

J&J Eyes Bankruptcy Maneuver in Bid to Skirt Liability in Baby Powder Lawsuits

By [Megan Redshaw](#)

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Johnson & Johnson is reportedly considering using what legal experts call the “Texas two-step” bankruptcy law, a maneuver that would allow the company to create a new entity housing talc liabilities that would then file for bankruptcy to halt litigation.

Johnson & Johnson (J&J) is exploring a plan to offload liabilities from widespread baby powder litigation by creating a new business that would then seek bankruptcy protection, [Reuters reported](#).

During settlement discussions over its talc-containing baby powder, a J&J legal representative told plaintiffs’ lawyers the company could pursue placing a subsidiary in bankruptcy as part of a strategy to settle thousands of claims linking the product to ovarian cancer.

If executed, the plan could [result in lower payouts](#) for cases that do not settle beforehand, according to people familiar with the matter.

According to the [Wall Street Journal](#), bankruptcy can be a powerful tool for companies facing a large number of lawsuits over allegedly defective products, or other mass-tort claims. A chapter 11 filing can pressure claimants into accepting lower settlements by halting ongoing litigation and discovery proceedings, and by creating a centralized forum to value claims.

Plaintiffs’ lawyers would initially be unable to stop J&J from taking such a step, though they could [pursue legal avenues](#) to challenge it later.

A [company spokesperson](#) said Sunday that “Johnson & Johnson Consumer Inc. has not decided on any particular course of action in this litigation other than to continue to defend the safety of talc and litigate these cases in the tort system, as the pending trials demonstrate.”

J&J is considering using Texas’ “divisive merger” law, which would [allow the company](#) to split into at least two entities — creating a new entity housing talc liabilities that would then file for bankruptcy to halt litigation, [according to Reuters](#).

Should J&J proceed, plaintiffs who have not settled could find themselves in protracted bankruptcy proceedings with a much smaller company. Future payouts would be dependent on how J&J funds the entity housing its talc liabilities.

The maneuver is known among legal experts as a Texas two-step bankruptcy, a strategy used in recent years by companies facing asbestos litigation.

According to [Onder Law, LLC](#), “A Texas two-step bankruptcy is a move that’s in line with the unscrupulous tactics Johnson & Johnson has exercised for decades. If they are successful — and we don’t believe they will be — the company hopes to discharge their liability from talc lawsuits throughout the country.”

A 2018 [Reuters investigation](#) found J&J knew for decades that asbestos, a known carcinogen, lurked in its baby powder and other cosmetic talc products.

J&J [stopped selling talc powder products](#) in the U.S. and Canada last year. But as of April 2021, there were roughly 28,900 lawsuits pending in U.S. courts against the company and its J&J Consumer Inc. subsidiary, alleging talc-containing powders caused ovarian cancer and other injuries.

J&J said in its most recent quarterly report in April that the number of talc cases continues to grow.

As [The Defender reported](#) last month, the Supreme Court on June 1 [rejected](#) an appeal by J&J to reverse a \$2.1 billion verdict for plaintiffs who claim the company’s talc powder products gave them ovarian cancer.

The pharmaceutical company, which developed the [Janssen COVID vaccine](#), asked the top court to review the verdict, arguing it didn’t receive a fair trial in Missouri where the court awarded a \$4.7 billion payout to 22 women who developed ovarian cancer.

The verdict was [reduced](#) to \$2.1 billion in June 2020, by the Missouri court of appeals.

Ken Starr, a prosecutor representing women who sued J&J, wrote in court briefings that the [pharma](#) company “knew for decades that their talc powders contained asbestos, a highly carcinogenic substance with no known safe exposure level.”

Starr [said](#) the company could have protected customers by switching from talc to cornstarch as their scientists proposed as early as 1973, but they were unwilling to sacrifice profits for a safer product. ”

J&J [claims its baby powder is safe](#) and does not contain asbestos or cause cancer.

Yes! The Supreme Court on Tuesday rejected an appeal by Johnson & Johnson to reverse a \$2.1 billion verdict for plaintiffs who claim the company’s talc powder products gave them ovarian cancer.

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— Robert F. Kennedy Jr (@RobertKennedyJr) [June 3, 2021](#)

The lawsuits linking talc powder to cancer aren't the first time J&J has been sued over the safety of its products.

Other [major J&J lawsuits](#) and recalls for faulty products include:

- 1995: J&J was hit with a \$7.5 million fine for [destroying documents](#) to cover up an investigation into wrongful marketing of its Retin-A acne cream to remove wrinkles.
- 1996: The company entered into an undisclosed settlement on [false claims](#) over condom protection against HIV and other STDs.
- 2001: J&J paid out \$860 million in a [class action lawsuit](#) for misleading customers about prematurely discarding its 1-Day Acuvue soft contact lens. J&J recommended they should be worn only once, although it was discovered the lenses were no different than the regular Acuvue lens that would last for two weeks.
- 2010: The drug giant was hit with a \$81 million settlement for [misbranding](#) its anti-epileptic drug Topamax to treat psychiatric disorders and hiring outside physicians to join its sales force to promote the drug for unapproved conditions. The following year, J&J paid [\\$85 million](#) for similar charges against its heart drug Natrecor.
- 2011: Several J&J baby products were [discovered](#) to contain carcinogenic ingredients.
- 2013: The U.S. Justice Department [charged](#) the company \$2.2 billion in criminal fines for marketing its autism and antipsychotic drug Risperdal for unapproved uses. Forty-five states had filed civil lawsuits against J&J in the scandal. Other serious adverse effects from Risperdal [reported](#) by the FDA include diabetes mellitus, hyperprolactinaemia, somnolence, depression, anxiety, psychotic behavior, suicide and death.
- 2019: A Philadelphia [jury ordered](#) J&J to pay \$8 billion in punitive damages to a Maryland man, whose lawyers argued the company illegally marketed antipsychotic drug, Risperdal, and downplayed the side effect that young men using it could grow breasts. At the time, J&J was facing approximately 13,400 claims tied to Risperdal.
- 2020: Four companies, [including J&J](#) reached a \$26 billion settlement with counties and cities that sued them for damages related to the opioid epidemic in the largest federal court case in American history.

2021: J&J [agreed to pay](#) a \$230 million settlement with New York state that bars the company from promoting opioids and confirmed it ended distribution of such products within the U.S.

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Megan Redshaw is a freelance reporter for The Defender. She has a background in political science, a law degree and extensive training in natural health.

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