippi action poses expensive burdens on the debtor and  
3 the state protected parties." He can only speak to LTL. I  
4 don't know how he speaks for these other non-debtor parties. I  
5 don't hear any testimony being offered by anyone from Johnson &  
6 Johnson, or Bausch Health. These are all being bootstrapped  
7 and being put into evidence before this Court today.

8 So as far as with respect to the way this is being  
9 presented to Your Honor, it's kind of haphazard, but at the  
10 same time, it's got no foundation whatsoever and it really  
11 should not be taken into evidence, any of it, today.

12 THE COURT: All right. Thank you.

13 I'm going to overrule the objection in part. To the  
14 extent the Court in reaching a ruling relies on the  
15 declaration, the Court will be specific as to which paragraphs  
16 it does so rely and will accord the appropriate weight.

17 If the Court -- since we're not going paragraph by  
18 paragraph, if the Court agrees that the content of a particular  
19 paragraph is inadmissible, either based on hearsay or relevance  
20 or for any other issue, the Court will not rely upon it in  
21 rendering a ruling. The ruling will be clear as to which  
22 statements the Court does rely as far as an evidentiary basis.

23 At this juncture, I'm going to accept the declaration  
24 into evidence but accord it the appropriate weight in rendering  
25 a ruling at some point in the future. Certainly, I want to

1 hear oral argument and then make a determination as to  
2 paragraph by paragraph whether there's an evidentiary support.

3 MR. MALONE: Thank you, Your Honor.

4 THE COURT: All right. So do I take your objection  
5 as to all three of the documents?

6 MR. MALONE: Yes, Your Honor.

7 THE COURT: Okay.

8 MR. MALONE: Because what it does is it incorporates  
9 by reference everything, so it really kind of dovetails into  
10 it.

11 THE COURT: All right.

12 MR. MALONE: There's no foundation, we're saying.  
13 And if they're offering it as a legal expert under Daubert,  
14 there's been no foundation, no basis, nothing to support any of  
15 the statements that have been made by Mr. Kim.

16 THE COURT: Understood. Thank you.

17 MR. JONES: Your Honor?

18 THE COURT: Counsel?

19 MR. JONES: If I may?

20 THE COURT: Yes.

21 MR. JONES: Jim Jones for the debtor, Jones Day.  
22 Just a moment of response.

23 THE COURT: Sure.

24 MR. JONES: As I understand the objection, I think it  
25 may be misapprehending the declarations in a way that I would

1 offer this explanation in response. And that is that Mr. Kim's  
2 declaration refers to being informed and speaking based on  
3 information that he has received from others, in part. And to  
4 the extent he does that, he's a corporate officer or the chief  
5 legal officer of the debtor and, of course, he's informed and  
6 when he gives testimony, he's informed by what he knows,  
7 observes in that position.

8           And he is not, as I understand the declaration,  
9 offering expert opinion but lay observation. And to the extent  
10 it's opinion, it would be lay opinion and, therefore,  
11 admissible and not hearsay, Your Honor.

12           THE COURT: Understood. Thank you.

13           Again, the Court's ruling is that it will take each  
14 assertion of fact contained within the declarations one by one.  
15 It will be evident to anyone reading the ruling, and I do  
16 intend to write a ruling on it, what the foundation will be and  
17 to what extent, if any, the Court relied upon the averments  
18 contained or the assertions contained in the declaration.

19           Thank you.

20           Then we're proceeding to oral argument.

21           Mr. Gordon.

22           MR. GORDON: Thank you, Your Honor.

23           MR. SATTERLEY: Before we start, just so we have it  
24 clear for the record, evidence has been closed. Correct?

25           THE COURT: The -- yes.

1 MR. SATTERLEY: Thank you.

2 THE COURT: The evidentiary record is closed.

3 MR. SATTERLEY: Thank you.

4 THE COURT: We're at oral argument.

5 MR. GORDON: Your Honor, may I approach?

6 THE COURT: Yes, please.

7 MR. GORDON: If we could bring up the slide deck, we  
8 have a (indiscernible).

9 THE COURT: Thank you.

10 MR. GORDON: Your Honor, I'm ready if you're ready.

11 THE COURT: I am ready. And let me just amplify one  
12 comment I made. I referenced a ruling. So that everybody  
13 knows going in today, I don't intend to issue a ruling on the  
14 motion today. That's not fair to the parties or to counsel  
15 and for the Court. I certainly want to be able to digest  
16 what's being argued and presented.

17 I don't -- I can virtually guarantee I will have a  
18 ruling before the Circuit rules because it's my intent to  
19 address it quickly one way or the other. But there won't be a  
20 ruling today. Thank you.

21 MR. GORDON: We appreciate the clarification, Your  
22 Honor. Thank you.

23 Next slide, please.

24 So, Your Honor, this slide kind of states the  
25 objection. These are the two state actions that are the

1 subject of the complaint that we filed and the motion that we  
2 filed, as well, one pending in the State of New Mexico, the  
3 other pending in the State of Mississippi.

4 Next slide, please.

5 I think this is an important slide because of the  
6 arguments that have been made by the other side. The  
7 defendants in these two actions are Old JJCI whose liability is  
8 now the responsibility of LTL, Johnson & Johnson, and then in  
9 the New Mexico case, the Bausch defendants, who are ones that  
10 have been indemnified by the debtor through a transaction  
11 involving the sale of a product line. And, also, obviously,  
12 the indemnity that's in place as a result of the divisional  
13 merger.

14 Next slide, please.

15 Let's go back one slide for a second.

16 I just want to emphasize here the argument's been  
17 advanced that the debtor's not a party. And I just want to be  
18 very clear that the debtor is the responsible party. It is the  
19 real party in interest here, which Your Honor has obviously  
20 heard in connection with the evidence that was presented both  
21 with respect to the preliminary injunction motion initially  
22 that's on appeal and the dismissal motion, as well.

23 Next slide, please.

24 The core allegations in both cases, they're both  
25 consumer protection cases, go to the alleged problems with the

1 products, the alleged danger in the products, allegations that  
2 the products contain carcinogens, that they contain asbestos,  
3 that talc is a dangerous product. I mean these are the very  
4 issues that are at the core of the talc claims that are the  
5 subject of this bankruptcy case.

6           So as Your Honor knows from sitting through multiple  
7 hearings, probably the fundamental disputed allegation in this  
8 case that needs to be addressed is whether talc products are  
9 safe or unsafe. And Your Honor knows the debtor's position and  
10 the position of J&J that we strongly believe these products are  
11 safe, that they're not unsafe.

12           Next slide, please.

13           Your Honor, this was the status of the New Mexico  
14 action as of the time we filed the motion. You can see it's  
15 been set for trial in May -- I said April or May before -- in  
16 May, end of May 2023. And you can see there's a number of  
17 deadlines coming up related to discovery starting in October  
18 and, you know, running through June -- through January of next  
19 year.

20           And as I indicated earlier in my preliminary remarks,  
21 this has been upended somewhat by the ruling yesterday by the  
22 New Mexico state court imposing a 45-day stay to further  
23 consider discovery disputes that have been presented to the  
24 Court.

25           Next slide, please.

1           And then Mississippi is on a similar timeline,  
2 although the trial here is sooner. This trial is scheduled for  
3 February, but you can see the number of deadlines upcoming with  
4 respect to discovery, with respect to Daubert motions,  
5 depositions, witnesses, motions in limine, and the like. And  
6 you can see there's actually a discovery, completion of  
7 discovery deadline at the end of October.

8           So both cases under scheduling orders in place. And,  
9 again, New Mexico's has been upended based on yesterday, but  
10 there's a fair amount of work that's scheduled to be done in  
11 advance of trials that at this point are set in the first half  
12 of next year.

13           Next slide, please.

14           There is a, Your Honor, an overlap in the counsel  
15 involved in these cases that in New Mexico -- New Mexico is  
16 represented by two law firms, plaintiffs' firms actually  
17 represent members of the TCC. And in Mississippi, you have two  
18 firms who also represent a talc claimant, but they're part of a  
19 consortium with Beasley Allen who represents a member of the  
20 TCC. So there is substantial overlap.

21           And I think this is important to keep in mind because  
22 from the debtor's perspective, this is just another component  
23 of a overall strategy that we've seen in this case by the  
24 plaintiffs to push the resolution of the issues, the  
25 fundamental issues that underlie this case, into courts outside



1 of the bankruptcy court.

2           And that's largely the reason we oppose this, and  
3 it's largely the reason that this -- the arguments here look  
4 very similar to the arguments that you've heard before because,  
5 fundamentally, what's happening here raises the same issue  
6 which is are we going to provide an opportunity to resolve  
7 these claims in this court through a bankruptcy process or  
8 instead are we going to permit the claims to move forward in  
9 piecemeal fashion in different courts that are not under the  
10 control of the bankruptcy court.

11           Next slide, please.

12           We've said this in our pleadings. I said it earlier  
13 today. From our perspective, and notwithstanding the counter  
14 arguments of the states, these actions are inextricably  
15 intertwined with the talc claims. I know I could get that word  
16 out at some point.

17           I mean the alleged danger, harmfulness of the talc  
18 claims is literally at the core of the allegations in these  
19 state cases. I mean they're basically contending that you've  
20 made representations that are false because you haven't  
21 disclosed that this is a dangerous product, you haven't put  
22 warnings on the product.

23           And the evidence that would be elicited in support of  
24 these claims is the exact same evidence that would be elicited  
25 in connection with the talc claims. Again, it goes to the

1 underlying merits of the claims. Are these dangerous products?  
2 Did these products cause cancer? Did they cause disease? Same  
3 issues.

4 Next slide, please.

5 And you really just have to look at the -- you know,  
6 compare the complaints, the New Mexico complaint, the  
7 Mississippi complaint to complaints by talc claimants, either  
8 individual complaints or complaints at the MDL or the MDL  
9 complaint to see the overlap in the allegations.

10 You can see -- again, I won't go through these in  
11 detail, but we tried to put them side to side just to show that  
12 these are all based on the potentially dangerous nature of  
13 these products and the alleged harms that these products  
14 supposedly cause. And you can see that across all of the  
15 various complaints, again, including on the right, the MDL  
16 complaint and then two other complaint that we have provided  
17 highlights from.

18 Next slide.

19 This, Your Honor, makes the point that I advised you  
20 of this morning that in the expert report in Mississippi,  
21 there's a summary of that expert's analysis of a claim asserted  
22 by one of the plaintiffs pending in the MDL in New Jersey.  
23 And, again, it's not surprising given who the counsel are  
24 representing Mississippi in that case.

25 Next slide, please.

1           And I think, Your Honor, notwithstanding protests by  
2 the other side that in fact these claims are different, those  
3 protests are belied by the actual language in the objections  
4 themselves because you can see again like in the opposition J&J  
5 knowingly and falsely represented that the talc products met  
6 certain standards or were of a certain quality making them safe  
7 for use.

8           And then there's an allegation about the J&J's  
9 deliberate omission of information regarding asbestos  
10 contamination. And then you can see claims about false  
11 marketing, false advertising, and selling products as being  
12 undeniably safe in the face of medical and scientific studies  
13 to the contrary. So you see that in the oppositions, you see  
14 it in the complaints allegations about scientific studies or  
15 medical studies that support their position.

16           Again, allegations like that which we dispute,  
17 obviously, go to the core of what these states are asserting in  
18 these actions. And, also, so that's from the state's  
19 objection, but the Ad Hoc Committee that's been put together in  
20 this case primarily for purposes of settlement, you can see  
21 they make similar statements about the alleged lack of safety  
22 of the product. It's very similar.

23           To me or to us, these make our point that these are  
24 inextricably intertwined with the talc claims and the evidence  
25 completely overlaps, and that's the harm that this issue would

1 move forward outside of this Court and at a time when the talc  
2 claimants are stayed. So you'd have these claims moving  
3 forward based on the same underlying allegations as the other  
4 claims that have been stayed at this point in time.

5           Next slide, please.

6           So, Your Honor, I'll go through these pretty rapidly.  
7 You know, I think the first point that probably should be  
8 addressed is the question of this Court's jurisdiction to  
9 entertain the relief that's been requested by the debtor.

10           And I re-read again last night Your Honor's  
11 preliminary injunction ruling which goes into great detail  
12 about all these issues and talks about Third Circuit rulings  
13 and the basis for jurisdiction and how the courts and the  
14 Circuit look at 105 issues versus automatic stay issues with  
15 respect to injunctions as to third parties.

16           But, you know, we think as Your Honor's already  
17 observed or already found that you have core jurisdiction both  
18 arising-under and arising-in jurisdiction which you found in  
19 both your initial preliminary injunction decision and also in  
20 your ruling on Hall or the Securities class action.

21           And, you know, in particular with respect to arising-  
22 in, you said in the Hall opinion the injunction's necessary to  
23 preserve the automatic stay and the action could arise only in  
24 the context of a bankruptcy case. The other side takes issue  
25 with these rulings. They're, in our view, making arguments

1 that you've heard before that you've rejected before. The  
2 focus isn't on the nature of their claims which is  
3 fundamentally what their argument is.

4           The focus is on what the nature of this lawsuit is  
5 that we've brought and the motion that we filed. And it is for  
6 purposes of preserving the automatic stay. It can only arise  
7 in this case, and it's for the purposes of having an injunction  
8 entered in this particular bankruptcy case.

9           Next slide, please.

10           And then, again, this is an issue Your Honor's also  
11 addressed at great length. We also believe at a minimum this  
12 Court has related-to jurisdiction. The threshold for this is  
13 low. It's the question of whether the outcome of the  
14 proceeding to be enjoined could conceivably have any effect on  
15 the estate being administered in bankruptcy. That standard  
16 applies whether the claims are alleged to be direct or  
17 indirect. That was Judge Beyers ruling in Bestwall, and we  
18 think it's just beyond dispute that these claims could  
19 conceivably have an effect on the estate.

20           Next slide, please.

21           And, again, these are all points I think that Your  
22 Honor has made in your prior preliminary injunction opinion in  
23 the Hall opinion. I mean here, first of all, the state claims,  
24 as I mentioned before, are asserted against the debtor. The  
25 debtor is a party. We believe they are intertwined, as I

1 indicated earlier. There are indemnification obligations owing  
2 both with respect to Johnson & Johnson which Your Honor's aware  
3 of, also with respect to the Bausch parties, as well, as we  
4 pointed out in the pleadings.

5           There are risks of evidentiary prejudice, collateral  
6 estoppel, and their concerns which I think Your Honor  
7 recognized before that the litigation will interfere with the  
8 estimation process that's recently getting underway, as well as  
9 the mediation efforts.

10           And as Your Honor knows on mediation, there is  
11 mediation that's ongoing with respect to the AG claims. And  
12 these are only two states out of all the states that are part  
13 of that. And these are two states that want to move forward in  
14 a way that we think will potentially undermine the mediation,  
15 and that's a further basis on which we believe this Court has  
16 related-to jurisdiction.

17           Next slide, please.

18           We think the law is clear that under 105, you have  
19 the authority to issue or extend the stay to enjoin the actions  
20 in this case. We cite Robins as authority for that. There are  
21 other cases, obviously, that we've cited, as well. And I think  
22 Your Honor recognized that Robins is the case that's been, you  
23 know, cited with favor by the Third Circuit, in particular, in  
24 the McCartney case.

25           Next slide, please.

1           Next slide, please. There we go.

2           And as we also pointed out, Your Honor, we think the  
3 law is clear that you have the ability to issue an injunction  
4 even if the automatic stay is not effective. And the Penn  
5 Terra case in the Third Circuit was one that we're primarily  
6 relying on where the court said the exercise of state power  
7 even for the protection of the public health and safety may run  
8 so contrary to the policy of the Bankruptcy Code that should  
9 not be permitted.

10           So there was a recognition by the Third Circuit that  
11 there could be an injunction even if the police power exception  
12 applied. And, again, there's a further quote to that effect.  
13 And then there's also legislative history with respect to  
14 Section 105 that has really a similar -- make a similar point.  
15 The effect of an exception is not to make an action immune from  
16 injunction. The court has ample other powers to stay actions  
17 not covered by the automatic stay.

18           Section 105 of the proposed Title -- that's from  
19 Section 105. So -- and it refers to the fact it grants the  
20 power to issue orders necessary or appropriate to carry out the  
21 provisions of Title 11.

22           All right. Next slide, please.

23           We cite in the papers, as I indicated, other cases  
24 where similar injunctions have issued. We saw these in Grace  
25 and Tecotta (phonetic) and Mallinckrodt and in Purdue where

1 injunctions were entered for similar reasons to halt state  
2 court actions.

3           Next slide.

4           And, Your Honor, with respect to the preliminary  
5 injunction, we think all four of the factors are met here for  
6 the reasons that all four of these factors were satisfied with  
7 respect to both Hall and with respect to our initial  
8 preliminary injunction motion.

9           Next slide, please.

10           With respect to the initial standard of likelihood of  
11 success, that focuses on the possibility of a successful  
12 reorganization. And I think as Your Honor previously  
13 recognized, we've explained what we're here for. We have the  
14 financial wherewithal in place through the funding agreement.

15           And we think the evidence has already shown that  
16 there's a prospect or possibility that we can succeed. And so  
17 we believe that threshold or that requirement has been  
18 satisfied for the reasons that Your Honor found it was  
19 satisfied in connection with your prior rulings.

20           Next slide, please.

21           I mean Your Honor's found that we entered bankruptcy  
22 for a legitimate purpose. And, again, we're in a situation  
23 where we have mediation that's ongoing. Obviously, we haven't  
24 reached a resolution at this point, but the efforts are  
25 continuing. And Your Honor's authorized an expedited



1 estimation, and that's proceeding a pace. I think all the  
2 parties have been having meetings, and that process is moving  
3 ahead.

4 Next slide, please.

5 On the irreparable harm, again, I think the basis for  
6 this argument is consistent with the findings that Your Honor  
7 has already made in connection with the other two proceedings.  
8 These claims are inextricably intertwined. The debtor, again,  
9 is a party to the litigation. And as Your Honor found before,  
10 continued litigation would have an adverse effect on the  
11 bankruptcy estate, would hinder reorganization efforts, and  
12 would serve as a constant drain on resources and time.

13 So, again, all these findings that were applicable in  
14 Hall, that were applicable to the broader preliminary  
15 injunction, in our view apply with equal force here.

16 Next slide, please.

17 And that's further confirmed, Your Honor, the  
18 irreparable harm, that is, from the indemnity agreements that  
19 are in place. And, again, Your Honor previously recognized  
20 this in the broader preliminary injunction opinion. The debtor  
21 is the one, it is the party that's solely responsible for Old  
22 JJCI's talc-related claims which include the state actions.

23 The debtor has contractual obligations both to J&J,  
24 contractual indemnity obligations to both J&J and the Bausch  
25 defendants. And as a result, the judgments against those

1 parties would be tantamount to judgments against the debtor in  
2 addition to the fact the debtor's a party.

3           Next slide, please.

4           There is, as Your Honor found before, a risk of  
5 collateral estoppel. There is a risk of record-taint. And,  
6 again, I won't go through this in detail, but the findings that  
7 Your Honor made before in connection with both Hall and the  
8 broader preliminary injunction opinion, we believe again apply  
9 equally here.

10           And the bottom line is we would run the risk of  
11 having findings or determinations that could disrupt our  
12 proceedings here. We could be faced with an evidentiary record  
13 in these cases that would be developed, that would impede our  
14 efforts, our settlement efforts here, our estimation process  
15 here, our efforts overall to resolve the cases here in this  
16 court.

17           Next slide, please.

18           I think specifically Your Honor's recognized the  
19 potential prejudice to the mediation and the estimation. And,  
20 again, I won't go through these in detail, but you mentioned  
21 the potential impairment of the ongoing mediation and the  
22 potential impact on the claims valuation in connection with an  
23 estimation in the case.

24           So, again, specifically this could disrupt the  
25 estimation process and it would likely interfere with the

1 mediation efforts that are under way.

2           Next slide, please.

3           The balance of the harms, we submit that the balance  
4 of harms favors issuing a preliminary injunction in this  
5 matter, again, for the same reasons as Your Honor found that  
6 the balance of the harms favored the issuance of the other  
7 injunctions.

8           And, again, I won't go through it other than Your  
9 Honor, I think, focused on the impact of the litigation on the  
10 reorganization process, the fact that this would be a constant  
11 drain, litigation would be a constant drain on the resources  
12 and time of the debtor.

13           Next slide, please.

14           And then on the other side of the equation, Your  
15 Honor, we don't believe that this is really harmful to the  
16 other side. I mean this is not a situation where the state is  
17 -- the states are alleging that there's defective product or a  
18 dangerous product that's continuing to be manufactured and  
19 sold.

20           As Your Honor knows, the products in the U.S. and  
21 Canada, the talcum powder products, haven't been manufactured  
22 or sold since I think the middle of 2020. I think as the  
23 papers reflected, there's only a three-year shelf life on these  
24 products. And Your Honor knows that more recently, the  
25 companies issued a release indicating it won't be selling talc-

1 containing products anywhere.

2           And so this isn't a case where the states need  
3 injunctive relief to stop what they view as a continuing harm.  
4 Also, Your Honor, we're assuming that if you were to issue an  
5 injunction, you would issue it in a way that you issued the  
6 others which is you would preserve for the Court an opportunity  
7 to revisit the injunction periodically. That further addresses  
8 in our view any harm to the states.

9           We also would emphasize that this is a temporary  
10 stay, not a permanent stay. We already know based on the  
11 conversations we've had previously in this hearing in New  
12 Mexico, there's already a stay in place in any event, at least  
13 for 45 days.

14           And in our view, all these law -- what these lawsuits  
15 are really about is the states just advancing their own  
16 pecuniary interest. There's really not, as I said before,  
17 cause for injunctive relief, and that's another reason why a  
18 temporary injunction of their ability to pursue their pecuniary  
19 interests, in our view, does not reflect harm to the states.

20           And I think lastly, it's important to point out a  
21 comment that Your Honor made in connection with the Securities  
22 litigation. When you said there that those plaintiffs would  
23 suffer no greater harm in terms of delay than the plaintiffs in  
24 the talc claims who also have been stayed to allow the  
25 mediation and reorganization efforts to play out.

1           So our request for relief would only put these states  
2 in the same position in terms of timing as to all the other  
3 parties with the similar and overlapping claims in this case,  
4 as opposed to putting them in a position where they can pursue  
5 their own pecuniary interests ahead of the other claimants in  
6 this case.

7           And, also, importantly ahead -- not only the other  
8 talc claimants but ahead of the other states, as well, other  
9 states who are part of an ad hoc committee who are part of an  
10 ongoing mediation effort.

11           And then public interest, we again believe that this  
12 factor supports the issuance of a preliminary injunction for  
13 the reasons that your Court -- that Your Honor found before in  
14 connection with the other proceedings. As Your Honor said in  
15 the initial ruling, this Court holds no doubt the claim  
16 resolution through the bankruptcy process is in the public  
17 interest.

18           And then we have the Integrated Health case, in the  
19 context of a bankruptcy case, promoting a successful  
20 reorganization is one of the most important public interests.  
21 And we believe that what we're asking for in this motion is  
22 relief that would promote our prospects for a successful  
23 reorganization. And to us, that just reinforces why the relief  
24 we're seeking is in the public interest.

25           Next slide, please.

1           So I think, Your Honor, the other side including the  
2 TCC has advanced the argument that you should allow these two  
3 particular cases to go forward because litigation of these  
4 claims outside of this Court will advance the Chapter 11 case  
5 because it will provide information that otherwise the parties  
6 don't have because state claims haven't been litigated before,  
7 unlike talc claims.

8           But there are a number of problems with that that we  
9 see, Your Honor, one of which is timing. You know, when are  
10 these trials actually going to go forward? As Mr. Malone  
11 indicated, would there be appeals? And so would the timing --  
12 would even the timing reflect that there could be some benefit  
13 to the parties from any education that they might obtain from  
14 the litigation of these claims.

15           And we would submit that the answer to that is no,  
16 it's too uncertain and it also, it just moves these cases out  
17 from under the auspices of this Court where there's absolutely  
18 no control by this Court over any more -- over the timing of  
19 these proceedings. And that seems to us to be very  
20 problematic.

21           And it seems particularly problematic at a time where  
22 we have an estimation process that's now been authorized and  
23 it's moving forward, you know, the purpose of which is to  
24 basically put this Court in a position ultimately to make an  
25 aggregate determination as to the value of the talc claims

1 against the company. And we don't think it makes sense to in a  
2 way carve out maybe the most important issue or set of issues  
3 that have to be addressed in that estimation and allow those to  
4 be litigated elsewhere at a time where you have a process in  
5 place that's literally focused on the very same issue.

6 And, again, I think the other points on this slide  
7 I've made. So let's move to the next one.

8 Now there have been arguments advanced by the other  
9 side that you are prevented from granting this relief based on  
10 sovereign immunity, and I won't spend much time on this because  
11 I think this issue's been well briefed in the papers. And I  
12 also won't spend much time because I know Your Honor has  
13 specifically addressed this issue in the Moss case that we have  
14 cited down at the problem but -- or, I'm sorry, down at the  
15 bottom.

16 But from our perspective, it's clear in this  
17 circumstance that sovereign immunity does not apply. When you  
18 look at Section 106, Section 105 is specifically referenced,  
19 Section 362 is specifically referenced. The Supreme Court in  
20 2020 seemed to indicate in its Katz ruling that its view of  
21 sovereign immunity or the fact that sovereign immunity didn't  
22 apply was a broad ruling with respect to bankruptcy cases.

23 And, you know, here we think the relief we're seeking  
24 and the problem we're trying to address does go to this Court's  
25 in rem jurisdiction because it would affect potential

1 distributions to claimants. It just goes right to the heart of  
2 the issues, this litigation to the issues that have to be  
3 addressed in the bankruptcy case before a plan can be  
4 formulated and before determinations can be made in terms of  
5 what claimants should be paid and how they should be paid.

6 Next slide, please.

7 And these are really the reasons on this slide why in  
8 rem jurisdiction is implicated. The state actions are against  
9 the debtor, and they do seek possession or control of the  
10 debtor's assets. We have the risks of collateral estoppel and  
11 evidentiary prejudice as they relate to the determination of  
12 the ultimate issue in this case. And all of that means that  
13 we're basically -- these are actions that would impact the  
14 equitable distribution of the debtor's property.

15 So from our perspective, we don't think there's any  
16 real doubt that in rem jurisdiction is implicated, as a result,  
17 sovereign immunity doesn't apply, Your Honor has the authority  
18 to issue the requested relief.

19 Next slide, please.

20 And I would be remiss if I didn't just address in a  
21 couple of slides here the fact that in our view, as well, these  
22 actions are subject to the automatic stay for the same reasons  
23 that Your Honor found that the -- in the broader injunction  
24 ruling that the automatic stay applies.

25 You know -- and so as a result, Your Honor has in our



1 view alternative bases to rule in our favor. One would be  
2 Section 105, the other would be Section 362. Under Section  
3 105, we believe as we set forth in our papers that you don't  
4 have to reach the issue of whether the police power exception  
5 applies or not if you're applying Section 105. Obviously, you  
6 would have to reach that issue under Section 362.

7           But, you know, we think if you were to address the  
8 police power exception, as we indicated in our papers, that you  
9 would find that it doesn't apply because, again, these are  
10 actions that really seek to advance the states' pecuniary  
11 interests. Again, these products have not been sold in the  
12 U.S. and Canada since the middle of 2020, and there's no future  
13 wrongful conduct to prevent. It's really only an effort to  
14 collect fines and penalties. There's no real need for  
15 injunctive relief.

16           Now there was a statement in the briefs that, well,  
17 maybe it's needed in the event the company changes its mind and  
18 decides to start manufacturing and selling talc-related  
19 products. But that's purely speculative, Your Honor. I mean  
20 based on the record, there's certainly no reason to think that  
21 the states are doing anything at this point other than  
22 advancing their own pecuniary interests.

23           Next slide, please.

24           So, again, Your Honor, and this is just going back to  
25 your initial preliminary injunction period -- preliminary

1 injunction ruling. I think as Your Honor recognized, there is  
2 Third Circuit authority, it's primarily I think in the  
3 McCartney case, that suggests that 362(a)(1) can be extended to  
4 third parties where unusual circumstances exist.

5           And one of those circumstances is where there's such  
6 an identity of interest between the debtor and the third party  
7 that the debtor can be viewed to be the real party in interest  
8 or the real party and defendant -- real party defendant. And  
9 that's because effectively then a ruling against the third  
10 party is the equivalent of a ruling against the debtor.

11

12           Next slide, please.

13           And, again, for all the same reasons I think Your  
14 Honor has found before, there would be reason to believe that  
15 362(a)(1) could be extended here. Old JJCI back in 1979  
16 assumed or predecessor assumed all cosmetic talc liability.  
17 The debtor was allocated all of that liability in the  
18 divisional merger. You have the indemnifications of both J&J  
19 and the Bausch parties.

20           Your Honor recognized before there is shared  
21 insurance. I don't think there's any dispute about that. And  
22 then, again, the intertwined nature of the claims. All of  
23 those factors or all of those findings support under Third  
24 Circuit authority the extension of the automatic stay under  
25 Section 362(a)(1).

1           Next slide, please.

2           And, again, this goes to the identity of interest  
3 point and the finding that Your Honor made previously in that  
4 circumstance where the identity of interest was such that the  
5 talc-related claims or the assertion of talc-related claims  
6 against the protected parties is essentially a suit against the  
7 debtor. Again, we would say, Your Honor, that applies with  
8 equal force here.

9           Next slide, please.

10           I think Your Honor went on in your preliminary  
11 injunction hearing to talk about the need to evaluate the  
12 impact of the litigation that's the subject of the injunction  
13 request, the impact of that litigation on the bankruptcy estate  
14 in the organization.

15           And, again, just going down findings that Your Honor  
16 made both in connection with the initial preliminary injunction  
17 ruling and the Securities lawsuit ruling, all of those  
18 potential impacts exist here, as well: the liquidation of  
19 pending tort claims as well as the indemnification claims,  
20 diversion of funds and resources, potential impairment of  
21 mediation efforts and negotiations, complicating the estimation  
22 hearings, and then the effect on claims valuation and  
23 estimation. Those are all impacts that this litigation would  
24 have here.

25           Next slide, please.

1           And then, Your Honor, again, just sort of walking  
2 through your prior rulings, we think for the same reasons Your  
3 Honor found that Section 362(a)(3) was satisfied, those reasons  
4 would apply here. And it's primarily based on a couple of  
5 things. One, in the initial ruling, you talked about the  
6 shared insurance, the fact that no party was questioning that  
7 shared insurance policies exist.

8           Now there was a dispute as to whether or not those  
9 policies perhaps had been exhausted or otherwise weren't  
10 available. But I think from your perspective, it didn't change  
11 the fact they were estate property. It didn't change the fact  
12 that the debtor was at risk that there wasn't any clear  
13 determination as to whether that coverage was available in  
14 whole or in part. And it wasn't appropriate to put the debtor  
15 at risk with respect to that because it was undisputed that the  
16 policies were shared policies.

17           And then, of course, in addition, in the Hall case,  
18 or the Securities action case, you recognized that the  
19 continuation of the state actions or the continuation of that  
20 action could strength defenses. The Securities action might  
21 strengthen defenses because of the "expect and intend" issues  
22 that were raised by that litigation. And I think given the  
23 nature of the allegations in these AG actions, the same  
24 potential concern is raised because of allegations about intent  
25 and fraud and the like.

1           Next slide, please.

2           So, Your Honor, at the end of the day, the  
3 fundamental purpose of this Chapter 11 case is to resolve in an  
4 equitable way the current and future talc claims in this case.

5           And we believe that continued litigation of the state  
6 actions would undermine that purpose, that fundamental purpose,  
7 not only to our detriment but to the detriment of the states  
8 because the bulk of the states are part of the mediation  
9 process but also to the detriment of current and future talc  
10 claimants who are constituents of the states and that's  
11 because, again, you'd be moving this litigation and only this  
12 litigation ahead of everyone else. This would be the one  
13 exception to the stays that have been put in place in this  
14 case, and I'll say what I said before, to preserve the  
15 integrity of this case, to preserve the ability of the debtor  
16 and the other parties to make every effort to consensually  
17 resolve these matters, all these claims, on a global basis.

18           And so we would say, Your Honor, that you have a  
19 basis to enjoin these claims through a preliminary injunction  
20 issued under Section 105. But, alternatively, you also have  
21 the ability to find that the automatic stay applies and can be  
22 extended to this litigation pursuant to Sections 362(a)(1) and  
23 (a)(3). So we would request, Your Honor, that our motion be  
24 granted.

25           THE COURT: Thank you, Mr. Gordon.

1           For the most part this morning and maybe afternoon,  
2 I'm going to hold my questions -- for the most part -- or  
3 comments for argument and then interject.

4           Wendy, how are you doing at this point? Do you need  
5 a break?

6           THE CLERK: (Indiscernible).

7           THE COURT: Let me get a sense -- it's a quarter to  
8 twelve, I want to know what today is going to look like. Do we  
9 anticipate the need to break for lunch and continue after or do  
10 we want to go through?

11           I'm amenable to either. It depends on how long  
12 you'll be, and then I'll ask Wendy.

13           MR. MALONE: I'm going to be a while, so I think  
14 breaking would probably be appropriate. It's about a quarter  
15 to twelve.

16           THE COURT: You want to break now or do you want to  
17 --

18           MR. MALONE: No, I don't want to start and stop. So  
19 I'm going to be on my feet for a while, for sure. I don't have  
20 a slide deck, but I do have a few things with respect to  
21 (indiscernible).

22           THE COURT: All right.

23           Wendy, do you have a preference?

24           COURTROOM DEPUTY: (Indiscernible).

25           THE COURT: I mean do you want to take an early -- I

1 don't want to interrupt your flow, either.

2 MR. MALONE: That's why I'm saying that rather --

3 THE COURT: But is it likely more than --

4 MR. MALONE: If we're going to take a break because  
5 otherwise --

6 THE COURT: Take it now?

7 MR. MALONE: I'd rather do it now than go halfway  
8 through and say it's a good time to take a break because it  
9 will just -- it will obviously get my flow.

10 THE COURT: I've always said there's not far to go in  
11 Trenton here.

12 MR. MALONE: Oh, I know that. The tree line's been  
13 closed for a long time.

14 THE COURT: Do you -- it's a quarter to twelve now.  
15 Do you want to stop now and come back at 12:30? Make sense?

16 MR. MALONE: That's fine.

17 THE COURT: Get people out.

18 MR. MALONE: Yeah, that's fine.

19 THE COURT: All right.

20 MR. MALONE: Forty-five minutes is appropriate.

21 THE COURT: All right. Thank you.

22 (Recess at 11:44 a.m./Reconvened at 12:31 p.m.)

23 THE COURT: All right. We will continue the hearing  
24 on the request for the preliminary injunction.

25 Mr. Malone, I did make a commitment to withhold

1 questions. I'm going to ask for you to address one matter  
2 during the scope of your presentation.

3 MR. MALONE: Okay.

4 THE COURT: And it's that Mr. Gordon left off with  
5 his -- one of his arguments at the end or contentions were that  
6 this is all about, you know, money. It's pecuniary relief.

7 And I'd like for you to address the underlying relief  
8 sought in these two state actions. What's the scope of the  
9 goals? What is being sought as far as recovery? And what type  
10 of relief?

11 MR. MALONE: I'll tell you, Your Honor --

12 THE COURT: And if it's scope or it's content?

13 MR. MALONE: -- I'll start with that and I'll work my  
14 way back. But let me start with just a couple of things just  
15 because I don't want to forget and it was a nice slide show,  
16 except for there were some inaccurate statements made and some  
17 people's hair went on fire, of course, when they were made.

18 One is -- I'm trying to make sure that I get it  
19 right, but when we go to Page 1, 2, 3, 4, the states' counsel  
20 on the affiliated with counsel on TCC, okay, Beasley Allen does  
21 not represent the State of Mississippi, okay. So make that  
22 clear to everybody. That's just an inaccurate statement by the  
23 debtor with respect to who's representing who. Maybe it  
24 doesn't really matter, but it is something that I was told to  
25 make.



1           The other thing is that I think one of the things  
2 that everybody has to realize here, and I think your question  
3 really kind of goes to the heart of the matter, the state  
4 actions are not state claims. They are enforcement and police  
5 power, regulatory powers under Consumer Protection Acts of each  
6 of these states. And the statutes as I've referred to them and  
7 are attached in my declaration are quite clear.

8           You can't self-police yourself, and that's what LTL  
9 is trying to convince this Court, hey, Judge, we stopped  
10 selling this or we're not making it anymore, not selling it  
11 because I'm sure they're going to sell off the rest of their  
12 inventory. And one of the things that they claim, it's got a  
13 three-year shelf life. I don't see anything on that bottle or  
14 any other bottle I've checked that says expiration date in  
15 three months. It's a mineral. Minerals don't go bad.

16           Maybe they think that they move their inventory in  
17 three months, but this has been sitting in my shore house for  
18 probably three or four years. And I'm sure there's a lot of  
19 this same product sitting in the homes of people in the State  
20 of Mississippi and the State of New Mexico. And if there's  
21 something with that product, they'll be able to prove maybe  
22 it's pure or not pure, but this isn't the court to do that.

23           The court to do that is in the State of New Mexico  
24 and in the State of Mississippi. They have rights to protect  
25 their consumers. Consumers rely upon the state governments and

1 their laws to enforce.

2           And some of the things that could happen with respect  
3 to what the State of New Mexico or the State of Mississippi  
4 could do is they could have an injunction issued by a state  
5 court that says, Johnson & Johnson, you may have said you're  
6 never going to make this product, you're only going to make  
7 corn starch, you're only going to do that. But they could  
8 change their minds in six months, a year, or when this is all  
9 over and say, you know what, we're making a lot of money on  
10 talc, let's go back and sell it.

11           Well, the states have a right to say, no, you're not  
12 going to sell talc in this state. In fact, if we do allow you  
13 to do it, there's going to be a warning put on there. The  
14 states could also say to Johnson & Johnson, hey, we want you to  
15 start running advertisements in the newspapers saying that this  
16 product is on recall, we want you to go to your nearest  
17 supermarket or wherever they want to set up and we'll give you  
18 a coupon if they want for maybe corn starch or whatever they  
19 want to do. It doesn't have to involve the claims of the talc.  
20 They are separate.

21           They're trying to conflate the issues here. And  
22 maybe there's some overlap, but they're mutually exclusive as  
23 to the rights and enforcement powers that the states are  
24 seeking. And if as a result of some of this, there's fines or  
25 whatever, fines are done against corporate bad actors. They're

1 not done and they're not going to be done against this debtor  
2 with respect to this debtor doesn't got any operations. I mean  
3 let's call it what it is.

4           They did the Texas Two Step, that's on appeal. I'm  
5 not going to get into those issues. But what is before this  
6 Court is basically a business trust that is going to try to  
7 take care of the legacy talc claims and run them through a  
8 524(g) injunction. What the states have is rights under their  
9 state laws. Every state, the laws vary. Maybe some of them  
10 are identical; I don't know. I just know that they have a  
11 right to enforce the police and regulatory powers. And if part  
12 of that is a byproduct that there are fines to deter bad  
13 actors, so be it.

14           But what they're trying to say is that they're trying  
15 to basically act as the big brother and try these talc  
16 claimants for these people, that couldn't be further from the  
17 truth. So there are -- there is a very real and big  
18 distinction with respect to what these states want to do.

19           They're sovereigns. They have a right to enforce  
20 their laws within their states. And with all due respect to  
21 this Court, this Court and the mediators that you've appointed  
22 cannot determine injunctive relief. What they can determine is  
23 you got a claim, how much money you're going to get. That's  
24 what this process -- this is a money court. This is not a  
25 court that imposes sanctions and fines and injunctions with

1 respect to the bad conduct of a particular actor.

2           They'll have their day in court. And, in fact, I  
3 think at least in the State of New Mexico, they have a right to  
4 jury trials. They don't do jury trials as far as the last time  
5 I saw a bankruptcy court here on those type of issues. So with  
6 all due respect to this Court, which I have a lot of respect  
7 for, this is outside your jurisdiction.

8           And I kind of dovetail into where we are. And, you  
9 know, one of the things I'd say is why are we here today? Why  
10 all of a sudden now? They filed this case over a year ago.  
11 they didn't see any need back then to try to enjoin any of the  
12 states from acting in exercise of their police and regulatory  
13 powers. All of a sudden they file an order to show cause I  
14 guess at the end of July seeking immediate and irreparable harm  
15 that was going to be placed upon a debtor.

16           This is a debtor that doesn't have any operations.  
17 This is a debtor that was created for the sole purpose of  
18 dealing with claims. So one of the things that you're going to  
19 say, and when you look at some of the case law, including the  
20 A.H. Robins case and a lot of the other cases where you see  
21 bankruptcy courts over the years that have issued 105  
22 injunctions, it's because you want management to stay focused  
23 on the reorganization and that you don't want them detracted  
24 with litigation.

25           Maybe, you know, there was a D&O action or some other

1 action that was going where they said, okay, well, I can't  
2 proceed against the debtor, but let me go against the officer  
3 and director. Those are your typical type of cases where 105  
4 may be an appropriate and a temporary relief.

5           What they're trying to do here is they're trying to  
6 extend to two or maybe more non-debtors who are not in this  
7 Court today. Maybe they're observing, but I don't see anything  
8 in the record, the record's been closed, any declaration from  
9 Johnson & Johnson or Bausch Health that tells this Court, gee,  
10 you got to stop them from doing this, this is going to detract  
11 to us. I don't know how it detracts them from, you know, the  
12 reorganization efforts that are going forward in this Court.

13           The actions that have been filed involve J&J.  
14 They're not going against LTL. They're looking to enforce  
15 their police and regulatory powers. And if it gets to a  
16 byproduct -- in one of the cases and, you know, no one cited  
17 some of these cases and, you know, I think one of them's pretty  
18 important. And that is the United States Supreme Court and the  
19 Board of Governors, the Federal Reserve v. MCorp, cited at 502  
20 U.S. 32 (1991).

21           And one of the statements I think that, you know,  
22 probably would help this Court and I'll quote it:

23           "It is possible, of course, that the Board  
24 proceedings, like many other enforcement actions, may  
25 conclude with the entry of an order that will affect

1 the bankruptcy control over the property of the  
2 estate. But that's a possibility cannot be  
3 sufficient to justify the operation of the stay  
4 against an enforcement proceeding."

5 Meaning if the byproduct here is that some of the  
6 information that comes out may or may not help the talc in this  
7 Court, that's not a reason to determine that you should stay  
8 that.

9 And I'll give you a better example. We see this all  
10 the time. How many times, you know, I've heard the quote, you  
11 know, sometimes so long as there's fools and there are  
12 scoundrels, there will always be bankruptcy. Well, we've all  
13 seen cases involving scoundrels where someone may have a  
14 criminal indictment against them or the like and someone  
15 decides to file bankruptcy or the bankruptcy's been filed and  
16 there's now a criminal indictment comes down.

17 Does this Court have the jurisdiction to say, wait a  
18 second, I'm going to call the U.S. Attorney in the Southern  
19 District and say, you can't go forward with a criminal  
20 prosecution of that case because some of the evidence that can  
21 come out in the record there may negatively affect a debtor in  
22 front of me.

23 There's not a criminal case here, but you still have  
24 police and regulatory powers that are being enforced. And if  
25 as a byproduct of that, something comes out that may be

1 negative to the debtor here, that is of no moment. And that's  
2 really not a reason for this Court to do it.

3           What they're asking this Court to do is legislate  
4 from the bench because in order to even invoke 105, and 105 has  
5 been narrowed a lot over the last couple of years, Law v.  
6 Siegel basically says the Supreme Court, and I think it was  
7 Justice Scalia, I'm not sure right now, but you can't subvert  
8 another section of the Bankruptcy Code to get to the result you  
9 want.

10           362(b)(4) was created by Congress, and it's therefore  
11 a reason and a very good reason and in fact back in April of  
12 2000, a gentleman by the name of Ethan Stein (phonetic), Deputy  
13 Associate Attorney General for the United States Department of  
14 Justice was called to testify before the Subcommittee on  
15 Commercial Administrative Law.

16           And some of the things he said is the Bankruptcy Code  
17 recognizes a very important set of exceptions for the automatic  
18 stay. Congress has recognized that the stay provisions were  
19 particularly vulnerable to abuse by debtors improperly seeking  
20 refuse under the stay in an effort to frustrate necessary  
21 government functions.

22           And, interestingly enough, the case that he cites and  
23 cited in some of the briefs is a Third Circuit case, United  
24 States v. Nicolet, 857 F.2d 202, 207 (3d Cir. 1988). Under  
25 Section 364(b)(4) of the Code, the automatic stay for the

1 debtor does not extend to the commencement or continuation of  
2 actions where you're trying to enforce police or regulatory  
3 powers. And that includes consumer protection rights.

4 THE COURT: But didn't you miss -- respectfully,  
5 didn't you miss the first part of that? 362(b), the filing of  
6 a petition does not exclude or does not stay under Section  
7 362(a). It's the filing. Isn't that saying the filing in and  
8 of itself will not give rise to the automatic stay in 362(b)(4)  
9 situation and other 362(b) exceptions?

10 MR. MALONE: Right.

11 THE COURT: But it doesn't bar the imposition of the  
12 automatic stay through 105 or otherwise. It simply says the  
13 filing so that it places the burden on the debtor or another  
14 party to come before the Court and seek the imposition of the  
15 automatic stay, that the filing itself of a bankruptcy won't do  
16 it. Aren't those words critical?

17 MR. MALONE: They are and they aren't, Your Honor,  
18 because I think there's a whole test with respect to how you  
19 get there. Because if you're going to invoke 105, those powers  
20 are very narrowly construed with respect to what you can and  
21 can't do with respect to it.

22 Because if it involves the police and regulatory  
23 powers, this Court should not step in the way. And what I  
24 would submit is Johnson & Johnson is not a debtor here. And if  
25 they were a debtor here, I think you'd have a hard time saying,



1 you know what, 362(b)(4) doesn't apply.

2           The cases that talk about allowing a party to  
3 continue the litigation or even to commence litigation to stop  
4 something are numerous. And I think as long as its intended  
5 goal -- and no one's been able to put any evidence in this  
6 record that the intended goal is just a money grab -- then I  
7 think it has to proceed. At any time if they think maybe that,  
8 aha, it is, maybe they're going to come back.

9           But to speculate today that the states who have a  
10 right to enforce their laws are going to be stopped by  
11 (indiscernible), puts everything on its head.

12           Everybody cites to, you know, cases that, you know,  
13 using to health and the welfare here. MCorp I think is a good  
14 instructive case with respect to that. 362(b)(4) applies when  
15 a -- in that case, a federal entity seeks to vindicate and  
16 enforce its regulatory powers.

17           If in fact that there's a fine results from that,  
18 that's not really going to the administration of the bankruptcy  
19 here. But what they're asking this Court to do also is go a  
20 bridge too far. Not only do they want it to -- it's not being  
21 made as an argument for LTL, they're asking you to do it for a  
22 non-debtor. They're asking you to apply 362(b)(4) exception  
23 and use 105 to get there.

24           Let me turn back to where I was with respect to my  
25 argument. Hopefully, I've answered your question. If not,

1 maybe it will become clearer as I continue.

2           On three separate occasions already, this Court and I  
3 guess also Judge Whitley in North Carolina has accepted that  
4 the states can enforce their rights. And as I said, why all of  
5 a sudden they're coming back here today is beyond me except for  
6 maybe something that they've decided that, you know, as they  
7 say, oh, certain evidence may come out in those cases that hurt  
8 us. Again, that's not a reason.

9           But in order for this Court to enter an injunction  
10 under 105, it's still going to have to make a determination  
11 that it has subject matter jurisdiction, and we submit it does  
12 not. The Court does not have under or arising-under or  
13 arising-in or related-to jurisdiction with respect to state-  
14 specific law claims. The debtor's efforts to enjoin them  
15 because the automatic stay is inapplicable here.

16           We've got a non-debtor, and as I said, if Johnson &  
17 Johnson were here, again, I don't know if this Court would have  
18 the power to say, well, I'm going to stop you from enforcing  
19 police or regulatory power. If they feel that maybe they got  
20 -- a state feels that important about the safety of its  
21 citizens and whether or not talc can be sold or that there  
22 should be recall or the like, this Court doesn't have the  
23 jurisdiction to make those determinations. This Court, again,  
24 as I said, is a money court.

25           And as I think I said before but I'll repeat it

1 again, Your Honor, you cannot create jurisdiction just by  
2 invoking 105. This is not a case, as I say, that's under  
3 Chapter 11. The actions by New Mexico and Mississippi are  
4 actions under state consumer law. They're not arising under  
5 this Chapter 11. The actions by New Mexico and Mississippi are  
6 actions brought in their own state court, so they're not  
7 arising here as far as something under the Code. It's not like  
8 they're trying to bring a fraudulent conveyance action or a  
9 preference action or anything of that light.

10           The actions, again, are against a non-debtor and  
11 actually it may in one case I think it's New Mexico, it's two  
12 non-debtors, one that's even more distant.

13  
14           One of the things that cannot be done through the  
15 Texas Two Step is you cannot create jurisdiction by agreement.  
16 So the fact that they are harping on the fact that there's this  
17 indemnification agreement is kind of a red herring. And I  
18 don't think this Court should look at that as hook in order to  
19 give it the jurisdiction that they're asking this Court to  
20 exercise.

21           With respect to the debtor having to, you know, meet  
22 the -- even under 105, this Court's going to have to go through  
23 the exact same likelihood of success on the merit that the  
24 danger is imminent and irreparable harm to this estate, that  
25 the balance of the harms favor the debtor, and the balance of

1 the public interest. I submit they're not going to be able to  
2 do that especially if you're going to go back to the last one,  
3 and that's the public interest.

4           They can speculate what is in the best interest of  
5 the public. I think the states are the only ones who really  
6 can say what is in the best interest of their citizens, not a  
7 debtor or anybody else. The people of the states of both New  
8 Mexico and Mississippi rely upon the fact that the states are  
9 there to look out for their rights.

10           If we don't allow the states to enforce certain  
11 things, what's to stop another company out there to say, you  
12 know what, we put something in this shampoo -- I'm not even  
13 going to say it's Johnson & Johnson -- it's Proctor & Gamble,  
14 don't worry about it. If they come after us, no one's going to  
15 be able to do anything because, you know, the states' consumer  
16 protection laws have no teeth. They're not going to be  
17 enforced. There's ways we can get around it. This Court can't  
18 allow people to do it.

19           There's a specific reason why 362(b)(4) was put in  
20 there. It's to allow the states to enforce their police  
21 powers, their regulatory rights. And just as a I said, if  
22 certain things come out that may affect claimants here, maybe  
23 it gives them ammunition or whatever -- or maybe that they've  
24 used information that's out there in those trials, that's not a  
25 reason to stop them from exercising those rights.

1           They keep trying to say that, you know, the  
2 irreparable harm is that the talc claims and the state claims  
3 are intimately intertwined. It's their words. But, again, as  
4 I said, these are not claims. These are enforcement actions.  
5 And I think we can't lose sight of the fact that what we're  
6 trying to do here is there's -- you know, an enforcement action  
7 doesn't always give rise to a claim as I just said.

8           If they're going to say we want you to put something  
9 in the newspapers, we want you to have a recall, that's not a  
10 claim that you can monetize maybe in this court. That's  
11 something where they're asking a court, the state to put some  
12 kind of injunctive relief in place. And I would submit I don't  
13 know how that would affect negatively this bankruptcy if  
14 Johnson & Johnson were to be found liable in a state court  
15 setting as to having to do certain things because before a jury  
16 someone's able to prove that this talc product did or did not  
17 -- in their case, they're going to deny, but maybe a jury's  
18 going to find that it did, in some cases it already has and in  
19 the case of the talc claimants, that it did cause cancer.  
20 That's not for this Court to decide. That's for those states  
21 who are going to present their cases in a state court setting  
22 under their state statutes.

23           And so when you even go back and you look at Stern v.  
24 Marshall, I think the easiest way you look at a case like Stern  
25 v. Marshall is does the cause of action survive but for the

1 bankruptcy? The answer here is yes. If there was no  
2 bankruptcy here, those states could be moving forward on their  
3 state causes as far as enforcement, regulatory, if there was  
4 punishment that has to be doled out, usually a deterrent to a  
5 corporation, there's fines, penalties.

6           What does the SEC do a lot of times in civil cases?  
7 They assert fines. They do things that punish. And it offers  
8 not only to that particular company that may be the bad actor,  
9 it also acts as the deterrent, as I said with the shampoo  
10 example, to someone trying to deter someone from being a bad  
11 actor in another case or another company. So to take that away  
12 from the states I think would be to undermine what Congress  
13 intended with the exception of 362(b)(4).

14           One of the things that they try to do is compare this  
15 to the Purdue case, and this couldn't be further away from the  
16 Purdue case because, again, we don't have Johnson & Johnson  
17 here. We have a company that's been created to deal with, as I  
18 say, a shell that deals with the claims. The operations are  
19 not being disturbed. Johnson & Johnson continues to operate as  
20 we sit here in court. They're not being affected by the fact  
21 that the claims are being here.

22           When they talk about people having to -- usually as I  
23 say when you're going to ask for these injunctions, you know,  
24 you're saying people are going to be taken away from their day  
25 in and day out work. I think you only have to go back and I

1 think it's part of what's been put into the evidence here is  
2 Mr. Kim's declaration, his first day declaration.

3           You know, pursuant to the divisional merger, the  
4 debtor became solely responsible for the liabilities, but it  
5 goes through what it got as far as its assets. It doesn't say  
6 anything in there about operations that I could see. So I  
7 don't know how Mr. Kim and his staff would be detracted from  
8 the case at hand in dealing with the state court claims  
9 especially when it doesn't involve LTL. LTL is not a party in  
10 either the Mississippi case or in the New Mexico case. It's  
11 Johnson & Johnson.

12           I mean I don't know why or what -- there's nothing in  
13 this record, there was nothing in any of the declarations that  
14 were introduced that gave this Court any reasons why LTL would  
15 be irreparably harmed by allowing those state court actions to  
16 go forward, that it would somehow detract from the  
17 reorganization efforts.

18           And, again, I think the word "reorganization" here is  
19 a misnomer. Call it what it is; this is a liquidating trust at  
20 the end of the day. There will be no ongoing operations of LTL  
21 after the -- hopefully, if this case stays in this Court and is  
22 not dismissed by the Third Circuit or by the Supreme Court, I'm  
23 going to take for the sake of this argument that it stays in  
24 this Court. LTL doesn't go on.

25           There will be an order entered closing the case some

1 day if it stays here, and that will be the end of it. They're  
2 not going to make talc. They never did make talc. They were  
3 given only a few assets, and it was for the sole purpose of the  
4 administration of claims, not everything else that you'd find  
5 in a bankruptcy. There are no other operations going on here  
6 that this Court has to be concerned with.

7           If Johnson & Johnson believes that they were going to  
8 be irreparably harmed by this, why aren't they here? Why  
9 haven't they filed declarations saying that because of this  
10 action that they need the protection of this Court? Instead,  
11 they're using LTL to make -- to do carry their water. And,  
12 again, this is a bridge too far.

13           They're not only taking the Bankruptcy Code and  
14 giving someone here the protections to allow them to deal with  
15 the claims, but now you're going to say you're outside the  
16 bankruptcy court, but I'm going to give you all the benefits  
17 and protections that would only usually be reserved for a  
18 debtor. But in this case, again, you know, it's the  
19 enforcement of police powers against the non-debtor. And I  
20 think that's just a bridge too far for this Court to carry.

21           I think we've made it clear and if we haven't, I'll  
22 make it clear. These are non-talc claims. And simply put, if  
23 you're going to, you know, enjoin the states at this point,  
24 you're not giving them their day in court. And I think that  
25 was never the intention and looking at the Johns-Manville case



1 cited at 26 B.R. 417, that court refused the continuation  
2 against them.

3           Again, I think one of the big things here is the  
4 strong vital public interest in allowing the government units  
5 to enforce police and regulatory powers. And I've heard  
6 nothing to the contrary that says that they shouldn't be  
7 allowed to do it except for the fact that, well, Judge, certain  
8 things could come out in those trials. And, again, I'll refer  
9 the Court back to the MCorp decision. Enjoining the  
10 prosecution of states' consumer protection laws has vast  
11 implication on these states.

12           And they should not -- if you allow it to happen in  
13 this case, where does it stop? Where does it stop? Does it  
14 mean that, you know, in any case that, you know, a debtor finds  
15 themselves in a situation where they may have regulatory  
16 problems, well, we'll just file bankruptcy, we'll make it all  
17 go away? I mean that's not the purpose of the bankruptcy  
18 court.

19           So, you know, again, you know, while the setting up  
20 of LTL was for the sole purpose of the bankruptcy, it should  
21 not be extended to undermine again state sovereignty and police  
22 powers. And I think that -- I'm citing to I guess LTL  
23 Management, 2120 WL 5343945 at 6, and that was I guess a  
24 decision out of the court in North Carolina which is still  
25 their record in this case.

1           And, again, going back to what I said originally,  
2 there's been at least three orders that kind of acknowledge  
3 that the states had these rights. Now all of a sudden, we're  
4 here and we're going to try to enjoin the states.

5           It's interesting that the debtors' counsel cited to  
6 the Penn Terra case because the starting point in examining the  
7 breadth of the states' police and regulatory (indiscernible)  
8 with well established principle that the automatic stay  
9 provision contained in 362(b)(4) through (5) should be  
10 construed broadly. And the automatic stay provision should  
11 whenever possibly read in favor of the states. Penn Terra v.  
12 Department of Environmental Commonwealth of Pennsylvania, 733  
13 F.2d 267, 273, again Third Circuit.

14           Again, getting back to the fact that the debtor is  
15 moving for the relief of an injunction, they have not prevailed  
16 as far as putting anything in this record that shows how, how  
17 those state actions against Johnson & Johnson hurt them except  
18 to say, well, certain things could come out.

19           They harked upon the fact before Your Honor saying  
20 that this is just a "money-grab" I think were the words that  
21 were used by counsel. There's no evidence of that. And,  
22 again, it gets back to the MCorp decision from the United  
23 States Supreme Court that says, well, if that's kind of the  
24 byproduct of it so be it. I mean, again, it gets back to, you  
25 know, if you look -- forget about states -- Securities Exchange

1 Commission, how many times, you know, their enforcement rights  
2 may or may not be a byproduct. Well, whether they can collect  
3 on it may come back to this Court.

4 THE COURT: Well, you agree -- I mean you've made a  
5 distinction between enforcement actions and claims.

6 MR. MALONE: Right.

7 THE COURT: Fines, you're considering those would  
8 fall under claims, right?

9 MR. MALONE: Only as far as the collection. The  
10 assessment of a fine, the assessment of a fine could be. But  
11 then again, Your Honor, these aren't fines against this debtor.  
12 These aren't claims against this debtor. These are claims, and  
13 we're getting the issues mixed up because everyone says, oh, we  
14 got this indemnity created by agreement. I think it's a red  
15 herring.

16 I think also that, you know, if I were the talc  
17 claimants, I would say, hey, they don't come in to a 524(g)  
18 matrix as far as how to deal with those claims. Those are  
19 outside of here, maybe they should be subordinated under 510 of  
20 the Bankruptcy Code. But that's something that's between  
21 Johnson & Johnson, maybe Bausch Health, and this debtor, not  
22 the states. The states have every right to collect their fines  
23 if they're assessed under Johnson & Johnson or Bausch Health or  
24 anybody else that they felt broke the law or violated these  
25 statutes. And that's not part of what this Court has

1 jurisdiction over.

2           We're not going to be making the -- if we -- if our  
3 client were to prevail in state court against Johnson & Johnson  
4 and they were fined a billion dollars, the claim wouldn't be  
5 made by us, meaning New Mexico or Mississippi in this Court.  
6 It would be made by Johnson & Johnson. And that's for another  
7 day.

8           So to try to bootstrap it saying, well, really your  
9 claim is against LTL, it's not the case. That's only pursuant  
10 to some indemnification agreement that's been created. I don't  
11 know where. It's not in the record here, it's not been put  
12 before the Court. They refer to it a lot, but I don't see it  
13 in any of the evidence that was put before the Court today.  
14 Maybe counsel will, you know, assist me because I guess I got a  
15 phone book with this and I didn't see it in there.

16           But I think everybody's confusing the issue. This is  
17 -- these are enforcement issues against non-debtors. And  
18 they're asking this Court to use its powers under 105 to say  
19 I'm going to not only say that I'm going to enjoin, but I'm  
20 going to say it's because I'm going to say that it's pecuniary,  
21 it's not a regulatory enforcement. I think that this one just  
22 goes way too far, Your Honor. This has nothing to do with the  
23 claims administration that's before this Court.

24           This Court in making its decision said I think, you  
25 know, maybe I'm not going to try to put words in your mouth,

1 but you felt that this was a more efficient place than an MDL  
2 litigation to deal with --

3 THE COURT: Well, I'm looking to clarify --

4 MR. MALONE: -- these claims.

5 THE COURT: I'm sorry, my apologies for interrupting.

6 MR. MALONE: Sure.

7 THE COURT: I'm just looking to clarify because when  
8 you referenced 362(b)(4), that's the stay provision of claims  
9 against -- it's relevant as to the debtor. So are these claims  
10 against the debtor?

11 MR. MALONE: No.

12 THE COURT: Then I should ignore 362(b)(4), period?

13 MR. MALONE: But they're asking you to -- what we're  
14 saying is if that -- the reason why you have to look at it, and  
15 this is the reason why I'm telling you to look at it.

16 If Johnson & Johnson were before this Court, which it  
17 is not, we believe that under 362(b)(4), that these would  
18 nevertheless be excepted from the automatic stay. So,  
19 therefore, how can you base your decision on 105 saying, well,  
20 if you've been a debtor, I'm going to estop state and  
21 regulatory powers to a non-debtor? If they don't apply to the  
22 debtor, how can they apply to a non-debtor? How can you invoke  
23 105 under Law v. Siegel Supreme Court case, which pretty much  
24 constrains the Court that you can't undermine other sections of  
25 the Bankruptcy code. You can't create jurisdiction out of

1 whole cloth.

2           As much as the debtor's counsel wants you to do it,  
3 you know, 105 does not provide an independent source of subject  
4 matter jurisdiction over independent non-derivative claims  
5 between non-debtors. Simply put.

6           The fact, again, Your Honor, and I think this -- you  
7 know, the fact that there may even be any kind of overlap on  
8 some of this evidence, I think, doesn't support the exercise of  
9 any kind of jurisdiction here. I think in the case of the  
10 states, the claims are grounded against independent liabilities  
11 against Johnson & Johnson. They are not derivative of any act  
12 committed or not committed by LTL.

13           So I don't know how you get to related-to or anything  
14 else. We're not -- this -- these causes of actions in the  
15 states do not have any bearing with respect to the claims here  
16 except for they're going to try to argue, but, Judge, we have  
17 this obligation to indemnify if Johnson & Johnson or Bausch  
18 Health were to lose and be fined.

19           Well, maybe or maybe not. But that's not, again, our  
20 claims here. But they fail to address in any way, shape, or  
21 form the entire issue of the other police and regulatory powers  
22 which I pointed out, taking it off the shelf, stop it, collect  
23 it from people's homes that are still using the product. Maybe  
24 it's got, as they pointed out, a three-month shelf life. That  
25 means the turnover on the shelves. That's what they mean. I

1 don't think it means that someone goes in and says, oh, it's  
2 not good anymore like when you go to the supermarket and milk  
3 has an expiration date on it, we take it off the shelf and we  
4 don't sell it to you.

5           People have these in their homes. People who tend to  
6 be maybe -- and maybe the people of Mississippi or New Mexico  
7 won't want me to say it, but I'm going to say it. You have  
8 some places in this country that are impoverished, and people  
9 use products until they're used up. They're not going to just  
10 go throw it away.

11           And if they don't have the knowledge that maybe we  
12 know here sitting in this Court about possible -- and I'm not  
13 even going to say dangers, I'll just even assume for the sake  
14 of this argument, possible dangers about the product that  
15 they're using, the states have a right to enforce their laws  
16 and make sure that if there's anything with respect to false  
17 advertising or that there's something with respect to purity,  
18 that the public has a right to know.

19           And by enjoining the states of New Mexico and  
20 Mississippi in enforcing those rights, you're basically  
21 subverting their rights as states under -- if you're going to  
22 look at their rights as a sovereign, sovereign states under the  
23 Tenth Amendment, you're basically deciding that, with all due  
24 respect, this Court knows better than you. This Court can  
25 determine under the State of New Mexico's laws or under

1 Mississippi what's best for the consumers.

2           And we'll determine if, you know, they shouldn't be  
3 able to sell it. I don't think this Court, again, can even go  
4 down that route. This Court can't say, well, I'm going to  
5 enter an injunction that says that you have to recall all your  
6 product in Mississippi and all your product in New Mexico. I  
7 think that's beyond the scope of what this Court's jurisdiction  
8 has been conveyed by Congress or anything else. It has nothing  
9 to do with the administration of this debtor. It's dealing  
10 with a non-debtor outside of this Court.

11           So, again, I think that asking this Court to take the  
12 Bankruptcy Code and stretch it beyond its limits, 105 does not,  
13 respectfully, give this Court subject matter jurisdiction. And  
14 if it's going to find subject matter jurisdiction, it has to be  
15 under one of those type of things. I don't see it. I don't  
16 see where there's related-to. I don't see how it affects this  
17 case in any way, shape or form.

18           They may be scared that certain things are going to  
19 come out. And, again, going back to my analogy of the criminal  
20 case, if there was an indictment against Johnson & Johnson  
21 brought down by U.S. Attorney in the District of New Jersey,  
22 they couldn't come before this Court and say, Judge, you know,  
23 we need an injunction against the U.S. Government because  
24 certain things are going to come out in that criminal trial  
25 that are going to, you know, help a creditor in this case.



1           It's too bad, so sad. Same thing here. If something  
2 happens, I'm not saying it will, but obviously, somebody, the  
3 light bulb went off that they've waited this long to come  
4 before this Court today seeking first a temporary TRO which was  
5 agreed to, to allow us to get to today, but preliminary  
6 injunction so that they can allow this reorganization to  
7 proceed because something may come out in a case in New Mexico  
8 or a case in Mississippi, I don't get it.

9           I don't get how it affects this case because, again,  
10 we're not seeking relief against LTL. We're seeking relief  
11 against Johnson & Johnson in both states and in one case Bausch  
12 Health.

13           And, again, Bausch Health isn't here. Johnson &  
14 Johnson is not here. They didn't file anything, certifications  
15 in support of this debtor's application to point out to this  
16 Court why it's important for this Court to issue to a  
17 nondebtor, which this Court, respectfully, doesn't have  
18 jurisdiction over as -- if we had two nondebtor creditors  
19 fighting over an intercreditor agreement, you'd say, hey,  
20 I'm --

21           THE COURT: Should I even listen to Johnson & Johnson  
22 or Bausch if they wanted --

23           MR. MALONE: No.

24           THE COURT: -- to come in?

25           MR. MALONE: I don't think you do.

1 THE COURT: Because isn't a 105 injunction brought by  
2 the debtor to protect the estate's interests, not third party?  
3 That would be --

4 MR. MALONE: Right. Exactly.

5 THE COURT: -- wholly improper.

6 MR. MALONE: But that's why this is so ludicrous  
7 today, because that's essentially what they're asking you to  
8 do. There's nothing to protect here. There is nothing to  
9 protect. If they're going to bring enforcement actions in the  
10 State of New Mexico and in the State of Mississippi, and as a  
11 result thereof fines are assessed or penalties are assessed  
12 against Johnson & Johnson, the nondebtor, then Johnson &  
13 Johnson can come in here and say, Judge, we want to enforce our  
14 rights under our indemnity.

15 But until it -- that time comes -- this is maybe  
16 speculative, but that time hasn't come. That issue is not ripe  
17 for this Court. There's nothing that's going to detract this  
18 debtor in its reorganization efforts -- and I put that in  
19 quotes -- before this Court by allowing the State of New Mexico  
20 and the State of Mississippi to proceed with state regulatory  
21 enforcement actions.

22 There's just nothing in this record. They have  
23 failed to meet their burden. There's nothing that is said in  
24 any one of Mr. Kim's certifications. There's nothing in any of  
25 the prior filings in these cases that shows it.

1           In fact, it shows to the contrary. There's been  
2 three orders entered that have accepted and recognize the  
3 powers of the government units to proceed, whether it be  
4 against LTL or maybe even a nondebtor.

5           You don't have jurisdiction over these nondebtors.  
6 That's why I'm kind of like why are we here? I get back to the  
7 original question. Why are we here? And that may be a  
8 question that this Court has to pose to debtor's counsel, and  
9 then I'll be able to answer that. But quite honestly, why are  
10 we here? And why are we here now, we get back to, a year  
11 later?

12           And, again, the Court just appointed Mr. Feinberg and  
13 has appointed Former Judge Steckroth to deal with the  
14 administration of the claims. And in the case of Judge  
15 Steckroth and the ad hocs -- and I'll let the ad hocs deal with  
16 their claims -- he has no way of mediating -- well, injunctive  
17 relief, you know? What are we going to do?

18           He's going to have someone agree that they'll never  
19 sell it again. So what? What kind of teeth does that come out  
20 of a mediation? He can't do anything. He has no jurisdiction  
21 or any power even as a former judge or even you as a judge to  
22 order something under the state laws of New Mexico or  
23 Mississippi. Those rights are reserved to those states.

24           And I think that's something that we have to abide by  
25 that you have to -- and even if this -- if they want you to do

1 it, you know, maybe the point is you're going to abstain, if  
2 nothing else. But I don't think you have the jurisdiction in  
3 the first place, and you can't, again, create it out of thin  
4 cloth or have them by agreement say, well, Judge, this is the  
5 reason why it affects us, because we have this indemnity  
6 agreement. That is not enough of a hook to get everything  
7 before this Court.

8           With that, I'll sit down, and I'll --

9           THE COURT: Thank you, Mr. Malone.

10           Mr. Molton?

11           MR. MOLTON: Thank you, Your Honor. Good afternoon.  
12 David Molton of Brown Rudnick for the TALC Claimants Committee.  
13 I'm going to just be -- have a short few remarks, and what I'm  
14 going to do is not repeat what counsel said but really focus on  
15 our view of the application in connection with our statement  
16 in -- in support of the states and in opposition to the  
17 debtor's objection in the context of the progress of this case  
18 and the time frame ahead of us.

19           Your Honor knows that Docket Number 22 in Adversary  
20 22-01231 is the Committee's statement in support. I'm not  
21 going to repeat that either but just refer you to it.

22           The TALC Claimants Committee, Your Honor, supports  
23 continuation of the state actions by each of New Mexico and  
24 Mississippi and opposes this debtor's, we say, untimely efforts  
25 to stay the consumer protection actions against J&J. Since the

1 outset of this bankruptcy case in North Carolina nearly 11  
2 months ago, Your Honor, the debtor has been clear that the  
3 scope of its PI that it obtained there in a preliminary form,  
4 which Your Honor then affirmed and renewed and which we  
5 revisited this past summer, does not include the state consumer  
6 protection and fraud actions.

7           Indeed, Your Honor, every PI order entered in the --  
8 in this case and the -- or the adversary proceedings expressly  
9 excluded, underscore excluded, the states as defendants.  
10 Moreover, as discussed, the state consumer protection and fraud  
11 actions we believe and submit fall well outside the definition  
12 of enjoined TALC claims. There is no reason now to broaden the  
13 existing PIs to include Mexico and Mississippi.

14           The Court has retained, as we all know, Mr. Feinberg  
15 as an expert on estimation of the TALC claims in order to give  
16 an opinion on aggregate number and values of present and future  
17 TALC claims. And I think one of the principal purposes that I  
18 recall Your Honor saying that that was done for so that  
19 creditors have sufficient information to vote on any plan that  
20 may be offered in this case. But the Court has not directed  
21 Mr. Feinberg to perform any consumer protection -- any analysis  
22 with respect to state consumer protection and fraud actions.  
23 The only current vehicles for gathering information about the  
24 merits of the state consumer protection actions are, I submit,  
25 Your Honor, the New Mexico and Mississippi actions.

1           So, Your Honor, in order to progress this case  
2 towards a plan, Mr. Feinberg is doing his work. And the New  
3 Mexico and Mississippi actions should proceed and do their work  
4 in gathering data or progressing those cases so that sufficient  
5 analysis can be done as to the nature of their -- those claims  
6 and their value.

7           The New Mexico and Mississippi actions are set to be  
8 tried in February 2023, and the other in May 2023. We submit,  
9 Your Honor, the Committee submits, there is absolutely no harm  
10 whatsoever to the defendants from allowing these cases to  
11 proceed. And these cases, therefore, as they proceed as  
12 consumer protection actions do not raise the same issues as in  
13 the TALC litigation.

14           As Your Honor knows, we have an appeal in the Third  
15 Circuit. The argument is going to be Monday. And there may be  
16 a ruling before year's end. Allowing these actions to proceed,  
17 at least through year's end when Mr. Feinberg and the Third  
18 Circuit do their work, we submit, will have absolutely no  
19 impact on the debtors.

20           And for those reasons, Your Honor -- and, again, my  
21 focus -- I leave it to learned counsel to explain the  
22 underlying merits of those -- of his opposition and the states'  
23 opposition. But from a case perspective, a case perspective,  
24 we submit that also supplies good reason for Your Honor to not  
25 grant the injunctions and to proceed in the manner suggested by

1 counsel to my right. Thank you, Judge.

2 THE COURT: Thank you, Mr. Molton.

3 For the Ad Hoc Committee? And I had wanted to give  
4 you -- your firm kudos. I think your firm was the only one  
5 that Mr. Keach had no issue with as far as fees. You get --

6 MS. JOHNSON: I don't know if that's kudos or because  
7 we're just getting started, Your Honor.

8 THE COURT: You get a smiley face.

9 MS. JOHNSON: But thank you, Your Honor. Erika  
10 Johnson from Womble Bond Dickinson on behalf of the Ad Hoc  
11 Committee of State Attorney Generals. I am -- I rise, you  
12 know, in support of opposition by the States of New Mexico and  
13 Mississippi to the motion to extend the injunction to their  
14 underlying state actions. I'm not going to repeat, you know,  
15 the arguments that have been made very ably Mr. Malone. I do  
16 want to just -- I guess flesh out a little bit the question  
17 about the subject matter jurisdiction.

18 You know, I think there is an issue in terms of,  
19 ultimately, how do any of the penalties affect the debtor. And  
20 in this case, the indemnification agreement's not on record.  
21 It's not part of the evidentiary record with this motion to  
22 extend the injunction. So there's really no evidence at this  
23 point that any liability of J&J or JJCI could then be imposed  
24 on the debtor. And even if you were to assume that that  
25 liability is the debtor's and it was appropriately assigned,

1 there's really no affect on the debtor anyways because of the  
2 cost sharing agreement where the debtor is not bearing that  
3 expense.

4           So I just wanted to rise to kind of mention that in  
5 terms of subject matter jurisdiction in a slightly different  
6 way to kind of think about that but then to also talk about  
7 105, assuming 105 is appropriate. We don't think it's  
8 appropriate to use 105 to extend the injunction to nondebtors  
9 in this case, especially when the relief they're seeking is not  
10 imposed for the debtor themselves with police powers.

11           And, frankly, the debtor hasn't established a  
12 likelihood of a successful reorganization. There's been  
13 arguments raised that allowing these actions to go forward  
14 would negatively impact the mediation that's occurring. You  
15 know, frankly, the Ad Hoc Committee doesn't think that it would  
16 negatively impact mediation. In fact, we feel the opposite,  
17 that allowing these cases to move forward as bellwether cases  
18 may help the parties understand their respective positions, the  
19 strengths, the weaknesses.

20           We've all been in mediations, you know, where the  
21 factual record or legal theories haven't been fully developed.  
22 This is that type of case where the parties may be so  
23 diametrically opposed that mediation is difficult without some  
24 additional guidance, you know, from the state courts in terms  
25 of what would the police power, enforcement powers be, what



1 would the penalties potentially be. And so fleshing out and  
2 advancing those legal theories would help advance a global  
3 resolution in this case.

4           You know, the debtor in argument this morning did  
5 rely on the Court's estimation process. But as noted by the  
6 TCC's counsel, the states' claims aren't part of the estimation  
7 process. Currently, the only way to move those claims forward  
8 in the bankruptcy case is through the mediation.

9           And we're not saying that we want to give up on  
10 mediation. We're still committed to mediation. The issue is  
11 when there is such diametrically opposed positions, sometimes  
12 additional factual development or legal development helps to  
13 break that logjam. And so that's why we submit, Your Honor,  
14 that allowing these cases to go forward would actually assist  
15 the global resolution and mediation of the cases.

16           And unlike, you know, some of the concerns with the  
17 TCC claims, I mean, this isn't a situation where allowing these  
18 two cases to go forward would open the floodgates of  
19 litigation. There's a finite number of states and territories.  
20 The Ad Hoc Committee is still part of the cost-sharing  
21 agreement. And as per the cost-sharing agreement, those states  
22 have agreed not to continue to pursue litigation for so long as  
23 they're part of the Ad Hoc Committee.

24           And so there's no danger, you know, in terms of  
25 allowing these two cases to go forward to open the floodgates

1 for every other state to do so. And even if every other state  
2 then chose to file suit, it's a finite number of actions that  
3 could go forward.

4           The debtor's reorganization efforts would not be  
5 irreparably harmed by allowing these actions to go forward.  
6 You know, it's been stated, it's clear, the debtor has no  
7 operations. There's nothing to be distracted from. These  
8 trials would actually be advancing the issues that need to be  
9 decided in this case.

10           The debtor has argued that there's some overlapping  
11 issues with the TCC claims and that allowing these actions to  
12 go forward would result in collateral estoppel that would harm  
13 them. And kind of to support that, the debtors argue that the  
14 states have to prove harm. That's not true. The states could  
15 choose to prove harm, but that's not a required element in the  
16 legal case in order to be successful with a consumer protection  
17 claim.

18           The states have a lower burden. All they have to  
19 show is that there was a failure to disclose that the talc  
20 products may contain asbestos. In fact, we already know from  
21 some of the recalls and the FDA testing there was asbestos in  
22 the product.

23           J&J's made representations in their advertising and  
24 marketing that the products are safe, they're pure, they're  
25 trusted by hospitals. But J&J didn't advertise the fact that

1 the product may contain asbestos. And they didn't do this,  
2 because they knew it would impact sales.

3           In 2007, they already started to see the sales  
4 decline as this information started to expand out into the  
5 public and with consumers. And rather than discontinue  
6 marketing, what J&J did was then target minority groups in  
7 order to continue to increase sales with consumers that weren't  
8 as well informed of what the products may contain. They  
9 broadly provided free samples at churches, barber shops, beauty  
10 parlors.

11           THE COURT: I'm giving you leeway into argument.  
12 Just as you've noted, there's no record of this either in front  
13 of me.

14           MS. JOHNSON: I understand, Your Honor.

15           THE COURT: I mean, it goes both ways.

16           MS. JOHNSON: And this isn't, Your Honor, anything in  
17 terms of evidence that you need to rely on. It's more  
18 background information to understand what the states are trying  
19 to regulate, what harm the states are trying to remedy in being  
20 able to pursue these actions.

21           And in doing that, the states don't, just to be  
22 clear, have to prove that any of these women or any of these  
23 parties actually got cancer as a result of the talc product.  
24 They have to just show that J&J knew information that wasn't  
25 publicly available, and they chose not to disclose it. That

1 J&J's (sic) represented its products were a particular quality  
2 or grade, for example, that contained pure talc, which a normal  
3 consumer wouldn't expect to contain asbestos. And if the  
4 consumer knew that it contained asbestos, they probably would  
5 not have bought it. So it's a lower burden is what I'm trying  
6 to explain to Your Honor and explain why these claims are  
7 different from the claims that talc victims will need to prove  
8 in terms of causation in any underlying action.

9           Part of the additional harm the debtors argued are  
10 indemnification agreements. Again, those aren't in evidence  
11 before the Court. They've also discussed various insurance  
12 policies. Those also aren't part of the record for the Court's  
13 consideration.

14           And now turning to kind of public policy, which I  
15 think is what Your Honor first raised in terms of enforcement  
16 actions and police powers. The debtor argues that it's really  
17 the public's interest to have a successful reorganization. And  
18 I think that's true when you're viewing it in the prism of a  
19 normal debtor that has operation, has employees, has a  
20 manufacturing process, something to preserve.

21           That's not the case here. Here, it's a liquidating  
22 debtor that was created purely to have a trust established to  
23 pay claims. And in that type of case, who benefits? Who  
24 benefits from this? It's really J&J and its shareholders. And  
25 that's not who Congress intended to protect when they enacted

1 the bankruptcy code.

2           Meanwhile, the states are trying to protect its  
3 citizens. They're seeking to protect them through injunctions,  
4 providing knowledge to its citizens about potential dangers and  
5 recalls. The debtor argues it's no longer necessary, because  
6 they voluntarily stopped using talc in products in mid-2020.  
7 And, Your Honor, we did note that on their website it says  
8 there's a three-year shelf life for talc products, so that  
9 would -- if you were aware of the three-year shelf life would  
10 mean the products could still be in use through middle of next  
11 year.

12           Just one moment, Your Honor. Not to be outdone by  
13 Mr. Malone, I looked in my in-laws' house just by chance. And  
14 they had three baby product -- or talc-containing products from  
15 Johnson & Johnson. I did look. I could not see any expiration  
16 date. There's no expiration date listed on any of the  
17 products. And I would submit to Your Honor that most  
18 consumers, if they had purchased it, still have that in their  
19 home just like my in-laws. And that's just one house that was  
20 looked at.

21           And the states are concerned about that, and the  
22 states want those products to be out of their citizens' homes.  
23 And that's part of the relief that would be sought in the state  
24 Court actions.

25           The other thing they argue is, you know, the good --

1 and I think this is beneficial in terms of the announcement to  
2 stop worldwide sales of talc. But even in looking at how that  
3 was done, it's not an immediate cessation of sales. They're  
4 going to stop sales once the current existing products are  
5 sold. So that's going to continue, you know, at least into  
6 next year, more likely than not.

7           And I think even doing it that way suggests that it's  
8 not being stopped because there's any danger to it or that J&J  
9 thinks there's any danger to it. In fact, they've said that  
10 it's safe and continue to maintain the use of that product is  
11 safe. So I think even ceasing that kind of worldwide sale  
12 doesn't help inform the states' citizens of the potential  
13 dangers of continuing to use the product.

14           THE COURT: Well, let me ask -- let me address that.  
15 I'm sorry to interrupt you. Because a lot of the focus of  
16 Mr. Malone's argument -- or not a focus, but he raised the need  
17 for advertisements, newspapers and -- which -- speaking of  
18 warnings and giving notice.

19           It seems to me that I don't go a day without hearing  
20 or -- hearing on radio or seeing on TV notices regarding the  
21 dangers of talc in advertisements daily through the tort bar  
22 having done that. In fact, I would venture to say, somewhat  
23 tongue in cheek, probably six months ago, nobody in this room,  
24 including myself, could spell Camp Lejeune, let alone know  
25 about the situation of water.

1           This is not the work of the states. This has been  
2 the work of, and to their credit, the plaintiff's bar, the tort  
3 bar in giving notice.

4           So how critical -- and we're talking about a  
5 preliminary injunction with a limited temporal time frame. Why  
6 is it so important to continue these actions for those notice  
7 purposes given the widespread notice that's there, that's out  
8 there in print, media, social media and the like, about the  
9 dangers of talc?

10           And I'll let -- I might as well get it all out. I'm  
11 sure if this was simply about an injunction, Mr. Kim here would  
12 agree right now to -- that Johnson & Johnson is not going to  
13 sell any other talc-based products. So is this -- isn't this  
14 more just about dollars and fines? So I'm opening the door for  
15 you to respond to that.

16           MS. JOHNSON: Yep. No, Your Honor, it's not just  
17 about dollars and fines. That is part of the state police  
18 powers to impose fines. It is a deterrent, in fact. You know,  
19 Johnson & Johnson in deciding to continue to sell talc probably  
20 did a cost-benefit analysis, you know? And part of what the  
21 states do in looking at companies, especially companies that  
22 are repeat violators of consumer protection laws, is to say  
23 these penalties need to be imposed to help deter this action  
24 going forward.

25           But it goes beyond that. And I think Your Honor's

1 making a presumption that people -- this is widespread  
2 knowledge about talc-containing products. It may be that, you  
3 know, you've done an internet search at some point, and your  
4 cookies have now opened you up to being inundated with these  
5 ads and these announcements.

6           Obviously, that's not the case for everybody. I  
7 mean, my in-laws don't know. Had no idea about these claims or  
8 about the potential dangers. It's still sitting in their  
9 house. And I submit that that may be the case for many  
10 consumers out in the public.

11           And that's the states' roles. That's not the tort  
12 bar's role to inform the citizens of the state. It's the  
13 states' role to help protect its citizens.

14           There's a degree of trust that's different, you know,  
15 when a citizen is hearing from their state government that  
16 there's a recall, there's potential danger from this, than from  
17 hearing it from a lawyer who they don't know, who they don't  
18 have any kind of client trust or relationship with. I mean,  
19 it's good and it's informative that this information is getting  
20 out there, but it really is the role of the states to enforce  
21 these rights and action. And I submit, Your Honor, that it  
22 would be taken differently and viewed differently by the  
23 citizens of a state when their attorney general is asserting  
24 this cause of action and seeking this type or relief.

25           And, you know, by all means, if the debtor and J&J,



1 because it has to be more than just the debtor, and Old JJCI  
2 agree to an injunction, agree to a recall, you know, agree to  
3 doing all these things and providing public service  
4 announcements, I mean, that would be something we'd be open to  
5 discussing, you know, with the parties.

6           You know, some also was provided or there was a  
7 suggestion that because J&J has agreed voluntarily not to see  
8 talc in their products going forward and instead use corn  
9 starch that there's no need for this going forward. Well,  
10 we've talked about the recall issue that's still out there.

11           But, you know, consider this is another context. You  
12 know, when there's a PFA that's entered against a person, and  
13 it could be consensual, there doesn't have to be a finding of  
14 abuse, the person has to turn over their firearms. Right? The  
15 court doesn't then say, okay, you voluntarily turned over your  
16 firearms, so we're not going to issue an injunction.

17           The injunction is still issued, right? So the  
18 injunction is there to help ensure the action that was taken  
19 voluntarily initially continues, you know, throughout the  
20 process. And so that's why it's also important, you know, for  
21 the states to have an injunction going forward.

22           I'm going to skip over a few things, Your Honor, that  
23 Mr. Malone already went through. I know the debtor argues  
24 that, I guess, the harm that they would suffer from the  
25 distractions or the potential collateral estoppel issues

1 outweighs the states' harms. But, you know, we've just  
2 outlined some of the states' concerns, citizens' harm that  
3 might be suffered that the states want to pursue.

4           And knowing that this isn't the typical debtor where  
5 the normal harm -- you know, there's usually like a conclusory  
6 statement that debtor is going to be distracted from the  
7 reorganization process, that there's going to be harm. We hear  
8 that a lot in bankruptcy cases. But, again, no operations. No  
9 employees. No product being manufactured. It's a different  
10 scenario here.

11           So allowing the Mississippi and New Mexico actions to  
12 go forward, it's not going to allow the states, you know, to  
13 pursue their interests in protecting its citizens with  
14 enforcement powers but it will actually move forward the  
15 mediation process.

16           In terms of this Court not being able to issue  
17 injunctions, you know, the mediator can't order injunctions be  
18 issued. That's really the purview either of the debtor and the  
19 other nondebtors consenting to that, or it's going to be  
20 something that the state courts are going to have to enforce.

21           So in this case, Your Honor, respectfully, I would  
22 submit that the harm for extending the injunction is really  
23 borne entirely by the impacted states. It's really not the  
24 debtor that suffers harm in this case. It's really for the  
25 benefit of Johnson & Johnson and the nondebtors that they're

1 seeking this relief.

2 And with that, Your Honor, I'll rest.

3 THE COURT: Great. Thank you.

4 MR. MALONE: Judge, I can either answer some  
5 questions --

6 THE COURT: Well --

7 MR. MALONE: -- now or later that you posed, but I  
8 would like to respond to some of those questions.

9 THE COURT: I'm going to give you an opportunity.

10 MR. MALONE: That's why I just want everyone -- I can  
11 sit down and let some other people go, I guess.

12 THE COURT: Well, I assume there's no other party who  
13 wishes to be heard. I have a few questions, and I -- I'll just  
14 go left to right and let you all answer them, and then I'll --  
15 and any other --

16 MR. MALONE: Could I answer the questions that you  
17 had first? Because I think there's some clarification here  
18 that has to be made. Because you started asking about the  
19 advertisements, and I think that becomes very important.  
20 Because I saw where we -- the states were getting pinned. And  
21 I know this was very important to the State of New Mexico, and  
22 they were very upset by it.

23 These states are sovereign entities, governments.  
24 And there's been an implication in the argument that they are  
25 somehow beholden to the talc. And this is nothing against my

1 brethren who are sitting here representing the talc committee,  
2 but nothing could be further from the truth. They're not  
3 carrying their water. There's no evidence about it at all.

4           When you get into the notices, these notices that  
5 we're talking about -- oh, it's out there -- well, it's, with  
6 all due respect, the plaintiff's bar trying to get people to  
7 call them and represent them in cases. Very different notice  
8 than maybe what the State of New Mexico or the State of  
9 Mississippi would order.

10           Take, for example, going back to the tobacco  
11 litigation years ago. What's on the side of every cigarette  
12 package? Do you think R.J. Reynolds wanted to put that on the  
13 side of the -- of their thing, or do you think they fought as  
14 hard as they could until the states enforced their regulatory  
15 powers on them?

16           Same thing here. There is -- the only warning on the  
17 back of this is, warning, keep powder away from child's face;  
18 avoid inhaling. That's it.

19           THE COURT: I'm not too sure you want to use  
20 government warnings as part of your argument for me.

21           MR. MALONE: But why do you --

22           THE COURT: Let me finish.

23           MR. MALONE: -- think it went there, though?

24           THE COURT: Let me finish. I mean, my familiarity  
25 with government warnings are that they are usually in such

1 small boilerplate that you -- they're not legible. You can't  
2 read them. They go across a screen so fast. They're  
3 incomprehensible. I'm not sure these -- I've always wondered  
4 about the benefits.

5           But I bring it up as far as, again, trying to bring  
6 you back to this is a preliminary injunction for a finite  
7 temporal period. And we're looking at the harm, and I'm trying  
8 to weigh the harm. And the harm can't be in the -- the lack of  
9 notice out there. And the harm can't be in the ability to  
10 fine, because that's not emergent. That's all -- Johnson &  
11 Johnson is not going anywhere.

12           So where's the emergency that has to proceed? That's  
13 what I was trying to focus on.

14           MR. MALONE: Emergency by LTL or --

15           THE COURT: Well, I'm trying to weigh the --

16           MR. MALONE: -- emergency by us?

17           THE COURT: I'm weighing the harms.

18           MR. MALONE: Okay. Well, first off, the trial dates  
19 have not been disturbed, and the parties are ready to proceed.  
20 They've waited 11 months. And all of a sudden, it's an  
21 emergency, so they've come before this Court.

22           Every day that goes by, someone's using that product  
23 if they don't know that it's not pure or that it could cause  
24 cancer. It's sitting in someone's bathroom. Somebody in  
25 Mississippi, somebody in New Mexico continues to use that

1 product. Maybe they don't have cancer as we sit here. Maybe  
2 they'll never get it. But maybe they will.

3           So what's the immediacy? The State of New Mexico and  
4 the State of Mississippi want their day in court now, because  
5 they feel it's that imperative to protect the citizens of their  
6 states from what they perceive to be an unsafe product.  
7 Another judge in a state court is going to determine whether  
8 they're right or wrong, not the bankruptcy court.

9           That's the immediacy of one person's delay is another  
10 person's due process here. The more delay, the more people  
11 could fall victim to having other claims. So, what, they're  
12 going to deal with the futures claimant years from now, because  
13 New Mexico was told, well, you only have to wait a couple more  
14 months, you only have to wait.

15           It's improper in the first place to invoke 105  
16 against this nondebtor, because the debtor is not involved.  
17 And, again, I think everybody has said it. There's an  
18 indemnification agreement which becomes the "hook." And I  
19 don't think it's a valid hook to get it before here.

20           And, again, those are going to be the claims not of  
21 New Mexico and not of Mississippi. Those are going to be  
22 claims made by Bausch Health or by Johnson & Johnson. So it's  
23 not going to -- interfere with this bankruptcy. So when you  
24 start balancing -- those claims aren't going to come before  
25 this court for a while.

1           As Ms. Johnson pointed out, it's not even in the  
2 record here what that indemnification agreement says. And this  
3 Court could even, as I said before when I argued under 510,  
4 equitable subordination, you may say, well, you know what, I've  
5 got LTL here. I've got a channeling injunction. I'm going to  
6 put those claims behind it. They're not going to -- the talc  
7 claims are going to come ahead of it. That's what my job here  
8 is, is the immediacy of the talc claimants, more fair and  
9 efficient manner than an MDL practice. That's why you believe  
10 that that case should be here.

11           This is outside of that. That has nothing to do with  
12 why you felt that this debtor was a legitimate debtor; it  
13 wasn't filed in bad faith. It has nothing to do with the fact  
14 that my clients want to proceed to enforce their regulatory  
15 powers which, in fact, may or may not result in fines, but  
16 there's certainly going to be injunctive relief in both cases.

17           THE COURT: Well, that's the focus -- that's what I'm  
18 trying to glean: the relief being sought in these actions and,  
19 really, what is the focal point. But let me --

20           MR. MALONE: To get it --

21           THE COURT: Let me --

22           MR. MALONE: -- off the shelves. To get it out of  
23 people's houses. To get it done.

24           THE COURT: I appreciate that. Let me take you back.  
25 And I was going to direct this question to Mr. Molton, if I

1 may. And it's on that -- it's the Committee's support for this  
2 action, because I'd like some clarity.

3           And I'm going to be candid. I'm a little bit  
4 surprised, and let me tell you why. And you probably can see  
5 it. We're cognizant that there's insurance out there. I've  
6 seen professional fees in the hundreds of thousands of dollars  
7 examining insurance policies in this case, if not more. And  
8 the pending coverage litigation involves the defenses raised,  
9 an exclusion to the policies, the expected and intended defense.  
10 And it is an asset -- a potential asset of the bankruptcy  
11 estate.

12           I went back, and I looked at the complaints, the New  
13 Mexico complaint and the Mississippi complaint. And let me  
14 just read from New Mexico complaint, paragraph 24. These are  
15 the allegations or the averments within the complaints.

16 Paragraph 24: "Defendants and the Cosmetic, Toiletry and  
17 Fragrance Association (CTFA), caused plaintiffs harm through  
18 intentional efforts to deceive the general public and  
19 regulatory authorities as to the safety of the presence of  
20 carcinogens, including asbestos, in talc-containing" --

21           "Defendants and the CTFA conspired and/or acted in  
22 concert with each other to ensure that the asbestos-containing  
23 talcum and talc powder products became widely used in commerce,  
24 irrespective of the potential and actual risks of harm to the  
25 users and consumers from the asbestos and other carcinogens



1 therein. They falsely represent that the talc and talcum  
2 powder products, including those of defendants, were safe and  
3 healthful. The claims submitted to the State of New Mexico  
4 were false and misleading or fraudulent, because defendants  
5 knowingly" -- and I'm -- it's my emphasis -- "knowingly  
6 concealed and misrepresented the dangerous risk associated with  
7 exposure to Johnson's baby powder and Shower to Shower."

8           That the -- "Johnson & Johnson caused" -- oh, this is  
9 Count 4 -- "caused false and misleading information regarding  
10 the safety and efficacy of Johnson's baby powder and Shower to  
11 Shower."

12           And finally: "Here, defendants were marketing and  
13 selling dangerous asbestos-containing talcum products" -- this  
14 is in Count 20 -- 220 -- "which the defendant knew contained  
15 asbestos and knew would be used as designed on a daily basis  
16 all over the consumer body, including the genital area."

17           And the Mississippi complaint, paragraph 93:  
18 "Defendants purposefully procured and disseminated false and  
19 misleading and deceptive information."

20           My concern -- and I -- I'm wondering why it's not the  
21 Committee's concern, and you'll explain it. Doesn't that give  
22 rise to a potential basis, if those facts are proven in court,  
23 of a basis for the insurers to possibly argue the exclusion,  
24 the extended -- intended -- the intended and expected  
25 exclusion? Why would the Committee want to take that risk?

1           MR. MOLTON: Those are good questions. First of all,  
2 Judge, I don't think we are taking that risk, and I'll tell you  
3 why in a minute. But I want to preface it by something that  
4 was -- we talked about awhile ago, a few months ago when we were  
5 talking, I think, estimation and exclusivity, and we were  
6 dealing with that.

7           I mean, the insurance here, unlike a case that  
8 hopefully is heading to a conclusion that was insurance driven,  
9 the Boy Scout case down the turnpike -- you know, and I'll get  
10 to how the insurers dealt with that in a minute. You know,  
11 we're dealing here, I understand, with \$2 billion. And, again,  
12 \$2 billion coverage. So I understand. Perhaps all of it  
13 already exhausted. We don't know.

14           I know that our insurance special counsel, Anderson  
15 Kill, is trying very much to get that information. And I'm not  
16 going to raise issues that are not in front of the Court. But,  
17 hopefully, we will have cooperation from the debtor in getting  
18 that information. I don't think we've been successful in  
19 getting that information. And needless to say, getting that  
20 information is important going forward for resolving this case.

21           But in a case like this, what you've heard me say  
22 from this rostrum, podium, is a full pay case. That insurance  
23 issue assumes a different posture, I say, an -- I'm not saying  
24 it's not important, but a different posture than in a case like  
25 down the turnpike, down the New Jersey thruway and across the

1 bridge in Delaware like in Boy Scouts which was fully  
2 insurance.

3           Second of all, my experience in this world -- not  
4 just in Boy Scouts but all cases -- I don't think we need the  
5 states to be making those allegations to have the insurers  
6 raising expected and intended based on complaints being made  
7 across the country by talc claimants and others, you know,  
8 regarding this issue. I fully expect that those issues  
9 probably have already been raised and not only in connection  
10 with the states.

11           I do know that you've heard during the lift stay  
12 issues that have been -- the individual claimant lift stay  
13 applications, you've heard some of the evidence that goes to  
14 the jury regarding what Johnson & Johnson knew or didn't know  
15 or say about asbestos in the talc, what they hid regarding  
16 asbestos in the talc allegations. So those issues aren't  
17 necessarily put out there for the insurers merely by what's --  
18 this request and this point.

19           Second of all, my -- I'm not a coverage lawyer. I'm  
20 not an insurance lawyer. I'm not going to give you the reason,  
21 but expected and intended doesn't necessarily provide a  
22 disqualification when, you know, in the event you allege  
23 knowledge of -- of a dangerous product on part of a  
24 manufacturer of that product. I think expected and intended,  
25 if you ask my insurance expert colleagues, is something a

1 little different and more -- more, but that's for them to  
2 debate --

3 THE COURT: Right.

4 MR. MOLTON: -- on coverage litigation.

5 THE COURT: My understanding, just to lay it out, --

6 MR. MOLTON: Yeah.

7 THE COURT: -- expected and intended, at least a  
8 recent pronouncement, I think, in New York, is that the key to  
9 that, of course, is what the knowledge is of the insured, but  
10 it's also -- it's the expectation and intention to do the harm  
11 itself, not just the risk that's out there. But that's why I  
12 focused on language in the complaints that all went to  
13 knowledge -- to -- to the knowing or the allegation or the  
14 averments that they were knowing. And it -- and it seems that  
15 if there were proofs undertaken at a trial in New Mexico or  
16 Mississippi that the risk of a record taint, a evidentiary  
17 taint, would be there.

18 And why -- I guess, we go back to why is the  
19 committee supporting the effort?

20 MR. MOLTON: Be -- be --

21 THE COURT: And also the -- the related -- I might as  
22 well -- again, I only get a little chance to speak. I just  
23 throw it all out. Is to -- it's the same issue with the  
24 indemnification risk that if there is a claim against the  
25 Bausch defendants and they look to Johnson & Johnson, and

1 Johnson & Johnson looks do LTL, and under the indemnification,  
2 but going back from '79, and it all comes out of the funding  
3 agreement. Why put those dollars in competition and why would  
4 the -- why is the committee on board?

5 MR. MOLTON: Well, because we feel, Your Honor, that  
6 going forward in the way that I described in terms of with an  
7 astute view as to case management towards a plan, and hopefully  
8 a consensual plan, that allowing these cases -- these two cases  
9 to go forward will help develop traction at least with respect  
10 to the States and the States' action to allow that to progress  
11 with your oversight and -- and your case management, and -- and  
12 and -- and in terms of -- in terms of allowing those cases to  
13 go forward.

14 So, you know, from our perspective, Judge, you know,  
15 again reviewing, -- you know, we're not diminishing. There's  
16 risk in every decision a party to a case takes, but we view  
17 this and we view the committee's view on this as something  
18 that's consistent with our view that this is and should be a  
19 full day case, notwithstanding what you've identified and  
20 notwithstanding possible indemnifications. And that allowing  
21 the States to go forward -- just like allowing the litigation  
22 to go forward against J&J by the tort claimants, by the talc  
23 claimants, will be something that helps resolve this case, and  
24 not defeat the resolution of this case.

25 THE COURT: All right.

1 MR. MOLTON: So that's where we're coming from and  
2 that was the essence of my presentation to you; a very  
3 practical view of the next six months as to how allowing these  
4 cases to go forward at least through, you know, up to trial --  
5 they're -- the trials are after the new year -- is something  
6 that would be beneficial to the progress of this case. I don't  
7 know if that's satisfactory to you, Judge, or answers the  
8 question, but it's certainly our view of how we've, you know,  
9 we feel this case can be best progressed, which I know is  
10 something in your mind every day.

11 THE COURT: No, I appreciate your response.

12 MR. MOLTON: So...

13 THE COURT: Thank you.

14 MR. MOLTON: So...

15 THE COURT: Mr. --

16 MR. MALONE: Judge, getting back to what --

17 THE COURT: I want to get to Mr. Gordon to ask that  
18 question you want me to ask him.

19 MR. MALONE: Well, the other question --

20 THE COURT: Go ahead.

21 MR. MALONE: -- here again, Your Honor, is you went  
22 through the contents of that complaint. If they're found  
23 guilty, a judge can order Johnson & Johnson to -- if there's an  
24 admission or maybe the State Attorney General will put in a  
25 publication they have been found liable on these things.

1 That's a lot more forceful than, as I said, the plaintiff's  
2 bar's notice. So some of the things you're pointing out go to  
3 that.

4           Again, I commend to the Court's attention the MCorp  
5 decision. I think just because -- and as I said, you know,  
6 what -- and I do insurance coverage work. So everybody sees  
7 the F word. And you see the F word, coverage counsel says, oh,  
8 that's an -- that's an exclusion under our policy. We don't  
9 insure for that. Some policies have it, some policies don't.  
10 There's a lot of different things in the insurance world in  
11 mass tort.

12           But that can't be a reason to grant the injunction.  
13 It can't be a reason that something that's not in this record,  
14 this hook or this so-called indemnification agreement, should  
15 drive this case. If it becomes a consequence, so be it, but it  
16 can't be the reason. It can't be the foundation for this Court  
17 granting the relief. Otherwise, you're giving everybody a  
18 roadmap out there to do it. If you think you're going to have  
19 liability, do something like this. Do your Texas Two-Step and  
20 you never have to worry. You won't be able to have to worry  
21 about consumer protection laws or anything else, because we'll  
22 create this little hook that brings it back to the bankruptcy  
23 court. It's a misnomer. It shouldn't be allowed to stand in  
24 this court or any other court.

25           THE COURT: Thank you.

1           So, Mr. Gordon, my comments before to counsel for the  
2 ad hoc committee and Mr. Malone, which referenced somewhat  
3 tongue-in-cheek, Camp Lejeune, and notices and advertisements  
4 that are out there to see if this case and the gravamen of  
5 this case is more than simply warnings and potential fines.  
6 But Mr. Malone raised the issue there -- and brought out the  
7 fact that there's more -- there's more here as to public  
8 safety. So the question becomes, well, why now? There's no --  
9 there is no trial scheduled in 2022. They're all scheduled and  
10 may even be deferred. Why is the debtor before the court now  
11 in trying to get this relief?

12           MR. GORDON: Well, let me address that. Greg Gordon  
13 again. In two ways --

14           THE COURT: And ostensibly, why place people at risk  
15 or during that -- during that gap period?

16           MR. GORDON: Sure. Appreciate it, Your Honor.

17           I wanted to address timing and I have other points  
18 I'd like to make as well.

19           In two ways. One is there was a suggestion that we  
20 waited too long and that as a result of waiting too long, we're  
21 the subject of three rulings, including two by this Court, and  
22 one by Judge Whitley, which they're basically saying represent  
23 a determination by you and Judge Whitley that these claims --  
24 that this litigation can't be stayed, and that's simply not  
25 true. I mean, those orders don't say that. They're simply



1 reservations of rights and reflecting the fact that when we  
2 filed the initial PI and we -- when we filed the securities  
3 action PI we weren't seeking to enjoin the State actions. And  
4 there's been a suggestion that there's something improper, that  
5 we waited too long. And I wanted Your Honor to know, and just  
6 to recall the sequence of events, because I think Your Honor  
7 knows this, from our perspective, the number one priority was  
8 to enjoin the talc litigation so we'd have a real bankruptcy  
9 case. And that took us in through, what, March of this year.

10           At the same time though, Your Honor knows, because I  
11 -- I know we raised this fairly early on that we were the  
12 subject of these claims by a multiple set of States. And we  
13 were very clear to Your Honor from beginning that we thought  
14 mediation was way to move this case forward, and that that  
15 mediation should include mediation of the State claims. And  
16 your Honor, may recall in connection with that, we said to Your  
17 Honor that we were working with the States to see if we could  
18 put together an ad hoc committee of States for purposes of the  
19 mediation. And, in fact Mississippi was a member of that ad  
20 hoc committee of States. You may remember that. And Your  
21 Honor knows because we presented the agreement to you that we  
22 actually reached an agreement, a partial reimbursement  
23 agreement, to defray the States' expenses because we asked them  
24 to come together, to work together, and we are willing to  
25 defray their expenses to a certain extent so we could have the

1 mediation.

2           And it wasn't until -- and at that point in time we  
3 had some cooperation. There were no deadlines running, and the  
4 like. There was no concern. We weren't being pressed at that  
5 point in time in the State litigation. So we -- so we went  
6 through that process. We went through the PI. We went through  
7 the ad hoc. The mediation started. Mississippi then pulled  
8 out and the focus then turned to the litigation. And as I  
9 tried to show in some of the early slides in the slide deck, we  
10 have a -- we have a number of deadlines coming up in both  
11 cases.

12           You're right, the Mississippi, -- the New Mexico  
13 action -- I knew I was going to mix this up. The New Mexico  
14 action now has that 6 -- 45-day stay. So the schedule, I'm  
15 assuming, isn't going to hold, but even that one had a bunch of  
16 discovery deadlines coming up as early as early October, just a  
17 few weeks from now, and moving right through the end of the  
18 year. And same thing with Mississippi. Mississippi has got a  
19 February trial date, and a whole bunch of deadlines with  
20 respect to discovery, completion of discovery experts, all of  
21 that sort of thing running through the end of the year. So  
22 we're now at the point in time where we'd have to spend a lot  
23 of time. So I did want to address the timing.

24           The other thing, Your Honor, you know, I did want to  
25 say, you asked a very pointed question, I thought, going to the

1 -- to the point of are these really pecuniary interests? Are  
2 these pecuniary-type claims or not? And you got a very varied  
3 set of answers and they weren't entirely clear to me, but I  
4 heard the word injunctive relief used multiple times, but  
5 there's nothing to enjoin. Then I heard things like recall.  
6 Product recalls forcing the company, I guess, to engage in  
7 print media or online media or whatever. I would just say to  
8 that, I don't think there's any evidence in the record that  
9 even indicates whether the States have the authority to do  
10 that. I don't think there's any -- you said you looked at the  
11 complaints. I don't think I saw any relief like that in those  
12 complaints, that they were asking for product recalls or -- or  
13 advertising or something like that.

14           And on the issue of advertising, there's nothing, I  
15 suppose, that would stop the States if they want to start some  
16 campaign claiming that these are unsafe products and you should  
17 throw them out or not use them. I don't think there's anything  
18 that would stop that. So to me, that's a long way of saying I  
19 didn't hear anything that really suggested that this is  
20 anything other than an issue of pecuniary interest. And I  
21 don't think otherwise. These other points about recalls and  
22 the like, I don't -- I just don't think there's any evidence  
23 before the Court that would suggest that the States even have  
24 that authority. And I think on our side we're doubtful that  
25 they would.

1           So there are -- well, first of all, I want to stop  
2 and make sure I answered your question, and then there was  
3 some other points I'd like to make if I could.

4           THE COURT: Well, I think what Mr. Malone also -- a  
5 focal point of his arguments were, again, these are actions  
6 against J&J, --

7           MR. GORDON: Yes.

8           THE COURT: -- not against this debtor. That the --  
9 the indemnification agreements, the funding agreements are not  
10 part of this record, and why are we here?

11          MR. GORDON: Well, --

12          THE COURT: These are two non-debtors at issue.

13          MR. GORDON: Yeah. Yes, so I was going to -- I was  
14 going to address those points.

15                 So on the the J&J point that it's not against the  
16 debtor, that's simply incorrect. I don't know what more to say  
17 about it. He probably said five times that this this action  
18 does not involve the debtor. One needs to only look at both  
19 complaints and know that the answer to that is -- that that  
20 assertion is wrong. Old JJCI is a party to those actions. The  
21 liability of old JJCI, as Your Honor knows full well, is now  
22 the obligation of LTL. So you can say that, I suppose, in the  
23 very technical sense that the name LTL doesn't appear as a  
24 defendant, but the party with the liability, the party that  
25 would be substituted in is LTL, as we've talked before.

1           He then says you can't create jurisdiction -- a  
2 jurisdictional hook through indemnity agreements, as if the  
3 indemnity agreements at issue here were created for the purpose  
4 of creating jurisdiction. As Your Honor well knows, the one  
5 indemnity agreement was made back in 1979. The other one with  
6 respect to the Shower and [sic] Shower -- the Shower sale,  
7 can't remember the exact date of that, but it was -- it was  
8 years before the bankruptcy filing. So to suggest that somehow  
9 agreements in the history of this company and in connection  
10 with prior restructuring -- restructurings of this company  
11 should just be ignored if they provide a basis for  
12 jurisdiction, to me, is false. The contention would have to be  
13 that they were developed for purposes of creating jurisdiction,  
14 which clearly was not the case.

15           I think another statement I heard, -- I think it was  
16 counsel for the ad hoc committee, was that, well, these claims  
17 are different because the States don't have to prove harm,  
18 unlike the talc claims. And maybe that's true, but that --  
19 that sort of misses the point because the the real point is  
20 that these -- to prevail on these claims, they have to prove  
21 that the products were dangerous or unsafe, and that goes to  
22 the core of the talc claims that are before this Court. So I  
23 didn't hear personally any argument by anyone that what can  
24 overcome the fact that the core elements of these claims are  
25 the exact same core elements as the talc claims that are before

1 the Court.

2 I heard the arguments about the indemnities and the  
3 funding agreement, and obviously Your Honor referred to that as  
4 well. I guess all I would say is number 1, John Kim's  
5 declarations provide the evidentiary basis for the indemnities.  
6 Number 2, the actual indemnity agreements themselves were in  
7 the record from the preliminary injunction hearing and the  
8 dismissal hearing as -- as I recall, the Shower to Shower and  
9 the 1979 indemnity agreement. So those agreements were  
10 available to the other side.

11 It seems to me that they knew what our contention  
12 was. They had the ability to look at the record to determine  
13 whether or not what Mr. Kim was testifying to was false, and  
14 that hasn't happened. And funding agreement has been before  
15 this Court since the first day of the case. I believe it was  
16 attached to Mr. Kim's first day declaration. So to me, to  
17 suggest that there's some sort of evidentiary issue with  
18 respect to those documents seems highly technical to me,  
19 particularly for parties that are represented by plaintiffs  
20 firms who are representing members of -- or associated with  
21 firms that are representing members of the TCC.

22 I'll try to go through this fast. Obviously, counsel  
23 for the States indicated that the funding agreement is the  
24 answer here. It's all circular. Your Honor addressed that.  
25 Your Honor knows that that's only a backstop.

1           There have been multiple statements that this is a  
2 liquidation case, a liquidating debtor with no operating  
3 business. That's belied by the fact that the company obviously  
4 owns the RAM business, the Royalty Asset Management business,  
5 which I think was valued \$375 million at the time of the  
6 bankruptcy case. There will be a reorganization in this case  
7 if there's a deal. It's not as straight liquidation. There  
8 will be a trust, but there -- there will be reorganized company  
9 that emerges from this bankruptcy filing.

10           Mr. Malone said multiple times that -- that -- well,  
11 he said a number of things. He said, number 1, this is all  
12 about protecting J&J and protecting the Bausch entities, and  
13 they're not here and therefore, there's no evidence in front of  
14 the Court that establishes a basis for the -- for the  
15 injunction. And I thought Your Honor had the right question in  
16 connection with that. This injunction is not about those  
17 parties. This injunction is about the debtor and the impact of  
18 the continuation of this litigation against the debtor. The  
19 focus is not the impact on those other two parties. So I  
20 thought your question was exactly right. Does it matter -- or  
21 would it matter what those two parties would have to say, those  
22 third parties? And the answer is no. I would submit it  
23 wouldn't.

24           His companion argument was that he -- he failed to  
25 hear any reasons or basis why this litigation would impact the

1 estate, and I thought I went through that in detail in my  
2 presentation. I thought it was laid out on a number of slides,  
3 but just to repeat, there's clearly an impact. The debtor is a  
4 party. Because of the indemnities, it's actually the real  
5 party defendant with respect to the other two parties. This  
6 case will impact -- these cases or the further prosecution of  
7 these cases will impact the bankruptcy because it will  
8 liquidate claims against the estate. We believe it will impact  
9 estimation, and let me stop there.

10           There's a suggestion that it can't impact estimation  
11 because Mr. Feinberg is not estimating these particular claims.  
12 But the point they're missing is the fundamental core of the  
13 claims he is estimating is the same fundamental core as the  
14 claims that these States want to pursue in their litigation.

15           And then again, I would submit that this will also  
16 adversely impact the mediation. Obviously the other side  
17 disagrees. I don't know. I haven't talked to the mediators.  
18 I don't know what mediators would think of that, but to me, the  
19 idea that the parties would think it would be beneficial to  
20 mediation to, in my view, effectively pause the mediation for a  
21 number of months to allow litigation to move forward somewhere  
22 else, to me, doesn't make sense.

23           And Mr. Molton said something like, well, that  
24 litigation could proceed under the guidance or the direction of  
25 this Court or some words to that effect. I don't see how that



1 can be the case. And if you allow litigation to go forward, it  
2 will go forward on a schedule set by those courts outside of  
3 this case and irrespective of where we are with mediation in  
4 our case or estimation in our case, and that, to us, is the  
5 problem.

6           And this is, -- I thought again, Your Honor asked the  
7 right question. This is a temporary stay we're talking about  
8 here. So when Mr. Malone makes statements like you don't have  
9 the ability to do this, you don't have the ability to make  
10 judgments for the States, you don't have the right to tell them  
11 what to do about injunctions or other relief, we're not asking  
12 you to do that. This relief doesn't ask you to do that. This  
13 just asks you to pause that litigation for a period of time to  
14 allow the proceeding here to move forward, and not to allow  
15 that litigation to potentially adversely impact what we're  
16 trying to accomplish in this case.

17           Mr. Malone said it's up to the States to determine  
18 what's in the public interest; that's their decision, not your  
19 decision. I think the case law belies that. I think the  
20 determination of whether what we're requesting is in the  
21 interest of the public is a decision for this Court, not for  
22 the States.

23           So, Your Honor, I think that's the core of it. I  
24 don't want to overextend my welcome. Again, I would just say,  
25 to sum up, that I didn't hear anything anyway that takes away

1 from the fact that these claims are inextricably intertwined.  
2 The core -- the core of the allegations in these claims is the  
3 same as the others. I, likewise, am puzzled by the TCC's  
4 support of this. I can't help but feeling it's just part of an  
5 overall effort by the plaintiffs generally to have some of the  
6 key issues in this case litigated outside of this forum, and I  
7 think, again, for purposes of preserving the integrity of the  
8 case, for purposes of allowing this case to proceed in an  
9 orderly way, to allow the mediation to continue to go forward  
10 effectively, to allow the estimation to go forward in an  
11 effective way, the Court should grant the relief we're seeking.

12 Thank you.

13 THE COURT: Alright, thank you, Mr. Gordon.

14 Mr. Malone, I'll let you wind up.

15 MR. MALONE: This is it. I promise.

16 You know, maybe it was just a Freudian slip, but  
17 there were many times in Mr. Gordon's presentation he used the  
18 word "we". We had deadlines in the discovery. No, they don't.  
19 LTL doesn't have any deadlines. We have to spend a lot of  
20 time. LTL doesn't have to spend a lot of time. It's J&J.  
21 Okay? Last I looked, Ms. Lauria and Mr. Rosen were counsel for  
22 J&J. Okay? LTL doesn't have to spend a lot of time or  
23 anything else. It's J&J, a non-debtor before this Court.

24 The public interest here is paramount to the interest  
25 of LTL. J&J is the bad actor. That's who the States are

1 looking to -- to make sure doesn't do this again or anything  
2 else. LTL is not going to -- maybe they're going to be "a  
3 liquidating trust", but there's no fear of LTL putting the  
4 product back on the line. Self-policing is not what helps  
5 here. The States have a right, the States want to go forward  
6 on certain things, and the remedies under the injunctive relief  
7 when he says, well, I don't see that in this -- in the  
8 complaint. That's -- that's the equitable relief or whatever  
9 that could come as a result of the jury trials or trial -- a  
10 bench trial in those States.

11           The simple fact is you can't pause police and  
12 regulatory powers, and that gets me back to, again, the  
13 362(b)(4) argument. If it was the debtor, Johnson & Johnson,  
14 before this Court -- forget about LTL -- J&J never did the  
15 Texas Two-Step. They're here. If the States wanted to enforce  
16 regulatory powers, this Court, I think would be constrained not  
17 to allow those to proceed. It gets back to MCorp and other  
18 things. What they're asking this Court to do is use 105 to use  
19 those same type of powers and extend it. If you can't do it  
20 for a debtor, how can you do it for non-debtor?

21           With that I'll sit down.

22           THE COURT: Alright, thank you Mr. Malone.

23           I appreciate -- extremely well argued. I know, I --  
24 hopefully, I tried to challenge you all and you did extremely  
25 well.

1           I have another matter that's important to the Court  
2 that I'd like to address, so I'm going to ask that you all bear  
3 with me. It's my turn for a small PowerPoint. And it's --  
4 it's not necessarily directed at those that are sitting here,  
5 but it's important, at least in my eyes.

6           So, in reading the briefs in preparation for today's  
7 hearing, there was in one brief an opening phrase that caused  
8 the Court considerable discomfort. Subject matter jurisdiction  
9 is not for sale. That was an allegation. Well, anyone reading  
10 that statement would necessarily understand that to mean that  
11 this Court has or continues to sell its rulings and authority  
12 for some hidden benefit.

13           Putting aside Professor LoPucki's oft repeated views  
14 and, ironically, on a day in which I just approved over \$20  
15 million in professional fees, I certainly would be interested  
16 in learning what this Court has received in exchange for the  
17 assertion of jurisdiction or for this court rulings beyond a  
18 challenging, gut wrenching case requiring an extraordinary  
19 amount of time, effort and energy for both the clerk's office,  
20 my staff, and for me.

21           The danger in such a reckless, offensive, and frankly  
22 demeaning rhetoric is that it finds its way into briefs,  
23 tweets, blogs, and interviews, and often can lead to  
24 emotionally driven, and at times vulgar and violent threats  
25 communicated directly or splashed across social media

1 platforms. All of which imperils the judiciary's independence  
2 and safety. And if there is anyone here who believes that this  
3 is mere hyperbole or exaggeration, please take a look at the  
4 next accompanying slide.

5 I won't read it. And I apologize for the vulgarity,  
6 but the content was tweeted out just last month. And it's  
7 consistent with obscene tweets, voicemails, emails, and other  
8 threats that have been directed to the Court since my February  
9 decisions.

10 Now, I'm not displaying this material, to be  
11 melodramatic or looking for sympathy. Indeed, many of my  
12 colleagues on state and federal benches have borne the brunt of  
13 far more lethal attacks and harm than these words. But I do  
14 wish to reiterate what others have said about the obligation  
15 lawyers have to be aware of the impact and the potential  
16 incendiary nature of their words. Let me refer to a recent  
17 statement by the City -- New York City bar. Words and matters  
18 -- words matter and have consequences, particularly when spoken  
19 by lawyers and public leaders about contentious legal  
20 processes. In these circumstances, lawyers in particular have  
21 an important role to play in upholding not under -- and not  
22 undermining the rule of law and the independence of the  
23 judicial system.

24 In the ten months I've had this case, I have tried to  
25 be courteous and respectful to everyone appearing before me,

1 especially given I know that many of you disagree fundamentally  
2 with my rulings and my views. And if I have failed, I  
3 apologize. I guess to quote my inner Andy Reid, I must do  
4 better. I have said before, I admire zealous advocacy,  
5 especially with such emotionally charged issues. I do expect,  
6 however, that all counsel and parties be cognizant of their  
7 their language's impact, and demonstrate respect and  
8 professionalism towards this Court and each other.

9 Thank you. Court adjourned.

10 Good luck to you all in Philly.

11 UNIDENTIFIED MALE SPEAKER: Thank you, Judge.

12 MR. MALONE: Judge, before you leave the bench, --

13 THE COURT: Yes?

14 MR. MALONE: -- because I think this becomes an  
15 important issue. You made a comment this morning that you were  
16 going to reserve decision.

17 THE COURT: Yes.

18 MR. MALONE: And as we know, there is an injunction  
19 pursuant to that consent order in place, and the question has  
20 been asked is, is there an intent to issue a ruling before the  
21 Third Circuit argument, after the Third Circuit argument? It  
22 comes down to -- and the reason why I raised the question is  
23 when it's a temporary injunction the Court only has so long to  
24 react.

25 THE COURT: I recognize that. What does the TRO say?

1 It was a consensual TRO.

2 MR. MALONE: I was --

3 THE COURT: Does it say through the --

4 MR. MALONE: I was not -- I was --

5 THE COURT: -- through the ruling?

6 MR. MALONE: Well, that's what I --

7 THE COURT: That's what I thought.

8 MR. MALONE: I don't know if it's -- I don't have it  
9 in front of me.

10 THE COURT: Let me --

11 MR. MALONE: I obviously wasn't the one who  
12 negotiated it, --

13 THE COURT: Yeah.

14 MR. MALONE: -- because I wasn't here at the time.

15 THE COURT: Let me try to put everybody at ease.

16 MR. MALONE: I'm looking more for clarification.

17 THE COURT: We're good here in my chambers. We're  
18 not that good. I'm not going to get an opinion out by -- by  
19 Monday.

20 MR. MALONE: No one -- okay.

21 THE COURT: But I do intend to have it -- I'm  
22 shooting for the next week or two.

23 MR. MALONE: All right. Because what someone would  
24 say is -- there was a request, of course, this morning when we  
25 started to carry this through to October. So that if the

1 Court's decision, let's say, was gonna come out December --

2 THE COURT: It would have the same impact.

3 MR. MALONE: Exactly.

4 THE COURT: They would have gotten what they -- what  
5 I denied.

6 MR. MALONE: Exactly. A pocket veto type of thing or  
7 whatever.

8 THE COURT: Sometimes I'm thinking.

9 MR. MALONE: Yeah, I know. You do.

10 THE COURT: I got it. But no. Again, I'm going to  
11 try to get it out in the next couple of weeks.

12 MR. MALONE: All right. That's --

13 THE COURT: If there's an issue, contact James and  
14 we'll have a call on it.

15 MR. MALONE: No, I was just being asked questions, --

16 THE COURT: Yeah. No, it's a fair question.

17 MR. MALONE: -- and I figured while we're all here.

18 THE COURT: I should -- I should have brought it up.

19 MR. MALONE: Okay.

20 THE COURT: And you asked it so politely. Thank you.

21 MR. MALONE: Ah-ha. I see.

22 THE COURT: Take care.

23 MR. MORTON: Thank you, Your Honor.

24 THE COURT: Thank you.

25 UNIDENTIFIED MALE SPEAKER: Thank you, Your Honor.



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UNIDENTIFIED MALE SPEAKER: Thank you, Your Honor.

\* \* \* \* \*

**C E R T I F I C A T I O N**

WE, KAREN K. WATSON, DIPTI PATEL, LIESL SPRINGER and  
CYNDI POND, court approved transcribers, certify that the  
foregoing is a correct transcript from the official electronic  
sound recording of the proceedings in the above-entitled matter  
and to the best of our ability.

/s/ Karen K. Watson

KAREN K. WATSON

/s/ Dipti Patel

DIPTI PATEL

/s/ Liesl Springer

LIESL SPRINGER

/s/ Cyndi Pond

CYNDI POND

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