

INSIGHTS

LTL Management Texas Two Steps into New Jersey Bankruptcy Court

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Judge Craig Whitley's recent transfer of the LTL Management case will bring a high-profile "Texas Two-Step" chapter 11 bankruptcy to New Jersey, and it may open a new chapter in how courts approach the novel transaction designed to isolate and address certain mass-tort liabilities.

Debtor LTL Management LLC filed for chapter 11 protection in the Western District of North Carolina on October 14, 2021 after its parent, pharmaceutical giant Johnson & Johnson, undertook a corporate restructuring that consolidated certain talc-related tort liabilities into the debtor. LTL's filing was the latest and highest-profile example of the combined restructuring and bankruptcy transaction that has come to be known as the "Texas Two-Step."

The Texas Two-Step transaction is designed to isolate mass-tort liabilities and address them through the Bankruptcy Code. The first step, a corporate restructuring, harnesses an unusual provision of Texas corporate law to divide an existing corporate entity into two successors: one entity intended to continue operations, and the other to house primarily the tort liabilities. Once these liabilities are isolated, the newly created entity holding the tort liabilities files for bankruptcy.

Cases featuring a Texas Two-Step include *Bestwall LLC*, *Aldrich Pump LLC*, *Murray Boiler LLC*, and *DBMP LLC*. Each of these was filed in the U.S. Bankruptcy Court for the Western District of North Carolina, a district with experience addressing asbestos claims and the associated litigation. The LTL Management case was filed in the same district and assigned to Judge Craig Whitley.

But in a November 16, 2021 order, Judge Whitley elected to transfer the LTL Management case to the U.S. Bankruptcy Court for the District of New Jersey. Judge Whitley's decision cited the case's strong connection to New Jersey. The Debtor maintains key employees and potential witnesses in the state. Thousands of ovarian cancer cases have also been centralized into a multi-district litigation that is pending in New Jersey against the Debtor and J&J. In contrast, Judge Whitley noted that many of the Debtor's connections to North Carolina appeared to be manufactured as part of the corporate restructuring on the eve of the bankruptcy filing.

The new venue could set the LTL Management case on a different course from previous Two-Step filings in North Carolina. For example, on December 1, 2021, the Official Committee of Talc Claimants moved to dismiss the case as a bad-faith bankruptcy filing. The Committee argues

that the Third Circuit (which includes New Jersey) allows courts to dismiss cases more readily and applies a less stringent test for a bad-faith filing than has been previously applied in North Carolina and the Fourth Circuit (which includes North Carolina). The motion to dismiss is set for a hearing before New Jersey Judge Michael B. Kaplan on February 15, 2021.

We will continue to monitor this latest twist to the Texas Two-Step, analyze its repercussions, and provide updates as appropriate.