

In the Supreme Court of the United States

MICHAEL HERLIHY, *ET AL.*,
Petitioners,

v.

DBMP, LLC,
Respondent.

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

**BRIEF OF THE OFFICIAL COMMITTEE OF ASBESTOS
PERSONAL INJURY CLAIMANTS IN *IN RE DBMP LLC* AS
AMICUS CURIAE IN SUPPORT OF PETITIONERS**

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INTEREST OF AMICUS CURIAE¹

Amicus is the Official Committee of Asbestos Personal Injury Claimants appointed in the chapter 11 bankruptcy case of *In re DBMP LLC*.² The committee submits this amicus curiae brief in support of the petition for a writ of certiorari filed by Petitioners Michael Herlihy, Ann Herlihy, and the Estate of Peter L. Bergrud.

Amicus is a statutory committee of creditors appointed under 11 U.S.C. § 1102 to represent the interests of current claimants who were injured by the asbestos torts of the Debtor's predecessor, CertainTeed Corp. The matter brought by Petitioners will have ramifications beyond their respective tort litigation because resolution in Petitioners' favor will almost certainly expedite the resolution of DBMP LLC's bankruptcy and three other "Texas Two-Step" bankruptcies that have languished in the Fourth Circuit for more than six years. All of these cases involve debtors created by multibillion-dollar enterprises—which easily managed their asbestos liabilities in the civil justice system—to strand their cancer victims in chapter 11 cases, while keeping their valuable business assets outside and unencumbered by bankruptcy. Each of these cases

¹ In accordance with Rule 37.2, Amicus certifies that counsel of record for the parties received timely notice of the intent to file this brief. In accordance with Rule 37.6, Amicus certifies that no counsel for any party authored this brief in whole or in part, no party or party's counsel made a monetary contribution to fund its preparation or submission, and no person other than Amicus or its counsel made such a monetary contribution.

² No. 20-30080 (Bankr. W.D.N.C.).

involves corporate enterprises that have selectively filed in the Fourth Circuit to sustain a never-ending payment holiday for themselves. While these debtors and affiliates directly benefit from drawn-out bankruptcy proceedings, their sick and dying asbestos victims find themselves unable to pursue their lawful causes of action. In supporting Petitioners, Amicus seeks to protect the rights and interests of its creditor constituency and to halt the bad-faith invocation of bankruptcy protection by wealthy corporate enterprises like CertainTeed.

INTRODUCTION AND SUMMARY OF ARGUMENT

At the heart of this case is whether a newly formed debtor's divisional merger and follow-on bankruptcy filing, known as a "Texas Two-Step," constitute a bad-faith filing that provides "cause" to lift the automatic stay under 11 U.S.C. § 362(d). The answer to that question, based on the law of most circuits, should be *yes*. In the Fourth Circuit, however, where this case originates, the answer is *no*. As a result, the Fourth Circuit has become the destination venue for Texas Two-Step bankruptcies, which enables the ensuing abuse of the bankruptcy process to flourish while mass-tort creditors are left in limbo indefinitely. It is time for this Court to put a stop to this form of bankruptcy abuse.

Since 2017, five different non-financially distressed companies have utilized 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 pending state-law claims

against them, keeping their assets out of creditors' reach and free of the strictures of bankruptcy. Once filed, these Texas Two-Step bankruptcies can go on forever. Indeed, that appears to be the point.

But, in the Fourth Circuit, intentionally delaying creditors is not a sufficient reason to free those creditors from bankruptcy so that they may pursue their state-law tort actions. Unless bankruptcy is both filed in "subjective bad faith" and "objectively futile," it continues. No other circuit would entertain such delay tactics when they are so obviously designed to abuse bankruptcy's protections, disadvantage tort victims, and undermine the delicate balance between debtors and creditors that lies at the heart of the Bankruptcy Code. Yet, in the Fourth Circuit, proof of "subjective bad faith" is not enough.

This Court has declined to take up previous appeals asking this Court to find Bestwall LLC's "Texas Two-Step" bankruptcy inappropriate as a jurisdictional or constitutional matter. That is not the case here. To resolve the question presented, this Court need only determine whether subjective bad faith is sufficient "cause" to lift the automatic stay. The Court's construction of "cause" will have consequences beyond the stay-relief context because the same standard governs whether a bankruptcy case should be dismissed.

This issue is critical because DBMP's bankruptcy, like all other Two-Step bankruptcies, is designed to circumvent creditors' fundamental bankruptcy protections and achieve a payment holiday for wealthy corporations. Yet, those facts

carry little weight before the courts below because the Fourth Circuit demands that claimants first show objective futility, a standard imposed only by that circuit that claimants have not and cannot satisfy when the debtor has a purportedly unlimited funding agreement. This Catch-22, in which a wealthy corporate enterprise, including one acting in bad faith, can avoid *ever* paying its tort victims because it can forever dangle the prospect of an out-of-reach distribution, is now squarely before this Court.

Petitioners present this Court with the opportunity to resolve a circuit split over whether a lack of a proper bankruptcy purpose is sufficient to show a lack of “good faith.” Resolving this split could shine a light at the end of the long tunnel into which these Two-Step debtors have cast many thousands of tort victims. This Court should put an end to the abuse of the bankruptcy process that, in the Fourth Circuit only, has permitted wealthy tortfeasors to evade accountability in the civil justice system. The Court should grant the petition.

ARGUMENT

I. The Texas Two-Step Bankruptcies Lack Good Faith

A. *The Texas Two-Step Bankruptcies All Follow the Same Contrived Pattern.* DBMP’s bankruptcy, like all other Two-Step bankruptcies, follows a stratagem that can be illustrated in the following hypothetical:³ Suppose “AceCo” is a

³ *In re Bestwall LLC*, filed in 2017, was the first Two-Step bankruptcy and served as the model for other companies to

successful Delaware company that 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,⁴ AceCo’s management wants to cease paying tort victims or, if possible, rid AceCo of its asbestos liabilities at a substantial discount. Bankruptcy would stay those liabilities and may provide a path for resolving them in a single proceeding. But AceCo’s management does not want to put AceCo into bankruptcy because of the perceived reputational harms, court oversight, lack of ability to drain cash out of the enterprise, 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.⁵ To obtain the benefits of bankruptcy without

follow. Following *Bestwall*’s footsteps, *DBMP*, *In re Aldrich Pump LLC* (No. 20-30608), *In re Murray Boiler LLC* (No. 20-30609), and *In re LTL Mgmt. LLC* (No. 21-30589), came soon thereafter. When devising the *Aldrich* corporate restructurings, employees called *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).

⁴ See, e.g., *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”); App. 50a (King J., dissenting) (“DBMP has acknowledged that . . . it can pay its dead and dying asbestos victims in full . . .”).

⁵ *DBMP*, 2021 WL 3552350, at *8.

its burdens, AceCo decides to use a provision of Texas law to implement a divisional merger.⁶

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.⁷

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.⁸ BadCo has no employees or business operations.⁹ 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.¹⁰

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.

⁶ *Id.* at *6.

⁷ *Id.* at *8-9, *16.

⁸ *Id.* at *9.

⁹ *E.g., id.* at *1.

¹⁰ *Id.* at *14.

Within weeks, BadCo files for chapter 11 bankruptcy relief in the Bankruptcy Court for the Western District of North Carolina.¹¹ 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 BadCo’s chapter 11 case grants a preliminary injunction 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.¹²

Sitting outside chapter 11, but protected by a bankruptcy stay, GoodCo continues to run the same business that AceCo once did, manufacture the same products that AceCo once did, and sell to the same customers that AceCo once did.¹³ GoodCo even adopts

¹¹ 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).

¹² *DBMP*, 2021 WL 3552350, at *4.

¹³ *Id.* at *1, *17 (“New CertainTeed’ . . . was essentially a mirror image” of “old” CertainTeed, “a fully operating company which retained all of Old CertainTeed’s employees, the bulk of its assets and operations, and all of its non-asbestos creditors.”).

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.¹⁴ For non-tort creditors, shareholders, employees, and other stakeholders in GoodCo, nothing has changed with the divisional merger and follow-on bankruptcy; other than the newfound ability to ignore tort claimants, everything is still “business as usual.”

The tort victims, however, are impaired and harmed by design. As the *Aldrich* bankruptcy court found, the Two-Step’s purpose is to “isolate the asbestos claimants from the overall corporate enterprise and strand them in bankruptcy” indefinitely.¹⁵ Bankruptcy was never intended to be used as a sword in this manner. And where other wealthy corporate enterprises attempted to misuse bankruptcy outside 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.¹⁶ Bankruptcy is only available to

¹⁴ See *infra* part I.B.

¹⁵ *Aldrich*, 2021 WL 3729335, at *21.

¹⁶ See, e.g., *LTL Mgmt., LLC*, 64 F.4th 84 (dismissing bankruptcy for cases to be resolved in the tort system); *In re Aeero 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.

a debtor who “proceeds with honesty and places virtually all its assets on the table for its creditors.” *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 209 (2024).

B. The Texas Two-Step Defeats Essential Creditor Protections in Bankruptcy by Design. The Bankruptcy Code aims to “strike . . . [a] ‘careful balance between the interests of creditors and debtors.’”¹⁷ The Code imposes numerous burdens on debtors, while the automatic stay blocks creditors from pursuing collection so they do not “dismember[] the estate while the bankruptcy case proceeds.”¹⁸ But this restriction on creditor rights is only intended for the “honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy.”¹⁹ This is the “simple bargain” of bankruptcy: to obtain the benefits of bankruptcy, a debtor must “proceed[] with honesty and place[] virtually all its assets on the table for its creditors.”²⁰ A debtor who abides by this bargain will submit to the “‘orderly and centralized’ debt-resolution process”²¹ designed by Congress.

The Texas Two-Step upsets that careful balance by sidestepping many of the debtor’s burdens.

Fla. Dec. 31, 2023) (noting settlement was reached in a multi-district litigation proceeding on August 29, 2023).

¹⁷ *Taggart v. Lorenzen*, 587 U.S. 554, 565 (2019) (quoting *Clark v. Rameker*, 573 U.S. 122, 129 (2014)).

¹⁸ *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 390 (2023) (citation modified).

¹⁹ *Loc. Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934).

²⁰ *Harrington*, 603 U.S. at 209.

²¹ *Coughlin*, 599 U.S. at 390-91.

Shorn of the statutory provisions aimed at driving a timely resolution through a carefully crafted negotiating dynamic, Two-Step bankruptcies become interminable. Specifically, in a Two-Step bankruptcy: (1) the reporting and transparency requirements set by the Code to facilitate plan negotiations become meaningless as GoodCo holds all the operational assets outside of bankruptcy;²² (2) the bankruptcy court’s oversight to which a debtor is subjected to preserve assets for creditors is rendered irrelevant because the principal assets are held by GoodCo and not subject to the Code’s provisions;²³ (3) the Code’s bar against paying favored creditors before all others is rendered useless when *only* disfavored tort creditors are subjected to the bankruptcy;²⁴ and (4) the long-established absolute priority rule, by which equity cannot be paid before creditors, absent

²² See 11 U.S.C. § 521; Fed. R. Bankr. P. 1007; *see also, 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 . . . thereby enhancing transparency and potentially laying bare any improper transfers or self-dealing”).

²³ See 11 U.S.C. §§ 363(b), (f), 364; *see also, 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”).

²⁴ See 11 U.S.C. §§ 1128, 1129; *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.”).

creditor consent, is flagrantly violated as GoodCo funnels *billions* in value to equity while tort victims languish in bankruptcy.²⁵

By sidestepping these provisions, CertainTeed, the GoodCo entity in DBMP’s bankruptcy, has been able to operate as normal for nearly *seven years* while moving no closer to a reorganization plan that might resolve creditor claims. Meanwhile, CertainTeed’s upstreaming of cash has enabled its ultimate parent, Compagnie de Saint-Gobain S.A., to pay out billions in dividends and share repurchases to shareholders. Since isolating its asbestos victims in bankruptcy in early 2020, Compagnie de Saint-Gobain S.A. has paid at least €8.9 billion to equity holders in dividends and stock buybacks.²⁶ Asbestos victims, on the other hand, remain uncompensated and trapped by

²⁵ See 11 U.S.C. §§ 726(a), 1129(a)(7), 1129(b); see also, 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 receive nothing until all previously listed creditors have been paid in full.”).

²⁶ See *Financial Results*, Saint-Gobain, <https://www.saint-gobain.com/en/finance/financial-results> (last visited Oct. 19, 2026) (sum of reported dividends from Consolidated Financial Statements for years 2020-25 and the 2026 Half-Year Financial Report and of share repurchases from earnings press releases for years 2021-25, the 2026 First-Half Press Release, and the 2020 Consolidated Financial Statement). Indeed, Compagnie de Saint-Gobain S.A., a publicly held global construction company based in Paris, had a market capitalization of €32.49 *billion* as of October 19, 2026. *Compagnie de Saint-Gobain S.A. (EPA:SGO)*, Stock Analysis, <https://stockanalysis.com/quote/epa/SGO/market-cap/> (last visited Oct. 19, 2026).

bankruptcy’s automatic stay and “preliminary” injunction despite holding higher-priority claims.²⁷

C. 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 quickly achieve a fair bargain with their creditors do not exist. For example, GoodCo 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

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.”).

preliminary injunction provide it with an indefinite payment holiday from asbestos litigation.

Contrast this with the costs borne by a debtor 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.”). In *DBMP*, the debtor and its 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.²⁸ 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.

²⁸ 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).

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.²⁹ And a claimant's death can result in lost legal rights and compensation. Some States limit the causes of action or damages a decedent's estate or personal representative may assert.³⁰ In some States, compensation for pain and suffering is not available to a decedent's estate.³¹ A lengthy delay also risks critical evidence being lost, as aging witnesses die or their memories fade.³²

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 its wealthy nondebtor

²⁹ *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).

³⁰ *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).

³¹ *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).

³² *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.").

affiliate chooses to fund its bankruptcy. 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 bizarre result follows directly from the Fourth Circuit’s identical standard for lifting the automatic stay and dismissing bad-faith bankruptcy filings. Under that standard, no amount of proof that BadCo and its corporate affiliates intended to use corporate maneuvers and bankruptcy law to create an untoward litigation advantage and impede creditor recoveries could ever allow tort victims to sue BadCo, GoodCo, or their affiliates in the tort system. The result is that such bankruptcy cases could last indefinitely. But “a chief purpose of the bankruptcy laws [is] to secure a prompt and effectual resolution of bankruptcy cases within a limited period.” *Taggart*, 587 U.S. at 564 (citation modified). No 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.

II. The Narrow Question Presented by Petitioners Has a Big Impact on Texas Two-Step Victims

Unlike previous petitions concerning the Texas Two-Step, the question presented here is narrow and statutory. It also cuts to the heart of the Two-Step’s bankruptcy abuse.

The question presented concerns the definition of “cause” as used in 11 U.S.C. § 362(d). As noted by Petitioners, the meaning of the term “cause,” whether applied to lifting the stay under § 362(d) or to dismissing a chapter 11 petition under § 1112(b), is the same. Pet. at 12.

Resolving Petitioners’ question presented requires only that the Court address the enduring circuit split as to the standard for determining when a lack of good faith amounts to “cause” under both § 362(d) and § 1112(b). The Fourth Circuit’s lack-of-good-faith standard stands alone in two key respects. First, it prevents a finding of a lack of good faith so long as a debtor intends to utilize § 524(g) of the Bankruptcy Code. This essentially immunizes any asbestos bankruptcy from dismissal or lift-stay even if it is filed with subjective bad faith.³³

Second, even when a party can show “subjective bad faith,” the Fourth Circuit also requires a showing of “objective futility”—i.e., the debtor lacks the means to fulfill a valid bankruptcy objective, such as reorganizing under chapter 11.³⁴

³³ See App. 15a (“It would be hard to argue that DBMP had subjective bad faith in seeking the protection that . . . [§ 524(g)] provided.”).

³⁴ See, e.g., *In re Aldrich Pump LLC*, No. 20-30608, 2023 WL 9016506, at *23 (Bankr. W.D.N.C. Dec. 28, 2023) (“While other Circuits either had, or later would, hold that either subjective bad faith or objective futility would support dismissal, the Fourth Circuit demanded both”); *id.* at *27 (“Because *Carolyn* involved a fatally insolvent debtor, the application of its two-prong standard to a case filed by a solvent, financially non-distressed debtor means all such cases survive dismissal, regardless of purpose.”); *DBMP*, 2021 WL 3552350, at *23

That showing is out of reach where, as here, BadCo can point to its funding agreement with GoodCo as a means of funding any theoretical plan of reorganization. As a result, BadCo need never defend its dilatory tactics against a charge of bad faith. So long as BadCo remains sufficiently funded to *theoretically* restructure, allegations of subjective bad faith need never be adjudicated.³⁵ Nowhere else in America are debtors *more* entitled to delay paying their bills simply because they assert that they easily could do so.³⁶ The Fourth Circuit’s standard for “cause” thus provides a roadmap for the very “abuse of the bankruptcy process” and “delay [to] creditors without benefitting them” that drove every circuit to adopt the good-faith requirement in the first place. *See In re SGL Carbon Corp.*, 200 F.3d 154, 161-62 (3d Cir. 1999) (collecting cases to find an implied requirement for “good faith” because a key purpose of bankruptcy is “prevent[ing] abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefitting them in any way”).

(explaining that a motion to dismiss “would likely fail—as it did in *Bestwall*—due to the exacting *Carolin* dual requirements of ‘subjective bad faith’ and ‘objective futility’”).

³⁵ The inverse is equally absurd. A well-intentioned but mistaken debtor whose reorganization is “objectively futile” may *also* languish indefinitely in bankruptcy pursuing a fool’s effort to reorganize.

³⁶ This is also contrary to Congress’s intention for chapter 11 to deal “with the reorganization of a financially distressed business enterprise, providing for its rehabilitation by adjustment of its debt obligations and equity interests.” S. Rep. No. 95-989, at 9 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5795.

Neither requirement exists in any other circuit. This is demonstrated most dramatically by the Third Circuit’s decision in *LTL Mgmt., LLC*, 64 F.4th 84, the only Texas Two-Step to escape the Fourth Circuit. There, the Third Circuit held that the debtor’s intent to use the bankruptcy system for an improper purpose established a lack of good faith and therefore “cause” under § 1112(b).³⁷ Neither the debtor’s subjective intent to utilize a provision of the Bankruptcy Code—specifically § 524(g), the same provision DBMP claims it intends to use—or any “objective futility” mattered.³⁸

The Fourth Circuit stands alone in answering “no” to the narrow question of whether a debtor’s subjective intent to misuse bankruptcy is, by itself, sufficient “cause” to lift the stay or dismiss a bankruptcy case. Because the Texas Two-Step is expressly designed to take advantage of the Fourth Circuit’s minority position and trap the debtor’s creditors in an intentionally interminable bankruptcy case, this question is fundamental to all Texas Two-Step cases.

This Court should resolve the circuit split by holding that “cause” is established by a debtor’s bad-faith pursuit of bankruptcy as part of a Texas Two-Step scheme.

³⁷ *LTL Mgmt., LLC*, 64 F.4th at 109-10.

³⁸ *Id.* at 98 & n.8 (noting that the bankruptcy court had found the debtor intended to utilize § 524(g) for a valid purpose and that only the Fourth Circuit requires “objective futility”).

CONCLUSION

The Fourth Circuit's unique and untenable interpretation of the "cause" standard perpetuates a gross abuse of bankruptcy whereby the wealthiest corporate enterprises may forever avoid paying their tort victims. The Court should take up the important legal questions presented by Petitioners and put an end to this abuse. The petition should be granted.

Respectfully submitted,

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