

Congress of the United States

Washington, DC 20510

November 10, 2021

Alex Gorsky
Chairman and CEO
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

Dear Mr. Gorsky:

We write to strongly object to Johnson & Johnson's efforts to manipulate bankruptcy laws to evade accountability for any harm caused by your products. We urge you to immediately reverse course so that tens of thousands of consumers can have their fair day in court.

Over thirty thousand lawsuits against Johnson & Johnson allege that the company's talc-based baby powder was contaminated with asbestos, causing tens of thousands of cases of ovarian cancer.¹ Instead of honestly facing these claims from consumers who claim they were harmed by your products, Johnson & Johnson is attempting to execute a complex corporate reshuffling and exploit a loophole in bankruptcy law to avoid responsibility. This bait-and-switch bankruptcy maneuver, known as the "Texas two-step," would protect Johnson & Johnson's profits and leave tens of thousands of cancer patients holding the bag.

Specifically, on October 14, 2021, a recently-created Johnson & Johnson subsidiary filed for Chapter 11 bankruptcy protection in North Carolina. Using a provision of Texas state law, Johnson & Johnson created the subsidiary via a "divisive merger," allowing the company to shift its talc-related liabilities onto the new entity.² This corporate shell game would force cancer victims seeking restitution from Johnson & Johnson to bring claims against the new shell entity rather than Johnson & Johnson itself. There will undoubtedly be substantial litigation challenging this legal maneuver, but Johnson & Johnson clearly intends to shield itself from claims from people harmed by its products.

A fundamental principle of our legal system is that people who have been harmed due to fraud, intentional misrepresentation, or the marketing and distribution of dangerous products have a right to seek restitution. An equally important principle is that people or corporations facing such claims have a right to defend themselves. However, in this case, Johnson & Johnson is not presenting a defense or objecting to the claims on their merits. Rather, it is attempting to deny tens of thousands of people their day in court by offloading its talc liabilities onto a new company created exclusively to protect Johnson & Johnson's assets and leave cancer-victim claimants with pennies on the dollar.

¹ Brian Mann, "J&J is using a bankruptcy maneuver to block lawsuits over baby powder cancer claims," NPR (Oct. 21, 2021), <https://www.npr.org/2021/10/21/1047828535/baby-powder-cancer-johnson-johnson-bankruptcy>.

² Edward Neiger, "What Plaintiffs Can Do If J&J Succeeds In Bankruptcy Strategy, LAW360 (Sept. 24, 2021), <https://www.law360.com/articles/1425029/what-plaintiffs-can-do-if-j-j-succeeds-in-bankruptcy-strategy>.

Exploitation of the bankruptcy system by large companies to avoid accountability is unsurprising, but it is also unacceptable. In July of this year, we introduced legislation, the “Nondebtor Release Prohibition Act of 2021,” that would rein in various bankruptcy loopholes that have been exploited by actors such as the Sackler family and Johnson & Johnson in order to dodge accountability.

In order to better inform our legislative efforts, and to better inform consumers and cancer victims about Johnson & Johnson’s bankruptcy maneuver, we request that you provide answers to the following questions by December 1:

1. How many claims against Johnson & Johnson related to talc-based products will be affected by the LTL Management LLC bankruptcy filing?
2. Johnson & Johnson has indicated that it will allocate an initial sum of two billion dollars to LTL Management LLC to cover legal costs for talc cases, a substantially lower amount than judgements that have already been issued against Johnson & Johnson in talc cases. How did Johnson & Johnson determine that two billion dollars was an adequate initial allocation?
3. Please provide detailed information about the royalty revenue streams which you claim are presently valued at over \$350 million and which you cite as additional funding for the talc claims trust.³
4. Please list any and all Johnson & Johnson subsidiary corporations that have filed for bankruptcy from FY 2001 through FY 2021.
5. When Johnson & Johnson decided to use the divisive merger process to separate its assets from its liabilities, what was the rationale for determining which assets it would transfer to LTL Management LLC and which it would shield from the reach of creditors through the creation of Johnson & Johnson Consumer Inc. (“New JJCI”)? Please list all of the assets that were transferred to New JJCI and their cumulative value.
6. In the First Day Pleadings document filed with the United States Bankruptcy Court for the Western District of North Carolina, it is claimed that LTL Management LLC “*has the same, if not greater, ability to fund the costs of defending and resolving present and future talc-related claims as Old JJCI did prior to the restructuring.*”⁴ What is the basis for this claim? If this is true, why did the company opt to undergo this extensive corporate restructuring and have its new subsidiary file for bankruptcy?

³ LTL Management LLC, “FAQ”, (October 14, 2021), <https://ltlmanagementinformation.com/wp-content/uploads/2021/10/LTL-FAQ.pdf>.

⁴ Declaration of John K. Kim In Support of First Day Pleadings filed by C. Richard Rayburn Jr. on behalf of LTL Management LLC., (Bankr. W.D.N.C. October 14, 2021) (Dkt. No. 5).

We look forward to your prompt response. In the meantime, we urge you to reconsider pursuing this course of action, in light of the harm it will cause to tens of thousands of Johnson & Johnson consumers who are suffering from cancer.

Sincerely,



RICHARD J. DURBIN
Chair
Senate Committee on the Judiciary



ELIZABETH WARREN
United States Senator



RICHARD BLUMENTHAL
United States Senator



CAROLYN B. MALONEY
Chairwoman
House Committee on
Oversight and Reform



RAJA KRISHNAMOORTHY
Chairman
House Oversight Subcommittee on
Economic and Consumer Policy