

Responses of Mr. Erik Haas, World Wide Vice President of Litigation, Johnson & Johnson, to Questions for the Record in the September 19, 2023, Hearing of the Committee on the Judiciary, United States Senate

The Honorable Charles Grassley

1. The Ingham verdict against Johnson and Johnson ultimately resulted in a \$2.2 billion verdict for 20 plaintiffs. Does Johnson and Johnson believe that its currently offered \$8.9 billion will be sufficient to satisfy all future claims when a previous verdict for only 20 plaintiffs amounted to nearly a quarter of Johnson and Johnson's current total settlement offer? If Johnson and Johnson's \$8.9 billion settlement proposal is ultimately approved by the bankruptcy court following a successful bankruptcy filing, will Johnson and Johnson commit to funding its subsidiary, LTL beyond this figure if this amount runs out and proves insufficient to satisfy all future claims?

The *Ingham* verdict, which is an outlier, demonstrates the benefits that a comprehensive resolution through bankruptcy can uniquely provide to all claimants, including both current and future claimants. Under the tort system, most claimants will not receive any compensation because, first, Johnson & Johnson Consumer Inc. has prevailed in the vast majority of cases as the science is clear that the company's products do not cause cancer;¹ and, second, it would take tens of thousands of years to try all of the cases that the plaintiffs' bar has generated against the company. Most claimants will receive nothing and never have their day in court. Instead of wildly divergent awards, the bankruptcy system enables courts and the claimants to review and consider a complete and final resolution that provides for the prompt and efficient resolution of all of the claims. For that reason, counsel representing a majority of the claimants has supported the \$8.9 billion fund proposed by Johnson & Johnson Consumer Inc. and supported by Johnson & Johnson.

Regarding the *Ingham* case itself, the verdict is inconsistent with the science. To date, Johnson & Johnson Consumer Inc. has reached verdicts in 15 ovarian cancer trials and prevailed at trial or on appeal in 14. *Ingham* is an outlier. This outlier result and outsized verdict is a direct result of the court allowing the 22 cases to proceed to trial in a consolidated fashion. Social science literature long ago and consistently established that such consolidation confuses jurors, prejudices defendants, and is therefore inconsistent with constitutional due process protections. The disconnect between the evidence at trial and the verdict in *Ingham* is perhaps best reflected in the identical amounts awarded to each plaintiff, regardless of each individual's medical or health situation.

¹ As another appellate court ruled recently, the talc claims are predicated on unreliable, unsubstantiated, and unscientific expert opinions. See *Barden v. Brenntag N. Am., et al.*, 2023 N.J. Super. Unpub. LEXIS 1624 (N.J. App. Div. Oct. 3, 2023).

The Honorable Thom Tillis

1. If Johnson & Johnson does not pursue a strategy through the bankruptcy courts, what is the estimate of how long it would take to litigate all of these cases through the federal courts and multidistrict litigation?

Between 2017 through 2021, fewer than 50 talc-related cases reached trial. Extrapolating that pace to the 40,000 cases filed at the time of LTL Management's first bankruptcy filing, it would take more than 3,000 years to resolve these cases. If the additional claims cited in the bankruptcy proceedings are included, it would take more than 20,000 years to resolve the talc litigation.

2. Johnson & Johnson has supported an \$8.9 billion resolution to the claims raised in the on-going litigation. Does this settlement plan include compensation for both existing and future claimants?

Yes, this amount includes compensation for existing and future claimants. The inclusion of future claimants is a unique feature of bankruptcy. Unlike traditional litigation, bankruptcy allows funds to be set aside for future claimants.

3. In traditional litigation can settlements be reached that provide for compensation for future claimants?

No.

4. Why do you believe that the current choice of using bankruptcy court proceedings is the appropriate venue to compensate existing and future claimants?

Bankruptcy is the most appropriate venue because it is the only judicial venue that can efficiently and equitably resolve the mass tort talc claims. First, bankruptcy provides a single forum for current and future claims at both the federal and state court level, allowing the court to address and resolve efficiently all claims at the same time. Second, by providing a single forum for all such claims, bankruptcy avoids the highly varied results of the mass tort system and is therefore more equitable for all claimants. Third, bankruptcy can provide finality by resolving all claims. For these reasons, counsel representing a majority of the claimants supported the proposed resolution and the \$8.9 billion fund offered by Johnson & Johnson Consumer Inc. and supported by Johnson & Johnson.