

# Divisional Merger and Chapter 11 Filings

Divisional merger laws are not new, with some having existed for over 30 years. States such as Delaware, Texas, Arizona and Pennsylvania have these laws.

Some have mischaracterized the use of a divisional merger, followed by a bankruptcy, as an abuse of bankruptcy law, but **there is nothing improper about a divisional merger transaction**. Further, the bankruptcy system has safeguards to ensure this process is not used in an unfair or improper way.

*[A] key feature—one that critics have overlooked—is that these divisional merger transactions have created additional sources of funding that were not available to the tort victims before the merger. **In this way, the divisional mergers put the tort claimants in a better position and are consistent with the purpose of Chapter 11.** Professor Anthony Casey, University of Chicago Law School. Written Statement to the US Senate. 2/8/22*

In the tort system, there are often so many cases—sometimes tens of thousands—that it is impossible to resolve them through individual trials. Further, the tort system offers no mechanism to address future claims. Divisional mergers solve this problem by offering a path to resolution of all current and *future* claims through the U.S. Bankruptcy Court.

**The divisional merger by Johnson & Johnson Consumer Inc. and Chapter 11 filing by LTL Management was proper and is the best path to fast, fair, and equitable resolution of talc claims.**

*[T]his Court holds a strong conviction that the **bankruptcy court is the optimal venue** for redressing the harms of both present and future talc claimants in this case—ensuring a meaningful, timely, and equitable recovery. Judge Michael B. Kaplan of the U.S. Bankruptcy Court for the District of New Jersey Memorandum Opinion, Case 21-03032-MBK, Doc 184. 2/25/22*

Johnson & Johnson Consumer Inc., unable to resolve future claims in the tort system, used the Texas divisional merger law to create LTL Management as a means to fairly and efficiently resolve all claims, both present and future. Further, Johnson & Johnson has agreed to provide funding to LTL for the payment of amounts the Bankruptcy Court determines are owed by LTL.

The talc claimants' committee and some plaintiffs' firms challenged the bankruptcy filing as having been undertaken in bad faith to shield LTL and Johnson & Johnson from liability, cap plaintiffs' recoveries and take away plaintiffs' right to jury trials. In its review of the case, the U.S. Bankruptcy Court for the District of New Jersey rejected these arguments and found that Johnson & Johnson's use of the Texas statute to facilitate a Chapter 11 filing was neither unlawful nor improper.

Mediated negotiations between claimants and LTL for a resolution of all pending and future claims remain ongoing.