

TRU Creditor Litigation Trust—Beneficiary Update

April 9, 2021

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).¹

In preparing this 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 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 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. This information contained herein is a summary. The Trust cannot make any assurances with respect to any aspect of any pending or potential future litigation.

I. Financial Update (as of December 31, 2020)

Cash Position

The Trust held \$5,945,395 of cash on December 31, 2020, representing a net increase of \$945,395 from the \$5,000,000 balance initially used to fund the Trust.

Aggregate cash receipts since inception of \$3,972,258 through December 31, 2020 were predominantly derived from monetizing Non-Released Claims consisting of Avoidance Actions (as further discussed below); a small portion of the overall cash receipts represents interest income on Trust deposits.

Aggregate cash expenditures since inception of \$3,023,864 through December 31, 2020 primarily consist of professional fees, including legal fees expended towards monetizing Avoidance Action claims. Other Trust administration costs include Trust Manager and Oversight Committee fees, insurance costs and other miscellaneous items.

¹ 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, as applicable.

Tax Allocation for 2020

The Trust will be allocating its 2020 taxable income and expenses to its Beneficiaries pursuant to the Trust Agreement. The Trust anticipates that it will be allocating a total of approximately \$1,038,000 of cash net income from 2020 (divided as allocations of both income and expense items). Of that amount, roughly \$848,000 of net income is expected to be allocated to the holders of Allowed Administrative Settlement Claims as Class A beneficiaries, and roughly \$190,000 of net income is expected to be allocated to TRU Kids, Inc. as Class B beneficiary. The Trust is providing this information to assist Beneficiaries with their tax planning; final amounts and allocations remain subject to revision once the Trust completes its 2020 tax returns.

II. Litigation Matters Update

The Trust has two pending litigation matters discussed below. Both cases are pending in the Eastern District of Virginia Bankruptcy Court. The Claims against Directors and Officers can be found under Adv. Pro. No. 20-03038-KLP (Bankr. E.D. Va.). The Avoidance Action is a claim for recovery of voidable preferences against UPS and can be found under Adv. Pro. No. 19-3087-KLP (Bankr. E.D. Va.)

Claims against the Directors and Officers of certain Toys “R” Us Debtors

As addressed in previous updates, the Trust filed its Complaint against David A. Brandon, Joshua Bekenstein, Matthew S. Levin, Paul E. Raether, Nathaniel H. Taylor, Joseph Macnow, Wendy A. Silverstein, Richard Goodman, Michael Short, and Richard Barry in March 2020. The Trust has recently filed its Second Amended Complaint. Pursuant to the Settlement Agreement, the Trust may pursue recoveries on account of the claims against the D&O Parties from available insurance policies. The Settlement Agreement includes a covenant by the Trust that it will not execute remedies against the personal assets of the individual Defendants.

The Trust is pursuing two categories of claims: (i) Creditor claims against the former TRU D&Os for fraud, intentional and negligent misrepresentations, and concealments, and (ii) Claims belonging to TRU against its former D&Os for breach of fiduciary duties.

Following unsuccessful settlement discussions and the Defendants’ unsuccessful motion to have the case dismissed, the parties have been engaged in extensive, ongoing discovery. So far, numerous trade vendors and most of the Defendants have provided documentary evidence and deposition testimony. Trial is set to begin on November 1, 2021.

Copies of selected documents in the D&O litigation can be accessed at the link below:

<https://file.dovel.com:7001/sharing/6e5DHAuTf>

Password: TRUTrust

Creditor Discovery Issues

In the interest of efficiency, the Trust elected to pursue approximately 100 creditor claims (from a universe of well over 1000). For those identified creditor claims, the Bankruptcy Court ordered a discovery protocol under which the particular creditor would be required to provide documentation and then sit for one or more depositions to answer questions under oath.

That process has resulted in a subset of the vendors having to bear financial costs for the benefit of the entire creditor pool. Unfortunately, efforts to reduce those costs (for example, by reaching agreement with the defendants to limit the document production requirement to the materials most likely to uncover relevant data) have been unsuccessful, driving up the costs for the participating creditors. As a result, the Trust Manager (with the unanimous approval of the Trust Oversight Committee) has decided to establish a Creditor Discovery Expense Reimbursement Fund to provide up to \$1 million in the aggregate to help offset the fees and costs incurred directly by those identified creditors in order to provide the discovery and evidence necessary to support the Trust's claims. The Trust's recoveries on other Non-Released Claims have contributed to the Trust being financially able to establish the fund. Details and further explanation regarding that fund are included in the Appendix to this update.

Certain of the creditors included in the group initially identified by the Trust have failed to cooperate with the Trust, often by failing to accept or refusing to respond to subpoenas for document production. The Trust reserves the right to ask the Bankruptcy Court to sanction any creditors that have not provided good faith cooperation. Those sanctions could potentially include loss of beneficial Interests and the right to participate in any Trust distributions.

Avoidance Actions Update

The Non-Released Claims also include certain Avoidance Actions that were not otherwise released pursuant to the Plans and which were assigned to the Trust.

As previously noted, the Trust retained counsel to review, investigate, and where appropriate pursue recoveries on Avoidance Actions constituting Non-Released Claims for the benefit of the Trust beneficiaries. The Trust identified less than ten Non-Released Avoidance Action claims to pursue; of those, all but one has now been settled or released.

The one remaining pending Avoidance Action is a claim for recovery of voidable preferences against UPS. UPS is asserting that it was released from potential Avoidance Action liability pursuant to the Settlement Agreement. The Trust disagrees, based upon the Debtors having paid UPS in full. The parties are currently engaged in discovery regarding the scope of the releases, with cross-motions for summary judgment expected to be filed in the next few months.

APPENDIX—Creditor Discovery Expense Reimbursement Fund

The Trust is establishing a \$1 million Creditor Discovery Expense Reimbursement Fund (the “Fund”) to be used to reimburse trade vendors for discovery expenses arising out of the D&O Claims. A small subset of trade vendors has been subjected to extensive (and sometimes repetitive) document search requirements and deposition time in connection with those claims, and thus must bear costs individually for the benefit of the group. The Fund will enable the Trust to more fairly share the burden of discovery among its Beneficiaries.

In order to qualify for the program, the vendor must have conducted a search for documents pursuant to the Discovery Protocol established by the Bankruptcy Court and must have been deposed in the case. If those requirements are met, the vendor can submit a request for reimbursement that provides documentation for fees and expenses paid to any outside resources used in the process of complying with discovery obligations in the Trust’s action. Those fees can include fees for outside document platforms, outside counsel hired for review, or any other external resources. Internal time or resources will not be covered by the program.

To participate, qualifying vendors will need to send their reimbursement request and accompanying documentation to Trust counsel, Dovel & Luner by July 31, 2021. The Trust’s counsel will review that documentation for reasonableness and approve qualifying expense reimbursement claims. Upon completion of the review process, approved claims will be reimbursed; if the amount of the approved claims exceeds \$1 million in the aggregate, reimbursements will be made on a pro rata basis. Expense reimbursements will be treated by the Trust as Trust expenses and not as Trust distributions.