



WILL Texas Two-Step
REMAIN PART OF RESTRUCTURING'S
MASS TORT DANCE ROUTINE?



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How mass torts may be addressed through a bankruptcy process is a topic garnering significant academic and practical attention, but for which there is no easily identifiable solution. Although a fundamental goal of U.S. bankruptcy laws is to give debtors a financial fresh start from burdensome debts, outside the context of asbestos-related torts, the Bankruptcy Code lacks a clear means for companies seeking to restructure around mass tort liabilities,¹ and, indeed, mass tort liabilities can be a death blow to any potential restructuring.

Companies, nonetheless, are increasingly turning to the Bankruptcy Code and Chapter 11 to try to efficiently resolve these often inundating, and sometimes unknown, liabilities, which are arguably even more difficult to confront in the existing tort system. Without a readily prescribed means for addressing such mass torts, debtors often resort to novel applications of existing law (which may ultimately signal a need for new or revised laws). One such novel approach is the “Texas Two-Step.”

In 2017, repurposing a preexisting Texas law, Georgia Pacific underwent what is called a “divisive” or “reverse”

merger to create a new entity under Texas law, Bestwall LLC. Georgia Pacific then assigned the entirety of its asbestos liabilities to Bestwall, which promptly entered into restructuring proceedings under Chapter 11 of the Bankruptcy Code. This “two-step” framework constitutes what has come to be known as a Texas Two-Step, named for a popular dance in the American Southwest. (Ironically, none of the cases discussed in this article are pending in Texas.) In the words of Bankruptcy Judge Michael Kaplan, it may be the newest entrant in the “migration of tort litigation out of the tort system and into the bankruptcy system.”²

This maneuver was, and remains, of note because Georgia Pacific’s related annual litigation costs averaged in the hundreds of millions of dollars,³ its total asbestos liabilities measured “in the billions,”⁴ and the company has so far managed to restructure these liabilities without placing any non-asbestos-related assets into bankruptcy.⁵ This move remains a large step forward—or backward, depending on one’s perspective—in the bankruptcy mass torts toolkit.

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Unsurprisingly, the restructuring community at large took interest in the case and continues to watch as other companies copy, and expand on, the strategy outlined in *In re Bestwall*.⁶ This article highlights the current state of the Texas Two-Step, clarifies common misconceptions about this new twist in the ongoing legal dance around mass torts, notes several of its potential benefits, and provides insight into its uncertain future.

Learning the Moves

How Does a Two-Step Function?

The Texas Two-Step first emerged in 2017, but the law on which it relies has been around for over 30 years.⁷ Section 10.008 of the Texas Business Organizations Code (TBOC) permits an existing company to divide itself into two or more new entities without technically requiring a transfer of assets.⁸ This is because Texas law defines “merger” to include not only the traditional meaning of the word but also its reverse: when an existing company divides into two or more entities.

Bestwall pioneered a restructuring approach whereby a company briefly reincorporates in Texas, undergoes a divisional merger pursuant to TBOC Section 10.008 (causing said company to cease to exist), and two new entities emerge from the paperwork. One entity, BadCo, is saddled with the now defunct company’s asbestos liabilities⁹ and the other, GoodCo, receives virtually all of the previous company’s operating assets, employees, and ongoing business. These new entities are then free to

immediately reincorporate wherever and in whatever form they desire.¹⁰

BadCo ultimately files for bankruptcy, while GoodCo continues operations, avoiding any stigma or legal requirements¹¹ associated with Chapter 11 of the Bankruptcy Code. To complete the two-step process, BadCo indemnifies GoodCo against related claims, while GoodCo enters into a funding agreement to backstop BadCo’s liabilities, hopefully to establish a basis to refute fraudulent transfer claims.

Is a Two-Step Subject to Fraudulent Transfer Actions?

One commonly claimed advantage of the Texas Two-Step is that it dances around fraudulent transfer laws and Section 548 of the Bankruptcy Code (as opposed to more typical spin-off strategies that fail to do so)¹² because, under the TBOC, a merger occurs “without . . . any transfer or assignment having occurred.”¹³ However, developing case law changes that assumption.

For example, each of the well-known opinions involving a Texas Two-Step (*Bestwall*, *In re DMBP*, and *In re Aldrich Pump*) asserts that fraudulent transfer laws are applicable to divisional mergers effectuated under the Texas statute.¹⁴ Judge Craig Whitley’s opinions from *DMBP* and *Aldrich Pump* discuss the applicability of such laws at length and explicitly state that “if a corporation uses a divisional merger to dump its liabilities into a newly created ‘bad’ company which lacks the ability to pay creditors while its ‘good’ twin corporation walks away with the enterprise’s assets, a fraudulent transfer avoidance action lies.”¹⁵

In re LTL Management, LLC, Johnson & Johnson’s ongoing Texas Two-Step case, has not yet addressed the issue, but Judge Kaplan notes that “to the extent Debtor’s actions drift [in the direction of a scheme to hinder, delay, and defraud talc powder creditors], this Court is prepared to take swift action and will honor its commitment of ensuring that claimants receive fair and timely compensation under a comprehensive and transparent distribution scheme.”¹⁶

Similarly, the TBOC states that a company may not use a divisional merger to prejudice its creditors,¹⁷ and Curtis Huff, a primary author of the merger statute,¹⁸ clarifies that the rights of creditors under fraudulent transfer laws apply to divisional mergers. In relevant part, Huff explains that although “a merger will not involve a ‘transfer’ of assets in the traditional sense,” the “allocation of assets in a merger should constitute both a ‘transfer’ and ‘conveyance’ of assets under both the letter and spirit of the [Uniform Fraudulent Transfer Act], the [Uniform Fraudulent Conveyance Act] and the Bankruptcy Code.”¹⁹ The applicability of such fraudulent transfer laws is further supported by the statute’s legislative history.²⁰

Where Do Claimants Stand? Most claimants involved in ongoing litigation over the validity of the Texas Two-Step are opposed to its use, and creditor groups have asserted several theories in support of this opposition. Currently, there is an ongoing fraudulent transfer action²¹ and a pending derivative breach of fiduciary duty action in *DBMP*²² and motions to consolidate

the debtor and non-debtor entities pending in both *DBMP*²³ and *Aldrich Pump*.²⁴ Claimants in each case first had to prove that they had derivative standing to bring claims on behalf of the estate, which was initially unclear,²⁵ but the court has continued to uphold creditors' standing in each case.²⁶

As of the writing of this article, the debtors in *DBMP* have filed a motion to dismiss the creditors' fraudulent transfer claims, and a hearing was scheduled for June 21, 2022.²⁷ If the creditors prove successful in their claim, a similar argument in *Aldrich Pump* is all but certain to be raised, given that the two cases have the same judge and present similar issues.

As in those cases, creditors in *LTL Management* have stated their "intention to seek standing to bring fraudulent conveyance claims" against non-debtor entities.²⁸ Following the standing disputes in *DBMP* and *Aldrich Pump*, *LTL* offered to consent to creditors' derivative standing to pursue claims relative to the divisive merger;²⁹ however, no motion has yet been filed. Judge Kaplan's denial of creditors' motion to dismiss *LTL Management* as a bad faith filing is currently set for direct review by the 3rd U.S. Circuit Court of Appeals, but no hearing date has been set as of the

writing of this article.³⁰ It remains to be seen whether *LTL Management* will mimic the course of litigation set forth in *DBMP* and *Aldrich Pump*.

Does the Texas Two-Step Actually Work? Whether the Texas Two-Step would work may depend on whether a company's end goal is to achieve an expeditious reorganization in bankruptcy or to simply cause delay, and even then, success remains uncertain. For example, *Bestwall*, the original Texas Two-Step restructuring, has now been in Chapter 11 proceedings for over five years without a confirmed plan; however, multiple plans have been put forth, a billion-dollar settlement trust was approved to be funded in September of 2020,³¹ and courts continue to uphold the preliminary injunction prohibiting claims against the non-debtor entity.³²

The case is currently embroiled in a dispute regarding potentially widespread fraud alleged to have been perpetuated by certain plaintiffs and their lawyers in *Bestwall's* prepetition claims settlements,³³ but the Texas Two-Step's framework has largely proven successful (though some would argue to the tort system's detriment), and hope remains for a positive resolution.

Despite *Bestwall's* achievements with the Texas Two-Step, the previously discussed claims in *DBMP*, *Aldrich Pump*, and *LTL Management* threaten to overturn the framework of the Texas Two-Step itself, at least in the Western District of North Carolina and in the 3rd Circuit. Assuming fraudulent transfer laws are applicable, the strategy's main benefit—other than strategic delay and leverage against creditors, which some critics assert is the real point

of the Texas Two-Step³⁴—appears to be in keeping non-asbestos assets out of Chapter 11 while selectively reaping the benefits thereof.³⁵ Whether this selective use of Chapter 11 is impermissibly prejudicial to claimants is a pending issue in a number of courts, but it arguably meets the fundamental goal of federal bankruptcy laws in giving debtors a fresh start.

Any of the previously mentioned benefits would be defeated by a determination of bad faith, fraudulent transfer, or substantive consolidation of the debtor and non-debtor entities. Accordingly, the debtors in *DBMP* deemed it necessary to alter their Texas Two-Step strategy and bolster their initial funding agreements to convince creditors that they would not be denied access to the non-debtor entity's assets.³⁶ Similarly, Johnson & Johnson chose to prefund its qualified settlement trust with over \$2 billion to "eliminate any doubt regarding the Debtor's financial ability to pay legitimate claims."³⁷ Nonetheless, the majority of creditors remain opposed to settlement and the Texas Two-Step dance as a whole.³⁸

As noted earlier, Johnson & Johnson and its progeny, *LTL Management LLC*, have sought to restructure asbestos-related talc powder liability in perhaps the most-opposed, and most-discussed, Texas Two-Step. This case raises another source of uncertainty, in that its initial venue in North Carolina (alongside *Bestwall*, *DBMP*, and *Aldrich Pump*) was removed to New Jersey.³⁹ Additionally, the 3rd Circuit has since accepted direct

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review of the New Jersey Bankruptcy Court's decision denying motions to dismiss the case as a bad faith filing and extending the preliminary injunction against non-debtors, so far permitting Johnson & Johnson to continue operations separate from any talc-related liabilities.⁴⁰

Texas Two-Step case law is largely limited to North Carolina Bankruptcy Courts, so the jurisdictional change and appellate transfer each raise questions as to how the controversial technique will be interpreted. So far, Judge Kaplan of the New Jersey Bankruptcy Court seems to approve of the Texas Two-Step's application⁴¹ and has discussed at length how Bankruptcy Courts may be the most efficient and most cost-effective forum for both debtor entities and claimants to resolve mass tort liabilities.⁴² This uncertain but hopeful sentiment reflects that of the North Carolina courts, to an extent. At a hearing in October 2021, Judge Craig Whitley described the Texas Two-Step as either a "brilliant strategy" or "manifestly unfair" but noted that he was unsure of which at the time.⁴³

Ultimately, as noted earlier, the 3rd Circuit has not yet addressed the issue, no debtor utilizing the Texas Two-Step has emerged from the restructuring process, and the technique's future will largely be determined by those cases that continue to work their way through the bankruptcy process or, potentially, by legislative action.

Next Steps

Even if pending cases affirm the viability of the Texas Two-Step, there is a chance that Congress, or even the Texas legislature, will have the last word on the issue.

U.S. Sen. Jerrold Nadler, along with other legislators,⁴⁴ has sponsored the Nondebtor Release Prohibition Act of 2021, which seeks to curtail the use of various bankruptcy tactics often employed in the mass torts context. The pending bill targets non-debtor releases, which became the subject of public debate largely due to other recent mass tort bankruptcy cases;⁴⁵ non-debtor stays; and divisional mergers.⁴⁶ If entered into law, the bill would require dismissal of any Chapter 11 case where a divisional merger was used (in the 10 years prior to its filing) to "separat[e] material assets from

material liabilities of an entity" and the debtor entity ends up holding "all or a substantial portion of those liabilities."⁴⁷

Judge Kaplan also raises the possibility of the Texas legislature taking action to clarify the extent and uses of its divisional merger scheme,⁴⁸ but no such legislation is currently pending at the time of writing this article.

Conclusion

Although the Texas Two-Step is essentially a legal fiction based on an interpretation of the TCBO that the Texas legislature almost certainly never predicted would be used in this manner,⁴⁹ it nonetheless has potential for use as an efficient means for large and otherwise solvent companies to restructure asbestos liabilities without detriment to their ongoing business, while potentially providing creditors access to the same pool of assets.

To date, Judge Whitley's description of the Texas Two-Step as either "brilliant strategy" or "manifestly unfair" appears reflective of the judicial and academic view of this mass tort bankruptcy dance, though creditors and the general public remain largely opposed in both concept and practice. Whether Chapter 11 and the Texas Two-Step will continue as an option for resolving asbestos-related mass torts, or potentially other mass torts, remains an open question, but the dance itself is indicative of the rising trend toward addressing mass torts through novel bankruptcy processes instead of the traditional tort system. ■

¹ Some non-asbestos-related mass tort restructurings have used a Bankruptcy Court's Section 105(a) powers to implement procedures that mirror those provided for in Bankruptcy Code Section 524(g)—which specifically relates only to asbestos claims that are channeled to a trust—but the appropriateness of this use of a Bankruptcy Court's Section 105(a) powers remains to be seen. See, e.g., *In re PG&E Corp.*, 617 B.R. 671 (Bankr. N.D. Cal. 2020); *In re Purdue Pharma, L.P.*, 635 B.R. 26 (S.D.N.Y. 2021) (debating whether such actions were appropriate).

² "What the Court regards as folly is the contention that the tort system offers the only fair and just pathway of redress and that other alternatives should simply fall by the wayside. . . . There is nothing to fear in the migration of tort litigation out of the tort system and into the bankruptcy system." *In re LTL Management, LLC*, Case No. 21-30589, Dkt. No. 1572 at 27 (Bankr. D.N.J.).

³ *In re Bestwall LLC*, Case No. 17-31795, Dkt. No. 12 at 12 (Bankr. W.D.N.C.).

⁴ *In re Bestwall LLC*, Case No. 17-31795, Dkt. No. 919 at 10 (Bankr. W.D.N.C.).

⁵ *In re Bestwall LLC*, 606 B.R. 243,

248 (Bankr. W.D.N.C. 2019).

⁶ 606 B.R. 243, 248 (Bankr. W.D.N.C. 2019).

⁷ Compare Tex. Bus. Corp. Act Ann. Art. 5.06A(2), (3) (Vernon Supp. 1990) with Tex. Bus. Orgs. Code Ann. § 10.008(a)(2), (3).

⁸ Tex. Bus. Orgs. Code Ann. § 10.008(a)(2). Other states have since enacted similar statutes. See, e.g., 15 PA. CONS. STAT. § 361; ARIZ. REV. STAT. ANN. § 29-2601; DEL. CODE ANN. tit. 6, § 18-217(b)-(c).

⁹ Use of the Texas Two-Step has so far been limited to resolving asbestos-related liabilities. This is largely because the relevant non-debtor entities have structured their funding agreements to channel claims into a specific type of trust available for resolving liability involving "asbestos or asbestos-containing products." See 11 U.S.C. § 524(g).

¹⁰ See, e.g., *In re DBMP LLC*, 2021 Bankr. LEXIS 2194, *27 (Bankr. W.D.N.C. 2021) ("In total, [the non-debtor entity] and [the debtor entity] were Texas entities for less than four hours."); *In re Aldrich Pump LLC*, 2021 Bankr. LEXIS 2294, *35 (Bankr. W.D.N.C. 2021) ("All told [the non-debtor entity] and [the debtor entity] were Texas entities for less than 24 hours. ").

¹¹ See, e.g., *In re DBMP LLC*, 2021 Bankr. LEXIS 2194, *59 (Bankr. W.D.N.C. 2021) (acknowledging the concerns of the claimants' representatives that the non-debtor entity was afforded Chapter 11 protections (the automatic stay and access to section 524(g)) without being subject to the corresponding creditor protections imposed by the Code (the absolute priority rule, debtor transparency, and court supervision)).

¹² See, e.g., *In re Tronox*, Case No. 09-01198, Dkt. No. 622 (Bankr. S.D.N.Y.).

¹³ Tex. Bus. Orgs. Code Ann. § 10.008(a).

¹⁴ See *In re Bestwall LLC*, 606 B.R. 243, 248 (Bankr. W.D.N.C. 2019); *In re DBMP LLC*, 2021 Bankr. LEXIS 2194, *65-66 (Bankr. W.D.N.C. 2021); *In re Aldrich Pump LLC*, 2021 Bankr. LEXIS 2294, 70* (Bankr. W.D.N.C. 2021).

¹⁵ *In re Aldrich Pump LLC*, 2021 Bankr. LEXIS 2294, *80 (Bankr. W.D.N.C. 2021); *In re DBMP LLC*, 2021 Bankr. LEXIS 2194, *65-66 (Bankr. W.D.N.C. 2021).

¹⁶ *In re LTL Management LLC*, Case No. 21-03032, Dkt. No. 184 at 21 (Bankr. D.N.J.).

¹⁷ The merger provisions under the Texas statute do not "abridge any right or rights of any creditor under existing laws." Tex. Bus. Orgs. Code Ann. § 10.901.

¹⁸ Curtis Huff was a member of the subcommittee of the Corporation Law Committee of the Business Law Section of the State bar of Texas that drafted the relevant amendments to the merger provisions of the Texas Business Organizations Code Annex. *In re Aldrich Pump LLC*, 2021 Bankr. LEXIS 2294, *77 (Bankr. W.D.N.C. 2021).

¹⁹ Curtis Huff, "The New Texas Business Corporations Act Merger Provisions," 21 ST. MARY'S L.J. 109, 129 (1989).

²⁰ Relevant legislative history states that "[c]reditors' rights would not be adversely affected by the [merger statute], and creditors would continue to have the protections provided by the Uniform Fraudulent Transfer Act and other existing statutes that protect the rights of creditors." *In re Aldrich Pump LLC*, 2021 Bankr. LEXIS 2294, *76-77 (Bankr. W.D.N.C. 2021) (citing H. COMM. ON BUS. & COM., BILL ANALYSIS, H.B. 472, 1989 Leg., 71st Reg. Sess., at 23 (Tex. 1989)).

²¹ *In re DBMP LLC*, Case No. 20-30080, Dkt. No. 1296 (Bankr. W.D.N.C.).

²² *In re DBMP LLC*, Case No. 20-30080, Dkt. No. 1297 (Bankr. W.D.N.C.).

²³ *In re DBMP LLC*, Case No. 20-30080, Dkt. No. 1005 (Bankr. W.D.N.C.).

²⁴ *In re Aldrich Pump LLC*, Case No. 20-30608, Dkt. No. 851 (Bankr. W.D.N.C.).

²⁵ See *In re Aldrich Pump LLC, 2021 Bankr. LEXIS 2294, *82-*85* (Bankr. W.D.N.C. 2021).

²⁶ See, e.g., *In re Aldrich Pump LLC*, Case No. 20-30608, Dkt. No. 1121 (Bankr. W.D.N.C.) (granting derivative standing to challenge the Texas Two-Step transaction); *In re Aldrich Pump LLC*, Case No. 20-30608, Dkt. No. 1121 (Bankr. W.D.N.C.) (denying the debtors' motion to clarify the scope of claims creditors are permitted to bring under their derivative standing); "Judge Whitley Denies Motions to Dismiss DBMP Asbestos Claimants' Substantive Consolidation Action to Unravel 'Texas Two-Step,'" REORG RESEARCH (February 10, 2022), app.reorg.com/v3#/items/intel/6185?item_id=158225 (noting that Judge Whitley refused to consider his prior ruling granting asbestos claimants' standing).

²⁷ *In re DBMP LLC*, Case No. 20-30080, Dkt. No. 38 (Bankr. W.D.N.C.).

²⁸ *In re LTL Management LLC*, Case No. 21-30589, Dkt. No. 1559 at 1 (Bankr. D.N.J.).

²⁹ *In re LTL Management LLC*, Case No. 21-30589, Dkt. No. 1572 at 55-56 (Bankr. D.N.J.).

³⁰ *In re LTL Management LLC*, Case No. 22-8015, Dkt. No. 12-1 (3d. Cir. 2022).

³¹ *In re Bestwall LLC*, Case No. 17-31795, Dkt. No. 1398 (Bankr. W.D.N.C.).

³² *In re Bestwall LLC*, Case No. 17-31795, Dkt. Nos. 245, 246 (Bankr. W.D.N.C.).

³³ See *In re Bestwall LLC*, Case No. 17-31795, Dkt. No. 2526 (Bankr. W.D.N.C.).

³⁴ Audio Tape: Abusing Chapter 11: Corporate Efforts to Side-Step Accountability Through Bankruptcy, held by the United States Senate Judiciary Subcommittee on Federal Courts, Oversight, Agency Action, and Federal Rights, at 01:14:55 (Feb. 8, 2022) (available at: [judiciary.senate.gov/meetings/abusing-chapter-11-corporate-efforts-to-side-step-accountability-through-bankruptcy](https://www.judiciary.senate.gov/meetings/abusing-chapter-11-corporate-efforts-to-side-step-accountability-through-bankruptcy)) ("Delay is the point. This mechanism is used to stick disfavored creditors into a bankruptcy where they are stuck, in the hopes that someday they will knuckle under and agree to . . . accept pennies on the dollar . . . for the value of their claims.") (oral statement of Kevin Maclay, counsel for the official committee of asbestos claimants in the *DBMP* and *Aldrich Pump* cases); see also *In re LTL Management LLC*, Case No. 21-30589, Dkt. No. 1572 at 9 (Bankr. D.N.J.) (noting claimants' concerns that the divisional merger was "intended to force talc claimants to face delay and to secure a 'bankruptcy discount'").

³⁵ But see *In re LTL Management LLC*, Case No. 21-30589, Dkt. No. 1572 at 47 (Bankr. D.N.J.) (noting that the key burdens of Chapter 11 are transparency of assets, liabilities, and conduct, oversight of assets and expenditures, and reaching consensus with creditors, but "[g]iven what will be required to confirm a plan in this case, as well as the attention this case is receiving from the public, media, government regulators, policy makers—let alone the Court, the United States Trustee and the dozens of attorneys involved—the Court is disinclined to view any of these entities as escaping the scrutiny or burdens").



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³⁶ *In re DBMP LLC*, Case No. 20-03000, Dkt. No. 1051 (Bankr. W.D.N.C.).

³⁷ *In re LTL Management LLC*, Case No. 21-30589, Dkt. No. 3 at 3 (Bankr. D.N.J.).

³⁸ See, e.g., *In re DBMP LLC*, Case No. 20-03000, Dkt. No. 1083 at 18 (Bankr. W.D.N.C.) ("The Second Amended Funding Agreement has no legitimate business purpose. It is . . . nothing more than a litigation tactic designed to shield the Corporate Restructuring from creditor challenge and judicial scrutiny."); *In re LTL Management LLC*, Case No. 21-30589, Dkt. No. 746 (Bankr. W.D.N.C.) ("[T]he Debtor asks the Court to recognize and give its imprimatur to a Funding Agreement laden with restrictive terms, a one-sided [qualified settlement fund] Trust Agreement with further restrictive terms, and an offensively inadequate 'settlement amount' of \$2 billion.").

³⁹ *In re LTL Management LLC*, Case No. 21-30589, Dkt. No. 416 (Bankr. W.D.N.C.).

⁴⁰ *In re LTL Management LLC*, Case No. 22-8015, Dkt. No. 12-1 (3d. Cir. 2022).

⁴¹ *In re LTL Management LLC*, Case No. 21-30589, Dkt. No. 1572 at 51-52 (Bankr. D.N.J.) ("With respect to the use of the now infamous 'Texas Two-Step,' the Court finds nothing inherently unlawful or improper with application of the Texas divisional merger scheme in a manner which would facilitate a chapter 11 filing for one of the resulting new entities. This Court does not find that the rights of the talc claimants and holders of future demands are materially affected by the divisional merger. . . . If current use of the divisional merger scheme as a foundation for chapter 11 filings conflicts with Texas' legislative scheme and goals, it can be repealed or modified. Until such time that there is legislative action, I am not prepared to rule

that use of the statute as undertaken in this case, standing alone, evidences bad faith.'").

⁴² *In re LTL Management LLC*, Case No. 21-30589, Dkt. No. 1572 at 19-30, 41-48 (Bankr. D.N.J.).

⁴³ "LTL Judge Has 'Grave Concerns' J&J May Have Independent Liability for Talc Claims; Limits Relief on 'Rushed and Unprepared' TRO Request to LTL Debtor and Old JJCI," REORG RESEARCH (October 22, 2021), app.reorg.com/v3#/items/intel/6185?item_id=158225

⁴⁴ "House Judiciary Committee Votes to Send Bill to Restrict Nondebtor Releases and Prohibit 'Texas Two-Step' to Full House," REORG RESEARCH (November 3, 2021), https://app.reorg.com/v3#/items/intel/4819?item_id=159526 (The bill was "[o]stensibly introduced in response to perceived abuse of nondebtor releases in opioid bankruptcy cases such as *Purdue Pharma* and other mass tort bankruptcy cases.")

⁴⁵ See Tyler Layne, "Constitutionality of Non-Consensual Third-Party Releases in Bankruptcy Reorganization," Bloomberg Law, https://www.bloomberglaw.com/product/health/document/X42S2V68000000?resource_id=88977b9d4399e7b44389f427511e5d2c.

⁴⁶ Nondebtor Release Prohibition Act of 2021, S. 2497 (IS), 117th Cong. (2021) (available at [warren.senate.gov/imo/media/doc/DUN21578.pdf](https://www.warren.senate.gov/imo/media/doc/DUN21578.pdf))

⁴⁷ Nondebtor Release Prohibition Act of 2021, S. 2497 (IS), 117th Cong. (2021) (available at [warren.senate.gov/imo/media/doc/DUN21578.pdf](https://www.warren.senate.gov/imo/media/doc/DUN21578.pdf))

⁴⁸ *In re LTL Management LLC*, Case No. 21-30589, Dkt. No. 1572 at 52 (Bankr. D.N.J.).

⁴⁹ *In re LTL Management LLC*, Case No. 21-30589, Dkt. No. 1572 at 51-52 (Bankr. D.N.J.).