

October 26, 2021

The Honorable Jerrold Nadler
Chairman
U.S. House Committee on the Judiciary
Washington, DC 20515

The Honorable Jim Jordan
Ranking Member
U.S. House Committee on the Judiciary
Washington, DC 20515

Dear Chairman Nadler and Ranking Member Jordon:

The undersigned organizations strongly support H.R. 4777, the Nondebtor Release Prohibition Act of 2021, and urge Congress to pass this critical legislation. H.R. 4777 would prevent companies from abusing the bankruptcy system to escape accountability for wrongdoing and cheat victims who have been harmed.

In October of 2021, pharmaceutical giant Johnson & Johnson, with a reported net worth of over \$420 billion dollars, filed for Chapter 11 bankruptcy. Those words alone should raise concern that a problem exists requiring Congress' attention. But what truly shocks the conscience is exactly what J&J has done and why.

J&J engaged in a decades-long cover-up of a lethal asbestos poisoning risk from its talc powders, including baby powder (since taken off the U.S. market). Rather than face its victims in court, J&J has decided to take advantage of a loophole in Texas law that allows companies to split in two - one with all the company's assets, the other with all the liabilities for the harm they caused. (This is allowed even if that split is done for the fraudulent purpose of wiping out legitimate claims against the company.) The company with all the liabilities then files for bankruptcy and claims (some 40,000 in this case) get dumped into bankruptcy court. Sick and dying victims then become nothing more than creditors in a bankruptcy, fighting for scraps of compensation from a relatively small sum of money that the company has allowed for them.

What makes this all the more disturbing is J&J's pattern of misconduct leading to this point. For decades, J&J's own testing showed that its talc powders could contain asbestos. The company not only withheld this information from the public but worked to influence the FDA's plans to limit asbestos in these products and sway scientific research on their health effects. Information about this cover-up was eventually released to the public in the course of litigation brought so far by victims, who are mostly women, and in a 2018/2019 Reuters investigative series. Among Reuters' findings was how the company's marketing of baby powder specifically targeted African-American women, "overweight women," and teens.

Many of these customers are now sick and dying with cancer and asbestos-caused mesothelioma. Rather than face its victims in court and allow the legal process to work properly, J&J's move is to cheat them by filing a dummy bankruptcy. This is reprehensible corporate abuse.

H.R. 4777 would address bankruptcy schemes that shield corporate wrongdoers from accountability in three ways. First, the bill requires the dismissal of a bankruptcy, after a hearing, if the judge determines the bankruptcy would place most of the liabilities into the bankrupt entity, taking away the rights of injured victims to take the wrongdoer to court. Second, the bill allows for an appeal of any order barring victims from suing the entity that holds the assets of the original wrongdoing company. Third, the bill would crack down on another bankruptcy abuse, known as “nondebtor releases.” This loophole in bankruptcy law allows bad actors (like corporate executives) to use a corporation’s bankruptcy to also shield themselves. As an example, the Sackler family, owners of Purdue, the maker of Oxycontin, is trying to use this mechanism to avoid full accountability to opioid victims through Purdue’s bankruptcy.

Unless Congress acts, we can expect other corporations engaged in misconduct to use these same brazen legal maneuvers to cover-up wrongdoing, escape responsibility, and defraud victims. We urge you to pass the Nondebtor Release Prohibition Act of 2021, H.R. 4777. (For any questions or for more information, please contact Joanne Doroshow, Executive Director, Center for Justice & Democracy, joanned@centerjd.org)

Very sincerely,

Alaska Community Action on Toxics
Alliance for Justice
Alliance of Nurses for Healthy
 Environments
American Family Voices
Americans for Financial Reform
Asbestos Disease Awareness Organization
Black Women for Wellness
Breast Cancer Prevention Partners
Cancer Prevention and Treatment Fund
Center for Auto Safety
Center for Justice & Democracy
Chapel Hill Organization for Clean Energy
Clean Water Action
Consumer Action
Consumer Federation of America
Consumer Watchdog
Consumers for Auto Reliability and Safety
Earthjustice
Empire State Consumer Project
Environmental Working Group
Essential Information

Georgia Watch
Greenpeace USA
KidsAndCars.org
National Association of Consumer
Advocates
National Consumer Law Center, on behalf
 of its low income clients
National Employment Lawyers Association
National Women’s Health Network
NYPIRG
Protect All Children's Environment
Public Justice
SC Appleseed Legal Justice Center
Sierra Club
Texas Watch
The Impact Fund
Trillium Asset Management
U.S. PIRG
Until Justice Data Partners
Women's Voices for the Earth