

Congress of the United States

Washington, DC 20510

December 17, 2021

Joaquin Duato
Vice Chairman of the Executive Committee
Johnson & Johnson
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

Dear Mr. Duato:

On November 10, 2021, we wrote to Alex Gorsky, Johnson & Johnson's current CEO, who you are due to replace on January 3, 2022, regarding our objections to Johnson & Johnson's ongoing attempt to use bankruptcy loopholes to evade accountability for the harm allegedly caused by your company's talc baby powder.¹ In our view, the approximately 38,000 claimants who argue that their cancers were caused by asbestos in your company's product deserve to have their cases fairly considered. We asked Mr. Gorsky to provide information to help explain why Johnson & Johnson is seeking to deny claimants that chance.

On December 1, 2021, we received a response letter from Johnson & Johnson's outside counsel. Unfortunately, this letter largely restates the dubious claim that Johnson & Johnson's convoluted corporate maneuvering will "provide[] significant benefits to the claimants." Having offloaded all talc liabilities onto a shell company, Johnson & Johnson is now arguing in bankruptcy court that it should be shielded from all relevant claims. Should Johnson & Johnson be successful, cancer victim claimants will be forced to seek restitution from the shell company alone and will likely receive pennies on the dollar, if anything at all.

Chapter 11 bankruptcies are often sought by struggling businesses as a last resort. Johnson & Johnson is not, however, financially strained. Your company's projected sales for this year exceed \$90 billion and corporate executives have made numerous statements about the company's financial strength.² Far from approaching the bankruptcy court out of necessity, Johnson & Johnson is seemingly attempting to exploit the bankruptcy system to dodge legal claims to which you are more than capable of responding.

In our November 10 letter, we noted that a key element of the bait-and-switch corporate reshuffling—the "Texas two-step"—involves the shell company filing for bankruptcy in a favorable jurisdiction. While the eventual outcome in Johnson & Johnson's case is far from certain, a North Carolina bankruptcy judge has rejected this element of your attempted maneuver, and has sent the case to New Jersey, where Johnson & Johnson is headquartered. This ruling is a step in the right direction, but while the bankruptcy court considers this matter, tens of thousands of cancer victims will continue to be left with neither compensation nor a fair day in court.

¹ "Durbin, Senate, And House Dems Object To Johnson & Johnson Bankruptcy Maneuver, Demand Answers" (Nov. 10, 2021), <https://www.durbin.senate.gov/newsroom/press-releases/durbin-senate-and-house-dems-object-to-johnson-and-johnson-bankruptcy-maneuver-demand-answers>.




² Laura Cooper and Matt Grossman, "Johnson & Johnson Posts Higher Profit as Healthcare Demand Returns," THE WALL STREET JOURNAL (Jul. 21, 2021), <https://www.wsj.com/articles/johnson-johnson-posts-higher-quarterly-profit-as-healthcare-demand-returns-11626867300>.

We write today to inquire if you, as incoming CEO, will continue Johnson & Johnson's current efforts to avoid accountability to cancer victims, or if you will reverse course. Your response will help inform the direction of our oversight and legislative response to this important issue.

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 KRISHNAMOORTH
Chairman
House Oversight Subcommittee on
Economic and Consumer Policy