MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
(CITY OF ST. LOUIS)

VICTORIA LYNN GIESE, ANGELA TRENTMANN, AND SUSAN VOGELER,

Plaintiffs,

v.

JOHNSON & JOHNSON

Serve: Steven M. Rosenberg
Registered Agent
One Johnson & Johnson Plaza
New Brunswick, NJ 08933

and

JOHNSON & JOHNSON CONSUMER, INC.

Serve: CSC- Lawyers Incorporating Service Company
221 Bolivar Street
Jefferson City, MO 65101

Defendants.

PETITION IN EQUITY

Case No. __

PETITION IN EQUITY

1. Plaintiffs Victoria Lynn Giese, Angela Trentmann, and Susan Vogeler ("Plaintiffs") by and through their undersigned counsel, respectfully file this Petition against Defendants Johnson & Johnson ("J&J Global") and Johnson & Johnson Consumer Inc. ("JJCI") ("J&J" when referred to collectively along with other corporate affiliates), seeking a permanent injunction preventing J&J Global and JJCI from utilizing a divisive merger or any other form of transaction to separate their assets from their talc-related liabilities, including the liabilities that may arise from the state-law claims Plaintiffs are pursuing against J&J before the

Honorable Rex M. Burlison in the 22nd Judicial Circuit Court of Missouri. As explained in a companion filing, Plaintiffs also seek emergency injunctive relief to prevent J&J Global and JJCI from implementing such a strategy pending adjudication of this complaint. In support of their request for relief, Plaintiffs allege as follows:

PRELIMINARY STATEMENT

2. As set forth below, J&J has been scheming for months to engage in a so-called "Texas Two-Step"—a corporate-law shell game that would allow this corporate giant, valued at nearly *half a trillion dollars*, to shield its enormous assets from ever being used to provide relief to these Plaintiffs and the tens of thousands of other women who have fallen victim to J&J's talc. With the Texas Two-Step, J&J would spin off a new corporate shell entity (hereinafter "BadCo"); funnel its talc-related liabilities—but not its assets—into BadCo; and then put the liability-laden BadCo into bankruptcy. Meanwhile, the bulk of J&J's productive assets—which could satisfy the company's talc liabilities several times over—would remain safely sequestered in a separate entity ("NewCo")[1], leaving J&J free to continue doing its highly lucrative business as usual. The Court should not permit this abuse of the judicial process.

3. For years, plaintiffs have fought for their day in court—to prove in a trial by jury that J&J's deadly, carcinogenic talc product caused them grievous harm, including ovarian cancer, mesothelioma, and other devastating and often fatal diseases.[2] If Plaintiffs' Missouri trials are allowed to go forward, they stand to secure substantial judgments against J&J Global and JJCI—as have numerous other women who have brought nearly identical claims. As just

[1] Depending on how the transaction is structured, NewCo or BadCo could be an existing J&J entity.

[2] Although other plaintiffs have brought claims for other injuries, *e.g.*, mesothelioma, these particular Plaintiffs bring claims for ovarian cancer only.

one example, in July 2018, a jury trial in Missouri state court resulted in a final judgment of $2.1 billion awarded to 22 victims of J&J talc.[3]

4. J&J Global, with its sterling balance sheet and massive stream of ongoing revenues, would be more than capable of paying judgments awarded to these Plaintiffs, as well as the compensation owed to other similarly harmed talc victims. Nonetheless, just weeks before Plaintiffs' trials are scheduled to commence—and just as other trials delayed because of COVID are slated to resume—it has become clear that J&J has no intention of allowing another Missouri jury to judge its conduct and award these talc victims what they are due. Instead of trying to defend its conduct with respect to these Plaintiffs, J&J is planning to use a complex series of fraudulent asset transfers, followed by a bankruptcy filing in a venue-shopped jurisdiction, in order to halt talc trials in Missouri and other places, to shield J&J from being held to account through a real trial, and to deprive these Plaintiffs and other talc victims of just compensation for the harm they have suffered.[4]

5. J&J has thus far refused to reveal its precise plans to achieve these improper goals. It has, however, been widely reported—with no denial by J&J—that the corporation intends to use the notorious "Texas Two-Step" to sequester the lion's share of its enormous assets far from the reach of women and families harmed by talc. With the "Texas Two-Step," J&J would spin off a new corporate entity from J&J Global, JJCI, or another entity within the J&J family of companies. It would then funnel all talc-related *liabilities* to BadCo, while moving all its productive *assets* into another corporate entity, NewCo. BadCo would receive some assets,

[3] Ex. 1, J&J to Pay $2.1 Billion Talc Award as Top Court Nixes Appeal, *Bloomberg Law* (June 1, 2021) https://news.bloomberglaw.com/product-liability-and-toxics-law/j-j-must-pay-2-1-billion-talc-award-as-top-court-rejects-appeal.

[4] Each of the Plaintiffs currently has a case pending in Missouri state court with a trial scheduled in the very near future—jury selection set to begin on September 7, 2021.

but not nearly enough to satisfy its liabilities, leaving the underfunded entity in position to file for bankruptcy. In a recent filing in the bankruptcy case involving one of J&J's talc suppliers, Imerys Talc America, Inc. and related debtor companies ("Imerys"), J&J all but admitted that it is planning to execute a Texas Two-Step.[5]

6. The effect, if J&J gets away with this scheme? All further court proceedings involving J&J's talc, including those in Missouri courts, would be halted by a bankruptcy stay. A complex and protracted bankruptcy proceeding would commence. After years of litigation, a single federal bankruptcy judge rather than a jury of Plaintiffs' peers would make a generalized, blanket judgment about how much the talc claims are worth. If J&J has its way, this blue-chip company with an estimated market value of nearly half a *trillion* dollars, and a credit rating that rivals that of the U.S. government itself, would pay mere pennies on the dollar for the injuries it has caused. All the while, the tens of thousands of women who unwittingly used J&J's deadly product would continue to suffer, and in many cases die, with little hope of ever receiving real justice.

7. The Court should not permit this, because J&J's planned scheme would violate the Missouri Uniform Fraudulent Transfer Act in at least three ways.

8. First, by transferring its talc liabilities away from its productive assets and into BadCo, J&J Global and/or JJCI would be making a "transfer. . . [w]ith actual intent to hinder, delay, or defraud any creditor of the debtor," namely these Plaintiffs. RSMo. § 428.024(1)(1).

[5] *See* Ex. 2, Defendants' Objection to Motion of Official Committee of Tort Claimants and Future Claimants' Representative for Preliminary Injunction, *In re: Imerys Talc America, Inc. et al.*, No. 21-51006, Dkt. 33-1 at 12-13 (arguing that J&J is *legally entitled* to perform "[a] divisional merger implemented under applicable state law," and specifically citing the Texas-law provision employed to implement a Texas Two-Step).

9. Second, the BadCo entity that would incur J&J's talc-related liabilities would, by design, lack assets sufficient to satisfy J&J's talc obligations. That lopsided transaction would amount to an illegal "incur[rence] [of an] obligation" by BadCo "without receiving a reasonably equivalent value in exchange," and BadCo would be engaged in a business for which its assets would be unreasonably small or would intend "to incur, or believ[e] or reasonably should … believe" it would "incur, debts beyond [its] ability to pay as they became due." RSMo. § 428.024(1)(2)(b).

10. Third, for similar reasons, BadCo would be "insolvent" as a result of the talc-related liabilities, either "at [the] time [it incurred the talc-related liabilities]" or "as a result of" taking on the talc-related liabilities. RSMo. § 428.029(1). Because BadCo would not receive "reasonably equivalent value in exchange" for taking on the talc-related liabilities, J&J's planned reorganization would violate the Missouri Uniform Fraudulent Transfer Act for this reason as well. *Id.*

11. The Court should permanently enjoin J&J from violating Missouri law by proceeding with its improper Texas Two-Step scheme or by executing any other corporate restructuring that would seek to shield this corporate giant's substantial assets from its talc-related liabilities. RSMo. § 428.039(1)(3). For the reasons explicated below, the Court should also avoid the transfer of any assets JJCI has made to J&J Global or other corporate entities in the J&J family of companies (hereinafter "Other J&J Entities") that received assets from JJCI (including dividends) after JJCI became insolvent, became insufficiently capitalized in relation to its business, or incurred debts beyond its ability to pay as they come due. *See* RSMo. § 428.039(1)(1); RSMo. § 428.024(1)(2).

12. To be clear, this Petition does not seek to limit J&J Global, JJCI, or Other J&J Entities from filing for bankruptcy. What Plaintiffs seek is an order permanently enjoining J&J from fraudulently transferring assets and liabilities *before* undertaking a bankruptcy filing in order to deprive talc victims of the compensation that they justly deserve. Unlike a bankruptcy filing on its own, that shifting of assets and liabilities constitutes illegal misconduct—and it is what Plaintiffs seek to prevent via this Petition and accompanying motion for emergency relief.

THE PARTIES

13. The Defendants are J&J Global, JJCI, and Other J&J Entities that received assets from JJCI (including dividends) after JJCI became insolvent, became insufficiently capitalized in relation to its business, or incurred debts beyond its ability to pay as they come due.

14. Defendant J&J Global is a multinational corporation that manufactures medical devices, pharmaceuticals, and consumer packaged goods. On information and belief, J&J Global is a New Jersey corporation with its principal place of business in the State of New Jersey.

15. Defendant JJCI (formerly known as Johnson & Johnson Consumer Companies, Inc.) is a wholly owned subsidiary of J&J Global. On information and belief, JJCI is a New Jersey corporation with its principal place of business in the State of New Jersey.

16. Defendants Other J&J Entities are additional corporate entities within the J&J family of companies. These Other J&J Entities include, but are not limited to, Janssen Pharmaceuticals, Inc., DePuy Synthes, Inc., and Johnson & Johnson International. Janssen Pharmaceuticals, Inc., DePuy Synthes, Inc., and Johnson & Johnson International are

situated between J&J Global and JJCI in the J&J family of companies.[6] Additional Other J&J Entities are currently unknown.

17. In addition to selling and marketing talc-related products, JJCI is more generally the division of J&J that handles consumer products, including those marketed for newborns, babies, toddlers, and mothers, including many name-brand cleansers, moisturizers, skin care, hair care, diaper care, sun protection, and nursing products. JJCI's brands include Neutrogena, Tylenol, Motrin, Band-Aid, Listerine, Carefree tampons, and the Aveeno line of skin products—among many others.[7]

18. The Plaintiffs in this case are Victoria Lynn Giese, Angela Trentmann, and Susan Vogeler.

19. Plaintiff Victoria Lynn Giese is a citizen of the City of Branson, State of Missouri. At all relevant times, including from approximately 1985-2014, Plaintiff Victoria Lynn Giese purchased and applied talcum powder in the States of Missouri, California, and Nevada. In or around March 2013, Plaintiff Victoria Lynn Giese was diagnosed with ovarian cancer, which developed in the State of Missouri. Plaintiff Victoria Lynn Giese developed ovarian cancer, and suffered effects attendant thereto, as a direct and proximate result of the unreasonably dangerous and defective nature of talcum powder and J&J's wrongful and negligent conduct in the research, development, testing, manufacture, production, promotion, distribution, marketing, and sale of talcum powder. As a direct and proximate result of these

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[6] *See, e.g.*, Ex. 3, Petition for Certiorari, *Johnson & Johnson et al. v. Ingham*, 20-1223 (United States Supreme Court) (March 2, 2021) at iii, https://www.supremecourt.gov/DocketPDF/20/20-1223/170734/20210302153815743_Ingham%20Petition%20-%203-2%20Final.pdf ("Johnson & Johnson Consumer Inc. is wholly owned by Janssen Pharmaceuticals, Inc. Janssen Pharmaceuticals, Inc. is wholly owned by DePuy Synthes, Inc. DePuy Synthes, Inc. is wholly owned by Johnson & Johnson International. Johnson & Johnson International is wholly owned by Johnson & Johnson, which is a publicly held company.").

[7] *See* Ex. 4, Consumer Health, *Johnson & Johnson*, https://www.jnj.com/healthcare-products/consumer.

injuries, Plaintiff Victoria Lynn Giese has incurred and will incur in the future medical expenses, has endured and will endure pain and suffering and loss of enjoyment of life, and Plaintiff Victoria Lynn Giese has otherwise been damaged in a personal and pecuniary nature.

20. Plaintiff Angela Trentmann is an adult whose principal place of residence is in the City of Gerald, State of Missouri. She brings this action in her capacity as daughter of Debra Marino in accordance with R.S.Mo. § 537.080 as a Class I Beneficiary. Plaintiff Angela Trentmann is pursuing this action due to the wrongfully caused premature death of Debra Marino pursuant to R.S.Mo. §§ 537.080, et seq. At all relevant times, including from approximately November 1963 to January 8, 2014, Debra Marino purchased and applied J&J's talcum products in the State of Missouri. In or about February 2009, Debra Marino was diagnosed with ovarian cancer, which developed in the State of Missouri. The premature death of Debra Marino was the direct and proximate result of her application of talcum powder and subsequent ovarian cancer diagnosis. Based on the unreasonably dangerous and defective nature of talcum powder and J&J's wrongful and negligent conduct in the research, development, testing, manufacture, production, promotion, distribution, marketing, and sale of talcum powder, and pursuant to R.S.Mo. §§ 537.080, et seq., Plaintiff seeks all damages available under R.S.Mo. § 537.090.

21. Plaintiff Susan Vogeler is a citizen of the City of Harrisonville, State of Missouri. At all relevant times, including from approximately 1971 to February 2009, Plaintiff Susan Vogeler purchased and applied talcum powder in the State of Missouri. On or around March 23, 2009, Plaintiff Susan Vogeler was diagnosed with ovarian cancer, which developed in the State of Missouri. Plaintiff Susan Vogeler developed ovarian cancer, and suffered effects attendant

thereto, as a direct and proximate result of the unreasonably dangerous and defective nature of talcum powder and J&J's wrongful and negligent conduct in the research, development, testing, manufacture, production, promotion, distribution, marketing, and sale of talcum powder. As a direct and proximate result of these injuries, Plaintiff Susan Vogeler has incurred and will incur in the future medical expenses, has endured and will endure pain and suffering and loss of enjoyment of life, and Plaintiff Susan Vogeler has otherwise been damaged in a personal and pecuniary nature.

22. Plaintiffs or one of their loved ones all used talcum products manufactured, marketed, and sold by J&J Global and JJCI. Plaintiffs or one of their loved ones each developed ovarian cancer as a result of their exposure to talc. Each of them is planning to take these cases to trial and eventual verdict.

23. Plaintiffs have an upcoming, scheduled trial against J&J on September 7 of this year in front of the Honorable Rex M. Burlison in the 22nd Judicial Circuit Court.

JURISDICTION AND VENUE

24. Jurisdiction is properly vested with this Court because Plaintiffs' equitable rights are subject to violation.

25. This Court has subject matter and personal jurisdiction over J&J under RSMo. § 506.500.

26. Venue is proper in this Court pursuant to RSMo. § 508.010.2(4).

BACKGROUND

A. J&J Currently Faces Tens of Thousands of Talc-Related Lawsuits.

27. Talcum power is made from talc, a naturally occurring mineral made up (in large part) of magnesium, silicon, and oxygen. Talcum powder absorbs moisture and reduces friction, especially friction against human skin. This prevents rashes and makes talcum powder useful

as a cosmetic product—such as baby powder and adult body and facial powders—in addition to a number of other consumer goods.

28. Beginning in 2009, based on scientific evidence that talc causes ovarian cancer, women injured by talc, and, in some cases, their loved ones, filed lawsuits against J&J in state and federal courts throughout the country. Several years later, after science revealed the presence of asbestos in J&J's talc products, additional lawsuits were filed, including by victims of mesothelioma and other devastating diseases. The named defendants in these suits include J&J Global and JJCI, a unit of J&J that manufactured, marketed, and sold talc products before those products were removed from the market.

29. The plaintiffs in these lawsuits all allege that exposure to J&J's talc-containing products—such as its Baby Powder and Shower to Shower products—causes (i) ovarian cancer and other gynecological diseases and (ii) mesothelioma, lung cancer, and other respiratory diseases. Each plaintiff alleges that J&J's manufacturing, marketing, and sale of these products violated state law and entitle them to substantial damages.

30. Since 2009, J&J has been sued by tens of thousands of individual tort claimants alleging personal injury and wrongful death claims arising from exposure to J&J's talc-containing products.

31. On May 19, 2020, after being ordered to pay billions of dollars in damages to talc claimants, J&J announced that it would stop selling talc-based products in the United States, a decision it attributed to declining "demand" and not mounting litigation losses.[8]

[8] *See* Ex. 5, Johnson & Johnson Consumer Health Announces Discontinuation of Talc-based Johnson's Baby Powder in U.S. and Canada, *J&J* (May 19, 2020), https://www.jnj.com/our-company/johnson-johnson-consumer-health-announces-discontinuation-of-talc-based-johnsons-baby-powder-in-u-s-and-canada.

B. J&J Faces Substantial Liability from Current Talc Claims.

32. There is no question that J&J Global and JJCI collectively face substantial current and future liabilities for damages caused to women who used its talc products.

33. As of July 29, 2021, there were 34,600 talc-related cases presently pending against J&J.[9] A disproportionate number of those claims are being brought by African Americans and other minorities who were improperly targeted by J&J's marketing.

34. The value of each of these individual cases is substantial. For example, in many of the cases that have already proceeded to trial, J&J has stipulated to the value of the medical expenses incurred by the plaintiffs. For just seven of these plaintiffs, stipulated medical expenses totaled more than $3.6 million—an average of more than $500,000 each.[10] As a result, if the 30,000-plus talc cases against J&J proceeded to trial, and if the juries found J&J liable, the

[9] Ex. 6, Johnson & Johnson SEC Form 10-Q (July 29, 2021), https://johnsonandjohnson.gcs-web.com/static-files/df3c7e07-e815-4c6d-843e-ff06c72b41e5 at 29.

[10] *See* Ex. 7, *Brower v. Johnson & Johnson*, 16-005534 (Fulton Cnty. Ct., Ga.) (Trial Tr. 9/20/19) ("The parties stipulate to the following facts: The total medical expenses incurred by Diane Brower and related to her medical treatment for ovarian cancer are one million two hundred ninety-nine thousand five hundred twenty-two dollars and forty-seven cents."); Ex. 8, *Cadagin v. Johnson & Johnson*, 18-571 (St. Clair Cnty. Ct., Ill.) (Trial Tr. 7/22/21) ("The parties agree that the total medical expenses incurred by Elizabeth Driscoll related to her medical treatment for ovarian cancer are $485,361.85."); Ex. 9, *Forrest v. Johnson & Johnson*, 1522-CC00419 (St. Louis Cir. Ct., Mo.) (Trial Tr. 12/16/19) ("The parties stipulate that the total usual and customary charges for Vickie Forrest's medical treatment are $260,885.24."); Ex. 10, *Fox v. Johnson & Johnson*, 1422-CC09012 (St. Louis Circuit Ct., Mo.) (Trial Tr. 2/10/16) ("[T]hat stipulation provides that the total usual and customary charges for Jacqueline Fox's medical treatment are $488,719.73."); Ex. 11, *Giannechini v. Johnson & Johnson*, 1422-CC09012 (St. Louis Cir. Ct., Mo.) (Trial Tr. 10/20/16) ("The parties stipulate that the total usual and customary charges for Deborah Giannecchini's medical treatment related to her ovarian cancer are . . . $563,423.01."); Ex. 12, *Ristesund v. Johnson & Johnson*, 1422-CC09012 (St. Louis Circuit Ct., Mo.) (Trial Tr. 4/21/16) ("The parties also stipulate that the total usual and customary charges for Gloria Ristesund's medical treatment is $174,406.23."); Ex. 13, *Slemp v. Johnson & Johnson*, 1422-CC09326 (St. Louis Cir. Ct., Mo.) (Trial Tr. 4/28/17) ("[T]he total usual and customary charges for Lois Slemp's medical treatment related to her ovarian cancer are $401,921.02.").

compensatory damages awards in each case are likely to be in the hundreds of thousands of dollars—before even considering pain and suffering, lost wages, or punitive damages.

35. Judged by comparison to similar lawsuits, the settlement value of these cases is also likely to be substantial on an individual basis. For example, in a recent litigation against the drugmaker Takeda, the plaintiffs alleged that Actos (a diabetes medication) increased the risk of bladder cancer, an analogous allegation to the increased ovarian-cancer risk at issue in the talc litigation, although bladder cancer is less deadly and less costly to treat than ovarian cancer. A global settlement of $2.4 billion was reached on behalf of 9,820 Actos plaintiffs, for an average of more than $200,000 each.[11] This comparison also suggests that the settlement value of each of the current talc claims is in the hundreds of thousands of dollars.

36. On the reasonable assumption that these claims are fairly worth at least $500,000 each—a value which is less than the average stipulated medical expenses alone for each plaintiff, with no added value at all for pain and suffering as well as no punitive damages of any kind—J&J's liability for the 34,600 present talc claims exceeds $17 billion.

C. J&J Faces Substantial Liability from Talc Victims in the Future.

37. In addition to present claims, J&J also faces substantial liability for claims brought by women who have not yet developed ovarian cancer as a result of their use of talc products—but will in the future.

38. Each year in the U.S., approximately 22,000 new cases of ovarian cases are diagnosed.

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[11] *See* Ex. 14, Takeda Agrees to Pay $2.4 Billion to Settle Suits Over Cancer Risks of Actos, *New York Times*, April 28, 2016, https://www.nytimes.com/2015/04/29/business/takeda-agrees-to-pay-2-4-billion-to-settle-suits-over-cancer-risk-of-actos.html#:~:text=Takeda%20Pharmaceutical%20has%20agreed%20to,cancer%2C%20it%20announced%20on%20Tuesday.&text=About%209%2C000%20bladder%20cancer%20claims%20are%20pending%20against%20Takeda%20involving%20Actos.

39. As detailed above, in May 2020 J&J discontinued its talc products. *See supra*, at ¶ 31.

40. The latency period for ovarian cancers is lengthy—easily exceeding 40 years from carcinogen exposure to cancer development.

41. During the next 40 years—from 2020 to 2060—nearly one million women will be diagnosed with ovarian cancer.[12]

42. Epidemiological analysis shows that, of these approximately one million ovarian cancer cases, 11 to 29 percent[13] will be attributable to J&J's talc products.[14]

43. These figures suggest that, of the million women who will develop ovarian cancer in the next 20 years, between 110,000 and 290,000 could potentially bring claims against J&J.

44. Thus, on the conservative assumption that these claims are fairly worth at least $500,000 each (a value which is less than the average stipulated medical expenses alone for each plaintiff), and on the conservative assumption that only 15,000 women (15% of the total number of ovarian-cancer victims with claims against J&J) will actually bring claims against J&J, J&J's liability for talc claims brought by future ovarian-cancer victims easily exceeds $7.5 billion dollars.

45. As a result, the total talc liabilities for JJCI and J&J Global as a result of present and future talc claims exceeds $24.5 billion.

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[12] *See* Ex. 15, Affidavit of Gerald McGwin, Jr., ¶ 3.

[13] *See* Ex. 16, Expert Report of Dr. Smith-Bindman (July 2, 2021) at 42 ("This reflects that between 11-29% of all ovarian cancer diagnosed each year are attributable to exposure to talcum powder products.").

[14] This estimate is further supported by comparing the current number of talc lawsuits to the total number of women currently suffering from ovarian cancer. There are currently 224,900 women living with ovarian cancer. Of those women, 34,600 have brought claims against J&J—around 15% of the total. *See* Ex. 6, Johnson & Johnson SEC Form 10-Q (July 29, 2021), https://johnsonandjohnson.gcs-web.com/static-files/df3c7e07-e815-4c6d-843e-ff06c72b41e5 at 29. These figures suggest that, of the million women who will develop ovarian cancer in the next 20 years, a minimum of 110,000 would have claims against J&J.

46. Despite having ample assets with which to satisfy these liabilities fairly valued in the tens of billions of dollars, J&J has currently reserved only $3.9 billion for talc-related liabilities—a fraction of the total liabilities it faces.[15]

D. J&J Global Has Ample Assets with which to Satisfy These Talc-Related Liabilities.

47. J&J Global is fully capable of paying the full value of these claims—both present and future. J&J Global is the parent company of the various J&J entities, including JJCI.

48. J&J Global is one of the most solvent companies—indeed, one of the most solvent entities of any kind, corporate or governmental—in the world. It currently has a market capitalization of nearly $500 billion,[16] and it routinely enjoys a credit rating higher than that of the United States government itself.[17]

49. There is no question that J&J as a whole—armed with J&J Global's massive market capitalization, numerous businesses, substantial assets, current cash holdings, and expected cashflows—is entirely able to satisfy its talc liability without resorting to the bankruptcy process at all. As noted above, J&J recently paid $2.1 billion to satisfy a jury verdict awarded on behalf of 22 women who developed ovarian cancer after using J&J's talc products.[18]

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[15] Ex. 17, Johnson & Johnson SEC Form 10-k (Feb. 22, 2021) at 28, https://johnsonandjohnson.gcs-web.com/static-files/e2a329b4-aeb6-438d-a449-f0e282cf8ee0.

[16] *See* Ex. 18, https://companiesmarketcap.com/johnson-and-johnson/marketcap/.

[17] *Compare* Ex. 19, S&P revises J&J's outlook to negative after $1.5B boost to legal reserve, *S&P Global*, https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/s-p-revises-j-j-s-outlook-to-negative-after-1-5b-boost-to-legal-reserve-60982518 (noting that "S&P Global Ratings . . . affirmed the company's AAA issuer credit rating") *with* Ex. 20, Sovereign ratings wrap: S&P affirms US at AA+, *S&P Global*, https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/sovereign-ratings-wrap-s-p-affirms-us-at-aa-fitch-cuts-south-africa-to-bb-57915061 (noting that "S&P Global Ratings affirmed the U.S.' unsolicited sovereign credit ratings at AA+/A-1+").

[18] Ex. 1, J&J to Pay $2.1 Billion Talc Award as Top Court Nixes Appeal, *Bloomberg Law* (June 1, 2021) https://news.bloomberglaw.com/product-liability-and-toxics-law/j-j-must-pay-2-1-billion-talc-award-as-top-court-rejects-appeal.

Since then, J&J's stock price has remained stable—and indeed *increased* in value—hardly the hallmarks of a company struggling to make ends meet to satisfy its tort liabilities.[19]

E. J&J Has Already Tried—and Failed—to Use the Bankruptcy System to Thwart Payments to Talc Victims.

50. This is not the first time that J&J has attempted to use the bankruptcy process to shirk full responsibility for its talc-related liabilities.

51. In February 2019, one of J&J's talc suppliers, Imerys, filed for Chapter 11 bankruptcy. Two months later, J&J attempted, unsuccessfully, to remove thousands of pending state tort actions against it to federal court and fix venue in the District of Delaware, on the theory that those cases were "related to" the Imerys bankruptcy.[20]

52. A number of courts around the country considered J&J's removals and transfers with respect to individual cases, and all remanded the cases to state court. Delaware U.S. District Judge Noreika also denied J&J's removal motion, finding that J&J's suggestion that fixing venue in a federal court in Delaware "would *increase* the efficiency of handling these issues defies common sense and logic." *Id.* at *8.

F. J&J Is Now Poised to Use a "Texas Two Step" Bankruptcy to Thwart Payments to Talc Victims.

53. Having failed to use the Imerys bankruptcy to its advantage, J&J now appears poised to try another scheme: the so-called Texas Two-Step.

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[19] *See* Ex. 21, JNJ Historical Data, *NASDAQ*, https://www.nasdaq.com/market-activity/stocks/jnj/historical.

[20] *See, e.g.*, *In re Imerys Talc Am., Inc.*, No. 19-MC-103 (MN), 2019 WL 3253366, at *2 (D. Del., July 19, 2019) ("In the months since removal, the Court is aware that at least 346 of these actions have been remanded back to state courts. The Court is not aware of any case in which a federal district judge has found subject matter jurisdiction over a removed State Court Talc Claim against Johnson & Johnson.") (citation omitted).

54. In a Texas Two-Step, a company with substantial assets and liabilities (like JJCI) reincorporates in Texas and undergoes a divisive merger pursuant to Texas Business Organization Code § 1.002(55)(A), purporting to divide itself into two entities. As part of the divisive merger, the company's assets and liabilities are allocated to its successor entities as it chooses, but with the predictable result that one successor entity (the BadCo) takes significant liabilities and another (the NewCo) takes most of the assets, free of those same liabilities. The ability to undertake such a divisive merger is a unique feature of Texas law; it is not permitted in other states, other than in Delaware, and then only for limited liability companies. *See* 6 Del. Code § 18-217.

55. As the second step in the process, BadCo, the entity that receives the liabilities in the divisive merger, files for bankruptcy, typically in the Western District of North Carolina, in order to take advantage of certain case law perceived as favorable in that jurisdiction.[21] Meanwhile, NewCo, the entity that received the assets, continues to operate as normal and claims to have no responsibility for the liabilities of the bankrupt BadCo. In J&J's case, this would mean that JJCI, whose brands include Neutrogena, Tylenol, Motrin, Band-Aid, Listerine, Carefree

[21] On July 31, 2017, Georgia-Pacific LLC converted from a Delaware LLC to a Texas LLC. After converting, Georgia-Pacific LLC engaged in a divisive merger transaction, forming Georgia-Pacific LLC (which immediately converted back to a Delaware LLC) and Bestwall LLC (which immediately converted from a Texas LLC to a North Carolina LLC). On November 2, 2017—ninety-three (93) days after domiciling in North Carolina—Bestwall LLC filed a Chapter 11 bankruptcy petition in the Western District of North Carolina. Among other things, the structure of the Bestwall transaction appears to have been an exercise in forum shopping, and specifically an effort to avoid the Third Circuit, where Georgia-Pacific had long been venued, and Third Circuit jurisprudence. This was the first of what has come to be known as the "Texas Two-step." Since then, CertainTeed, Ingersoll-Rand/Trane Technologies, and Trane US have each engaged in virtually identical transactions. While the details of what J&J is reportedly contemplating are unknown, these prior transactions, which were undertaken at the advice of counsel from the same law firm J&J has purportedly engaged, appear to foreshadow its plans.

tampons, and the Aveeno line of skin products—among many others[22]—would be able to separate and shield those valuable assets from its talc liabilities.

56. Missouri law applies to this action, but this maneuver would qualify as an illegal transfer even under Texas law. Although Texas has a statutory provision stating that a merger (including a divisive merger) operates "without . . . any transfer or assignment having occurred," Texas Bus. Org. Code § 10.008(a)(2)(C), the Texas Uniform Fraudulent Transfer Act provides that, "[i]n this chapter," meaning under the Texas Uniform Fraudulent Transfer Act, the term "transfer" encompasses "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance." 3 Tex. Bus. & Comm. Code § 24.002(12). This definition squarely embraces the reorganization that J&J is planning here. In other words, even under Texas law, which is not applicable because, among other reasons, there is as of yet no Texas entity involved, it is the Uniform Fraudulent Transfer Act that determines whether a transfer has occurred, not the Texas Business Organizations Code.[23]

57. In any event, this Complaint and accompanying motion are brought under Missouri law, which, like the Texas Uniform Fraudulent Transfer Act, provides that the term "transfer" means "every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance." RSMo. § 428.009(12).

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[22] *See* Ex. 4, Consumer Health, *Johnson & Johnson*, https://www.jnj.com/healthcare-products/consumer.

[23] The provision of the Texas Business Organizations Code deeming a merger not to be a "transfer or assignment" would still control vis-à-vis contractual anti-assignment provisions, however, such that it is not a nullity.

That definition also squarely embraces the reorganization that J&J is planning here, and there is no Missouri-law provision that comes anywhere close to insulating so-called "mergers," conducted under the laws of *other states*, from the reach of Missouri's own fraudulent-transfer law.

58. A Texas Two-Step maneuver would be designed to allow J&J to protect its enormous assets from the reach of talc victims and continue its substantial business operations unencumbered by the burdens of the bankruptcy process. Meanwhile, an underfunded shell company with no business to protect or other creditors to manage would benefit from bankruptcy's automatic stay of all talc litigation, depriving plaintiffs like those in this action of their day in Court, and leaving J&J without any incentive to quickly and fairly resolve its bankruptcy.[24]

59. This would not be the first time a company has attempted a Texas Two-Step. As a North Carolina bankruptcy court recently noted just last week, the exact same strategy was "previously employed in [the] Bestwall [bankruptcy], and it [was] thereafter . . . repeated in the *Aldridge* and *Murray* bankruptcy cases filed in this judicial district." Ex. 36, Findings of Fact and Conclusions of Law Regarding Automatic Stay, *In re: DBMP LLC* ("CertainTeed"), No. 20-30080, Dkt. 972 (Aug. 11, 2021).

60. As that court went on to observe, the origin of this scheme is *not* struggling or unlucky businesses or businesspeople in need of temporary relief from pressing liabilities. Rather,

[24] It is important to recognize that a divisive merger is not the only means by which J&J could attempt to shield its assets so they are not available to provide just compensation to talc victims. For example, J&J could simply transfer assets out of JJCI, which directly holds a large amount of J&J's talc liabilities and then put an asset-depleted JJCI into bankruptcy. As with the Texas Two-Step, such a maneuver would run afoul of Missouri law. To protect against that and other equally improper maneuvers, the Court should freeze any assets J&J moved out of JJCI after the point at which those talc liabilities rendered that entity insolvent. RSMo. § 428.039(3)(a). The Court should also enjoin any "further disposition" of those assets. *Id.*

the genesis of the scheme is a single Big Law corporate defense firm: "In each of the four cases, the Debtor corporation was represented by the Jones Day law firm." *See id.* It is no coincidence that J&J has hired Jones Day to be its bankruptcy counsel here.[25] To the contrary, that hiring is itself indicative of J&J's true plans.

61. J&J's sole purpose for carrying out this maneuver would be to use the bankruptcy laws to dramatically reduce its payment obligations to tort victims without subjecting J&J's actual ongoing businesses or the bulk of its assets to the burdens of the bankruptcy process.

62. As evidence of its intent, J&J has threatened counsel representing talc victims with the specter of exactly this kind of bankruptcy maneuver—explaining that if these plaintiffs fail to settle now they are likely to wait years for the bankruptcy process to play out and ultimately get much less than the low-ball settlement amounts currently on offer.

63. Some of these threats (but by no means all of them) have already been made public—and have been in the public record since spring 2021. Specifically, law firms representing injured plaintiffs reported that "[a]s a threat to force acceptance of a parsimonious offer, J&J [was] threatening bankruptcy," that "J&J [was] making what is likely an idle threat to declare bankruptcy in a dicey back-handed method called the 'Texas two-step,'" and that J&J was attempting to use this maneuver "to discharge their liability from talc lawsuits throughout the country."[26]

64. Similar threats have been reported more recently in numerous stories in the legal, financial, and popular press.

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[25] *See* Ex. 22, Johnson & Johnson Taps Jones Day to Explore Talc Bankruptcy, *WSJ Pro Bankruptcy* (July 20, 2021), https://www.wsj.com/articles/johnson-johnson-taps-jones-day-to-explore-talc-bankruptcy-11626809000.

[26] Ex. 23, Johnson & Johnson Litigation Update, *Mass Torts Nexus* (April 15, 2021), https://www.masstortnexus.com/News/5467/Johnson-And-Johnson-Litigation-Update

65. For example, the *Wall Street Journal* reported that, "[i]n discussions with lawyers for personal-injury claimants, J&J has said it could split talc-related liabilities tied to its Johnson & Johnson Consumer Inc. unit away from income-producing assets and file a newly formed unit for bankruptcy."[27] The Journal also noted that "Johnson & Johnson has engaged law firm Jones Day"—the very law firm that initially concocted the Texas Two-Step process—"to advise the company as it explores placing a subsidiary in bankruptcy to help settle thousands of personal injury claims linking talcum-based baby powder to cancer[.]" *Id.*

66. There are numerous stories reporting that J&J is not just *threatening* a Texas Two-Step but has every intention of carrying it out.[28] For example, Reuters has reported that "Johnson & Johnson is exploring a plan to offload liabilities from widespread Baby Powder litigation into a newly created business that would then seek bankruptcy protection, citing seven separate individuals familiar with the matter."[29]

67. Debtwire similarly reported "that Johnson & Johnson is considering a restructuring plan that would place its liabilities from widespread baby powder litigation into a newly created

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[27] Ex. 22, Andrew Scurria & Alexander Gladstone, *Johnson & Johnson Taps Jones Day to Explore Talc Bankruptcy*, Wall Street Journal (July 20, 2021); *see also* Ex. 24, *How Bankruptcy Could Help Johnson & Johnson Corral Vast Talc Litigation*, Wall Street Journal (July 20, 2021) https://www.wsj.com/articles/how-bankruptcy-could-help-johnson-johnson-corral-vast-talc-litigation-11626773400.

[28] *E.g.*, Ex. 25, Mike Spector, Jessica Dinapoli & Dan Levine, *J&J exploring putting talc liabilities into bankruptcy*, Reuters (July 18, 2021), https://www.reuters.com/business/healthcare-pharmaceuticals/exclusive-jj-exploring-putting-talc-liabilities-into-bankruptcy-sources-2021-07-18/; Ex. 26, Andrew Scurria, *Johnson & Johnson Legal Rep Floats Subsidiary Bankruptcy Filing Over Talc Lawsuits*, Wall Street Journal (July 19, 2021); Ex. 22, Andrew Scurria & Alexander Gladstone, *Johnson & Johnson Taps Jones Day to Explore Talc Bankruptcy*, Wall Street Journal (July 20, 2021); Ex. 27, Jonathan Randles & Becky Yerak, *Johnson & Johnson Agrees to Standstill Over Talk Dispute*, Wall Street Journal (July 29, 2021).

[29] Ex. 25, Mike Spector, Jessica Dinapoli & Dan Levine, *J&J Exploring Putting Talc Liabilities into Bankruptcy*, Reuters (July 19, 2021).

business that would then seek bankruptcy protection, a process also known as a 'Texas two-step' bankruptcy."[30]

68. As Law360 reported, "[t]he divisive merger strategy allows a company to shield its assets while putting up a ring-fence around its liabilities." As Law360 went on to explain, "[t]he impact of the bankruptcy and the centralizing of tort claims, when coupled with a divisive merger strategy, is to limit the parent company's exposure and the source of potential recovery for the claimants."[31]

69. As Axios reported, "[a]ll of [J&J's] talc-related liabilities would be in one company that would then file for bankruptcy, while the rest would carry on as normal, listed on the stock exchange," a maneuver that "would normally be a 'fraudulent transfer.'"[32]

G. J&J's Response to Press Reports Confirms that an Injunction Is Necessary.

70. As significant as the press reports themselves is J&J's response to those reports.

71. When asked whether it was planning to perform the Texas Two-Step to avoid liability to talc victims, J&J could have flatly denied that it would ever do so—or denied that it had any current plans to do so. That was not J&J's response. Instead, J&J told Reuters that it had "not decided on any particular course of action in this litigation" and then "declin[ed] further

[30] Ex. 28, *Johnson & Johnson looks to two-step its way from asbestos liability*, Debtwire (July 21, 2021).
[31] Ex. 29, Vince Sullivan, *Talc Plaintiffs' Attys Fume At Idea J&J Might Use Ch. 11 Tactic*, Law360, https://www.law360.com/retail/articles/1404483/talc-plaintiffs-attys-fume-at-idea-j-j-might-use-ch-11-tactic.
[32] Ex. 30, Felix Salmon, *How Johnson & Johnson could use the "Texas two-step" to cap its baby powder liabilities*, Axios (July 22, 2021), https://www.axios.com/johnson-and-johnson-baby-powder-bankruptcy-dec4874c-e02b-4076-817d-83de74d6196c.html.

comment."[33] J&J went on to repeat this boilerplate in response to inquiries from other media outlets.[34]

72. The meaning of this non-answer is clear. J&J is currently considering doing *exactly* what it has been threatening to do all along: use a Texas Two-Step or similar corporate-law maneuvers to insulate its assets from being available to provide just compensation to victims injured by its talc products.

73. Unsurprisingly, this meaning was clear even to the reporters who received J&J's non-denial. After receiving J&J's response to the request for comment, Reuters headlined its article "J&J Exploring Putting Talc Liabilities Into Bankruptcy."

H. J&J's Statements during Recent Court Proceedings Confirm that an Injunction Is Necessary.

74. During a July 7 hearing before the Honorable Patricia W. Booker in the State Court of Richmond County, Georgia, where another talc trial is soon set to begin, the Court asked counsel for J&J whether the corporation really was considering a Texas Two-Step or similar maneuver as, the court noted, had widely been reported in the press, including the *Wall Street Journal*. Defense counsel responded: "I absolutely cannot make any comment."[35] At no point did counsel for J&J deny that J&J was fully intending—and indeed planning—to do exactly what the press has been reporting.

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[33] Ex. 25, Mike Spector, Jessica Dinapoli & Dan Levine, *J&J exploring putting talc liabilities into bankruptcy*, Reuters (July 19, 2021).

[34] *See, e.g.*, Ex. 26, Johnson & Johnson Legal Rep Floats Subsidiary Bankruptcy Filing Over Talc Lawsuits, *WSJ* (July 19, 2021); Ex. 29, Talc Plaintiffs' Attys Fume At Idea J&J Might Use Ch. 11 Tactic, Law360 (July 19, 2021), https://www.law360.com/retail/articles/1404483/talc-plaintiffs-attys-fume-at-idea-j-j-might-use-ch-11-tactic.

[35] Ex. 31, Transcript, *Monroe v. Johnson & Johnson*, Civ. 2018RCSC01222 (July 27, 2021).

75. Similarly, an official committee of creditors in the Imerys bankruptcy recently asked the Bankruptcy Court to restrain J&J and JJCI "from using a divisive merger or any other form of corporate transaction to separate themselves from the indemnification obligations they owe to [the Imerys entities]."[36] On July 29, 2021, the court held an initial hearing on that motion at which counsel for J&J did not deny that the company was fully intending and planning to execute a Texas Two-Step or something similar in order to cleanse itself of its talc-related liabilities. Instead, counsel for J&J acknowledged that the Texas Two-Step was indeed something that J&J could "someday decide to do."[37] In seeking to resist any restraint on such a plan, counsel for J&J asserted that there would be "remedies for" that conduct if it occurred, noting that it could be challenged as "a fraudulent conveyance or whatever." *Id.*[38]

76. In its formal response to this motion in the Imerys case, J&J doubled down on its intention to execute a Texas Two-step.[39] As J&J acknowledged, the creditor committee in Imerys alleged that "J&J is potentially considering a so-called 'Texas two-step,' meaning a divisional merger followed by a bankruptcy filing by the divided entity." *Id.* at 7. In response, despite having every opportunity to do so, J&J *nowhere*—not once—suggested that it had no intention of doing exactly what the creditor committee alleged J&J was

[36] Ex. 32, Motion of the Official Committee of Tort Claimants and the Future Claimants' Representative for Temporary Restraining Order and Preliminary Injunction, *In re Imerys Talc America, Inc.*, No. 19-10289, Dkt. 4 at 2; *see also* Ex. 33, Memorandum of Law in Support of the Motion, *In re Imerys Talc America, Inc.*, No. 19-10289, Dkt. 5.

[37] Ex. 27, Johnson & Johnson Agrees to Standstill Over Talc Bankruptcy Dispute, *WSJ* (July 29, 2021), https://www.wsj.com/articles/johnson-johnson-agrees-to-standstill-over-talc-bankruptcy-dispute-11627602019.

[38] *See also* Ex. 34, Transcript of Video Hearing, *In re: Imerys Talc America*, 19-10289 (July 29, 2021) at 11-14.

[39] *See* Ex. 2, Defendants' Objection to Motion of Official Committee of Tort Claimants and Future Claimants' Representative for Preliminary Injunction, *In re: Imerys Talc America, Inc. et al.*, No. 21-51006, Dkt. 33.

planning to do. Instead of denying that it planned to use a Texas Two-Step to shield its assets, J&J decided to rely on mere technicalities instead. Specifically, J&J argued that the creditor committee waited *too long* to file its motion seeking to halt the Texas Two-Step, *id.* at 23 (arguing that "the Movants suspected months ago that J&J might undertake a divisional merger under Texas law . . . but did nothing"), quibbled with whether allegations about a potential Texas Two-Step were properly included in the relevant complaint, *id.* at 10 ("The Adversary Complaint includes none of the 'allegations' upon which the Movants rely—including, for example, that J&J is considering a divisional merger or what Movants refer to as the 'Texas two-step.'"), argued that the Bankruptcy Code's automatic stay provision did not prohibit the planned Texas Two-Step, *id.* at 14 ("Quite simply, the automatic stay does not prohibit J&J from engaging in corporate mergers or otherwise restructuring its corporate form."), argued that its right to "corporate autonomy" outweighed any interest in preventing its corporate-law machinations, *id.* at 26; *see also id.* at 28 (arguing that "[c]orporate mergers or divisions are permitted under applicable non-bankruptcy law and are a tool that corporations commonly use to pursue their business goals and maximize value for shareholders"), and argued that such corporate shell-games were in fact entirely lawful under state law, *id.* at 12-13 ("A divisional merger implemented under applicable state law is not a free-for-all in which companies abrogate rights of counterparties. A divisional merger would fully preserve the Debtors' contractual rights, whatever they are."). Perhaps most strikingly, J&J cynically acknowledged in its response that "legal remedies" would be available "at [some] point" in the future to the extent the planned reorganization were deemed "improper," a tacit admission that the Texas Two-Step could rightly be deemed a fraudulent transfer. *Id.* at 20. There is simply no way to fairly read J&J's response without coming away with the

following conclusion: Unless J&J is enjoined, it will use the Texas Two-Step to illegally shield its enormous assets from its talc-related liabilities.

I. J&J's Planned Reorganization Would Deprive Talc Victims of Compensation to which They Are Entitled under the Law.

77. As even the initial reporting on this issue has recognized, the purpose and effect of J&J's Texas Two-Step bankruptcy process is obvious: "Should J&J proceed, plaintiffs who have not settled could find themselves in protracted bankruptcy proceedings with a likely much smaller company." [40] And "[f]uture payouts to plaintiffs would be dependent on how J&J decides to fund the entity housing its talc liabilities." *Id.*

78. If history is any guide, this would inevitably leave talc victims like Plaintiffs vastly undercompensated or even completely uncompensated for their injuries: "Bankruptcy cases filed to resolve litigation, including those related to asbestos, often take years, and *almost never fully repay creditors*." *Id.*

79. This is true even when the defendant "promises" to create a "trust" to pay present and future tort victims. For example, the Johns Manville Trust—created, unlike here, after that company *legitimately* filed for bankruptcy due to truly overwhelming present tort claims—is currently paying out just 6.25 percent of average settlement amount.[41] Similarly, the Owens Corning/Fibreboard Trust pays between 9 and 11 percent of the value of the claims. *Id.* And the Babcock and Wilcox Co. Trust pays just 11.9 percent of the values of the claims. *Id.* These payments—and other like them from similar trusts—are quite literally pennies-on-the-dollar payouts to victims injured by these companies' misconduct. *See id*. (detailing

[40] Ex. 25, Mike Spector, Jessica Dinapoli & Dan Levine, *J&J exploring putting talc liabilities into bankruptcy*, Reuters (July 19, 2021).
[41] Ex. 35, Affidavit of Charles P. Stern (Aug. 17, 2021).

payout history for the USG, Pittsburgh Corning Corp., W.R. Grace and Co., Combustion Engineering, Kaiser Aluminum & Chemical Corp., and Eagle-Picher Industries Trusts).

80. Indeed, the bankruptcy court in *CertainTeed* recently recognized the realities of the situation in clear-eyed fashion, forthrightly stating that "it appears that the Divisive Merger [employed in that case] had a material, negative effect on the asbestos creditors' ability to recover on their claims."[42]

81. There is no doubt that J&J here is hoping to use the Texas Two-Step—or similar maneuvers to wall off its assets from its liabilities—to achieve exactly this same result. As explained below, Missouri's Uniform Fraudulent Transfer Act forbids J&J to do so.

J. The Plaintiffs Here Will Be Injured by J&J's Planned Misconduct.

82. These Plaintiffs are scheduled to try their claims against J&J, beginning on September 7 of this year in front of Judge Burlison in the 22nd Judicial Circuit Court. Although each Plaintiff's medical history is unique, the underlying liability case is nearly identical to the cases brought by other plaintiffs in that same court—cases that led to a multi-billion-dollar verdict, more than $2 billion of which was affirmed on appeal all the way to the United States Supreme Court.[43] As a result, it is likely that these Plaintiffs will soon hold sizable, legally enforceable judgments against J&J.

83. The question is what will happen when those judgments are entered. If J&J is enjoined from the corporate maneuvering it has planned, then after any appeals are exhausted, J&J would

[42] Ex. 36, Findings of Fact and Conclusions of Law Regarding Automatic Stay, *In re: DBMP LLC* ("CertainTeed"), No. 20-30080, Dkt. 972 (Aug. 11, 2021) at 49.
[43] *Ingham v. Johnson & Johnson*, 608 S.W.3d 663 (Mo. App. E.D., 2020) *cert. denied*, No. 20-1223, 2021 WL 2194948 (U.S. June 1, 2021).

simply pay the judgment that the jury ordered, and which J&J lawfully owes to Plaintiffs—just as J&J did for the plaintiffs who secured the multi-billion dollar judgment against them.[44]

84. Entering an injunction against J&J would cause no harm to J&J if its intentions are pure. If no J&J entity is actually planning to execute the Texas Two Step (or similar reorganization, restructuring, or transfers), then the injunction would have no effect at all. Nor would the injunction have any effect if any J&J entity wishes to file for bankruptcy, with its assets and liabilities intact. All this injunction would prevent is a Texas Two-Step (or similar pre-bankruptcy maneuvering) that would intentionally and fraudulently transfer J&J's talc liabilities away from the assets necessary to fully satisfy them. The injunction would, in effect, preserve the status quo of where assets and liabilities are located within J&J, something J&J voluntarily agreed to do previously.[45] And there is no conceivable legitimate business objective that would be stymied by that.

85. On the other hand, if the injunction this Complaint seeks is denied, there would be real harm—specifically, harm to these Plaintiffs. J&J would separate its assets from its talc liabilities, leaving these Plaintiffs (at best) with the option of taking pennies-on-the-dollar payouts, many years from now, after going through the expensive and time-consuming bankruptcy process—or at worst going entirely uncompensated.

[44] *See* Ex. 6, Johnson & Johnson, Form 10-Q at 31 (July 29, 2021) ("In June 2021, the Company paid the award, which, including interest, totaled approximately $2.5 billion.").
[45] *See* Ex. 34, Transcript of Video Hearing, *In re: Imerys Talc America*, 19-10289 (July 29, 2021) at 13 (counsel for J&J stating that "[t]he bottom line is we agreed to maintain the status quo pending the hearing").

86. Thus, even if a Texas Two-Step could ultimately be attacked after the fact as a fraudulent transfer—as J&J itself argued is possible[46]—the harm would be done and could not be repaired because the facts on the ground of the fraudulent transfer would provide J&J with enormous negotiating leverage vis-à-vis these Plaintiffs and other talc creditors. If J&J is allowed to execute a Texas Two-Step, the fact that the transaction would be legally subject to avoidance is beside the point given the realities of mass tort litigation: J&J could threaten years of protracted litigation over the fraudulent transfer *in its chosen forum* and use that threat to extract a settlement for cents on the dollar from creditors. Indeed, this is the devious heart of the Texas Two-Step: J&J benefits even if a Texas Two-Step is theoretically avoidable as a fraudulent transfer. The delay and shift of litigation leverage to J&J also constitutes real, concrete, and irreparable injury to these Plaintiffs that can be averted only by enjoining J&J from undertaking a Texas Two-Step in the first place. As explained below, because J&J's planned conduct amounts to a fraudulent transfer under Missouri law, the Court should enjoin J&J from injuring Plaintiffs in this way.

FIRST CAUSE OF ACTION

(Violation of the Missouri Uniform Fraudulent Transfer Act—Actual Intent to Hinder, Delay, or Defraud Creditors by J&J)

87. Plaintiffs hereby incorporate and re-allege paragraphs 1 through 86.

88. The Missouri Uniform Fraudulent Transfer Act provides that "[a] transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer

[46] *See* Ex. 2, Defendants' Objection to Motion of Official Committee of Tort Claimants and Future Claimants' Representative for Preliminary Injunction, *In re: Imerys Talc America, Inc. et al.*, No. 21-51006, Dkt. 33-1 at 20.

or incurred the obligation . . . [w]ith actual intent to hinder, delay, or defraud any creditor of the debtor." RSMo. § 428.024(1)(1).

89. A debtor's "actual intent to hinder, delay, or defraud" its creditors may be determined from circumstantial evidence. That circumstantial evidence may include the presence of some, though not necessarily all, of the badges of fraud listed in RSMo. § 428.024(1)(2). These badges of fraud include that "the transfer or obligation was to an insider," a term that includes corporate affiliates, RSMo. § 428.009(7)(d); that "[b]efore the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit"; that "the transfer was of substantially all the debtor's assets"; that "the debtor removed or concealed assets"; and that "the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred." RSMo. § 428.024(2)(1), (4), (5), (7) (9).

90. J&J Global currently has the ability to pay talc-related liabilities owed to these Plaintiffs and other talc victims.

91. Despite having ample assets with which to satisfy these liabilities fairly valued in the tens of billions of dollars, J&J has currently reserved only $3.9 billion for talc-related liabilities—a fraction of the total liabilities it faces.

92. J&J Global and/or JJCI are currently planning to use a "Texas Two-Step" (or other corporate reorganization or transactions) in order to separate their talc-related liabilities from productive assets that could be used to satisfy those liabilities. The entity that holds the liabilities, BadCo, would then declare bankruptcy, while the company that holds the assets, NewCo, would remain unaffected by the burdens that come with seeking and obtaining bankruptcy protection.

93. The sole purpose of this reorganization—as demonstrated by the threats that J&J has made to other talc victims and their attorneys—would be to thwart talc victims' ability to recover damages for the injuries caused to them by J&J's talc products.

94. In performing this reorganization, J&J's "actual intent" would be "to hinder, delay, or defraud" talc victims such as these Plaintiffs. RSMo. § 428.024(1).

95. The fraud badges are on prominent display here. J&J Global and JJCI (plus NewCo and BadCo) would all be corporate affiliates of one another, and thus any transfers of assets and liabilities between these entities would amount to a transfer among "insiders." RSMo. § 428.024(2)(1); RSMo. § 428.009(7)(d). There is no question that J&J Global and JJCI have each "been sued or threatened with suit" on tens of thousands of occasions, including by victims of J&J's talc. RSMo. § 428.024(2)(4). By placing assets in NewCo and liabilities in BadCo, the restructuring would by design transfer "substantially all the debtor's assets" into NewCo. RSMo. § 428.024(2)(5). There is little doubt that assets would be "removed [and] concealed" via the restructuring. RSMo. § 428.024(2)(7). And as explained below, BadCo and JJCI would both be "insolvent or became insolvent shortly after the transfer was made or the obligation was incurred." RSMo. § 428.024(2)(9).

96. The presence of these badges of fraud underscores that J&J would undertake the Texas Two-Step, or other reorganization, with the "actual intent to hinder, delay, or defraud" creditors such as the Plaintiffs.

97. If this were not J&J's intent, J&J would have no need to undertake this reorganization to shield its assets from its talc-related liabilities.

98. The effect of this reorganization would be to prevent Plaintiffs from receiving full and just compensation for the injuries caused to them by J&J's talc products.

99. The effect of this reorganization or transaction would be to prevent effective execution of judgments entered against J&J at the conclusion of trials, the first of which is currently scheduled for September 7 of this year.

100. A permanent injunction against this reorganization is authorized under RSMo. § 428.039, which provides that "[in a fraudulent transfer action], a creditor . . . may obtain . . . [a]n injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property." RSMo. § 428.039(1)(3)(a).

SECOND CAUSE OF ACTION

(Violation of the Missouri Uniform Fraudulent Transfer Act—Actual Intent to Hinder, Delay, or Defraud Creditors by JJCI)

101. Plaintiffs hereby incorporate and re-allege paragraphs 1 through 86.

102. The Missouri Uniform Fraudulent Transfer Act provides that "[a] transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation . . . [w]ith actual intent to hinder, delay, or defraud any creditor of the debtor." RSMo. § 428.024(1), (1)(1).

103. A debtor's "actual intent to hinder, delay, or defraud" its creditors may be determined from circumstantial evidence. That circumstantial evidence may include the presence of some, though not necessarily all, of the badges of fraud listed in RSMo. § 428.024(2). These badges of fraud include that "the transfer or obligation was to an insider," a term that includes corporate affiliates, RSMo. § 428.009(7)(d); that "before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit"; that "the transfer was of substantially all the debtor's assets"; that "the debtor removed or concealed assets"; and that

"the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred." RSMo. § 428.024(2)(1), (4), (5), (7) (9).

104. J&J Global currently has the ability to pay talc-related liabilities owed to these Plaintiffs and other talc victims.

105. Despite having ample assets with which to satisfy these liabilities fairly valued in the tens of billions of dollars, J&J has currently reserved only $3.9 billion for talc-related liabilities—a fraction of the total liabilities it faces.

106. On information and belief, JJCI has been transferring assets (including but not limited to dividends) to J&J Global and/or other entities within the J&J family of companies.

107. The sole purpose of these asset transfers would be to thwart talc victims' ability to recover damages for the injuries caused to them by J&J's talc products.

108. In performing these asset transfers, JJCI's "actual intent" would be "to hinder, delay, or defraud" talc victims such as these Plaintiffs. RSMo. § 428.024(1)(1).

109. The fraud badges are on prominent display here. J&J Global, JJCI, and any other entities within the J&J family of companies are corporate affiliates of one another, and thus any transfers of assets and liabilities between these entities would amount to a transfer among "insiders." RSMo. § 428.024(2)(1); RSMo. § 428.009(7)(d). There is no question that JJCI has "been sued or threatened with suit" on tens of thousands of occasions, including by victims of J&J's talc. RSMo. § 428.024(2)(4). By removing assets from JJCI, J&J's aim would be to transfer "substantially all the debtor's assets" into J&J Global and the other entities within the J&J family of companies. RSMo. § 428.024(2)(5). There is little doubt that assets would be "removed [and] concealed" via the transfer. RSMo. § 428.024(2)(7). And as explained above, JJCI was "insolvent or became insolvent shortly after the transfer

was made or the obligation was incurred." RSMo. § 428.024(2)(9); *compare supra*, at ¶ 45 (talc liabilities) *with infra*, at ¶ 155 ($14 billion in assets).

110. The presence of these badges of fraud underscores that any transfer of assets from JJCI to J&J Global or other entities within the J&J family (outside the ordinary course of business) is being undertaken with the "actual intent to hinder, delay, or defraud" creditors, such as the Plaintiffs.

111. If this were not JJCI's intent, J&J would have no need to transfer assets out of JJCI outside of the ordinary course of business.

112. The effect of these asset transfers would be to prevent Plaintiffs from receiving full and just compensation for the injuries caused to them by J&J's talc products.

113. The effect of these asset transfers would be to prevent effective execution of judgments entered against JJCI at the conclusion of trial currently scheduled for September 7 of this year.

114. An order avoiding any transfers that have already been made is authorized under RSMo. § 428.039, which provides that "[i]n an action for relief against a [fraudulent] transfer", a creditor may obtain "[a]voidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim." RSMo. § 428.039(1)(1).

115. An order providing for an attachment or other form of lien against assets that have already been transferred is authorized under RSMo. § 428.039, which provides that "[a]n attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by applicable laws of this state." RSMo. § 428.039(2).

116. A permanent injunction against any further transfers of these assets is authorized under RSMo. § 428.039, which provides that "[in a fraudulent transfer action], a creditor . . . may obtain . . . [a]n injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property." RSMo. § 428.039(1)(3)(a).

THIRD CAUSE OF ACTION

(Violation of the Missouri Uniform Fraudulent Transfer Act as to Present and Future Creditors—Transfer of Liabilities from J&J Global or JJCI to BadCo for Less than Reasonably Equivalent Value)

117. Plaintiffs hereby incorporate and re-allege paragraphs 1 through 86.

118. The Missouri Uniform Fraudulent Transfer Act provides that "[a] transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation . . . [w]ithout receiving a reasonably equivalent value in exchange for the transfer or obligation . . . [if] the debtor [w]as engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or [if the debtor] [i]ntended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due." RSMo. § 428.024(1)(2).

119. J&J Global currently has the ability to pay talc-related liabilities owed to these Plaintiffs and other talc victims.

120. Despite having ample assets with which to satisfy these liabilities fairly valued in the tens of billions of dollars, J&J has currently reserved only $3.9 billion for talc-related liabilities—a fraction of the total liabilities it faces.

121. J&J Global and/or JJCI are currently planning to use a "Texas Two-Step" transaction (or other corporate reorganization or transactions) in order to transfer their talc-related liabilities to a shell company, BadCo, that would then declare bankruptcy.

122. This reorganization would have the effect of separating J&J's talc-related liabilities from J&J's substantial assets that could be used to pay those talc-related liabilities.

123. As the intended result of the reorganization, BadCo would not be given or otherwise possess assets sufficient to satisfy its liabilities.

124. BadCo's "remaining assets [would be] unreasonably small in relation to" the transaction saddling it with the talc-related liabilities. RSMo. § 428.024(1)(2)(a).

125. Because the BadCo shell company would not have sufficient assets relative to the talc liabilities, the BadCo shell company would "incur[] [an] obligation" with "inten[t] to incur . . . debts beyond [its] ability to pay as they became due." RSMo. § 428.024(1)(2)(b).

126. Because the BadCo shell company would not have sufficient assets, when it is saddled with the talc liabilities, the BadCo shell company would "incur[] [an] obligation" even though it "believed or reasonably should have believed that [it] would incur, debts beyond [its] ability to pay as they became due." RSMo. § 428.024(1)(2)(b).

127. Because the BadCo shell company would not have sufficient assets, it would not be able to provide "reasonably equivalent value in exchange" for the "obligation" of assuming the talc-related liabilities. RSMo. § 428.024(1)(2). Indeed, BadCo would provide nothing in exchange for assumption of the liabilities as part of a divisive merger.

128. The effect of this reorganization would be to prevent Plaintiffs from recovering damages needed to pay for the injuries that Plaintiffs experienced as a result of J&J's talc products.

129. The effect of this reorganization would be to prevent effective execution of judgments entered against J&J at the conclusion of trials, the first of which is currently scheduled for September 7 of this year.

130. A permanent injunction against this reorganization is authorized under RSMo. § 428.039, which provides that "[in a fraudulent-conveyance action], a creditor . . . may obtain . . . [a]n injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property." RSMo. § 428.039(1)(3)(a).

FOURTH CAUSE OF ACTION

(Violation of the Missouri Uniform Fraudulent Transfer Act as to Present Creditors—Transfer of Liabilities from JJCI or J&J Global to BadCo for Less than Reasonably Equivalent Value)

131. Plaintiffs hereby incorporate and re-allege paragraphs 1 through 86.

132. The Missouri Uniform Fraudulent Transfer Act provides that "[a] transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation." RSMo. § 428.029(1).

133. J&J Global currently has the ability to pay talc-related liabilities owed to these Plaintiffs and other talc victims.

134. Despite having ample assets with which to satisfy these liabilities fairly valued in the tens of billions of dollars, J&J has currently reserved only $3.9 billion for talc-related liabilities—a fraction of the total liabilities it faces.

135. J&J Global and/or JJCI are currently planning to use a "Texas Two-Step" transaction (or other corporate reorganization or transactions) in order to transfer their talc-related liabilities to a shell company, BadCo, that would then declare bankruptcy.

136. This reorganization would have the effect of separating J&J's talc-related liabilities from J&J's substantial assets that could be used to pay those talc-related liabilities.

137. As the intended result of the reorganization, the shell company BadCo would not be given sufficient assets when it is created.

138. As a result, when the BadCo shell company is saddled with the talc liabilities, it would be "insolvent" either "at th[e] time" it incurs the talc-related liabilities or, at a bare minimum, "as a result of" incurring the talc-related liabilities. RSMo. § 428.029.

139. The effect of this reorganization would be to prevent Plaintiffs from recovering damages needed to pay for the injuries that Plaintiffs experienced as a result of J&J's talc products.

140. The effect of this reorganization would be to prevent effective execution of judgments entered against J&J at the conclusion of trials, the first of which is currently scheduled for September 7 of this year.

141. A permanent injunction against this reorganization is authorized under RSMo. § 428.039, which provides that "[in a fraudulent-conveyance action], a creditor . . . may obtain . . . [a]n injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property." RSMo. § 428.039(1)(3)(a).

FIFTH CAUSE OF ACTION

(Violation of the Missouri Uniform Fraudulent Transfer Act as to Present and Future Creditors—Transfer from JJCI to J&J Global or Other J&J Entities for Less than Reasonably Equivalent Value)

142. Plaintiffs hereby incorporate and re-allege paragraphs 1 through 86.

143. The Missouri Uniform Fraudulent Transfer Act provides that "[a] transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation . . . [w]ithout receiving a reasonably equivalent value in exchange for the transfer or obligation . . . [if] the debtor [w]as engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or [if the debtor] [i]ntended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due." RSMo. § 428.024(1)(2).

144. On information and belief, JJCI has over the past several years transferred assets to J&J Global and/or Other J&J entities, for example by paying dividends and executing other transfers.

145. During that period, as a result of JJCI's talc-related liabilities, JJCI was or became insolvent. As it has admitted in court filings, JJCI's assets total approximately $14 billion.[47] And as discussed above, JJCI has talc-related liabilities exceeding $24.5 billion. *See supra*, at ¶ 45. As a result, without even considering any *other* liabilities that JJCI might have—*i.e.*, liabilities to trade creditors, other judgment creditors, other creditors holding non-liquidated liabilities, or anyone else—JJCI's liabilities outweigh its assets, making it insolvent. That is, JJCI "believed or reasonably should have believed that [it] would incur debts beyond [its] ability to pay as they became due." RSMo. § 428.024(2).

[47] *See, e.g.*, Ex. 37, Stipulation, *Brower v. Johnson & Johnson, et al.*, 16EV005534 (Fulton County Court, Georgia) (Sept. 27, 2019) ("Based on year-end data, the current net worth of Johnson & Johnson Consumer Inc. ("JJCI") is approximately $14.092 billion.").

146. On information and belief, JJCI did not receive "reasonably equivalent value in exchange" for the assets (including dividends) that JJCI transferred to J&J Global and/or Other J&J Entities. RSMo. § 428.024(2).

147. As a result, these transfers from JJCI to J&J Global and/or Other J&J Entities violated the Missouri Uniform Fraudulent Transfer Act.

148. To the extent these transfers were made in the form of dividends, the transfers also violated RSMo. § 351.220, which expressly forbids insolvent corporations from paying dividends. *See* RSMo. § 351.220 ("No dividend shall be declared or paid at a time when the net assets of the corporation are less than its stated capital or when the payment thereof would reduce the net assets of the corporation below its stated capital.").

149. An order avoiding this transfer—and requiring J&J Global and/or Other J&J Entities to return the transferred assets to JJCI—is authorized under RSMo. § 428.039, which provides that "[i]n an action for relief against a [fraudulent] transfer . . . a creditor . . . may obtain . . . [a]voidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim [and] [a]n attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by applicable laws of this state." RSMo. § 428.039.

150. An order providing for an attachment or other form of lien against assets that have already been transferred is authorized under RSMo. § 428.039, which provides that "[a]n attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by applicable laws of this state." RSMo. § 428.039(2).

151. An order enjoining any future transfer of assets from JJCI to J&J Global or Other J&J Entities is also warranted. *See* RSMo. § 428.039 (providing that a court may order "[a]n injunction against further disposition by the debtor or transferee, or both, of the asset [fraudulently] transferred or of other property").

SIXTH CAUSE OF ACTION

(Violation of the Missouri Uniform Fraudulent Transfer Act as to Present Creditors—Transfer from JJCI to J&J Global or Other J&J Entities for Less than Reasonably Equivalent Value)

152. Plaintiffs hereby incorporate and re-allege paragraphs 1 through 86.

153. The Missouri Uniform Fraudulent Transfer Act provides that "[a] transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation." RSMo. § 428.029(1).

154. On information and belief, JJCI has over the past several years transferred assets to J&J Global and/or Other J&J Entities, for example by paying dividends and executing other transfers.

155. During that period, JJCI was "insolvent" as a result of JJCI's talc-related liabilities. As it has admitted in court filings, JJCI's assets total approximately $14 billion.[48] And as discussed above, JJCI has talc-related liabilities exceeding $24.5 billion. *See supra*, at ¶ 45. As a result, without even considering any *other* liabilities that JJCI might have—*i.e.*,

[48] *See, e.g.*, Ex. 37, Stipulation, *Brower v. Johnson & Johnson, et al.*, 16EV005534 (Fulton County Court, Georgia) (Sept. 27, 2019) ("Based on year-end data, the current net worth of Johnson & Johnson Consumer Inc. ("JJCI") is approximately $14.092 billion.").

liabilities to trade creditors, other judgment creditors, other creditors holding non-liquidated liabilities, or anyone else—JJCI's liabilities outweigh its assets, making it insolvent, either "at [the] time" it made transfers to J&J Global or Other J&J Entities or at a bare minimum "as a result of" those transfers. RSMo. § 428.029(1).

156. On information and belief, JJCI did not receive "reasonably equivalent value in exchange" for the assets (including dividends) that JJCI transferred to J&J Global and/or Other J&J Entities. RSMo. § 428.029(1).

157. As a result, these transfers from JJCI to J&J Global and/or Other J&J Entities violated the Missouri Uniform Fraudulent Transfer Act.

158. To the extent these transfers were made in the form of dividends, the transfers also violated RSMo. § 351.220, which expressly forbids insolvent corporations from paying dividends. *See* RSMo. § 351.220 ("No dividend shall be declared or paid at a time when the net assets of the corporation are less than its stated capital or when the payment thereof would reduce the net assets of the corporation below its stated capital.").

159. An order avoiding this transfer—and requiring J&J Global and/or Other J&J Entities to return the transferred assets to JJCI—is authorized under RSMo. § 428.039, which provides that "[i]n an action for relief against a [fraudulent] transfer . . . a creditor . . . may obtain . . . [a]voidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim [and] [a]n attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by applicable laws of this state." RSMo. § 428.039.

160. An order providing for an attachment or other form of lien against assets that have already been transferred is authorized under RSMo. § 428.039, which provides that "[a]n attachment

or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by applicable laws of this state." RSMo. § 428.039(2).

161. An order enjoining any future transfer of assets from JJCI to J&J Global or Other J&J Entities is also warranted. *See* RSMo. § 428.039(1)(3)(a) (providing that a court may order "[a]n injunction against further disposition by the debtor").

SEVENTH CAUSE OF ACTION

(Declaratory Judgment of Successor Liability—BadCo Shell Corporation with JJCI or J&J Assets)

162. Plaintiffs hereby incorporate and re-allege paragraphs 1 through 86.

163. Circuit Courts "have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." RSMo. § 527.010.

164. J&J Global and/or JJCI are currently planning to use a "Texas Two-Step" transaction (or other corporate reorganization) to transfer their talc-related liabilities to BadCo, a shell company, that would then declare bankruptcy.

165. This reorganization would have the effect of separating J&J's talc-related liabilities from J&J's substantial assets that could be used to pay those talc-related liabilities.

166. As the intended result of the reorganization, BadCo would not be given sufficient assets when it is created.

167. As the intended result of the reorganization, a second company resulting from the divisive merger (NewCo) would be given substantial assets from JJCI (or J&J).

168. If no Texas Two-Step transaction occurred, NewCo's assets could and would be used to satisfy any judgment or settlement owed to Plaintiffs.

169. NewCo (with substantial assets) would, under the terms of the divisive merger agreement, not hold talc-related liabilities. Under the terms of the agreement, that would mean the NewCo would not be liable to Plaintiffs even if Plaintiffs won at trial.

170. Under Missouri law, a company that is not assigned liabilities after a corporate merger or other transaction can owe successor liability under four circumstances: "(1) when the purchaser expressly or impliedly agrees to assume the debts and liabilities; (2) when the transaction amounts to a consolidation or merger; (3) when the purchaser is merely a continuation of the seller; and (4) when the transaction is entered into fraudulently to escape liability for the debts and liabilities." *Edwards v. Black Twig Marketing and Communications LLC*, 418 S.W.3d 512, 520 (Mo. App. E.D., 2013).

171. The second company resulting from the Texas Two-Step transaction (NewCo) would be in substance merely a continuation of the seller. It would still be owned by J&J, sell the same goods, own the same assets, pursue the same business, and have many of the same employees.

172. As explained above, the "Texas Two-Step" transaction planned by JJCI and J&J Global would be a transaction "entered into fraudulently to escape liability for the debts and liabilities."

173. For at least those two reasons, the second company resulting from the "Texas Two-Step"—NewCo—bears successor liability to the Plaintiffs, joint and several with the liability that is owed by J&J Global and JJCI.[49]

174. Plaintiffs have no adequate remedy at law if J&J's Texas Two-Step transaction occurs.

[49] As noted above, depending on how a Texas Two-Step is structured, JJCI or another existing J&J entity could itself be NewCo.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that this Court enter judgment in its favor and against J&J and grant the following relief:

A. A permanent injunction preventing J&J from utilizing a divisive merger strategy or any other form of corporate transaction to separate its assets from liability for the talc-related claims that Plaintiffs are currently pursuing against it.

B. An order avoiding any asset transfer made by JJCI to J&J Global or Other J&J Entities with intent to hinder, delay, or defraud talc victims.

C. An order requiring J&J Global and Other J&J Entities to return assets (including dividends) that JJCI transferred to J&J Global or Other J&J Entities after the time at which JJCI became insolvent or insufficiently capitalized in relation to its business or incurred debts beyond its ability to pay as they come due as a result of the talc-related liabilities.

D. An order providing for an attachment or other form of lien against assets that JJCI transferred to J&J Global or Other J&J Entities after the time at which JJCI became insolvent or insufficiently capitalized in relation to its business or incurred debts beyond its ability to pay as they come due as a result of the talc-related liabilities.

E. An order requiring J&J Global and JJCI to provide an accounting of any assets and talc-related liabilities transferred between JJCI and J&J Global or Other J&J entities after the time at which JJCI became insolvent or insufficiently capitalized in relation to its business or incurred debts beyond its ability to pay as they come due as a result of the talc-related liabilities.

F. An order prohibiting JJCI from transferring assets to J&J Global or Other J&J Entities with intent to hinder, delay, or defraud talc victims.

G. An order providing for an attachment or other form of lien against assets that JJCI transferred to J&J Global or Other J&J Entities with intent to hinder, delay, or defraud talc victims.

H. Imposition of a constructive trust over any assets that JJCI transferred to J&J Global or Other J&J Entities after the time at which JJCI became insolvent or insufficiently capitalized in relation to its business or incurred debts beyond its ability to pay as they come due as a result of its talc-related liabilities.

I. Imposition of a constructive trust over any assets that JJCI transferred to J&J Global or Other J&J Entities with actual intent to hinder, delay, or defraud talc victims.

J. An order prohibiting JJCI from transferring assets to J&J Global or Other J&J Entities for less than reasonable equivalent value until such time as JJCI is solvent and sufficiently capitalized in relation to its business and able to pay its debts as they come due.

K. A declaratory judgment that any entity with substantial assets resulting from the contemplated Texas Two-Step transaction or other corporate restructuring is liable to Plaintiffs to the same extent JJCI or J&J currently are under successor liability.

L. Attorneys' fees and costs incurred by Plaintiffs in connection with this litigation; and

M. Such other relief as the Court deems just and proper.

Date: August 24, 2021

/s/ W. Wylie Blair

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STATUTORY APPENDIX

351.220. Payment of dividends on shares of stock. — The board of directors of a corporation may declare and the corporation may pay dividends on its shares in cash, property, or its own shares, subject to the following limitations and provisions:

(1) No dividend shall be declared or paid at a time when the net assets of the corporation are less than its stated capital or when the payment thereof would reduce the net assets of the corporation below its stated capital;

(2) If a dividend is declared out of the paid-in surplus of the corporation, whether created by reduction of stated capital or otherwise, the limitations contained in section 351.210 shall apply;

(3) If a dividend is declared payable in its own shares having a par value, such shares shall be issued at the par value thereof and there shall be transferred to stated capital at the time such dividend is declared an amount of surplus equal to the aggregate par value of the shares to be issued as a dividend;

(4) If a dividend is declared payable in its own shares, without par value, and such shares have a preferential right in the assets of the corporation in the event of its involuntary liquidation, such shares shall be issued at the liquidation value thereof, and there shall be transferred to stated capital at the time such dividend is declared, an amount of surplus equal to the aggregate preferential amount payable upon such shares in the event of involuntary liquidation;

(5) If a dividend is declared payable in its own shares without par value and none of such shares has a preferential right in the assets of the corporation in the event of its involuntary liquidation, such shares shall be issued at such value as shall be fixed by the board of directors by resolution at the time such dividend is declared, and there shall be transferred to stated capital, at the time such dividend is declared, an amount of surplus equal to the aggregate value so fixed in respect of such shares, and the amount per share transferred to stated capital shall be disclosed to the shareholders receiving such dividends concurrently with payment thereof;

(6) A split-up or division of issued shares into a greater number of shares of the same class shall not be construed to be a share dividend within the meaning of this section;

(7) No dividend shall be declared or paid contrary to any restrictions contained in the articles of incorporation.

428.009. Definitions. — As used in sections 428.005 to 428.059, the following terms mean:

(1) **"Affiliate"**:

(a) A person who directly or indirectly owns, controls, or holds with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

(i) As a fiduciary or agent without sole discretionary power to vote the securities; or

(ii) Solely to secure a debt, if the person has not exercised the power to vote;

(b) A corporation twenty percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person who directly or indirectly owns, controls, or holds, with power to vote, twenty percent or more of the outstanding voting securities of the debtor, other than a person who holds the securities,

(i) As fiduciary or agent without sole power to vote the securities; or

(ii) Solely to secure a debt, if the person has not in fact exercised the power to vote;

(c) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(d) A person who operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) **"Asset"**, property of a debtor, but the term does not include:

(a) Property to the extent it is encumbered by a valid lien;

(b) Property to the extent it is generally exempt under nonbankruptcy law; or

(c) An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) **"Claim"**, a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(4) **"Creditor"**, a person who has a claim.

(5) **"Debt"**, liability on a claim.

(6) **"Debtor"**, a person who is liable on a claim.

(7) **"Insider"** includes:

(a) If the debtor is an individual,

a. A relative of the debtor or of a general partner of the debtor;

b. A partnership in which the debtor is a general partner;

c. A general partner in a partnership described in subparagraph b; or

d. A corporation of which the debtor is a director, officer, or person in control;

(b) If the debtor is a corporation,

a. A director of the debtor;

b. An officer of the debtor;

c. A person in control of the debtor;

d. A partnership in which the debtor is a general partner;

e. A general partner in a partnership described in subparagraph d; or

f. A relative of a general partner, director, officer, or person in control of the debtor;

(c) If the debtor is a partnership,

a. A general partner in the debtor;

b. A relative of a general partner in, a general partner of, or a person in control of the debtor;

c. Another partnership in which the debtor is a general partner;

d. A general partner in a partnership described in subparagraph c; or

e. A person in control of the debtor;

(d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor; and

(e) A managing agent of the debtor.

(8) **"Lien"**, a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(9) **"Person"**, an individual, partnership, corporation, association, organization, government or governmental subdivision or agency, business trust, estate, trust, or any other legal or commercial entity.

(10) **"Property"**, anything that may be the subject of ownership.

(11) **"Relative"**, an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(12) **"Transfer"**, every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

(13) **"Valid lien"**, a lien that is effective against the holder of a judicial lien subsequently obtained by legal or equitable process or proceedings.

28.024. Transfers fraudulent as to present and future creditors.

1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(a) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(b) Intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

2. In determining actual intent under subdivision (1) of subsection 1 of this section, consideration may be given, among other factors, to whether:

(1) The transfer or obligation was to an insider;

(2) The debtor retained possession or control of the property transferred after the transfer;

(3) The transfer or obligation was disclosed or concealed;

(4) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit;

(5) The transfer was of substantially all the debtor's assets;

(6) The debtor absconded;

(7) The debtor removed or concealed assets;

(8) The value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;

(9) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;

(10) The transfer occurred shortly before or shortly after a substantial debt was incurred; and

(11) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

428.029. Transfers fraudulent as to present creditors.

1. A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

2. A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

428.039. Remedies of creditors.

1. In an action for relief against a transfer or obligation under sections 428.005 to 428.059, a creditor, subject to the limitations in section 428.044, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by applicable laws of this state;

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure,

(a) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

(b) Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

(c) Any other relief the circumstances may require.

2. If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

527.010. Scope. — The circuit courts of this state, within their respective jurisdictions shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.