No. 23-702

IN THE
Supreme Court of the United States

SANDER L. ESSERMAN, IN HIS CAPACITY AS FUTURE CLAIMANTS' REPRESENTATIVE,

Petitioner,

v.

BESTWALL LLC; GEORGIA-PACIFIC LLC; AND OFFICIAL COMMITTEE OF ASBESTOS CLAIMANTS,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

In 11 U.S.C. § 524(g), Congress provided a solution to the problem this Court has described as the "asbestos-litigation crisis." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 598 (1997). That statute enables a company to resolve mass asbestos liabilities fairly and equitably by creating a trust—subject to the approval of the District Court and a supermajority of claimants—for the payment of both current and future asbestos tort claims. Respondent Bestwall LLC filed its bankruptcy petition to pursue the resolution Congress authorized. Faced with thousands of asbestos claims in state courts across the country and thousands more projected for years to come, Bestwall's predecessor undertook a corporate restructuring, the potential for which § 524(g) expressly addresses, assigning its asbestos liability to Bestwall, but backed by the full funding capability of the predecessor.

The Bankruptcy Court entered a preliminary injunction that, during the bankruptcy case, stays litigation outside bankruptcy of the *exact, same—identical and co-extensive in every respect*—asbestos claims Bestwall seeks to resolve in bankruptcy. The questions presented are:

1. Whether 28 U.S.C. § 1359 applied to strip the Bankruptcy Court of its otherwise-existing subject-matter jurisdiction.

2. Whether the Bankruptcy Court properly assessed Bestwall's likelihood of success on the merits by inquiring whether Bestwall had a reasonable likelihood of a successful reorganization.

RULE 29.6 STATEMENT

Bestwall LLC and Georgia-Pacific LLC are wholly owned subsidiaries of Georgia-Pacific Holdings, LLC, which is a wholly owned subsidiary of Georgia-Pacific Equity Holdings LLC, which is a wholly owned subsidiary of Koch Renewable Resources, LLC, which is a wholly owned subsidiary of Koch Industries, Inc. No publicly held company, either directly or indirectly, holds 10% or more interest in Bestwall LLC or Georgia-Pacific LLC.

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INTRODUCTION

This Petition, like the petition in No. 23-675, seeks to litigate a question the Fourth Circuit did not resolve—the validity of Bestwall's bankruptcy following its corporate restructuring. That is why the Fourth Circuit accurately held that the attack on Bestwall's bankruptcy in *this* proceeding was "both premature and improper," Pet.App.22a, and therefore did not address it. *See also id.* (characterizing the Petition's "jurisdictional arguments" as a "back-door way to challenge the propriety" of Bestwall's "reorganization and the merits of a yet-to-be-filed Chapter 11 plan").

Petitioner, the Future Claimants' Representative ("the Representative"), contests the Bankruptcy Court's routine entry of a preliminary injunction temporarily staying, during Bestwall's bankruptcy, litigation of asbestos claims against non-debtor affiliates, which claims undisputedly are *identical* to the claims Bestwall seeks to resolve in bankruptcy—indeed, as the Bankruptcy Court found, "identical and co-extensive in every respect," Pet.App.94a, because they are the very same claims asserted against Bestwall. This is thus not a case where a non-debtor would benefit from an injunction relating to claims against it that are separate and distinct from those asserted against the debtor. There is no circuit split on such facts.

The Petition presents two challenges to the Fourth Circuit's decision affirming that order. Neither merits this Court's review.

First, the Representative argues that the Bankruptcy Court lost its otherwise existing subject-

matter jurisdiction by operation of 28 U.S.C. § 1359. In the absence of a circuit split, this argument seeks only fact-bound error correction regarding the Fourth Circuit's determination that there was an independent and legitimate business justification for the restructuring.

Section 1359 bars federal jurisdiction where a "party" has been "improperly or collusively made or joined to invoke" that jurisdiction. As the Fourth Circuit concluded, § 1359 does not apply at all because Bestwall's corporate restructuring did not "manufacture" jurisdiction. Rather, bankruptcy court jurisdiction would have existed even if the corporate restructuring had never taken place. No court has ever found § 1359 applicable in such circumstances. Nor is there any possible circuit split on this question, because no circuit applies § 1359 to bankruptcy cases. Instead, the circuits apply the statute to prevent parties from creating federal diversity jurisdiction by assigning claims from a non-diverse to a diverse plaintiff.

Any split among the circuits would also make no difference here given that the Fourth Circuit alternatively applied the Representative's proposed "presumption against jurisdiction" and found it overcome on the facts of Bestwall's case, making the Petition at most a plea to correct fact-bound error. And it had jurisdiction on two additional, independent grounds under 28 U.S.C. § 1334 that do not implicate Section 1359 at all.

Second, the Representative argues that the decision below applied the wrong legal standard for assessing Bestwall's preliminary injunction request

by inquiring whether Bestwall had a "reasonable likelihood of a successful reorganization." Pet.App.101a. The Petition does not even attempt to assert a split of authority on this question, and for good reason—there is none. Instead, the Representative asserts that this uniform approach somehow conflicts with this Court's pronouncements on the general standard for injunctive relief. It does not.

Beyond the two Questions Presented, the Petition also contends that the preliminary injunction was somehow inconsistent with § 524(g). Exactly the opposite is true: The Bankruptcy Court's temporary stay advances Congress's design for resolving mass asbestos liabilities under § 524(g). The Petition does not even attempt to identify a circuit split on this issue.

Finally, there is no reason to hold this case for *Harrington v. Purdue Pharma L.P.*, No. 23-124. *Purdue* involves a challenge to a nonconsensual third-party *release* in a *confirmed plan* under 11 U.S.C. § 1123(b)(6). This case instead involves a *temporary stay* under 11 U.S.C. § 105(a); no claims have been released and no plan confirmed. Further, the issue in *Purdue*—the statutory propriety of non-consensual third-party releases under general bankruptcy provisions—is irrelevant in the asbestos context, where Congress has specifically authorized such releases under § 524(g).

Because the Petition implicates no split of authority or other important question, certiorari should be denied.

STATEMENT OF THE CASE

A. Legal background

In 1994, Congress enacted 11 U.S.C. § 524(g) to address what this Court later called an "asbestos-litigation crisis," *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 597–98 (1997), and an "elephantine mass," *Ortiz v. Fibreboard Corporation*, 527 U.S. 815, 821 (1999), that has been a disaster for claimants, defendants, and courts.

Section 524(g) "allows a debtor to address in one forum all potential asbestos claims against it, both current and future, as well as current and potential future claims against third parties alleged to be liable on account of asbestos claims against the debtor." Pet.App.91a. A Chapter 11 debtor funds a trust under a confirmed plan of reorganization, in exchange for a permanent "channeling" injunction to protect itself and qualifying affiliates. Pet.App.8a n.3, 10a n.5. The debtor's trust may be funded, in part, through non-debtor sources (including affiliates), as has happened in "multiple section 524(g) cases." *In re Bestwall LLC*, 605 B.R. 43, 49 (Bankr. W.D.N.C. 2019).

The statute expressly contemplates the possibility of pre-bankruptcy corporate restructurings. 11 U.S.C. § 524(g)(4)(A)(ii)(IV). And as with Chapter 11 cases generally, it does not require insolvency. *See* 11 U.S.C. § 109(c) & (d); *Toibb v. Radloff*, 501 U.S. 157, 160–61 (1991).

A significant contributor to the asbestos-litigation crisis is the long latency of asbestos-related illness. In the tort system, a company cannot settle unknown or not-yet-existing claims. Section 524(g) makes this

possible, if (among other things) a bankruptcy court appoints a future claimants' representative in addition to a current-claimants' committee. 11 U.S.C. § 524(g)(4)(B). Both are funded by the debtor. *See id.* §§ 503(b)(2), 1103(a). Seventy-five percent of a class of current claimants must approve a § 524(g) plan, and a bankruptcy court and a district court must find it "fair and equitable." *Id.* § 524(g)(2)(B), (3)(A), (4), (5). And "personal injury claimants" remain "entitled, if they elect to do so, to have a jury trial." *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1012 (4th Cir. 1986); 28 U.S.C. § 1411(a).

Across 40 years, § 524(g) has yielded more than 60 trusts to compensate asbestos victims. *Bestwall*, 605 B.R. at 49–50; U.S. Gov't Accountability Office, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts* 3 (2011). Its utility, however, has had a side effect. "[T]he first seventeen asbestos defendants to go into bankruptcy represented 'one-half to three-quarters of the original liability share.'" James L. Stengel, *The Asbestos End-Game*, 62 N.Y.U. Ann. Surv. Am. L. 223, 238 (2006) (citation omitted). The focus of tort litigation then shifted to previously peripheral defendants in what leading plaintiffs' lawyer Richard Scruggs described as an "endless search for a solvent bystander." *Medical Monitoring and Asbestos Litigation—A Discussion with Richard Scruggs and Victor Schwartz*, 1-7:21 Mealey's Asbestos Bankr. Rep. 5 (Feb. 2002). But these "bystanders," which include Bestwall LLC, are now (and have been for years) targeted as primary defendants allegedly responsible for the substantial share of the liability of the bankrupt defendants that established trusts funded

with tens of billions of dollars that continue to process and pay claims. *In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 84–87 (Bankr. W.D.N.C. 2014). Plaintiffs often fail to disclose to defendants or state courts confidential claims made against those trusts in order to inflate recoveries against non-bankrupt defendants. *Id.*

B. Procedural history

1. The asbestos liability of Bestwall LLC's predecessor, the former Georgia-Pacific LLC ("Old GP"), arose from its acquisition of the Bestwall Gypsum Company, which produced a joint compound containing small amounts of chrysotile asbestos, *Bestwall LLC*, 605 B.R. at 47, a type of asbestos that, if toxic at all, is "far less toxic than other forms" commonly used in other products. *Garlock*, 504 B.R. at 75, 83. Old GP stopped using asbestos in 1977. *See Bostic v. Georgia-Pacific Corp.*, 439 S.W.3d 332, 353 (Tex. 2014). It began to face asbestos litigation in 1979, but was not a primary target for suits, facing fewer than 500 mesothelioma claims each year until 2000. Yet by 2017, after asbestos defendants that had accounted for most of the liability share had filed for Chapter 11 and established bankruptcy trusts, Bestwall faced more than 64,000 pending asbestos tort claims, with tens of thousands more expected for decades to come. *Bestwall*, 605 B.R. at 47.

The "magnitude and projected continuation" of asbestos claims "ultimately led Old GP to undertake a corporate restructuring" in 2017. Pet.App.87a. Old GP was restructured under a decades-old provision of Texas's Business Organizations Code authorizing a "divisional merger" that results in two separate

companies to which the assets and liabilities of the original are allocated. Here, the two new companies were Bestwall and Georgia-Pacific LLC ("New GP"). Pet.App.92a.

Bestwall is no mere "shell company." Pet. 33. In the restructuring, it received Old GP's asbestos liability—the "Bestwall Asbestos Claims." Pet.App.89a n.3 (defining term). It also received ample consideration in exchange for that liability, despite the Representative's claims to the contrary. Pet. 22. Bestwall received assets, including accounts holding approximately $32 million in cash; all contracts related to Old GP's asbestos litigation; real estate; and the equity, valued at $145 million, in a North Carolina company that owns certain operating assets of Old GP's historical gypsum business and was projected to generate $18 million in annual cash flow. Pet.App.87a–88a. In addition, a support agreement establishes reciprocal indemnification obligations corresponding to the allocation of liabilities between Bestwall and New GP. *See* Pet.App.91a–92a.

Bestwall and New GP also executed a Funding Agreement, which obligates New GP to fund Bestwall's expenses, including those of a Chapter 11 reorganization, and any amounts necessary to satisfy Bestwall's asbestos-related liabilities, including through a § 524(g) trust. The Funding Agreement operates as a "backstop." Pet.App.92a. Bestwall must exhaust any cash distributions from its subsidiaries before turning to the Funding Agreement to cover costs. Pet.App.89a. And Bestwall must exhaust *all* its assets before turning to the Funding Agreement to fund a § 524(g) trust. Pet.App.92a.

The Funding Agreement does not "immunize" New GP from liability, Pet. 2–3, because New GP remains obligated to pay claims to the extent Bestwall cannot satisfy the liability. Nor did the corporate restructuring shield New GP from "disclosure" of its "financial affairs." Pet. 2. The Funding Agreement also requires New GP to provide quarterly financial information to Bestwall, which Bestwall in turn provides to the Committee and the Representative. Dkt. 2, Annex 2, at 8, No. 3:17-br-31795 (Bankr. W.D.N.C. Nov. 2, 2017).

The corporate restructuring allowed Old GP to pursue a global resolution of Bestwall Asbestos Claims in a § 524(g) reorganization without putting the entirety of Old GP's assets and operations into bankruptcy. After the restructuring, despite the allocation of asbestos liabilities solely to Bestwall and the fact that New GP had never manufactured or sold an asbestos-containing product, plaintiffs immediately began to sue New GP over Old GP's products.[1] Pet.App.7a. As the Bankruptcy Court observed, the "liability being asserted against New GP" was "identical and co-extensive in every respect," except for the name of the Defendant, to any liability Bestwall faces. Pet.App.94a. That court found—and no one contests—that "[b]oth sets of claims involve the same plaintiffs, the same asbestos-containing products, the same alleged injuries, the same legal theories and causes of action,

[1] The Petition uses the term "Georgia-Pacific" to refer to both Old GP and New GP, Pet. 9–10, suggesting (incorrectly) that New GP manufactured and sold asbestos-containing products. It did not.

the same time periods, the same markets, and the same alleged damages resulting from the same alleged conduct," *id.*—in other words, the very same claims that Bestwall seeks to resolve in its bankruptcy.

2. Bestwall filed a Chapter 11 petition in 2017, seeking to "resolve mass asbestos claims through a section 524(g) trust." Pet.App.85a. The Bankruptcy Court appointed an Official Committee of Asbestos Creditors ("the Committee") and the Representative, the Petitioner here.

The Committee (but not the Representative) moved to dismiss the case as filed in bad faith, arguing that the Texas divisional merger facilitated an improper use of bankruptcy. The Bankruptcy Court denied that motion. *Bestwall*, 605 B.R. at 48–50. It explained that Bestwall's goal of resolving asbestos claims through § 524(g) was "a valid reorganizational purpose," a point with which the Committee "agree[d.]" *Id.* at 49. The Committee then sought leave to appeal to the District Court, as well as certification for a direct appeal to the Fourth Circuit. *See* 28 U.S.C. § 158. Although the Bankruptcy Court certified its decision, the Fourth Circuit declined a direct appeal. *See* Dkt. 13, No. 19-408 (4th Cir. Nov. 14, 2019). And the District Court denied leave. Dkt. 18, No. 3:19-cv-00396-RJC (W.D.N.C. Nov. 6, 2023). The Committee has since brought two further motions to dismiss, both of which the Bankruptcy Court also denied. *In re Bestwall LLC*, 2024 WL 721596, at *1–2 (Bankr. W.D.N.C. Feb. 21, 2024). The more recent of those remains pending on appeal below. None is the subject of this Petition.

3. Instead, the Petition, like the petition in No. 23-675, challenges a temporary stay granted by the Bankruptcy Court. When Bestwall filed its Chapter 11 case, it commenced an adversary proceeding (Fed. R. Bankr. P. 7001) seeking under 11 U.S.C. § 105(a) to temporarily enjoin litigation of Bestwall Asbestos Claims against certain of its affiliates ("Protected Parties," Pet.App.85a n.4) during its bankruptcy case. These were the claims allocated to Bestwall and for which Bestwall was solely responsible but which claimants had sought to bring against Bestwall's affiliates. *See supra* at 6–8. Bestwall alternatively sought the same relief through a declaration that the automatic stay under § 362(a) extends to such actions. Pet.App.112a. On a stipulated record, the Bankruptcy Court granted Bestwall's motion, recognizing that such stays had "previously and uniformly been issued in numerous other asbestos-related cases," listing twelve examples since 2000. Pet.App.87a, 102a–103a & n.12. The Representative does not dispute these examples. Nor, tellingly, does he cite *any* contrary authority to support the assertion that "*most* Section 524(g) cases confirm a plan without a pre-confirmation injunction protecting non-debtors." Pet. 30.

The Bankruptcy Court determined it had jurisdiction under § 1334(b), which provides for bankruptcy court jurisdiction "of all civil proceedings arising under title 11, or arising in or related to cases under title 11." That court applied the longstanding and universal rule that an adversary proceeding is "related to" a Chapter 11 bankruptcy if it "could conceivably have any effect on the estate being

administered in bankruptcy." Pet.App.90a (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)).

The Bankruptcy Court found that continued litigation of Bestwall Asbestos Claims *during* the bankruptcy against affiliates *outside* of bankruptcy met that test because the "Bestwall Asbestos Claims brought against New GP" were not "in any way distinguishable from [the] liability asserted against the Debtor." Pet.App.94a. Instead, "[t]he liability being asserted against New GP and Bestwall would be identical and co-extensive in every respect." *Id.* Permitting claimants to prosecute those same claims against affiliates during Bestwall's bankruptcy thus would "defeat the very purpose of section 524(g)"—global resolution of asbestos claims against the debtor. Pet.App.91a.

On the merits, the Bankruptcy Court applied "the traditional four-prong test for injunctions, tailored to the unique circumstances of bankruptcy." Pet.App.100a. In particular, it explained, drawing on authority from across the country, that "[i]n the context of bankruptcy, success on the merits is to be evaluated in terms of the likelihood of a successful reorganization." Pet.App.101a. Bestwall satisfied every prong of the test for preliminary injunctive relief. Pet.App.103a–112a.

4. The District Court affirmed. As to jurisdiction, it concluded that the Bankruptcy Court "clearly, at a minimum, had related to jurisdiction." Pet.App.69a–70a n.3. That was "because determining whether or not to grant the injunctive relief" could "conceivably" affect "the Debtor's bankruptcy estate"—indeed,

denial could "defeat the entire purpose of the Debtor's reorganization." Pet.App.67a. It did not "analyze in depth whether arising in jurisdiction [also] exist[ed]" as a separate ground for § 1334(b) jurisdiction, but nonetheless explained that "courts in this Circuit find arising in jurisdiction exists" to consider the sort of injunction Bestwall sought. Pet.App.69a–70a n.3.

On the merits, it recognized the same four-element test as the Bankruptcy Court, including considering whether the debtor can "show it has a reasonable likelihood of successful reorganization" and requiring "[e]ach part of the test" to be satisfied. Pet.App.71a–72a. It rejected the Representative's argument that the Bankruptcy Court had misapplied the test, and found no abuse of discretion in its findings and conclusion. Pet.App.72a–73a. In particular, the District Court agreed that Bestwall likely could fund a § 524(g) trust and pay the costs of reorganization, and thus had shown a reasonable likelihood of success. *Id.*

5. The Fourth Circuit affirmed.

First, it agreed that the Bankruptcy Court had "related to" subject-matter jurisdiction. Applying the same longstanding precedent, the Fourth Circuit asked whether "the outcome" of Bestwall's request for a preliminary injunction "could conceivably have any effect on the estate being administered in bankruptcy." Pet.App.16a (quoting *Pacor,* 743 F.2d at 994). It found that test satisfied because "the asbestos-related claims against Bestwall are identical to the claims against New GP pending now

or likely to be pending in the future in the various state courts." *Id.*

The Fourth Circuit rejected the Committee's argument that the corporate restructuring destroyed jurisdiction by operation of 28 U.S.C. § 1359. That provision bars federal jurisdiction of "a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court." But, the Fourth Circuit explained, "without the restructuring, the asbestos claims would have remained with Old GP," and "if Old GP had filed for bankruptcy, the bankruptcy court would have had jurisdiction over those claims as it does over the same claims here." Pet.App.22a. Because jurisdiction would have existed either way, Bestwall did not "manufacture" it. *Id.*

On the merits, the Fourth Circuit held that the Bankruptcy Court had "appropriately considered Bestwall's realistic likelihood of successfully reorganizing." Pet.App.28a–32a.

Judge King dissented, arguing that the Bankruptcy Court lacked both "related to" and "arising in" jurisdiction. Pet.App.50a, 51a. He did not reach the merits. Nor did he question the correctness of the four-prong preliminary injunction standard applied by the majority.

6. The Committee and Representative petitioned for rehearing *en banc*, which the Fourth Circuit denied by a vote of 8–5. *See* Dkt. 82, No. 22-1127 (4th Cir. Aug. 7, 2023). Chief Judge Diaz and Judges Wilkinson, Niemeyer, Agee, Harris, Quattlebaum, Rushing, and Heytens voted to deny the petitions. Judges King, Gregory, Wynn, Thacker, and

Benjamin voted to grant. Judge Richardson recused. This Petition followed. (The Committee earlier filed a separate petition, to which Bestwall has responded separately. No. 23-675.)

REASONS FOR DENYING THE PETITION

I. THE PETITION IMPLICATES NO CIRCUIT SPLIT AND SEEKS FACT-BOUND ERROR CORRECTION.

The Petition implicates no split of authority and instead seeks mere fact-bound error correction. As to jurisdiction, § 1359 does not apply to this case at all—therefore the Petition could not possibly implicate a split of authority—because *no* circuit applies that statute in bankruptcy cases. Any asserted jurisdictional error is, moreover, fact-bound: The Fourth Circuit concluded that the Bankruptcy Court would have had jurisdiction with or without the corporate restructuring and so was not "manufactured." And the Petition does not even attempt to demonstrate a split of authority on the preliminary injunction standard.

A. The decision below does not implicate § 1359, much less a split involving it.

The Fourth Circuit's decision implicates no circuit split involving § 1359. That court concluded that § 1359 did not apply because bankruptcy court jurisdiction would have existed with or without the corporate restructuring. Pet.App.22a. The Petition does not dispute that § 1359 applies only where jurisdiction would not otherwise have existed. It thus identifies no split on that question but, instead, seeks fact-bound error correction. Regardless, the asserted split rests entirely on diversity jurisdiction cases. Because no circuit has ever applied § 1359 to bankruptcy cases, there is no split on that question.

1. As Bestwall has explained in its opposition to the Committee's petition seeking review of the same

Fourth Circuit decision, that decision implicates no split of authority involving § 1359. The Fourth Circuit determined that the divisional merger "did not manufacture jurisdiction" under § 1359 because that transaction was not the basis for the Bankruptcy Court's jurisdiction. Pet.App.25a. Instead, jurisdiction was "based on the thousands of identical claims pending against New GP outside of the bankruptcy proceeding and the effect of those claims on Bestwall's bankruptcy estate." *Id.* In other words, § 1359 does not apply to this case because "the corporate restructuring leaves the jurisdictional result the *same*." Pet.App.23a (quotation omitted). The Petition thus implicates no question about, much less split over, § 1359.

Section 1359 provides: "A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court." So, for example, a plaintiff with a claim against a nondiverse party cannot assign the claim to a resident of another state to "manufacture" federal diversity jurisdiction. *Kramer v. Caribbean Mills, Inc.*, 394 U.S. 823, 828–29 (1969).

But if federal-court jurisdiction exists wholly apart from the assignment, then § 1359 does not matter. Jurisdiction has not been "manufacture[d]" here because it already existed. Pet. 7. Thus, if a North Carolina corporation assigns its claim against a New York corporation to a Virginia corporation, § 1359 is irrelevant; either way, federal jurisdiction exists. As even Judge King recognized in dissent, § 1359 could defeat jurisdiction only where "none would otherwise exist." Pet.App.35a.

Under the decision below, the basis for the Bankruptcy Court's § 1334(b) "related to" jurisdiction over the adversary proceeding did not have anything to do with the pre-petition corporate restructuring. Pet.App.25a. Rather, the Fourth Circuit held that, on these facts, there would have been jurisdiction even if the corporate restructuring never occurred. As that court explained, "without the restructuring, the asbestos claims would have remained with Old GP"; Old GP could have filed for bankruptcy; and "the bankruptcy court would have had jurisdiction over those claims." Pet.App.22a.

The Representative does not dispute this. That alone establishes that § 1359 is irrelevant. The Bankruptcy Court's subject-matter jurisdiction under § 1334(b) depends on the nature of a "proceeding[ ]"; like federal-question jurisdiction more generally, it is "jurisdiction over the category of claim in suit." Pet.App.19a (quoting *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007)). The Fourth Circuit thus was required "to analyze whether the *claims* involving New GP are 'related to' the bankruptcy case." Pet.App.23a. In a finding the Representative does not contest, the Bankruptcy Court determined that those claims were "identical and co-extensive in every respect" to the claims Bestwall is seeking to resolve in bankruptcy. Pet.App. 94a. And since those were the very same claims Old GP undisputedly could have resolved in bankruptcy, jurisdiction would have existed with or without the corporate restructuring.

Section 1359 thus is beside the point. The Representative asserts no split concerning application of the statute where jurisdiction

otherwise would exist. Instead, he seeks, at most, to correct the alleged fact-bound error of the Fourth Circuit's (correct) conclusion that, on these facts, Bestwall did not "manufacture" jurisdiction.

2. Nor does the decision below implicate any circuit split involving the "presumption against jurisdiction" the Representative invokes. Pet. 17. No circuit applies that presumption under § 1359 in bankruptcy cases. Nevertheless, the Fourth Circuit alternatively found the presumption overcome.

a. The Representative asserts a split involving a judicially developed presumption "against jurisdiction arising from transactions between affiliates." Pet. 18. Under that presumption, "the party asserting jurisdiction must show that the transaction was done 'for a legitimate business purpose unconnected with the creation of [federal] jurisdiction.'" *Id.* at 19 (quoting *Prudential Oil Corp. v. Phillips Petroleum Co.*, 546 F.2d 469, 475 (2d Cir. 1976)).

The circuits that apply this presumption developed it in, and have only ever applied it to, cases where federal jurisdiction is based on diversity of citizenship. For example, in *Prudential Oil*, which the Petition emphasizes, the Second Circuit held jurisdiction lacking where a transaction "served only the function of creating an appearance of *diversity* jurisdiction." 546 F.2d at 475 (emphasis added). Attempting to apply that holding, the Petition replaces the opinion's "diversity" with "[federal]." Pet. 19. This edit itself is telling.

The Petition invokes no authority—none—applying § 1359 in bankruptcy. Nor did the Fourth

Circuit majority or dissent. Instead, *every* § 1359 case the Representative invokes is a diversity case. *See* Pet. 17–20. These courts apply the asserted presumption against jurisdiction where parties contract "primarily to invoke *diversity* jurisdiction as proscribed by § 1359." *Branson Label, Inc. v. City of Branson*, 793 F.3d 910, 917 (8th Cir. 2015) (emphasis added); *Yokeno v. Mafnas*, 973 F.2d 803, 809–10 (9th Cir. 1992) (presumption against "creat[ion] [of] *diversity* jurisdiction.") (emphasis added); *Toste Farm Corp. v. Hadbury, Inc.*, 70 F.3d 640, 642 (1st Cir. 1995) (parties "created diversity via the merger"); *accord* 13F Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3637 (3d ed. 2023). This is unsurprising, for it is "unclear whether Section 1359 even applie[s] to … non-diversity cases." *Belcufine v. Aloe*, 112 F.3d 633, 637 (3d Cir. 1997) (Alito, J.).

History reinforces this view. The first statutory predecessor to § 1359 appeared in the Judiciary Act of 1789. Congress provided for federal jurisdiction in suits "between a citizen of the State where the suit is brought, and a citizen of another State." § 11, 1 Stat. 73, 78. It then excluded from that diversity jurisdiction "action[s] in favor of an assignee, unless a suit might have been prosecuted in such court … if no assignment had been made." *Id.* This Court has repeatedly traced this statutory pedigree, including in authority the Petition invokes, applying iterations of the provision only in the context of diversity jurisdiction. Pet. 18 (citing *Lehigh Mining & Manufacturing Company v. Kelly*, 160 U.S. 327, 330–31 (1895); *e.g.*, *Farmington Vill. Corp. v. Pillsbury*,

114 U.S. 138, 141–42 (1885); *Williams v. Nottawa*, 104 U.S. 209, 210–12 (1881).

Accordingly, courts applying § 1359 have long confirmed that it "exclude[s] from the diversity jurisdiction" cases with "a contrived interstate appearance." *Lester v. McFaddon*, 415 F.2d 1101, 1104 (4th Cir. 1969). As the Fourth Circuit summarized a half-century ago, building on this Court's then recently-issued *Kramer* decision: "It is the lack of a stake in the outcome coupled with the motive to bring into a federal court a local action normally triable only in a state court which is the common thread of the cases holding actions collusively or improperly brought." *Id.* at 1106 n.11; Pet.App.17a (same); *accord Kramer*, 394 U.S. at 824, 827 (rejecting diversity jurisdiction based on pretextual transaction). Nothing has changed in the last fifty years.

Any split concerning a "presumption against jurisdiction" under § 1359, Pet. 17, is not implicated here. Entirely apart from diversity jurisdiction, federal courts have "original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334(a). Chapter 11 cases like Bestwall's (including proceedings actually "related to" them under § 1334(b)) are *not* mere local actions normally triable in state courts. *See Central Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 369–79 (2006) (discussing breadth of federal bankruptcy power); *Celotex Corp. v. Edwards*, 514 U.S. 300, 307–11 (1995) (discussing "related to" jurisdiction); *cf. Stern v. Marshall*, 564 U.S. 462, 474–82 (2011) (similar). So no possible circuit split concerning application of § 1359 is relevant to this case.

b. Regardless, the Fourth Circuit expressly applied the Petition's asserted presumption in the alternative and found it overcome. "Assuming without deciding" that Bestwall was "obligated" to "prove that the restructuring was 'driven by an independent, legitimate business justification' rather than being pretextual," the Fourth Circuit correctly concluded that "Bestwall did make that showing." Pet.App.26a. So even if § 1359 applied, the only question would be fact-bound—whether the Fourth Circuit properly found the Petition's presumption overcome.

B. The Petition asserts no other split.

The Petition asserts no other split of authority. Apart from his jurisdictional argument, the Representative argues, as his second Question Presented, that the decision below evaluated Bestwall's request for a temporary stay under the wrong standard. He contends that the Fourth Circuit is "the only Circuit Court" to hold "that bankruptcy courts can grant sweeping nationwide injunctions without satisfying the injunction standards applicable to district courts." Pet. 23. But he does not identify a single other circuit court that allegedly takes a different approach. *See id.* at 23–28.[2] Nor is there one. The circuits that have addressed the issue apply the same rule as the Fourth Circuit, adapting the preliminary injunction inquiry to the bankruptcy

[2] Further, as discussed in II.B below, the Fourth Circuit did not hold as he claims. Instead, it held that a preliminary injunction in the bankruptcy context requires showing a likelihood of success on the merits and correctly applied that standard.

context by focusing on the debtor's likelihood of a successful reorganization. *See In re Excel Innovations, Inc.*, 502 F.3d 1086, 1095 (9th Cir. 2007); *In re Eagle-Picher Indus., Inc.*, 963 F.2d 855, 860 (6th Cir. 1992).

The Representative does not even try to distinguish the many cases in which bankruptcy courts have "uniformly" issued orders temporarily staying claims identical to claims against the debtor. Pet.App.102a & n.12 (collecting cases). He does *say* that "[p]re-confirmation injunctions protecting non-debtors are not, and should not be, routine occurrences in a chapter 11 case," but he *cites* nothing to support this assertion. Pet. 30. When the stayed claims are identical to those against the debtor, such preliminary injunctions are routine, particularly in the asbestos context, as here.

The Petition on this question thus asserts no split and seeks mere error correction regarding the standard for preliminary injunctive relief. That does not merit this Court's review. Sup. Ct. R. 10; *see also* Stephen M. Shapiro et al., *Supreme Court Practice* § 5.12(c) (10th ed. 2013).

II. THE FOURTH CIRCUIT CORRECTLY AFFIRMED THE TEMPORARY STAY.

Even if this Court were inclined to consider the Petition's request for fact-bound error correction absent a split, the decision below was correct. The Fourth Circuit properly determined that the Bankruptcy Court had subject-matter jurisdiction to enter its preliminary injunction. The Fourth Circuit also applied the correct legal standard, which is the same standard applied by the other circuits that

have considered the question in the bankruptcy context. And the decision below does not contravene but instead advances Congress's solution to the asbestos litigation crisis in § 524(g).

A. The Bankruptcy Court properly exercised subject-matter jurisdiction.

Section 1334(b) provided the Bankruptcy Court multiple grounds for subject-matter jurisdiction. That court "clearly, at a minimum, had related to jurisdiction." Pet.App.69a n.3. Even assuming § 1359 applied to this case—and it does not—that statute did not destroy the Bankruptcy Court's "related to" jurisdiction. In any event, the Bankruptcy Court also had jurisdiction under both the "arising in" and "arising under" grounds in § 1334(b), and § 1359 has nothing to do with those independent grounds.

1. The universal view of the lower courts was correct: The Bankruptcy Court had "related to" jurisdiction under § 1334(b) to enter its temporary stay.

In assessing "related to" jurisdiction, the Fourth Circuit (like the other courts below before it) applied its decades-old precedent. Pet.App.16a (citing *Robins*, 788 F.2d 994). That precedent, in turn, had adopted the canonical test for "related to" jurisdiction first articulated in *Pacor*, 743 F.2d at 994. *Robins*, 788 F.2d at 1002 n.11. This Court has favorably discussed and generally approved the *Pacor* test, *see Celotex Corp.*, 514 U.S. at 308 & n.6, and the circuits universally follow it, *see* Br. in Opp., No. 23-675, at 19–23. Under the *Pacor* test, an adversary proceeding is "related to" a Chapter 11 bankruptcy if it "could conceivably have any effect on the estate

being administered in bankruptcy." *Pacor*, 743 F.2d at 994.

The panel determined that litigating the Bestwall Asbestos Claims against Protected Parties during Bestwall's bankruptcy met this test. That was because "the asbestos-related claims against Bestwall *are identical to the claims against New GP*" that are subject to the Bankruptcy Court's preliminary injunction. Pet.App.16a (emphasis added). As a result, simultaneously litigating in the tort system those "*same claims*" sought to be "resolved within the Bestwall bankruptcy case" at least "could" affect Bestwall's bankruptcy estate. Pet.App.17a.

Of course it could. Litigating the Bestwall Asbestos Claims against New GP during Bestwall's bankruptcy would raise concerns about "issue preclusion, inconsistent liability, and evidentiary issues." Pet.App.18a. In addition, given the obvious impact that the claims against New GP would have on claims against Bestwall—they are, after all, the exact same claims—Bestwall's officers would have no choice but to devote their time to defending claims against New GP instead of resolving Bestwall's bankruptcy. And the goal of an equitable and global resolution of all claims under § 524(g) would be impossible if some of these same claims are resolved outside of bankruptcy. These effects on Bestwall's "rights, liabilities, options, or freedom of action" more than suffice to confer "related to" jurisdiction. *Pacor*, 743 F.2d at 994. It is therefore obvious that the Bestwall Asbestos Claims—claims that are, literally, the exact same claims against Bestwall itself—are,

at the very least, "related to" Bestwall's Chapter 11 case.

2. Section 1359 had no effect on the Bankruptcy Court's "related to" jurisdiction. As explained, *supra* Pt. I.A, and as the Fourth Circuit concluded, Pet.App.22a, the statute does not apply to this case at all because the Bankruptcy Court would have had jurisdiction to stay litigation of the Bestwall Asbestos Claims even if the corporate restructuring had never taken place.

The Fourth Circuit's jurisdictional conclusion expressly was "not predicated on" the "indemnification and funding agreements" Bestwall and New GP undertook as part of the corporate restructuring. Pet.App.25a. It instead rested on the identity of the claims: "[T]he possible effect on the Bestwall bankruptcy estate of litigating thousands of identical claims in state court is sufficient to confer 'related to' jurisdiction." Pet.App.14a. Section 1359 thus did not destroy the Bankruptcy Court's subject-matter jurisdiction because that statute was not the basis for jurisdiction in the first place.

3. Although the Fourth Circuit did not address the point (Pet.App.20a n.14), the Bankruptcy Court also had jurisdiction under the other two independent grounds in § 1334(b)—"arising in" and "arising under" jurisdiction. These independent sources of jurisdiction make any error on "related to" jurisdiction (including with respect to § 1359) irrelevant.

First, "arising in" jurisdiction exists over a proceeding that "would have no existence outside of the bankruptcy." *E.g.*, *Bergstrom v. Dalkon Shield*

Claimants Tr., 86 F.3d 364, 372 (4th Cir. 1996). A request in bankruptcy for a temporary stay under § 105(a) applicable only during and for the sake of the bankruptcy meets that test—"such an injunction would have no existence outside of bankruptcy." *In re Brier Creek Corp. Ctr. Assocs. Ltd.*, 486 B.R. 681, 685 (Bankr. E.D.N.C. 2013); *accord In re SVB Fin. Grp.*, 2023 WL 2962212, at *5 (Bankr. S.D.N.Y. Apr. 14, 2023); *Lyondell Chem. Co. v. CenterPoint Energy Gas Servs. Inc.*, 402 B.R. 571, 586 (Bankr. S.D.N.Y. 2009) (same); *In re Monroe Well Serv., Inc.*, 67 B.R. 746, 753 & n.9 (Bankr. E.D. Pa. 1986) (same; favorably cited in *Celotex*, 514 U.S. at 311 n.8). The Representative has never identified a case to the contrary, nor did the dissent (Pet.App.50a–52a), and Bestwall knows of none.

Thus, the Bankruptcy Court had "arising in" jurisdiction because Bestwall's request to simply *stay* litigation of the Bestwall Asbestos Claims *during its bankruptcy* would have no existence outside of the bankruptcy. And because "arising in" jurisdiction turns on the requested relief, the corporate restructuring and § 1359 are even more irrelevant to this ground. Although the District Court did not "analyze" this question "in depth," it correctly recognized the rule and authority under which "arising in jurisdiction exists when considering whether to grant an injunction" like this one. Pet.App.69a n.3.

Of course, as Judge King noted in dissent, the *underlying* asbestos claims pre-date Bestwall's bankruptcy case. Pet.App.52a. But the question is whether the claim *in the adversary proceeding*—that is, the temporary stay Bestwall requested—would

exist outside of the bankruptcy case. It would not. And, like the automatic stay, this sort of injunction has no bearing on the merits of any underlying civil dispute.

Second, the Bankruptcy Court also had "arising under" jurisdiction. Bestwall sought relief directly under 11 U.S.C. § 362(a), which establishes the automatic stay. Pet.App.10a. Section 362(a)(1) has been held to extend that stay to third parties "when there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor." *Robins*, 788 F.2d at 999. That is the case here, where the liability asserted against Bestwall and New GP is identical.

In addition, § 362(a)(3) extends the automatic stay to "any action, *whether against the debtor or third-parties*, to obtain possession or to exercise control over property of the debtor." *Id.* at 1001. After the corporate restructuring, liability for the Bestwall Asbestos Claims is the sole responsibility of Bestwall. New GP never manufactured or sold any products that are the subject of the Bestwall Asbestos Claims. Any attempt to assert those claims against New GP thus necessarily relies on theories of successor liability, fraudulent transfer, or alter ego. As another bankruptcy court explained in a similar case, causes of action "through which claims might be asserted against … Protected Parties" are "either … bankruptcy estate property" or "avoidance actions which" cannot be asserted by "individual creditors." *In re DBMP LLC*, 2021 WL 3552350, at *4 (Bankr. W.D.N.C. Aug. 11, 2021); *e.g., Nat'l Am. Ins.*

Co. v. Ruppert Landscaping Co., 187 F.3d 439, 441–42 (4th Cir. 1999) (fraudulent conveyance); *Steyr-Daimler-Puch of Am. Corp. v. Pappas*, 852 F.2d 132, 136 (4th Cir. 1988) (alter ego); *Morley v. Ontos, Inc.*, 478 F.3d 427, 432–33 (1st Cir. 2007) (alter ego and successor liability). As a result, they are "also subject to the automatic stay" under § 362(a)(3). *DBMP*, 2021 WL 3552350, at *4.

A proceeding seeking relief available under § 362 arises directly "under title 11." § 1334(b); *see, e.g.*, *Houck v. Substitute Trustee Servs., Inc.*, 791 F.3d 473, 481 (4th Cir. 2015) ("A claim under § 362(k) for violation of the automatic stay is a cause of action arising under Title 11."); *SVB*, 2023 WL 2962212, at *6 ("[S]eek[ing] the extension of the automatic stay to a non-debtor … confers 'arising under' jurisdiction."). This basis thus also has nothing to do with § 1359. And at a minimum, "if the Court has subject matter jurisdiction over a proceeding to determine the applicability of the automatic stay, then it has jurisdiction over a related motion for preliminary injunctive relief" to implement the stay. *FPSDA II, LLC v. Larin*, 2012 WL 6681794, at *5 (Bankr. E.D.N.Y. Dec. 21, 2012); *see also Chase Manhattan Bank (N.A.) v. Third Eighty-Ninth Assocs.*, 138 B.R. 144, 147 (S.D.N.Y. 1992) (§ 105(a) injunctions issued where "the claims against the non-debtor third parties are really claims against the debtor and therefore impair the automatic stay").

B. The courts below applied the correct standard for assessing Bestwall's request for a preliminary injunction.

The decision below applied the proper standard for assessing Bestwall's request for a preliminary injunction under § 105(a)—an issue on which the Petition does not even assert a circuit split.

1. The Fourth Circuit recited the same basic rule the Petition urges: "[T]o grant a preliminary injunction, courts must evaluate, *inter alia*, whether the plaintiff is likely to succeed on the merits." Pet.App.28a–29a; *cf.* Pet. 23. It then explained that the "merits" in a bankruptcy case are different than in ordinary civil litigation. Pet.App.29a. "Normally, the 'merits' in litigation are the resolution of an underlying civil dispute." *Id.* But in a Chapter 11 case, where a temporary stay is sought to support the entire reorganization, the "focus is not on resolving a particular dispute but rather on the debtor's rehabilitation and reorganization." *Id.* Thus the proper question was exactly the one the Bankruptcy Court asked—whether Bestwall had a "reasonable likelihood of a successful reorganization." Pet.App.101a.

In support of that basic rule and its application to bankruptcy cases, the Fourth Circuit applied the same standard applied by every circuit that has considered the question. It thus cited four of its own precedents identifying successful reorganization as the purpose of a Chapter 11 case. Pet.App.29a. It also relied on the views of two sister circuits "stat[ing] explicitly" that the "'merits' that must be considered for purposes of a preliminary injunction

in a Chapter 11 bankruptcy case are the debtor's rehabilitation and reorganization." *Id.* (citing *Excel Innovations, Inc.*, 502 F.3d at 1095; *In re Eagle-Picher Indus.*, 963 F.2d at 860). And it noted that, consistent with those circuits, it had previously focused on "whether any effort at reorganization of the debtor will be frustrated" absent a preliminary injunction. *Id.* (citing *A.H. Robins*, 788 F.2d at 1008).

The Petition fails to acknowledge, let alone distinguish, *any* of that authority. Nor does it cite any contrary authority rejecting this application of the basic preliminary injunction standard for bankruptcy. This silence belies its assertion that the Fourth Circuit somehow stands alone. Pet. 23.

Instead, the Representative argues that the Fourth Circuit's decision "conflicts with this Court's holding" eighty years ago "that a court may not grant preliminary injunctive relief that differs from the relief that would be available on a final basis." Pet.App.26a (citing *De Beers Consol. Mines, Ltd. v. United States*, 325 U.S. 212, 220 (1945)). The Representative tellingly never invoked *De Beers*, which is not a bankruptcy case, below. To the extent relevant, *De Beers* supports the Fourth Circuit's decision. This Court reversed a preliminary injunction that "deal[t] with property which *in no circumstances* can be dealt with in any final injunction that may be entered." 325 U.S. at 220 (emphasis added). The opposite is true here. The Bankruptcy Court entered the preliminary injunction precisely *because* Bestwall had a "reasonable likelihood of a successful reorganization" that would result in confirmation of a § 524(g) plan of reorganization—a result that *could* be established at

the end of the case. Pet.App.101a, 104(a) (making this finding).

The Fourth Circuit correctly held that Bestwall's request for a preliminary injunction did not require it to demonstrate entitlement to permanent injunctive relief under § 524(g). *Cf.* Pet.App.30a. Below, as here, Pet. 29, the Representative argued that the courts "engaged in the wrong legal inquiry by focusing on the likelihood of reorganization rather than on the likelihood of the court confirming a plan that included a *permanent* injunction," Pet.App.28a. But the fact that § 524(g) authorizes a permanent channeling injunction does not mean that a debtor may not obtain preliminary injunctive relief pending its proof of entitlement to a permanent injunction at plan confirmation. To hold otherwise would put the "cart before the horse," Pet.App.30, and turn on its head the truism that "[a] party is not required to prove his case in full at a preliminary-injunction hearing." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981).

The Petition tellingly cites no authority to the contrary. Pet. 29–31. It argues instead, relying on the Fourth Circuit's opinion in *A.H. Robins*, that preliminary injunctions protecting non-debtors "are properly reserved for the limited situations where actions against non-debtors might diminish estate assets." *Id.* at 30. But nothing in *A.H. Robins* indicates that the "need to preserve the limited funds available" under a shared insurance policy, Pet. 30, was necessary to justify the preliminary injunction in that case. Many other considerations, including the risks of "inconsistent judgments" and frustration of the debtor's reorganization, also supported the

preliminary injunction in *A.H. Robins*, as they did in this proceeding. 788 F.2d at 1008.

2. The Representative also argues, as below, that the Bankruptcy Court "applied the wrong standard by focusing on the *realistic possibility* of reorganization instead of requiring a *clear showing* of a successful reorganization," a distinction this Court purportedly made in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008). Pet.App.28a; Pet. 23–24. Not so.

As the Bankruptcy Court recognized, drawing on Fourth Circuit precedent that expressly addressed *Winter*, this Court's opinion in *Winter* "recalibrated" the preliminary injunction test by "requiring that each preliminary injunction factor be 'satisfied as articulated.'" Pet.App.101a (quoting *Pashby v. Delia*, 709 F.3d 307, 320 (4th Cir. 2013)). *Winter* thus did away with the "balance-of-hardship-test." *Id.* Under that test, the Fourth Circuit "instructed that the likelihood-of-success requirement be considered, if at all, only *after* a balancing of hardships is conducted and then only under the relaxed standard of showing that 'grave or serious *questions* are presented' for litigation." *Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 346 (4th Cir. 2009) (emphasis added), *vacated on other grounds*, 559 U.S. 1089 (2010). Courts now must "separately consider each *Winter* factor." *Pashby*, 709 F.3d at 321. As a result, to obtain a preliminary injunction, a plaintiff must demonstrate a likelihood of success on the merits—not, as before, just a serious question. The courts below applied that rule and determined that, under it, Bestwall had met that standard. Pet.App.29a, 101a.

Neither the petition nor *Winter* says anything about the vast body of law establishing that, in the bankruptcy context, a party demonstrates likelihood of success on the merits by showing that it is reasonably likely to reorganize successfully—here, through a plan of reorganization. *See* Pet.App.29a. Short of showing a "certainty of success," which a preliminary injunction does not require, *Camenisch*, 451 U.S. at 395, it is not clear what further showing would satisfy the Representative. As the Fourth Circuit observed, if "a 'clear showing' of a debtor's ability to reorganize" were required "before the plan-confirmation stage, Chapter 11 proceedings would never get off the ground." Pet.App.31a.

C. The decision below is consistent with and advances Congress's design for resolving asbestos liability under § 524(g).

The preliminary injunction is consistent with § 524(g). To pursue a bankruptcy case seeking to employ § 524(g) according to its terms does not reduce Bestwall's "incentive to agree to a fair amount of trust funding" or resolve its bankruptcy "prompt[ly]." Pet. 31 Bestwall instead seeks to legitimately employ Congress's remedy to address an area where the tort system has failed.

In § 524(g) Congress supplied a remedy that provides "all claimants—including future claimants"—with an "efficient means through which to equitably resolve their claims." Pet.App.111a. Bestwall is committed to confirming a § 524(g) plan for the very reason it filed its bankruptcy case in the first place—to "address in one forum all potential

asbestos claims against it, both current and future, as well as current and potential future claims against third parties alleged to be liable on account of asbestos claims against the debtor." Pet.App.95a. And that plan will be subject to the approval of two courts charged with determining that it is "fair and equitable," as well as a supermajority—75%—of claimants. 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb), (3)(A), (4), (5).

The Representative erroneously argues that the temporary stay somehow contravenes § 524(g), or is unnecessary to Bestwall's successful reorganization and establishment of a trust under that statute. Pet. 28. First, he contends that § 524(g) authorizes an injunction only "in connection with" a confirmation order. *Id.* But as explained, Bestwall need not prove its entitlement to a *permanent* injunction to obtain preliminary relief during its bankruptcy. *Supra* 29–33.

Next, the Representative argues that a "pre-confirmation injunction blocking claims against non-debtors is not a prerequisite to a successful reorganization" under § 524(g). Pet. 30. The Petition tellingly cites *no* authority in support of this argument, which begs the question of the Bankruptcy Court's discretion to reach the contrary conclusion. And this argument contravenes that court's finding based on a stipulated factual submission: "It would defeat the purpose" of Bestwall's Chapter 11 case—the "global and fair determination of all current and future Bestwall Asbestos Claims" under § 524(g)—if those claims "effectively continue to be prosecuted in the tort

system notwithstanding the pendency" of its bankruptcy case. Pet.App.105a.

The argument that the temporary stay here was not "necessary to preserve estate assets" similarly contravenes the Bankruptcy Court's factual findings. Pet. 30. That court determined that the Funding Agreement is not "circular" because, among other things, the Funding Agreement is only a backstop—Bestwall is required to exhaust its own assets before obtaining funding for a plan of reorganization under that Agreement. Pet.App.92a; *see* Pet.App.18a n.13.

Finally, any delay in the resolution of Bestwall's bankruptcy case is no fault of Congress's mechanism for resolving asbestos liabilities or the preliminary injunction enabling Bestwall to pursue that resolution. Pet. 29. As the Fourth Circuit noted, when Bestwall filed its bankruptcy, 75% of the 64,000 Bestwall Asbestos Claims had been pending for ten years or more. Pet.App.27a. The Representative "complain[ed]" below, as here, that the preliminary injunction had "impeded the resolution" of those claims. *Id.*; Pet. 29. But the truth is the opposite, as the Fourth Circuit saw: "[T]he main interference with the timely resolution of the claims in Bestwall's bankruptcy proceeding appears to be Claimant Representatives' challenge to the preliminary injunction" in the first place. Pet.App.28a. It is such "relentless[ ] attempt[s] to circumvent the bankruptcy proceeding" that delay claimants' recovery. *Id.*; *see also In re Bestwall, LLC*, 47 F.4th 233 (3d Cir. 2022) (rejecting collateral attack on subpoena that Bankruptcy Court issued at Bestwall's request); Dkt. 1546, No. 3:17-br-31795 (Bankr. W.D.N.C. Dec. 22, 2020) (denying the

Committee's second motion to dismiss for failure to prosecute).

III. THE PETITION PRESENTS NO IMPORTANT OR RECURRING QUESTION AND DOES NOT IMPLICATE THE ISSUE IN *PURDUE*.

The Petition presents no important or recurring question worthy of this Court's review. Nor does it implicate the question at issue in *Harrington v. Purdue Pharma, L.P.*, No. 23-124.

A. The decision below raises no important or recurring question.

The Representative does not even claim that the second Question Presented, on the standard for a bankruptcy court to issue a temporary stay, is important or recurring. And on the Petition's first Question Presented, regarding jurisdiction, the claims of importance are doubly flawed.

1. The Representative's pleas about the importance of this case repackage an issue not presented here—the validity of Bestwall's bankruptcy petition. Pet. 31–32. The Fourth Circuit recognized the "jurisdictional arguments" below as "a back-door way to challenge the propriety of the reorganization and the merits of a yet-to-be-filed Chapter 11 plan." Pet.App.26a. It appropriately considered this approach as "improper." *Id.* In the Bankruptcy Court, the Committee argued that the state law that authorized the restructuring was preempted; the court rejected that challenge; and the Committee did not appeal that ruling. *See* No. 23-675, Pet.App.96a–100a. The Committee since has filed additional motions to dismiss raising similar issues, the latest of which remains pending on appeal

below. But this case presents none of those issues. Indeed, the Representative below conceded that this proceeding "is not about the legal validity of the corporate restructuring that preceded the filing of this bankruptcy and formed Bestwall—or even whether Bestwall's bankruptcy itself was proper." Dkt. 37 at 1, No. 22-1127 (4th Cir. May 20, 2022).

2. Nor does the decision below encourage forum shopping. Pet. 32–34. As explained, the Petition implicates no circuit split. It thus presents no issue that would cause a bankruptcy court in another jurisdiction to act differently on a request such as the one here. *Supra* pt. I.

In any event, bankruptcy courts—including those in the same district from which the preliminary injunction here issued—can and do transfer cases where warranted. *See, e.g., In re LTL Mgmt., LLC*, 2021 WL 5343945, at *5 (W.D.N.C. Nov. 16, 2021) (transferring case to New Jersey). When they do, a transferee bankruptcy court may exercise the same subject-matter jurisdiction, and employ the same authority under § 105(a), that supported the Bankruptcy Court's preliminary injunction here—as has happened. *See In re LTL Mgmt., LLC*, 638 B.R. 291, 303 (Bankr. D.N.J. 2022) (continuing preliminary injunction).

B. There is no reason to hold the Petition for *Purdue*.

There is no reason to hold this Petition for *Purdue*. Pet. 28. *Purdue* involves a challenge to a nonconsensual third-party *release* in a *confirmed plan* of reorganization—which, per the Question Presented, "extinguishes claims held by nondebtors

against nondebtor third parties." No. 23-124, Order of Aug. 10, 2023. That question has no bearing on the Petition for three reasons.

First, the Bankruptcy Court's order is different in kind from the order in *Purdue*. The Representative challenges a *temporary stay* the Bankruptcy Court entered under § 105(a), not a release in a final plan under § 1123(b)(6). (No claims have been released here, and no plan confirmed.) There is thus no reason to expect *Purdue* to address any question at issue here.

Second, the Petition does not even attempt to raise any question about the scope of bankruptcy courts' authority under § 105(a). The other Petition seeking review of the decision below at least purports to do so. No. 23-675, Pet. at 23. That effort is baseless, both because the Committee forfeited the argument and because there is no split, let alone one implicated here. No. 23-675, Br. in Opp. at 32, 34–35. Nor will *Purdue* actually resolve the dispute asserted in that Petition concerning the scope of § 105(a). *See* No. 23-124, Reply Br. for the Pet'r. 5 n.2 (noting debtor and circuit court in *Purdue* both "recognized" that § 105(a) "cannot itself authorize the release," which would need to be carrying out § 1123(b)(6)). *Purdue* thus will not resolve any relevant question about statutory authority under § 105(a).

Third, to the extent one might think *Purdue* relevant to a § 105(a) temporary stay, Congress has mooted the issue for asbestos cases. In bankruptcy cases involving asbestos-related liability, § 524(g) specifically authorizes nonconsensual third-party releases upon specified conditions. 11 U.S.C.

§ 524(g)(2)(B)(ii)(IV)(bb); *see* No. 23-124, Pet'r. Br. 21 (recognizing this). Thus, the third-party-release issue in *Purdue* is irrelevant to Bestwall's asbestos bankruptcy.

CONCLUSION

The petition for a writ of certiorari should be denied.

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