No. 25A-____

In the Supreme Court of the United States

MICHAEL HERLIHY, ANN HERLIHY, and
THE ESTATE OF PETER L. BERGRUD,
Applicants,

v.

DBMP, LLC,
Respondent.

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

APPLICATION FOR A 60-DAY EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI

TO: The Honorable John Roberts, Chief Justice of the United States and Circuit Justice for the Fourth Circuit

The applicants respectfully request a 60-day extension of time within which to file a petition for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Fourth Circuit in this case, up to and including September 18, 2026. Absent an extension, the deadline for filing the petition will be July 20, 2026. This application is being filed on July 10, 2026—at least 10 days before the petition is due. *See* S. Ct. R. 13.5. In support of this request, the applicants state as follows:

1. The Fourth Circuit entered judgment and issued its opinion on February 11, 2026, a copy of which is attached. App. 1–58. The Fourth Circuit denied rehearing en banc in a per curiam order, also attached, on April 20, 2026. App. 59. This Court has jurisdiction under 28 U.S.C. § 1254(1).

2. This case presents an exceptionally important question that has divided the circuits: whether a bankruptcy debtor's Chapter 11 petition is filed in good faith when the debtor is created in a "divisional merger," which assigns the debtor a solvent entity's liabilities for discharge in bankruptcy while shielding that entity's assets from the Code's requirements.

3. In a divisional merger, a company "split[s] itself into two companies under Texas corporation law … by forming two new entities and assigning to them [the original company's] liabilities and assets." App. 5. The maneuver, commonly known as the "Texas Two-Step," reflects "an increasingly common scheme" that solvent companies use to "shed [themselves] of civil tort liability for asbestos-related claims." App. 21 (dissenting op.). Such a maneuver is designed to "isolate the asbestos liabilities in a single affiliated corporation and file it in Chapter 11." App. 31 (dissenting op.). Using this "corporate sleight-of-hand," even fully solvent companies take advantage of bankruptcy to protect themselves from asbestos claims in the civil justice system. App. 25 (dissenting op.).

4. The linchpin to this scheme is section 524(g) of the Bankruptcy Code, which allows debtors to establish a trust in bankruptcy court for payment of all pending and future claims. By invoking section 524(g) as the basis for a bankruptcy filing, a non-distressed debtor can take advantage of an automatic stay, 11 U.S.C. § 362(d), to shield it from tort claims in the civil justice system, and a preliminary injunction, 11 U.S.C. § 105(a), to forestall claims even against its non-debtor affiliates.

5. That's what happened here. For more than half a century, CertainTeed Corporation manufactured and sold building products containing asbestos, leading to

thousands of tort suits claiming that the company's products caused asbestosis and mesothelioma. App. 4. Claimant Michael Herlihy was one of those claimants. Herlihy worked for a saw sharpening company, where he regularly sharpened saw blades used to cut CertainTeed's asbestos-contaminated cement before he was diagnosed with mesothelioma in 2023. App. 8. Likewise, Peter Bergrud regularly cut CertainTeed cement for his work in the construction industry before his death from mesothelioma in 2019. App. 8–9. The claimants filed tort claims against CertainTeed in state courts. *Id.*

6. CertainTeed responded to these and similar claims by creating a new company (also called CertainTeed) to hold most of the company's assets and liabilities, and a separate entity (called DBMP) to hold "all of its asbestos liabilities." App. 5–6. That arrangement ensured that, at the time of its creation, DBMP's liabilities outstripped its assets. App. 49–50 (dissenting op.). That was by design: DBMP was created insolvent for the purpose of filing for bankruptcy to automatically stay all tort actions against it. App. 3. And once the petition was filed, DBMP moved for, and the bankruptcy court granted, a preliminary injunction prohibiting asbestos claims against the newly formed CertainTeed and affiliated entities not subject to the automatic stay—even though they were not insolvent and had never filed for bankruptcy. App. 6–7.

7. Seeking to revive their tort claims, the claimants filed motions to lift both the stay and the preliminary injunction, arguing that DBMP filed its Chapter 11 petition in bad faith. App. 9. The Bankruptcy Code gives the bankruptcy courts authority to grant relief from the automatic stay on a showing of "cause." 11 U.S.C. § 362(d). Cause existed here, the claimants explained, because DBMP and its affiliates were not in financial distress and

were "capable of paying all claims in full." App. 3. The company invoked Chapter 11, they argued, "not to reorganize," "but to deny [claimants] the right to prosecute their claims in state court." App 9. And they asked "that they be allowed to prosecute their asbestos claims against the debtor before a judge and jury in the traditional tort system." App. 3.

8. The bankruptcy court denied the motions, rejecting the claimants' argument "that a non-distressed, solvent company's use of bankruptcy tools necessarily amounts to bad faith." App. 15. The district court affirmed the bankruptcy court's decision. *Herlihy v. DBMP, LLC*, 2024 WL 4589795 (W.D.N.C. 2024).

9. The Fourth Circuit also affirmed. The court agreed with the claimants "that a showing of a lack of good faith, or bad faith, can [] justify lifting the stay." App. 14. "When a debtor manipulates the bankruptcy procedure for some other purpose or steps outside the equitable limitations of the Bankruptcy Code," the court explained, "his good faith comes into question, placing in doubt any relief he seeks in bankruptcy"—including the automatic stay. *Id.* But the court ultimately "agree[d] with the bankruptcy court that the record does not include evidence to suggest bad faith," because DBMP "filed its Chapter 11 petition with the legitimate purpose of pursuing a § 524(g) plan." App. 4, 16.

10. In reaching that conclusion, the Fourth Circuit noted that DBMP faced substantial asbestos liability, but it cited no facts suggesting that, as a result, the company was in financial distress. The court rejected the claimants' argument that "the use of Chapter 11 is somehow wrong" when the debtor is a "profitable, non-distressed" company with "the ability … to pay the asbestos claims without the need of filing a Chapter 11." App. 17. The debtor's solvency is "irrelevant to … bad faith," it concluded, because section 524(g)

itself "does not require a showing of 'insolvency.'" *Id.* Relying on legislative history, the court wrote that section 524(g) recognizes a "different form of financial distress" suffered by companies facing asbestos claims—even those that remain fully solvent in the face of those claims. App. 18. Congress passed section 524(g), it concluded, to bypass inefficiencies and unfairness that the court saw as inherent in the civil justice system: "The § 524(g) process is quicker, more efficient, and fairer than can be provided by continuing with widely dispersed litigation in various federal and state courts." App. 19.

11. In a strongly worded dissent, Judge King disagreed. Chapter 11, he wrote, "was designed to give those teetering on the verge of a fatal financial plummet an opportunity to reorganize on solid ground and try again, not to give profitable enterprises an opportunity to evade … liability." App. 24. "And the purpose of the automatic stay is to preserve a debtor's assets and permit an orderly, as opposed to chaotic, distribution or reorganization," not "to grant defendants a last-minute escape chute out of pending civil litigation." *Id.* DBMP's Chapter 11 filing, the dissent concluded, was a bad-faith attempt to "subvert[] the Bankruptcy Code to evade asbestos-related civil tort liability." App. 22.

12. By allowing financially healthy companies to invoke Chapter 11 to escape tort claims in the civil justice system, the Fourth Circuit's holding conflicts with the law of other circuits, which recognize that "good faith necessarily requires some degree of financial distress on the part of a debtor." *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 121 (3d Cir. 2004) (collecting cases); *see*, *e.g.*, *In re LTL Mgmt., LLC*, 64 F.4th 84, 103 & n.14 (3d Cir. 2023) (noting the "central role" that financial distress plays in the good-faith inquiry). It also incentivizes forum-shopping by making the Fourth Circuit into a "'safe

haven' for ultra-wealthy corporations seeking to evade asbestos-related civil tort liability under the guise of the Bankruptcy Code." App. 21 (dissenting op.).

13. The applicants respectfully request a 60-day extension of time to file a petition for a writ of certiorari seeking review of the Fourth Circuit's ruling in this case and submit that there is good cause for granting this request. Applicants' counsel of record, Deepak Gupta, and his colleagues are heavily engaged with other matters, including: an opening brief due in the Third Circuit in *In re Toronto-Dominion Bank/First Horizon Corporation Securities Litigation*, No. 26-1146, on July 13; a reply brief due in the California Court of Appeal in *Sjobring v. First American Title Insurance Co.*, No. B347938, on July 20; a petition due in the Connecticut Supreme Court in *Cruz v. Spec Personnel*, No. AC 46515 UWY, on July 22; a reply brief due in the Seventh Circuit in *Murray et al. v. Metro Fibernet LLC*, No. 25-2687, on July 22; a merits reply brief due in this Court in *Anderson v. Intel*, No. 25-498, on August 3; a reply brief due in the Ninth Circuit in *Lang v. Providence*, No. 25-7294, on August 3; an opening and answering brief due in the Nevada Supreme Court in *Escobia v. Raspperry*, Nos. 90213 and 89723, on August 7; a reply brief due in the Ninth Circuit in *Phlaum v. Navy Federal*, No. 25-7070, on August 10; a certiorari-stage reply brief due in this Court in *Cantero v. Bank of America*, No. 25-1313, on August 10; an opening brief due in the Ninth Circuit in *In re Google RTB Consumer Privacy Litigation*, No. 26-2638, on August 12; an appellee brief due in the Virginia Court of Appeals in *Zwerner v. Newport News School Board*, No. CL2301446H-00, on August 12; a reply brief due in the Seventh Circuit in *Xu Lun v. Milwaukee Electric Tool Corp*, No. 25-3347, on August 17; an opening brief due in the Eighth Circuit in *Ball-Bey v. Chandler*, Nos. 26-

1415 and 26-1419, on August 18; a response brief due in the Florida Court of Appeal in *Casaretto v. Johnson & Johnson*, No. 4D2026-1014, on August 25; a reply brief due in the Third Circuit in *In re Toronto-Dominion Bank/First Horizon Corporation Securities Litigation*, No. 26-1146, on September 2; a reply brief due in the Fourth Circuit in *Does v. Mindgeek*, No. 25-2411, on September 3; a reply brief due in the Nevada Supreme Court in *Escobia v. Raspperry*, Nos. 90213 and 89723, on September 7; and an oral argument in the New York State Court of Appeals in *Salter v. Meta*, No. APL-2025-00170, on September 15.

14. Extending the deadline to file the petition in this case to September 18, 2026, will allow applicants' counsel adequate time to prepare the petition in this case in concert with their other obligations.

CONCLUSION

For the foregoing reasons, the applicants respectfully request that the Court extend the time within which to file a petition for a writ of certiorari in this matter to and including September 18, 2026.

Dated: July 10, 2026

Respectfully submitted,

/s/ Deepak Gupta
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