

No. 25A_____

IN THE
SUPREME COURT OF THE UNITED STATES

OFFICIAL COMMITTEE OF ASBESTOS CLAIMANTS OF BESTWALL LLC,
Applicant,

v.

BESTWALL LLC,
Respondent.

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

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Claimants of Bestwall LLC*

January 16, 2026

PARTIES TO THE PROCEEDINGS BELOW

Applicant Official Committee of Asbestos Claimants of Bestwall LLC was a court-appointed fiduciary representing the interests of asbestos claimants in the bankruptcy court proceedings and the appellant in the court of appeals proceedings.

Respondent Bestwall LLC was the debtor in the bankruptcy court proceedings and the appellee in the court of appeals proceedings.

Wilson Buckingham and Angelika Weiss were claimants in the bankruptcy court proceedings whose motion to dismiss was denied. The bankruptcy court denied their subsequent motion for certification of direct appeal to the Fourth Circuit (Bankr. W.D.N.C. No. 17-31795, ECF No. 3358), and there presently is a renewed request for certification of direct appeal pending before the district court (W.D.N.Y. No. 24-cv-00042, ECF No. 51); they did not participate in the court of appeals proceedings below and thus are not respondents in the proceedings before this Court.

Georgia-Pacific LLC was an appellee in prior district court proceedings and an appellee in prior court of appeals proceedings, but is no longer participating in these proceedings.

Sander L. Esserman, in his capacity as Future Claimants' Representative, was an appellant in prior district court proceedings and an appellant in prior court of appeals proceedings, but did not participate in the bankruptcy court proceedings or court of appeals proceedings regarding the motion to dismiss at issue and thus is not a respondent in the proceedings before this Court.

RELATED CASES

Related Decisions Under Review

In re Bestwall LLC, 605 B.R. 43 (Bankr. W.D.N.C. July 29, 2019) (No. 17-31795, Adv. Proceeding No. 17-03105) (denying motion to dismiss or, alternatively, for change of venue)

In re Bestwall LLC, 658 B.R. 348 (Bankr. W.D.N.C. Feb. 21, 2024) (No. 17-31795, Adv. Proceeding No. 17-03105) (denying motions to dismiss and for reconsideration)

Bestwall LLC v. Official Comm. of Asbestos Claimants of Bestwall LLC, 148 F.4th 233 (4th Cir. Aug. 1, 2025) (No. 24-1493) (affirming bankruptcy court)

Bestwall LLC v. Official Comm. of Asbestos Claimants of Bestwall LLC, 157 F.4th 579 (4th Cir. Oct. 30, 2025) (No. 24-1493) (denying rehearing en banc)

Related Decisions Previously Under Review

In re Bestwall LLC, 606 B.R. 243 (Bankr. W.D.N.C. July 29, 2019) (No. 17-31795, Adv. Proceeding No. 17-03105)

In re Bestwall LLC, 2022 WL 67469 (W.D.N.C. Jan. 6, 2022) (No. 3:20-cv-103-RJC)

In re Bestwall LLC, 2022 WL 68763 (W.D.N.C. Jan. 6, 2022) (No. 3:20-cv-105-RJC)

In re Bestwall LLC, 71 F.4th 168 (4th Cir. June 20, 2023) (Nos. 22-1127(L) & 22-1135), *reh'g denied* (4th Cir. Aug. 7, 2023), *cert. denied*, 144 S. Ct. 2519 & 2520 (U.S. May 13, 2024) (Nos. 23-675 & 23-702)

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

Pursuant to 28 U.S.C. § 2101(c) and Rules 13.5, 22, and 30.3 of the Rules of this Court, applicant Official Committee of Asbestos Claimants of Bestwall LLC respectfully requests a 23-day extension of time, up to and including February 20, 2026, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

The court of appeals entered its judgment on August 1, 2025 and denied a petition for rehearing en banc on October 30, 2025. The court of appeals' opinion (reported at 148 F.4th 233) and order denying rehearing en banc (reported at 157 F.4th 579) are attached hereto as Exhibits A and B, respectively. The orders of the bankruptcy court (reported at 658 B.R. 348 and 605 B.R. 43) are attached hereto as Exhibits C and D, respectively. The petition would be due on January 28, 2026, and this application is made at least 10 days before that date. This Court's jurisdiction would be invoked under 28 U.S.C. § 1254(1).

1. This case presents the exceptionally important question whether an entity with a conceded ability to timely and fully pay all current and anticipated liabilities can invoke bankruptcy. Georgia-Pacific, a thriving conglomerate worth tens of billions of dollars, crafted this bankruptcy case to isolate its asbestos liabilities in the bankruptcy system and delay justice for thousands of asbestos

plaintiffs. In 2017, it pioneered a controversial scheme, now known as the “Texas Two-Step,” that separated its valuable business operations from its asbestos liabilities. The first step was for Georgia-Pacific to split into two new entities: New GP, which received most of the profitable assets and business operations; and Bestwall, which received the asbestos liabilities, token assets, and a funding commitment from New GP. The second step was for Bestwall to declare bankruptcy in its forum of choice and obtain an injunction halting all asbestos lawsuits against itself, as well as New GP and other non-debtor affiliates. Georgia-Pacific’s scheme has blocked all asbestos litigation against it for eight years and counting.

2. The Fourth Circuit has refused to enforce fundamental bankruptcy limitations against Bestwall, in conflict with the decisions of other circuits, this Court’s precedent, and the Bankruptcy Clause of the Constitution. *First*, bankruptcy courts can dismiss Chapter 11 petitions for lack of good faith under 11 U.S.C. § 1112(b)(1). That power “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). The “basic policy” animating bankruptcy law is “affording relief *only* to an ‘honest but *unfortunate* debtor.’” *Cohen v. de la Cruz*, 523 U.S. 213, 217 (1998) (quoting *Grogan v. Garner*, 498 U.S. 279, 287 (1991)) (emphases added). Given that objective, circuit courts generally recognize that “good faith necessarily requires some degree of financial distress on the part of a debtor.” *Integrated Telecom Express*, 384 F.3d at 121 (collecting cases); *see In re*

LTL Mgmt., LLC, 64 F.4th 84, 103 & n.14 (3d Cir. 2023) (noting “central role” that financial distress plays in circuit courts’ good-faith inquiries).

By contrast, the Fourth Circuit applies a distinct two-pronged test. Its test requires showing both the “objective futility” of the debtor’s reorganization effort and the debtor’s “subjective bad faith.” *Carolin Corp. v. Miller*, 886 F.2d 693, 700-01 (4th Cir. 1989). The Fourth Circuit has said that the purpose of its test is to ensure that a Chapter 11 petition bears “some relation to the statutory objective of resuscitating a financially troubled debtor.” *Id.* at 701 (cleaned up). But the bankruptcy court determined that Bestwall, with a conceded ability to pay all its debts, easily satisfied the objective-futility prong of the standard because it has the resources to reorganize. And because both prongs of the test must be satisfied, ruling out objective futility meant the bankruptcy court could ignore evidence of the debtor’s subjective bad faith. By blessing wealthy debtors and ignoring their subjective bad faith, that analysis conflicts with other circuit law, incentivizes forum-shopping by financially healthy companies, and upends the principle that bankruptcy is only for the honest but unfortunate debtor. Nevertheless, the Fourth Circuit in this case refused to correct the bankruptcy court’s analysis or align its good-faith test with other circuits to ensure that Chapter 11 proceedings are limited to resuscitating financially troubled debtors.

Second, the Bankruptcy Clause of the Constitution authorizes Congress to establish “uniform Laws on the subject of Bankruptcies.” Art. I, § 8, cl. 4. That language, understood in light of history and tradition, limits the use of bankruptcy’s

unique debt adjustment remedies to debtors that actually are bankrupt—*i.e.*, debtors unable to pay their debts. As Justice Story put it, “a law on the subject of bankruptcies” is “a law making provisions for cases of persons *failing to pay their debts.*” 2 Joseph Story, *Commentaries on the Constitution* § 1113, at 50 n.3 (Thomas M. Cooley ed., 4th ed. 1873) (emphasis added). And as this Court has explained, bankruptcy is “the ‘subject of the relations between an *insolvent* or *nonpaying* or *fraudulent* debtor and his creditors.’” *Central Virginia Cnty. Coll. v. Katz*, 546 U.S. 356, 371 (2006) (quoting *Wright v. Union Cent. Life Ins. Co.*, 304 U.S. 502, 513-14 (1938)) (emphases added).

Here, the Fourth Circuit held that bankruptcy courts have jurisdiction over any petition filed under the Bankruptcy Code, regardless of the debtor’s ability to pay, contravening the Constitution’s original meaning. As the dissent from both the panel opinion and the denial of rehearing en banc forcefully explained, that unprecedented endorsement of unlimited bankruptcy jurisdiction runs afoul of the Constitution, and it gives free rein for profitable companies to amass wealth by stranding thousands of tort victims in the bankruptcy system.

3. The 23-day extension to file a certiorari petition is necessary because undersigned counsel needs the additional time to prepare the petition and appendix in light of other, previously engaged matters in this and other courts, including: (1) a merits reply brief in the Third Circuit in *In re Samsung Electronics America Inc.*, No. 25-1895 (due Jan. 20, 2026); (2) a merits response brief in the Ninth Circuit in *U.S. Wholesale Outlet & Distribution, Inc., et al. v. Innovation Ventures, LLC*,

et al., No. 25-3460 (due Feb. 2, 2026); (3) argument in the Supreme Judicial Court of Massachusetts in *Cardillo v. Monsanto Co., et al.*, No. SJC-13741 (scheduled for Feb. 4, 2026); and (4) argument in the Second Circuit in *In re RML, LLC*, No. 25-263 (scheduled for Feb. 18, 2026).

For all these reasons, there is good cause for a 23-day extension of time, up to and including February 20, 2026, within which to file a certiorari petition in this case to review the judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,



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