

## J&J lawsuit bankruptcy move causes ruffles



---

Published by: Dippy Singh at 23/09/2024

---

**A Johnson & Johnson subsidiary has filed for bankruptcy to resolve the US lawsuits stemming from its ongoing talc scandal – with law firms already logging their complaints over the controversial move.**

**Johnson & Johnson (J&J) subsidiary Red River Talc** has filed for voluntary Chapter 11 bankruptcy in an effort to settle the onslaught of class actions and lawsuits claiming a link between its talc products and ovarian cancer.

Red River Talc registered the filing with the US Bankruptcy Court for the Southern District of Texas on Friday (20 September), with the case assigned to Judge **Christopher Lopez**.

The beauty behemoth has failed in its last two attempts to use the bankruptcy strategy – known as a ‘Texas two-step’ – to resolve the [mounting talc-related lawsuits](#), which are reported to be in their tens of thousands. Under the controversial strategy, the talc liabilities are transferred to the subsidiary, which then files for

bankruptcy – effectively guarding the parent company from the liabilities and pushing all claimants into one settlement. Commentators contend that it allows companies to dodge their legal responsibilities.

The latest bankruptcy plan would resolve all the ovarian talc litigation claims, which represent 99.75% of all pending talc lawsuits. J&J said the plan received the support of 83% of current claimants, surpassing the 75% approval threshold required by the US Bankruptcy Code to secure confirmation of the plan.

In order to obtain the claimants' backing, Red River Talc increased the settlement contribution by USD 1.75 billion to approximately USD 8 billion to be paid out to claimants over 25 years, with the nominal amount totalling around USD 10 billion. The USD 1.75 billion includes USD 650 million to settle the legal fees owed to lawyers for their part in the multi-district litigation cases, where most of the filed ovarian claims are pending.

**Erik Haas**, worldwide vice president of litigation at J&J – which maintains the talc-related claims have no merit – said in a statement: “The overwhelming support for the plan demonstrates the company’s extensive, good-faith efforts to resolve this litigation for the benefit of all stakeholders,” adding that the plan is “fair and equitable to all parties” and should be “expeditiously confirmed by the Bankruptcy Court”.

J&J added that the plan gives claimants a “far better recovery than they stand to recover at trial”, noting that the company has been victorious in approximately 95% of ovarian cases tried to date.

The healthcare company also confirmed that the plan is supported by the future claims representative (FCR), a lawyer representing the future claimants.

However, several law firms have been quick to oppose the appointment of the FCR, as well as the bankruptcy filing itself.

In a strongly worded motion lodged with the Bankruptcy Court on 22 September, a group of law firms calling itself the Coalition of Counsel for Justice for Talc Claimants has taken issue with Red River Talc’s “hand-selected choice of a FCR”, asserting that it is the court, and not the debtor, that has the authority to appoint an FCR.

“The debtor has stated that it intends to seek the court’s approval of **Randi Ellis** [a dispute resolution and settlement consulting lawyer] to serve as FCR in this case. The Coalition believes this bankruptcy case, like its two predecessors, was filed in bad faith, and, thus, should be dismissed. But if the case is not dismissed and the appointment of an FCR becomes appropriate, there must be a fair and transparent selection process,” the Coalition stated in its motion.

The Coalition includes law firms **Ashcraft & Gerel**, **Beasley Allen**, **Golomb Legal**, **Levin Sedran & Berman**, **Levin Papantonio**, and **Robinson Calcagnie**.

“The selection of an FCR is particularly important, where the rights of tens of thousands of current and future claimants to a jury trial are at stake. If the plan were confirmed, future creditors not only would be deprived of their right to a trial, but their right to recovery through a section 524(g) trust would be capped,” the Coalition added in the motion. “Accordingly, the role of the FCR is critical and should be occupied by somebody that creditors can feel assured has been vetted for any perceived or actual bias.”

“The Coalition has reason to believe, and expects to demonstrate, that the vote on the debtor’s pre-packaged plan is illusory, and that, in fact, J&J did not garner the requisite percentage of votes to satisfy the requirements,” it added.

**Andy Birchfield**, mass torts section head at Beasley Allen, said: “We view this so-called vote as another fraudulent effort by J&J to manipulate the bankruptcy process and minimise the legitimate claims of ovarian cancer victims. It’s preposterous for a company valued at USD 400 billion, with USD 90 billion in annual revenue, to resort to bankruptcy to unfairly compensate the women whose lives it has irreparably harmed.”

**Tom Longstaff**, partner and head of product liability at **KP Law** (previously Lanier, Longstaff, Hedar & Roberts), which commenced its [first UK group action](#) targeting talc manufacturers including J&J in 2022, tells *CDR* in an email: “This is the third time in recent years that J&J has attempted to use the bankruptcy courts to settle tens of thousands of claims brought in the US relating to the sale of baby powder. It is of course a matter for claimants in the US to decide if the specific detail of the USD 10 billion settlement is acceptable, which does not affect UK claimants, and on whose behalf we will continue to seek justice.”

In June, a nationwide coalition of US states [secured a USD 700 million settlement](#) from J&J after claiming the company’s marketing tactics misled consumers over the safety of its talcum powder-based brands.

---