

No. 25-1013

In The
Supreme Court of the United States

OFFICIAL COMMITTEE OF ASBESTOS CLAIMANTS OF
BESTWALL LLC,

Petitioner,

v.

BESTWALL LLC,

Respondents.

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

**BRIEF OF PUBLIC JUSTICE AS *AMICUS CURIAE* IN
SUPPORT OF PETITIONER**

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INTEREST OF THE *AMICI CURIAE*

Public Justice¹ is a national public interest legal organization that specializes in pursuing justice for victims of corporate and government wrongdoing. The organization maintains an Access to Justice Project that pursues litigation and other advocacy to remove procedural obstacles that unduly restrict those who have been harmed from seeking redress in the civil court system.

Consonant with its mission, Public Justice has engaged in significant advocacy efforts against abuse of the bankruptcy system to evade the civil justice system, which hinders and delays justice for victims of corporate wrongdoing. For example, Public Justice has authored multiple amici curiae briefs urging bankruptcy courts to prevent corporations from misusing the bankruptcy system to avoid tort liability, including in *In re LTL Mgmt*, *In re Tehum*, and *In re Wellpath*.

INTRODUCTION AND SUMMARY OF ARGUMENT

Nearly a decade ago, Georgia-Pacific manufactured a scheme to weaponize the bankruptcy system against the hundreds of thousands of people GP had gravely injured with its asbestos products. As

¹ No counsel for a party authored this brief in whole or in part and no person other than the amicus or its counsel made any monetary contribution to its preparation or submission. Both parties received timely notice of intent to file this brief, pursuant to Rule 37.2.

this case has worked its way through the courts, tens of thousands of GP's victims have died from asbestos-related diseases. These victims, whose Seventh Amendment rights were sacrificed at the altar of GP's sham bankruptcy, received no recompense while they were alive. Years later, their families remain unable to pursue justice through the civil court system because their claims are indefinitely halted. Should the bankruptcy be allowed to continue, thousands of victims and their loved ones will likely never have their day in court. Instead, the best they can hope for is a global settlement—negotiated under circumstances in which GP holds all the leverage—that will significantly limit both current and future claims.

This is not a run-of-the-mill bankruptcy. When an honest debtor petitions for bankruptcy, it submits itself and all of its assets to the bankruptcy court's supervision and control. In exchange, this financially distressed debtor gains access to bankruptcy's extraordinary tools, intended to help the debtor survive while maximizing equitable, though incomplete, recovery to creditors. These tools, however, force creditors to relinquish certain rights, particularly through limitations on access to the civil justice system.

Here, the bankruptcy petitioner is no honest debtor. GP—a multibillion dollar conglomerate in no financial distress—has benefitted from bankruptcy's tools without actually submitting itself to the bankruptcy court's oversight or control. It did so via what is now known as the Texas Two-Step. First, GP bifurcated itself under a Texas statute, placing all its obligations to asbestos-victim-creditors in one entity, and its assets, business operations, and obligations to

corporate creditors in another. Then, GP put the asbestos-liability shell corporation into bankruptcy in the Fourth Circuit, which maintains unique views on bankruptcy's limited jurisdiction and good faith requirement. Despite the shell's conceded willingness and ability to pay all debts, the courts below have permitted this bankruptcy to continue, handing GP an escape chute out of liability. Ultimately, in wedding corporate creativity with one circuit's extraordinary views on bankruptcy, GP has thwarted its victims' access to *any* recovery for nearly nine years.

What's more, GP's creativity has inspired others. Multiple affluent corporate tortfeasors have already availed themselves of the Texas Two-Step, turning bankruptcy's shields into weapons against their victims—everyday working-class Americans, suffering and dying from harm inflicted upon them by these corporations. These tortfeasor-companies, too, continue to pay billions to equity owners and shareholders while prolonging and limiting accountability to those they harmed. The Fourth Circuit has enabled that result through rulings that grant its bankruptcy courts unlimited jurisdiction and prevent the dismissal of bad-faith bankruptcy petitions. Should its interpretations remain, numerous additional corporate tortfeasors will Texas Two-Step their way to the Fourth Circuit.

Amicus writes separately to underscore the harm this scheme causes the everyday, working-class people whose constitutional rights are sacrificed at the altar of these sham bankruptcies.

This Court must grant certiorari to resolve this circuit split, safeguard bankruptcy's tools for only honest-but-unfortunate debtors, and ensure that financially healthy tortfeasors cannot re-harm their

victims by weaponizing the bankruptcy system to postpone or deny any recovery.

ARGUMENT

I. Georgia-Pacific's products have killed tens of thousands of people and gravely injured hundreds of thousands more.

Lisa Pransky was exposed to GP's asbestos products at the age of just eight years old, playing in the basement of her home while her father was renovating it in 1972. *Pransky v. Georgia Pacific Corp.*, No. 188369 (Md. Cir. Ct., Montgomery Cty., Aug. 10, 1999). In 1997, she was diagnosed with malignant mesothelioma. *Id.* She lost a lung and then underwent multiple rounds of chemotherapy and radiation. *Id.* In August of 1999, after two weeks of trial, a Maryland jury found GP liable and awarded Lisa and her husband \$9.188 million. *Id.* At the age of just 34, Lisa lost her battle with mesothelioma shortly after winning her trial.

Joan Mahoney was exposed to GP's asbestos products through her work in the construction and remodeling business she shared with her husband. *Mahoney v. Advocate Mines Ltd. et al.*, No. CGC-06-458140, (Cal. Super. Ct., S.F. Cty. Mar. 11, 2008). Retired and recently relocated to be near her grandkids, Joan found herself the sole caretaker to her husband Daniel, who had been paralyzed by a stroke. *Id.* In March of 2006, Joan began having trouble breathing and was ultimately diagnosed with pleural mesothelioma. *Id.* Her illness and subsequent treatment rendered her unable to continue to care for Daniel. *Id.* She brought suit against GP and, two years after her diagnosis, a California jury found GP

liable and handed down a \$20 million verdict to Joan and Daniel (reduced to \$6.3 million based on liability apportionment). *Id.* Joan died just one month later, secure in the knowledge that this substantial verdict would ensure that Daniel was cared for in her absence.

Daniel Stupino was a Uruguayan immigrant who began renovating apartments in 1974 to earn extra cash. *See generally Stupino, Daniel v. American Biltrite*, No. 0190385/2010 (Sup. Ct. N.Y. Cty. 2011). For nine years, he used GP's asbestos-containing joint compound to seal joints between sheets of drywall. *Id.* In 2010, he started feeling weak and tired. *Id.* At first he thought it was stress, but a CT scan revealed fluid in his lungs and shortly thereafter, he was diagnosed with mesothelioma. *Id.* One lung had to be completely removed, and then he suffered through radiation and chemotherapy treatments, after which he had "almost permanent pain." *Id.* Daniel's case against GP settled mid-trial in August 2011. *Id.* A loving husband and father of two, he had testified that he once dreamed of retiring at 65 and traveling with his wife Anna. *Id.* Daniel died of mesothelioma on December 14, 2012, just before his 64th birthday.

Lisa Pransky, Joan Mahoney, and Daniel Stupino are just three of hundreds of thousands of people who have been gravely injured or died after exposure to GP's asbestos products, which have been proven to cause mesothelioma, lung cancer, laryngeal cancer, ovarian cancer, and asbestosis. Mesothelioma, in particular, is an incurable cancer inextricably linked to asbestos exposure that is typically fatal within two years of diagnosis. App.29a (King, J., dissenting). Within seven years of Bestwall's bankruptcy filing, 25,000 claimants had died of the

diseases caused by GP's asbestos products. *Id.* This number, which has continued to grow over the last two years, does not include the tens of thousands of people who have been unable to file lawsuits throughout the bankruptcy's pendency. People impacted by this bankruptcy continue to die, and die quickly.

II. Georgia-Pacific contrived, and the Fourth Circuit alone has condoned, a scheme that weaponizes the bankruptcy system against certain creditors.

A. Georgia-Pacific devised a way to reap one-sided benefits of bankruptcy while avoiding the submission an honest bankruptcy requires.

In 2017, GP formulated and executed a scheme to use the bankruptcy system as a weapon against everyday, working-class people whom it had already gravely injured. Now known as the Texas Two-Step, this scheme involved strategically splitting itself in two. Specifically, GP placed all of its asbestos-related liability in one entity (Bestwall) and the bulk of its assets, business, and obligations to creditors into a "go-forward" company that would continue operating unencumbered (New GP). Bestwall, its liability shell, then filed for bankruptcy, which allowed the entire GP enterprise to avail itself of all the benefits typically afforded to "honest but unfortunate" debtors.

Ordinarily, bankruptcy functions to "offer[] individuals and businesses in financial distress a fresh start to reorganize, discharge their debts, and maximize the property available to creditors." *Truck*

Ins. Exch. v. Kaiser Gypsum Co., Inc., 602 U.S. 268, 272 (2024). To balance these competing interests, courts across the country have found a “good faith” requirement incorporated throughout the Bankruptcy Code. *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1071-72 (5th Cir. 1986); *see also In re Cedar Shore Resort, Inc.*, 235 F.3d 375, 379 (8th Cir. 2000) (collecting cases across circuit courts holding “that the Code contains an implicit good faith requirement.”). Specifically, “the good faith requirement ensures that the Bankruptcy Code’s careful balancing of interests is not undermined by petitioners whose aims are antithetical to the basic purposes of bankruptcy[.]” *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 119 (3d Cir. 2004).

For this reason, ensuring that bankruptcy petitioners are genuinely facing financial distress is a key component of the good-faith requirement. *See id.* at 121 (a debtor’s “financial distress” is “necessarily require[d]” to satisfy good faith); *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986) (finding that “the debtor’s financial status” is a key consideration when evaluating the “existence of good faith”); *In re LTL Mgmt., LLC*, 64 F.4th 84, 109 (3d Cir. 2023) (dismissing LTL’s bankruptcy for lack of good faith because “the debtor was in no financial distress when it sought Chapter 11 protection”). Indeed, as this Court has repeatedly articulated, assisting debtors in financial distress is a central purpose of bankruptcy. *See, e.g., Williams v. U.S. Fid. & Guar. Co.*, 236 U.S. 549, 554 (1915) (purpose of bankruptcy is to relieve debtor from “the weight of oppressive indebtedness”); *Truck Ins. Exch.*, 602 U.S. at 272 (describing what bankruptcy is intended to offer those “in financial distress”).

At no time has either New GP, a multibillion-dollar conglomerate, or its liability shell company faced current or anticipated financial distress. In fact, GP, a Koch Industries subsidiary, paid its parent company a two billion dollar dividend in the year before Bestwall’s bankruptcy filing, App.27a (King, J., dissenting), and New GP has paid over five billion dollars in dividends between filing and 2024, App.55a. Despite having no meaningful assets of its own, Bestwall came (and remains) before the bankruptcy court equally affluent—backed by a funding agreement with New GP that ensures Bestwall is “able to pay any conceivable liabilities now and in the foreseeable future.” App.92a.

Subverting bankruptcy’s fundamental requirements, GP “placed its tort liabilities to thousands of workers behind a wall of bankruptcy protection, without itself undergoing the scrutiny, transparency, or risk that bankruptcy typically entails.” App.24a (King, J., dissenting). “In other words, by systematically manipulating the procedures that were designed to give the ‘honest but unfortunate debtor’ a ‘fresh start,’ [GP has] sought to ensure that [its] victims will never access our nation’s tort system during their limited lifetimes.” Brief of “Texas Two-Step” Victims as Amici Curiae in Support of Petitioner at 5, *Harrington v. Purdue Pharma L.P.*, No. 23-124 (U.S. Sept. 27, 2023) (quoting *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007)).

Those harmed by GP’s asbestos products have been forced to sacrifice numerous substantive rights; meanwhile, GP itself has sacrificed nothing, nor have its other creditors. GP has not submitted itself to the control of the bankruptcy court, nor is it publicly disclosing its financial dealings. While more than

25,000 of its victims have died with their claims against GP frozen, GP continues to pay its corporate creditors and equity owners in due course. App.29a. (King, J., dissenting).

B. Georgia-Pacific's false bankruptcy tramples upon creditors' rights.

Entering bankruptcy allowed GP to access tools designed to achieve equitable results when a debtor cannot fully repay all its debts. These tools include an automatic stay of litigation (11 U.S.C. § 362), special injunctive relief limiting—and often halting entirely—claims against related non-bankrupt third parties, a claims estimation process (11 U.S.C. § 502(c)), and channeling injunctions that funnel all claims against the debtor to a single trust (11 U.S.C. §§ 105(a), 524(g)). Because each of these tools significantly curtail creditors' rights, they must be reserved for the good-faith debtor in distress to prevent abuse by “debtors whose overriding motive is to delay creditors without benefitting them in any way.” *Integrated Telecom*, 384 F.3d at 119 (quoting *Little Creek*, 779 F.2d at 1072).

The automatic litigation stay, for example, prevents litigation creditors from seeking relief through the civil justice system throughout the course of the bankruptcy. The stay is intended to provide the financially distressed debtor “a breathing spell from creditors.” *Maritime Elec. Co., Inc. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir. 1991). However, for a dishonest debtor like Bestwall, the stay can functionally serve as “a last-minute escape chute out of pending civil litigation.” *Furness v. Liliensfield*, 35 B.R. 1006, 1009 (D. Md. 1983). Similarly, injunctive

relief protecting nonbankrupt-but-related third parties extends this “breathing spell from creditors” to litigation that would only tangentially impact the debtor. See *In re Seatco, Inc.*, 257 B.R. 469, 473 (Bankr. N.D. Tex. 2001) (collecting cases that “approved plans containing broad third party releases and permanent injunctions to enforce those releases”). For the Texas Two-Step debtor, however, this tool expands the liability escape chute from the shell company to the entire enterprise.

Importantly, for the honest-but-unfortunate debtor and its creditors, these injunctions are temporary. Where a debtor has submitted itself, its assets, and all creditors to the oversight and control of the bankruptcy court, it is motivated toward prompt resolution to regain self-sufficiency. However, a liability shell company has no incentive to swiftly exit bankruptcy, leaving litigation-creditors with no leverage to achieve a fair or prompt settlement.

If a bankruptcy does move forward toward resolution, the court may use a claims estimation process, which serves “to determine issues of liability or amount owed by means of anticipating and estimating the likely outcome of these actions” more quickly than awaiting civil litigation of each claim. *Matter of Cont'l Airlines*, 981 F.2d 1450, 1461 (5th Cir. 1993). However, this process is highly speculative and does not satisfy ordinary due process. *Owens Corning v. Credit Suisse First Bos.*, 322 B.R. 719, 721 (D. Del. 2005) (claims estimation requires courts to “make predictions which are themselves based upon predictions and assumptions,” its “margin for error” is “substantial,” and “minor variations” can “skew the end result enormously”).

Finally, the channeling injunction directs all pending and future litigation to a specially designated trust, but if the trust's funds are insufficient, creditors' recovery may be severely limited, or even nonexistent. *See* Lindsey D. Simon, *Bankruptcy Grifters*, 131 YALE L.J. 960, 1181 n.143 (2022) (“asbestos litigation notoriously suffered from underfunded trusts”).

When used properly, these tools can help the bankruptcy court balance the unfortunate debtor's survival against maximized recovery to creditors. Absent requirements of good faith and financial distress, however, tortfeasors are handed a series of weapons to wield against those they have already harmed.

C. The only creditors against whom Georgia-Pacific seeks to weaponize the bankruptcy system are its victims.

Shielding its business creditors from pay delay in the bankruptcy, GP placed just one group of people at the mercy of an unlimited litigation stay—its victims. These creditors are “ordinary and hardworking Americans who have spent their workdays installing drywall, laying insulation, cutting pipe, and then simply returning to their homes”; “factory workers, veterans, tradespeople, and laborers”; and “the widows, adult children, and family members of thousands of [GP's] and Bestwall's deceased victims, seeking to pursue tort claims in the civil courts on behalf of their loved ones who have died or are suffering from harrowing asbestos-related diseases.” *See* App.129-30a (King, J., dissenting).

Unresolved after nine years and with no end in sight, the impact of GP's bankruptcy on its victims has been striking. A comparison of GP's victims' claims before and after Bestwall petitioned for bankruptcy is illustrative.

i. Prior to Bestwall's bankruptcy, victims could seek and obtain civil justice for exposure to GP's harmful asbestos products.

Prior to Bestwall's bankruptcy petition, those suffering from asbestos-related diseases linked to GP were able to pursue their claims through civil courts. In some cases, GP prevailed. In others, like the case of Daniel Stupino, GP chose to settle before a verdict was rendered.² And in many, like the cases of Lisa Pransky and Joan Mahoney, juries found that GP had caused plaintiffs' devastating illnesses.³ *See supra*

² *See, e.g., Carrizales Gilbert I v. AW Chesterton Inc*, No. 07-L-000287 (Wis. Cir. Ct., Madison Cty. Nov. 2013) (settled two days before opening arguments); *Stupino, Daniel v. American Biltrite*, No. 0190385/2010 (N.Y. Sup. Ct., N.Y. Cty. 2011) (settled mid-trial).

³ *See, e.g., Taylor, Roy L v. Georgia Pacific*, No. 2014-022141-CA-01 (Fla. 11th Cir. Ct. 2015) (\$17 million verdict, award reduced to \$9.35 million in accordance with liability apportionment); *Wigley v. U.S. Gypsum Co. et al.*, No. CC-98-10710-B (Tex. Cty. Ct., Dallas Cty. Aug. 10, 1999) (\$4.6 million verdict after 3 week trial); *Pransky v. Georgia Pacific Corp.*, No. 188369 (Md. Cir. Ct., Montgomery Cty., Aug. 10, 1999)

Section I. The civil justice system worked as intended: GP faced no liability to plaintiffs who could not prove their case, but for plaintiffs who could, verdicts offered timely justice when time was of the essence.

ii. Following Bestwall's bankruptcy filing, GP's victims are dying while their claims remain indefinitely frozen in time.

Those whose asbestos-related claims languish in bankruptcy suffer an even worse fate. Unable to pursue their claims due to the stay and preliminary injunction, a vast majority of these claimants are certain to die during the pendency of bankruptcy due to the aggressive nature of asbestos-related diseases.

The stories of the members of the Claimants' Committee, appointed by the Bestwall bankruptcy court, illustrate this devastating reality. Shortly after Bestwall entered bankruptcy proceedings, the bankruptcy court appointed an Official Committee of Asbestos Claimants—ten claimants to represent the interests of the tens of thousands of people with outstanding claims against GP. *In re Bestwall LLC*, No. 3:17-bk-31795 (Bankr. W.D.N.C. Nov. 16, 2017), Dkt. No. 97. At the time of appointment, four members were representatives of decedent family members and six were living members representing their own interests. All agreed to fight for the best

(\$9.188 million verdict after 2 week trial); *Mahoney v. Advocate Mines Ltd. et al.*, No. CGC-06-458140, (Cal. Super. Ct., S.F. Cty. Mar. 11, 2008) (\$20 million verdict, award reduced to \$6.3 million in accordance with liability apportionment).

interests of others confronting similar grave illnesses and their loved ones.

The four members representing the claims of their deceased family members included—Barbara McAlpine, representing the claims of her husband Ed McAlpine, a farmer, Navy veteran, and volunteer firefighter from Mars, Texas, who died on June 29, 2016 of mesothelioma; Patricia Deetz, representing the claims of her husband Dave Deetz, a father of three and grandfather of two who spent his early career as a dairy farmer and his retirement years as a school bus driver and who died on May 4, 2017 of mesothelioma; Rick Benson, representing the claims of his father Eric “Benny” Benson, a beloved husband, father of four, and grandfather of ten, a longtime member of the Norfolk Men’s Chorus, and an avid Husker fan who died on March 14, 2016 of mesothelioma; and Rick Bengston, representing the claims of his brother, Gary Bengston, a former construction industry supervisor and truck driver and a lover of saltwater fishing, who died of mesothelioma on June 7, 2017.⁴

Within five years of the Committee’s appointment, all six then-living claimants were dead—killed by the diseases that GP’s products had caused. Just over two weeks after he was appointed to the Committee, Cresante Perreras died of mesothelioma on December 1, 2017, leaving his daughter, Nikol Chuidian, to carry forward both his claims and his role on the Committee. Eight months later, on August 10, 2018, Stephen Lamphear died of

⁴ See Motion to Appoint Official Committee of Asbestos Claimants, *In re Bestwall LLC*, No. 3:17-bk-31795 (Bankr. W.D.N.C. Nov. 8, 2017), Dkt. No. 69.

mesothelioma; his daughter Elizabeth Ann Harding has now taken his place on the Committee. On February 23, 2020, Linda Marie Hofferber died of mesothelioma; she is succeeded on the Committee by her husband Paul Tice. Three days later, Jefferey A. Watts died of mesothelioma; he is succeeded on the Committee by his brother Steven Watts. On August 29, 2020, R. Scott Trumball died after a five-year battle with mesothelioma; his wife of 47 years carries on his claims. And on May 5, 2022, Reverend John Harvey Dixon, the last of the Committee's living claimants, died of mesothelioma; his wife of 33 years, Emma Pearl Dixon, succeeds him.⁵

These ten lives lost to asbestos exposure, and their shared inability to seek justice, are representative of tens of thousands of others whose litigation against Bestwall was abruptly halted before a jury verdict or other resolution could be reached. Their stories are also echoed in the tens of thousands more who have gotten sick since 2017 but have been prevented from filing lawsuits.

Ed Chapman fell into this latter bucket. S. Hrg. 118-155: *Evading Accountability: Corporate Manipulation of Chapter 11 Bankruptcy: Hearing Before S. Comm. on the Judiciary*, 118 Cong. (2023) (Testimony of Lori Knapp). A contractor in the 1970s, Ed Chapman worked with a group of ten other men on contracting projects, including substantial work with

⁵ Daniel Connolly, *For These Victims, Death Came Before Bankruptcy Resolution*, Law360, Feb. 7, 2025, <https://www.law360.com/pulse/articles/2292619/for-these-victims-death-came-before-bankruptcy-resolution> (attaching docket entries for Motions to Substitute Committee Members upon their deaths).

drywall. *Id.* At least three of those men are now dead from mesothelioma. *Id.* Ed was diagnosed with mesothelioma in 2018, a year *after* Bestwall filed for bankruptcy. *Id.* Ed was a fighter and a firm believer in accountability. Even as he fought fiercely against mesothelioma through chemotherapy and radiation, Ed wanted to hold those who had harmed him accountable. *Id.* But the litigation stay and preliminary injunction prevented him from pursuing claims against GP, despite his exposure to their asbestos products. *Id.* A devoted husband and loving father, Ed Chapman died “an excruciating, horrible, prolonged death from his asbestos cancer on November 16, 2020.” *Id.* Ed’s claims against GP (carried forward by his daughter Lori) remain frozen in time.

D. Georgia-Pacific’s scheme deprives its victims of their constitutional rights.

The jury trials wherein Lisa Pransky and Joan Mahoney obtained significant verdicts to compensate for their harms are the cornerstone of the American civil justice system. They and GP each presented their evidence to juries, who decided their cases in accordance with due process of law. GP had ample opportunity to defend itself against the claims and to seek appellate review of those judgments. *Georgia-Pac. Corp. v. Pransky*, 369 Md. 360, 364 (2002) (upholding verdict); *Mahoney v. Georgia-Pacific LLC*, No. A122038, 2009 WL 3451754 (Cal. Ct. App., 1st Dist. Oct. 27, 2009) (upholding verdict). The tens of thousands of others harmed by GP’s products should have the same opportunity to seek redress through the civil justice system.

This Court has recognized the “serious constitutional concerns” under the Seventh Amendment “that come with any attempt to aggregate individual tort claims,” as well as the “deep-rooted historic tradition that everyone should have his own day in court.” *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 845-46, 868 (1999). Unless a bankruptcy petitioner is financially distressed and filing in good faith, claimants’ constitutional right to a jury trial must not be superseded. *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 50 (1989) (discussing need to safeguard Seventh Amendment jury trial right amid bankruptcy).

While GP’s equity owners continue to rake in billions, its victims’ options have been diminished indefinitely. Claimants and their descendants have already waited nine years, and there is no end in sight. This is by design, as GP has no incentive to exit a bankruptcy process that requires nothing of its go-forward business while still fully insulating it from liability. And this same holding pattern provides GP “additional leverage to negotiate a global settlement” against those who’ve long sought recompense for the grave harm GP caused. *In re Aeero Techs. LLC*, 642 B.R. 891, 912 (Bankr. S.D. Ind. 2022).

III. The Fourth Circuit’s outlier allowance of bad-faith bankruptcies filed by financially healthy debtors has created a circuit split that this Court must resolve.

A. The Fourth Circuit alone permits bad-faith bankruptcy filings by financially healthy entities, violating the jurisdictional integrity of bankruptcy courts.

Bankruptcy’s “good faith” requirement “protects the jurisdictional integrity of the bankruptcy courts by rendering their powerful equitable weapons ... available only to those debtors ... with ‘clean hands.’” *Little Creek*, 779 F.2d at 1072. This threshold good-faith requirement has been recognized nationwide. Nevertheless, the Fourth Circuit alone hamstrung its bankruptcy courts’ ability to dismiss bad-faith debtors by adding an “objective futility” requirement which, if met, preempts a bankruptcy court’s ability to evaluate subjective bad faith. *Carolin Corp. v. Miller*, 886 F.2d 693, 698, 700-01 (4th Cir. 1989).

Thus, the Fourth Circuit has become an outlier. By functionally eliminating the “good faith” prerequisite, the Fourth Circuit has placed bankruptcy’s powerful equitable weapons into *unclean* hands. Under the paradigm created by its ruling below, “any profitable business facing legal risk” can jettison its tort liabilities into a shell company, bankrupt that shell company, and halt all litigation against the business, “not because it is ... unable to pay its debts, but because it prefers to evade the scrutiny of a jury — as required by the Seventh

Amendment — and shirk accountability” to its “sick and dying victims[.]” App.45a (King, J., dissenting).

B. Courts outside of the Fourth Circuit have rejected this very scheme.

Courts outside of the Fourth Circuit have declined to bless the Texas Two-Step. Unlike the Fourth Circuit, these courts have enforced the good-faith requirement that protects creditors from sacrificing their rights while the profitable purported debtor sacrifices nothing.

Take Johnson & Johnson, which attempted to follow the path GP paved. Aiming to halt thousands of claims against it by those suffering from exposure to its talc products, J&J placed its liabilities into a “a shell company[, LTL,] ‘formed,’ almost exclusively, ‘to manage and defend thousands of talc-related claims.’” *LTL*, 64 F.4th at 109. LTL—like Bestwall, backed by a funding agreement with the go-forward business—filed for bankruptcy within the Fourth Circuit just two days after its formation. *Id.* at 97. In a rare ruling, however, that bankruptcy court transferred venue to the District of New Jersey (within the Third Circuit), where multidistrict litigation had already been consolidated. *Id.*

Third Circuit precedent, contrary to the Fourth Circuit’s, holds that “a Chapter 11 bankruptcy petition filed by a financially healthy company in the face of potentially significant civil [] liability” “lacks a valid reorganizational purpose[.]” *In re SGL Carbon Corp.*, 200 F.3d 154, 156, 169 (3d Cir. 1999). Applying this precedent, the bankruptcy court dismissed LTL’s petition for bad faith. *LTL*, 64 F.4th at 101. On appeal, the Third Circuit found that the “funding backstop

plainly mitigate[d] any financial distress” and held that “absent financial distress, there is no reason for Chapter 11 and no valid bankruptcy purpose.” *Id.* at 110. It further explained that embedding actual financial distress into bankruptcy’s good-faith requirement is a “safeguard [that] ensures that claimants’ pre-bankruptcy remedies—here, the chance to prove to a jury of their peers injuries claimed to be caused by a consumer product—are disrupted only when necessary.” *Id.* at 111.

Afterwards, J&J attempted, and failed, to proceed in bankruptcy two more times. Litigation resumed after dismissal of the third attempt in March 2025. In the year since, juries have entered numerous verdicts against J&J, finding that J&J’s talc products caused plaintiffs’ illnesses and compensating plaintiffs accordingly.⁶

3M also tried, and failed, to replicate the Texas Two-Step, this time in the Seventh Circuit. 3M, another multibillion-dollar conglomerate, sought to evade an MDL that, at its height, included 336,000 actions against it. For 15 years, 3M (and its subsidiary, Aearo) sold earplugs it knew were defective. Hundreds of thousands of people who had relied on these earplugs—mostly veterans—suffered hearing loss and damage. When those individuals sought accountability, 3M sought an escape chute by

⁶ See, e.g., *Houghton Carley v. Johnson & Johnson*, Case No. 62-CV-25-2358 (Minn. Dist. Ct., Ramsey Cty. Dec. 19, 2025); *Craft v. Ahold Delhaize US Inc. et al.*, No. 24-X-24-000005 (Md. Cir. Ct., Baltimore City Dec. 22, 2025); *Emerson v. Johnson & Johnson*, Case No. 190509334 (Pa. Commw. Ct., Phila. Cty. Feb. 13, 2026).

isolating these liabilities into Aearo, backing it with a funding agreement, and petitioning for bankruptcy in Indiana. *In re Aearo Techs. LLC*, No. 22-02890-JJG-11, 2023 WL 3938436, at *1-9 (Bankr. S.D. Ind. June 9, 2023).

Following Seventh Circuit precedent, the bankruptcy court first denied a preliminary injunction, finding that it lacked subject-matter jurisdiction to enjoin claims against Aearo's non-debtor parent, 3M, due to the uncapped funding 3M promised to Aearo. *Aearo*, 642 B.R. at 911. Shortly thereafter, the court dismissed the bankruptcy petition, finding that allowing a financially healthy entity to take advantage of Chapter 11 would risk "a bankruptcy court [] becoming another court of general jurisdiction, which it most decidedly is not." *Aearo*, 2023 WL 3938436, at *21.

The MDL court then sanctioned 3M for its bad-faith attempt to "upend the nearly four years of methodical effort" to resolve earplug liabilities through the "Congressionally-established system for resolving mass tort disputes." *In re 3M Combat Arms Earplug Prods. Liab. Litig.*, No. 3:19MD2885, 2022 WL 17853203, at *3, *7 (N.D. Fla. Dec 22, 2022). A year after Aearo's bankruptcy petition was dismissed, 3M reached a \$6 billion global settlement of all claims through the MDL's efforts. *See* Press Release, 3M, *3M Announces Combat Arms Settlement* (Aug. 29, 2023), <https://investors.3m.com/news-events/press-releases/detail/1797/3m-announcescombat-arms-settlement>. Rather than having their claims halted for years only to have their recoveries limited, 3M's victims were compensated for their harm shortly after 3M's gambit failed.

In the Fourth Circuit, though, GP's victims' fates have differed sharply.

IV. Unless this Court grants certiorari, corporate tortfeasors seeking to avoid financial accountability will weaponize the Fourth Circuit's outlier precedent against the people they harmed.

A. Multiple entities have already followed GP to the Fourth Circuit.

Since GP put Bestwall in bankruptcy, multiple affluent, corporate tortfeasors have successfully followed its roadmap in the Fourth Circuit. Saint-Gobain, a multibillion-dollar multinational corporation, was the first. Two years after GP pioneered the maneuver, CertainTeed, a US subsidiary of Saint-Gobain that harmed hundreds of thousands of people with its asbestos products, created a new entity called DBMP that "was allocated 100% of Old CertainTeed's considerable asbestos liabilities" but "no employees, no operations, and few assets" and filed for bankruptcy just three months after its creation. *Herlihy v. DBMP, LLC*, No. 24-2109, 2026 WL 376481, at *1-2 (4th Cir. Feb. 11, 2026). Here, too, the shell company was backed by an "uncapped funding agreement." *Id.* Here, too, the bankruptcy halted access to the civil court system for tens of thousands of victims, many of whom are dying of mesothelioma and other asbestos related diseases while their claims remain "on ice[.]" *Id.* at *19 (King, J, dissenting).

Similarly, Trane Technologies jettisoned its asbestos liabilities into two new entities, Aldrich

Pump and Murray Boiler. *In re Aldrich Pump LLC*, No. 20-30608, 2023 WL 9016506, at *1 (Bankr. W.D.N.C. Dec. 28, 2023). Seven weeks after their creation, both entities filed Chapter 11 petitions, each with their own funding agreement backed by a go-forward Trane entity. *Id.* at *8. As with the victims of GP and CertainTeed, those harmed by Trane’s asbestos products continue to die without ever seeing their constitutionally assured day in court.

B. If the Fourth Circuit’s ruling stands, numerous sophisticated tortfeasors will follow suit.

Judges attempting to operate within the Fourth Circuit’s outlier precedent have explicitly requested intervention from higher courts. In 2023, the *Aldrich Pump* bankruptcy court wrote: “Until the propriety of the ‘Texas Two-Step’ and its use by solvent ‘non-distressed’ corporations is determined by the higher courts, no progress will be made in these bankruptcy cases.” *Aldrich Pump*, 2023 WL 9016506, at *32 (Whitley, J). And just last month, in a dissent on appeal from the *DBMP* bankruptcy, Fourth Circuit Judge King noted the “differences of opinion about whether a non-distressed solvent company can use bankruptcy tools,” and stated that “a higher court than this one will ultimately make the call.” *Herlihy*, 167 F.4th at 163 (King, J., dissenting).

For now, the Fourth Circuit’s ruling creates perverse incentives for the next affluent corporation that learns its products or services are causing mass harm. Businesses acting in bad faith will continue to commit mass harm where they can get away with it, because doing so is cheaper than rectifying the harm.

Such corporations now have a roadmap for evading accountability, even after the harm and its cause come to light. When liability accumulates, these affluent tortfeasors can override the constitutional rights of their victims and dump hundreds of thousands of lawsuits into the bankruptcy court in the Fourth Circuit—where claims can be indefinitely stayed, future claims can be redirected before they’ve arisen, and claimants have virtually no leverage to acquire a fair settlement.

At present, the Texas Two-Step remains a rare maneuver, but the ruling below risks opening the floodgates. And once those “floodgates are opened, debtors . . . can be expected” to replicate that move, making “every case that rare case.” *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 470 (2017). Because corporations have flexibility regarding bankruptcy venue, virtually any sophisticated tortfeasor could create and re-domicile a shell company within the Fourth Circuit to take advantage of its bad-faith allowance. *See generally* Brief of the Commercial Law League of America & the National Bankruptcy Venue Reform Committee as Amici Curiae in Support of Neither Party, *Harrington v. Purdue Pharma L.P.*, No. 23-124 (U.S. Sept. 27, 2023).

Without this Court’s intervention, the Fourth Circuit’s condoning of bad-faith bankruptcies threatens to functionally become the law of the land—handing windfall upon windfall to corporations facing significant liability and further harming everyday Americans who those same corporations have already gravely injured.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

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Respectfully submitted,

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