

In the Supreme Court of the United States

OFFICIAL COMMITTEE OF ASBESTOS CLAIMANTS OF
BESTWALL LLC,

Petitioner,

v.

BESTWALL LLC,

Respondent.

*On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit*

**BRIEF OF THE ASBESTOS CREDITORS' COMMITTEES IN
THE *DBMP* AND *ALDRICH* BANKRUPTCIES AS AMICI
CURIAE IN SUPPORT OF PETITIONER**

KEVIN C. MACLAY

Counsel of Record

JEFFREY A. LIESEMER

LUCAS H. SELF

NATHANIEL R. MILLER

ALEC G. SCHWARTZ

CAPLIN & DRYSDALE, CHARTERED

1200 New Hampshire Ave. NW

8th Floor

Washington, DC 20036

(202) 862-5000

kmaclay@capdale.com

CARRIE V. HARDMAN

WINSTON & STRAWN LLP

200 Park Avenue

New York, NY 10166

ELIZABETH J. IRELAND

WINSTON & STRAWN LLP

300 South Tryon Street

16th Floor

Charlotte, NC 28202

Counsel for Amici Curiae

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INTEREST OF AMICI CURIAE¹

Amici are (1) the Official Committee of Asbestos Personal Injury Claimants appointed in the chapter 11 bankruptcy case of *In re DBMP LLC*;² and (2) the Official Committee of Asbestos Personal Injury Claimants appointed in the chapter 11 bankruptcy cases of *In re Aldrich Pump LLC* and *In re Murray Boiler LLC* (collectively, “*Aldrich*”).³ These committees submit this amici curiae brief in support of the petition for a writ of certiorari filed by Petitioner, the Official Committee of Asbestos Claimants of Bestwall LLC.

Like Petitioner, Amici are each a statutory committee of creditors appointed under 11 U.S.C. § 1102 to represent the interests of current claimants

¹ In accordance with Supreme Court Rule 37.2, counsel of record for all listed parties received notice at least 10 days prior to the due date of Amici’s intention to file this brief. Caplin & Drysdale, Chartered and Winston & Strawn LLP are counsel to both the *Aldrich* committee and the *DBMP* committee and, in that capacity, pursuant to Supreme Court Rule 37.6, (1) authored the brief in whole; (2) no funds from any party or party’s counsel were used in preparing or submitting the brief; and (3) no person other than Amici and their members or their counsel contributed money that was intended to fund preparing or submitting the brief. Robinson & Cole LLP, which serves as counsel to the *Bestwall* creditors’ committee, also serves as counsel to Amici, but the *Bestwall* committee is itself a distinct entity from Amici, and Amici came to their own conclusions following discussion and a vote of constituents about the submission of this shared amicus brief. Robinson & Cole did not author any part of this brief, and neither Caplin & Drysdale nor Winston & Strawn serves as counsel to the *Bestwall* committee.

² No. 20-30080 (Bankr. W.D.N.C.).

³ No. 20-30608 (Bankr. W.D.N.C.).

who were injured by their respective debtors' asbestos torts. The matter brought by Petitioner has ramifications beyond *Bestwall* because *DBMP* and *Aldrich* were each modeled after the "Texas Two-Step" stratagem first deployed in *Bestwall*. All these cases involve debtors created by multibillion-dollar corporations—who easily managed their asbestos liabilities in the civil justice system—stranding their cancer victims in chapter 11 cases, all while keeping their valuable business assets outside and unencumbered by bankruptcy. All these cases involve corporate enterprises that are not in financial distress, have no need for bankruptcy protection, and can fully pay asbestos-related settlements and verdicts in the tort system. And the debtors and affiliates in all these cases directly benefit from drawn-out bankruptcy proceedings that prejudice the rights of their asbestos victims. In supporting Petitioner, Amici seek to protect the rights and interests of their creditor constituencies and to halt the improper invocation of bankruptcy protection by wealthy corporate enterprises, such as Georgia-Pacific in the case of *Bestwall*, CertainTeed in the case of *DBMP*, and Ingersoll-Rand and Trane in the case of *Aldrich*.

INTRODUCTION AND SUMMARY OF ARGUMENT

Now is the time for this Court to put an end to an almost decade-long abuse of the bankruptcy process. Since 2017, five different companies have filed for bankruptcy in the Western District of North Carolina after undergoing a divisional merger under an unusual provision of Texas law. These companies have done so as a litigation tactic to enjoin the

pending state-law claims of those suffering from asbestos cancer in the nation's civil courts and to put their assets out of the reach of creditors and free of the strictures of bankruptcy courts. This unprecedented maneuver not only abuses the bankruptcy system, but it also tramples on the constitutional rights of victims and the civil jury system established by the United States and state constitutions. All five were large and profitable companies with substantial assets and none claimed to be financially distressed. Nor were they Texas companies either before or after their so-called "Texas Two-Step" maneuver was complete.

Under the Texas Two-Step, a rich and successful company effectively divides itself into two new affiliated companies. One of the companies receives the lion's share of the business assets; the other receives all the unwanted tort liabilities. A few weeks later, after reincorporating as a North Carolina entity, the company with the unwanted liabilities files for chapter 11 bankruptcy, while the rich company with the vast majority of the assets remains outside bankruptcy.

The liability-laden shell in bankruptcy then obtains an indefinite, nationwide preliminary injunction from the bankruptcy court to protect its asset-rich affiliate (and any other affiliates and parent holding companies) from the tort actions. The injunction strands tort victims in bankruptcy to face a Hobson's choice of standing on their rights or capitulating to an artificially fabricated limited fund that bars access to the state and Article III federal courts designed to litigate and resolve their claims. Meanwhile, the asset-rich, manufactured non-debtor

and its affiliates can sit and indefinitely wait out the tort victims while enjoying all the benefits of bankruptcy and taking on none of the burdens—a primary benefit being a so-called “payment holiday.”

This bad-faith scheme violates fundamental bankruptcy principles, including that companies shoulder the burdens and obligations of bankruptcy if demanding its protections.⁴ These congressionally established burdens and obligations are designed to protect creditors. But, because the asset-rich company is sitting outside bankruptcy,

- it is not subject to the reporting and transparency requirements that debtors are;
- it can incur senior debt or transfer substantially all its assets without either notice to creditors or court approval;
- it is free to pay its (non-tort) creditors, including pre-bankruptcy liabilities, in full and not in accordance with an approved chapter 11 plan; and

⁴ See *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 209 (2024) (“[B]eneath . . . [bankruptcy’s] complexity lies a simple bargain: A debtor can win a discharge of its debts if it proceeds with honesty and places virtually all its assets on the table for its creditors.”); see also *Abusing Chapter 11: Corporate Efforts to Side-Step Accountability Through Bankruptcy: Hearing Before S. Subcomm. on Fed. Cts., Oversight, Agency Action and Fed. Rts. of the S. Comm. on the Judiciary*, 117th Cong. 39 (2022) (statement of Kevin C. Maclay) [hereinafter *Testimony*].

- it is not subject to the “absolute priority rule” in bankruptcy and can therefore upstream substantial sums of cash to shareholders without paying a penny to its disfavored tort creditors.

Without these and other bankruptcy obligations and creditor protections, the intended pressures and incentives that motivate debtors to reach a timely resolution of their bankruptcy cases do not exist. Enjoying the protections of a bankruptcy stay and injunction, the Two-Step debtor and its asset-rich affiliate happily choose to sit and wait out the tort claimants, leaving them in “creditors’ prison” for as long as possible.

The resulting prejudice inflicted on thousands of asbestos-cancer victims is profound: they lose virtually all negotiating leverage vis-à-vis their tortfeasors; they lose the ability to pursue all state-law remedies and their day in court; and many die from asbestos poisoning before holding the tortfeasor accountable in their lifetimes. These real-world problems have been carried on the backs of human loss for too long. These are not mere academic concerns. Fundamental fairness is at stake.

Petitioner presents this Court with the opportunity to resolve a circuit split over the standard for dismissing bad-faith bankruptcy filings under 11 U.S.C. § 1112 and to define the scope and reach of the Constitution’s Bankruptcy Clause.⁵ This Court should grasp that opportunity and thus put an end to the abuse of the bankruptcy process that, in the Fourth Circuit only, has permitted wealthy

⁵ U.S. CONST. art. I, § 8, cl. 4.

tortfeasors to evade the civil justice system. The Court should grant the petition.

ARGUMENT

I. The Texas Two-Step Bankruptcies Follow the Same Contrived Pattern to Undermine the Rights of Unwanted Asbestos Creditors

The Texas Two-Step bankruptcies, including *DBMP* and *Aldrich*, follow the same stratagem that can be illustrated in the following hypothetical:⁶ Suppose there is a successful Delaware company called “AceCo,” which has a strong balance sheet and a line of products generating substantial cash. But AceCo has overhanging asbestos liabilities to individuals harmed by exposure to its products.

Although AceCo has more than enough cash to defend itself in the tort system and to settle and pay asbestos claims as they arise in the future,⁷ AceCo’s

⁶ *Bestwall*, filed in 2017, was the first Two-Step bankruptcy and served as the model for other companies to follow. Trane employees, for example, used *Bestwall* as a template when devising the *Aldrich* corporate restructurings, calling *Bestwall* a “data information jackpot.” *In re Aldrich Pump LLC*, No. 20-30608, 2021 WL 3729335, at *9 (Bankr. W.D.N.C. Aug. 23, 2021).

⁷ *In re DBMP LLC*, No. 20-30080, 2021 WL 3552350, at *8 (Bankr. W.D.N.C. Aug. 11, 2021) (characterizing “old” CertainTeed, DBMP’s predecessor, as “a profitable going concern whose assets significantly outweighed its combined operating and asbestos liabilities”); *In re Aldrich Pump LLC*, No. 20-30608, 2023 WL 9016506, at *5 (Bankr. W.D.N.C. Dec. 28, 2023) (observing that, before the Two-Step, “old” Ingersoll-Rand and “old” Trane “comprised ‘a profitable going concern whose assets

management wants to rid AceCo of its asbestos liabilities and to do so at a substantial discount. Bankruptcy may provide a path for resolving those liabilities in a single proceeding, but AceCo's management does not want to put AceCo into bankruptcy because of the perceived reputational harms, court oversight, required transparency, associated costs of running a large business in bankruptcy, and the resulting pressures to meet its creditors at the negotiating table in good faith.⁸ To obtain the benefits of bankruptcy without its burdens, AceCo decides to use a provision of Texas law to implement a divisional merger.⁹

To accomplish this, AceCo first converts from a Delaware company to a Texas company. Then, as a Texas company, AceCo uses Texas law to effectively split itself into two new companies, "GoodCo" and "BadCo." As a formal legal matter, AceCo ceases to exist. GoodCo and BadCo are directly or indirectly owned by the same parent holding company that once owned AceCo.¹⁰

As part of the divisional merger, GoodCo gets 97% or more of AceCo's assets and all of AceCo's non-tort liabilities. BadCo gets 3% or less of AceCo's assets and all of AceCo's asbestos liabilities.¹¹ BadCo

significantly outweighed its combined operating and asbestos liabilities" (citation omitted)).

⁸ *Aldrich*, 2021 WL 3729335, at *8-9.

⁹ *DBMP*, 2021 WL 3552350, at *6.

¹⁰ *Id.* at *8-9, *16; *Aldrich*, 2021 WL 3729335, at *9-10.

¹¹ *DBMP*, 2021 WL 3552350, at *9; *Aldrich*, 2021 WL 3729335, at *10-11.

has no employees or business operations.¹² Apart from BadCo’s officers and board members, who are also employees of GoodCo or its parent companies, a bare bones in-house legal team is loaned to BadCo to manage the pending tort litigation against BadCo (as successor in interest to AceCo) until BadCo files for bankruptcy.¹³

To cast a veneer of supposed legitimacy onto this scheme, GoodCo and BadCo enter into a “funding agreement” whereby GoodCo promises to provide necessary funds to BadCo during BadCo’s remaining days in the tort system, as well as in its bankruptcy.

Within weeks, BadCo files for chapter 11 bankruptcy relief with the Bankruptcy Court for the Western District of North Carolina.¹⁴ As a result of the chapter 11 filing, all asbestos-related lawsuits against BadCo are automatically stayed. 11 U.S.C. § 362(a). Thereafter, the bankruptcy court overseeing

¹² *E.g.*, *DBMP*, 2021 WL 3552350, at *1.

¹³ *Id.* at *14; *Aldrich*, 2021 WL 3729335, at *16; *see also Testimony* at 43.

¹⁴ All five Two-Step bankruptcies have been commenced in the Western District of North Carolina, underscoring how that district has become the forum-shopping destination for the Two-Step maneuver. *See In re Bestwall LLC*, No. 17-31795 (filed Nov. 2, 2017); *In re DBMP LLC*, No. 20-30080 (filed Jan. 23, 2020); *In re Aldrich Pump LLC*, No. 20-30608 (filed June 18, 2020); *In re Murray Boiler LLC*, No. 20-30609 (filed June 18, 2020); *In re LTL Mgmt., LLC*, No. 21-30589 (filed Oct. 14, 2021). *LTL* was subsequently transferred to the District of New Jersey and then dismissed for lack of financial distress. *In re LTL Mgmt., LLC*, 64 F.4th 84, 97-98, 98 n.8, 101 (3d Cir. 2023) (noting that the Third Circuit’s test for dismissal is much less “stringent” than the Fourth Circuit’s and speculating this could be why the Fourth Circuit has borne the brunt of the Two-Step cases).

BadCo’s chapter 11 case grants a preliminary injunction and/or rules that the automatic stay itself enjoins asbestos claimants from suing GoodCo and all its nonbankrupt affiliates on account of AceCo’s tort liabilities.¹⁵

Sitting outside chapter 11—but protected by a bankruptcy stay—GoodCo continues to run the same business that AceCo once did, to manufacture the same products that AceCo once did, and to sell to the same customers that AceCo once did.¹⁶ GoodCo even adopts AceCo’s name. GoodCo pays its (non-asbestos) creditors, the former vendors and suppliers of AceCo, without disruption. And, as AceCo once did, GoodCo regularly distributes its substantial earnings to its direct and indirect parent companies, which results in their ultimate parent holding company paying out billions of dollars to shareholders in dividends and stock buybacks.¹⁷ For non-tort creditors, shareholders, employees, and other stakeholders in GoodCo, nothing has changed with the divisional merger and follow-on bankruptcy; everything is still “business as usual.”

The tort victims, however, are impaired and harmed by design. As the *Aldrich* bankruptcy court

¹⁵ *DBMP*, 2021 WL 3552350, at *4; *Aldrich*, 2021 WL 3729335, at *4.

¹⁶ *Aldrich*, 2023 WL 9016506, at *5 (“New TTC and New Trane are almost mirror images of Old . . . [Ingersoll-Rand] and Old Trane: fully operating companies that retained their predecessor’s employees, almost all of their assets and business operations, and their non-asbestos creditors.” (citation omitted)); *DBMP*, 2021 WL 3552350, at *1, *17 (same as to “old” CertainTeed and “new” CertainTeed).

¹⁷ *Aldrich*, 2021 WL 3729335, at *8.

found, the Two-Step’s purpose is to “isolate the asbestos claimants from the overall corporate enterprise and strand them in bankruptcy” indefinitely.¹⁸ Bankruptcy was never intended to be used as a sword in this manner. And where other wealthy corporate enterprises attempted to misuse bankruptcy outside of the Fourth Circuit in the same or similar manner, those bankruptcies were dismissed, and the underlying tort claims were resolved in the civil justice system.¹⁹ Bankruptcy is only available to a debtor who “proceeds with honesty and places virtually all its assets on the table for its creditors.” *Harrington*, 603 U.S. at 209.²⁰

II. The Texas Two-Step Defeats Essential Creditor Protections in Bankruptcy by Design

The Texas Two-Step disrupts the careful debtor-creditor balance established by Congress. Congress passed chapter 11 to deal “with the reorganization of a *financially distressed* business

¹⁸ *Id.* at *21.

¹⁹ See, e.g., *In re LTL Mgmt., LLC*, 64 F.4th 84 (dismissing bankruptcy for cases to be resolved in the tort system); *In re Aearo Techs. LLC*, No. 22-02890-JJG-11, 2023 WL 3938436, at *3 (Bankr. S.D. Ind. June 9, 2023) (dismissing 3M affiliates’ cases from bankruptcy); *In re 3M Combat Arms Earplug Prods. Liab. Litig.*, No. 3:19-MD-02885, 2023 WL 9034299, at *1 (N.D. Fla. Dec. 31, 2023) (noting settlement was reached in a multi-district litigation proceeding on August 29, 2023).

²⁰ Indeed, in the balance between debtor and creditor rights, bankruptcy has historically favored creditors. See *Nelson v. Carland*, 42 U.S. 265, 274 (1843) (Carton, J., dissenting) (noting that “the bankrupt system intended by the framers of the Constitution . . . was a system for the benefit of creditors”).

enterprise, providing for its rehabilitation by adjustment of its debt obligations and equity interests.”²¹ But with bankruptcy stays in place shielding debtor and nondebtor alike, GoodCo and its affiliates enjoy one of the principal benefits of bankruptcy—i.e., an indefinite, nationwide stay of tort claims—without taking upon itself any of the statutory burdens and in the absence of any financial distress. GoodCo and its affiliates are also free of the obligations required of a chapter 11 debtor—obligations that constitute essential creditor protections, to wit:

A. Reporting Requirements and Transparency. In bankruptcy, debtors are required to make regular reports to their creditors and the bankruptcy court, including information about their assets, liabilities, and financial affairs at the start of the case, and subsequent monthly operating reports to monitor cash flow. 11 U.S.C. § 521; Fed. R. Bankr. P. 1007. These reporting requirements create an environment of transparency to help creditors understand the debtor’s financial condition, which in turn informs plan negotiations and, if applicable, the debtor’s reorganization.²² They also help to prevent the misuse or misappropriation of assets.

These reporting requirements are undermined in the Two-Step bankruptcy. GoodCo is not required

²¹ S. Rep. No. 95-989, at 9 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5795 (emphasis added).

²² *E.g., In re Sillerman*, 605 B.R. 631, 644 (Bankr. S.D.N.Y. 2019) (stating that the Bankruptcy Code’s reporting requirements “cannot be ignored” and are necessary to “supply the Court and creditors with relevant and material information

to file any schedules of its assets and liabilities, statements of financial affairs, or monthly operating reports—thereby foreclosing transparency regarding GoodCo’s financial condition or what it is doing with the money that is supposedly available to pay asbestos victims.

B. Bankruptcy Court Oversight. A chapter 11 debtor cannot layer on additional debt or engage in any transactions outside the ordinary course of business, such as selling material assets, without prior notice to creditors and the bankruptcy court’s approval. *See* 11 U.S.C. §§ 363(b), (f), 364. The purpose of these protections is to prevent debtors or the entities controlling them from overleveraging a debtor that already is in financial distress or from stripping the debtor of its assets for less than fair value.²³

The Texas Two-Step subverts this safeguard. GoodCo can layer on debt that is senior in priority to its obligations under the funding agreement and can engage in transactions outside the ordinary course of business, including transferring all its assets, without any notice to asbestos creditors and without first obtaining the bankruptcy court’s approval.

. . . thereby enhancing transparency and potentially laying bare any improper transfers or self-dealing”); *see also Testimony* at 41.

²³ *E.g., In re Cook & Sons Mining, Inc.*, No. Civ.A. 05-19, 2005 WL 2386238, at *6 (E.D. Ky. Sep. 28, 2005) (stating that “the purpose of § 363(b) is to provide notice to creditors and a hearing before the debtor enters into extraordinary transactions so that creditors may have a chance to object to the transaction before the debtor becomes obligated”); *see also Testimony* at 41.

C. *Payments to Creditors.* Ordinarily, debtors can pay their creditors only in accordance with a chapter 11 plan that satisfies the requirements of the Bankruptcy Code and is approved by the bankruptcy court after notice and a hearing. *See* 11 U.S.C. §§ 1128, 1129.²⁴

In a Two-Step bankruptcy, however, GoodCo can continue to pay its non-asbestos creditors (for both pre- and post-bankruptcy debts) outside of a court-approved chapter 11 plan. By contrast, asbestos creditors trapped in BadCo’s bankruptcy are not getting paid, and it is not clear when, if ever, they will be.

D. *Absolute Priority Rule.* An “absolute priority rule” is embodied in the Bankruptcy Code. 11 U.S.C. §§ 726(a), 1129(a)(7), 1129(b). The rule is a longstanding tenet of bankruptcy law and generally provides that, unless creditors consent to less favorable treatment, they must be paid in full before the debtor’s shareholders or owner can retain their shares or ownership interests in the debtor or receive dividends or distributions on account of those shares or interests. *See, e.g., Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 457 (2017) (“The Code places equity holders at the bottom of the priority list. They

²⁴ *See also, e.g., Off. Comm. of Equity Sec. Holders v. Mabey*, 832 F.2d 299, 302 (4th Cir. 1987) (“The Bankruptcy Code does not permit a distribution to unsecured creditors in a Chapter 11 proceeding except under and pursuant to a plan of reorganization that has been properly presented and approved.”).

receive nothing until all previously listed creditors have been paid in full.”).

The Texas Two-Step, however, flips this priority rule on its head, thus “alter[ing] the balance struck by the statute.” See *Law v. Siegel*, 571 U.S. 415, 427 (2014). In Two-Step bankruptcies, the GoodCo entities are outside chapter 11 and thus are not subject to the absolute priority rule. Those entities can and do distribute substantial earnings to their direct and indirect parent companies and shareholders. This upstreaming of cash by the GoodCo entities in the *DBMP* and *Aldrich* bankruptcies set the stage for the ultimate parent holding companies, Compagnie de Saint-Gobain and Trane Technologies plc, respectively, to pay out billions in dividends and share repurchases to shareholders. In 2022 alone, the Aldrich debtors’ parent, Trane Technologies, paid out \$1.2 billion in stock buybacks and \$620.7 million in dividends to shareholders.²⁵ Additionally, since isolating its asbestos victims in bankruptcy in early 2020, Compagnie de Saint-Gobain, DBMP’s ultimate parent, has paid at least €8.148 billion to equity holders in dividends and stock buybacks.²⁶

²⁵ *Aldrich*, 2023 WL 9016506, at *8. Estimates relying on publicly available information suggest that, since the *Aldrich* debtors filed for bankruptcy in mid-2020, the total value funneled to shareholders by Trane Technologies plc has exceeded \$9 billion. See *Financial Summary*, Trane Technologies, <https://investors.tranetechnologies.com/financial-information/financial-summary/default.aspx> (last visited Mar. 5, 2026).

²⁶ See *Financial Results*, Saint-Gobain, <https://www.saint-gobain.com/en/finance/financial-results> (last visited Mar. 5,

Meanwhile, asbestos creditors, who hold higher-priority unsecured claims, remain uncompensated and trapped by bankruptcy’s automatic stay and “preliminary” injunction.²⁷

By enabling companies with very profitable businesses to isolate their asbestos liabilities in chapter 11, while sidestepping the obligations and creditor protections that normally come with chapter 11, the Texas Two-Step is an abuse of bankruptcy.

III. With the Bankruptcy Obligations and Protections Shorn Away, the Texas Two-Step Enables a Chapter 11 Case to Remain Pending in Perpetuity

Because of the Texas Two-Step, the normal economic pressures and incentives that motivate debtors to come to the negotiating table in good faith and attempt to quickly achieve a fair bargain with their creditors do not exist.²⁸ For example, GoodCo

2026) (sum of reported numbers from Consolidated Financial Statements for years 2020-25).

²⁷ Moreover, GoodCo evades paying quarterly bankruptcy fees owed to the U.S. government. *See Siegel v. Fitzgerald*, 596 U.S. 464, 480 (2022) (requiring that such fees be nationally uniform, including in jurisdictions subject to bankruptcy administrator programs, like North Carolina). Those fees are tied to the debtor’s disbursements to third parties and so tend to be larger for companies with more complex operations or more assets. 28 U.S.C. § 1930(a)(6), (7) (laying out fee schedule based upon size of disbursements); *see also Siegel*, 596 U.S. at 469 (“The fee [owed by a debtor] varies according to the amount of funds paid out (“disbursed”) from the bankruptcy estate to creditors, suppliers, and other parties during that quarter.”).

²⁸ Without the attendant burdens motivating a timely resolution, the bankruptcy’s automatic stay and related

need not assure lenders and bondholders that it will move through the chapter 11 process speedily and need not take steps to assure suppliers and vendors that it will abide by the previous payment terms for post-bankruptcy trade debt. GoodCo can continue to pay ordinary-course business creditors without disruption, can proceed without court scrutiny (or public disclosure) of its accounting practices, and can avoid any reputational harm caused by its business remaining in bankruptcy—all while the automatic stay and preliminary injunction provide it with an indefinite payment holiday from asbestos litigation.

Contrast this with the debtor's costs in a “normal” bankruptcy, where these pressures can be a considerable factor in driving the debtor to the negotiating table. *See, e.g., In re Chateaugay Corp.*, 961 F.2d 378, 381 (2d Cir. 1992) (noting the “uncertainties” and “daunting transaction costs of [a typical] bankruptcy”); *Puerto Rico v. Franklin Cal. Tax-free Tr.*, 579 U.S. 115, 132, (2016) (Sotomayor, J., dissenting) (“By requiring a debtor and creditors to negotiate together and forcing both sides to make concessions within the limits set by law, bankruptcy gives the debtor a ‘fresh start,’ . . . and allows all parties to find equitable and efficient solutions to fiscal problems.”). Indeed, in both *DBMP* and *Aldrich*, the debtors and their affiliates have received a considerable “payment holiday” for the past six years in bankruptcy compared to what they were paying in the tort system prepetition. *Aldrich*, 2023 WL 9016506, at *10 (acknowledging that “both the

injunction become a weapon wielded against creditors and a mechanism for twisting procedure to achieve permanent relief. *See Testimony* at 45.

Debtors and the Affiliates have enjoyed a respite from the tort system and a ‘payment holiday’).²⁹ Thus, whenever a stream of legal fees in perpetuity, discounted to present-day value, is worth less than the cost of paying asbestos claimants in full today, GoodCo and BadCo are incentivized to remain in bankruptcy indefinitely rather than reach a fair settlement with asbestos claimants.

Compounding this prejudice to asbestos victims are the lost rights and remedies stemming from the interminable delays of the Two-Step bankruptcies. Sick and dying claimants may not receive funds for medical care or to support their families.³⁰ And a claimant’s death can result in lost legal rights and compensation. Some States limit the

²⁹ In *DBMP*, spending decreased from an annual burn rate between \$80 million and \$160 million in payments of settlements, judgments and defense costs to an average of \$32.9 million each year in bankruptcy professional fees. *See DBMP*, 2021 WL 3552350, at *6 (averaging tort system expenses between 2002 and 2019); *DBMP Monthly Status/Operating Reports* (professional fee average determined by tracking all filed Monthly Status/Operating Reports in *DBMP* through Jan. 2026). In *Aldrich*, the annual spend rate decreased from approximately \$100 million in indemnity and defense costs to \$33.1 million each year in bankruptcy professional fees. *See Aldrich*, 2023 WL 9016506, at *5 (averaging tort system expenses between 2015 and 2019); *Aldrich Monthly Status/Operating Reports* (professional fee average determined by tracking all filed Monthly Status/Operating Reports in *Aldrich* through Jan. 2026).

³⁰ *E.g.*, *Kadel v. Folwell*, 446 F. Supp. 3d 1, 11 (M.D.N.C. 2020) (identifying harm from continued denial of healthcare coverage for medically necessary procedures), *aff’d sub nom. Kadel v. N.C. State Health Plan for Tchrs. & State Emps.*, 12 F.4th 422 (4th Cir. 2021), *as amended* (Dec. 2, 2021).

causes of action or damages a decedent’s estate or personal representative may assert.³¹ In some States, compensation for pain and suffering is not available to a decedent’s estate.³² A lengthy delay also risks critical evidence being lost, as aging witnesses die or their memories fade.³³

In sum, without the normal economic incentives and pressures that encourage a debtor to make a seasonable exit from chapter 11, BadCo can idle in chapter 11 as long as it wants. It faces little downside due to the stay of tort litigation against the non-debtor enterprise group—that obviously controls it—and can delay resolution of its chapter 11 case unless and until the asbestos creditors knuckle under and agree to a substantial discount on the value or recovery of their claims. This interplay between the Texas Two-Step and bankruptcy law, which stands on the shoulders of the Fourth Circuit’s standard for dismissing bad-faith bankruptcy filings, presents the possibility that such bankruptcy cases could literally last *forever*. But “a chief purpose of the bankruptcy

³¹ *E.g.*, FLA. STAT. ANN. § 768.21 (West 2025) (specifying damages available to decedent’s estate or personal representative); *Bailey ex rel. Brown v. Exxon Mobil Corp.*, 2011-0177 (La. App. 4 Cir. 8/31/11), 76 So. 3d 53, 54-55 (holding that punitive damages could not be recovered in a wrongful death action).

³² *E.g.*, ARIZ. REV. STAT. ANN. § 14-3110 (West 2025) (providing that damages for pain and suffering do not survive death of tort victim); IDAHO CODE ANN. § 5-327(2) (West 2025) (specifying limited damages available in survival actions).

³³ *See, e.g., Shearin v. Doe 1 Through 10*, No. CIV.A. 03-503-JJF, 2007 WL 4365621, at *2 (D. Del. Dec. 11, 2007) (“The lengthy passage of time involves the risk of loss of evidence or the fading of memory.”).

laws [is] to secure a prompt and effectual resolution of bankruptcy cases within a limited period.” *Taggart v. Lorenzen*, 587 U.S. 554, 564 (2019) (citation modified). No Texas Two-Step bankruptcy case in the Fourth Circuit has been resolved. This is not a normal chapter 11 process; it is a perversion of that process.

CONCLUSION

The Texas Two-Step, as upheld in the Fourth Circuit, is a gross abuse of bankruptcy that enables the wealthiest corporations to gain the benefits of bankruptcy indefinitely without ever having to be in it themselves. The Court should take up the important legal questions presented by Petitioner and put an end to this abuse. The petition should be granted.

Respectfully submitted,

Kevin C. Maclay
Counsel of Record

Jeffrey A. Liesemer

Lucas H. Self

Nathaniel R. Miller

Alec G. Schwartz

Caplin & Drysdale, Chartered
1200 New Hampshire Ave. NW
8th Floor

Washington, DC 20036

(202) 862-5000

kmaclay@capdale.com

Carrie V. Hardman
Winston & Strawn LLP
200 Park Avenue
New York, NY 10166

Elizabeth J. Ireland
Winston & Strawn LLP
300 South Tryon Street
16th Floor
Charlotte, NC 28202

Counsel for Amici Curiae

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