

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BOY SCOUTS OF AMERICA AND
DELAWARE BSA, LLC,¹

Debtors.

Chapter 11

Case No. 20-10343 (LSS)

(Jointly Administered)

Ref. D.I.: 5461

**DEBTORS' OBJECTION TO MOVING INSURERS' MOTION TO ADJOURN
THE HEARING TO CONSIDER APPROVAL OF DISCLOSURE STATEMENT
AND SOLICITATION PROCEDURES FOR THE THIRD AMENDED
CHAPTER 11 PLAN OF REORGANIZATION FOR BOY SCOUTS
OF AMERICA AND DELAWARE BSA, LLC**

Boy Scouts of America (the “BSA”) and Delaware BSA, LLC, the non-profit corporations that are debtors and debtors in possession in the above-captioned chapter 11 cases (together, the “Debtors”), by and through their undersigned counsel, hereby object to the *Moving Insurers' Motion to Adjourn the Hearing to Consider Approval of Disclosure Statement and Solicitation Procedures for the Third Amended Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC* [D.I. 5461] (the “Motion”)² and state as follows:

OBJECTION

This week, after months of mediation, the Debtors achieved a breakthrough with the TCC, FCR, Coalition, JPM, UCC and AHCLC—*i.e.*, every significant creditor constituency in these cases. The Debtors moved quickly to file an RSA memorializing the terms of this

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Boy Scouts of America (6300) and Delaware BSA, LLC (4311). The Debtors' mailing address is 1325 West Walnut Hill Lane, Irving, Texas 75038.

² Capitalized terms used but not defined herein shall have the meanings set forth in the Motion.

agreement [D.I. 5466], and are working diligently to file the full collection of deal documents later today. The Debtors' actions are consistent not only with their unflagging efforts to achieve a global resolution that will allow the Debtors successfully to emerge from bankruptcy and preserve their vital charitable mission, but also to keep all parties informed of their progress every step of the way. That is why, as the Moving Insurers acknowledge in their Motion, the Debtors have regularly filed revised plan documents and frequently reached out to the Moving Insurers with updated drafts and information. The Motion, however, claims that unless the Court forces the Debtors to file their amended plan (much of which is unchanged since the last version filed in mid-June) on a full 28 days' notice, the Moving Insurers will be unduly prejudiced. As explained below, this argument is premised on a false statement of the record, lacks merit, and is just another delay tactic by the Moving Insurers that threatens to derail the Debtors' hard-won progress.

The Court should deny the Motion for at least four reasons:

First, the Motion is premised on the false claim that the Moving Insurers' deadline to object to the Debtors' Disclosure Statement is July 8, giving the Moving Insurers "less than a week over a holiday weekend to review and brief objections." Mot. ¶ 17. That statement was false when written: before the Motion was filed, the Debtors agreed to extend the Moving Insurers' objection deadline by five days, to July 13. *See* Ex. A, July 1, 2021 email from Derek Abbott to Stamoulis Stamatios.³ Indeed, after filing the Motion, the Moving Insurers acknowledged their misstatement of the record by filing an amended motion to shorten notice—

³ *See also Second Amended Notice of Hearing to Consider Approval of Disclosure Statement and Solicitation Procedures for the Third Amended Chapter 11 Plan of Reorganization for Boy Scouts of America and Delaware BSA, LLC* [D.I. 5463] (providing notice of the extended Disclosure Statement objection deadline to July 13, 2021).

but not an amended Motion—which admits that “the Debtors . . . offered [] to extend the Disclosure Statement Objection Deadline to July 13, 2021.” *See* D.I. 5467 (“Amended Motion to Shorten”) ¶ 7. The Moving Insurers will have nearly twice the amount of time they claim in the Motion—11 days from the filing of the revised Plan and Disclosure Statement, rather than six—to file their objections.

Second, the Moving Insurers imply that the Debtors have acted in bad faith, asserting that the Moving Insurers were only “ostensibly” invited to attend the mediation and were improperly “excluded” from sessions between the Debtors and the Claimants’ Representatives. Motion ¶ 15. This is a distortion of the record. The Moving Insurers cite no evidence showing that the mediation—which was conducted over the course of months under the supervision of three highly qualified mediators—excluded them. To the contrary, the Debtors have participated in dozens of virtual and in-person mediation sessions with the Moving Insurers. And it is routine for mediation sessions to include a subset of participants, particularly in the context of a large, multi-party mediation. Indeed, the Debtors have frequently attended sessions including only their insurers. The Moving Insurers also admit that the Debtors promptly shared with them the results from the Debtors’ sessions with the Claimants’ Representatives. *See, e.g.*, Motion ¶ 14 (stating that “following meetings between the Debtors and the Claimants’ Representatives . . . the Debtors filed” the revised Plan and Disclosure Statement); *id.* ¶ 2 (stating that the Debtors shared a revised RSA and TDP with the Moving Insurers on June 25).⁴

⁴ The objections that the Moving Insurers make to certain terms of the Debtors’ settlement with the TCC, FCR and Coalition are not properly raised in the context of a disclosure statement objection. They also lack merit. In particular, the Debtors’ agreement to pay the Coalition’s professional fees is eminently reasonable, given that settling with the Coalition will allow the Debtors to avoid protracted litigation that could have resulted in costs and expenses far in excess of those fees.

Third, the Motion fails to identify any prejudice to the Moving Insurers justifying the requested adjournment. The Debtors filed their initial amended Plan and Disclosure Statement on March 1, 2021. Throughout the nearly five months that have followed, many of the Plan terms—including the terms most relevant to the Moving Insurers—have remained unchanged or were revised long ago. For example, the language regarding insurance neutrality, which the Moving Insurers specifically identify as “important” (*see* Motion at 3, n.2), has not changed since the June 17 Plan, which was filed more than 28 days before the July 20 hearing date. Moreover, as the Moving Insurers acknowledge, the Debtors have taken great pains to keep the Moving Insurers informed of proposed changes to the Plan, sending the Moving Insurers a revised TDP, RSA and term sheet as recently as June 25. *See* Motion ¶¶ 2, 13, 16. Additionally, the Moving Insurers have already collectively filed more than 80 pages of objections to the Debtors’ Disclosure Statement (*see* D.I. 3856 (Century’s Disclosure Statement objection); D.I. 3523 (AIG Companies’ Disclosure Statement objection); D.I. 3478 (Zurich Insurers’ Disclosure Statement objection)), undermining the claim that they will be “jammed” by the need to prepare Disclosure Statement objections without a further 28 days to do so. Motion ¶ 18. Indeed, debtors routinely amend their plans without providing 28 days’ notice with every turn.⁵ And as the Moving Insurers acknowledge, many of the changes that the Debtors have made as a result of the settlement with the TCC, FCR and Coalition simplify the Plan, further weakening any claim of prejudice. *See, e.g.*, Motion ¶ 2 (noting that “there are now one set” of TDPs “rather than two”).

⁵ *See, e.g., In re Mallinckrodt PLC, et al.*, Case No. 20-12522 (JTD) (revised disclosure statement and plan filed six days before disclosure statement hearing, and disclosure statement approved); *In re GNC Holdings, Inc.*, Case No. 20-11662 (KBO) (revised disclosure statement and plan filed eight days and three days, respectively, before disclosure statement hearing, and disclosure statement approved).

Fourth, *Imerys*, on which the Moving Insurers purport to rely, is inapt. In *Imerys*, the debtors filed a revised disclosure statement, plan, trust distribution procedures and solicitation order a mere *two days* before the scheduled disclosure statement hearing and substantially *after* the objection deadline had passed. On this basis, several parties, including the U.S. Trustee, requested an adjournment of the disclosure statement hearing. This Court granted that request for two main reasons: (i) this Court found two days' notice to be insufficient and (ii) this Court wanted the benefit of written objections. *See generally* Ex. B, Oct. 6, 2021 Hr'g Tr., *In re Imerys Talc America, Inc.*, Case No. 19-10289 (LSS) (Bankr. D. Del. 2019). Neither concern applies here, where the Debtors are filing revised documents *more than two weeks* before the proposed disclosure statement hearing and *11 days* before objections are due, and have worked diligently to provide updated drafts of documents as they became available to the Moving Insurers and other parties in interest.⁶

CONCLUSION

For these reasons, the Debtors respectfully request that the Court deny the Motion.

⁶ In light of the Debtors' agreement to extend the Moving Insurers' objection deadline to July 13, the motion to shorten notice was moot before it was filed and should have been withdrawn rather than amended. Inexplicably, the Amended Motion to Shorten continues to seek shortened notice on the false premise that the Motion needs to be heard before the Moving Insurers' non-existent July 8 objection deadline. *See* Amended Motion to Shorten Notice at 1 ("The Moving Insurers respectfully move to shorten notice . . . so that the [Motion] may be heard at a date and time convenient for the Court before the July 8, 2021 deadline to object to the Debtors' revised Disclosure Statement."); *id.* ¶ 1 ("Cause exists to shorten notice of the hearing scheduled for July 20, 2021 (with objections due on July 8, 2021)"); *id.* ¶ 4 ("The current deadline for the Disclosure Statement is July 8, 2021."). While the Debtors have chosen to respond expeditiously to the Motion so as to correct the record, the Debtors reserve the right to supplement this objection and thus object to the Amended Motion to Shorten to the extent it seeks to limit the rights of the Debtors or any other party based on an uncorrected objection deadline.

Dated: July 2, 2021
Wilmington, Delaware

/s/ Paige N. Topper

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ATTORNEYS FOR THE DEBTORS AND DEBTORS
IN POSSESSION

Exhibit A

July 1, 2021 email from Derek Abbott to Stamoulis Stamatios

Hershey, Sam

From: Abbott, Derek <DAbbott@morrisnichols.com>
Sent: Thursday, July 1, 2021 12:10 PM
To: Stamoulis Stamatios
Subject: BSA

Stam, we will not consent to the motion you described but are willing allow you an extension of the objection deadline until 7/13.

Derek

DEREK C. ABBOTT

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Exhibit B

Oct. 6, 2021 Hr'g Tr., *In re Imerys Talc America, Inc.*, Case No. 19-10289 (LSS) (Bankr. D. Del. 2019)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

IN RE: . Chapter 11
. .
IMERYS TALC AMERICA, INC., . Case No. 19-10289 (LSS)
et al., .
. .
. (Jointly Administered)
DEBTORS Wednesday, October 7, 2020
. 10:30 a.m.

Courtroom No. 2
824 North Market Street
Wilmington, Delaware 19801

TRANSCRIPT OF TELEPHONIC CONFERENCE ON MOTION TO
ADJOURN THE HEARING TO CONSIDER APPROVAL OF THE
DISCLOSURE STATEMENT FOR SECOND AMENDED JOINT CHAPTER
11 PLAN OF REORGANIZATION OF IMERYS TALC AMERICA, INC.
AND ITS DEBTOR AFFILIATES UNDER CHAPTER 11 OF THE
BANKRUPTCY CODE [DOCKET NO. 2290]
BEFORE THE HONORABLE LAURIE SELBERT SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

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For the U.S. Trustee: Linda Richenderfer
OFFICE OF THE U.S. TRUSTEE

1 (Audio Recording Begins.)

2 THE COURT: Good morning, counsel. This is
3 Judge Silverstein. We're here on the Imerys Talc
4 America, Inc. case; Case number 19-10289 for a status
5 conference and, I guess, also in response to a motion
6 to adjourn the disclosure statement hearing.

7 Ginger, can you please remind everyone of
8 the protocol for the hearing?

9 COURT CLERK: It is extremely important that
10 you put your phones on mute when you are not speaking.
11 When speaking, please do not have your phone on
12 speaker as it creates feedback and background noise
13 and it makes it very difficult to hear you clearly.
14 Also, it is very important that you state your name
15 each and every time you speak for an accurate record.
16 Your cooperation in this matter is greatly
17 appreciated. Thank you.

18 THE COURT: Okay. Thank you. Let me start
19 by saying that even before I got the motion to adjourn
20 the disclosure statement hearing, I was considering
21 having a status conference to determine where we are
22 and whether we're really prepared to go forward
23 tomorrow given that at the time that we were looking
24 for the disclosure statement hearing earlier this
25 week, it had not been filed, the amended disclosure

1 statement, which I envisioned would have to come given
2 that I had been working off of the previous disclosure
3 statements and documents that were filed, I think
4 around August 12th and as we all know, there were
5 developments that happened since that time.

6 So, that is to say that I am somewhat
7 amenable to moving the hearing. So, let me start with
8 Ms. Posin, if you are going to be addressing this or
9 whoever from the debtor's side is going to be
10 addressing why we're in a position to go forward with
11 the disclosure statement hearing given that the
12 objections that I have are geared toward a disclosure
13 statement that's no longer relevant.

14 MS. POSIN: Yes, Your Honor. Good morning.
15 Kim Posin of Latham and Watkins, counsel for the
16 debtors.

17 Your Honor, as you noted several times in
18 this case and more recently in the last couple of
19 months, the debtors continue to believe that it's in
20 the best interest of their estate to move these cases
21 forward. We have been in bankruptcy now for 20 months
22 and therefore, we would request that the Court permit
23 the debtors and the planned proponents to proceed with
24 the disclosure statement hearing tomorrow and allow
25 the debtors to send the second amended disclosure

1 statement and plan out for voting.

2 The hearing scheduled for tomorrow relates
3 solely to the adequacy of the disclosures in the
4 disclosure statement and of course any and all
5 objections from any of the parties that have objected
6 thus far to the content of the plan of the adequacy of
7 the concepts that are laid set forth in the plan, of
8 course are completely reserved and can be addressed at
9 confirmation.

10 The debtors, as the Court just noted, did
11 file our initial plan of disclosure statement back on
12 May 15th, almost five months ago now. We did file a
13 amended plan of disclosure statement on August 12th,
14 almost two months ago, and of course we did file our
15 original TDP and the trust agreement 27 days ago on
16 September 10th.

17 As the Court is -- is going to hear this
18 morning and saw in the papers that the movants filed,
19 after working through revisions with each of the other
20 planned proponents over the last 10 days or so since
21 the Court entered the order denying J&J's stay motion,
22 as well as with settling parties, Rio Tinto and
23 Zurich, the debtors filed our amended plan of
24 disclosure statement and an amended TDP that the Court
25 noted on Monday.

1 However, I think the important note is if
2 you look at the black lines that were filed with all
3 three of those documents on Monday, which I'd
4 certainly be happy to walk the Court through as
5 appropriate, you will see very clearly there were
6 very, very minimal changes made from the prior
7 documents. With respect to the plan of disclosure
8 statement, the only substantive revisions included the
9 following: one is revising a handful of definitions
10 simply to conform to the definitions that were used in
11 the TDP that was filed on September 10th.

12 The second, as the Court has already noted,
13 are revisions to reflect the denial of the J&J stay
14 motion. That -- that hearing was held on September
15 23rd, the order was entered September 25th, not that
16 long ago, and removing the J&J protocol order language
17 from the plan of disclosure statement as a result of
18 the denial of J&J's motion, and adding a preservation
19 of rights with respect to J&J, which is substantially
20 similar to the treatment of J&J that was set forth in
21 the May 15th plan that has been outstanding for, again,
22 almost five months.

23 The third substantive revision is the
24 revision to the timeline. Of course, because our
25 original disclosure statement was set to be heard back

1 in June and now our disclosure statement may not be
2 heard, you know, until tomorrow or later, we course
3 had to address the confirmation timeline accordingly
4 and -- culminating in a currently planned confirmation
5 hearing on December 17th and then finally, we disclosed
6 that we are proceeding with mediation, which we are
7 pleased to report to the Court with another insurance
8 company, XL (phonetic) Insurance Company, later this
9 month and we are in discussions with other insurers to
10 also proceed with mediation with them as well.

11 That's it. That's the full -- that's the
12 sum of all of the changes. I know the movants say
13 that the changes are dramatic, but that's it and as
14 far as the TDP's, it's exactly the same. The only
15 substantive changes made to the TDP from the original
16 version that was filed September 10th is to remove the
17 J&J protocol language and to make it clear that J&J
18 stay motion was denied by this Court.

19 As the movants noted in their motion and the
20 Court has already noted today, it should be no
21 surprise to anybody, certainly nobody on this call or
22 any of the movants, or any of the joining parties,
23 that the disclosure statement and plan had to be
24 revised to reflect the denial of J&J's stay motion.

25 I think it's also worth noting, Your Honor,

1 that the movants here putting it by the joining
2 parties, which I'll get to in a minute, are J&J, which
3 is a co-defendant and indemnitor and several insurance
4 companies and to be clear, none of the insurers, to my
5 knowledge, have liquidated claims against these
6 estates and likely want to be to vote on the plan and
7 as to J&J, they did file a 20 million dollar indemnity
8 claim, which we have objected to and we have asked the
9 Court to disallow that claim in full.

10 As to the insurers specifically, they will
11 all receive full neutrality under the terms of the
12 plan. Those neutrality provisions are set forth very
13 clearly in the plan and they are found in Section
14 11.4. They have not changed since the original plan
15 was filed five months ago -- are identical. They are
16 substantially identical to other similar neutrality
17 provisions that have been approved multiple times in
18 the Third Circuit and they ensure that the rights of
19 each of the insurers are fully preserved.

20 In any event, if any of the insurers do not
21 agree with the scope or substance of those neutrality
22 provisions despite all of the things that I just
23 noted, then they have a full and fair opportunity to
24 raise those issues with the Court at confirmation.

25 Now, as to J&J, the operative plan documents

1 now provide that all J&J's rights and obligations to
2 the debtors will simply be transferred to the trust,
3 along with all of the rest of the debtors remaining
4 Talc assets. This treatment is also substantially
5 similar to the treatment that J&J received under the
6 original May 15th plan and provides as follows, and I
7 want to -- I want to quote because I think this is
8 important. The plan provides, quote, "subject to
9 section" -- currently -- Subject to Section 11.5.5 of
10 the plan, which relates to the Rio Zurich settlement,
11 nothing contained in the plan, the plan documents,
12 which include the TDP or the confirmation order
13 including any provision that purports to be
14 (indiscernible) shall in any way operate or have the
15 effect of impairing, altering, supplementing,
16 changing, expanding, decreasing, or modifying the J&J
17 indemnification rights and obligations and Section
18 7.7E of the plan further provides that for all issues
19 relating to J&J's indemnification rights and
20 obligations, the provisions, terms, conditions, and
21 limitations of any agreements underlying the J&J
22 indemnification rights and obligations shall control.

23 So, again, Your Honor, to the extent that
24 J&J has any concerns with the substance of those
25 preservation provisions, they will have a full and

1 fair opportunity to discuss that with Court at
2 confirmation. It doesn't affect the adequacy of the
3 disclosures, which is the sole purpose of the hearing
4 tomorrow.

5 Now, you know, we had originally included
6 very similar language as I noted, frankly less
7 protective language than is in the plan now in our May
8 15th plan disclosure statement. The only reason why we
9 ever changed those provisions in our August 12th plan
10 of disclosure statement was because we had all of the
11 parties that are on this call today or many of them,
12 certainly the movants, demanding that we do so in
13 order to reflect J&J's stay motion. Based on those
14 objections, we did that. Now that the Court has
15 denied that motion, we've reverted back to our
16 original plan, which is to preserve those rights for
17 determination at -- at a later date, and again, to the
18 extent J&J has concerns, they can raise those at
19 confirmation.

20 As to the joining parties, so, late last
21 night and then five minutes before this hearing, I saw
22 that there were two plaintiffs groups, ad hoc groups,
23 that (indiscernible) joinders. As to the joinder that
24 was filed late last night, the joining party, which
25 appears to be a law firm represented by another law

1 firm, I don't know that law firm -- I presume that
2 original law firm, the movants, or the joining party,
3 has -- represents plaintiffs, but I don't understand
4 how that law firm itself has standing, but in any
5 event, nobody has reached out to us. We heard from
6 these folks, both groups, back in June when they filed
7 their original objection to our May disclosure
8 statement and plan. I have not heard a word from them
9 since. They have not filed anything in these cases
10 until the documents were filed last night and this
11 morning and as the Court asked me at the hearing two
12 weeks ago, I think -- it must've been two weeks ago,
13 whether we had engaged in other parties and I told the
14 Court, call me, my number and my email address are on
15 all of our papers, call me. Let's talk. I haven't
16 heard a word. Nobody on this -- on this phone -- on
17 this call today or at least that I can see on this
18 Zoom have reached out and that includes the ad hoc
19 groups. I haven't heard a word from them since June.

20 So, for all these reasons, Your Honor,
21 because we don't believe that the plan of disclosure
22 statement -- what we've heard today or what we've
23 heard in the motion is that parties need additional
24 time because we've made substantive changes to the
25 documents. That's simply not true. All we did was

1 reflect the Court's September 23rd ruling and to revert
2 back to preservation of J&J's indemnification rights
3 to be dealt with at a later date with a trust. That's
4 all we did and as such, because we believe that the
5 plaintiff's groups are adequate -- let me take a step
6 back. There is one voting class here. There is one
7 impaired class of voting. That is the class of Talc
8 personal injury claimants, which is the vast majority
9 of which, if not all, is made up of direct Talc
10 claimants. Those direct Talc claimants are ably
11 represented by a committee of 11 members, of which
12 selected by United States Trustee back in 2019 and it
13 adequately represents the interest of both
14 (indiscernible) ovarian cancer claims and
15 (indiscernible). To the extent the draining parties
16 believe that they know something better or different
17 that those 11 members, they have a full and fair
18 opportunity to ask the United States Trustee to put
19 them onto the committee.

20 We have a committee in these cases, in
21 Chapter 11 cases for a reason, and we believe that
22 this committee adequately represents the rights of
23 those parties. Certainly, parties have an ability to
24 come in. We are not objecting to that ability and
25 those folks certainly have done so, but we have spent

1 a significant amount of time negotiating the plan of
2 disclosure statement with -- with the committee and
3 with the FCR, which represents the future claimants in
4 this case and all of them -- or the committee and the
5 FCR and also the (indiscernible) in the non-debtor
6 affiliates fully support this plan. They believe that
7 it is appropriate under the circumstances and it is in
8 the best interest of their constituents and it should
9 go out to vote.

10 My understanding is they also do believe
11 ultimately, despite what you may have seen in the
12 joining parties that filed their documents last night
13 and this morning, they do believe that the vote --
14 that the plan in the statement will be well received
15 and that they will be able to achieve the vote that is
16 required by Section -- by 24G of the plan -- oh,
17 sorry, the bankruptcy code.

18 So, for all of those reasons, Your Honor, we
19 don't see a reason why we should not, you know,
20 proceed with the hearing tomorrow.

21 MS. RICHENDERFER: Your Honor, if I could?
22 This is Linda Richenderfer from the Office of the
23 United States Trustee. I wanted to make it clear that
24 while we have not filed anything, we do join in the
25 request also, that the hearing be adjourned, I -- Ms.

1 Sarcasion (phonetic) and I were discussing the
2 situation we found ourselves in yesterday and we're
3 going to reach out to the Court with an email copy to
4 everyone and we were beaten to the punch, so to speak.
5 So, no need to join in a request that it be adjourned
6 since this hearing was going forward today.

7 So, I just want to make it clear that the
8 U.S. Trustee also believes that this needs to be
9 adjourned. We barely had time to look at the black
10 lines and U.S. Trustee's objection was two-fold. It
11 was based on the fact that the disclosure statement
12 was inadequate in terms of its disclosure, but it was
13 also that it was seeking to confirm what we believe is
14 an unconfirmable plan and the basis of those two
15 arguments has now shifted somewhat because TDPs have
16 been changed. We don't think the plan -- we don't
17 think the issues have been resolved, but we need time
18 to analyze all of this and I will also state that I,
19 myself, sent very detailed emails on the disclosure
20 statement as it related to the TDPs and the trust
21 agreement. I never got a response, other than I was
22 told by Ms. Posin they were passed on to the committee
23 and to the FCR for response. No responses were ever
24 received and we know that there are still some
25 outstanding issues that Ms. Sarcasion raised over the

1 summertime regarding solicitation procedures and we
2 need time to review what has now occurred with this
3 disclosure statement and with the TDPs in order to
4 respond to ensure the due process is being met and to
5 ensure that this disclosure is adequate.

6 It still only has a one-page statement
7 regarding the TDPs, which are the most important issue
8 to the claimant and now that the TDPs have been
9 changed, and have a new process in them, I think that
10 time needs to be allotted to allow people to make
11 appropriate objections, as Your Honor noted. The
12 objections are to a disclosure statement. That is no
13 longer the one that the Court is being asked.

14 So, I -- I apologize for jumping in before
15 Your Honor had a chance to ask for other parties who
16 don't want the continuance, but I just wanted to be
17 made very clear that the U.S. Trustee joins in the
18 request that tomorrow's hearing be adjourned.

19 THE COURT: That's fine. The Offices was
20 invoked there. So, I guess, I am not surprised to
21 have you jump in. okay. I will hear from others who
22 have something non-duplicative to say to what Ms.
23 Posin said with respect to the need to go forward
24 tomorrow in light of where we are.

25 Okay. Then, let me hear from whoever -- is

1 this Mr. Schiavoni? Did you file the motion?

2 MR. SCHIAVONI: Your Honor, I did file the
3 motion, but I did coordinate with the other parties.
4 It's my understanding that substantially all of the
5 objectives join us. We -- J&J, Cypress, Tort claimant
6 constituency represented by the Pachulski Stang firm
7 and not a quote, "couple of insurers," but the -- a
8 significant number, like, more than a dozen -- more
9 than a dozen, perhaps two dozen insurers joined in the
10 application, but just to get right to the core of
11 really what I think you might want to consider here is
12 that the TDP was -- the TDP that was filed on
13 September 10th in order to get this deadline was at its
14 core a placeholder. The only thing it said about the
15 J&J indemnity was that -- was that there was a J&J
16 protocol order, which is entirely now factitious.
17 There was not. So, the briefing you have in front of
18 you from all of us are about something that doesn't
19 even exist.

20 With respect to the Class 4 claims, it was
21 represented to you as if they're exclusively asbestos
22 (indiscernible) injury claims, but they're not. The
23 claims of all of the objectors are grouped into this
24 same class, Class 4, as, quote, "Indirect" Talc
25 claims. Some in substance of the TDP disclosure on

1 September 10th was that procedures will be developed in
2 the future to address the liquidation of those claims.
3 That's a placeholder by its very nature. So, what you
4 have now is you have (indiscernible) in front of you
5 that deal with those issues that aren't -- that are
6 completely not before us now. I -- you know, I think
7 good briefs end up with good decisions. We can try to
8 go forward tomorrow, but, you know, what we're going
9 to get is really a, sort of, very one-sided story with
10 the Court not having the benefit of briefing
11 explaining really what the issues are before it.

12 The summary statements of what the -- what
13 even the objections are present the entire matter in
14 such a bizarrely one-sided way. The list of objections
15 that are listed as, quote, "objections to the TDPs"
16 for instance, don't even list objections by our
17 clients in them. In the -- in the -- in the list, the
18 chart's main objections, there's a statement just that
19 our objections on TDPs are premature. This is not
20 useful briefing and it's not something that we've had
21 an opportunity to respond to and we're not the only
22 ones here. I think the Court -- it's going to be a
23 very inefficient process for the Court to have to
24 address this, sort of, on a rolling basis.

25 I'd also just like to suggest -- you know,

1 in conclusion, just to respond to one thing. This
2 notion that somehow the debtor, nobody reached out to
3 the debtor. I mean, if nothing else is clear, our
4 clients have written the debtor, asked for drafts of
5 the documents, asked to participate in negotiation of
6 the plan and the TDPs. We've been completely and
7 totally locked out. The notion that we haven't called
8 is just completely wrong. We have written, we've
9 written multiple times, we asked to participate.

10 So, this is a -- this is a plan that was
11 filed yesterday that we never saw before. We didn't
12 have any input on. We didn't get an opportunity to
13 negotiate or participate in and the reason for that,
14 not just for us, but many of the other objectives
15 here, including, I think you'll hear from J&J is that
16 it's been negotiated here are terms under which to
17 liquidate in essence claims against us for which it's
18 a completely one-sided discussion.

19 The TDP terms for how to liquidate a direct
20 claim say you -- you must file basically one-sentence
21 statement that you were exposed to Talc and have a
22 one-sentence letter from a doctor, it's all it
23 requires, saying that you -- you have some, sort of,
24 disease, that's it, and you get paid under the matrix.

25 With respect to our claims under Class 4, it

1 says we will develop a process in the future. This is
2 -- this is a system here that it puts moral hazard
3 with capital M. So, Your Honor, we -- we just think
4 that the much more efficient way to deal with this is
5 to put this off, allow the briefing. There should be
6 substantive input from us in a way to try to reach
7 some, sort of, resolution, but if you just have a
8 group of tort claimants designing a scheme to allow
9 and value their claims, you're going to get a result
10 that's just fundamentally wrong. Thank you, Your
11 Honor.

12 THE COURT: Thank you. Let me hear from any
13 other parties who wish to adjourn the disclosure
14 statement again to the extent not duplicative of what
15 Mr. Schiavoni has already argued.

16 MS. BERKOVICH: Yes, Your Honor. This is
17 Ronit Berkovich from Weil Gotshal for Johnson and
18 Johnson. Okay. So, the debtors filed overnight on
19 Monday and into yesterday morning a new plan of
20 reorganization, a new disclosure statement, new TDPs,
21 and a new proposed (indiscernible) solicitation order
22 and black lines of all of the -- of all of those
23 documents total hundreds and hundreds of pages.
24 Importantly, J&J never received drafts of any of those
25 documents before they were filed.

1 With the limited time we've had to review,
2 it appears at a minimum, and very contrary to what Ms.
3 Posin said that there are drastic changes to the
4 treatment of J&J's indemnity, which impacts both J&J
5 and they impact all Class 4 claimants, this includes
6 both the direct Talc claimants in the class and the
7 indirect Talc claimants in the class, like, J&J and
8 the plan otherwise modifies other issues that will
9 impact J&J and other parties in the trust.

10 I will get to these, but I think some
11 background is helpful for this status conference. So,
12 the debtors are rushing to have the amended disclosure
13 statement be approved tomorrow, but fundamentally J&J
14 has not been provided enough time to review, analyze,
15 object to, and be heard on these new documents.
16 What's especially frustrating to us objectors is that
17 each of these changes presumably could have and should
18 have been made well before Tuesday and immediately
19 after the Court denied J&J's lift stay motion two
20 weeks ago. That would've given us at least a little
21 time to review, ask questions, file objections, if
22 appropriate, but that fact that these documents were
23 not filed until after the objection deadline suggests
24 that the debtors, we believe under the influence of
25 the TCC and FCR, are intentionally seeking to

1 steamroll this plan over legitimate objections or at
2 the very least they don't care that that's the effect
3 of what they're doing, but process matters, erroneous
4 matters and we believe that the process here is
5 systematic of the larger issues we complained about
6 from the very beginning, lack of fairness and lack of
7 transparency.

8 One issue Your Honor heard at the stay
9 hearing is that J&J went -- Mr. Schiavoni's clients, a
10 major player in this case, has been left out of plan
11 negotiations entirely and it seems the same for other
12 objectors, the group represented by Ms. Davis-Jones.
13 You know, as -- you know, we think the debtor's
14 counsel should reach out to parties that raise their
15 hands with issues on the disclosure statements, not
16 wait for them to -- to call and Your Honor did ask the
17 debtor's counsel at the stay hearing about our
18 allegations that J&J's been left out of the
19 negotiations and Ms. Posin's response was telling.
20 She answered that, Yes, they've had negotiations with
21 J&J over the stay order, but really, that's it.
22 There's been zero negotiations with J&J over the plan
23 itself or any of the associated plan documents and,
24 again, very frustrating because since shortly after
25 the case was filed, since Spring of 2019, we've been,

1 you know, sending them letters saying please talk to
2 us, please negotiate with us and not focus solely on
3 the TCC and FCR and we were told repeatedly that they
4 would do that after they reached a deal with the TCC
5 and the FCR. We just had to sit tight and wait. So,
6 we did that and they did reach a deal sometime in the
7 Spring of 2020 and they filed a plan, but even still,
8 there's been no negotiations with J&J and that first
9 plan was filed in May.

10 To the contrary, when we said please talk to
11 us now, the -- the -- the debtor said that they agreed
12 with the TCC and FCR, that they would be literally
13 forbidden from having negotiations with J&J without
14 the presence of the TCC and FCR. That is
15 unprecedented, at least in the experience of those of
16 us from Weil who worked on this case and that includes
17 Marsha Goldstein (phonetic), who retired earlier this
18 year after working as a restructuring attorney for
19 over 44 years. It's really shocking.

20 The debtor should be fiduciary for all --
21 fiduciaries for all creditors, including indirect Talc
22 claimants like J&J and they should never be prohibited
23 from engaging in discussions with creditors and other
24 parties. Instead, and we've said this from the
25 beginning, the debtors have locked themselves in with

1 the TCC and FCR. Those are fiduciaries who represent
2 only direct claimants and we believe strongly debtors
3 have given them a blank check to write their own
4 inflated claim amount in an attempt to confirm a claim
5 quickly that gets their parents, the debtors parents,
6 (indiscernible) off the hook for any liability. You
7 know, that's the dirty deal that we speak about and
8 then the point is to foist responsibility for those
9 inflated values on third parties like J&J and the
10 insured.

11 Their failure to engage with J&J has had
12 consequences both large and small and here's just one
13 example. Before the objection deadline on the first
14 disclosure statement, so, we're talking June, you
15 know, we've had issues with the disclosure statement.
16 So, we've asked them for a word version of this
17 disclosure statement and we sent them a markup. Here
18 are some changes that we suggest you put input into
19 the disclosure statement to resolve our
20 disclosure-related objections. We never heard
21 anything from them. Instead, they file with their
22 reply a new disclosure statement, a black line, that
23 did have some of our changes, but not all of them,
24 and, so, -- oh, we in our objection had to file the
25 black line ourselves, instead of negotiating with the

1 debtor. So -- and, you know, they have yet to
2 negotiate with us and all of the comments that we have
3 on the disclosure statement.

4 Now, as the Court may know, I represent many
5 debtors and that's just not the way we typically deal
6 with disclosure statement objections. We reach out to
7 parties, we negotiate with them, especially when there
8 are language objections to the disclosure statement.
9 You know, we try to resolve and narrow as many of
10 these disclosure issues as possible before we file a
11 revised disclosure statement and that certainly eases
12 the burden on the Court so the Court doesn't have to
13 sit there in Court and have us to line and line over
14 the words that we suggest be added to the disclosure
15 statements that the debtor refuses to add and I really
16 don't mean to disparage debtor's counsel here.

17 Both firms are excellent and I've had good
18 experiences with them and one thing I will say for
19 them is that they are generally available for calls to
20 answer questions when we have questions, but they
21 refuse to negotiate with us, even on simple issues,
22 like language for disclosure statement and, you know,
23 it seems like they just have their hands tied because
24 of their agreement with the TCC and FCR and, again,
25 they're (indiscernible) focused attention here on

1 getting channeling injunction for the parents and that
2 seems to their --- their sole goal from the beginning
3 of the case.

4 It really is baffling to us why they
5 couldn't send us a draft of a current version of the
6 plan of disclosure statement immediately following the
7 stay hearing or at least call us up to let us know big
8 picture about the changes they were going to make to
9 the plan structure, which again that I'll get to in a
10 minute. You know, we thought we heard the Court say
11 loud and clear a few weeks ago that the debtors should
12 negotiate the parties about this new plan that
13 everyone knew they were going to file and we expected
14 those documents to be filed within days of the stay
15 hearing and we expected this disclosure statement
16 hearing scheduled for October 8th to be moved in light
17 of all of the changes needed, but, again, no such
18 thing occurred and Mr. Schiavoni touched on this
19 briefly, but I do think it's worth noting that the --
20 that all of this and the lateness of the debtor's
21 filing makes existing briefing much less useful and
22 creates huge inefficiencies for the Court.

23 For J&J alone, three different objections
24 has been filed for disclosure statement and some
25 issues in each of them are moot now and some are still

1 live and we definitely don't agree with the debtors
2 chart, which gives the debtor's opinion as to what in
3 our objections are moot and which issues are -- are
4 not and, so, to prepare for this hearing tomorrow, the
5 Court would have to review each of J&J's three
6 objections and then even then the Court would not have
7 a complete view of J&J's position because, of course,
8 those three filed objections do not address J&J's very
9 strong objections, which I will get to, to the new
10 issues raised in a very different plan that was filed
11 Monday night.

12 So, right now, the Court has something,
13 like, three objections and joinders in front of it and
14 many cases from -- a lot of them are from the same
15 objectors and that's a lot. Thirty objections is a
16 lot for a disclosure statement hearing. So, it --
17 that, kind of, briefing is not only inefficient for
18 the Court, it's unfair to the parties. You know, the
19 debtor's haven't complied for the new documents they
20 filed with the 28 days-notice required by the
21 bankruptcy rules. Like, we literally can't file an
22 objection to the disclosure statement that was filed
23 overnight Monday. You know, the debtor already filed
24 their reply. Two days is hardly enough time to
25 adequately assess how these filings will impact J&J's

1 interest.

2 To get the cases back on track, we suggest
3 the following and we think the Court should order or
4 at least strongly suggest that the debtor's whole
5 negotiating sessions with each of the objectors
6 regarding our issues to the disclosure statement of
7 plan to try to narrow the issues as much as possible
8 and I am not talking mediation here or something
9 formal. I am just saying talk to us, negotiate with
10 us, try to solve our issues. We may not end up
11 agreeing on everything, we probably won't, but at
12 least we'll narrow the issues before the Court.

13 Perhaps the Court can tell the debtor and
14 the other state fiduciaries that the debtors can no
15 longer be prohibited from having discussions with any
16 partying interest in this case without the presence of
17 the TCC and FCR. After that, the debtors can file a
18 new plan of disclosure statement. Parties can have 28
19 days to object to the new plan of disclosure statement
20 and we can use those 28 days to further engage in
21 negotiations and something else we can try to work out
22 during this period is a timeline for confirmation
23 discovery and a briefing schedule. You know, we
24 haven't really touched on those, but we think that the
25 timeline that they're seeking and the new solicitation

1 order they filed is way too short and that, you know,
2 and that, you know, why don't we try to -- they
3 haven't -- again, agreed with us or negotiated with us
4 or engaged with us over what a briefing schedule and
5 discovery schedule looks like. So, we think they
6 should do that and then we would come before the Court
7 if we can't reach agreement.

8 All of that we think would set the case back
9 on course at least a little bit. Through all of this,
10 the debtors have made and will make two big points to
11 pushback. First, they've said that the hundreds of
12 pages they filed this week contained only minor tweaks
13 to what was already on file. Simply not true and I
14 will get to that. Second, they say that time is of
15 the essence here, they can't afford to delay and on
16 that issue, although I have some sympathy, they really
17 have created this mess themselves and it's not a good
18 enough reason to trample on party's rights or send
19 this case careening towards confirmation when multiple
20 parties, including the United States Trustee, have
21 raised major concern regarding the conduct of plan
22 negotiation, moral hazard, and the proposed TDPs and I
23 am sure it may be that the Court hasn't reviewed the
24 three or so objections yet, but I will highlight the
25 one that the United States Trustee filed from last

1 week because it raises very significant issues about
2 the TDPs that we believe the Court will be concerned
3 about. Okay.

4 So, there are three different plans on file.
5 The first plan when the debtors filed in May appeared
6 to address the indemnity by letting it ride through
7 and the trust would deal with it later. It's not
8 entirely clear, but that appeared to be the gist of
9 it.

10 The second plan, the one the debtors filed
11 in August, incorporated that whole J&J protocol order
12 structure where the debtors were essentially asking
13 the Court to rewrite the J&J indemnity agreement to
14 provide more favorable terms for the debtors and
15 plaintiffs and force J&J to take those into the Tort
16 system. I think the debtors realized that that
17 structure was unenforceable, not confirmable, and they
18 dropped it after the stay hearing.

19 The third plan, the one filed on Monday
20 night, appears in its face to be close to the first
21 version and that's what Ms. Posin said, "It's just
22 what we had before," but it's really not. It's
23 actually a bizarre hybrid of the two plans. Again,
24 the plan itself seems to provide plain vanilla
25 treatment to the Class 4 claims. They're rushing them

1 to the TDPs where presumably there would be some table
2 with values and the indemnity in this case would be
3 explicit -- was explicitly transferred to the trust,
4 but all the actions in the TDPs, the debtors filed
5 yesterday.

6 There -- and this is totally new, it appears
7 that claimants who claims injuries from J&J products,
8 they call these indemnified claims, are given an
9 option, they call it an election, to either submit
10 their claims to the trust or pursue claims against the
11 debtors in the Tort system based on the, quote, "J&J
12 indemnity" and, again, the TDPs are less than clear
13 here, but they suggest that J&J will (indiscernible)
14 the debtors with respect to claims where claimants
15 elect to pursue their claims in the Tort system and
16 that, you know -- more problematic for us that if the
17 claimants obtain judgment against the debtors, that
18 J&J will pay it, but the plan can't force an
19 involuntary defense objection on J&J. The agreements
20 themselves, the indemnity agreements, nowhere require
21 J&J to (indiscernible) the defense themselves.
22 Instead, they give the J&J the option to take over the
23 defense, not a mandate and there's been no judgment or
24 order requiring J&J to defend the debtors against such
25 claims.

1 You know, the plan also can't force such a
2 broad open-ended and unproven indemnification
3 obligation on J&J. You know, J&J recognizes here that
4 it may have some indemnity obligations for some years,
5 but the scope of those indemnification obligations is
6 sharply disputed and in addition, J&J has made it
7 clear that it believes in a very strong defense as to
8 the indemnity. So, we previously voluntarily offered
9 terms under which J&J would agree to indemnify all of
10 the Talc claims to avoid, you know, what we call the
11 dirty deal inflated values that are agreed to by the
12 parties as a result of the moral hazard and imposed
13 the J&J, but the debtors rejected our offer and the
14 Court denied our stay motion that contained the offer.

15 For J&J now to be responsible for
16 indemnifying the debtors under the 1989 agreement for
17 a judgment entered in Tort system in favor of a
18 particular plaintiff, there would be need to be a
19 determination of the specific judgment claim falls
20 within the scope of that indemnity and the answer
21 might be different for different claims and as we said
22 over and over again, to the extent that any of these
23 claims pursue serious based on asbestos, J&J believes
24 it has a complete defense indemnity and it's also the
25 case of course that J&J indemnity only covers certain

1 years, yet the TDP appears to have J&J fully
2 indemnified immersed in the Tort system for all of the
3 indemnified claims and we also believe in any of the
4 disputes about the scope of the indemnity should be
5 heard by Court in Vermont, which would determine
6 whether J&J is responsible under the indemnity
7 agreement.

8 So, back to the TDPs and the new ones that
9 were filed, these indemnified Class 4 claimants, they
10 get to make an election, they become either a trust
11 election claimant or a Tort system election claimant
12 because they have new concepts and new TDPs, never
13 been in there before, and the ones that make election
14 assume that the J&J takes over this defense, which
15 again is a flawed assumption without any agreement
16 from J&J or some court determination that J&J has
17 (indiscernible).

18 So, even though there's great uncertainty by
19 J&J's indemnity obligations under the -- you know,
20 they're giving these claimants the rights under the
21 TDP to make an election to go to the Tort system or go
22 to the trust when they get a lower recovery, but the
23 fact that they may not get anything from the Tort
24 system because of J&J's defenses is a risk factor
25 that's absent from the disclosure statement and beyond

1 providing an odd and uninformed choice for Tort
2 claimants, this is highly prejudicial to J&J. It
3 permits plaintiff's lawyers to pick their best claims
4 for the Tort system and leave their weaker claims to
5 recover from the already inflated claim numbers in the
6 trust. It's the worst of all worlds and, again, this
7 election is a totally new concept in the TDP filed
8 early Thursday morning.

9 So, more importantly for today, it leaves
10 open the question, how does this all work? Don't look
11 at the disclosure statement for answers because this
12 major change to the treatment of the only impaired
13 class under the plan is not in there. It's probably
14 the most important issue to creditors. It goes to the
15 heart of their discovery, but the disclosure statement
16 doesn't contain a single sentence explaining this
17 election concept or what it means to be a trust
18 election claimant versus a Tort system election
19 claimant. If a disclosure statement should do
20 anything, it should at the very least explain to
21 creditors what they're getting under a plan and this
22 disclosure statement does no such thing.

23 In fact, we think that the plan of
24 disclosure statement as currently written actually
25 conflicts with the TDPs as they're written. You know,

1 Section 2.1A of the disclosure statements states that
2 following the effective date of the plan, Talc
3 Personal Injury claimants may not continue to pursue
4 the claims against the debtors. Again, totally
5 contrary to the TDP within the elect to do so and the
6 same thing with certain language in the plan that I --
7 that I can get to, but I know that I have been
8 speaking for a long time.

9 So, the disclosure statement is misleading
10 and lacks adequate information because it
11 mischaracterizes the plan and the TDP. Now, maybe the
12 debtors will say that I am misunderstanding the TDPs.
13 It's not the way it works, but if I misunderstand
14 them, how are creditors supposed to understand them?
15 You know, this all proves the point of needing more
16 time to understand, to adjust, to negotiate of asking
17 parties such as J&J the opportunity to pile objections
18 to this fundamentally new plan structure and it will
19 give the debtors time to craft disclosure that
20 actually describes to creditors what they're going to
21 receive under the plan.

22 You know, Susan mentioned insurance
23 neutrality. The way that insurance neutrality is
24 written for J&J is totally new. We haven't had time
25 to adjust it. On first blush, it looks like it's --

1 it's -- it's -- it's not adequate and you hear the
2 insurers telling you that its not adequate for them.
3 I mean, if insurance neutrality was perfect, you
4 wouldn't hear us objecting, right, because we wouldn't
5 be worried about the effect of these inflated values
6 on us. So, that's not the way we feel.

7 So, the second issue that Ms. Posin raised
8 is timing. Well, they knew to move quickly. There's
9 been no time to slow down and do things right, but as
10 I noted, the timing is an issue of their own doing.
11 You know, since the beginning of the case, not only
12 has J&J sought to participate in negotiations, you
13 know, we've also sought discovery relevant to the
14 plan, but the debtors consistently gave us
15 (indiscernible). Since Spring of 2019, our letters
16 asked for information relevant to the most important
17 issue in this case, which is the ultimate claim value
18 and we were told that it was premature.

19 So, Your Honor may remember that J&J filed a
20 2004 motion, you know, back in June of 2019 and Your
21 Honor heard it in July of 2019, which, again, more
22 than a year ago. When the debtor's opposed the motion
23 at that time and made the argument that it was
24 premature for us to seek this information, even though
25 it was the same information that was being shared with

1 the TCC and the FCR and "Don't worry, once the plan is
2 filed, you'll get all of the information that you
3 need." Well, that plan was filed in May and we're
4 still waiting on this information and, you know, we
5 expressed concerns to the Court at that time, but the
6 debtors have tried to jam us -- confirmation and not
7 give us the information we need with sufficient time
8 for our experts that we've hired to analyze the data
9 and the debtors assured us that waiting for the plan
10 filing would not lead to such a result. Well, we're
11 here.

12 Unfortunately, J&J will have to bring these
13 discovery issues before the Court in the near term
14 because as hard as we're trying, it doesn't appear
15 that we'll resolve these issues and Mr. Tsekerides may
16 at the end of this want to address the Court how it
17 wishes to hear the discovery issues, but this also
18 impacts the timing.

19 We need this information. This is basic
20 information that's required to analyze whether the
21 values they put in the TDPs really are inflated, but
22 the debtors are refusing to provide it and they're
23 making up excuses, frankly, that don't make sense to
24 us and further our suspicions about being controlled
25 by the TCC and FCR instead of being fiduciaries for

1 all parties.

2 As to the overall timing recently in denying
3 the stay motion, Your Honor stated that certainly
4 discovery is going to be permitted with respect to
5 plan-related issues and the Court would proceed along
6 a pace that makes sense and perhaps, you know, there
7 needs to be a pause. Well, even though the
8 confirmation timing isn't before the Court at this
9 time, we think it's worth raising now and perhaps
10 getting some guidance from the Court before the
11 debtors file in some, sort of, revised schedule.

12 So, to be clear, the deadlines that they put
13 in the revised solicitation order are way shorter than
14 the deadlines that they put in the same documents they
15 filed in May. The confirmation objections are due 30
16 days less time and the confirmation hearing is, like,
17 a month and a half sooner. So, the timing between the
18 approval of the disclosure statement and those two
19 dates and they may try to justify this and I think
20 they do this a little bit in their reply by saying
21 that, "Well, there's been some discovery that's taken
22 place since the initial plan was filed. So, we can
23 have a shorter deadline," but we have not received the
24 discovery that relates to the key issue in the case.
25 The one that generally leads to a confirmation

1 schedule for a mass Tort hearing being longer than a
2 standard Chapter 11 case, which is the settlement
3 history and other related documents that underlie the
4 claim values.

5 So -- so, just a couple of more points about
6 timing. You know, one of the cases the debtors cite
7 in their reply in the Court of their --

8 THE COURT: I haven't read the reply --

9 MS. BERKOVICH: Okay.

10 THE COURT: -- and I haven't thought about
11 the timing yet.

12 MS. BERKOVICH: Okay.

13 THE COURT: So, I think I've heard enough on
14 whether we need to go forward tomorrow. Is there any
15 objector who possibly has anything to say that's not
16 duplicate of what Ms. Berkovich said with respect to
17 the timing issue?

18 MS. DAVIS-JONES: Your Honor, this is Laura
19 Davis-Jones with Pachulski Stang Ziehl and Jones on
20 behalf of Arnold and Itkin LLP. Your Honor, we did
21 file a joinder last night and I appreciate the
22 comments that have been made by counsel and I will not
23 duplicate those. Your Honor, the only point I wanted
24 to emphasis is, you know, obviously you hear the
25 frustration, we share it. We do think we need more

1 time here.

2 Your Honor, we would ask that the TCC, the
3 FCR, the debtor, or some set of them be encouraged or
4 may be directed to meet with us and provide
5 information and to negotiate with us as well. Thank
6 you, Your Honor.

7 THE COURT: Ms. Jones, I did not see what
8 was filed last night. Who was your client?

9 MS. DAVIS-JONES: Your Honor, Arnold and
10 Itkin LLP. They represent thousands of the Talc
11 ovarian cancer personal injury claimants. We only
12 filed --

13 THE COURT: Thank you.

14 MS. DAVIS-JONES: Thank you, Your Honor. We
15 just filed a two-page joinder and that's been covered.
16 Thank you.

17 THE COURT: Thank you. Anyone else?

18 MR. HEATH: Your Honor, Paul Heath on behalf
19 of Cyprus Amax Minerals Company and Cyprus Mines
20 Corporation. We didn't file a formal joinder last
21 night, but we do support the requests for an
22 adjournment. Indeed in our -- I believe it was our
23 third supplemental objection we filed yesterday -- or
24 Monday, we did previous to the Court what we thought
25 would be the need for an adjournment. So, at this

1 point, just wanted to go on the record and make the
2 Court aware that we do formally join in the request
3 for adjournment.

4 THE COURT: Thank you. Anyone else?

5 MR. SILVERBERG: Your Honor, it's Bennett
6 Silverberg on behalf of the ad hoc plaintiff's group.
7 To the extent that the -- that the debtors and TCC are
8 going to be directed to negotiate with anybody, we
9 would like to be included amongst the parties that
10 they engage with.

11 THE COURT: Thank you. Anyone else?

12 MR. SILVERBERG: Thank you, Your Honor.

13 THE COURT: I want to come back to Ms.
14 Posin. Ms. Posin, I keep hearing over and over that
15 the debtors are not negotiating with parties because
16 the FCC or the future claimants representatives have
17 mandated it; is that true?

18 MS. POSIN: No. I will say. We have -- I
19 am a little bit befuddled because we have had
20 communications. I mean, we went to mediation with
21 J&J, we went to mediation with Cyprus. We are
22 involved in mediation with Cyprus. We went to
23 mediation with Rio, Tinto and Zurich. We are engaged
24 in mediation with Excel (phonetic). We are probably
25 going to engage in mediation with a couple of other

1 insurers, including some of the movants here today.

2 So, I am little befuddled by that.

3 Certainly, there were discussions at the
4 outset. You know, this is a 524G plan. I know this
5 Court is well aware in order to confirm a 524G plan,
6 we have to have 75 percent acceptance rate, which is a
7 high rate, and, so, typically in a 524G case, you will
8 have to have negotiations with the committee that
9 represents the direct Talc claimants and reach an
10 agreement with them, so, that they can deliver, if you
11 will, that vote.

12 So, we have -- we did spend a fair amount of
13 time at the beginning of this case negotiating with
14 the -- the TCC and the FCR as well as ultimately a
15 parent and we reached an agreement that was filed that
16 was included in the plan that was filed in May.

17 As part of that discussion, the parties
18 reached an agreement that it made sense to -- while we
19 -- we reached an agreement, I think it's public
20 knowledge at this point, in early March. J&J filed
21 their stay relief motion later in March and we had
22 already reached the deal in principle and it took us
23 six weeks to fully paper that deal and to file the
24 amended plan disclosure statement on May 15th.

25 So, that took some time. We do not believe

1 that at that point in time that it made sense after we
2 had already reached a deal in principle after
3 negotiating for over a year to, kind of, rejigger that
4 and bring in new parties and try to revise that while
5 we were still negotiating the original terms that had,
6 you know -- that had been agreed to in principle.

7 So, no, we certainly have had conversations
8 with all of these various parties. There is a lot of
9 discovery outstanding. I understand from Ms.
10 Berkovich they haven't gotten everything they want.
11 That's frankly not unusual. We have provided a fair
12 amount of information that we believe we can provide.
13 They have requested things that are very clearly
14 covered by mediation privilege as we discussed. They
15 can bring those issues into Court and we're happy to
16 brief them as appropriate, but we are continuing that
17 dialogue. We would love to have an agreement with
18 everybody, as I said before. It has been a difficult
19 process to get to where we are with the planned
20 proponents.

21 I heard Ms. Berkovich and I think Mr.
22 Schiavoni say, you know, "The Court entered that order
23 on -- on September 25th, why didn't they have a
24 disclosure statement the next day?" Your Honor, we're
25 dealing with four planned proponents, including a

1 committee of 11 members, a future claimants
2 representative and 300 and so non-debtor
3 (indiscernible) entities and that 10 day period is
4 over two weekends and the Jewish holidays. We filed
5 that amended plan disclosure statement as soon as we
6 possibly could on Monday. We are not playing games,
7 we are not trying to jam people. We are trying to get
8 this case moved forward, point blank.

9 As far as the neutrality provisions, we
10 believe that the insurers -- the language in the
11 (indiscernible) that I noted for the insurers are
12 exactly what Mr. Schiavoni has gotten in other cases
13 for his clients exactly what has been done in many
14 other 524G cases in the Third Circuit. It's identical
15 language and that's been in the -- in the -- in the
16 planned disclosure statement since May. If they don't
17 like it, fine, that's a confirmation issue, it's not a
18 disclosure statement issue.

19 Ms. Berkovich just did a very eloquent
20 argument, but she basically just argued the disclosure
21 statement today. She told you she's not ready, she
22 needs more time. I think I just heard her entire
23 argument and she sounds like she was very well versed
24 in the changes that have been made and has responses
25 to all of them. So, it doesn't seem to me that

1 there's additional time needed for disclosure.

2 Yes, I am hearing everybody say we need more
3 time for confirmation, we need time for more
4 discovery, but the confirmation issue can be dealt
5 with after the disclosure statement hearing.

6 THE COURT: Okay. Thank you. I am not sure
7 I heard a direct answer to my first question, but I
8 will accept the answer that was given. The -- so,
9 here's where we are. I would agree that Ms. Berkovich
10 is perfectly capable of arguing the disclosure
11 statement, she just did, but I am not perfectly
12 capable of hearing it and it is not a -- and it's not
13 a comment on whether the debtor could have filed its
14 amended plan sooner or not, given the logistics
15 necessary to do it, the intervening holidays,
16 etcetera. It's a question -- it's a matter -- it's
17 just a fact that revised documents were filed
18 apparently late Monday night and I have objections
19 that do not go to that disclosure statement and in
20 fact as Mr. Berkovich pointed out and as I noted as we
21 were taking a look at the agenda, I probably have
22 three objections from each objector that incorporate
23 back their objections to other plans that are not in
24 front of me and where I would have to try to figure
25 out what is still relevant and what isn't relevant and

1 I am not in a position to do that in a day and to be
2 prepared to -- to comment on the adequacy of this
3 disclosure statement.

4 The -- and I think other parties are
5 entitled to see the finished product and comment on it
6 and some parties haven't been able to see it and
7 didn't see it before yesterday and they should be
8 entitled to comment on it now. Whether it's the same
9 as the May plan, I don't know because I didn't read
10 the May plan because it wasn't in front of me. So, I
11 have no idea whether it's the same or not but I also
12 don't think parties should have to be preparing off of
13 three different disclosure statements and plans.

14 So, I am going to postpone the hearing
15 (indiscernible) to timing and I would like in the
16 meantime for the parties who are filing an objection,
17 although this is more work for them, but I am hearing
18 they want it, to in fact provide me one objection per
19 objecting party that has all of their objections to
20 the current plan and -- to the current disclosure
21 statement in one document.

22 We have a hearing --

23 UNIDENTIFIED FEMALE: I think the next
24 hearing is November 16th. That's the sale hearing.

25 THE COURT: Yes. We have a hearing on

1 November 16th. So, we're going to continue disclosure
2 statement to November 16th. I would like objections
3 filed -- well, let me work back from that. I would
4 like the reply filed by the 9th. So, I would like
5 objections filed on the 26th. That should give
6 everyone time to read the new documents; synthesis
7 your objections; target me on real disclosure
8 statement objections, not confirmation objections
9 please; and that should give -- then the two weeks in
10 between should give the debtors time to see if there
11 can be agreement on language for the disclosure
12 statement and I recognize there -- you may have 300
13 non -- 300 affiliated people and others to check with,
14 but they need to move quickly.

15 As for discussions, of course the parties
16 should be talking. I don't see why I should have to
17 order that. If there are any constraints that three
18 people have to be in the room before the debtors can
19 have discussions, then those three people better be in
20 the room. I don't know why that's necessary, if it
21 is, and Ms. Posin, you made an interesting comment
22 about how the fact that you didn't think that the -- I
23 think you said you didn't think that parties with
24 indirect Talc payments were going to get to vote on
25 the plan. I don't understand that comment. So, if

1 that's going to be part of procedures that are going
2 to be put in front of me for approval on
3 (indiscernible), then I am going to need to understand
4 that.

5 MS. POSIN: And I apologize, Your Honor.
6 The comment was just meant to be -- I don't think any
7 of those claims are liquidated. Certainly those folks
8 have an opportunity to file 30:18 (phonetic) motion
9 and that's what's permissible under, you know, the
10 (indiscernible) procedures for indirect Talc
11 claimants. So, that -- that was the comment.

12 I don't otherwise see how that would work
13 and I think a lot of the indirect Talc claimants that
14 I've seen, the proofs of claims that have been filed
15 are protected and there aren't -- there aren't
16 existing claims against the estate, but not
17 (indiscernible) anybody. I am sure a few folks on
18 this call will tell me that that's not the case for
19 their client and we're happy to take a look at that,
20 but that's my general understanding.

21 THE COURT: So, if we're going to have to
22 build in a 30:18 hearing into the confirmation process
23 timeline, then that's something that is going to have
24 to be considered with respect to the timeline.

25 MS. POSIN: Understood. Your Honor, I just

1 wanted to get -- I know the Court is very slammed. We
2 do have -- we did set the objection to J&J's claim for
3 November 16th. We also will probably be filing a DIP
4 motion to be heard on November 16th. I just wanted to
5 make sure the Court is going to have sufficient time
6 for all of those things and -- and -- and the sale
7 hearing, which -- which could be contested.
8 Obviously, we don't know that yet. So, I wanted just
9 to make sure we have sufficient time on that date.

10 THE COURT: Okay. So, I have you down for
11 the 16th. I am going to cross out the 17th and keep
12 that day open as well.

13 MS. POSIN: Thank you, Your Honor.

14 MS. RAMSEY: Your Honor, it's Natalie Ramsey
15 for the Tort Claimant Committee. I don't want to
16 speak out of order and I do not want to delay things
17 and this really does not directly relate to the
18 scheduling that Your Honor is in the process of doing,
19 but I think the last question that you directed to Ms.
20 Posin caused me some concern because I don't want the
21 allegations that the Tort Claimant's Committee has
22 been unresponsive or unwilling to talk with really any
23 parties, but particularly the other represented Tort
24 claimants that have appeared is accurate at all. We
25 had a meeting on the 29th of September most recently

1 with the folks that are represented by Brown Rudnick.
2 That meeting was a couple of weeks in the process of
3 scheduling regarding the TDP. The claimants
4 represented by the Chelsey (phonetic) firm were
5 invited -- included on those communications. For
6 whatever reason, they were -- they didn't end up
7 participating in that call, but we have talked with
8 them from time to time, in large part, you know,
9 frankly, to say to them that the TDP would be coming
10 and we would be happy to talk with the -- the deal --
11 deal has landed. For whatever reason, that didn't
12 happen. So, the first time we knew that they were
13 expressing concerns they were expressing was really
14 yesterday, but I did want to assure the Court and the
15 Court knows we are -- recently we were in mediation
16 with J&J, we have tried to include Mr. Schiavoni and
17 mediation. We had -- Mr. Pollack (phonetic) reached
18 out to Mr. Schiavoni several times with respect to
19 executing confidentiality and protective orders and
20 that didn't happen, but we have been available, we
21 remain available and it is our intention to continue
22 to be available to talk with anyone that would like to
23 talk with us about the TDP.

24 THE COURT: Thank you.

25 MS. DAVIS-JONES: Your Honor, this is Laura

1 Davis-Jones. If I may have just one moment just in
2 response to Ms. Ramsey (indiscernible) silence the
3 acquiescence.

4 Your Honor, I have a very different history
5 of that. I am glad to hear Ms. Ramsey saying they now
6 will be available and willing to talk to us because up
7 until now it's been "Let's just see if the TDP gets
8 filed, there's too many people under the tent. We
9 can't involve you, we cannot include you, we cannot
10 answer your questions," and then as recently as
11 shortly before this hearing, I was told by her partner
12 that our issues are all confirmation issues and we'll
13 have to deal with them then.

14 SO, I am very glad to hear that they are
15 willing to meet with us and -- other than just pick up
16 a phone and say, "We'd like to talk with you and
17 really understand your frustration, but we have
18 nothing that we can give you." I am glad to hear now
19 that maybe they can and we will take them up on that
20 offer. Thank you, Your Honor.

21 THE COURT: Okay. Thank you. Let me say
22 this since we are lengthening the period on the
23 disclosure statement. There is not a need to wait
24 necessarily until disclosure statement hearing
25 approval for confirmation discovery certainly to be

1 offered by debtors and I say that because I am going
2 to permit a sufficient period of time for discovery of
3 confirmation issues and if the discovery doesn't start
4 until the confirmation -- until disclosure statements
5 been approved, then it's going to push it out, the
6 confirmation hearing schedule. There's no question
7 about that.

8 So, I understand there's outstanding
9 discovery requests. If the debtor chooses to go ahead
10 and respond and get a jumpstart on responding to the
11 requests, don't stand on ceremony and say we have to
12 wait until the disclosure statement is approved
13 because eventually, I assume some disclosure statement
14 is going to be approved, whether it's this one or some
15 modified one and eventually something is going to go
16 out, but from what I am understanding about the big
17 issues, they go to the TDPs and if the TDPs aren't
18 going to change, then there's really no basis to wait
19 for that discovery.

20 If the debtor chooses to wait to respond,
21 then we'll deal with that, but I see no reason why the
22 debtor can't get a jumpstart if he chooses, in
23 responding to discovery requests, certainly
24 outstanding discovery requests if the debtor deemed
25 were really confirmation issues.

1 MS. POSIN: And Your Honor, just on that
2 point, just to be clear, my -- my litigation partner
3 is on the line, but we have received a substantial
4 amount of discovery requests, at least from four or
5 more parties on this phone call today. We have
6 responded to all of those requests, we have served a
7 substantial amount of documents already. We are not
8 waiting, I assure you. Yes, there are some issues,
9 there will always been in discovery and we are working
10 through those and we are (indiscernible) appropriate
11 and we will bring those issues -- other movants, the
12 parties seeking discovery will bring those issues
13 before the Court as needed. Hopefully that will not
14 happen, but we -- I wanted to assure you that we are
15 very much interested in moving forward with discovery
16 and we are pushing that along.

17 THE COURT: Okay.

18 MR. TSEKERIDES: Your Honor, Ted Tsekerides
19 for J&J. Picking up on that last point, we are going
20 to have some disputes that we know right now we are
21 going to need to bring to your attention and from a
22 process prospective, how -- how should do that that
23 would be best for the Court? Should we try to set up
24 a conference by telephone with chambers, should we
25 send a letter, file a motion? What would be the best

1 way to do that?

2 THE COURT: You should send a letter --
3 well, you should file it on the docket and you should
4 send it to chambers and after we receive the
5 responses, which should be promptly, we'll set up a
6 time, a telephone conference or a Zoom conference to
7 hear it. No motion.

8 MR. TSEKERIDES: Thank you very much.

9 THE COURT: No motion.

10 MR. TSEKERIDES: Okay.

11 THE COURT: One question on about what was
12 filed on Monday or Tuesday, whenever it was filed.
13 I've got a TDP and then I have a notice of filing of a
14 corrected revised TDP. I assume it's the correct
15 revised TDP that I should be looking at?

16 MS. POSIN: That's right, Your Honor. The
17 original document that was filed was cut off. It only
18 gets to Page 11. It didn't change, it just got --
19 there was an error in the filing.

20 THE COURT: Okay. Okay. So, the black
21 lines should still be good as well to the extent I go
22 to that?

23 MS. POSIN: The black line is complete and
24 correct. Yes.

25 THE COURT: Okay. Okay. I don't think I

1 have any other questions. Any other business we can
2 do today? Okay. Thank you very much, counsel. We're
3 adjourned.

4 UNIDENTIFIED FEMALE: Thank you, Your Honor.

5 UNIDENTIFIED MALE: Thank you, Your Honor.

6 (Audio Recording Concluded.)

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CERTIFICATION

I, KRISTIN CORRADO, the assigned transcriber, do hereby certify the foregoing transcript of proceedings is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate non-compressed transcript of the proceedings, as recorded.

BY: *Kristin Corrado*

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10/8/2020

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