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3M and the Use of the Bankruptcy Code and Power of the Bankruptcy Court to Stay Actions Against Non-Debtors

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David Kupetz, a partner in Troutman Pepper Locke's Bankruptcy + Restructuring Practice Group, published the article "3M and the Use of the Bankruptcy Code and Power of the Bankruptcy Court to Stay Actions Against Non-Debtors" in the 2024 edition of *Norton Annual Survey of Bankruptcy Law* published by Thomson Reuters.

In a high profile decision seemingly constraining the bankruptcy court's power to serve as the avenue for resolving mass tort claims, a bankruptcy court in the chapter 11 cases of Aearo Technologies and its affiliates (Aearo) declined to apply or, in effect, extend the automatic stay to litigation against Aearo's parent, 3M Corporation (3M). The bankruptcy court's decision parallels the subsequent decision of the Third Circuit Court of Appeals dismissing the initial chapter 11 bankruptcy case of LTL Management, LLC (LTL), an entity created by Johnson & Johnson (J&J) to file bankruptcy for the purpose of addressing mass tort liability. In both cases, the decisions centered on funding agreements that the courts construed as insulating the chapter 11 debtors from financial distress and creditors from risk of non-payment.

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