Docket #0226 Date Filed: 4/16/2026

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re ALDRICH PUMP LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 20-30608 (LMJ) (Jointly Administered)
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, Plaintiff, v. ALDRICH PUMP LLC, MURRAY BOILER LLC, TRANE TECHNOLOGIES COMPANY LLC, and TRANE U.S. INC., Defendants.	Adv. Pro. No. 21-03029 (LMJ)
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC, Plaintiff, v. INGERSOLL-RAND GLOBAL HOLDING COMPANY LIMITED, TRANE TECHNOLOGIES HOLDCO INC., TRANE TECHNOLOGIES COMPANY LLC, TRANE INC., TUI HOLDINGS INC., TRANE U.S. INC., and MURRAY BOILER HOLDINGS LLC, Defendants.	Adv. Pro. No. 22-03028 (LMJ)

DEFENDANTS' SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO STAY ADVERSARY PROCEEDINGS

[1] The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.

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Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray"), as debtors and debtors in possession (together, the "Debtors"), and Trane Global Holding Company Limited f/k/a Ingersoll-Rand Global Holding Company Limited, Trane Technologies Holdco Inc., Trane Technologies Company LLC ("TTC"), Trane Inc., TUI Holdings Inc., Trane U.S. Inc. ("TUI," and together with TTC, the "NDAs"), and Murray Boiler Holdings LLC (collectively, the "Trane Defendants," and together with the Debtors, "Defendants") hereby file this supplemental memorandum in support of the previously continued *Motion to Stay Adversary Proceedings* (the "Stay Motion"), respectfully stating as follows:

PRELIMINARY STATEMENT

Numerous developments since the Court first considered the Stay Motion in October 2025 provide additional compelling grounds to stay the Adversary Proceedings. These include recent events in these bankruptcy proceedings; Judge Volk's decision denying the motions for leave to appeal Judge Whitley's *Order Denying Motions to Dismiss* [Dkt. 2047] (the "Order Denying Dismissal"); and recent decisions involving other "Texas Two-Step" bankruptcies (including from the Fourth Circuit) which further undermine the Committee's contentions in the Adversary Proceedings and support a stay here.

In these bankruptcy proceedings, recent changes to the governance of the Committee, the parties' agreement to commence mediation, and, most importantly, the decision to bifurcate the estimation proceeding, all clear a path that could lead to resolution of the cases and obviate any need to further litigate the Adversary Proceedings. In particular, bifurcation of the estimation proceeding will soon yield a definitive tort-system extrapolation estimate of the Debtors' liabilities from which the parties potentially could negotiate a global resolution. Bifurcation further led the parties to agree to suspend all other estimation-related discovery and deadlines,

leading this Court to inquire in recent hearings whether the Adversary Proceedings should likewise be stayed.

The answer is an unequivocal yes. Absent a stay, the costs and burdens of the Adversary Proceedings will soon escalate materially. Activity to date has been limited largely to written discovery and correspondence, meet and confers, and limited motion practice relating to that discovery. That is starting to change. Significant document review and production is in process. The Committee recently served yet another extremely broad set of written discovery requests on Defendants. Finally, the Committee indicated during the February 26, 2026 hearing that it will press for depositions and expert discovery to start in the near term. Given the sheer number of depositions (20 permitted per side), ongoing litigation of the Adversary Proceedings in parallel with estimation will quickly become very time-consuming and very costly—potentially disrupting not only the estimation process but efforts to resolve the case. It also likely will necessitate significant additional motion practice.

Recent events also have highlighted the highly tenuous and untested (and in the Defendants' view, baseless) nature of the legal theories on which these Adversary Proceedings are based. The hearing in February on Defendants' *Motion to Compel the Committee to Provide Adequate Responses to Discovery Requests* (the "Motion to Compel")[2] revealed that the Committee has no evidentiary basis for its original "creditor-reliance" theory of substantive consolidation. Instead, the Committee indicated that it now intends to seek substantive consolidation of non-debtor entities on the basis of legal theories that apparently have never been proposed to, much less accepted by, any court. The recent hearing also laid bare that the Committee, through substantive consolidation, is asking this Court to dramatically complicate

[2] Adv. Pro. 21-03029, Dkt. 204; Adv. Pro. 22-03038, Dkt. 131.

the nature of these proceedings—implicating tens of thousands of additional creditors of non-debtors New TTC and New Trane—based on at best a handful of prepetition settlements that allegedly "relied" on the "economic resources" of Old IRNJ and Old Trane (and without any showing the Debtors themselves lack the resources to pay those settlements).

Furthermore, in connection with the Motion to Compel the Committee has now admitted what everyone has known all along: the entire goal of these Adversary Proceedings is simply a repackaging of the Committee's seriatim attacks on the "Texas Two-Step" nature of these bankruptcies. But the Committee has already litigated, and lost, its efforts to dismiss these bankruptcies on that basis. Indeed, since the Court considered the Stay Motion in October 2025, District Court Judge Volk denied the motions filed by the Committee and certain other claimants for leave to appeal Judge Whitley's Order Denying Dismissal. See Off. Comm. of Asbestos Claimants v. Semian, 809 F. Supp. 3d 383, 391-92, *6 (W.D.N.C. 2025). For reasons forecast in the Stay Motion, Judge Volk's decision supports a stay of the Adversary Proceedings even absent operation of the divestiture rule. The Committee's decision, after filing the Adversary Proceedings, to ask the Court to dismiss these cases on the basis of their objections to the "Texas Two-Step" has obvious law-of-the-case ramifications for the Adversary Proceedings. By leveling the same "sundried" attacks on the "Texas Two-Step" in dismissal litigation as in the Adversary Proceedings—often using the same exact words—the Committee is bound here by the resulting rulings. Yet the Committee fails to explain how or why its "Texas Two-Step" challenges would fare any better in the Adversary Proceedings than they did in the dismissal litigation, particularly given that dismissal was the appropriate forum to adjudicate those issues.

Finally, as discussed in section III below, Judge Volk's decision aligns with at least three decisions entered since the Court considered the Stay Motion in October 2025—including one

from the Fourth Circuit—that have likewise rejected the contentions and legal theories the Committee advances in the Adversary Proceedings.

For all these reasons, and those submitted in the Stay Motion, Defendants submit the Adversary Proceedings should be stayed, with the Court to hold a status conference approximately 60 days after the Court enters a decision in the Phase I estimation proceeding to consider continuation of such stay at that time.

BACKGROUND[3]

A. The Adversary Proceedings

1. As detailed in the Stay Motion, each of the Committee's Adversary Proceedings is premised on the same two underlying contentions. See Stay Motion, at 1-2. The first, the "Texas Two-Step Hinder and Delay Contention," alleges the "Texas Two-Step" nature of Debtors' bankruptcy filings constitutes a "stratagem" to trap asbestos claimants into a prolonged bankruptcy proceeding until claimants capitulate to a "bankruptcy discount." Id. at 1-2, 11-13 (citing Committee allegations). The second, the "Insufficient Assets Contention," contends the 2020 corporate restructuring which created the Debtors (the "Corporate Restructuring") rendered the Debtors "insolvent," "inadequately capitalized," and unable to satisfy their asbestos liabilities. Id. (citing Committee allegations).[4]

2. The Committee has not disputed Defendants' characterizations of the underlying contentions in the Adversary Proceedings. Nor does it dispute that the underlying purpose of the

[3] Defendants respectfully direct the Court to the Stay Motion for a comprehensive recitation of the bankruptcy proceedings and the reasons for staying the Adversary Proceedings. This Background section summarizes the arguments made by the parties in connection with consideration of the Stay Motion in October 2025.

[4] Outside of the Adversary Proceedings, by contrast, the Committee maintains the Debtors—by virtue of their funding agreements with the NDAs (the "Funding Agreements")—are, in fact, solvent, suffer no financial distress, and are capable of paying their asbestos liabilities in full. See Stay Motion at 2, 15-16 (citing Committee allegations in dismissal proceedings).

Adversary Proceedings is to effectuate dismissal of these cases. None of the Adversary Proceedings seek a monetary recovery or even additional assurances the Funding Agreements will be available, as needed, to fully satisfy the Debtors' asbestos liability.[5]

B. Defendants' Motion To Stay the Adversary Proceedings, the Committee's Response, and the Court's Decision to Continue the Motion.

3. The Stay Motion detailed three principal reasons why the Adversary Proceeding should be stayed. Each of the reasons, briefly recapped below, apply today with even greater force.

4. *First*, the Committee's decision to litigate its "Texas Two-Step Hinder and Delay Contention" in the context of dismissal, after filing the Adversary Proceedings but before they were litigated, has clear ramifications on the latter. If the District Court had granted the motions for leave to appeal Judge Whitley's Order Denying Dismissal—which were pending at the time the Stay Motion was filed—this Court would be divested of jurisdiction over the "Texas Two-Step Hinder and Delay Contention" involved in the appeal. See Stay Motion, at 4-5, 23-26. Alternatively, if the District Court denied the leave for appeal (as subsequently occurred), the Order Denying Dismissal—which squarely rejected the Committee's claim that the Debtors (formed through a "Texas Two-Step") are improper debtors—would be law of the case that cannot be collaterally attacked in the Adversary Proceedings. See id. at 6, 26-29 (citing decisions where bankruptcy courts have applied law of the case to preclude re-litigation of issues

[5] In DBMP, the asbestos claimants committee—comprised of the same counsel representing the Committee here—actually objected to the debtor's motion to modify the funding agreement in ways ***favorable*** to asbestos claimants, arguing it was an attempt "to extinguish fraudulent transfer claims that would unwind the Corporate Restructuring, and to try to defeat the pending request to substantively consolidate the Debtor's estate with CertainTeed." See In re DBMP, Case No. 20-30080 (Bankr. W.D.N.C.), Dkt. No. 1083, at 2. No one seriously disputes the adversary proceedings in these cases are about unwinding the "Texas Two-Step" and causing dismissal of the bankruptcies, not assuring sufficient resources are available to pay claims.

already decided in a different contested matter or adversary proceeding within the same bankruptcy).

5. *Second*, the Stay Motion explained that the Committee's "Insufficient Assets Contention" should be stayed because it depends on speculation and future contingences, including (1) whether the Debtors' liability for asbestos claims exceeds the value of the Debtors' existing assets and financial resources (including insurance assets, a $270 million Qualified Settlement Fund, and value generated by its subsidiaries) even before considering the uncapped resources available under the Funding Agreements and (2) speculation that the NDAs—despite honoring every funding request to date—will not honor their commitments under the Funding Agreements. See id. at 5-6, 31-35.

6. *Third*, Defendants argued the Adversary Proceedings should at a minimum be stayed until completion of the estimation proceedings. See id. at 35-37. The Debtors have consistently demonstrated their commitment to resolve these cases and move forward to confirmation. Phase I estimation provides a real opportunity to resolve these cases in their entirety, which would moot the need to litigate the Adversary Proceedings. Moreover, the Committee's Insufficient Assets Contention necessarily requires an estimation of the Debtors' asbestos liability. Staying the Adversary Proceedings now promotes judicial economy and the efficient management of the Court's docket, something the Court recognized at the February 2026 hearing. See Feb. 26, 2026 Hr'g Tr. at 122:22 ("If you're only going to rely on [the Committee's estimation of Debtors' asbestos liability] after estimation, that only, I mean, to me, that is exactly why this should be stayed. Because, you know, it's just too soon if, if you want to go through all of estimation before you talk about what your, what the number, the liability is, the amount.").

7. The Committee's objection to the Stay Motion did not meaningfully respond to any of these three reasons. Instead, the Committee first focused on Defendants' prior efforts to stay the litigation at earlier points in these cases under different circumstances, arguing Judge Whitley's prior rulings "preclude the requested stay relief" (see Dkt. 2842, at 11-14) and, oddly, that the standard for seeking a stay pending appeal applied to the Stay Motion (see id. at 14-16). In reply, Defendants demonstrated the Committee's arguments were based on the wrong standards and provided several examples where courts granted a motion to stay after previously denying a similar request. See Dkt. 2851, at 5-8. A court always retains authority to manage its docket in view of new developments.

8. The Committee advanced four arguments in response to Defendants' contention that Judge Whitley's Order Denying Dismissal, and the motions for leave to appeal that order, warranted a stay of the Adversary Proceedings. The Committee's arguments were incorrect on the law and otherwise meritless.[6] The Committee did not (and could not) contest the near complete identity between the "Texas Two-Step" challenges the Committee unsuccessfully asserted in the dismissal litigation and those that serve as the central contention, and entire purpose, of the Adversary Proceedings. See Dkt. 2822, at 4 & Exhibit B (chart comparing the Committee's allegations regarding the "Texas Two-Step" across the Adversary proceedings and the Committee's motion to dismiss). As detailed below in section II, the Committee's vague attempts to sidestep the law-of-the-case impact of its previous challenges are groundless. Law of the case is a result of the Committee's own making: by leveling the same attacks on the "Texas-Two Step" at every possible turn, the Committee is bound by resulting legal rulings.

[6] See id. at 8-13 (explaining how the divestiture rule applies to interlocutory orders closely related to those aspects of the case on appeal and why the Adversary Proceedings concern the same "Texas Two-Step" challenges at issue in the motions for leave to appeal the Order Denying Dismissal).

9. Nor did the Committee dispute that its Insufficient Assets Contention depends on speculation and uncertain contingent future events. Nor could it. The Committee's "alternative positions"—what it now calls "nuanced" (Dkt. 2842, at 22)—on whether the Debtors are solvent (the Committee's position on dismissal) or insolvent (the Committee's position in the Adversary Proceedings) are ***premised on*** that uncertainty. In arguing for dismissal, the Committee trumpeted that the Debtors are backed by uncapped Funding Agreements that will be honored, as the Committee otherwise could never have argued the Debtors lack financial distress.[7] In stark contrast, in the Adversary Proceedings, the Committee speculates that the Debtors lack sufficient assets to fund their asbestos liabilities and, further, that the Debtors and the NDAs will not enforce and honor the Funding Agreements. Moreover, the Committee's selective citation to Judge Whitley's prior rulings (see Dkt. 2842, at 22) ignores the numerous instances in those same rulings where Judge Whitley acknowledged the likely scenario that the Funding Agreements ***would*** be enforced and honored and, thus, there would be no fraudulent transfer claim worth pursuing. See, e.g., Stay Motion at ¶¶ 6-7.[8]

[7] See, e.g., *Consolidated Memorandum of Law to Support Motion for Leave to Appeal the Orders Denying Aldrich Committee's, Mr. Robert Semian and Forty-Six Other MRHFM Plaintiffs', and Mr. Wilson Buckingham and Ms. Angelika Weiss's Motions to Dismiss* (filed in consolidated district court dismissal appeal for Bestwall and these cases), Aug. 28, 2025 (attached to Stay Motion as Exhibit A) at 4; see also id. at 7 (stating "[t]he bankruptcy court held that Aldrich and Murray, through their respective funding agreements with corporate affiliates, can 'undisputably . . . fund their obligations"); 8 ("Aldrich and Murry have the same ability to pay claimants as did their corporate predecessors, and that ability to pay is beyond doubt.").

[8] The Committee's claim that the sufficiency of the Debtors' assets is "irrelevant" to "Plaintiffs' contentions in the Adversary Proceedings" is baseless, because those claims are all premised on some alleged harm to claimants. See Adv. Pro. 21-03029, Dkt. 209 (Defendants' reply in support of motion to compel), at ¶¶ 21-23. And the Committee's suggestion that the "sufficiency of assets is determined ***at the time*** of the fraudulent transfer, not after," Dkt. 2842, at 22, ignores that its derivative claim must provide some real benefit to the estate. See, e.g., Wellman v. Wellman, 933 F.2d 215, 217-18 (4th Cir. 1991) (avoidance claims "allow recovery of the transferred property or its value only if the recovery is for the benefit of the estate"); In re Mirant Corp., 675 F.3d 530, 534 (5th Cir. 2012) ("[A] trustee may only avoid a transfer *to the extent it benefits the estate*."). At a minimum, the speculation and contingent nature of the Committee's "Insufficient Assets Contention" is highly relevant in assessing whether to stay the Adversary Proceedings.

10. Finally, in responding to Defendants' contention that the Adversary Proceedings should be stayed at least until Phase I estimation is complete, the Committee cited a comment that Judge Whitley made early in the proceedings about permitting both sides to pursue their respective litigation paths. Dkt. 2842, at 3-4. That ignores the developments in the cases during the last several years, including the Committee's decision, after filing the Adversary Proceedings, to instead pursue dismissal of the cases on the exact same bases. It also ignores Judge Whitley's comment, cited in the Committee's objection, that he did not want to tie this Court's hands on the proper management of these cases. See id. at 10 (citing Judge Whitley comment that he did not want to "put[] [his] fingerprints on an issue and then [his] successor [would be] stuck with what we've done and that's never a good thing, either"). In any event, this Court has already ruled that litigation of the Adversary Proceedings will trail the estimation proceeding. See Oct. 23, 2025 Hr'g Tr. at 76:23-77:11.

11. At the October 23, 2025 hearing, the Court considered the Stay Motion and the Committee's *Motion to Amend Case Management Order* [Adv. Pro. 21-03029, Dkt. 168; Adv. Pro. 22-03028, Dkt. 97] for the Adversary Proceedings ("Motion to Amend CMO"). With respect to the Motion to Amend CMO, the Court established deadlines applicable to Defendants' response to the Committee's document requests (including as to search terms and custodians), but otherwise denied the motion. See Oct. 23, 2025 Hr'g Tr. at 79:3-10; Adv. Pro. 21-03029, Dkts. 196 & 197; Adv. Pro. 22-03028, Dkts. 123 & 124. The Court continued the Stay Motion for six months. See Oct. 23, 2025 Hr'g Tr. at 88:16-89:15.

RECENT DEVELOPMENTS FURTHER SUPPORT STAYING THE ADVERSARY PROCEEDINGS

12. Following the filing of the Stay Motion, numerous developments—both in these cases and involving other "Texas Two-Step" cases—further support staying the Adversary

Proceedings, making the case for a stay even stronger than when the Court considered the issue in October 2025. These developments each relate to one or more of the several already existing reasons to stay the proceedings, and further demonstrate the baseless nature of the Adversary Proceedings. The serious infirmities in the Committee's claims mean it faces little prejudice from staying litigation that is effectively a "Hail Mary" with little, if any, chance of success, as Judge Whitley noted likely was the case from the beginning.[9]

I. RECENT DEVELOPMENTS IN THESE BANKRUPTCY PROCEEDINGS

13. The events that have taken place in this bankruptcy proceeding since the Court's continuation of the Stay Motion in October 2025 certainly provide further grounds for staying the Adversary Proceedings.

14. *First*, on November 6, 2025, the Bankruptcy Administrator materially altered the make-up of the Committee with the appointment of seven additional claimants. See Dkt. 2885. Prior to these new appointments, the Committee was controlled by various plaintiff firms preoccupied with dismissing the cases and resistant to negotiations and a potential resolution.[10] While the law firms that represent Committee claimants have barely changed, Defendants are hopeful the newly constituted Committee, guided by the Court's directives on proper Committee governance,[11] can finally facilitate productive negotiations over case resolution.

15. *Second*, toward that end, on November 6, 2025, the Bankruptcy Administrator filed a *Motion for Order Directing Parties to Mandatory Mediation and Establishing Mediation*

[9] See Apr. 1, 2022 Hr'g Tr. at 30:5-9 (noting substantive consolidation is "rarely appropriate" and "even less frequently appropriate when you're trying to do this with a nondebtor, much less a company or companies of the size and magnitude of, of New Trane and, and New TTC," and indicating substantive consolidation claim "is a longshot" and "the last arrow in the quiver").

[10] See Oct. 23, 2025 Hr'g Tr. at 102:21-24, 108:10-14, 132:1-11, 136:11-15.

[11] See Aug. 28, 2025 Hr'g Tr. at 48:4-49:5; Nov. 20, 2025 Hr'g Tr. at 23:20-25:13, 26:10-27:15, 32:18-33:18.

Procedures (the "Mediation Motion").[12] While the parties have different perspectives on the best time for the mediation—including whether it should occur before or after estimation—all parties supported the Mediation Motion, and a mediation effort could prove fruitful if actual Committee members are involved and Committee counsel truly are interested in a resolution.

16. *Third*, and most importantly, subsequent to the Stay Motion, the Court granted the FCR's *Motion for an Order Commencing the Estimation Trial With Hearings Based on Tort System Values and the Parties' Expert Reports* [Dkt. 2941] (the "Bifurcation Motion"). None of the Parties to the estimation proceeding objected to the Bifurcation Motion, the general consensus being that a Court finding on the extent of the Debtors' asbestos liability based on tort-system values could facilitate an ultimate resolution of the cases.[13]

17. The granting of the Bifurcation Motion has now served to materially accelerate the estimation proceedings. The parties will have in the near term a tort-system extrapolation estimate of the Debtors' liabilities as a foothold from which to negotiate a resolution of the cases. Such a resolution, of course, would obviate (even from the Committee's perspective) any reason to continue the Adversary Proceedings.

18. There also is much to be done over the coming months in connection with estimation. The exchange of rebuttal expert reports just occurred on March 27, 2026, to be followed by depositions of multiple expert witnesses by May 15, 2026; briefing on pre-hearing

[12] The Court granted the Mediation Motion. See Dkt. 2006.

[13] See Dkt. 2941, at 1, 3 (FCR: "The Court's subsequent estimate could, and indeed should, lead to an agreement between the estate fiduciaries for a plan and trust consistent with the Court's findings," which "should put this case on the path to plan confirmation"), Dkt. 2969, at 1, 9 (ACC: "the Committee believes that mediation should proceed in tandem with any expedited estimation in an effort to advance the ultimate resolution of these cases, and noting "a streamlined estimation would be far preferable to the current drawn out process"); Dkt. 2973, at 1-2 (Debtors: "an initial trial estimating the Debtors' liabilities under the Tort System Extrapolation Method could foster negotiations, allow parties to better evaluate the proposed $545 million Debtors/FCR Plan, and lead the parties to a consensual resolution").

motions by June 25, 2026 and July 16, 2026; a pretrial conference and motions hearing on July 23, 2026; pretrial briefs by August 3, 2026; trial starting on August 10, 2026; likely post-trial briefs due thereafter; and the Court's ultimate ruling. See Dkt. 3011, at ¶¶ 3, 5-6. The bifurcation of the estimation proceedings led the parties and the Court to jointly suspend all other estimated-related discovery and deadlines in estimation (see id. at ¶ 12) and for the Court to ask whether the Adversary Proceedings should be likewise be stayed. See Dec. 17, 2025 Hr'g Tr. at 41:3-44:4. The Defendants agree that bifurcation and acceleration of the estimation proceeding provides an additional and compelling reason to stay the Adversary Proceedings at this time.

19. *Fourth*, absent a stay, the estates are likely to incur substantially escalating legal and other professional fees associated with the Adversary Proceedings. FTI, the Committee's apparent expert for the Adversary Proceedings, has already incurred over $2.4 million in fees related to the Adversary Proceedings. See Stay Motion at ¶ 20 (citing FTI interim fee applications for the period June 1, 2023 to May 31, 2025 seeking over $1.6 million in fees relating to the Adversary Proceedings). FTI's latest two fee applications, covering the period June 1, 2025 to January 31, 2026, sought $804,298 relating to "Potential Avoidance Actions & Litigation." See Dkts. 3118 & 2942. Likewise, the last two fee applications filed by Winston & Strawn (whose only role in these bankruptcies is to prosecute the Adversary Proceedings) sought over $1 million for the eight-month period from January 1, 2025 to August 31, 2025. See Dkts. 2789 & 2995. Furthermore, Winston & Strawn's monthly fee statements for September 2025 through January 2026 cumulatively request over $2 million.[14] This does not even consider the

[14] See *Notice of Monthly Compensation Statement by Winston & Strawn LLP for the Period of September 1, 2025 Through September 30, 2025* (requesting $297,507.50 in fees); *Notice of Monthly Compensation Statement by Winston & Strawn LLP for the Period of October 1, 2025 Through October 31, 2025* (requesting $867,705.00 in fees); *Notice of Monthly Compensation Statement by Winston & Strawn LLP for the Period of November 1, 2025 Through November 30, 2025* (requesting $334,178.00 in fees); *Notice of Monthly Compensation Statement by*

cost of work performed by the professionals retained by the Debtors (and the NDAs) relating to the Adversary Proceedings.

20. Without a stay, the professional fee run-rate for the Adversary Proceedings will accelerate—perhaps materially—over the next few months. Committee counsel stated at the February 26, 2026 hearing that it intends to begin taking depositions, seek an exchange of expert reports, and engage in expert discovery. See Feb. 26, 2026 Hr'g Tr. at 70:2-71:7. The Committee's suggestion that depositions would be "narrow and focused," and that expert discovery would be "truncated," are belied by its prior argument that it should be able to take ***at least*** 30 depositions in the Adversary Proceedings (the number was ultimately set at 20 depositions per side), see, e.g., Adv. Pro. 21-03029, Dkts. 119 at 3-4, 8-11, Dkt. 123 at 4-8),[15] and the millions in expert-related fees it has already incurred in connection with the proceedings.

21. Furthermore, the Committee recently served new written discovery requests in the Adversary Proceedings, some of which are extremely broad and burdensome. For example, new Interrogatory 1 demands that Defendants identify any "transfer of funds or other assets from New TTC or New Trane to any of their Affiliates, including distributions, accounting transfers, upstreaming of cash, the assumption of liabilities, and other transfers of value from May 1, 2020 to the Present," likely constituting thousands of ordinary course transactions over a six-year period. New Interrogatory 3 likewise demands that Defendants identify "all payments made by New Trane or New TTC to their shareholders, suppliers, vendors, and other non-asbestos

Winston & Strawn LLP for the Period of December 1, 2025 Through December 31, 2025 (requesting $403,971.50 in fees); *Notice of Monthly Compensation Statement by Winston & Strawn LLP for the Period of January 1, 2026 Through January 31, 2026* (requesting $190,542.75 in fees).

[15] In claiming a need for at least 30 depositions, the Committee argued that it has "identified 45 potential fact witnesses across both Adversary Proceedings," stressed the "complexity and the factual and legal issues that dominate the proceedings" and the "fact-intensive nature" of its fraud-based claims, and noted the allegedly "limited" nature of discovery taken in the PI Proceeding. See id.

creditors from May 1, 2020 to the Present," likely constituting hundreds of thousands, if not millions, of ordinary course transactions over the same period. These new discovery requests run directly counter to the Committee's recent representations to the Court that they are seeking only "targeted searches" for post-petition information.[16] At the very least, this extremely broad, needlessly invasive discovery inevitably will trigger motion practice and more expense.

22. *Fifth*, the Motion to Compel and the arguments that followed highlighted the baseless nature of the Substantive Consolidation Proceeding. The Committee previously claimed its substantive consolidation complaint was based solely on the "creditor reliance" factor of the Augie-Restivo test, contending that certain, unidentified asbestos claimants "relied" on the "economic resources" of Old Ingersoll-Rand and Old Trane when they entered into prepetition agreements to settle their claims.[17] The Committee's opposition to the Motion to Compel and comments at the February hearing exposed that the Committee actually has no factual basis for this contention, see Feb. 26, 2026 Hr'g Tr. at 96:13-97:21, 98:12-99:5, 106:24-109:13, 111:16-113:24, 114:21-24, 117:17-118:11,[18] and how incredibly strained its substantive consolidation suit really is. The Committee now effectively admits that it intends to seek substantive consolidation of non-debtor entities on the basis of legal theories that apparently have never been

[16] See Feb. 26, 2026 Hrg' Tr. at 93:10-16 ("There was a discussion about how our requests asked for pre-petition and post-petition information. Your Honor as that updated I mentioned earlier, we've reached agreement with the parties that our information will be sought largely prepetition and with some targeted searches, they will go for some post-petition information. So I believe that issue has been resolved.").

[17] See, e.g., *Plaintiffs' Opp. to Debtors' Motion to Dismiss*, Adv. No. 21-03029, Dkt. 30, ¶9 ("As such, they were relying on the economic resources of Ingersoll-Rand and Trane to pay the settlement amount."); *Plaintiffs' Opp. to Affiliates' Motion to Dismiss*, Adv. No. 21-03029, Dkt. 31, ¶ 25 ("They were relying on the economic resources of Ingersoll-Rand and 'old' Trane to pay the settlement amounts, but those payments never materialized; only the Corporate Restructuring did.").

[18] The lack of any supporting facts led Committee counsel to suggest that it would now seek to establish such facts in discovery, which would significantly expand the scope of discovery in the Adversary Proceedings, including discovery directed to asbestos claimants. See id. at 99:6-17; 106:115:12-14; 116:2-15.

proposed to, much less accepted by, any court.[19] In addition, the Committee has made clear that it is asking the Court to dramatically complicate the nature these proceedings—impacting literally tens of thousands of the NDAs' creditors—on the basis of a relative handful of prepetition settlements that allegedly "relied" on "economic resources" of the NDAs.[20]

23. As this Court has previously recognized, substantively consolidating a debtor's estate with a non-debtor may be appropriate but only in "very limited circumstances" and is a remedy to be "exercised sparingly." In re Chadley Capital, LLC, Case No. 24-10170 (Bankr. M.D.N.C), Slip Op. at 6 (quotations and citations omitted). "The overriding equitable consideration is that consolidation will *benefit all creditors*, both those of the current debtors and those to be forcibly made debtors." Id. at 7 (quoting Property Holdings, LLC v. Stewart, et al. (In re Stewart), 571 B.R. 460, 470 (Bankr. W.D. Okla. 2017)) (citing additional cases).

24. The Committee is not seeking substantive consolidation here to assure sufficient resources are available for asbestos creditors, but to instead level the same old challenges to the "Texas Two-Step" that had been rejected when the Committee eventually raised them in the appropriate context (a dismissal motion). See Adv. Pro. 21-03029, Dkt. 207; Adv. Pro. 22-03028, Dkt. 137 (Committee opposition to Motion to Compel, arguing its substantive consolidation motion is "premised on" allegations that the Texas Two-Step should be unwound).

[19] See Feb. 26, 2026 Hr'g Tr. at 96:13-22, 97:6-11, 99:3-5, 113:5-8, 108:11-109:9, 111:19-23, 114:21-24 118:9-21 (Court observing the Committee, without any evidence of actual creditor reliance, was advancing a "confusing" and "different" theory of substantive consolidation, at odds with "the usual you see in the cases around the country and certainly in this Circuit"); id. at 102:14-103:13 109:19-110:11, 112:6-25 (Committee confirming it is relying on the Debtors' claims database and schedules identifying settlements, not actual testimony from creditors).

[20] The Committee presumably relied on the existence of a handful of prepetition settlements involving asbestos claimants because it is well established that involuntary creditors, including tort creditors, cannot "extend credit" for purposes of the Augie/Restivo test. See In re Owens Corning, 419 F.3d 195, 212 n.21 (3d Cir. 2005); In re Haas, 31 F.3d 1081, 1088 (11th Cir. 1994); Zubik v. Zubik, 384 F.2d 267, 273 (3d Cir. 1967).

Not only is this is an unprecedented use of substantive consolidation, it is "premised on" challenges that both this Court—and now the Fourth Circuit—have rejected.

II. THE DISTRICT COURT'S RULING DENYING MOTIONS FOR LEAVE TO APPEAL THE ORDER DENYING DISMISSAL

25. On November 12, 2025, District Court Judge Volk denied the motions of the Committee and certain claimants represented by the Maune Raichle Hartley French & Mudd law firm for leave to appeal Judge Whitley's Order Denying Dismissal. See Semian, 809 F. Supp. 3d 383.[21] Judge Volk held "that the basis for their appeal is the bankruptcy courts' purported misapplication of Carolin, which is sufficient to doom their request." Id. at 392. The District Court further held that Carolin's "rigorous bad faith dismissal standard[] governs both solvent and insolvent debtors." Id. While Judge Volk's decision rendered the divestiture rule inapposite, see Stay Motion at ¶¶ 40-46, Judge Whitley's previous rejection of the Committee's challenges to the Texas Two-Step in the Order Denying Dismissal nonetheless remains law of the case and necessarily forecloses the Adversary Proceedings' identical challenges to that set of transactions. See id. at ¶¶ 46-50.

26. The Committee's contentions to the contrary in opposing the Stay Motion are baseless. See Dkt. 2842, at ¶¶ 39-43. The Committee's suggestion that its attacks on the "Texas Two-Step" in the Adversary Proceedings present "distinct" "legal issues" or "legal theories" from its attacks on the "Texas Two-Step" in dismissal is false. See id. at ¶¶ 41-42. As the Stay Motion made clear, the Committee advanced the exact same legal attacks and legal theories against the Texas Two-Step in dismissal that it makes in the Adversary Proceedings, often using

[21] Given an overlap in issues presented, the motions by the Committee and various claimants were consolidated with a similar motion for leave filed in the Bestwall case. On March 27, 2026, Judge Volk denied a request for certification of direct appeal to the Fourth Circuit in that same consolidated case filed by certain claimants in the Bestwall case to certify Judge Beyer's decision denying their motion to dismiss the Bestwall bankruptcy. See Case 3:24-cv-00042-FWV (Lead) (W.D.N.C.), Dkt. 56.

the exact same words. See Stay Motion at 1-2 (footnotes 2-3), 4, 15, 17, Exhibit B (chart of overlapping allegations). In the Order Denying Dismissal, Judge Whitley expressly acknowledged the Committee's "sundried arguments that the 'Texas Two-Step' is a manipulation of the bankruptcy process—that it creates prejudicial delays, and that these Debtors are simply a modern take on the 'new debtor syndrome'"—but held these challenges are "simply recast 'bad faith filing' arguments" that did not warrant dismissal. Dkt. 2047, at 58. The Committee makes no effort to explain how or why the exact same challenges to the "Texas Two Step" in the Adversary Proceedings should fare any better now, much less be allowed to go forward having already been expressly rejected in these bankruptcy cases.[22]

27. Absent substantially different evidence, change in appliable law, or clear error manifesting injustice—none of which the Committee has cited—Judge Whitley's prior decision that the Debtors, even as by-products of a "Texas Two-Step," are eligible debtors under 11 U.S.C. § 109, is law of the case. This is true even if the order is considered to be interlocutory. See Stay Motion at ¶ 48 (citing cases). Moreover, as detailed in the Stay Motion, applying law of the case to preclude re-litigation of the propriety of these bankruptcies, including what assets were (and were not) put into bankruptcy, is particularly appropriate because the common-law standards for dismissal of bankruptcy petitions provide the exclusive standards and remedies for resolving whether these chapter 11 cases are "proper." See Stay Motion at ¶¶ 51-54.

28. Indeed, on March 26, 2026, the Committee and the DBMP committee filed a joint amicus brief in support of the Bestwall committee's effort to seek Supreme Court review of

[22] The Committee's position that its challenges to the Texas Two-Step allegedly occurred in a "distinct procedural posture," Dkt. 2842, at ¶ 41, does not render the rulings inapplicable to the Adversary Proceedings. As noted in the Stay Motion, bankruptcy courts routinely apply law of the case to preclude re-litigation of issues already decided in a different contested matter or adversary proceeding within the same bankruptcy case. See Stay Motion, at ¶ 49 (citing cases).

lower court decisions declining to dismiss that bankruptcy. The ***entire basis*** of the amicus brief—which advances the same Texas Two-Step Hinder and Delay Contention advanced in these Adversary Proceedings—is that any "Texas Two-Step" is an "abuse of bankruptcy" and should be ***dismissed***.[23] The amicus brief further demonstrates that the Committee's fundamental challenge to the "Texas Two-Step" is a matter for dismissal ***and*** that the Fourth Circuit has "upheld" the use of the "Texas Two-Step" in multiple cases. See id. at 19.

29. To be clear, Defendants are ***not*** suggesting, as the Committee alleges, that the issue of "whether the Carolin standard has been met" is fully "dispositive" of the Adversary Proceedings, Dkt. 2842, at ¶ 39, or that the Order Denying Dismissal entirely "immunizes or blesses the Texas Two-Step that was implemented and executed in connection with the Corporate Restructuring and resulting bankruptcy." Id. at 18 n.62. That Order is dispositive of the "Texas Two-Step Hinder and Delay Contention," but Defendants recognize Judge Whitley permitted the Committee to challenge the Corporate Restructuring ***on the basis that it arguably left the Debtors with insufficient assets to pay their asbestos liabilities***.[24] But that challenge—the "Insufficient Assets Contention"—raises a ***different*** potential attack on the Corporate Restructuring, albeit one the Debtors submit is unfounded and certainly unripe. As noted in the Stay Motion, it depends on uncertain future events and for that reason should be stayed.

[23] See *Brief of the Asbestos Creditors' Committees in the* DBMP *and* Aldrich *Bankruptcies as Amici Curiae in Support of Petitioner*, *Official Committee of Asbestos Claimants of Bestwall LLC v. Bestwall LLC* (S. Ct.) (attached hereto as **Exhibit B**) at 2-6 (Introduction and Summary of Argument), 19 (Conclusion: "The Texas Two-Step, as upheld in the Fourth Circuit, is a gross abuse of bankruptcy that enables the wealthiest corporations to gain the benefits of bankruptcy indefinitely without ever having to be in it themselves. The Court should take up the important legal questions presented by Petitioner and put an end to this abuse. The petition should be granted.").

[24] See Stay Motion, at 9 (citing Judge Whitley's concern in PI Ruiling that "the Debtors might be unwilling to enforce, and the NDAs might refuse to honor, the Funding Agreements"), 12 (citing Judge Whitley's oral rulings granting the Standing Motion and denying dismissal of substantive consolidation action, again relating to the possibility Debtors have insufficient assets).

30. Until the value of the Debtors' asbestos liabilities is determined—whether during the estimation proceeding or otherwise—it cannot be determined whether the Debtors already have enough assets or resources, even without the Funding Agreements, to satisfy those liabilities. In fact, as demonstrated at the February hearing, the Committee refuses to set forth a position in these Adversary Proceedings on the value of the Debtors' asbestos liabilities at this point, saying its position is based on yet-undeveloped expert opinion. See Feb. 26, 2026 Hr'g Tr. at 123:2-126:1. Further, even if in estimation it were to be determined that the Debtors need to access the Funding Agreements to fully satisfy their liabilities, whether the speculative Insufficient Assets Contention has any merit depends on whether the Debtors enforce, and the NDAs comply with, the agreements to meet those liabilities under a plan. The NDAs have met all liabilities under the Funding Agreements to date, so there is no basis to assume they will not. Moreover, as noted in the Stay Motion, ¶¶ 58-59, the Funding Agreements are presumed valid unless and until they are breached. See Love v. Edmonston, 27 N.C. 354, 356 (N.C. 1845) ("[W]hen a contract is once made between parties, it binds and is legally presumed to subsist, until it be sh[o]wn to have been performed or rescinded."). For these reasons, the Adversary Proceedings should be stayed pending the above determinations, absent which the proceedings are simply premature at this time.

III. RECENT DECISIONS IN OTHER "TEXAS TWO-STEP" CASES

31. Significant decisions in the other "Texas Two-Step" bankruptcies since the Court considered the Stay Motion in October 2025 seriously undermine the Committee's contentions in the Adversary Proceedings, further supporting a stay of the proceedings.

32. The *first* is a decision entered on January 29, 2026 by the United States District Court for the District of New Jersey in Love v. Red River Talc, LLC, et al., No. 24-6320 (MAS)(RLS). There, Plaintiffs alleged that the divisional mergers and subsequent bankruptcy

filings—the "Texas Two-Step"—of Johnson & Johnson affiliates LTL Management, LLC and Red River Talc LLC, constituted fraudulent transfers designed to "hinder[], delay[], and[] defraud" claimants. See 2026 WL 242061 (D.N.J, Jan. 29, 2026), at *2. The district court found claimants had not alleged any cognizable harm—and therefore lacked standing to sue—rejecting plaintiffs' claim that defendants' "Texas Two-Step" chapter 11 bankruptcy filings could form the basis of a fraudulent transfer claim, even where those bankruptcy filings were dismissed on other grounds. Id. at *3-5. The court noted that "Plaintiffs fail to cite any authority holding that a delay in litigation—whether caused by a bankruptcy stay or otherwise—constitutes a cognizable injury for the purposes of Article III standing," and, moreover, that any claimed injury would be to "speculative" and "hypothetical" to confer standing. Id. at *4. Finally, the court further found that "Plaintiffs' theory of injury is fundamentally incompatible with the structure and purposes of the Bankruptcy Code," reasoning that the Code has a "comprehensive" and "carefully calibrated" framework governing whether bankruptcy proceedings are valid. Id. at 5 (citing Bednar v. Pierce & Assocs., P.C., 220 F. Supp. 3d 860, 863-64 (N.D. Ill. 2016), for the proposition that state law claims for an alleged improper bankruptcy filing were preempted by the Bankruptcy Code because permitting such claims "would pile on additional state-law deterrent[s] that [are] improper given the comprehensive regulations provided by the bankruptcy system").

33. The decision in Love is entirely consistent with Defendants' arguments in the Stay Motion as to why the Committee's effort to challenge the propriety of the "Texas Two-Step" through fraudulent transfer, breach of fiduciary duty, and similar legal claims is baseless. See Stay Motion ¶¶ 51-53.[25]

[25] Ironically, the appellants in the DBMP lift-stay appeal pointed to the LTL as a "material identical Two-Step Scheme" that supported a finding of bad faith in DBMP. While the Third Circuit, applying its unique test for assessing the good faith of bankruptcy filings, ordered dismissal of the LTL bankruptcies on grounds of a lack of

34. The *second* recent decision is the Fourth Circuit's February 11, 2026 decision affirming the bankruptcy and district courts' denial of a motion filed by certain asbestos plaintiffs to lift the automatic stay in DBMP to allow litigation of their claims in the tort system. See Herlihy v. DBMP, LLC, 167 F.4th 142 (4th Cir. 2026). Appellants argued the lower courts erred by limiting their analysis of the lift stay motion to the well-known lift stay factors from In re Robbins, 964 F.2d 342 (4th Cir. 1992) and failing to consider whether the DBMP bankruptcy was filed in good faith. See *Corrected Opening Brief of Appellants*, Case No. 24-2109 (4th Cir.), Dkt. 39 at 28, 53-59 (attached hereto as **Exhibit C**). Arguing that the appeal "arises from one of four 'Texas Two-Step' Chapter 11 cases languishing in the Western District of North Carolina," appellants stated the "fundamental," "foundational," and "central issue" posed in the appeal is "whether non-distressed Texas Two-Step bankruptcies are consistent with the purposes of the Bankruptcy Code." Id. at 1-2, 5, 21, 27. The appeal advanced the same "fundamental" challenge to the "Texas Two-Step" made in the Adversary Proceedings here: that it is a "litigation tactic" to "isolate[] one class of [asbestos-claimant] creditors" and "leverage the automatic stay and force creditors into 'judicially compelled negotiations'" to settle claims the corporation "can pay in full and without distress" outside of bankruptcy. Id. at 2, 16, 41-42; Stay Motion at 1-2 (footnotes 2-3), 4, 15, 17, Exhibit B (citing Committee's challenges to the "Texas Two-Step" in the Adversary Proceedings).[26]

financial distress, it did not pass judgment on the "Texas Two-Step." See In re LTL Mgmt., LLC, 64 F.4th 84, 96 (3d Cir. 2023). And, now, the New Jersey District Court has ruled that the "Texas Two-Step" nature of the LTL and Red River bankruptcies does ***not*** give rise to cognizable fraudulent-transfer claims.

[26] The official asbestos committee in DBMP—represented by the same counsel representing the Committee here—filed an amicus brief in support of appellants advancing the same challenges. See *Amicus Brief of the Official Committee of Asbestos Personal Injury Claimants of DBMP LLC in Support of Appellants*, Case No. 24-2109 (4th Cir.), Dkt. 23-1, at 2-3, 5, 18-20.

35. Notwithstanding appellants' contentions regarding the "Texas Two-Step," the Fourth Circuit did not find DBMP's bankruptcy was filed in bad faith. It is not as though the Fourth Circuit did not understand the bases for appellants' challenge; it thoroughly discussed the divisional merger that created DBMP and recited appellants' attacks on the "Texas Two-Step" at length in its opinion. See Herlihy, 167 4th at 146-48, 150. But the court found the "record does not include evidence to suggest bad faith," reasoning that DBMP's attempt to use section 524(g) to address a flood of asbestos-related lawsuits "was precisely the kind [of liability] that prompted Congress to enact § 524(g)," regardless of its current solvency. Id. at 151-53. It also found that, given the "*uncapped* funding agreement," the divisional merger that created DBMP (the first step in the "Texas Two-Step") "did not protect *one single dollar from asbestos-related liability*," but instead left the debtor with the same resources to pay asbestos claimants as it had before the divisional merger. Id. at 153.[27]

36. *Third*, on March 16, 2026, Judge Edwards issued a lengthy opinion in DBMP granting in part, and denying in part, the DBMP committee's motion on various privilege issues filed in connection with similar adversary proceedings pending in that bankruptcy. While the court stated it was "not suggesting that Texas two-steps are, by definition, immune from fraudulent transfer claims"—a proposition Defendants acknowledge above—it nonetheless observed they are "generally lawful" and "broadly legal." Slip Op., ¶ 176. Based in no small part on the Fourth Circuit's February 11, 2026 decision in Herlihy, see id. at ¶¶ 74-75, the Court reasoned that a "Texas Two-Step"— "at least on the ultimate merits in the Fourth Circuit"—

[27] On February 25, 2026, appellants in the Herlihy appeal filed a Petition for Rehearing *En Banc*. Briefing on the petition is complete. The Fourth Circuit has not yet acted on the petition.

"cannot simultaneously serve a proper bankruptcy purpose that does not warrant a bad faith dismissal and also give rise to a prima facie case for fraudulent transfer." Id. at ¶ 174.

37. Furthermore, the court observed that "purported badges of fraud" the committee has advanced to support the claims of actual fraudulent transfer in DBMP are inapposite because they "are an inherent feature of this transaction type" and, therefore, are probative of little or nothing. Id., ¶ 171; see also id. ¶¶ 172-174 (explaining why numerous purported badges of fraud are inherent in a Texas Two-Step transaction and stating, "given the controlling Fourth Circuit standards," that "the prima facie showing [of a fraudulent transfer] must rest on indica beyond the structural features inherent to the transactions"). Likewise, the court "reject[ed] the Plaintiffs' argument that constructive knowledge of the time required to obtain confirmation in bankruptcy suffices to establish an intent to delay for purposes of a prima facie fraudulent transfer showing." Id. at ¶ 180; see also id. ¶ 182 ("Plaintiffs do not, in fact, allege that Defendants intended to delay payment to Claimants, only that Defendants knew delay would occur. Moreover, the record suggests the opposite: Defendants have sought to reach their desired conclusion, estimation and a confirmation of a § 524(g) trust as expeditiously as possible.").

38. The court's observations apply with equal force to the Committee's contentions here, which have rested on the same inapposite badges of fraud and allegations of Defendants' awareness of the time likely necessary to confirm a bankruptcy plan. See, e.g., Dkt. 848, at ¶¶ 59-60 (Committee's motion for derivative standing to pursue certain causes of action); Dkt. 905, at 5 n.8 (Committee's reply in support of motion for derivative standing to pursue certain causes of action). Moreover, the record in this case is overwhelmingly clear that Defendants have sought to reach a consensual resolution expeditiously, and it is the Committee that, for years, has declined to meaningfully engage in negotiations. Any "delay" outside the "temporary

hinderance" inherent in any chapter 11 proceeding, Slip Op., ¶ 183, lays at the feet of the Committee, not Defendants.

CONCLUSION

For all of the foregoing reasons, and those stated in the Stay Motion, the Court should grant the Stay Motion. Defendants propose that the Court hold a status conference approximately 60 days after the Court enters a decision in the Phase I estimation proceeding to consider continuation of such stay at that time. A proposed order is attached as **Exhibit A**.

Dated: April 16, 2026
Charlotte, North Carolina

Respectfully submitted,

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re ALDRICH PUMP LLC, *et al.*,[28] Debtors.	Chapter 11 Case No. 20-30608 (LMJ) (Jointly Administered)
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, Plaintiff, v. ALDRICH PUMP LLC, MURRAY BOILER LLC, TRANE TECHNOLOGIES COMPANY LLC, and TRANE U.S. INC., Defendants.	Adv. Pro. No. 21-03029 (LMJ)
OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS, on behalf of the estates of Aldrich Pump LLC and Murray Boiler LLC, Plaintiff, v. INGERSOLL-RAND GLOBAL HOLDING COMPANY LIMITED, TRANE TECHNOLOGIES HOLDCO INC., TRANE TECHNOLOGIES COMPANY LLC, TRANE INC., TUI HOLDINGS INC., TRANE U.S. INC., and MURRAY BOILER HOLDINGS LLC, Defendants.	Adv. Pro. No. 22-03028 (LMJ)

[28] The Debtors are the following entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): Aldrich Pump LLC (2290) and Murray Boiler LLC (0679). The Debtors' address is 800-E Beaty Street, Davidson, North Carolina 28036.

ORDER GRANTING
DEFENDANTS' MOTION TO STAY ADVERSARY PROCEEDINGS

This matter coming before the Court on the *Defendants' Motion to Stay Adversary Proceedings* [Dkt. 2822] (the "Stay Motion"),[29] filed by Aldrich Pump LLC ("Aldrich") and Murray Boiler LLC ("Murray"), as debtors and debtors in possession (together, the "Debtors"), and Trane Global Holding Company Limited f/k/a Ingersoll-Rand Global Holding Company Limited, Trane Technologies Holdco Inc., Trane Technologies Company LLC ("TTC"), Trane Inc., TUI Holdings Inc., Trane U.S. Inc. ("TUI," and together with TTC, the "NDAs"), and Murray Boiler Holdings LLC (collectively, the "Trane Defendants," and together with the Debtors, "Defendants"); the Court having reviewed the Stay Motion, the *Plaintiff's Objection to Defendants' Motion to Stay Adversary Proceedings* [Dkt. 2842], the replies and supplemental briefing submitted thereto, and upon consideration of the arguments presented at the October 23, 2025 and May 21, 2026 hearings, the Court having found that (a) the Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, (b) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and after due deliberation the Court having determination that the relief requested in the Stay Motion is in the best interests of the Debtors, and the parties in interest, and good and sufficient cause having been shown;

IT IS HEREBY ORDERED THAT:

1. The Stay Motion is GRANTED.

2. The Adversary Proceedings are hereby stayed in their entirety pending a status conference to be held approximately 60 days after the Court enters a decision in the Phase

[29] Capitalized terms not otherwise defined herein have the meanings given to them in the Stay Motion.

I estimation proceeding.

3. The Defendants are authorized to take all actions necessary to implement the relief granted in this Order.

4. This Order shall be immediately effective and enforceable upon its entry.

5. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

This Order has been signed electronically.
The Judge's signature and Court's seal appear
at the top of the Order.

United States Bankruptcy Court

EXHIBIT B

NO. 25-1013

In the Supreme Court of the United States

OFFICIAL COMMITTEE OF ASBESTOS CLAIMANTS OF BESTWALL LLC,

Petitioner,

V.

BESTWALL LLC,

Respondent.

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

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

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In re Aearo Techs. LLC,
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In re Aldrich Pump LLC,
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Kadel v. Folwell,
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In re Aldrich Pump LLC, No. 20-30608 (Bankr. W.D.N.C.).....1, 2, 8, 17

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In re DBMP LLC, No. 20-30080 (Bankr. W.D.N.C.) 1, 2, 6, 8, 14, 16, 17

In re LTL Mgmt., LLC, No. 21-30589 (Bankr. W.D.N.C.).....8

In re Murray Boiler LLC, No. 20-30609 (Bankr. W.D.N.C.).....1, 8

Other Authorities

Abusing Chapter 11: Corporate Efforts to Side-Step Accountability Through Bankruptcy: Hearing Before S. Subcomm. on Fed. Cts., Oversight, Agency Action and Fed. Rts. of the S. Comm. on the Judiciary, 117th Cong. (2022).....4

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Financial Summary, Trane Technologies, https://investors.tranetechnologies.com/financial-information/financial-summary/default.aspx 14

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INTEREST OF AMICI CURIAE[1]

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

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

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

[2] No. 20-30080 (Bankr. W.D.N.C.).

[3] No. 20-30608 (Bankr. W.D.N.C.).

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

INTRODUCTION AND SUMMARY OF ARGUMENT

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

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

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

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

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

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

- it is not subject to the reporting and transparency requirements that debtors are;

- it can incur senior debt or transfer substantially all its assets without either notice to creditors or court approval;

- it is free to pay its (non-tort) creditors, including pre-bankruptcy liabilities, in full and not in accordance with an approved chapter 11 plan; and

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

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

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

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

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

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[5] U.S. CONST. art. I, § 8, cl. 4.

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

[9] *DBMP*, 2021 WL 3552350, at *6.

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

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

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

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

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

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

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

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

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

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

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

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

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

[17] *Aldrich*, 2021 WL 3729335, at *8.

found, the Two-Step's purpose is to "isolate the asbestos claimants from the overall corporate enterprise and strand them in bankruptcy" indefinitely.[18] Bankruptcy was never intended to be used as a sword in this manner. And where other wealthy corporate enterprises attempted to misuse bankruptcy outside of the Fourth Circuit in the same or similar manner, those bankruptcies were dismissed, and the underlying tort claims were resolved in the civil justice system.[19] Bankruptcy is only available to a debtor who "proceeds with honesty and places virtually all its assets on the table for its creditors." *Harrington*, 603 U.S. at 209.[20]

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

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

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[18] *Id.* at *21.

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

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

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

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

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

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

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

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

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

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

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

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

C. Payments to Creditors. Ordinarily, debtors can pay their creditors only in accordance with a chapter 11 plan that satisfies the requirements of the Bankruptcy Code and is approved by the bankruptcy court after notice and a hearing. *See* 11 U.S.C. §§ 1128, 1129.[24]

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

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

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

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

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

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

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

Meanwhile, asbestos creditors, who hold higher-priority unsecured claims, remain uncompensated and trapped by bankruptcy's automatic stay and "preliminary" injunction.[27]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Respectfully submitted,

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March 26, 2026

EXHIBIT C

No. 24-2109

United States Court of Appeals

for the

Fourth Circuit

MICHAEL N. HERLIHY; ANN HERLIHY;
THE ESTATE OF PETER L. BERGRUD,

Claimants-Appellants,

– v. –

DBMP, LLC,

Debtor-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF NORTH CAROLINA, CHARLOTTE DIVISION

CORRECTED OPENING BRIEF OF APPELLANTS

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

DISCLOSURE STATEMENT

- In civil, agency, bankruptcy, and mandamus cases, a disclosure statement must be filed by **all** parties, with the following exceptions: (1) the United States is not required to file a disclosure statement; (2) an indigent party is not required to file a disclosure statement; and (3) a state or local government is not required to file a disclosure statement in pro se cases. (All parties to the action in the district court are considered parties to a mandamus case.)
- In criminal and post-conviction cases, a corporate defendant must file a disclosure statement.
- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
- Counsel has a continuing duty to update the disclosure statement.

No. 24-2109 Caption: Michael Herlihy v. DBMP, LLC

Pursuant to FRAP 26.1 and Local Rule 26.1,

The Estate of Peter L. Bergrud; And Michael N. And Ann Herlihy
(name of party/amicus)

who is Appellants, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐YES ☑NO

2. Does party/amicus have any parent corporations? ☐YES ☑NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐YES ☑NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☑NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☑YES ☐NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Thomas W. Waldrep, Jr. Date: 11/19/2024

Counsel for: Appellants

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I. INTRODUCTION

Forty years ago, a federal judge sounded the alarm regarding perversion of the Bankruptcy Code by wealthy corporations:

> This Court has watched with alarm as major corporations have filed for Chapter 11 reorganization or threatened to file Chapter 11 petitions to evade existing labor contracts, or to invoke the automatic stay provision to evade pending litigation. As discussed hereafter, the Court considers such practices to be a gross abuse of the bankruptcy proceedings. Chapter 11 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 contractual or other liability.

Furness v. Lilienfield, 35 B.R. 1006, 1009 (D. Md. 1983).

This appeal arises from one of four "Texas Two-Step" Chapter 11 cases languishing in the Western District of North Carolina. In a Texas Two-Step, a profitable business divides itself into two new companies. One new company is assigned the profitable business' asbestos liabilities and immediately files for bankruptcy, stranding the asbestos victims in bankruptcy. The other is assigned virtually all the profitable business, and all non-asbestos liabilities and continues business-as-usual, free from the obligations and limitations of the Bankruptcy Code.[1]

[1] The Texas Two-Step gets its name because the splitting of the profitable company to isolate the asbestos creditors is accomplished via a "divisive

For seven years, the Bankruptcy Courts in the Charlotte have refused to rule on the fundamental issue presented here: is it bad faith for (1) a profitable, non-distressed corporation (2) to isolate one class of creditor from its profitable business and all other creditors in a newly-created corporation for the purpose of (3) invoking bankruptcy's automatic stay to force re-negotiation of state-law tort liabilities that (4) the corporation admits it can pay in full and without distress, outside of bankruptcy?

Here, and in the other Texas Two-Step cases, these four facts are not disputed. They were the express basis for the two motions on appeal, which argued that the Debtor's petition was filed in bad faith. But the Bankruptcy Court refused to rule on the bad faith issue. Instead, it denied Appellants' Motions for Relief from Stay without determining whether the non-distressed Debtor's attempt to "overcome the tort system" in Article I courts was consistent with the Bankruptcy Code's purposes.

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merger" under Texas law. *See generally In re LTL Mgmt., LLC*, 64 F.4th 84, 96 (3d Cir. 2023); *see also In re Bestwall LLC*, 71 F.4th 168, 173–74 (4th Cir. 2023).

The automatic stay freezes all creditor rights at the beginning of a Chapter 11 case. *See* 11 U.S.C. § 362(a). Given its disruptive impact on creditors, the automatic stay has Congressionally mandated limits. Bankruptcy courts "shall" grant relief from the stay "for cause." 11 U.S.C. § 362(d)(1). When a creditor seeks relief from the stay, Congress places the burden of proof[2] squarely upon the debtor. *See* 11 U.S.C. § 362(g)(2).

Bad faith is "cause" for relief from the automatic stay. *Carolin Corp. v. Miller*, 886 F.2d 699–700 (4th Cir. 1989). A bankruptcy petition is filed in bad faith when it does not further "the purposes of the Code." *Id.* at 701. Those purposes? "[R]esuscitating a financially troubled debtor," *id.*, while protecting creditors' interests, *see Bartenwerfer v. Buckley*, 598 U.S. 69, 72 (2023); *Janvey v. Romero*, 883 F.3d 406, 410 (4th Cir. 2018).

Below, Appellants sought limited relief from the stay to quantify the value of their personal injury claims against the Debtor before a jury. This right is expressly guaranteed by Congress. *See* 28 U.S.C. § 157(b)(5). Appellants' motions asserted that the undisputed facts set forth above demonstrated bad faith. Relief from the stay was required because bad

[2] There is one exception, proof of lack of equity in property. *See* 11 U.S.C. § 362(g)(1). There is no dispute this exception is not relevant to this case.

faith is cause for stay relief, because the burden of resisting stay relief is on the Debtor, and because Congress mandates that relief "shall" issue for cause. But the Bankruptcy Court refused to examine DBMP's bad faith.

The Debtor here presented no evidence to controvert the undisputed facts above and prove good faith (or lack of cause). The Bankruptcy Court, ignoring the Debtor's statutory burden of proof, filled this evidentiary void with speculation about hypothetical effects that stay relief might have on *the Debtor's* goal. That goal? Judicially compelled negotiations to force mass resolution of state-law debts the Debtor was, and is, fully able to pay without distress.

Then, the Bankruptcy Court applied an inapposite case (*In re Robbins*, 964 F.2d 342 (4th Cir. 1992)) involving a debtor whose good faith was not challenged. The Bankruptcy Court never ruled on the central issue: the petition was filed in bad faith because the Debtor's purpose was "not in line with any of the purposes of the Bankruptcy Code." *See In re Patel*, Case No. 20-30455, 2022 WL 1420045, at *5-7 (Bankr. W.D.N.C. May 4, 2022). Instead, the Bankruptcy Court ignored binding precedent that it is bad faith for a non-distressed company to use

bankruptcy jurisdiction to force "judicially compelled" negotiations. *In re Premier Automotive Servs.*, 492 F.3d 274, 280–81 (4th Cir. 2007) ("*Premier Auto*"). This was error.

Since 2017, when the first Texas Two-Step bankruptcy was filed in the Western District of North Carolina, no court in this Circuit has ruled on the central issue posed here: whether non-distressed Texas Two-Step bankruptcies are consistent with the purposes of the Bankruptcy Code—*i.e.*, whether they are good faith filings.[3] This appeal crystallizes this legal question, on undisputed facts. It is imperative that this Court decide this issue now and reverse the Bankruptcy Court's ruling.

II. JURISDICTIONAL STATEMENT

This is an appeal from the final order of the U.S. District Court for the Western District of North Carolina (Hon. Kenneth D. Bell) (the "District Court"), entered October 28, 2024, JA1186-1196, affirming the Bankruptcy Court for the Western District of North Carolina's (Hon. J.

[3] In *In re Bestwall LLC*, 71 F.4th 168, 182 (4th Cir. 2023), this Court expressly noted that the question of good faith was not before it. Later, this court declined interlocutory review of an order denying a motion to dismiss based upon bad faith, notwithstanding the Bankruptcy Court's certification of the bad faith question and plea for guidance. *See Official Committee of Asbestos Personal Injury Claimants v. Aldrich Pump LLC*, No. 24-128, D/E 50, April 17, 2024.

Craig Whitley) (the "Bankruptcy Court's") denial of (1) the *Motion of The Estate of Peter L. Bergrud For Relief From The Automatic Stay*, and (2) the *Motion of Michael N. and Ann Herlihy for Relief from The Automatic Stay*, both entered May 28, 2024, JA625-628, (together the "Denial Orders"). The underlying Chapter 11 bankruptcy case was filed by DBMP LLC ("DBMP" or "Debtor"), Case No. 20-30080 (Bankr. W.D.N.C.) (the "Bankruptcy Case").[4]

Appellants are: (1) Peter L. Bergrud, a mesothelioma victim who died from asbestos-caused cancer in 2019, whose estate is represented by his widow, Cheryl (collectively, "the Bergruds"); and (2) living mesothelioma victim Michael N. Herlihy and his wife, Ann ("the Herlihys"). JA297, JA439. Appellants filed timely notices of appeal. JA297, JA629-640.

This Court has jurisdiction pursuant to 28 U.S.C. § 158. *See Ritzen Group, Inc. v. Jackson Masonry, LLC*, 589 U.S. 35, 38 (2020).

[4] The District Court consolidated the appeals of the Denial Orders. *See Herlihy v. DBMP LLC*, 24-CV-00558 (W.D.N.C.), unnumbered text only docket entry, July 18, 2024. JA3, JA6-11.

III. STATEMENT OF THE ISSUES

1. **Bad faith.** A bankruptcy case filed to invoke 11 U.S.C. § 362's automatic stay and force renegotiation of state-law tort liability that the Debtor admits it can pay in full, without financial distress, is not filed in good faith. The Debtor's isolation of a single class of creditor via its Texas Two-Step restructuring provides additional indicia of bad faith.

2. **"[S]hall grant relief…for cause."** The Bankruptcy Court abused its discretion when it declined to rule on whether the Debtor's Chapter 11 petition was filed in bad faith, given that bad faith was the basis for Appellants' respective motions and that bad faith is "cause" for relief from stay under 11 U.S.C. § 362(d)(1).

3. "**[T]he Party Opposing Such Relief has the Burden of Proof.**" The Bankruptcy Court erred when it failed to require that the Debtor prove its petition was filed for purposes consistent with the purposes of the Code. *See* 11 U.S.C. § 362(g)(2). Instead, the Bankruptcy Court denied Appellants' motions based on speculation about how stay relief would affect the Debtor's desired outcome, without addressing whether that outcome furthered the purposes of the Code.

4. **Good faith is a prerequisite to bankruptcy power; case management is not.** The Bankruptcy Court abused its discretion when it concluded that granting relief from stay would frustrate efficient case management of the Debtor's bankruptcy (a) without determining whether the Debtor's petition furthered the purposes of the Code and (b) where Appellants sought only to liquidate, but not collect upon, their claims, thereby posing no risk of "dismemberment" to the estate.

IV. STATEMENT OF THE CASE

Under *Carolin* and *Premier Auto*, a bankruptcy petition filed by a profitable company in no need of resuscitation for the purpose of altering state-law liabilities it can pay in full and without distress is filed in bad faith. "Chapter 11 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 contractual or other liability." *In re SGL Carbon Corp.*, 200 F.3d 154, 166 (3d Cir. 1999) (quoting *Furness*, 35 B.R. at 1009).

Nevertheless, the Bankruptcy Courts in the Western District of North Carolina repeatedly have refused to rule on whether the Texas Two-Step scheme constitutes a bad faith use of the bankruptcy system.

This critical issue must be addressed. The material facts are undisputed. This Court should rule on the discrete issue of bad faith now.

A. Old CertainTeed and Appellants' Underlying State Tort Cases.

By the mid-1960s, CertainTeed Corporation knew that asbestos caused mesothelioma and that it used a particularly carcinogenic form of the fiber in its asbestos-cement pipe. JA380-381. Heedlessly, CertainTeed kept selling its asbestos-laden pipe into the 1990s.

In the mid-1960s, Air Force veteran Peter Bergrud began a decades-long construction career in Washington state. JA432. He regularly cut, beveled, and drilled Old CertainTeed's asbestos-cement pipe. JA405-406; JA415. In 2019, Mr. Bergrud was diagnosed with—and died from—mesothelioma. Asbestos was found in his lung tissue. JA360.

Michael Herlihy worked at a California saw sharpening company from the mid-1980s to the mid-1990s. JA569. One of his employer's biggest clients was the CertainTeed plant in Riverside, California, where CertainTeed manufactured asbestos-cement pipe from 1965 through the early 1990s. JA569-570. Mr. Herlihy regularly breathed dust caked on the saw blades used to cut the asbestos-cement pipe at CertainTeed's

plant. JA570. Mr. Herlihy was diagnosed with mesothelioma on March 23, 2023. JA500. He is still alive.

The Bergruds sued Old CertainTeed in Washington state court in April 2019. JA429-434. The Herlihys filed suit in August 2023 in California state court. JA502-530. Both Appellants are unable to proceed with their claims against DBMP because of the automatic stay. *See* JA532-535.[5]

B. Old CertainTeed Creates DBMP, Which Two-Steps into North Carolina.

The Bankruptcy Court made detailed factual findings as part of its decision to grant a preliminary injunction extending the protections of the automatic stay to New CertainTeed and other entities affiliated with DBMP. JA218-296 ("Findings"). The Debtor did not dispute those findings, which were the basis for Appellants' motions below and are the factual basis for this appeal.

[5] As in most asbestos-related personal injury cases, Appellants asserted claims against other joint tortfeasors they alleged contributed to their harm. How the existence of multiple joint tortfeasors relates to the ultimate liability of any individual tortfeasor (*e.g.*, joint-and-several liability, several liability, or a combination of both) is a matter of state law.

In 2018, Old CertainTeed "was a profitable going concern whose assets significantly outweighed its combined operating and asbestos liabilities." JA231, Findings ¶ 44. Indeed, "on Old CertainTeed's publicly disclosed financial statements, [it] had almost $3 billion in assets and less than half of that in all liabilities." JA237, Findings ¶ 57. Old CertainTeed "never entertained a bankruptcy filing for itself." JA231, Findings ¶ 44. Such a filing would have had "serious negative consequences." JA231-232, *id.* ¶¶ 44-45.

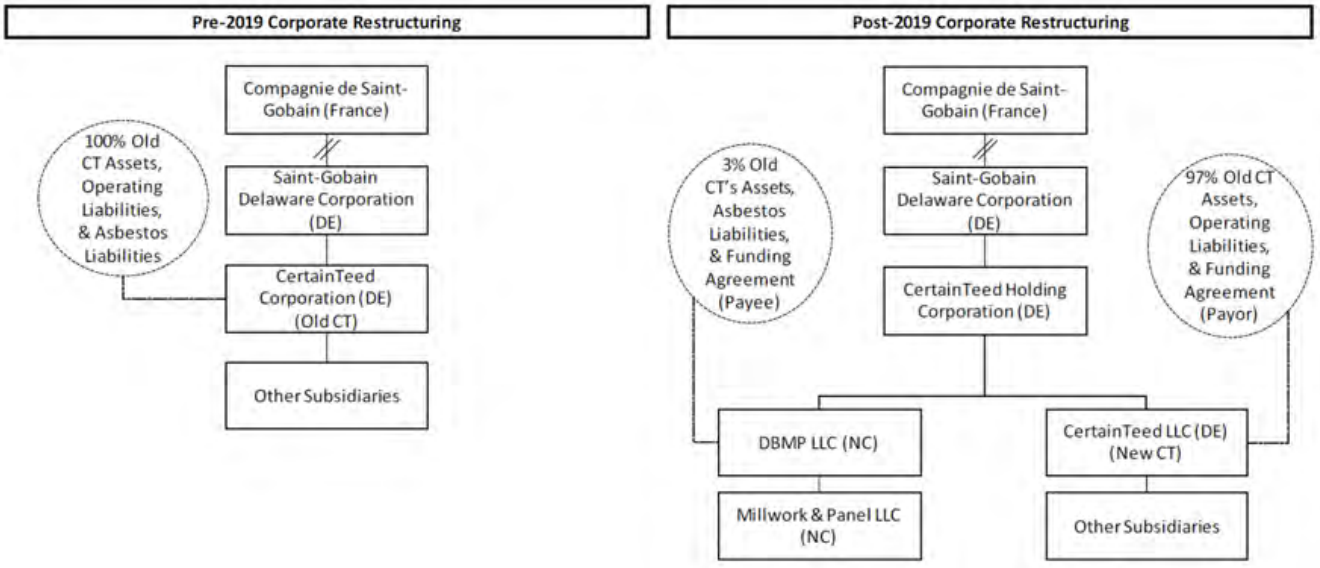
Nevertheless, inspired by Bestwall, the first Texas Two-Step bankruptcy, Old CertainTeed executed its own Texas Two-Step to "overcome the tort system." By so doing, Old CertainTeed sought to minimize its entirely manageable liability for poisoning Americans with asbestos, all while leaving its profitable business free from the obligations of Chapter 11. JA230-231; JA247, Findings ¶¶ 42, 100.

By 2018, Old CertainTeed began discussing "a plan to isolate [its] asbestos liabilities in a new company, with minimal assets, that would file for bankruptcy." JA230, Findings ¶¶ 40-42. The shell entity would shield "the CertainTeed Enterprise from Old CertainTeed's asbestos liabilities." JA232, Findings ¶ 46. The plan, codenamed "Project

Horizon[,]" was a "closely guarded corporate secret" that was "driven not by businesspeople, but by lawyers." JA230231, Findings ¶¶ 41, 43.

After the Two-Step, "New CertainTeed" was "essentially a mirror image of Old CertainTeed: a fully operating company with all of Old CertainTeed's employees, the bulk of its assets and operations, and all of its non-asbestos creditors." JA219, Findings ¶ 1. DBMP was "quite different," being "allocated 100% of Old CertainTeed's considerable asbestos liabilities."[6] JA219, JA234, JA238, Findings ¶¶ 1, 53, 65. The Bankruptcy Court diagrammed Old CertainTeed's Texas Two-Step as follows:

[6] New CertainTeed received approximately 97% of Old CertainTeed's assets, most of its operations, and all its employees. Only 3% of Old CertainTeed's assets were given to DBMP. Among these assets was approximately $25 million in cash, Old CertainTeed's asbestos liabilities, and the ability to draw from the "Funding Agreement." JA234-238, Findings ¶¶ 53, 65.



JA236, Findings ¶ 58.

DBMP and New CertainTeed executed a series of "Funding Agreements" that require New CertainTeed to provide DBMP with all funds necessary to satisfy DBMP's asbestos liabilities, whether DBMP is in or out of bankruptcy. *See* JA1315-1318; JA1326 ("Permitted Funding"). The Funding Agreement "is not a loan," does not impose "repayment obligations" on DBMP, and is not capped. JA238, Findings ¶¶ 66-67.[7]

Through the Funding Agreement, DBMP (and New CertainTeed) "steadfastly" maintain that DBMP "has the same ability to fund the costs

[7] Since the Bankruptcy Court's Findings, DBMP and New CertainTeed entered into a Second Amended Funding Agreement. JA1315–1318. The Second Amended Funding Agreement does not alter New CertainTeed's obligation to fund DBMP's asbestos liabilities. JA1341-1358 (redline of amendments); JA1068 (DBMP explaining amendment).

of defending and resolving present and future asbestos claims, both in the state and federal courts and in connection with any chapter 11 filing as [former CertainTeed]." JA237-238, Findings ¶¶ 61, 65. DBMP admits "the Funding Agreement…makes available New CT's and DBMP's combined resources from Old CT—giving DBMP the ability to meet its obligations, including paying asbestos claims." JA1068.

In sum, DBMP's bankruptcy was filed not out of financial need, but out of a desire to invoke the automatic stay to freeze state-law jury trials and force renegotiation of Old CertainTeed's asbestos liabilities while leaving CertainTeed's profitable business—and all its other creditors—free of bankruptcy's "serious negative consequences." JA856. More concisely, in the words of the architect of the Texas Two-Step, the scheme is the latest in a long line of attempts to "overcome the tort system."[8]

[8] JA308, JA451. *See also* AMERICAN BANKRUPTCY INSTITUTE, 2022 Annual Spring Meeting Session Replay, 43:00–48:39, at 44:17, Comments of Gregory M. Gordon, Esq., April 22, 2022, available at: https://www.abi.org/texas-two-step-of-tort-liability-jj-annual-spring-meeting-2022-video-replay. Mr. Gordon's comments about the Two-Step have been referenced frequently before the United States Bankruptcy Court for the Western District of North Carolina (i.e., *In re Aldrich Pump LLC, et al.*, Case No. 20-30608, D/E 1712, Ex. 2).

In January 2020, DBMP filed a voluntary petition for relief under Chapter 11 (the "Petition"). DBMP's petition triggered the automatic stay under 11 U.S.C. § 362(a). DBMP's parent subsequently announced that it expected DBMP's bankruptcy "to take up to approximately five to eight years," during which "all asbestos litigations [sic] have been stayed and all related costs suspended." JA437.

In 2021, the Bankruptcy Court granted the Debtor's motion to preliminarily enjoin litigation against New CertainTeed, effectively extending the protections of the automatic stay to New CertainTeed. The Bankruptcy Court reasoned that allowing continued unfettered litigation and collection against New CertainTeed would be "tantamount to dismissal" of the Debtor's bankruptcy. JA915. In so ruling, the Bankruptcy Court expressly recognized that it was not ruling on "bad faith" or on a motion to dismiss. JA260, Findings ¶¶ 149-50; JA914-915.

Appellants' § 362(d) lift stay motions, in contrast, placed DBMP's bad faith squarely before the Bankruptcy Court.

C. Appellants' § 362(d) Motions and the Bankruptcy Court's Ruling.

In April 2024, pursuant to § 362(d) and following this Court's invitation to individual Two-Step victims to seek relief from the stay in

Two-Step bankruptcies, Appellants moved the Bankruptcy Court for relief from the stay. JA297-476; *In re Bestwall, LLC*, 71 F.4th 168, 183 (4th Cir. 2023) ("[C]laimants can bring individual actions for relief based on the specific facts of a particular claim.").[9]

Appellants premised their motions on bad faith. DBMP is not and never has been in financial distress; it admits it can pay all asbestos creditors in full outside of bankruptcy. Additionally, the Texas Two-Step—which strands a single class of creditors in bankruptcy but shields all other creditors and 97% of CertainTeed's profitable business from the obligations of bankruptcy—confirms DMBP was using Chapter 11 as a litigation tactic regarding state-law asbestos liabilities it was fully able to pay. *See* JA234-238, Findings ¶¶ 53, 65. Accordingly, DBMP's Chapter 11 petition does not serve the Bankruptcy Code's purpose of resuscitating a financially distressed debtor and is in bad faith. In turn, bad faith is "cause" for relief from the stay, and relief is mandatory under § 362(d).

[9] The Debtor's lack of financial distress was not before the Fourth Circuit in *Bestwall*: "In this appeal, by contrast, [appellants] do not make the arguments raised by the claimants in *LTL Management*." *Bestwall*, 71 F.4th at 182.

Appellants sought extremely limited relief: lifting the automatic stay so they could quantify their personal injury claims against DBMP before a jury—a right guaranteed to them by Congress and the Seventh Amendment.[10] Appellants expressly forswore collection, asking only to quantify their claims and return to the bankruptcy proceeding. *See generally* JA227-476 (Motions for Relief). Appellants are the only claimants who have sought relief from the stay in the four-year existence of the DBMP case. The Debtor vigorously objected. JA584-611

The Bankruptcy Court denied both motions on May 23, 2024. JA905-1047 (hearing), JA913-925 (announcing ruling); JA625-628 (Orders Denying Appellants' Motions for Relief).

The Bankruptcy Court refused to assess whether the Debtor invoked bankruptcy jurisdiction in bad faith. Instead, the Bankruptcy Court parroted the conclusion from its 2021 decision, which did not address bad faith and which reasoned that allowing unfettered litigation *and collection* against New CertainTeed would be the functional equivalent of dismissal.

[10] Under 11 U.S.C. § 1129(a) and 28 U.S.C. § 157(b), the Bankruptcy Court is prohibited from liquidating or estimating (*i.e.*, quantifying) personal injury claims.

The Bankruptcy Court provided no coherent explanation how quantifying Appellants' two individual claims and returning to the bankruptcy proceeding to await its conclusion would equate to dismissal. Rather, the Bankruptcy Court speculated—based on no record evidence—that lifting the stay for Appellants would result in the filing of hundreds or thousands of additional motions for relief from the stay, that the Court somehow would be required to grant all of these hundreds or thousands of motions, and that this would "defeat the purpose of the bankruptcy case, and effectively, be akin to dismissal." JA918.

The Court cited no record evidence to support its "finding" that hundreds or thousands of additional motions would be filed, and no authority that it would be "required" to grant those motions.[11] Nor did the Court explain how merely quantifying the value of claims and foregoing collection pending conclusion of the bankruptcy proceeding would "be akin to dismissal."

[11] At no point did the Debtor offer any evidence of how or why granting the limited relief from stay sought by Appellants "would lead to case dismissal" despite the Congressional allocation of the burden of proof in resisting lift stay motions to the debtor. *See* 11 U.S.C. § 362(g)(2).

As for the dispositive issue—DBMP's bad faith—the Bankruptcy Court "[didn't] feel comfortable making that conclusion today…" JA921. Although the evidence of bad faith stemmed primarily from the Bankruptcy Court's own detailed factual findings—findings which were not disputed by DBMP—the Bankruptcy Court stated:

> I've mentioned the differences of opinion about whether a non-distressed solvent company can use bankruptcy tools. … Can I find today that this filing is subjective bad faith because it's sought by a solvent non-distressed entity and does that dismiss, justify dismissal? I'd say the answer in this Circuit at the moment appears to be no. … [E]ven if subjective bad faith lies, I don't think it's the standard.
>
> *At most,* it's a factor. The standard for relief from stay is cause and the controlling case in our Circuit is *Robbins*. *Robbins* involves a balancing test and as I, both I and [the Bankruptcy Court in *Bestwall*] have held, here relief from stay would lead to case dismissal, which under *Carolin* is not attainable for simply subjective bad faith. So I'm not going to try to do indirectly something that I'm not permitted to do or not inclined to do under existing law. I am bound by the *Carolin* decision. JA922-923.

The Bankruptcy Court did not find the Debtor filed for bankruptcy in good faith—which the Congressional allocation of the burden of proof on

the debtor *required*. JA918. This is so whether bad faith alone constitutes cause, or whether bad faith is merely "a factor" in a balancing analysis.[12]

D. Appeal to the District Court.

Appellants appealed to the United States District Court for the Western District of North Carolina. JA12-51. After a hearing, the District Court issued its ruling on October 28, 2024. JA1186. The District Court held "that the Bankruptcy Court did not abuse its discretion under *Robbins* …." JA1196. Despite recognizing that bad faith can be grounds for lifting an automatic stay, the District Court likewise failed to examine whether DBMP filed in bad faith. *See* JA1195-1196. The District Court similarly failed to provide any explanation of how granting Appellants' limited motions for relief solely to quantify (but not collect) their claims would amount to effective dismissal of the bankruptcy, nor did it address the lack of record evidence to support such a conclusion.

E. The Present Appeal.

[12] Neither the Bankruptcy Court nor the Debtor have ever seriously contended that a putative debtor can deliberately file a bankruptcy petition for purposes contrary to the Congressional purposes of the Code and nevertheless be shielded indefinitely by the automatic stay. Yet that is the result of the Bankruptcy Court's ruling if bad faith is only "a factor" in lift stay analysis and the Bankruptcy Court can deny lift stay relief without ruling on that factor.

Appellants are victims of Old CertainTeed's asbestos-containing products. Mr. Bergrud has already died from mesothelioma. Mr. Herlihy is living on borrowed time.

Appellants' motions isolated one issue: whether this Texas Two-Step bankruptcy was filed in bad faith as defined by this Circuit's longstanding precedent. There is no dispute that DBMP (1) is not financially troubled, (2) can pay all creditors in full outside of bankruptcy, and (3) engaged in a pre-filing Texas Two-Step to isolate a single class of creditors and force renegotiation of Old CertainTeed's state-law tort liabilities. All the while, 97% of Old CertainTeed's profitable non-distressed business (and all its other creditors) remain free from the obligations of bankruptcy.

The Bankruptcy Court refused to rule on the foundational question, rejecting it as "a waste of everyone's time." JA924. Instead, it treated the case as it would a good faith bankruptcy and purported to apply a balancing test regarding whether stay relief should issue. This was error.

Treating a bankruptcy like a good faith filing when bad faith has been raised puts the cart before the horse. Before a court balances the automatic stay's harm to creditors against the potential disruption of the

bankruptcy case, it must determine if the bankruptcy case itself furthers the purposes of the Bankruptcy Code—*i.e.*, whether the petition is in good faith. If not, then no disruption of the case can tilt the balance against the creditors' rights—particularly when only limited creditor relief is sought.

The Code's allocation of the burden of proof to the Debtor confirms Congress' unequivocal intention that relief from the automatic stay be granted absent *proof* that no cause exists. Proof requires evidence; a failure of proof cannot be overcome with speculation. The Bankruptcy Court's refusal to decide whether the Debtor has invoked Chapter 11 in bad faith is the subject of this appeal.

V. SUMMARY OF ARGUMENT

This Circuit has long abided *Furness*' warning that Chapter 11 should not "give profitable enterprises an opportunity to evade contractual or other liability." *Furness*, 35 B.R. at 1009.[13]

[13] *Furness* is foundational. Half a dozen federal appellate courts (and numerous lower courts) have relied on its on it when analyzing a debtor's bad faith. *See In re SGL Carbon Corp.*, 200 F.3d 154, 165 (3d Cir. 1999); *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1071 n.1, 1072 n.2 (5th Cir. 1986); *In re South Beach Securities, Inc.*, 606 F.3d 366, 376 (7th Cir. 2010); *In re Cedar Shore Resort, Inc.*, 235 F.3d 375, 381 (8th Cir. 2000); *In re Marsch*, 36 F.3d 825, 828 (9th Cir. 1994); *In re Dixie Broadcasting,*

The purpose of Chapter 11 is "to allow the resuscitation of a financially troubled debtor." *Carolin Corp. v. Miller,* 886 F.2d 698, 701 (4th Cir. 1989). This Court expressly confirmed that bankruptcy is not for "financially healthy companies with no need to reorganize under the protection of Chapter 11." *Premier Auto*, 492 F.3d at 280 (4th Cir. 2007) (*citing SGL Carbon,* citing *Furness* and other authority).

The Supreme Court reaffirmed this principle earlier this year: "Bankruptcy offers individuals and businesses *in financial distress* a fresh start to reorganize, discharge their debts, and maximize the property available to creditors." *Truck Ins. Exchange v. Kaiser Gypsum Company, Inc.,* 602 U.S. 268, 272 (2024) (emphasis added).

The uncontested facts demonstrate that DBMP is not in financial distress. It accordingly filed in bad faith. In addition to its admitted ability to pay its creditors in full—sufficient in itself for a bad faith finding—DBMP's Texas Two-Step demonstrates its purposes are, in the

Inc., 871 F.2d 1023, 1027 (11th Cir. 1989). This Circuit, in turn, relies upon *SGL Carbon* and *Little Creek* in *Carolin* and *Premier Auto.*

words of Judge Whitley in another case, "not in line with any of the purposes of the Bankruptcy Code."[14]

Section 362(a)'s automatic stay is one of bankruptcy's most powerful and disruptive tools. Accordingly, Congress and the courts designed limits to ensure the stay is not improperly invoked. Congress engineered two dramatic limits in § 362(d): the mandate that relief "shall" be granted if "cause" exists, and the allocation of the burden of proof—of *disproving* cause—upon the debtor. 11 U.S.C. § 362. The Bankruptcy Court's ruling violated both Congressional limits.

Despite (1) copious and undisputed indicia of DBMP's bad faith put squarely before it, (2) the mandatory nature of relief from stay, and (3) the Congressionally mandated burden of proof, the Bankruptcy Court refused to rule on whether DBMP filed in bad faith and refused to grant relief from the stay.

In *Carolin*, this Circuit recognized the availability of stay relief where bad faith is "cause" under § 362(d). This recognition was a building block of *Carolin*'s two-pronged standard for dismissal of bad faith petitions under 11 U.S.C. § 1112(b). *Carolin* recognized that creditors

[14] *In re Patel*, 2002 WL 1420045, at *6 (Bankr. W.D.N.C. 2022).

whose rights were mired in bad faith petitions had access to relief from the automatic stay, even if the petition might not qualify for dismissal pursuant to § 1112 at the "very portals" of a case. 886 F.2d at 700. The availability of stay relief mitigated the potential harm to creditors of delay caused by not dismissing a petition upon a finding of subjective bad faith. *Id.* at 699–700.

By conflating the § 362(d) relief-from-stay standard with the § 1112 dismissal standard, the Bankruptcy Court ignored *Carolin*'s reasoning and effectively eliminated bad faith as "cause" for stay relief. *Accord In re Dixie Broadcasting,* 871 F.2d 1023, 1029 (11th Cir. 1989) ("We disagree that bad faith constituting 'cause' for relief from a stay automatically equates to bad faith warranting dismissal of the petition. If that were true, there would not be a need to ever lift a stay for bad faith, because the petition would necessarily have to be dismissed.").

Moreover, by refusing to address bad faith, the Bankruptcy Court created a bizarre and unjust rule. Under the Bankruptcy Court's reasoning, a profitable, non-distressed company can *deliberately* file a bankruptcy petition in bad faith and, nevertheless, enjoy the automatic stay's benefits indefinitely. Under this through-the-looking-glass rule, a

massively profitable company that freely admits it has no financial *need* for bankruptcy—and that it has filed for bankruptcy to force restructuring of state-law debts it can pay in full, without distress—is immune from both dismissal for bad faith *and* from stay relief.

But the ability to pay creditors in full does not entitle a debtor to benefit from the automatic stay under 11 U.S.C. § 362(a) while it leverages the bankruptcy system for its non-bankruptcy goal. The ability to pay all creditors in full, without distress, outside of bankruptcy, means the debtor should not benefit from Chapter 11 at all.

Instead of addressing the Debtor's bad faith, the Bankruptcy Court applied *In re Robbins*, 964 F.2d 342 (4th Cir. 1992), a case that presumes good faith and, therefore, is superfluous to the bad faith analysis. But even assuming that *Robbins'* equitable factors apply, the Bankruptcy Court still erred: it ruled on conjecture rather than evidence, *see* § 362(d)(1); ignored the nil potential for "dismemberment" of the estate, *see Grady v. A.H. Robins Co., Inc.*, 839 F.2d 198, 202 (4th Cir. 1988); and gave weight to the purported purpose of the Debtor's Texas Two-Step bankruptcy scheme without determining if that purpose was consistent with Congress' purposes for the Code, *see Carolin*, 886 F.2d at 700.

The Bankruptcy Code is not a tool for ultra-wealthy corporations to wield against Americans sickened and killed by their dangerous and defective products. Congress never so intended, nor has this Circuit—or any other—ever so held. The Bankruptcy Court's ruling mutates Article I courts into tribunals of unlimited jurisdiction, available for any purpose so long as a debtor—counterintuitively—can pay all its creditors.

DBMP's lack of financial distress (and pre-filing Texas Two-Step) demonstrate its Chapter 11 case was filed in bad faith. Bad faith is cause for relief from the automatic stay. And where cause exists, relief to a creditor is mandatory. Ignoring assertions of bad faith *incentivizes* parties to act in bad faith.

This Court must intercede now, and rule on the foundational issue plaguing the Texas Two-Step bankruptcies filed in the Western District of North Carolina. This Court must reverse.

VII. STANDARD OF REVIEW

This Court examines factual findings of the bankruptcy court for clear error and reviews legal conclusions de novo. *In re Kirkland*, 600 F.3d 310, 314 (4th Cir. 2010). Where, as here, the relevant facts are

undisputed, this Court reviews the bankruptcy court's decision de novo. *In re Jones*, 591 F.3d 308, 310 (4th Cir. 2010).

VIII. ARGUMENT

Courts uniformly acknowledge that a bankruptcy case does not serve the purposes of the Code unless a debtor is in financial distress. And a Chapter 11 case that fails to serve the Code's purposes is not brought in good faith. Lack of good faith is well-recognized cause for relief from § 362(a)'s automatic stay. Because relief from stay is mandatory "for cause" under § 362(d), because a debtor's bad faith is "cause," and because the Bankruptcy Court refused to entertain whether bad faith even exists here, the Bankruptcy Court erred.

This appeal touches on some of the Bankruptcy Code's granular provisions, but the controlling principles here are broad ones: limits on bankruptcy's disruptive power, limits on federal jurisdiction, and the foundational purposes of the Bankruptcy Code. Put simply, bankruptcy is for debtors struggling to pay their creditors. It is not a tool for the ultra-wealthy to restructure state-law liabilities they admit they can pay in full.

Because the material facts demonstrating bad faith are undisputed, the existence of "cause" is a question of law for this Court. And because Congress mandates relief from the automatic stay when cause exists, this Court should reverse the Bankruptcy Court and grant Appellants relief from the automatic stay.

A. Bankruptcy: Powerful Relief for the Financially Distressed. But DBMP is Not Financially Distressed.

A "debtor has no constitutional or 'fundamental' right to a discharge in bankruptcy." *Grogan v. Garner*, 498 U.S. 279, 286 (1991). "Congress' power under the Bankruptcy Clause[15] contemplate[s] an adjustment of a *failing debtor's* obligations." *Ry. Labor Execs. Ass'n v. Gibbons*, 455 U.S. 457, 466 (1982) (emphasis added). Bankruptcy offers a "fresh start" to "businesses in financial distress." *Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268, 272 (2024).

Chapter 11 vests courts with "considerable powers" that "can impose significant hardship" on creditors. *In re LTL Mgmt., LLC*, 64 F.4th 84, 103 (3d Cir. 2023) (cleaned up). Recognizing this, bankruptcy

[15] "[The Congress shall have power …] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. art. I, § 8, cl. 4.

law balances the opposing interests of debtors and creditors. *See Bartenwerfer v. Buckley*, 598 U.S. 69, 72 (2023); *Janvey v. Romero*, 883 F.3d 406, 410 (4th Cir. 2018); *In re Little Creek Development Co.*, 779 F.2d 1068, 1071–72 (5th Cir. 1986). But "the good and useful ends of the bankruptcy process can be badly abused." *Premier Auto,* 492 F.3d at 277.

A "simple bargain" lies beneath bankruptcy's complexities. *Harrington v. Purdue Pharma L.P.*, 603 U.S. ----, 144 S. Ct. 2071, 2077–78 (2024). A company which "places virtually all its assets on the table for its creditors" may win a discharge of its debts. *Id*. But only if that company seeks bankruptcy's safe harbor in "good faith." *Carolin,* 886 F.2d at 698. The "fresh start" offered by Chapter 11 is limited to "honest but unfortunate debtor[s]." *Grogan*, 498 U.S. at 286–87 (quoting *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934)).

Like all federal courts, bankruptcy courts have limited jurisdiction; they must be "alert to avoid overstepping" their limited power. *Canal Corp. v. Finnman (In re Johnson)*, 960 F.2d 396, 399 (4th Cir. 1992); *McCorkle v. First Penn. Banking & Trust Co.*, 459 F.2d 243, 244 n.1 (4th Cir. 1972). Courts cannot wield bankruptcy's "powerful equitable weapons," like the automatic stay, on behalf of "financially healthy

companies with no need to reorganize." *See Premier Auto,* 492 F.3d at 279-82 (quoting *SGL Carbon*, 200 F.3d at 166 (collecting cases)).

To the contrary, the purpose of the Bankruptcy Code is universally recognized as allowing for "resuscitating a financially troubled debtor." *Carolin*, 886 F.2d at 701 (quoting *In re Coastal Cable TV, Inc.*, 709 F.2d 762, 765 (1st Cir. 1983)).[16]

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[16] *See also Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) ("One of the primary purposes of the Bankruptcy Act is to relieve the honest debtor from *the weight of oppressive indebtedness*, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes."); *Wetmore v. Markoe*, 196 U.S. 68, 77 (1904) ("Systems of bankruptcy are designed to relieve the honest debtor from the weight of indebtedness which *has become oppressive* …"); *In re Capitol Food Corp. of Fields Corner*, 490 F.3d 21, 25 (1st Cir. 2007) (acknowledging that a debtor need not be "insolvent" before filing, but that it must face "some type of *financial distress*"); *In re Cohoes Indus. Terminal, Inc.*, 931 F.2d 222, 228 (2d Cir. 1991) (debtor must "at least … face such *financial difficulty* that, if it did not file at that time, it could anticipate the need to file in the future"); *In re SGL Carbon Corp.*, 200 F.3d at 164–66 ("Courts have allowed companies to seek the protections of bankruptcy when faced with pending litigation that posed a *serious threat to the companies' long term viability*."); *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1073 (5th Cir. 1986) ("[T]he purpose of Chapter 11 reorganization is to assist *financially distressed* business enterprises … "); *In re Winshall Settlor's Trust*, 758 F.2d 1136, 1137 (6th Cir. 1985) (*rev'd on other grounds*, *Toibb v. Radloff*, 501 U.S. 157, 160 n. 3 (1991)) ("The purpose of Chapter 11 reorganization is to *assist financially distressed*" debtors); *In re Cook*, 104 F.2d 981, 985 (7th Cir. 1939) (holding the debtor had no valid bankruptcy purpose where "proceeding was instituted not for the purpose

Federal courts (except Article I courts in the Western District of North Carolina) are unified on the issue of financial distress. Chapter 11's legislative history is similarly unequivocal:

> Chapter 11 deals with the reorganization of a *financially distressed* business enterprise, providing for its rehabilitation by adjustment of its debt obligations and equity interests. …
>
> Reorganization, in its fundamental aspects, involves the thankless task of determining who should share the losses incurred by an *unsuccessful business* and how the values of

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of obtaining benefits afforded by the Act to a corporation *in financial distress*, but to enable appellees to escape the jurisdiction of another court"; "A Federal Court should not extend its jurisdiction under such circumstances."); *In re Cedar Shore Resort, Inc.*, 235 F.3d 375, 380 (8th Cir. 2000) (affirming a finding of debtor bad faith because, *inter alia*, the Debtor "was not in dire financial straits," had no "problems with any other creditors," and filed bankruptcy to "thwart" state court litigation by one creditor); *In re Marsch*, 36 F.3d 825, 829 (9th Cir. 1994) (affirming bad faith finding where debtor "had the financial means to pay" obligations, which posed no "danger of disrupting business interests"); *In re Stewart*, 175 F.3d 796, 811 (10th Cir. 1999) (recognizing that relieving "oppressive indebtedness" is "[o]ne of the main purposes of bankruptcy law"); *In re Waldron*, 785 F.2d 936, 940 (11th Cir. 1986) (recognizing Chapter 11's purpose giving a fresh start to a "financially troubled debtor" rather than the "financially secure"; "Permitting the financially secure [debtor] to avoid an option by filing bankruptcy would prompt a flood of litigation: any business that proves it miscalculated could avoid unprofitable deals through the bankruptcy process. This result makes a travesty of the bankruptcy process.") (emphasis added throughout footnote).

> the estate should be apportioned among creditors and stockholders.

S.Rep. No. 95-989, pp. 9-10 (1978). Congress has never extended the protections of the Bankruptcy Code to successful, profitable businesses seeking a better deal on liabilities they can pay in full, nor could such attempt survive Constitutional review.

Here, the Bankruptcy Court's factual findings are unchallenged. DBMP "steadfastly" maintains it has the "same ability to fund the costs of defending and resolving present and future asbestos claims, both in the state and federal courts and in connection with any chapter 11 filing" as Old CertainTeed. JA237-238. DBMP subsequently assured the District Court the "Funding Agreement … makes available New [CertainTeed's] and DBMP's combined resources from Old [CertainTeed]—giving DBMP the ability to meet its obligations, including paying asbestos claims." JA1068.

The linchpin material fact in this appeal—DBMP's lack of financial distress—is uncontroverted. And a lack of financial distress means the lack of a valid bankruptcy purpose—a lack of good faith.

B. Lack of Financial Distress = Lack of Good Faith. DBMP's Invocation of Bankruptcy's Powerful Equitable Weapons Was Bad Faith.

"Bad faith" in the context of Chapter 11 filings does not mean "actual fraud" or "proof of malice." *In re Waldron*, 785 F.2d 936, 941 (11th Cir. 1986). Rather, the good faith requirement simply "prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefitting them in any way or to achieve reprehensible purposes." *Premier Auto*, 492 F.3d at 279; *accord Waldron*, 785 F.2d at 941 (bankruptcy courts must "preserve the integrity of the bankruptcy process by refusing to condone its abuse"). Subjective bad faith may be shown where a debtor files "to abuse the reorganization process," or "to cause hardship," or "to delay creditors by resort to the Chapter 11 device merely for the purpose of invoking the automatic stay." *Premier Auto*, 492 F.3d at 280 (citing *Carolin*, 886 F.2d at 702).

"The purpose of Chapter 11 reorganization is to assist financially distressed business enterprises by providing them with breathing space in which to return to a viable state." *Premier Auto*, 492 F.3d at 284. In *Premier Auto*, the debtor, like DBMP, "had no demonstrable need to

reorganize when it filed the petition; it was not, the bankruptcy court found, even 'experiencing financial difficulties.'" *Id.* at 280. The bankruptcy filings revealed a "solvent[17] business entity with no unsecured creditors and few, if any, secured creditors." *Id.* Those facts supported a finding of "impermissible purpose"—*i.e.*, of bad faith. *Id.*

In *Premier Auto*, this Court cited the Third Circuit's decision in *SGL Carbon* for the proposition that "financially healthy companies with no need to reorganize under the protection of Chapter 11" do not belong in Chapter 11. 492 F.3d at 280. In *SGL Carbon*, a Delaware manufacturer facing significant antitrust liability was, nevertheless, "financially healthy." *SGL Carbon*, 200 F.3d at 156. Such a debtor "has no need to rehabilitate or reorganize," so its petition "cannot serve the rehabilitative purpose for which Chapter 11 was designed." *Id.* at 166. Chapter 11, after all, requires the use of "considerable powers" (like the

[17] Appellants have never asserted that *insolvency* is required for bankruptcy. A good faith debtor who legitimately believes he will run out of money should not have to wait to seek relief. *See In re Capitol Food Corp. of Fields Corner*, 490 F.3d 21, 25 (1st Cir. 2007). But DBMP can pay all its creditors via the uncapped funding agreement backstopped by New CertainTeed. At no time has DBMP presented any evidence that it was out of money, about to run out of money, or in any financial distress.

automatic stay) that "can impose significant hardship on particular creditors." *Id.* at 165.

"When financially troubled petitioners seek a chance to remain in business, the exercise of those powers is justified. But this is not so when a petitioner's aims lie outside those of the Bankruptcy Code." *Id.* at 165–66. The absence of a valid, reorganizational, Chapter 11 purpose doomed SGL Carbon's bankruptcy for "lack of good faith." *Id.*

SGL Carbon was the doctrinal start (and end) for a recent high profile Texas Two-Step case. In *LTL Management*, the Third Circuit twice rejected—for lack of good faith—a non-distressed bankruptcy materially identical to this one. There, a Johnson & Johnson ("J&J") affiliate executed a Texas Two-Step whereby J&J dumped its asbestos liabilities into LTL Management ("LTL"). *See In re LTL Mgmt., LLC*, 64 F.4th 84, 95–96 (3d Cir. 2023). LTL was backstopped by a "Funding Agreement" it could use "like an ATM disguised as a contract" to draw necessary money from J&J. *See id.* LTL had "massive liabilities," but its "call on assets to fund them exceeded any reasonable projections" available on the record. *Id.* at 109. Because LTL lacked financial distress,

it lacked a valid bankruptcy purpose and, therefore, lacked the good faith required for a debtor to invoke Chapter 11's considerable powers. *See id.*

Here, the *Premier Auto*, *Carolin*, *SGL Carbon*, and *LTL Management* principles control: DBMP's Chapter 11 lacks good faith as a matter of law. As in *Premier Auto*, DBMP has "no demonstrable need to reorganize" and is not "experiencing financial difficulties." It does not need "breathing space" or "resuscitation." Accordingly, its bankruptcy does not serve Chapter 11's rehabilitative purpose and is, therefore, in bad faith.

Like SGL Carbon, DBMP does not need bankruptcy to "remain in business." Accordingly, the courts' deployment of Chapter 11's "powerful equitable tools" on DBMP's behalf is unjustified. DBMP's attempt to limit its mass-tort liabilities is no different than SGL Carbon's attempt to use bankruptcy to limit its antitrust liability. Like SGL Carbon, DBMP's bad faith is manifest. "[I]f a Chapter 11 plan does not have a rehabilitative purpose, the statutory provisions designed to accomplish the reorganizational objectives become destructive of the legitimate rights and interests of creditors." *SGL Carbon*, 200 F.3d at 166.

SGL Carbon points to *Carolin*, this Circuit's touchstone for bad faith dismissal under 11 U.S.C. § 1112(b), as recognizing a "good faith requirement" that is "indispensable" to Chapter 11's purposes. *SGL Carbon*, 200 F.3d at 162. *Carolin*, unlike this case, concerned a debtor with "no realistic chance to rehabilitate," 886 F.2d at 702, and prompted this Court to articulate its two-part test for § 1112(b) "bad faith" dismissal, *id.* at 700–02.

In announcing that test, this Court acknowledged the possibility that some Chapter 11 cases filed in subjective bad faith may nevertheless survive dismissal motions "at the very portals of bankruptcy." *Id.* at 700. But creditors who could not win dismissal under § 1112(b) had other remedies, including—expressly—"relief from stay." *Id.*

LTL Management was a materially identical Two-Step Scheme: the same debtor-side lawyers and the same fundamental deficiency as here: bad faith.[18] The Third Circuit "start[ed], and stay[ed], with good faith.

[18] Like this case, LTL's first Chapter 11 petition was filed in the Western District of North Carolina, presumably to take advantage of what Two-Step debtors argue is the more stringent standard for dismissal in this Circuit. Appellants strongly disagree with the debtors' illogical position; the Fourth Circuit has never ruled that a company can effectively be rich enough to buy the equitable relief provided by the Code. But dismissal is not at issue here.

Good intentions—such as to protect the [corporate] brand or comprehensively resolve litigation—do not suffice alone. What counts to access the Bankruptcy Code's safe harbor is to meet its intended purposes." 64 F.4th at 93. "[G]iven Chapter 11's ability to redefine fundamental rights of third parties, only those facing financial distress can call on bankruptcy's tools to do so. Applied here, while [J&J's made-for-bankruptcy shell company] faces substantial future talc liability, its funding backstop plainly mitigates any financial distress foreseen on its petition date." *Id.* at 110.

Like LTL Management, DBMP is fully backstopped by a corporate affiliate that can pay DBMP's asbestos liabilities in full, inside or outside of bankruptcy. [19] DBMP *wants* access to the powerful equitable weapons

[19] The existence of 11 U.S.C. § 524(g) does nothing to help the Debtor. Section 524(g) is a tool of bankruptcy, not a bankruptcy purpose. Congress did not fling open Chapter 11's doors to profitable non-distressed debtors who manipulate their corporate structure to isolate asbestos disease victims when it enacted § 524(g). Rather, § 524(g) was enacted in the wake of the Johns-Manville bankruptcy "for use by any asbestos company facing a similarly overwhelming [to Johns-Manville] liability." H.R. Rep. No. 103-835, at 40–41 (1994)*; see also Kane v. Johns-Manville Corp.*, 843 F.2d 636, 640 (2d Cir. 1988) (confirming Manville was faced with "crippling" lawsuits); *id.* at 649 (recognizing Manville was a "financially besieged enterprise in desperate need of reorganization of its crushing debt, both present and future."); S. Rep. No. 95-989, at 9

of bankruptcy, but it does not *need* them to prevent a "fatal financial plummet." *SGL Carbon*, 200 F.3d at 166 (quoting *Furness*, 35 B.R. at 1009). Rather, DBMP conflates its desire for access to a proper tool of bankruptcy with a proper bankruptcy purpose. *See In re Patel*, 2022 WL 1420045, at *7.

As in *LTL Management*, *SGL Carbon*, and *Premier Auto*, the Debtor's lack of financial distress means bad faith taints DBMP's Chapter 11 case. But other indicia of bad faith exist here, too, and make DBMP's bad faith indisputable.

C. Other Indicia of Bad Faith Bankruptcies: DBMP's Chapter 11 Filing Is Tainted by New Debtor Syndrome, Forum Shopping, and a Desire (Not Need) for Judicially Compelled Negotiations.

Bad faith can be demonstrated in myriad ways, and courts consider the totality of the circumstances. *Carolin*, 886 F.2d at 701; *In re Cedar Shore Resort, Inc.*, 235 F.3d 375, 379 (8th Cir. 2000) (citing *Little Creek*, 779 F.2d at 1072); *Furness*, 35 B.R. at 1012 (D. Md. 1983). It is, of course,

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(1978) (legislative history suggesting Chapter 11 was meant to deal "with the reorganization of a financially distressed enterprise"). Unlike Johns-Manville, Old CertainTeed / DBMP have never faced lawsuits that would "cripple" or "overwhelm" them.

"unlikely that a debtor will ever acknowledge its own bad faith." *In re Cedar Shore*, 235 F.3d at 380 (internal citation omitted).

"New debtor syndrome" describes a bad faith Chapter 11 case filed soon after a one-asset entity is created or revitalized, to isolate creditors. *In re Little Creek*, 779 F.2d at 1073; *In re Dunes Hotel Assocs.*, 188 B.R. 162, 171 (D.S.C. 1995).

A debtor that enters Chapter 11 to "orchestrate pending litigation" rather than to ease "genuine financial distress" abuses the Code's provisions in bad faith. *Furness*, 35 B.R. at 1013*; see also In re Cook*, 104 F.2d 981, 985 (7th Cir. 1939) (debtor lacked good faith when it entered bankruptcy "not for the purpose of obtaining benefits afforded by the Act to a corporation in financial distress, but to enable [it] to escape the jurisdiction of another [state] court…").

Entering bankruptcy to leverage the automatic stay and force creditors into "judicially compelled negotiations" indicates bad faith. *Premier Auto*, 492 F.3d at 280. So does shopping for a debtor-friendly forum. *In re Phoenix Piccadilly, Ltd.*, 849 F.2d 1393, 1395 (11th Cir. 1988). Likewise, using the bankruptcy system to thwart creditors' state

court rights signals bad faith. *In re Cedar Shore*, 235 F.3d at 381; *In re Marsch*, 36 F.3d 825, 828–29 (9th Cir. 1994).

Here, in addition to DBMP's admitted lack of financial distress, multiple indicia of bad faith taint its Chapter 11 filing. Like Premier Auto, which entered bankruptcy to force its landlord into "judicially compelled negotiations," DBMP invoked the automatic stay to "overcome the tort system"—to resolve all its state-law asbestos tort liability in one federal forum. As in *Premier Auto*, DBMP's "unilateral expectation that judicially compelled … negotiations might culminate in agreement" did not make its invocation of Chapter 11 proper. 492 F.3d at 282–83.

The undisputed facts here fall squarely into the words of the Seventh Circuit nearly a century ago:

> the instant proceeding was instituted not for the purpose of obtaining benefits afforded by the Act to a corporation in financial distress, but to enable appellees to escape the jurisdiction of another court where the day of reckoning for their alleged acts of misconduct was at hand. It is our conclusion that a Federal Court should not extend its jurisdiction under such circumstances. To do so is to furnish a haven of repose for one accused and called to account by a court of competent jurisdiction.

In re Cook, 104 F.2d at 985.

In *Little Creek*, the Fifth Circuit recognized that "new debtor" syndrome—the transfer of one's assets to a new debtor on the eve of a Chapter 11 finding—is indicia of bad faith. *In re Little Creek*, 779 F.2d at 1073 n.3 (collecting cases). So too here. DBMP exists as a newly-created stooge receptacle for the asbestos liabilities of its wealthy corporate affiliates; it was created (in October 2019) for the purpose of immediately filing (three months later) for bankruptcy.[20]

Further, "new debtor" DBMP was engineered for one specific federal jurisdiction: the Western District of North Carolina. Even more egregiously than in *Phoenix Piccadilly*, where a venue over 700 miles from the debtor's property and creditors was chosen for filing, here the ultimate decision to create DBMP and plunge it into bankruptcy happened in France. *See* 849 F.2d at 1395 (citing *In re Pappas*, 7 B.R. 488, 490 (Bankr. D. Mass. 1980)); *In re Heritage Wood'n Lakes*, 73 B.R. 511, 514 (Bankr. M.D. Fla. 1987).

As a matter of judicial restraint, the specter of "judicially compelled negotiations," combined with forum shopping cannot be overlooked.

[20] The Bankruptcy Court flatly rejected DBMP's attempt to claim that it was not formed for the purpose of filing for bankruptcy, as not credible and contrary to the evidence. JA248, Findings ¶102.

DBMP, through its restructuring and Funding Agreements, has access to the vast resources of its corporate affiliates. It does not stand in the same position as a typical Chapter 11 debtor, which is incentivized to escape from bankruptcy as soon as practicable.

Instead, DBMP has entered the one bankruptcy district in America which permits wealthy, non-distressed corporations to deploy bankruptcy's "powerful equitable weapons" to effectuate extra-legislative tort reform due to their dissatisfaction with the civil justice system. And it permits them to do so after performing a Texas Two-Step, leaving the profitable business free from the obligations of bankruptcy.

For seven years, this bankruptcy district has steadfastly refused to rule on whether such an attempt by a debtor constitutes a good faith invocation of the Code. Appellants (and the other claimants in this case), by contrast, are individual American citizens and "creditors" of DBMP through no fault of their own, but simply by virtue of breathing dust from DBMP's products. Whether the Debtor's grievances about the states' tort systems are pretextual or not is beside the point—Congress has never granted the bankruptcy court the authority to enact civil justice reform. Appellants (and the Debtor) already have Constitutionally appropriate

forums to negotiate with DBMP: the state civil courts of California and Washington.

In these circumstances, the automatic stay does not act in its Congressionally-assigned role as a tool for rehabilitation; the Two-Step debtors have no need of rehabilitation. Rather, in these cases, the automatic stay mutates into a weapon for the ultra-wealthy to bludgeon their creditors into submission, bypassing Congress and the state legislatures and using the bankruptcy courts to effectuate tort reform.

Congress never empowered Article I courts to "overcome the tort system" via the Bankruptcy Code. Changing the civil justice system is the exclusive province of Congress and the state legislatures. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 842 (1999) (recognizing the "serious constitutional concerns" raised by aggregating individual tort claims, "especially where a case seeks to resolve future liability in a settlement-only action"). This Court should not countenance such tactics.

In short, while the Debtor's petition is terminally flawed by its lack of financial distress, its Texas Two-Step scheme provides ample additional indicia of bad faith. Has DBMP forum shopped? Yes. Isolated one class of creditor? Yes. *See In re Kestell*, 99 F.3d 146, 149–50 (4th Cir.

1996). Attempted to keep assets out of the reach of bankruptcy jurisdiction? Yes. *See In re Dutch Flat Inv. Co.*, 6 B.R. 470, 471 (Bankr. N.D. Cal. 1980) (finding bad faith, and reasoning that guarding against misuse of Chapter 11 is particularly needed "where debtors have elected not to submit the actual entities in interest to the jurisdiction of the court thereby isolating the entities in interest from scrutiny and control of the court during the proceedings."); *Milwaukee Postal Bldg. Corp. v. McCann*, 95 F.2d 948, 952 (8th Cir. 1938) (where "the debtor … was organized and the property conveyed to it for the sole purpose of attempting to work out a reorganization…[a] corporation organized for such a purpose is not within the remedy afforded by" bankruptcy law); *Mongiello Bros. Coal Corp. v. Houghtailing Properties Inc.*, 309 F.2d 925, 930 (5th Cir. 1962) ("[T]he Act is not to be abused by the extension of its privileges to those not within the contemplation of it, such as where individual debtors convey their property to a corporation for the purpose of utilizing" bankruptcy proceedings.)

Appellants do not expect DBMP to "acknowledge its own bad faith." *In re Cedar Shore*, 235 F.3d at 380. But when the issue was raised directly to the Bankruptcy Court, it was obligated to assess whether the

statutory power entrusted to it had been properly invoked. Its failure to do so, especially when relief from the stay is mandated by statute, *see* § 362(d), was error.

D. *The Automatic Stay: Congressionally and Judicially Limited Because It Is So Disruptive. The Stay's Protections (1) Do Not Inure to the Bad Faith Debtor and (2) Serve No Pro-Creditor Purpose.*

Section 362(a)'s automatic stay, which stops any other proceedings against a debtor, is one of Chapter 11's most "powerful" tools. *See, e.g. SGL Carbon*, 200 F.3d at 165; *Fox Valley Const. Workers Fringe Ben. Funds v. Pride of Fox Masonry & Expert Restorations*, 140 F.3d 661, 666 (7th Cir. 1998); *In re Selinsky*, 365 B.R. 260, 267 (Bankr. S.D. Fla. 2007). *Accord In re Russo*, 94 B.R. 127, 129 (Bankr. N.D. Ill. 1988) ("The automatic stay is one of the most powerful weapons known to the law.")

Congress expressly recognized the automatic stay's potential to infringe on a creditor's rights:

> The automatic stay by its nature, seriously affects the rights of all the debtor's creditors. As a result, certain limitations are placed upon the continuance of the stay…Any creditor may request the court for relief from such stay, which request shall be given calendar priority by the court."

S. Rep. 95-989, 4–5.

> "[A]t hearings on relief from the stay, the only issue will be the lack of adequate protection, the debtor's equity in the property, and *the necessity of the property of an effective reorganization of the debtor*, or *the existence of other cause* for relief from the stay."

Id. at *55 (emphasis added).

Like most bankruptcy provisions, the automatic stay is intended to protect both creditors and (good faith) debtors. Debtors avoid "an uncontrollable scramble for [their] assets in a number of uncoordinated proceedings in different courts." *In re A.H. Robins Co.*, 788 F.2d 994, 998 (4th Cir. 1986). Creditors are protected from one another: the stay "preclude[s] one creditor from pursuing a remedy to the disadvantage of other creditors." *Id.* Absent the stay, "dismemberment rather than reorganization" would be "the inevitable result." *Grady v. A.H. Robins Co., Inc.*, 839 F.2d 198, 202 (4th Cir. 1988).

The statutory provision controlling relief from stay is found in 11 U.S.C. § 362(d). "On request of a party in interest and after notice and a hearing, the court *shall* grant relief from the stay provided under [§ 362(a)], such as by terminating, annulling, modifying, or conditioning such stay … for cause." 11 U.S.C. § 362(d)(1).

Congress allocated the burden of resisting stay relief (or, as the legislative history puts it, the party arguing for "continuance of the stay")

onto the party opposing stay relief—here, the Debtor. 11 U.S.C. § 362(g)(2).

Bad faith is widely recognized as "cause" for stay relief under § 362(d). "[C]reditors who become entangled in hopeless Chapter 11 cases … have [the] remed[y] of relief from stay." *Carolin*, 886 F.2d at 700.[21] Section 362(d)(1)'s "for cause" language "authorizes the court to determine whether, with respect to the interests of a creditor seeking relief, a debtor has sought the protection of the automatic stay in good faith." *Id.* at 699.

[21] The Bankruptcy Court's ruling presupposes that *Carolin* somehow prevents dismissal. While that issue is not before this Court, such an interpretation of *Carolin* goes against its plain language. Further, the "objective futility," part of *Carolin*'s § 1112(b) test, has never been a requirement for § 362(d) lift stay. Grafting *Carolin*'s dismissal analysis into this § 362(d) lift stay request was error. Nevertheless, to the extent that this Court were to hold that *Carolin*'s two-pronged test for bad faith dismissal applies, the undisputed facts and DBMP's lack of financial distress, demonstrate objective futility in addition to subjective bad faith—as a matter of law. *See Carolin*, 886 F.2d at 701 (proof "inevitably will overlap" re: the inquiry into a petition's objective futility and subjective bad faith). *Carolin* defines the purpose of the objective futility analysis as ensuring the petition serves the Code's purpose of "resuscitating a financially troubled debtor." *Id.* Because DBMP is not a "financially troubled debtor" and has never needed "resuscitating" its petition is objectively futile as a matter of law.

As discussed in Sections VIII.B–C, *supra*, there is no colorable argument that DBMP filed its Chapter 11 petition in good faith. It does not qualify for the continued protection of the automatic stay, and it does not (under any reasonable understanding of fundamental fairness) deserve it.

Moreover, because DBMP admits it can pay its creditors in full, the automatic stay's "anti-dismemberment" purposes are not served by the stay's continuance (even if Appellants sought to both quantify *and collect*). Nor can DBMP pretend there is any threat to the size of the estate: it admits it can fully pay all asbestos creditors, now and in the future, inside or outside of bankruptcy.[22] But these concerns are purely hypothetical given the express limitation of the relief sought by Appellants to merely quantifying the value of their claims.

Unlike most bankruptcies, where good faith debtors seek to return quickly back into the commercial world, here DBMP benefits by sitting

[22] *See* H.R.Rep. No. 95-595, at 341 (1977); S.Rep. No. 95-989, at 50 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5836 (emphasis added) ("[I]t will often be more appropriate to permit proceedings to continue in their place of origin, *when no great prejudice to the bankruptcy estate would result*, in order to leave the parties to their chosen forum and to relieve the bankruptcy court from many duties that may be handled elsewhere.").

behind § 362(a)'s high wall indefinitely.[23] DBMP has not paid a single verdict or settlement in five years. Its cost to defend asbestos-related claims in state court since this case was filed is $0.00. This collateral (and improper) benefit of Old CertainTeed's Texas Two-Step was expressly recognized by DBMP's corporate parent when it announced it expected DBMP's bankruptcy "to take up to approximately five to eight years," during which "all asbestos litigations [sic] have been stayed and all related costs suspended." JA437.

On the other side of the debtor-creditor balance stand Peter Bergrud's family and the Herlihys. The Bergruds filed suit against

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[23] The Texas Two-Step has resulted in billions of dollars in windfall to equity holders, who are supposed eat last at Chapter 11's table. *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 457 (2017); 11 U.S.C. § 726(a)(6). Additionally, well over $500,000,000.00 in fees has been doled out to bankruptcy professionals in the four cases parked in the Western District of North Carolina. *See* Ames Alexander, *Profitable companies are dodging asbestos lawsuits. A Charlotte court has helped them*, THE CHARLOTTE OBSERVER, July 24, 2024, https://www.charlotteobserver.com/news/local/crime/article289390884.html; Jeff Tiberri, *Legal maneuvers used in Charlotte bankruptcy court hold up lawsuits by victims of asbestos exposure*, NORTH CAROLINA PUBLIC RADIO (July 30, 2024), https://www.wunc.org/show/due-south/2024-07-30/legal-maneuvers-used-in-charlotte-bankruptcy-court-hold-up-lawsuits-by-victims-of-asbestos-exposure.

DBMP's predecessor six months before Old CertainTeed executed its Two-Step. They have waited almost six years to present their case to a Washington jury.[24] Mr. Herlihy was diagnosed with mesothelioma over three years after DBMP filed its petition. Unless the stay is lifted, there is a real risk he will not see his day in court.[25]

In this case, the costs of delay inure only to the detriment to the creditors. Thus, the automatic stay here does nothing to serve Congress' balance between a debtor's need for a "breathing spell" and all creditors' right to payment. The Bankruptcy Court had no discretion to skip over the question of whether the automatic stay was protecting a bad-faith debtor. Bad faith is "cause," and cause mandates stay relief. *See* 11 U.S.C. § 362(d)(1).

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[24] *See* 28 U.S.C. §§ 157(b)(2)(B), (b)(5), § 1334(c)(2).

[25] Sometimes lift stay preferred to dismissal. *See In re Yukon Enterprises, Inc.*, 39 B.R. 919, 920-21 (Bankr. C.D. Cal. 1984) ("[T]he lifting of the stay is often a more prudent course for creditors rather than seeking dismissal of the case."). *See also In re Dixie Broadcasting*, 871 F.2d 1023, 1029 (11th Cir. 1989) (collecting cases) ("We disagree that bad faith constituting 'cause' for relief from a stay automatically equates to bad faith warranting dismissal of the petition. If that were true, there would not be a need to ever lift a stay for bad faith, because the petition would necessarily have to be dismissed. That seems at odds with the intent of the Bankruptcy Code [and] is at least in consistent with the practice in many courts.").

E. The Bankruptcy Court Erred by Failing to Require that DBMP Prove Continuation of the Stay Was Warranted and Compounded Its Error by Putting Hypothetical Case Management Concerns Over Foundational Issues of Judicial Power.

When cause for stay relief is shown—and bad faith is cause[26]—relief is not optional. *See* 11 U.S.C. § 362(d) ("shall grant relief").

Here, instead of analyzing bad faith, the Bankruptcy Court blindly looked to *In re Robbins*, 964 F.2d 342 (4th Cir. 1992). In that post-divorce

[26] *Carolin*, 886 F.2d at 699; *Furness*, 35 B.R. at 1011 ("Courts have found that if a Chapter 11 petition is not filed in good faith, grounds exist to either vacate the automatic stay or dismiss the petition."); *In re Talladega Steaks, Inc.*, 50 B.R. 42, 43 (Bankr. N.D. Ala. 1985) (same); *In re Victory Const. Co., Inc.*, 9 B.R. 549, 560 (Bankr. C.D. Cal. 1981) (vacated on other grounds as moot, 37 B.R. 222 (B.A.P. 9th 1984) ("[T]he debtor's lack of 'good faith' in filing a case under Chapter 11 is 'cause,' independent of the existence of lack of adequate protection, to vacate the automatic stay under § 362(d)(1)); *In re Corp. Deja Vu*, 34 B.R. 845, 850 (Bankr. D. Md. 1983) ("Reorganization was neither contemplated nor possible. The petition was filed in bad faith. This bad faith constitutes cause to allow the secured creditor relief from the stay."); *In re RAD Properties, Inc.*, 84 B.R. 827, 831 (Bankr. M.D. Fla. 1988) ("[T]he court concludes that the debtor's pending Chapter 11 case was filed in bad faith, which constitutes cause within the meaning of Section 362(d)(1) of the bankruptcy code for lifting the automatic stay.").

equitable distribution dispute, the issue of bad faith was not discussed. This Court reasoned that the consideration of "cause" under § 362(d) balances "potential prejudice to the bankruptcy debtor's estate against the hardships that will be incurred by the person seeking relief from the automatic stay if relief is denied." *Robbins*, 964 F.2d at 345.

As discussed in Section VIII.D., *supra*, DBMP's lack of financial distress (and the resulting existence of bad faith) disprove the need for continuing the automatic stay. The harm to the Bergruds and Herlihys is manifest. The risk of prejudice to the Debtor's estate is non-existent—it admits the uncapped ability to pay all creditors fully. Indeed, taking DBMP at its word, *every* claimant in this case could quantify his claim against the Debtor in a civil court then return to bankruptcy to await distribution, all without affecting the amount paid to any other creditor. Under the law, every claimant has the right to do just that. *See* 28 U.S.C. § 157(b)(2); 28 U.S.C. § 157(b)(5); 28 U.S.C. § 1334(c)(2).

But the Bankruptcy Court ignored the rationale for the automatic stay in its discussion in *Robbins*'. Instead, the Court bypassed the question of bad faith and limited itself to certain non-inclusive factors—announced in a case where bad faith was not discussed. Those factors

include (1) whether the issues in outside-bankruptcy litigation involve only state law (so the expertise of the bankruptcy court is unnecessary); (2) whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because matters would have to be litigated in bankruptcy court; and (3) whether the estate can be protected properly by a requirement that creditors seek enforcement of any judgement through the bankruptcy court. *Id.*

Even assuming *Robbins* applies in a bad faith case, the Bankruptcy Court erred. There was no dispute *Robbins'* first and third factors supported lifting the stay. As to the first factor, the Bergruds' claims arise under Washington's law, and the Herlihys' under California's. Not only is the Bankruptcy Court's expertise unnecessary in quantifying Appellants' claims, Congress forbids it from so doing. As to the third factor, even setting aside the unlimited funding available to DBMP's "estate" and the Debtor's professed ability to pay each creditor 100-cents on the dollar, Appellants have foresworn payment pending resolution of the bankruptcy proceeding.

The Bankruptcy Court's ruling, which purports to rely upon *Robbins* second factor, illogically ignored the undisputed facts of this case and the purposes of the Code. In the context of a bad faith filing, *Robbins*' discussion of judicial economy automatically weighs in favor of lifting the stay.

If the petition does not further the purposes of the Bankruptcy Code, then, by definition, it does not further judicial economy for the bankruptcy court to continue to exercise jurisdiction. Judicial economy is undoubtedly an important concern, but only if a case belongs in court in the first place.[27] What purpose can "judicial economy" possibly serve in a case where one party has no business wielding Bankruptcy Code's "powerful equitable weapons?" The purposes of the bad faith debtor, perhaps, but not the "clear purposes of the bankruptcy code." *See Carolin*, 886 F.3d at 700.

[27] Imagine: a Virginia plaintiff sues a Virginia defendant in Article III court in Virginia, under a state law tort theory for $74,999. *But see* 28 U.S.C. § 1332. The parties approach the hypothetical court with a joint report, a discovery plan, and a well-reasoned proposed scheduling order. Under the Bankruptcy Court's reasoning here, that Article III judge should ignore the facially problematic existence of the case itself, and focus instead on the effects of the parties' scheduling proposals on her docket.

And even assuming *arguendo* that *Robbins*' second factor can be assessed without considering the Debtor's bad faith—and it logically cannot—it was the Debtor's burden to *prove* the lack of cause for stay relief. 11 U.S.C. § 362(g)(2). There is no record evidence thereof. The findings by the Bankruptcy Court on the matter are slippery-slope conjecture, inferential, and reasoned entirely in favor of the party with the burden of proof. Making inferences in the Debtor's favor was twice error: once in ignoring the statutory command that stay relief "shall" issue for cause, and once in replacing the statutory burden of proof with hypothetical conjecture not based upon any record evidence.

Every claimant in this non-distressed tort-reform bankruptcy has the right to liquidate/estimate his claim before a jury—Congress has expressly forbidden the Bankruptcy Court from so doing. *See* 28 U.S.C. § 157(b)(2); 28 U.S.C. § 157(b)(5); 28 U.S.C. § 1334(c)(2). The "rights of all the debtor's creditors" cannot be overlooked, and any claimant who wants to vindicate those rights will require judicial resources to do so. S. Rep. 95-989, 4-5.

What is at stake here goes far beyond the two-party post-divorce equitable distribution dispute in *Robbins*. Although DBMP's ongoing

asbestos liability—caused by decades of poisoning Americans with deadly products—may be an accounting headache for its shareholders and executives, DBMP has "no constitutional" or "fundamental" right to a discharge in bankruptcy. *Grogan*, 498 U.S. at 286. Here, the automatic stay freezes the rights of dying citizens and their families nationwide, in every state and federal court.

Apart from citizens' constitutional jury trial rights found in almost all states (and the U.S. Constitution's Seventh Amendment)[28], each state itself has an interest in enforcing its own safety regulations and in providing its citizens a forum for redressing injuries. *See Ford Motor Co. v. Montana Eighth Judicial Dist. Ct.*, 592 U.S. 351, 368 (2021). The Bankruptcy Court's reasoning permits a single Article I court to allow the "continuance of the stay," S. Rep. 95-989, 4-5, to disruptive nationwide effect, without even assessing the propriety of its own jurisdiction. Such a rule belies the nature of a court "of limited jurisdiction," *In re Johnson*, 960 F.2d at 399, and tramples on core federalism principles, *see Bond v.*

[28] *See* Cal. Const. art. 1, § 16 ("Trial by jury is an inviolate right and shall be secured to all…"); Wash. Const. art. I, § 21 ("The right of trial by jury shall remain inviolate…"); U.S. Const. amend. VII ("In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved…").

U.S., 564 U.S. 211, 221-22 (2011).[29] Leaving the Bankruptcy Court's reasoning untouched puts this Court's imprimatur on vast federal overreach in the form of an effectively unreviewable automatic stay.[30]

The automatic stay's effect on creditors' and states' rights is staggeringly heavy. It cannot not be weighed against the concerns of judicial economy in a case where the federal judiciary has no authority to deploy its "powerful equitable weapons." *Carolin*, 886 F.2d at 698.

IX. CONCLUSION

[29] "[F]ederalism secures to citizens the liberties that derive from the diffusion of sovereign power. … [It] protects the liberty of all persons within a State by ensuring that laws enacted in excess of delegated governmental power cannot direct or control their actions. … By denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power. When a government acts in excess of its lawful powers, that liberty is at stake."

[30] Indeed, the attorneys general of dozens of states have voiced unequivocal opposition to the Texas Two-Step. *See* Brief of North Carolina, Arizona, California, Colorado, Connecticut, Delaware, Illinois, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington, Wisconsin, and the District of Columbia as Amicus Curiae, *Official Committee of Asbestos Claimants v. Bestwall LLC*, Case No. 23-675 (January 22, 2024), *available at* https://www.supremecourt.gov/DocketPDF/23/23-675/298347/20240122164305807_Bestwall%20-%20NC%20et%20al.%20amicus.pdf

The Texas Two-Step has drawn rare bipartisan Congressional scorn. *See* Brief of Members of Congress as Amici Curiae in Support of Petitioner, *Off. Comm. of Asbestos Claimants v. Bestwall LLC*, 2024 WL 2116276 (U.S. May 13, 2024) (No. 23-675).[31] It has earned rebuke from two dozen state attorneys general, including North Carolina's. *See* FN30, *supra*. The only federal appellate court to address it has carefully and thoroughly, rejected it twice. *In re LTL Management, LLC*, 64 F.4th 84 (3d Cir. 2023); *In re LTL Management* LLC, No. 23-2971, 2024 WL 3540467 (3d Cir. July 25, 2024). And bipartisan legislation has been introduced to specifically eliminate the Two-Step.[32]

"Courts must not be 'blind' to what '[a]ll others can see and understand.'" *Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 486 (1985) (quoting *United States v. Rumely*, 345 U.S. 41, 44 (1953)). Bankruptcy is for those in financial distress. According to the Bankruptcy Court's reasoning, this Circuit offers unique judicial protection—in the form of a

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[31] *Available at* https://www.judiciary.senate.gov/imo/media/doc/23-675%20Bestwall%20amicus%20FINAL.pdf.

[32] Ending Corporate Bankruptcy Abuse Act of 2024, S.4746, 118th Congress Second Session, (2023-2024) *available at* https://sykes.house.gov/media/press-releases/sykes-gooden-whitehouse-hawley-introduce-bipartisan-legislation-to-deter-texas-two-step-bankruptcy-trick.

blind eye—to bad faith debtors who have invoked the automatic stay, so long as those debtors are flush with cash. That reasoning is illogical, inequitable, and erroneous.

Bankruptcy's cornerstone "has always been the doing of equity." *In re Waldron*, 785 F.2d at 941. "Attempting to circumvent a legal obligation through a technicality of the law" is the "antithesis" of "[g]ood faith or basic honesty." *Id.* Because the material fact—DBMP's admitted ability to pay its creditors in full—is undisputed, this Court need simply apply the law. DBMP's lack of financial distress means its Chapter 11 case was filed in bad faith. Its pre-filing Texas Two-Step compounds that bad faith. Bad faith is cause for relief from the automatic stay. And where cause exists, relief to a creditor is mandatory. This Court must reverse.

Respectfully Submitted,

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No. 24-2109 **Caption:** Michael Herlihy v. DBMP, LLC

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(s) Thomas W. Waldrep, Jr.

Party Name Appellants

Dated: February 28, 2025