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BANKRUPTCY

Talc Users Suing J&J Decry 'Abusive' Bankruptcy as Trial Opens

A high-stakes trial kicked off Monday over Johnson & Johnson's strategy for moving costly talc litigation to bankruptcy court



Johnson & Johnson moved about 38,000 talc lawsuits to chapter 11, a legal strategy that has come under scrutiny.

PHOTO: JUSTIN SULLIVAN/GETTY IMAGES

By [Jonathan Randles](#)

Feb. 14, 2022 8:17 pm ET

Johnson & Johnson moved a deluge of costly lawsuits over talc-based products to chapter 11 to gain an unfair edge in litigation, lawyers for cancer victims said as a bankruptcy trial opened Monday on the company's legal strategy.

Personal-injury lawyers accused J&J of improperly seeking to access chapter 11

without filing for bankruptcy itself, instead pushing the company's talc-related liabilities into a new subsidiary that swiftly filed for court protection. The bankruptcy filing was designed to resolve talc cases before J&J splits off its consumer-health business, which wasn't financially distressed, injury lawyers said.

J&J lawyers said the bankruptcy filing was proper and that its consumer unit faced severe financial challenges from talc litigation that justify the chapter 11 filing. The dueling portrayals kicked off a four-day trial before Judge Michael Kaplan of the U.S. Bankruptcy Court in Trenton, N.J., who is weighing whether bankruptcy law permits J&J's maneuver.

J&J and a few other profitable companies, all advised by the same law firm, have used the same legal strategy in recent years to move at least 250,000 personal-injury cases to bankruptcy court.

"At its core, this case is rotten because it is abusive," said Jeffrey Jonas, a lawyer representing a committee of talc-injury claimants arguing the bankruptcy should be dismissed because it was filed in bad faith and isn't a valid use of chapter 11.

J&J has denied that it acted in bad faith and said bankruptcy will compensate injury claimants more fairly and equitably. The bankrupt subsidiary, LTL Management LLC, has a funding agreement with J&J to cover any amounts deemed to be owed to people alleging talc-based products caused ovarian cancer or contained traces of asbestos. J&J has denied the allegations and maintained its talc products are safe.

Greg Gordon, a lawyer representing LTL, said the restructuring had no bearing on the larger planned separation of J&J's consumer-health business into a separate public company. The plaintiffs' argument is belied by the fact that J&J also has agreed, through the funding agreement, to be jointly liable for resolving the talc litigation, Mr. Gordon said.

Instead, Mr. Gordon said J&J moved its talc liabilities to LTL after considering different options for addressing talc claims, which have skyrocketed in recent years. He said bankruptcy will be more beneficial to talc claimants than the tort system, under which most claimants would receive no compensation for their claims and would have to wait years before their case is resolved.

"The tort system is not beneficial to these claimants," Mr. Gordon said. "It may be beneficial to the plaintiffs bar but it's not beneficial to plaintiffs, most of whom receive nothing."

The trial is examining J&J's use of a Texas law that lets companies fill subsidiaries that

have limited business operations with legal liability for pending and future injury litigation before those units file for bankruptcy. Last week, the Senate Judiciary Committee scrutinized the Texas law and its use by J&J as Congress considers reining in the use of bankruptcy to resolve mass litigation.

LTL's chapter 11 case has paused roughly 38,000 pending talc lawsuits against J&J. If Judge Kaplan dismisses LTL's bankruptcy, injury lawyers can resume suing J&J. If the chapter 11 proceeds, LTL and J&J would have time to try to build support for a proposed \$2 billion settlement. Judge Kaplan has said he intends to rule by the end of February.

Injury lawyers claimed Monday that the restructuring strategy is connected to J&J's plan to spin off its consumer business, which the company announced in November. Lawyers cited an October email exchange between corporate executives about structuring the funding agreement between J&J and LTL as well as deposition testimony from the company's assistant comptroller, who said financial statements for the consumer business were being prepared without including its historical talc liability. J&J said in November it would likely spin out its consumer division and hold a stock offering.

"J&J, your honor, is trying to enlist this court to be an additional investment banker to pretty-up its balance sheet and juice its IPO value and that is a misuse of the bankruptcy system," said Brian Glasser, a lawyer representing talc claimants.

Mr. Glasser said LTL didn't need to file for chapter 11 because it wasn't in financial distress. Citing earlier deposition testimony from J&J officials, Mr. Glasser said that outside of chapter 11, LTL's funding agreement with J&J could be worth as much as \$60 billion, or the fair market value of Johnson & Johnson Consumer Inc. when its talc liabilities were hived off from its operations, which include Tylenol medicine, Band-Aid bandages and other consumer-health products.

Executives leading LTL defended the bankruptcy strategy on the witness stand. Robert Wuesthoff, a J&J vice president before being tapped to run LTL, denied the bankruptcy was filed to gain a legal advantage over talc claimants. He said the chapter 11 provides an alternative forum for compensating talc claimants more quickly than the traditional trial system.

While answering questions from a lawyer representing LTL, Mr. Wuesthoff said J&J has complied with its obligations under the funding agreement and provided millions of dollars of funding to cover lawyers fees related to the chapter 11 case.

He said the "strong" funding agreement is seeded with \$2 billion and that LTL is ready

to negotiate a potential settlement with talc claimants if the bankruptcy case is allowed to proceed.

“We’re ready to go, we’re just waiting,” Mr. Wuesthoff said. “In the meantime we’re burning a lot of money that’s just being wasted.”

The trial is scheduled to continue on Tuesday.

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