COVINGTON

BEIJING BRUSSELS DUBAI FRANKFURT JOHANNESBURG
LONDON LOS ANGELES NEW YORK PALO ALTO
SAN FRANCISCO SEOUL SHANGHAI WASHINGTON

Brian D. Smith

Covington & Burling LLP
One CityCenter
850 Tenth Street, NW
Washington, DC 20001-4956
T +1 202 662 5090
bdsmith@cov.com

December 2, 2019

The Honorable Raja Krishnamoorthi
Subcommittee on Economic and Consumer Policy
Committee on Oversight and Reform
U.S. House of Representatives
Washington, D.C. 20515

Dear Chairman Krishnamoorthi:

On behalf of our client, Johnson & Johnson, this letter addresses your recent invitation to Alex Gorsky, Johnson & Johnson's Chairman and CEO, to testify at a hearing of the Subcommittee on December 10, 2019, regarding "methods used to detect asbestos in talc." We are writing to request that you reconsider our proposal that Kathleen Widmer or Matthew Sanchez appear at the hearing. Ms. Widmer is Chairman of Johnson & Johnson's North America Consumer Division, overseeing all of Johnson & Johnson's consumer businesses in North America, including Johnson's Baby Powder. The consumer division is an extremely large segment of the company encompassing more than $10 billion in sales, 7,500 employees, nine home offices, and several manufacturing plants. Importantly, Ms. Widmer is the highest level executive who is directly knowledgeable about and accountable for the company's consumer businesses. Dr. Sanchez is a recognized expert on talc testing methods. As discussed with your staff and as detailed below, Mr. Gorsky's background is not in this area and he does not have firsthand knowledge about talc testing methods.

As you know, throughout 2019, Johnson & Johnson has been working with you, other Members of the Subcommittee, and your staff to respond to the Subcommittee's questions about talc and talc safety. Johnson & Johnson is committed to working with the Subcommittee to address these significant and important public policy issues.

In early March, your staff requested a briefing from Johnson & Johnson on issues related to talc safety. On March 8, Dr. Susan Nicholson, Johnson & Johnson's Vice President for Safety Surveillance and Risk Management, provided the Subcommittee's staff with a detailed briefing on talc safety issues and answered a number of questions from the staff. On March 11, in advance of the Subcommittee's hearing on March 12, Johnson & Johnson submitted a lengthy letter to all of the Subcommittee Members. The letter summarized the decades of testing that shows that Johnson & Johnson's cosmetic talc and Johnson's Baby Powder are safe, are not contaminated with asbestos, and do not cause cancer. As noted in that submission, Johnson & Johnson has dedicated significant resources to providing the public with open and transparent information regarding Johnson's Baby Powder, cosmetic talc, and talc safety, including through a dedicated website, Facts About Talc (www.factsabouttalc.com), where the company has posted more than 1,500 documents of studies, letters, and other materials covering decades of information about cosmetic talc.

In late March, you requested a wide variety of documents from Johnson & Johnson. The request covered documents and information regarding Johnson & Johnson's talc suppliers, detection levels regarding asbestos, asbestos testing methods, the results of testing for asbestos, sales figures, marketing materials, and more. In April and May, Johnson & Johnson responded or provided materials in response to each of the numbered requests in your letter. In total, Johnson & Johnson provided nearly 10,000 pages of materials. In addition, the company offered to provide, and Subcommittee staff declined to receive, more than 300,000 additional pages of materials related to the testing of talc.

As summarized in Johnson & Johnson's March 11 submission, these documents demonstrate that Johnson & Johnson has used rigorous testing methods for decades to ensure the safety of its cosmetic talc. Several different analytical methods exist to identify and characterize minerals such as asbestos. In 1976, the cosmetics industry established a testing standard to ensure the safety of cosmetic talc, called the CTFA J4-1 specification. The J4-1 standard requires the use of x-ray diffraction ("XRD"), and, where necessary for additional screening, polarized light microscopy ("PLM"). Johnson & Johnson has required the use of XRD and PLM, where necessary, for decades, and indeed, currently uses both methods in accordance with the United States Pharmacopeia recommendations for ensuring that pharmaceutical-grade talc does not contain asbestos. In addition to using XRD and PLM in accordance with the United States Pharmacopeia and J4-1 methods, the company has had third-party laboratories use transmission electron microscopy ("TEM") to assess the company's cosmetic talc. Johnson & Johnson has required TEM testing for decades and, by doing so, has exceeded industry standards for decades. The cosmetic talc used in Johnson's Baby Powder is tested multiple times, including at the site where the talc is mined, once the ore is extracted, and after it is milled.

Because testing for asbestos is a highly specialized and technical field, Johnson & Johnson relies on experts to advise the company on appropriate test methods, to conduct the testing, and to analyze the results. These analyses are used to determine the morphology, composition, and crystalline structure of the mineral. Minerals such as talc can have chemical characteristics, crystalline structures, or morphology attributes that are similar to asbestos, complicating the scientific analyses and requiring an even greater level of expertise and training. As reflected in the significant materials related to talc testing that Johnson & Johnson produced to the Subcommittee, tests have been conducted by a variety of experts, including McCrone Associates, the RJ Lee Group, and the National Institute for Occupational Safety and Health. Johnson & Johnson's testing regime surpasses both the industry standard and the United States Pharmacopeia recommendations for pharmaceutical grade talc. Johnson & Johnson's extensive record of testing using the full suite of methodologies ensures that its talc does not contain asbestos.

After receiving the hearing invitation, we requested a telephone call with your staff. In a call on Wednesday, November 20, we conveyed that Johnson & Johnson supports the Subcommittee's interest in examining testing methods used to detect whether talc contains asbestos. We noted that, given the highly specialized and technical nature of talc testing, Mr. Gorsky is not an appropriate witness for the scientific topics planned for the hearing. We expressed that Johnson & Johnson was interested in working with the Subcommittee to suggest a scientific expert who could speak to the scientific issues in the hearing, including geology,

mineralogy, and microscopy. The staff indicated that the Subcommittee was open to hearing proposals regarding the witness for the hearing, and we agreed to consider potential witnesses and reconnect with the staff on Friday.

On Friday, November 22, in a follow up conversation with the Subcommittee staff, we proposed that Dr. Matthew S. Sanchez, Ph.D., testify on behalf of Johnson & Johnson at the December 10 hearing. We noted that Dr. Sanchez would be an ideal witness for the hearing because he has expertise in mineralogy, geology, and microscopy, and specific expertise in the testing methods used to detect asbestos, including XRD, PLM, and TEM. Since 2007, Dr. Sanchez has been a scientist, manager, and investigator at RJ Lee Group; RJ Lee Group is one of the key outside experts relied upon by Johnson & Johnson to advise on testing methods for talc. We agreed to provide the staff with Dr. Sanchez's curriculum vitae, which we did that afternoon. Upon receiving Dr. Sanchez's background, the staff immediately responded and said they "expect Mr. Gorsky to testify on December 10th."

On Monday, November 25, we again spoke with the staff. We reiterated that Mr. Gorsky is not an appropriate witness for the hearing because he does not have a background in the topic of the hearing. We indicated that Johnson & Johnson is a family of some 220 companies, and Mr. Gorsky came up through the pharmaceutical side of Johnson & Johnson's business and has no experience serving within the consumer and baby segments of the company. We also addressed the staff's contention that Mr. Gorsky had testified or spoken publicly about talc issues, noting that Mr. Gorsky's public and private statements regarding talc have repeatedly made clear that he and the company rely on outside experts.

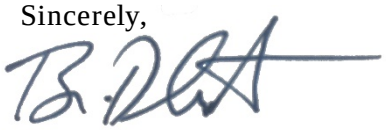
In the November 25 call, the staff also indicated that the Subcommittee wanted to hear from a witness from within the company, notwithstanding the company's use of outside experts for its talc testing methodologies. In response, we proposed that Kathleen Widmer, Johnson & Johnson's Company Group Chairman, Consumer North America, appear at the hearing because she is the executive accountable for Johnson & Johnson's consumer businesses. Given Johnson & Johnson's structure, Ms. Widmer operates at a level equivalent to a CEO and she has decades of experience in the consumer products sector. She additionally has experience addressing policy issues associated with consumer safety, for example, by serving as an Executive Board Director of the Personal Care Products Council. The staff asked that we make the proposal in writing and provide additional information regarding Ms. Widmer's background, which we did that same day.

On Wednesday, November 27, the staff requested a follow up telephone call. In that call, the staff indicated that the Subcommittee had considered our proposal to have Ms. Widmer appear at the hearing. The staff conveyed that the Subcommittee did not intend to modify the invitation to Mr. Gorsky and the "invitation is still outstanding." We expressed that, although Johnson & Johnson is committed to cooperating with the Subcommittee, Mr. Gorsky does not have knowledge of the scientific issues to be discussed and does not have a background in the consumer business segment. In contrast, Dr. Sanchez and Ms. Widmer are able to speak to these two issues, respectively.

We reiterate Johnson & Johnson's demonstrated commitment to cooperating with the Subcommittee and working with you and your staff on the hearing. We have offered two

witnesses with significant experience and expertise in the topics identified in the hearing invitation and our subsequent discussions with your staff. Given the factors discussed above, we strongly urge you to reconsider our offer to have Dr. Sanchez, Ms. Widmer, or both appear on behalf of Johnson & Johnson at the December 10 hearing.

Sincerely,



Brian D. Smith

cc: The Honorable Michael Cloud