

No. 23A_____

IN THE
SUPREME COURT OF THE UNITED STATES

OFFICIAL COMMITTEE OF ASBESTOS CLAIMANTS,
Applicant,

v.

BESTWALL LLC; GEORGIA-PACIFIC LLC; AND
SANDER L. ESSERMAN, IN HIS CAPACITY AS FUTURE CLAIMANTS' REPRESENTATIVE,
Respondents.

**APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH
TO FILE PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT**

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Asbestos Claimants*

October 20, 2023

PARTIES TO THE PROCEEDINGS BELOW

Applicant Official Committee of Asbestos Claimants was an appellant in the district court proceedings and an appellant in the court of appeals proceedings.

Respondent Sander L. Esserman, in his capacity as Future Claimants' Representative, was an appellant in the district court proceedings and an appellant in the court of appeals proceedings.

Respondent Bestwall LLC (debtor) was the plaintiff in the bankruptcy court proceedings, an appellee in the district court proceedings, and an appellee in the court of appeals proceedings.

Respondent Georgia-Pacific LLC was an appellee in the district court proceedings and an appellee in the court of appeals proceedings.*

* The individuals listed on Appendix A to the Complaint are plaintiffs or potential plaintiffs in state court proceedings involving asbestos claims against the predecessor and affiliates of the debtor. Those individuals were not parties to the bankruptcy court proceedings, the district court proceedings, or the court of appeals proceedings, and thus are not parties to the proceedings before this Court. Appendix A to the Complaint can be found on Pacer for the United States Bankruptcy Court for the Western District of North Carolina, *In re Bestwall LLC*, No. 17-31795, Adv. Proceeding No. 17-03105, ECF No. 1 (Nov. 2, 2017).

RELATED CASES

In re Bestwall LLC, No. 17-31795, Adv. Proceeding No. 17-03105 (Bankr. W.D.N.C.) (judgment entered July 29, 2019)

In re Bestwall LLC, No. 3:20-cv-103-RJC (W.D.N.C.) (judgment entered Jan. 6, 2022)

In re Bestwall LLC, No. 3:20-cv-105-RJC (W.D.N.C.) (judgment entered Jan. 6, 2022)

In re Bestwall LLC, Nos. 22-1127(L) & 22-1135 (4th Cir.) (judgment entered June 20, 2023)

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To the Honorable John G. Roberts, Jr., Chief Justice of the United States and
Circuit Justice for the Fourth Circuit:

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.3 of the Rules
of this Court, applicant Official Committee of Asbestos Claimants respectfully
requests a 45-day extension of time, up to and including December 20, 2023, within
which to file a petition for a writ of certiorari to review the judgment of the United
States Court of Appeals for the Fourth Circuit.

The court of appeals entered its judgment on June 20, 2023, and denied
petitions for rehearing en banc on August 7, 2023. The court of appeals' opinion
(reported at 71 F.4th 168) and order denying rehearing en banc are attached hereto
as Exhibits A and B, respectively. The orders of the district court are not reported
but are available at 2022 WL 67469 and 2022 WL 68763, and they are attached
hereto as Exhibits C and D, respectively. The memorandum opinion and order of
the bankruptcy court is reported at 606 B.R. 243 and is attached hereto as Exhibit
E. The petition would be due on November 5, 2023, and this application is made at
least 10 days before that date. This Court's jurisdiction would be invoked under
28 U.S.C. § 1254(1).

1. This case presents important questions about the scope of federal
bankruptcy jurisdiction. In 2017, Georgia-Pacific – a profitable manufacturing
behemoth – hatched a scheme to evade liability for exposing people to dangerous

asbestos. The company was the first to use a maneuver under Texas law, now commonly called the “Texas Two-Step,” to shift all of its asbestos liabilities and almost no assets into a new entity, Bestwall, which it promptly placed in bankruptcy. Georgia-Pacific simultaneously placed almost all of its business assets but no meaningful liabilities into another new entity, New GP, which it kept outside of bankruptcy and away from bankruptcy court supervision. To complete the maneuver, Bestwall then asked the bankruptcy court to enjoin not only all litigation against itself as the newly created debtor, but also all asbestos litigation against non-debtor New GP and its other non-bankrupt affiliates. The bankruptcy court granted that request and froze thousands of asbestos lawsuits around the country against those solvent defendants, permitting New GP to gain a critical bankruptcy benefit without incurring any corresponding bankruptcy burden.

The Fourth Circuit affirmed, providing a roadmap for solvent corporations to abuse the bankruptcy system through the same contrivance. Indeed, the Fourth Circuit has now become a haven for manipulation of the Bankruptcy Code among forum-shopping companies deploying the same divisive mergers and seeking the same broad injunctions shielding non-debtors from tort litigation. The first four Texas Two-Step bankruptcies in U.S. history all commenced in the Fourth Circuit, despite the companies lacking real ties to any State within it. In each case, a sweeping non-debtor injunction – like the Fourth Circuit upheld here – was the linchpin of the scheme. If its decision is allowed to stand, the Fourth Circuit will become an even greater magnet for future cases like this one.

2. The injunction the Fourth Circuit blessed here depends on bankruptcy jurisdiction that Georgia-Pacific manufactured in violation of both fundamental jurisdictional principles and a federal statute, 28 U.S.C. § 1359, that bars collusive jurisdiction-conferring schemes like this one. By allowing Georgia-Pacific to contrive bankruptcy jurisdiction, the Fourth Circuit created a conflict with other circuits that require heightened scrutiny of such maneuvers. *See, e.g., Toste Farm Corp. v. Hadbury, Inc.*, 70 F.3d 640, 644 (1st Cir. 1995); *Prudential Oil Corp. v. Phillips Petroleum Co.*, 546 F.2d 469, 475 (2d Cir. 1976); *Branson Label, Inc. v. City of Branson*, 793 F.3d 910, 917 (8th Cir. 2015); *Yokeno v. Mafnas*, 973 F.2d 803, 809-10 (9th Cir. 1992). Departing from those circuits, the Fourth Circuit upheld bankruptcy jurisdiction based on Georgia-Pacific’s “orchestrated endeavor to fabricate it.” *In re Bestwall LLC*, 71 F.4th 168, 193 (4th Cir. 2023) (King, J., dissenting in part).

Moreover, the Fourth Circuit’s decision to uphold the non-debtor injunction extended bankruptcy jurisdiction far beyond what this Court and other circuits have permitted. The Fourth Circuit relied on 28 U.S.C. § 1334(b), which confers jurisdiction over proceedings “related to” a bankruptcy case. But related-to jurisdiction requires that non-bankruptcy proceedings have a “direct and substantial adverse effect” on the debtor’s estate. *Celotex Corp. v. Edwards*, 514 U.S. 300, 310 (1995). Because of how Georgia-Pacific structured Bestwall – including a functionally unlimited funding guarantee from New GP ensuring that judgments against New GP cannot possibly affect Bestwall’s estate – that test is not met here. In holding

otherwise, the Fourth Circuit deepened the circuit conflict. *See, e.g., In re Memorial Ests., Inc.*, 950 F.2d 1364, 1368 (7th Cir. 1991) (“A case is ‘related’ to a bankruptcy when the dispute ‘affects the amount of property for distribution [i.e., the debtor’s estate] or the allocation of property among creditors.’”) (citation omitted; alteration in *Memorial Estates*); *In re Aearo Techs. LLC*, 642 B.R. 891, 910 (Bankr. S.D. Ind. 2022) (applying the Seventh Circuit’s more limited standard for “related to” jurisdiction and declining to find subject-matter jurisdiction despite the existence of uncapped funding agreements because the “focus . . . is on the *actual* economic effect continuation of the Pending Actions will have on Aearo’s estate and creditors”); *In re Combustion Eng’g, Inc.*, 391 F.3d 190, 227-28 (3d Cir. 2004) (holding that “related to” test “inquires whether the allegedly related lawsuit would affect the bankruptcy without the intervention of yet another lawsuit” and rejecting argument that mere corporate affiliation or contribution agreements can create related-to jurisdiction over non-debtors).

3. The 45-day extension to file a certiorari petition is necessary because undersigned counsel needs the additional time to prepare the petition and appendix in light of other, previously engaged matters in this and other courts, including: (1) a certiorari reply brief in this Court in *Indiana Municipal Power Agency, et al. v. United States*, No. 23-48 (to be filed Nov. 1, 2023); (2) an *amicus* brief in this Court in support of the defendants in *Alaska v. United States, et al.*, No. 157, Orig. (due Nov. 9, 2023); and (3) a merits brief for respondents in this Court in *Macquarie Infrastructure Corp., et al. v. Moab Partners, L.P., et al.*, No. 22-1165 (due Dec. 13, 2023).

For all these reasons, there is good cause for a 45-day extension of time, up to and including December 20, 2023, within which to file a certiorari petition in this case to review the judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,



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