**Litigation**

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Mass Tort Bankruptcies

Key considerations for a company seeking to resolve mass tort claims under Chapter 11 of the Bankruptcy Code, including pre-bankruptcy strategies for isolating mass tort liability, setting and providing notice of the claims bar date, obtaining a channeling injunction, establishing a settlement trust, using third-party releases, and insurance-related issues.

Table of Contents ×

Advantages of Chapter 11 In Resolving Mass Tort Claims

Pre-Chapter 11 Bankruptcy Strategies for Isolating Mass Tort Liability

The Claims Bar Date

Resolution of Claims and Emergence from Chapter 11

Contributors

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Mass tort cases can consume a company's time and resources due to the potentially significant quantum of liability, the long-tail nature of claims, the logistical complexities and costs of defending multiple

lawsuits in multiple jurisdictions, and the administrative burdens presented by the volume of claims asserted against it. Companies therefore often seek to comprehensively resolve mass tort claims through either:

- Class action settlements.
- Aggregate mass (that is, inventory) settlements with individual plaintiff firms.
- Proceedings under Chapter 11 of the Bankruptcy Code.

Entities in various industries have turned to the Bankruptcy Code to help resolve mass tort claims arising from, among other things:

- Asbestos exposure.
- Talc exposure.
- Wildfires.
- Opioid addiction.
- Sexual abuse.
- Airbag malfunctions.
- Defective medical devices.
- Faulty earplugs.
- Firearm abuse in mass shootings.

This article provides an overview of the advantages of resolving mass tort claims in Chapter 11 and certain elements of the Chapter 11 process that deserve special consideration in a mass tort bankruptcy case.

(For a collection of resources on issues companies may face in mass tort bankruptcy proceedings, see [Mass Tort Bankruptcy Toolkit](#) on Practical Law; for information on active mass tort bankruptcy cases, see [Bankruptcy: Mass Tort Tracker](#) on Practical Law.)

Advantages of Chapter 11 In Resolving Mass Tort Claims

Chapter 11 provides two main benefits to a company facing mass tort liability:

- The availability of a single venue to centralize the process of resolving all claims against the debtor and, potentially, claims against related non-debtor parties.
- The ability to reach a global settlement of all current claims, as well as latent or future claims (also known as future demands) (for example, § 524(g)(5), Bankruptcy Code (defining future demands)).

These benefits allow the company to emerge from Chapter 11 with a clean slate, free to focus on its core business without the overhang of tort liability.

Centralized Process

Filing for Chapter 11 generally funnels all claims against the debtor to the bankruptcy court for resolution, often including future claims. Several provisions of the Bankruptcy Code work together to centralize claims

against the debtor in a single venue:

- The automatic stay stops all pending actions and enjoins all future actions against the debtor outside the bankruptcy court during the pendency of the bankruptcy case (§ 362(a), Bankruptcy Code; for more information, see [Automatic Stay: Overview](#) on Practical Law). Often, debtors seek to extend the automatic stay to related actions against directors and officers, parent companies, affiliates, and other potentially co-liable parties.
- The district court hearing the debtor’s case — and the bankruptcy court, by extension through 28 U.S.C. § 157 — has exclusive jurisdiction under 28 U.S.C. § 1334(e) over the property of the debtor’s estate.
- The bankruptcy court’s related-to jurisdiction under 28 U.S.C. § 1334(b) may extend beyond claims against the debtor to claims against related third parties, including co-defendants, if those claims could conceivably affect the debtor’s estate (see *In re LTL Mgmt., LLC*, 638 B.R. 291, 302 (Bankr. D.N.J. 2022) (explaining that a “claim falls within the bankruptcy court’s ‘related to’ jurisdiction if the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy” (internal quotation marks and citations omitted)); *In re Endeavour Highrise, L.P.*, 432 B.R. 583, 632 (Bankr. S.D. Tex. 2010) (stating that “the Supreme Court and the Fifth Circuit have held that bankruptcy courts have jurisdiction whenever the outcome of a proceeding could conceivably have any effect on the estate being administered in bankruptcy”); see also *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984) (discussing a predecessor to section 1334(b)), overruled on other grounds, *Things Remembered, Inc. v. Petrarca*, 516 U.S. 124 (1995)).
- The plan discharge (§ 1141, Bankruptcy Code) and plan injunction (§ 524(a), Bankruptcy Code) provisions foreclose claims against the reorganized debtor that arise from the mass tort incident, assuming the debtor provided adequate notice and due process to potential current and future claimants (see *The Claims Bar Date* below).

These mechanisms funnel all claims against the debtor into the bankruptcy case and bar claims enforcement outside the bankruptcy process. The debtor’s Chapter 11 plan will typically then route all claims through a channeling injunction into a trust funded under the plan. The channeling injunction is available expressly by statute for asbestos cases under section 524(g) of the Bankruptcy Code (§ 524(g), Bankruptcy Code; see *Channeling Injunctions in Asbestos Claims Under Section 524(g)* below) and for other types of cases through the bankruptcy court’s equitable powers primarily under section 105 (§ 105(a), Bankruptcy Code; see *Channeling Injunctions in Non-Asbestos Claims Under Section 105(a)* below). The channeling injunction supplements the plan discharge and injunction provisions by:

- Directing tort claimants to seek recovery only against a trust established under the Chapter 11 plan.
- Enjoining tort claimants from bringing claims against:
 - the debtor;
 - the bankruptcy estate;
 - the reorganized debtor; and
 - the debtor’s property.

(For more on the Chapter 11 process, see [Chapter 11 Plan Process: Overview](#) on Practical Law.)

Benefits to the Debtor

The centralization of claims offers significant benefits to the debtor, such as:

- Minimizing the risk of disparate judgments and excessive litigation costs from defending multiple lawsuits in multiple courts.
- Allowing the debtor to balance the demands of the mass tort claimants with the debtor's ongoing business needs by resolving tort liabilities while also addressing funded debt, trade debt, and contractual liabilities from the debtor's business operations.
- Permitting the court to estimate the debtor's aggregate liability in a proceeding using statistical techniques and other legal theories potentially unavailable in a class action or individualized tort case.

Benefits to Tort Claimants

Bringing all claims into the bankruptcy case and channeling them to a trust can benefit tort claimants. For example:

- Tort claimants receive fundamental protections under the Bankruptcy Code designed to ensure equitable recoveries among similarly situated creditors.
- The trust provides tort claimants with a single point of recovery, which often reduces the cost, time, and burden required to obtain a recovery (see *The Settlement Trust* below). Distributions are made under a set of universally applicable trust distribution procedures (TDPs) (also referred to as claims resolution procedures), which are typically developed in the bankruptcy process and presented to the bankruptcy court for approval as part of the Chapter 11 plan.
- The trustee and claims administrator charged with authorizing distributions from the trust usually develop expertise in evaluating the claims against the trust, which may further streamline the distribution process.

Therefore, the centralization of claims can:

- Reduce the overall cost of resolving individual tort claims.
- Facilitate speedier distributions to tort claimants.
- Eliminate the risk of inconsistent outcomes.
- Help ensure equitable treatment of current and future tort claimants.

Global Settlement of Claims

Resolving current and future mass tort claims through a global settlement under Chapter 11 results in a clean slate for the reorganized debtor. The debtor (and any released third party) is freed from the overhang of additional liability for any future tort claims that may arise from prepetition conduct (such as the design, manufacture, or sale of a defective product) and the expenses associated with resolving those claims.

The clean slate often has the ancillary benefit of making the reorganized debtor more attractive to potential lenders, equity investors, and buyers. Depending on the funding mechanism for the trust, this may increase the recovery available to tort claimants by making more cash available for distribution or

increasing the value of the reorganized company's equity. For example, a trust funded with the equity of the reorganized debtor or the future revenue or proceeds of the reorganized debtor's business could benefit from a higher market valuation or increased cash flow generated by the business.

Chapter 11's comprehensive clean slate provides a major advantage over class action settlements or aggregate settlements, which cannot resolve as broad a range of claims or bind all claimants (including holdouts) as a Chapter 11 plan can. For example, although a trust may be used to distribute a class action settlement, a trust established through a bankruptcy proceeding can address a broader set of claims than may be possible to certify under a single class action settlement.

Additionally, class action settlements are not suitable for addressing (if they can at all) unknown future claims (see *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 846, 856-58 (1999) (reversing certification of a mandatory limited-fund class in a mass tort action involving current and future claimants); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 622-25 (1997) (affirming reversal of certification of a predominant-common-question class in a mass tort action involving current and future claimants)). By contrast, bankruptcy courts may either:

- Establish a deadline for asserting current and future claims against a debtor and bar claims asserted after that deadline (see *The Claims Bar Date* below).
- Appoint a future claimants representative to advocate for claimants holding future claims and protect their due process rights.

Chapter 11 also provides flexibility in resolving claims involving diverse, individualized injuries, such as where liability arises under various state laws or fact patterns. Combining these claims in a class action may not satisfy the predominance or superiority requirements necessary to approve a class action settlement, and if approved, may require certifying multiple sub-classes or severing portions of claims for individual trials (see *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 745-47 & n.19 (5th Cir. 1996); FRCP 23 advisory committee's note to 1966 amendment (explaining that a "'mass accident' ... is ordinarily not appropriate for a class action because of the likelihood that significant questions, not only of damages but of liability and defenses of liability, would be present, affecting the individuals in different ways ... [causing it to] degenerate in practice into multiple lawsuits separately tried").

In a Chapter 11 bankruptcy, on the other hand, these claims may be classified together under a plan of reorganization and then paid from a single source through universally applicable TDPs that may account for differences among particular claims.

(For the complete version of this resource, which includes more on the advantages of Chapter 11 in resolving mass tort claims, see [Mass Tort Bankruptcies: Overview](#) on Practical Law.)

Pre-Chapter 11 Bankruptcy Strategies for Isolating Mass Tort Liability

Some companies have implemented pre-bankruptcy corporate restructurings in the form of divisive or divisional mergers. Earlier iterations of this strategy adopted a two-step approach colloquially referred to as the Texas Two-Step because these were generally completed under Texas corporate law (for example,

Tex. Bus. Orgs. Code Ann. § 1.002(55)(A); A.R.S. §§ 29–2101 to 29–2703; 6 Del. C. § 18-217(b)-(c); K.S.A. 17-7685a; 15 Pa. C.S.A. §§ 361 to 368). The Texas Two-Step strategy allows companies facing mass tort liability to divide into new companies where the liability for all mass tort claims is contained in a single entity, which later files for Chapter 11 bankruptcy. Companies that attempted to use this strategy to limit the impact of a Chapter 11 filing on its overall business while taking advantage of Chapter 11's benefits have experienced intense opposition from tort claimants. (For more on the mechanics of and challenges to the Texas Two-Step strategy, see [The Texas Two-Step in Restructuring and Bankruptcy](#) on Practical Law.)

A divisive merger can also be coupled with a liability divestiture that may allow a company to avoid a Chapter 11 filing altogether. With this strategy, following the divisive merger, a company sells the surviving entity that was allocated the mass tort liability to a third-party purchaser. Following the transfer, the purchaser is responsible for resolving the claims. The purchasers in these transactions are often companies with expertise in claims management and can make a return if they are able to resolve the claims for less than the assets of the entity that is sold. The purchasers may also earn fees on managing the assets and legacy claims.

Additionally, companies with mass tort liabilities may resolve their legacy liabilities through a prepackaged Chapter 11 plan. In a prepackaged Chapter 11 plan, the debtor negotiates a settlement with tort claimants and solicits votes on the Chapter 11 plan before commencing a Chapter 11 case. Recent examples include *In re Maremont Corp.* (No. 19-10118) (plan confirmed in 2019) and *In re Myoshi America, Inc.* (No. 26-90522) (confirmation hearing scheduled for June 2026).

(For the complete version of this resource, which includes guidance on Chapter 11 eligibility requirements and venue considerations, see [Mass Tort Bankruptcies: Overview](#) on Practical Law.)

The Claims Bar Date

Setting and providing adequate notice of the bar date may be one of the more contentious and strategic parts of a mass tort bankruptcy. For the debtor, the bar date assists in providing a clean slate because all proofs of claim filed after the bar date may be disallowed, assuming claimants received adequate notice of the bar date (for more information, see [Bar Dates in a Chapter 11 Bankruptcy Case](#) on Practical Law).

However, the bar date for mass tort claims may be less relevant to a debtor if there is a settlement between the debtor and tort claimants and other creditor groups do not dispute the value allocated to the mass tort claimants under the Chapter 11 plan. In this scenario, a debtor may forgo setting a bar date for tort claims because it would have little effect on funding the trust or confirming the plan.

A debtor may want to set a bar date for strategic reasons, such as to focus settlement discussions, because the parties will have a firmer understanding of the number and magnitude of claims against the debtor after the bar date has passed. Of course, in practice, settlement discussions are also informed by the amount of money available.

The debtor and the tort claimants committee may find themselves in conflict over the amount of notice to provide to creditors of the bar date. The tort claimants committee is likely to argue for a later bar date (or

no bar date at all) because tort claimants would have more time to file proofs of claim, and the number of claims filed may inform the aggregate liability calculated during an estimation proceeding. However, a later bar date could also help the debtor mitigate potential due process concerns.

Due process requires that the debtor provide notice of the bar date to creditors before that deadline may be enforced against them. The notice period must also be sufficient, which in mass tort cases has included periods of two to three months, though both shorter and longer periods may be appropriate depending on the circumstances of the case.

Additionally, for known claimants or claimants whose identity is reasonably ascertainable by the debtor, due process requires actual notice of the bar date (see *In re Energy Future Holdings Corp.*, 522 B.R. 520, 529 (Bankr. D. Del. 2015) (citing *City of New York v. N.Y., N.H. & H.R. Co.*, 344 U.S. 293, 295-97 (1953))). For unknown claimants, due process requires constructive notice. In non-mass tort bankruptcies, constructive notice is typically satisfied through publication notice (see *In re Energy Future Holdings Corp.*, 522 B.R. at 529 (citing *Chemetron Corp. v. Jones*, 72 F.3d 341, 346 (3d Cir. 1995))). However, constructive notice in the mass tort context is often significantly more involved than in a Chapter 11 case with primarily business or trade creditors. The noticing procedures in some high-profile mass tort Chapter 11 cases have more closely resembled the noticing procedures in class action proceedings.

For example, in *In re PG&E Corp.*, the debtors faced the challenge of providing actual or constructive notice of the bar date to several thousand unknown wildfire claimants, many of whom relocated across the country after the wildfires and some of whom were rendered homeless, with no known permanent address. The bar date notice procedures in that case included, among other things:

- A notice period of at least 95 days.
- Mailing notice to all:
 - known parties;
 - the debtors' employees; and
 - the debtors' customers.
- Publication in:
 - three national magazines;
 - two national newspapers; and
 - 27 local newspapers.
- Online banner advertisements.
- Social media campaigns.
- Television, radio, and billboard advertising.
- Establishing claims service centers where claimants could submit proofs of claim in person. (See Declaration of Jeanne C. Finegan (I) Regarding Implementation of the Debtors' Notice Procedures and Supplemental Notice Plan and (II) In Support of the Debtors' Objection to Class Representative's Motion to Extend Application of Federal Rule of Civil Procedure 23 to Proof of Claim, *In re PG&E Corp.*, No. 19-30088 (Bankr. N.D. Cal. Jan. 14, 2020).)

When the *PG&E* tort claimants committee requested an extension of the bar date because of a perceived low submission rate for wildfire proofs of claim, the debtors extended the bar date by two months and agreed to the appointment of a wildfire victims claims representative (paid for by the debtors' estate) to identify and reach out to potential wildfire claimants who had not filed proofs of claim (see Order Extending Bar Date for Fire Claimants and Appointing Claims Representative, *In re PG&E Corp.*, No. 19-30088 (Bankr. N.D. Cal. Nov. 12, 2019)).

(For the complete version of this resource, which includes information on Chapter 11 jurisdiction, claims management, and plans of reorganization, see [Mass Tort Bankruptcies: Overview](#) on Practical Law.)

Resolution of Claims and Emergence from Chapter 11

Mass tort claims in a Chapter 11 case are commonly resolved through a channeling injunction that directs all relevant tort claims asserted against the debtor and its estate to a settlement trust, which is then funded with estate assets or assets contributed by related third parties. Because of the channeling injunction, the debtor's exposure to mass tort liability is capped at a fixed amount of assets contributed to the trust. A settlement trust may be funded with one or more kinds of consideration, including:

- Cash.
- Insurance proceeds.
- Proceeds of future litigation.
- Promissory notes.
- The equity of a reorganized debtor.
- Future sources of cash, such as dividend payments or revenue.

Often, and as may be required in the case of a 524(g) settlement trust, the trust's funding will include the reorganized debtor's stock (§ 524(g)(2)(B)(i)(II), Bankruptcy Code (requiring the trust to be funded in whole or in part by the securities of one or more debtors involved in the plan)). As a result, tort claimants may wind up owning a significant stake in the reorganized debtor's business, which is said to provide an "evergreen" funding source for future ... claimants" (*In re Combustion Eng'g, Inc.*, 391 F.3d 190, 248 (3d Cir. 2004); see also 140 Cong. Rec. S4521-01, S4523 (Apr. 20, 1994) (Senator Brown stating "[i]n essence, the reorganized company becomes the goose that lays the golden egg by remaining a viable operation and maximizing the trust's assets to pay claims")).

Channeling Injunctions in Asbestos Claims Under Section 524(g)

Section 524(g) of the Bankruptcy Code specifically permits debtors to establish a settlement trust and receive protection from a channeling injunction that channels all asbestos tort claims to the trust. Under section 524(g), the trust must:

- Be funded by the securities of a debtor who must also make future payments, including dividends.
- Own, or be entitled to own if specified contingencies occur, a majority of the voting shares of:
 - the debtor;

- the debtor's parent corporation; or
- a subsidiary of the debtor that is also a debtor.
- Use its assets to pay claims and demands. (§ 524(g)(2)(B)(i)(II), (III), (IV), Bankruptcy Code.)

The bankruptcy court must also make certain findings to issue a channeling injunction in connection with a Chapter 11 plan, including that:

- The debtor is likely to be subject to substantial future demands for payment from asbestos claimants.
- The actual amounts, numbers, and timing of these future demands cannot be determined.
- The pursuit of these demands outside the procedures prescribed by the plan is likely to threaten the plan's purpose to deal equitably with claims and future demands.
- The plan is approved by at least a supermajority of tort claimants (at least 75% of those voting) whose claims will be addressed by the trust.
- The trust will operate through mechanisms that will treat similar current and future claims in substantially the same manner. (§ 524(g)(2)(B)(ii), Bankruptcy Code.)

Additionally, section 524(g) permits bankruptcy courts to grant protection to certain third parties, such as insurance carriers and corporate affiliates. A section 524(g) channeling injunction can enjoin action against a third party if both:

- The third party "is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor."
- The alleged liability of the third party arises by reason of:
 - the third party's ownership of a financial interest in the debtor, a past or current affiliate of the debtor, or a predecessor in interest of the debtor;
 - the third party's involvement in the management of the debtor or a predecessor in interest of the debtor, or service as an officer, director, or employee of the debtor or a related party;
 - the third party's provision of insurance to the debtor or a related party; or
 - the third party's involvement in a transaction changing the corporate structure of the debtor or a related party or in a loan or other financial transaction affecting the financial condition of the debtor or a related party. (§ 524(g)(4)(A)(ii), Bankruptcy Code.)

A court may only enjoin future claims and demands if it determines that the injunction is fair and equitable regarding future claimants and demand holders "in light of the benefits provided, or to be provided, to [the] trust" (§ 524(g)(4)(B)(ii), Bankruptcy Code). In the context of a section 524(g) channeling injunction that enjoins claims against a non-debtor third party, this requirement has been interpreted to mean that a third party must "contribute to the trust in amounts that are consistent with [its] likely liability ... outside of bankruptcy" to receive the protections of a channeling injunction (see *In re Quigley Co.*, 437 B.R. 102, 133 (Bankr. S.D.N.Y. 2010) (quoting 4 Collier on Bankruptcy ¶ 524.07[2], at 524-59 (16th ed. 2010))).

Channeling Injunctions in Non-Asbestos Claims Under Section 105(a)

In non-asbestos cases, bankruptcy courts may authorize a channeling injunction through their inherent powers under section 105(a) of the Bankruptcy Code. Although no statute expressly allows for channeling injunctions outside the asbestos context, Congress at least contemplated that bankruptcy courts may have this authority when it enacted section 524(g) (see 140 Cong. Rec. 27692 (Oct. 4, 1994) (expressing “no opinion as to how much authority a bankruptcy court may generally have under its traditional equitable powers to issue an enforceable injunction of [the kind in section 524(g)]”).

Multiple mass tort cases have approved channeling injunctions outside the asbestos context (see, for example, *In re TK Holdings, Inc.*, 653 B.R. 33 (D. Del. 2023) (defective airbag inflators); *In re Boy Scouts of Am. & Delaware BSA, LLC*, 642 B.R. 504 (Bankr. D. Del. 2022) (sexual abuse); *In re Mallinckrodt PLC*, 639 B.R. 837 (Bankr. D. Del. 2022) (opioid claims); *In re PG&E Corp.*, 2020 WL 9211190 (Bankr. N.D. Cal. July 6, 2020) (wildfires); *In re Blitz U.S.A., Inc.*, 2014 WL 2582976 (Bankr. D. Del. Jan. 30, 2014) (exploding gas cans); *In re Dow Corning Corp.*, 211 B.R. 545 (Bankr. E.D. Mich. 1997) (silicone breast implants); *In re A.H. Robins Co.*, 129 B.R. 457 (Bankr. E.D. Va. 1991) (intrauterine devices)).

Importantly, a section 105(a) channeling injunction applies only to claims of claimants who received actual or constructive notice of the claims bar date or were represented by a future claimants representative in the bankruptcy proceeding.

Further, following the US Supreme Court’s decision in *Harrington v. Purdue Pharma L.P.*, a bankruptcy court does not have authority in a non-asbestos case to enter a channeling injunction that enjoins claims of non-debtor third parties absent consent of such parties (603 U.S. 204, 226 (2024)).

Third-Party Releases and Injunctions

A debtor may seek to include claims against third parties in the channeling injunction or as part of the releases granted under the Chapter 11 plan, often for the benefit of either individuals associated with the debtor or companies with which the debtor has a close business relationship in exchange for a contribution to the restructuring. Depending on how the plan is structured, how settlement discussions have proceeded during the Chapter 11 case, and what the subject of the restructuring is, these releases may be consensual or nonconsensual.

Section 524(g)(4)(A)(ii) of the Bankruptcy Code expressly authorizes nonconsensual third-party releases in asbestos cases in accordance with specified conditions. Previously, courts were split on whether nonconsensual third-party releases could be granted in non-asbestos cases and on the standards for approving nonconsensual releases. However, the Supreme Court in *Purdue* rejected nonconsensual third-party releases as impermissible for all non-asbestos bankruptcy cases. The decision notably excluded consensual third-party releases. (603 U.S. at 226.)

While the Supreme Court’s ruling forecloses the use of nonconsensual third-party releases in Chapter 11 plans in non-asbestos cases, it expressly does not define what qualifies as a consensual release (*Purdue Pharma*, 603 U.S. at 226). Courts must decide what is considered consent for parties releasing claims against a non-debtor.

Some courts have held that a party consents to a release if it both:

- Receives adequate notice of:
 - the proposed release;
 - the opt-out procedures; and
 - the consequences of failing to opt out.
- Does not opt out of the release.

Other courts have disagreed, requiring affirmative consent to the release. Among the courts that approved consensual third-party releases using an opt-out mechanism pre-*Purdue Pharma*, individual judges varied in their specific preferences about the form of the relevant notice and precise opt-out mechanism. (For more information, see [Third-Party Releases in Bankruptcy Plans](#) on Practical Law.) However, rulings post-*Purdue Pharma* on the use of opt-out mechanisms to obtain consent for third-party releases vary across jurisdictions.

(For a collection of post-*Purdue Pharma* rulings on the use of opt-out mechanisms in Chapter 11 plans for obtaining consent to releases of claims, see [Bankruptcy: Post-Purdue Pharma Third-Party Release Ruling Tracker](#) on Practical Law.)

The Settlement Trust

TDPs are presented to the court for approval before the effective date of the Chapter 11 plan. A settlement trust is typically established and funded on the effective date of the plan. The trust documents usually address several operational concerns, including:

- The nomination and appointment of:
 - a trustee or trustees to oversee the trust;
 - a claims administrator who, along with the trustee, oversees distributions from the trust; and
 - a trust oversight committee or trust advisory committee, which may have review powers over the trustee's and claims administrator's decisions.
- A process for claimants to challenge the trustee's and claims administrator's decisions about the value of their claims.
- If the trust is funded with stock, procedures for liquidating the stock.
- Procedures to ensure that claimants receive pro-rata distributions from the trust's assets.
- Conditions for winding down the trust and distributing any remaining funds.

The trust documents may also contain a payment matrix entitling claimants to receive expedited recoveries on their claims. If claimants disagree with the matrix amounts, the trust documents typically offer claimants the ability to pursue an appeal.

Paths for a claimant to challenge or appeal the trust's claim determinations often involve competing interests. Keeping the appeal within the trust may promote efficient claims administration and consistent outcomes as the trustee and claims administrator become experienced with the subject matter, while also

avoiding litigation expense, which could deplete assets otherwise available for distribution to claimants. However, a claimant seeking to challenge its recovery amount may want recourse outside the structure of the trust (for example, in the tort system) and may care less about the efficiency of administering all claims within the TDP.

If a claimant holding a personal injury or wrongful death claim objects to the lack of recourse in a court with jurisdiction under Article III of the Constitution, the bankruptcy court may require that at least the objecting claimant have a path to liquidate the claim in an Article III court. For example, the TDP may provide that, after a claimant has exhausted all remedies within the trust, the claimant can liquidate the claim in the tort system. The recovery amount would still be subject to any payment percentage and maximum values applicable to the claim. However, the trust documents may structure the challenge process to function as comprehensively as possible within the trust.

(For the complete version of this resource, which includes more on Chapter 11 TDPs, see [Mass Tort Bankruptcies: Overview](#) on Practical Law.)

The Role of Insurance in the Resolution of Mass Tort Bankruptcy Cases

Insurance proceeds are a common asset used to fund Chapter 11 trusts. During a Chapter 11 case, a debtor may reach a settlement with one or more of its insurers under which the insurers agree to make a monetary contribution to the trust in exchange for a release of liability under their policies.

Even if no settlement is reached during the Chapter 11 case, a debtor may transfer its rights under its insurance policies to the trust. Courts have permitted these transfers despite anti-assignment provisions in insurance policies, finding that the Bankruptcy Code preempts these provisions (see, for example, *In re Fed.-Mogul Glob. Inc.*, 684 F.3d 355 (3d Cir. 2012)). After confirmation of the Chapter 11 plan, the trust would have the ability to sue or settle with the insurers based on the insurance rights transferred to the trust.

Section 363 Sales

As an added layer of protection, settling insurers may seek to repurchase their insurance policies or a debtor's rights to insurance proceeds through a policy buyback under section 363 of the Bankruptcy Code. The debtor would then contribute the sale proceeds to the trust. Section 363 permits a debtor to sell property of the estate outside the ordinary course of business (§ 363(b), Bankruptcy Code). If certain conditions are met, these sales can be free and clear of any non-debtor interests in the policies, such as coverage rights of additional insureds (§ 363(f), Bankruptcy Code).

Courts disagree on whether, in connection with a section 363 sale, a bankruptcy court can enjoin the rights of non-debtor additional insureds from seeking a recovery directly against the insurers (compare *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, 93 (2d Cir. 1988) with *In re SoyNut Butter Co.*, 2018 WL 3689549, *5 (Bankr. N.D. Ill. Aug. 1, 2018) and *In re Forty-Eight Insulations, Inc.*, 149 B.R. 860, 864-65 (N.D. Ill. 1992)). Courts that have not allowed these sales to extinguish the rights of non-debtor additional

insureds have held, among other things, that bankruptcy courts lack jurisdiction to impair the independent contractual rights of additional insureds absent consent or compensation (see *Overton's, Inc. v. Interstate Fire & Cas. Ins. Co. (In re SportStuff, Inc.)*, 430 B.R. 170, 178 (B.A.P. 8th Cir. 2010)).

Insurance Neutrality

Because of the potential liability exposure that insurance companies face in mass tort cases, non-settling insurers frequently oppose Chapter 11 plans containing channeling injunctions. Insurers often object that confirmation of a plan with a channeling injunction accelerates or increases their liability and would encourage the payment of non-meritorious or fraudulent claims.

To combat these objections, plan proponents often include language in the plan and confirmation order that purports to make the plan insurance neutral. Insurance neutrality is the recognition that a plan cannot alter the contractual rights of an insurer unless the Bankruptcy Code permits that abridgement or the insurer consents.

The Supreme Court severely limited the impact of insurance neutrality in bankruptcy cases in *Truck Insurance Exchange v. Kaiser Gypsum Co.* (602 U.S. 268 (2024)). Before the *Kaiser* ruling, certain courts had held that insurers lacked standing to object to plan confirmation because the plan was insurance neutral (see *In re Combustion Eng'g, Inc.*, 391 F.3d at 216-18; *Mt. McKinley Ins. Co. v. Pittsburgh Corning Corp.*, 518 B.R. 307 (W.D. Pa. 2014)). However, in *Kaiser*, the Supreme Court reversed the circuit court and found that insurers with financial responsibility for bankruptcy claims are parties in interest under section 1109(b) of the Bankruptcy Code that "may raise and may appear and be heard on any issue" in a Chapter 11 case. The Supreme Court opined that it is conceptually wrong to conflate whether the plan alters the insurer's contractual rights or quantum of liability with the issue of whether insurers have standing to object to plan confirmation. In other words, insurance neutrality is not a standing doctrine. (*Kaiser*, 602 U.S. at 280-81, 283-84.) Despite this ruling, insurance neutrality may still be a helpful tool to resolve potential objections to a plan from insurers.

To accomplish insurance neutrality, plan proponents often add language to a plan and confirmation order that preserves all claims, defenses, rights, and causes of action held by the insurers. Plan proponents may further add a super-preemptory provision to a plan and confirmation order, explicitly stating that the bankruptcy court's order does not affect the insurers' rights. (*In re Combustion Eng'g*, 391 F.3d at 209, 216-18 & n.26.)

In *In re Boy Scouts of America*, the US Court of Appeals for the Third Circuit upheld the assignment of insurance rights and related insurance-neutrality provisions over the objections of non-settling insurers. The court ruled that the plan preserved certain insurers' contractual rights and defenses under the assigned policies and the plan was insurance neutral. (137 F.4th 126 (3d Cir. 2025), cert. denied sub nom. *Lujan Claimants v. Boy Scouts of Am.*, 2026 WL 79599 (U.S. Jan. 12, 2026).)

Even with purported insurance neutrality language, however, insurers have challenged whether a plan is actually insurance neutral if it dramatically increases the quantum of liability for the insurer. For example,

in *In re Global Industrial Technologies, Inc.*, the Third Circuit found that the plan was not insurance neutral because the plan's promise of a secondary trust for silica claims (where most claims against the debtor were asbestos claims) had led to a 27-fold increase in silica claims against the debtor for which the insurers may have been liable (645 F.3d 201 (3d Cir. 2011)).

Insurance carriers often attempt to negotiate additional protective language with plan proponents in exchange for the insurers dropping their objections to the plan.

The views stated above are solely attributable to Jessica Liou and Jason George and do not necessarily reflect the views of Weil, Gotshal & Manges LLP or its clients.

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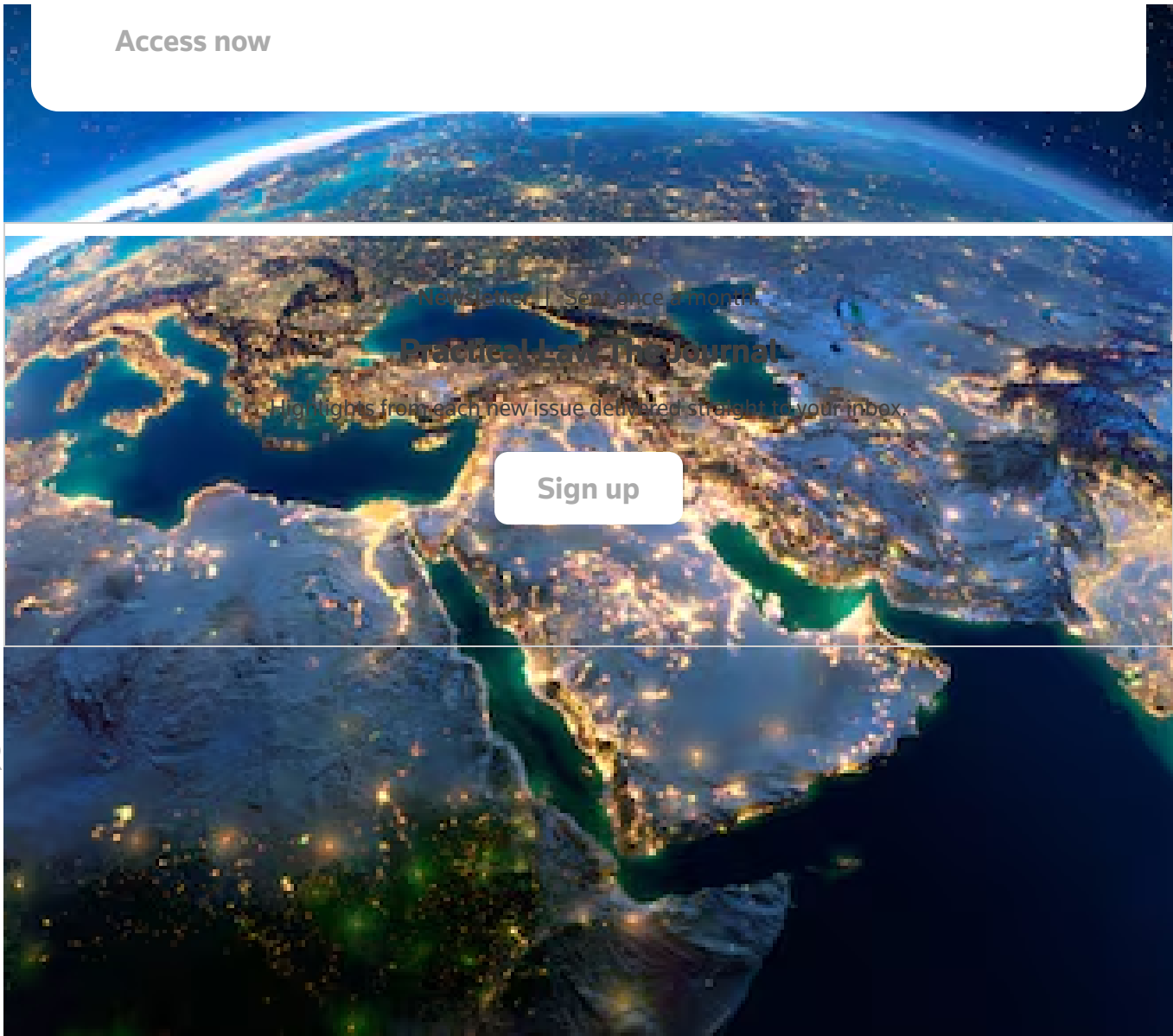
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