

**TRU Creditor Litigation Trust**  
**Beneficiary Update Regarding Litigation Matters**  
**April 28, 2022**

As described in detail in the preamble to the *TRU Creditor Litigation Trust Agreement* [Dkt. No. 6925] (the “*Trust Agreement*”), the TRU Creditor Litigation Trust (the “*Trust*”) was formed pursuant to the Settlement Agreement Order, Confirmation Orders, and Plans, to investigate and, if warranted, pursue the Non-Released Claims for the benefit of certain creditors of the Toys Delaware Debtors and Toys Inc. (in each case, as described in the Trust Agreement).<sup>1</sup>

In preparing this Litigation Matters Update, the Trust Manager has relied upon the integrity and accuracy of the information and documents supplied by counsel and various advisors and staff of the Trust and the Reorganized Debtors, as applicable. Although the Trust Manager has attempted to corroborate the information and documents he has obtained from different sources, he has not independently verified all of the information and documentation he has relied upon in preparing this Update. Nothing in this Litigation Matters Update can be used against the Trust Manager, the members of the Trust Oversight Committee, or the Trust’s counsel, advisors and staff in litigation or otherwise.

The Trust is furnishing this Litigation Matters Update to potential beneficiaries of the Trust pursuant to Section 7.3(c) of the Trust Agreement as a status update of the Trust’s activities, and not for any other purposes. The information contained herein is a summary. The Trust cannot make any assurances with respect to any aspect of any pending or potential future litigation.

The purpose of this update is to advise Trust beneficiaries regarding the status of and material developments in the Trust’s pending litigation matters. This update supplements the most recent prior Beneficiary Update of October 13, 2021 [Dkt. No.7572, Ex. C]. Beneficiaries are encouraged to review the October 13, 2021 Beneficiary Update as well as prior updates for additional details and information.

Directors and Officers Litigation Update

The Trust continues to pursue its claims against certain former Directors and Officers of TRU. Those claims remain pending before Judge Phillips in the Eastern District of Virginia Bankruptcy Court under Adv. Pro. No. 20-03038-KLP (Bankr. E.D. Va.).

**a. Motion for Summary Judgment:**

The Trust and Defendants submitted extensive briefing on Defendants’ motion for summary judgment. The parties argued the summary judgment motion on February 23, 2022. As of this date, there has not been a decision by Judge Phillips on the Defendants’ motion for summary judgment. Judge Phillips received guidance from the District Court to rule upon all pending motions, including the motion for summary judgment, by July 1, 2022, by which date the Trust expects to learn whether any of its claims will not be permitted to proceed to trial.

**b. Trial Date:**

At the hearing on the motion for summary judgment, Judge Phillips advised the parties that a trial date in April 2022 for a jury trial lasting four weeks would not be feasible. The earliest trial date for a four-week jury trial before Judge Phillips would be in November 2022. The Defendants have since indicated their view that a jury trial could take up to six weeks, in which case the trial would likely be delayed until sometime in 2023.

**c. Whether claims will be tried before a judge or jury:**

As noted in the October 13, 2021 update, in September 2021, the Bankruptcy Court ruled that the Trust's jury trial right was not waived by the Settlement Agreement in the bankruptcy. After the Bankruptcy Court's order, Defendants raised additional challenges to the Trust's right to a jury trial. On March 31, 2022, Judge Phillips issued an order that the Trust's fraud and negligence claims were all eligible for a jury trial, but that the Trust's breach of fiduciary duty claims were not eligible for a jury trial because the Trust had not timely requested a jury trial on those claims. The Trust filed a motion for reconsideration of that order on April 7, 2022, laying out why the Trust had appropriately preserved its right to a jury trial and asking Judge Phillips to reconsider his decision on the breach of fiduciary duty claims. That motion is scheduled to be heard before Judge Phillips on May 17, 2022.

**d. Briefing before the District Court:**

Due to the concerns over trial date scheduling and in order to pursue the fastest and most efficient path to bring this case to trial, complete the work of the Trust and distribute any available funds to the Trust Beneficiaries, the Trust is seeking to have the jury trial held before the District Court, as an alternative to the Bankruptcy Court. As part of that briefing process, the District Court judge will also have a chance to weigh in on which claims (if any) are eligible for a jury trial. The District Court docket can be found at Case No. 3:20-cv-311-DJN (E.D. Va.).

For convenience, copies of selected documents in the D&O litigation can be accessed at the link below:

<https://file.dovel.com:7001/sharing/fCsGIoOZH>  
password: HLBjBCLs

Creditor Discovery Expense Reimbursement Fund Update

In the April 9, 2021 update, the Trust advised that it had established a \$1 million Fund to reimburse trade vendors for a portion of their discovery expenses in order to more fairly share the burden of discovery among its beneficiaries. Vendor discovery is now complete, and the period for reimbursement has closed. After reviewing the amount of reimbursements requested and the Trust's cash position and budget going forward, the Trust decided to increase the amount of the vendor reimbursement fund to \$1.62 million and to reimburse a

higher percentage of the expenses incurred by vendors with smaller Claims.

#### Avoidance Actions Update

The Bankruptcy Court recently granted defendant UPS' motion for summary judgment, ending the Trust's final remaining Avoidance Action, which can be found under Adv. Pro. No. 19-03087-KLP (Bankr. E.D. Va.).

#### Oversight Committee Fee Update

The Trust Manager, with the Unanimous Consent of the non-conflicted members of the Oversight Committee, decided to extend the quarterly compensation of one member of the Oversight Committee for the duration of the Trust. The other two members, who are a principal of and counsel for Trust Beneficiaries, respectively, will not receive further compensation.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to such term in the Trust Agreement or Plans, as applicable, which are available on the bankruptcy docket or at the website maintained by the Trust (the "Trust Website") at: <https://case.stretto.com/TRUCreditorLitigationTrust>. All information and summaries set forth herein are subject in all respects to the definitive documents, including the Trust Agreement, Plans, Settlement Agreement and Settlement Agreement Order.