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**COMMENTARY**

*3M Subsidiary Files for Bankruptcy After More Than 230,000  
Veterans File Lawsuits*

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Aearo Technologies, a subsidiary of 3M, filed for Chapter 11 bankruptcy on July 26, 2022.<sup>1</sup> More than 230,000 veterans are bringing lawsuits against Aearo Technologies alleging that the company's combat earplugs were defective and caused hearing loss and tinnitus.<sup>2</sup> After being considered one of the largest product liability civil cases in the United States, 3M decided to put Aearo into Chapter 11 bankruptcy because doing so would allow a fair, equitable, and fast process to resolve the veterans' claims.<sup>3</sup>

Chapter 11 bankruptcy allows a company to reorganize their financial affairs during a time of financial distress. Through Chapter 11, 3M and Aearo Technologies are seeking bankruptcy protection and a stay of proceedings.<sup>4</sup> Both companies explained that filing for Chapter 11 bankruptcy was a move made due to their unhappiness with the multidistrict litigation proceedings and not because of "changed financial circumstances."<sup>5</sup> Additionally,

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<sup>1</sup> Brendan Pierson, *Florida Judge Sharply Questions 3M Bankruptcy Strategy*, REUTERS (Aug. 16, 2022, 3:21 PM), <https://www.reuters.com/legal/litigation/florida-judge-sharply-questions-3m-bankruptcy-strategy-2022-08-11/>.

<sup>2</sup> Steven Church & Jeremy Hill, *3M Unit Goes Bankrupt in Bid to Resolve Lawsuits Over Military Earplugs*, BLOOMBERG (July 26, 2022, 8:06 AM), <https://www.bloomberg.com/news/articles/2022-07-26/3m-unit-goes-bankrupt-in-bid-to-coral-earplug-lawsuits#xj4y7vzkg>.

<sup>3</sup> Bob Tita, *Veterans Suing 3M Over Earplugs Oppose Shifting Cases to Bankruptcy Court*, WALL ST. J. (Aug. 11, 2022, 7:00 AM), <https://www.wsj.com/articles/veterans-suing-3m-over-earplugs-oppose-shifting-cases-to-bankruptcy-court-11660175831>.

<sup>4</sup> Robert Klonoff, *3M's Bankruptcy Maneuver Raises Issues for Justice System*, LAW360 (Aug. 11, 2022, 6:46 PM), <https://www.law360.com/articles/1518112/3m-s-bankruptcy-maneuver-raises-issues-for-justice-system>.

<sup>5</sup> *Id.*

the companies stated in their brief to the bankruptcy court that the multidistrict litigation was “broken beyond repair.”<sup>6</sup>

3M plans to create a trust with \$1 billion for the victims.<sup>7</sup> This amount of money is inadequate for the victims, especially comparing the amount to the large judgments rendered in federal court. Shortly after learning about 3M’s trust, plaintiff Joseph Sigmon stated that “3M believes each veteran’s hearing damage is worth less than \$5,000.”<sup>8</sup> Sigmon continued by saying, “Would [the] 3M CEO Mike Roman want to lose his hearing in exchange for \$5,000?”<sup>9</sup> The veterans suing 3M risked their lives to be on the front line protecting the United States, only to be harmed by allegedly defective earplugs.

3M’s strategy to put Aearo Technologies in bankruptcy is similar to those implemented by Johnson & Johnson and Purdue Pharma LP.<sup>10</sup> Bryan Alstock, an attorney representing the veterans, said that “3M’s bankruptcy maneuver is further proof that they value their profits and stock price more than the well-being of the veterans.”<sup>11</sup> The move from federal court to bankruptcy court is viewed as an escape from the civil litigation system because cases were not being ruled in 3M’s favor.<sup>12</sup> U.S. District Court Judge M. Casey Rodgers thought that 3M is running away to another forum because it does not like the rulings she is giving.<sup>13</sup> Although Judge Rodgers allowed the move to bankruptcy court, she also ruled that 3M could not relitigate claims in bankruptcy court that were settled in her court.<sup>14</sup>

3M’s tactic of trying to avoid responsibility may soon backfire. Chief U.S. Bankruptcy Judge Jeffrey Graham will rule in the near future whether to halt litigation and force 3M to settle with the veterans.<sup>15</sup> This ruling may change the way large corporations decide to handle mass tort litigation in the future. There has been a history of large corporations filing for Chapter 11 bankruptcy to move litigation to the bankruptcy court so they can keep their companies intact while paying significantly less in judgments. Plaintiffs are still able to receive money from judgments in the bankruptcy court, but only a small fraction of what they could get in civil court. Here, some of the victims have already received multimillion-dollar judgments. To date, 3M has lost 10 out of 16 trials, awarding

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Gretchen Morgenson, *3M Is Creating a \$1 Billion Trust for Service Members Who Say Its Earplugs Didn’t Protect Them From Hearing Loss*, NBC NEWS (July 26, 2022, 9:23 AM), <https://www.nbcnews.com/business/corporations/3m-creating-1-billion-trust-service-members-say-earplugs-didnt-protect-rcna40032>.

<sup>9</sup> *Id.*

<sup>10</sup> Church & Hill, *supra* note 2.

<sup>11</sup> *Id.*

<sup>12</sup> Steven Church, *3M Awaits Bankruptcy Ruling That May Sink Litigation Tactic*, BLOOMBERG (Aug. 22, 2022, 2:28 PM), <https://www.bloomberg.com/news/articles/2022-08-22/3m-awaits-bankruptcy-ruling-that-could-sink-litigation-tactic>.

<sup>13</sup> Pierson, *supra* note 1.

<sup>14</sup> *Id.*

<sup>15</sup> Church, *supra* note 12.

nearly \$265 million to 13 plaintiffs.<sup>16</sup> Having to pay such large judgments is most likely the driving force behind 3M's tactic to switch to bankruptcy court. Although 3M is trying to avoid paying these large judgments by having Aearo Technologies file for Chapter 11 bankruptcy and moving to bankruptcy court, hopefully Judge Graham's ruling will thwart their tactics and prevent other large corporations from participating in this very popular strategy.

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<sup>16</sup> Brian Bushard, *3M Commits \$1 Billion for Military Members Who Claim Earplugs Were Faulty*, FORBES (July 26, 2022, 3:51 PM), <https://www.forbes.com/sites/brianbushard/2022/07/26/3m-commits-1-billion-for-military-members-who-claim-earplugs-were-faulty/?sh=73c6b87b548d>.