No. 23-675

IN THE
Supreme Court of the United States

OFFICIAL COMMITTEE OF ASBESTOS CLAIMANTS,
Petitioner,

v.

BESTWALL LLC; GEORGIA-PACIFIC LLC; AND SANDER L. ESSERMAN, IN HIS CAPACITY AS FUTURE CLAIMANTS' REPRESENTATIVE,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

In 11 U.S.C. § 524(g), Congress provided a solution to the problem this Court has described as the "asbestos-litigation crisis." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 597–98 (1997). That statute enables a company to resolve mass asbestos liabilities fairly and equitably by creating a trust—subject to the approval of the District Court and a supermajority of claimants—for the payment of both current and future asbestos tort claims. Respondent Bestwall LLC filed its bankruptcy petition to pursue the resolution Congress authorized. Faced with thousands of asbestos claims in state courts across the country and thousands more projected for years to come, Bestwall's predecessor undertook a corporate restructuring, the potential for which § 524(g) expressly addresses, assigning its asbestos liability to Bestwall, but backed by the full funding capability of the predecessor.

The Bankruptcy Court entered a preliminary injunction that, during the bankruptcy case, stays litigation outside bankruptcy of the *exact, same—identical and co-extensive in every respect*—asbestos claims Bestwall seeks to resolve in bankruptcy. Properly framed, the only questions presented concern that court's subject-matter jurisdiction:

1. Whether asbestos tort claims *identical* to those Bestwall seeks to resolve in bankruptcy are "related to" its bankruptcy under 28 U.S.C. § 1334(b).

2. Whether 28 U.S.C. § 1359 applied to strip the Bankruptcy Court of its otherwise-existing subject-matter jurisdiction.

RULE 29.6 STATEMENT

Bestwall LLC and Georgia-Pacific LLC are wholly owned subsidiaries of Georgia-Pacific Holdings, LLC, which is a wholly owned subsidiary of Georgia-Pacific Equity Holdings LLC, which is a wholly owned subsidiary of Koch Renewable Resources, LLC, which is a wholly owned subsidiary of Koch Industries, Inc. No publicly held company, either directly or indirectly, holds 10% or more interest in Bestwall LLC or Georgia-Pacific LLC.

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INTRODUCTION

The Petition seeks to litigate a question the Fourth Circuit did not resolve—the validity of Bestwall's bankruptcy following its corporate restructuring. Petitioner, the Official Committee of Asbestos Claimants ("the Committee"), challenged that restructuring in a motion to dismiss in a different proceeding; the Bankruptcy Court rejected its arguments; and the Fourth Circuit declined to grant interlocutory, direct review. That is why the Fourth Circuit accurately held that the Committee's attack on Bestwall's bankruptcy in *this* proceeding was "improper," Pet.App.22a, and therefore did not address it. *See also id.* (characterizing the Committee's "jurisdictional arguments" as a "back-door way to challenge the propriety" of Bestwall's "reorganization and the merits of a yet-to-be-filed chapter 11 plan").

Instead, this case involves the Bankruptcy Court's jurisdiction to enter a routine preliminary injunction temporarily staying, during Bestwall's bankruptcy, litigation of asbestos claims against non-debtor affiliates—claims the Bankruptcy Court found to be "identical and co-extensive in every respect" with the claims Bestwall seeks to resolve in bankruptcy. Pet.App.98a. This is not a case where a non-debtor seeks release from its separate, independent liability. There is no circuit split on this issue. The circuits universally apply the same longstanding test to determine whether such claims are "related to" bankruptcy and thus subject to bankruptcy court jurisdiction under 28 U.S.C. § 1334(b). The answer is uniform: Bankruptcy courts have jurisdiction to enter temporary stays, like this one, that merely

pause the litigation of claims that are identical to claims against the debtor itself.

Seeking to overcome this, the Petition attempts to assert two other circuit splits, neither of which implicates this case.

First, the Committee asserts a circuit split concerning 28 U.S.C. § 1359, which bars federal jurisdiction where a "party" has been "improperly or collusively made or joined to invoke" that jurisdiction. But as the Fourth Circuit concluded, § 1359 does not apply at all because Bestwall's corporate restructuring did not "manufacture" jurisdiction. Rather, bankruptcy court jurisdiction would have existed even had the corporate restructuring never taken place. No court has ever found § 1359 applicable in such circumstances.

Nor has any circuit applied § 1359 to bankruptcy cases. The circuits apply the statute instead to prevent parties from creating diversity jurisdiction by assigning claims from a non-diverse to a diverse plaintiff. There is, therefore, no relevant circuit split over § 1359. In any event, the Fourth Circuit alternatively applied the Committee's "presumption of collusion" and found it overcome, making the Petition at most a plea to correct fact-bound error.

Second, the Committee asserts a circuit split over whether 11 U.S.C. § 105(a) conferred statutory authority on the Bankruptcy Court to enter the temporary stay. But the Committee has forfeited this argument, because while it challenged the Bankruptcy Court's *jurisdiction* below, it never argued that the court lacked *statutory authority* to enter the stay. Regardless, the decision below

implicates no split. The Petition's attempt to divide the circuits into camps that apply § 105(a) "broadly" and "narrowly" (Pet. 24) is baseless and makes no difference here because the stay satisfies even the Committee's preferred approach.

Finally, this case has nothing to do with *Harrington v. Purdue Pharma L.P.*, No. 23-124. *Purdue* involves a challenge to a nonconsensual third-party *release* in a *confirmed plan* under 11 U.S.C. § 1123(b)(6). This case involves a *temporary stay* under § 105(a); no claims have been released and no plan confirmed. Further, the issue in *Purdue*—the statutory propriety of non-consensual third-party releases under general bankruptcy provisions—is irrelevant in the asbestos context, where § 524(g) specifically authorizes such releases.

Because the Petition implicates no split of authority or other important question, certiorari should be denied.

STATEMENT OF THE CASE

A. Legal background

The "asbestos-litigation crisis" has been a disaster for claimants, defendants, and courts. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 597–98 (1997). In response to this "elephantine mass" of litigation, *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 821 (1999), Congress enacted 11 U.S.C. § 524(g).

Section 524(g) "allows a debtor to address in one forum all potential asbestos claims against it, both current and future, as well as current and potential future claims against third parties alleged to be liable on account of asbestos claims against the debtor." Pet.App.95a. A Chapter 11 debtor funds a

trust under a confirmed plan of reorganization, in exchange for a permanent "channeling" injunction to protect itself and qualifying affiliates. Pet.App.6a n.3, 7a n.5. The debtor's trust may be funded, in part, through non-debtor sources (including affiliates), as has happened in "multiple section 524(g) cases." *In re Bestwall LLC*, 605 B.R. 43, 49 (Bankr. W.D.N.C. 2019).

The statute expressly contemplates the possibility of pre-bankruptcy corporate restructurings. 11 U.S.C. § 524(g)(4)(A)(ii)(IV). As with Chapter 11 cases generally, it does not require insolvency. *See id.* § 109(c) & (d); *Toibb v. Radloff*, 501 U.S. 157, 160–61 (1991).

A significant contributor to the asbestos-litigation crisis is the long latency of asbestos-related illness. A company cannot in the tort system settle unknown or not-yet-existing claims. Section 524(g) makes this possible, if (among other things) a bankruptcy court appoints a future claimants' representative in addition to a current-claimants' committee. 11 U.S.C. § 524(g)(4)(B). Both are funded by the debtor. *See* 11 U.S.C. §§ 503(b)(2), 1103(a). Seventy-five percent of a class of current claimants must approve a § 524(g) plan, and a district court must find it "fair and equitable." *Id.* § 524(g)(2)(B), (3)(A), (4), (5). And "personal injury claimants" remain "entitled, if they elect to do so, to have a jury trial." *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1012 (4th Cir. 1986); 28 U.S.C. § 1411(a).

Across 40 years, Congress's statutory scheme has yielded more than 60 trusts to compensate asbestos victims. *Bestwall*, 605 B.R. at 49–50; U.S. Gov't

Accountability Office, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts* 3 (2011). Its utility, however, had a side effect. "[T]he first seventeen asbestos defendants to go into bankruptcy represented 'one-half to three-quarters of the original lability share.'" James L. Stengel, *The Asbestos End-Game*, 62 N.Y.U. Ann. Surv. Am. L. 223, 238 (2006) (citation omitted). As a result, the focus of tort litigation shifted to previously peripheral defendants in what leading plaintiffs' lawyer Richard Scruggs described as an "endless search for a solvent bystander." *Medical Monitoring and Asbestos Litigation—A Discussion with Richard Scruggs and Victor Schwartz*, 1-7:21 Mealey's Asbestos Bankr. Rep. 5 (2002).

B. Procedural history

1. Respondent Bestwall LLC's predecessor, the former Georgia-Pacific LLC ("Old GP"), was one such peripheral defendant. Its liability arose from its acquisition of the Bestwall Gypsum Company, which produced joint compound containing small amounts of chrysotile asbestos, *Bestwall LLC*, 605 B.R. at 47, a type that, if toxic, is "far less toxic than other forms" commonly used in other products, *In re Garlock Sealing Techs., LLC*, 504 B.R. 71, 75, 83 (Bankr. W.D.N.C. 2014). Old GP stopped using asbestos in 1977. *See Bostic v. Georgia-Pac. Corp.*, 439 S.W.3d 332, 353 (Tex. 2014). It began to face asbestos litigation in 1979, but was not a primary target for suits, facing fewer than 500 each year until 2000. Yet by 2017, after asbestos defendants that had accounted for most of the liability share had filed for bankruptcy and established trusts, the number of suits against Old GP ballooned to more than 64,000,

with tens of thousands more expected for decades to come. *Bestwall*, 605 B.R. at 47.

The "magnitude and projected continuation" of asbestos claims "ultimately led Old GP to undertake a corporate restructuring" in 2017. Pet.App.91a–92a. Old GP was restructured under a decades-old provision of Texas's Business Organizations Code authorizing a "divisional merger" that results in two separate companies to which the assets and liabilities of the original are allocated. Here, the two new companies were Bestwall and Georgia-Pacific LLC ("New GP"). Pet.App.92a.

Bestwall received Old GP's asbestos liabilities—the "Bestwall Asbestos Claims." Pet.App.89a n.3 (defining term). Bestwall also received assets, including approximately $32 million in cash; all contracts related to Old GP's asbestos litigation; real estate; and the equity, valued at $145 million, in a North Carolina company that owns certain operating assets of Old GP's historical gypsum business and is projected to generate $18 million in annual cash flow. Pet.App.92a–93a.

Bestwall and New GP executed a Funding Agreement, which obligates New GP to fund Bestwall's expenses, including those of a Chapter 11 reorganization, and any amounts necessary to satisfy Bestwall's asbestos-related liabilities, including through a § 524(g) trust. The Funding Agreement operates only as a "backstop." Pet.App.96a. Bestwall must exhaust any cash distributions from its subsidiaries before turning to the Funding Agreement to cover costs. Pet.App.15a n.13. And Bestwall must exhaust *all* its assets before turning

to the Funding Agreement to fund a § 524(g) trust. Pet.App.96a. In addition, a support agreement establishes reciprocal indemnification obligations corresponding to the allocation of liabilities between Bestwall and New GP. *See* Pet.App.96a.

The corporate restructuring allowed Old GP to pursue a global resolution of Bestwall Asbestos Claims in a § 524(g) reorganization without putting the entirety of Old GP's assets and operations into bankruptcy and complicating the bankruptcy case.

After the restructuring, despite the allocation of asbestos liabilities solely to Bestwall, plaintiffs immediately began to sue New GP over Old GP's products. Pet.App.4a. As the Bankruptcy Court observed, the "liability being asserted against New GP" was "identical and co-extensive in every respect," except for the name of the defendant, to any liability Bestwall faces. Pet.App.98a. That court found—and no one contests—that "[b]oth sets of claims involve the same plaintiffs, the same asbestos-containing products, the same alleged injuries, the same legal theories and causes of action, the same time periods, the same markets, and the same alleged damages resulting from the same alleged conduct"—in other words the very claims that Bestwall seeks to resolve in its bankruptcy. *Id.*

2. Bestwall filed a Chapter 11 petition in 2017, seeking to "resolve mass asbestos claims through a section 524(g) trust." Pet.App.89a. The Bankruptcy Court appointed a Future Claimants' Representative and the Committee.

The Committee (but not the Representative) moved to dismiss the case as filed in bad faith,

arguing that the Texas divisional merger led to an improper use of bankruptcy. The Bankruptcy Court denied that motion. *Bestwall*, 605 B.R. at 48–50. It explained that Bestwall's goal of resolving asbestos claims through § 524(g) was "a valid reorganizational purpose," a point with which the Committee "agree[d]." *Id.* at 49. The Committee then sought leave to appeal to the District Court, as well as certification for a direct appeal to the Fourth Circuit. *See* 28 U.S.C. § 158. Although the Bankruptcy Court certified its decision, the Fourth Circuit declined a direct appeal. *See* Dkt. 13, No. 19-408 (4th Cir. Nov. 14, 2019). The District Court then denied leave. Dkt. 18, No. 3:19-cv-00396-RJC (W.D.N.C. Nov. 6, 2023). The Committee later brought two further motions to dismiss, both of which the Bankruptcy Court denied. *In re Bestwall LLC*, 2024 WL 721596, at *1–2 (Bankr. W.D.N.C. Feb. 21, 2024). The more recent motion remains pending on appeal below. None is the subject of this Petition.

3. Instead, the Petition challenges a temporary stay granted by the Bankruptcy Court. When Bestwall filed its Chapter 11 case, it commenced an adversary proceeding (Fed. R. Bankr. P. 7001) in which it sought under 11 U.S.C. § 105(a) (and in support of the automatic stay under 11 U.S.C. § 362(a)) to temporarily enjoin litigation of Bestwall Asbestos Claims against certain of its affiliates ("Protected Parties," Pet.App.89a n.4) during its bankruptcy case. These were the claims allocated solely to Bestwall but which claimants sought to bring against Bestwall's affiliates. *See supra* at 6–7. Bestwall alternatively sought the same relief through a declaration that the automatic stay under

§ 362(a) extends to such actions. Pet.App.114a. On a stipulated record, the Bankruptcy Court granted Bestwall's motion, recognizing that such stays had "previously and uniformly been issued in numerous other asbestos-related cases," listing twelve examples since 2000. Pet.App.88a, 91a, 104a–105a.

The Bankruptcy Court determined it had jurisdiction under § 1334(b), which provides for bankruptcy court jurisdiction "of all civil proceedings arising under title 11, or arising in or related to cases under title 11." That court applied the longstanding and universal rule that an adversary proceeding is "related to" a chapter 11 bankruptcy if it "could conceivably have any effect on the estate being administered in bankruptcy." Pet.App.94a (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). Under that test, "[a]n action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankruptcy estate." *Pacor*, 743 F.2d at 994.

The Bankruptcy Court found that continued litigation of Bestwall Asbestos Claims *during* the bankruptcy against affiliates *outside* of bankruptcy met that test because the "Bestwall Asbestos Claims brought against New GP" were not "in any way distinguishable from [the] liability asserted against the Debtor." Pet.App.98a. Instead, "[t]he liability being asserted against New GP and Bestwall would be identical and co-extensive in every respect." *Id.* Permitting claimants to prosecute the exact, identical claims against affiliates during Bestwall's bankruptcy would thus "defeat the very purpose of

section 524(g)"—global resolution of asbestos claims against the debtor. Pet.App.95a.

On the merits, the Bankruptcy Court applied "the traditional four-prong test for injunctions, tailored to the unique circumstances of bankruptcy." Pet.App.103a–105a. Bestwall satisfied every prong. Pet.App.105a–114a.

4. The District Court affirmed. As to jurisdiction, it concluded that the Bankruptcy Court "clearly, at a minimum, had related to jurisdiction." Pet.App.82a n.3. That was "because determining whether or not to grant the injunctive relief" could "conceivably" affect "the Debtor's bankruptcy estate"—indeed, denial could "defeat the entire purpose of the Debtor's reorganization." Pet.App.79a. Although it did not need "to analyze in depth whether arising in jurisdiction [also] exist[ed]" as a separate ground for § 1334(b) jurisdiction, it nonetheless explained that "courts in this Circuit find arising in jurisdiction exists" to consider the sort of injunction Bestwall sought. Pet.App.82a n.3.

On the merits, District Court agreed that Bestwall likely could fund a § 524(g) trust and pay the costs of reorganization, and thus had a reasonable likelihood of success. Pet.App.84a.

5. The Fourth Circuit affirmed.

First, it agreed that the Bankruptcy Court had "related to" subject-matter jurisdiction. Applying the same longstanding precedent, the Fourth Circuit asked whether "the outcome" of Bestwall's request for a preliminary injunction "could conceivably have any effect on the estate being administered in bankruptcy." Pet.App.12a (quoting *Pacor,* 743 F.2d

at 994). It found that test satisfied because "the asbestos-related claims against Bestwall are identical to the claims against New GP pending now or likely to be pending in the future in the various state courts." Pet.App.13a.

The Fourth Circuit rejected the Committee's argument that the corporate restructuring destroyed jurisdiction by operation of 28 U.S.C. § 1359. That provision bars federal jurisdiction of "a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court." But, the Fourth Circuit explained, "without the restructuring, the asbestos claims would have remained with Old GP," and "if Old GP had filed for bankruptcy, the bankruptcy court would have had jurisdiction over those claims as it does over the same claims here." *Id.* Because jurisdiction would have existed either way, Bestwall did not "manufacture" it. *Id.*

On the merits, the Fourth Circuit held that the Bankruptcy Court had "appropriately considered Bestwall's realistic likelihood of successfully reorganizing." Pet.App.24a–27a.

Judge King dissented, arguing that the Bankruptcy Court lacked both "related to" and "arising in" jurisdiction. Pet.App.42a, 45a. He did not reach the merits.

6. The Committee and Representative petitioned for rehearing *en banc*, which the Fourth Circuit denied by a vote of 8–5. *See* Dkt. 82, No. 22-1127 (4th Cir. Aug. 7, 2023). Chief Judge Diaz and Judges Wilkinson, Niemeyer, Agee, Harris, Quattlebaum, Rushing, and Heytens voted to deny the petitions.

Judges King, Gregory, Wynn, Thacker, and Benjamin voted to grant. Judge Richardson recused. This Petition followed. (The Representative filed a separate petition a week later, to which Bestwall will separately respond. No. 23-702.)

REASONS FOR DENYING THE PETITION

I. THERE IS NO SPLIT BEARING ON THE BANKRUPTCY COURT'S JURISDICTION.

This case implicates no split over the Bankruptcy Court's jurisdiction to decide Bestwall's request for a temporary stay in its bankruptcy case. Section 1359 does not apply because the lawful corporate restructuring the Committee impugns was not the ground on which Bestwall "invoke[d] the jurisdiction" of the Bankruptcy Court. Even if it were, no circuit has applied the judicially developed "presumption of collusion" the Committee invokes outside of diversity, much less in a bankruptcy case, making any split regarding § 1359 doubly irrelevant. Nor are the circuits split on the test for a bankruptcy court's "related to" jurisdiction under § 1334(b)—much less its jurisdiction over claims *identical* to the claims administered in the bankruptcy.

A. The decision below does not implicate § 1359, much less a split involving it.

The Fourth Circuit's decision implicates no circuit split involving § 1359. That court concluded that § 1359 did not apply because bankruptcy court jurisdiction would have existed with or without the corporate restructuring. Pet.App.18a. The Petition does not dispute that § 1359 applies only where jurisdiction would not otherwise have existed. It thus identifies no split on that question but, instead, seeks fact-bound error correction of the Fourth Circuit's conclusion that Bestwall did not manufacture jurisdiction. The asserted split also rests entirely on diversity jurisdiction cases. Because

no circuit has ever applied § 1359 to bankruptcy cases, there is no split on that question, either.

1. The Fourth Circuit determined that the divisional merger "did not manufacture jurisdiction" under § 1359 because that transaction was not the basis for the Bankruptcy Court's jurisdiction. Pet.App.18a. Instead, jurisdiction was "based on the thousands of identical claims pending against New GP outside of the bankruptcy proceeding and the effect of those claims on Bestwall's bankruptcy estate." Pet.App.21a. In other words, § 1359 does not apply because "the corporate restructuring leaves the jurisdictional result the *same*." Pet.App.19a (quotation marks omitted). The Petition thus implicates no question about, much less split over, § 1359.

Section 1359 provides: "A district court shall not have jurisdiction of a civil action in which any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court." So, for example, a plaintiff with a claim against a nondiverse party cannot assign the claim to a resident of another State to "manufacture" diversity jurisdiction. *Kramer v. Caribbean Mills, Inc.*, 394 U.S. 823, 828–29 (1969).

But if jurisdiction exists wholly apart from the assignment, then § 1359 does not matter. Jurisdiction has not been "manufactured" because it already existed. Pet. 11. Thus, if a North Carolina corporation assigns its claim against a New York corporation to a Virginia corporation, § 1359 is irrelevant; either way, federal jurisdiction exists. As even Judge King recognized in dissent, § 1359 could

defeat jurisdiction only where "none otherwise would exist." Pet.App.35a.

Under the decision below, the basis for the Bankruptcy Court's § 1334(b) "related to" jurisdiction over the adversary proceeding had nothing to do with the pre-petition corporate restructuring. Pet.App.13a. Rather, the Fourth Circuit held that, on these facts, there would have been jurisdiction even if the restructuring never occurred. As that court explained, "without the restructuring, the asbestos claims would have remained with Old GP"; Old GP could have filed for bankruptcy; and "the bankruptcy court would have had jurisdiction over those claims." Pet.App.18a.

The Committee does not dispute this. Pet. 8. That alone establishes that § 1359 is irrelevant. The Bankruptcy Court's subject-matter jurisdiction under § 1334(b) depends on the nature of a "proceeding[ ]"; like federal-question jurisdiction more generally, it is "jurisdiction over the category of claim in suit." Pet.App.19a (quoting *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 431 (2007)). The Fourth Circuit thus was required "to analyze whether the *claims* involving New GP are 'related to' the bankruptcy case." Pet.App.19a. In a finding the Committee does not contest, the Bankruptcy Court determined that those claims were "identical and co-extensive in every respect" to the claims Bestwall is seeking to resolve in bankruptcy. Pet.App.89a n.3, 98a. And since those were the very same claims Old GP undisputedly could have resolved in bankruptcy, jurisdiction would have existed with or without the corporate restructuring.

Section 1359 thus is beside the point. The Committee asserts no split concerning application of the statute where jurisdiction would otherwise exist. Instead, it seeks, at most, to correct the alleged fact-bound error of the Fourth Circuit's (correct) conclusion that, on these facts, Bestwall did not "manufacture" jurisdiction.

2. Nor does the decision below implicate any circuit split on the "presumption of collusion" the Committee invokes. Pet. 11. No court of appeals has ever applied that presumption in bankruptcy, let alone to the type of pre-petition corporate restructuring here. Regardless, the Fourth Circuit found in the alternative that Bestwall overcame the presumption.

a. The asserted split involves a judicially developed presumption that "transfers between related business entities are collusive" under § 1359. Pet. 10. Under that presumption, "the burden of proof is with the party asserting jurisdiction to establish that the reason for the merger is legitimate and not pretextual." *Id.* at 12 (alterations omitted) (quoting *Toste Farm Corp. v. Hadbury, Inc.*, 70 F.3d 640, 644 (1st Cir. 1995)).

But the circuits that apply this presumption developed it in, and have only ever applied it to, diversity cases. For example, *Toste*, which both the Petition (at 11, 12) and the dissent (Pet.App.38a) highlight among the circuits imposing a presumption, involved diversity jurisdiction. *See* 70 F.3d at 642. Indeed, *every* § 1359 case the Committee invokes is a diversity case. *See* Pet. 10–14. The Committee's argument simply purges references to

diversity jurisdiction from the cases. *E.g.*, Pet. 12 (changing "diversity" to "[jurisdiction]" and twice changing "diversity jurisdiction" to "[federal] jurisdiction").

This presumption's limited applicability is both universal and unsurprising, for it is "unclear whether Section 1359 even applie[s] to … non-diversity cases." *Belcufine v. Aloe*, 112 F.3d 633, 637 (3d Cir. 1997) (Alito, J.). "Section 1359 seeks to prevent agreements or transactions that are designed primarily to manufacture *federal diversity jurisdiction*," thus "clos[ing] the federal courthouse doors to controversies that properly should be litigated in state tribunals." 13F Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 3637 (3d ed. 2023) (emphasis added).

History reinforces this view. The first statutory predecessor to § 1359 appeared in the Judiciary Act of 1789. There Congress provided for federal diversity jurisdiction but excluded from that jurisdiction "action[s] in favour of an assignee, unless a suit might have been prosecuted in such court … if no assignment had been made." § 11, 1 Stat. 73, 79. This Court has repeatedly traced this pedigree, applying iterations of the provision only in the context of diversity jurisdiction. *See, e.g.*, *Farmington Vill. Corp. v. Pillsbury*, 114 U.S. 138, 141–42 (1885); *Williams v. Nottawa*, 104 U.S. 209, 210–12 (1881).

Accordingly, courts applying § 1359 have long confirmed that it "exclude[s] from the diversity jurisdiction" cases with "a contrived interstate appearance." *Lester v. McFaddon*, 415 F.2d 1101, 1104 (4th Cir. 1969). As the Fourth Circuit

summarized a half-century ago, building on this Court's then recently-issued *Kramer* decision: "It is the lack of a stake in the outcome coupled with the motive to bring into a federal court a local action normally triable only in a state court which is the common thread of the cases holding actions collusively or improperly brought." *Id.* at 1106 n.11; Pet.App.17a (same); *accord Kramer*, 394 U.S. at 824, 827 (rejecting diversity jurisdiction based on pretextual transaction); *Yokeno v. Mafnas*, 973 F.2d 803, 809 (9th Cir. 1992); *Bishop v. Hendricks*, 495 F.2d 289, 292–93 (4th Cir. 1974). Nothing has changed in the last fifty years.

But federal courts have "original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334(a). Chapter 11 cases like Bestwall's (including proceedings "related to" them under § 1334(b)) are *not* mere local actions normally triable in state courts. *See Central Va. Cmty. College v. Katz*, 546 U.S. 356, 369–79 (2006) (discussing breadth of federal bankruptcy power); *Celotex Corp. v. Edwards*, 514 U.S. 300, 307–11 (1995) (discussing "related to" jurisdiction); *cf. Stern v. Marshall*, 564 U.S. 462, 474–82 (2011) (similar). The Petition invokes no authority—none—applying § 1359 in bankruptcy. Nor did the Fourth Circuit majority or dissent. So there is no possible circuit split here.

b. Regardless, the Fourth Circuit expressly applied the Committee's presumption in the alternative and found it overcome. "Assuming without deciding" that Bestwall needed to "prove that the restructuring was 'driven by an independent, legitimate business justification' rather than being pretextual," the Fourth Circuit correctly

concluded that "Bestwall did make that showing." Pet.App.21a. It found "that the restructuring was driven by Old GP's desire to pursue its non-asbestos-related business apart from asbestos-related litigation or a bankruptcy proceeding while keeping its assets available to satisfy any asbestos-related liabilities." *Id.* So even if § 1359 applied, the claimed split would not matter here. The only question would be fact-bound—whether the Fourth Circuit properly found the presumption overcome.

B. There is no split on the scope of "related to" jurisdiction, let alone one the decision below implicates.

Nor does the Fourth Circuit's decision implicate any split on the scope of "related to" jurisdiction. The circuits long have applied the same test. They also uniformly recognize a bankruptcy court's "related to" jurisdiction to stay claims identical to claims against the debtor.

1. Forty years ago, the Third Circuit in *Pacor* developed the foundational test for determining "related to" jurisdiction under § 1334(b): A proceeding is related to a bankruptcy case if "the outcome of that proceeding *could conceivably have any effect* on the estate being administered in bankruptcy," including "the debtor's rights, liabilities, options, or freedom of action (either positively or negatively)." 743 F.2d at 994 (emphasis added). So too if the action "in any way impacts upon the handling and administration of the bankrupt estate." *Id.* A decade later, in *Celotex*, 514 U.S. at 308 & n.6, this Court favorably discussed and generally approved *Pacor*'s test. "This test has been almost

universally adopted by [the] circuits." *In re Quigley Co.*, 676 F.3d 45, 57 (2d Cir. 2012). The Fourth Circuit below recognized that its own precedent, from 1986, adopted *Pacor*. Pet. App.12a–13a. So did the District Court. Pet.App.57a. Indeed, not one of the Committee's appellate cases acknowledges a split about "related to" jurisdiction. *See* Pet. 16–21.

According to the Committee, *Celotex* observed that the *Pacor* test "has fractured the courts of appeals for decades." Pet. 16. It did not. Instead, the Court observed that *eight circuits*—the First, Fourth, Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh—"have *adopted* the *Pacor* test *with little or no variation*." 514 U.S. at 308 n.6 (emphasis added). On top of that *nine-circuit consensus*, the Court described the "Second and Seventh Circuits" as "seem[ing] to have adopted a *slightly* different test." *Id.* (emphasis added). But it explained that any "slight[]" distinction was without difference: "[W]hatever test is used, these cases make clear that bankruptcy courts have no jurisdiction over proceedings that have no effect on the estate of the debtor." *Id.*

Attempting to draw a distinction along lines *Celotex* did not identify—with an oddly different circuit lineup—the Committee asserts that the Third, Fifth, and Seventh Circuits diverge from the *Pacor* test by holding that "mere 'common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate do not bring the matter' within the bankruptcy court's jurisdiction." Pet. 18–19. (alteration adopted) (quoting *Pacor*, 743 F.2d at 994). But that is the rule in *all* circuits, including the Second, Fourth, and Sixth. *See New Horizon of NY LLC v. Jacobs*, 231 F.3d 143, 151 (4th

Cir. 2000) (quoting the same language from *Pacor*); *In re Greektown Holdings, LLC*, 728 F.3d 567, 577 (6th Cir. 2013) (same); *In re Bernard L. Madoff Inv. Sec. LLC*, 561 B.R. 334, 346 (Bankr. S.D.N.Y. 2016) (same).

More pointedly, the Committee asserts that the Third, Fifth, and Seventh Circuits require "an actual economic effect on the assets of the estate or their distribution to creditors before finding 'related to' jurisdiction." Pet. 18. That is wrong.

The Third Circuit's *Pacor* test itself is expressly conditional: A bankruptcy court has "related to" jurisdiction where the "outcome" of a proceeding "*could conceivably*" have "any effect on the estate being administered in bankruptcy," meaning that it "could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and … in any way impacts upon the handling and administration of the bankruptcy estate." 743 F.2d at 994 (emphasis added).

The same is true in the Fifth Circuit: "[A]ttenuated, hypothetical effects of third-party litigation can give rise to related-to bankruptcy jurisdiction." *In re Spillman Dev. Grp., Ltd.*, 710 F.3d 299, 305 (5th Cir. 2013); *see also In re Stonebridge Techs., Inc.*, 430 F.3d 260, 266–67 (5th Cir. 2005) (per curiam) (finding "related to" jurisdiction because "*[i]f* the Bank is successful … the need for reimbursement from [the] estate is alleviated."); *In re El Paso Refinery, LP*, 302 F.3d 343, 349 (5th Cir. 2002) (finding "related to" jurisdiction based on a "chain of indemnification provisions" that "could" be "asserted"). The only Fifth Circuit case the

Committee invokes to establish its alternate test both looked to *Celotex* and applied *Pacor*'s conditional approach, simply finding it "difficult to imagine" the action "could somehow" affect the estate. *In re Walker*, 51 F.3d 562, 568–69 (5th Cir. 1995). The Committee seeks to shoehorn the Fifth Circuit into an approach it does not take.

Nor does the Seventh Circuit diverge from *Pacor*. The Committee invokes *Matter of Memorial Estates*, 950 F.2d 1364, 1368 (7th Cir. 1991), pre-*Celotex*, for the proposition that "[a] case is 'related' to a bankruptcy when the dispute 'affects the amount of property for distribution.'" Pet. 18. That is unremarkable. "Related to" jurisdiction plainly exists over an action seeking "foreclosure and sale of the property" that is "the principal asset" of the estate. *Mem'l Estates*, 950 F.2d at 1368. But it does not follow, nor does the case say, that "related to" jurisdiction exists *only* when a dispute affects the "amount of property for distribution." *Id.*

The Committee primarily relies not on the Seventh Circuit itself but on a bankruptcy court's (erroneous) characterization of it. Pet. 18–19, 21–22 (citing *In re Aearo Techs. LLC*, 642 B.R. 891 (Bankr. S.D. Ind. 2022)). *Aearo* suggested that the Seventh Circuit had "adopted a more constrained approach to 'related to' jurisdiction." 642 B.R. at 909. Even if true, that would belie the Committee's asserted split, because, according to *Aearo*, the Seventh Circuit stands not with the Fifth and Third but *alone*. *Id.*

Aearo is also wrong. The Seventh Circuit has made clear that it does not diverge from the *Pacor* test. That court recently explained that the test *Aearo*

invoked—"a dispute is 'related to' bankruptcy when resolution affects the amount of property for distribution [to creditors] or the allocation of property"—"needs a qualification." *Bush v. United States*, 939 F.3d 839, 845 (7th Cir. 2019) (quotation marks and citation omitted). *Bush* noted that this more constrained formulation involved the question "whether the related-to jurisdiction follows an asset after it leaves the estate." *Id.* at 846. But that question was distinct from the question whether "a matter comes within the related-to jurisdiction" of the court, which is an "*ex ante* inquiry." *Id.* As to the latter, the Seventh Circuit expressly "aligned [itself] with the view widely held by our colleagues elsewhere: the related-to jurisdiction must be assessed at the outset of the dispute, and it is satisfied when the resolution has a *potential* effect on other creditors." *Id.* (emphasis added). This is consistent with *Pacor*.

2. Regardless, the asserted split makes no difference here. As the Bankruptcy Court noted, courts in asbestos cases have "uniformly" issued, and thus recognized at least "related to" jurisdiction over, a request to temporarily stay claims *identical* to claims against the debtor. Pet.App.104a & n.12 (collecting cases). The Petition identifies no contrary case.

Consider *Celotex* itself. Celotex posted a judgment bond as to which Northbrook Property and Casualty Insurance Company served as surety. 514 U.S. at 302. After Celotex filed its Chapter 11 petition, the plaintiffs who had obtained judgment against it sought to "execute against Northbrook" on the bond. *Id.* at 303. This Court, after noting the circuits'

general agreement with the *Pacor* test, readily found that action "related to" "Celotex's bankruptcy"—even though "a proceeding … against Northbrook on the supersedeas bond [did] not directly involve Celotex"—because it sought to "reach Debtor's collateral" for the bond. *Id.* at 309–10. Indeed, the dissent agreed, so the Court was unanimous on jurisdiction. *Id.* at 309 n.7. In other words, under any potential formulation, related-to jurisdiction plainly exists when an action against a third party amounts to an action against the debtor.

So here. The identity of Bestwall Asbestos Claims—whether asserted against Old GP, New GP, or Bestwall—means this case readily involves "related to" jurisdiction, whether under *Pacor* or any variation on its theme that arguably exists. Bestwall Asbestos Claims asserted against New GP or other affiliates after the corporate restructuring are, literally, the *same identical* ones previously asserted against Old GP, allocated to Bestwall, and now asserted against Bestwall in its bankruptcy. They are "not … in any way distinguishable from liability asserted against [Bestwall]. The liability being asserted against New GP and Bestwall would be identical and co-extensive in every respect." Pet.App.98a. As a result, "judgments against [New GP are] tantamount to judgments against [Bestwall]." Pet.App.96a. And those claims cannot be resolved in Bestwall's bankruptcy case if they are simultaneously litigated elsewhere.

The Committee asserts only two cases as contrary to these conclusions.[1] *See* Pet. 21–22. Neither is.

First, in *In re Combustion Engineering, Inc.*, the Third Circuit, ***applying*** *Pacor*, refused to find "related to" jurisdiction over "independent claims" against non-debtors that did not yield "automatic liability against the debtor." 391 F.3d 190, 232–33 (3d Cir. 2004). This of course does not question *Pacor*, and it says nothing about identical claims that result in judgments "tantamount to judgments against the Debtor." Pet.App.96a.

Subsequently, a bankruptcy court in the Third Circuit, in a case similarly filed after asbestos-related "pre-petition corporate transactions," had no trouble finding "related to" jurisdiction over a proceeding to stay litigation of asbestos claims against non-debtors. *In re LTL Mgmt., LLC*, 638 B.R. 291, 303 (D.N.J. 2022). Applying *Pacor*, the court recognized that continued litigation of them had a "'conceivable effect' on the bankruptcy estate because it effectively seeks to collect and liquidate claims against" the debtor. *Id.* Although the Third Circuit later dismissed that bankruptcy petition, its opinion expressly did not "reach th[e] question" of "related to" jurisdiction. *In re LTL Mgmt., LLC*, 64 F.4th 84, 99 n.11 (3d Cir. 2023).

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[1] In a bare citation, the Petition (at 22) may mean to suggest that finding related-to jurisdiction here contravenes *Matter of Zale Corp.*, 62 F.3d 746, 753 (5th Cir. 1995). It does not. The Fifth Circuit there not only followed its precedent that *Celotex* had cited as in accord with *Pacor*, but also favorably recognized that courts have "upheld 'related to' jurisdiction over third-party actions … because the subject of the third-party dispute is property of the estate." *Id.* at 751–53.

Second, the identity of claims also distinguishes the bankruptcy court's decision in *Aearo*. Pet. 22. There, while most of the relevant products were sold before Aearo transferred the business to 3M, 3M (unlike New GP here) "continued to manufacture, market, and sell" the products for several years after that transaction. 642 B.R. at 897. In other words, the two entities' liability was not "identical" and "co-extensive." Pet.App.13a. But here, as the Fourth Circuit explained, the Committee has acknowledged that "litigating *the same claims* in thousands of state-court cases, that will also be resolved within the Bestwall bankruptcy case, could have an effect on the Bestwall bankruptcy estate." *Id.* For example, among other effects, "issue preclusion, inconsistent liability, and evidentiary issues could well arise in the bankruptcy proceeding based on the results of" the stayed cases. Pet.App.14a.

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For all these reasons, the Petition identifies no split that implicates the Bankruptcy Court's jurisdiction here, whether under § 1359 or § 1334(b).

II. THE FOURTH CIRCUIT WAS CORRECT TO FIND JURISDICTION OVER BESTWALL'S PROCEEDING TO STAY CLAIMS IDENTICAL TO THOSE AT ISSUE IN ITS BANKRUPTCY CASE.

The Fourth Circuit's determination that the Bankruptcy Court had jurisdiction was plainly correct. The Bankruptcy Court "clearly, at a minimum, had related to jurisdiction." Pet.App.82a n.3. It also had jurisdiction under both the "arising in" and "arising under" grounds in § 1334(b).

A. The Bankruptcy Court properly exercised "related to" jurisdiction.

The universal view of the lower courts here was correct. In assessing "related to" jurisdiction, the Fourth Circuit applied its longstanding precedent, *Robins*, 788 F.2d 994, which in turn adopted the universal *Pacor* test discussed above in Part I.B. Pet.App.13a–16a.

The panel noted that "the asbestos-related claims against Bestwall *are identical to the claims against New GP*" that are subject to the Bankruptcy Court's preliminary injunction. Pet.App.13a (emphasis added). Simultaneously litigating in the tort system those "*same claims*" sought to be "resolved within the Bestwall bankruptcy case" at least "could" affect Bestwall's bankruptcy estate. *Id.* Of course it could. As the Committee has acknowledged, plaintiffs pursuing Bestwall Asbestos Claims seek *the same recovery* against Bestwall and New GP. Pet.App.14a. There are other obvious effects, too. Litigating the Bestwall Asbestos Claims against New GP during Bestwall's bankruptcy would raise concerns about "issue preclusion, inconsistent liability, and evidentiary issues." *Id.* Additionally, given the obvious impact that the claims against New GP would have on claims against Bestwall—they are, after all, the exact same claims—Bestwall's officers would have no choice but to devote time to defending claims against New GP instead of resolving Bestwall's bankruptcy. And the goal of an equitable and global resolution of all claims under § 524(g) would be impossible if some of these same claims are resolved outside of bankruptcy. These effects on Bestwall's "rights, liabilities, options, or freedom of

action" suffice to confer "related to" jurisdiction. *Pacor*, 743 F.2d at 994.

Although the Committee insists that "circular funding agreements between affiliated parties bear on the jurisdictional inquiry," Pet. 21, the Fourth Circuit's conclusion expressly was "not predicated on" the "indemnification and funding agreements," Pet.App.21a. It instead rested on the identity of the claims: "[T]he possible effect on the Bestwall bankruptcy estate of litigating thousands of identical claims in state court is sufficient to confer 'related to' jurisdiction." Pet.App.14a. In any event, the Funding Agreement is not "circular" because, among other things, Bestwall is required to exhaust its own assets *before* obtaining funding under that Agreement. Pet.App.15a n.13, 96a.

It is therefore obvious that the Bestwall Asbestos Claims—claims that are, literally, the exact same claims against Bestwall itself—are, at the very least, "related to" Bestwall's chapter 11 case.

B. The Bankruptcy Court also had both "arising in" and "arising under" jurisdiction.

Although the Fourth Circuit did not address the point (Pet.App.16a n.14), the Bankruptcy Court also had jurisdiction under the other two independent grounds in § 1334(b)—"arising in" and "arising under" jurisdiction. Any error on "related to" jurisdiction (or § 1359) is irrelevant.

First, "arising in" jurisdiction exists over a proceeding that "would have no existence outside of the bankruptcy." *E.g.*, *Bergstrom v. Dalkon Shield Claimants Tr.*, 86 F.3d 364, 372 (4th Cir. 1996). A

request in bankruptcy for a temporary stay under § 105(a) applicable only during and for the sake of the bankruptcy meets that test—"such an injunction would have no existence outside of bankruptcy." *In re Brier Creek Corp. Ctr. Assocs. Ltd.*, 486 B.R. 681, 685 (Bankr. E.D.N.C. 2013); *accord In re SVB Fin. Grp.*, 2023 WL 2962212, at *5 (Bankr. S.D.N.Y. Apr. 14, 2023); *Lyondell Chem. Co. v. CenterPoint Energy Gas Servs. Inc.*, 402 B.R. 571, 586 (Bankr. S.D.N.Y. 2009); *In re Monroe Well Serv., Inc.*, 67 B.R. 746, 753 & n.9 (Bankr. E.D. Pa. 1986) (favorably cited in *Celotex*, 514 U.S. at 311 n.8). The Committee has never identified a case to the contrary, nor did the dissent (Pet.App.44a–45a), and Bestwall knows of none.

Thus, the Bankruptcy Court had "arising in" jurisdiction because Bestwall's request to *stay* litigation of the Bestwall Asbestos Claims *during its bankruptcy* would have no existence outside of the bankruptcy. And because "arising in" jurisdiction turns on the requested relief, the corporate restructuring and § 1359 are even more irrelevant to this ground. Although the District Court did not "analyze" this question "in depth," it correctly recognized the rule and authority under which "arising in jurisdiction exists when considering whether to grant an injunction" like this one. Pet.App.61a n.3.

Of course, as Judge King noted in dissent, the *underlying* asbestos claims pre-date Bestwall's bankruptcy case. Pet.App.45a. But the question is whether the claim *in the adversary proceeding*—that is, the temporary stay Bestwall requested—would exist outside of the bankruptcy case. It would not.

Like the automatic stay, this sort of injunction has no bearing on the merits of any underlying civil dispute.

Second, the Bankruptcy Court also had "arising under" jurisdiction. Bestwall sought relief directly under 11 U.S.C. § 362(a), which establishes the automatic stay. Pet.App.7a–8a, 114a. Section 362(a)(1) has been held to extend that stay to third parties "when there is such identity between the debtor and the third-party defendant that the debtor may be said to be the real party defendant and that a judgment against the third-party defendant will in effect be a judgment or finding against the debtor." *Robins*, 788 F.2d at 999. That is the case here, where the liability asserted against Bestwall and New GP is identical.

In addition, § 362(a)(3) extends the automatic stay to "any action, *whether against the debtor or third-parties*, to obtain possession or to exercise control over property of the debtor." *Id.* at 1001. After the corporate restructuring, liability for the Bestwall Asbestos Claims belongs to Bestwall. New GP never manufactured or sold any products that are the subject of those claims. Any attempt to assert the claims against New GP thus necessarily relies on theories of successor liability, fraudulent transfer, or alter ego. As another bankruptcy court explained in a similar case, causes of action "through which claims might be asserted against … Protected Parties" are "either … bankruptcy estate property" or "avoidance actions which" cannot be asserted by "individual creditors." *In re DBMP LLC*, 2021 WL 3552350, at *4 (Bankr. W.D.N.C. Aug. 11, 2021); *e.g.*, *Nat'l Am. Ins. Co. v. Ruppert Landscaping Co.*, 187 F.3d 439, 441–

42 (4th Cir. 1999) (fraudulent conveyance); *Steyr-Daimler-Puch of Am. Corp. v. Pappas*, 852 F.2d 132, 136 (4th Cir. 1988) (alter ego); *Morley v. Ontos, Inc.*, 478 F.3d 427, 432–33 (1st Cir. 2007) (alter ego and successor liability). As a result, they are "also subject to the automatic stay" under § 362(a)(3). *DBMP*, 2021 WL 3552350, at *4.

A proceeding seeking relief available under § 362 arises directly "under title 11." 28 U.S.C. § 1334(b); *see, e.g.*, *Houck v. Substitute Trustee Servs., Inc.*, 791 F.3d 473, 481 (4th Cir. 2015) ("A claim under § 362(k) for violation of the automatic stay is a cause of action arising under Title 11."); *In re SVB*, 2023 WL 2962212, at *6 ("[S]eek[ing] the extension of the automatic stay to a non-debtor … confers 'arising under' jurisdiction."). This basis also has nothing to do with § 1359. And at a minimum, "if the Court has subject matter jurisdiction over a proceeding to determine the applicability of the automatic stay, then it has jurisdiction over a related motion for preliminary injunctive relief." *FPSDA II, LLC v. Larin, LLC*, 2012 WL 6681794, at *5 (Bankr. E.D.N.Y. Dec. 21, 2012); *see also Chase Manhattan Bank (N.A.) v. Third Eighty-Ninth Assocs.*, 138 B.R. 144, 147 (S.D.N.Y. 1992) (§ 105(a) injunctions issued where "claims against the non-debtor third parties are really claims against the debtor and therefore impair the automatic stay").

III. THE COMMITTEE'S SECTION 105(A) ARGUMENT IS FORFEITED AND IMPLICATES NO SPLIT AND NO ISSUE IN *PURDUE*.

The Committee has forfeited the argument that 11 U.S.C. § 105(a) did not authorize the Bankruptcy

Court's temporary stay. Petitioner's claimed split is also baseless and irrelevant because the Bankruptcy Court had statutory authority to enter the stay even under Petitioner's preferred interpretation. There is thus no reason to hold this case for resolution of the distinct issue in *Purdue*.

A. The Committee's argument is forfeited.

Section 105(a) authorizes bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Code. The Committee asserts that some circuits construe § 105(a) "broad[ly]," while others construe it narrowly, and that the order here could not have issued under the latter approach. Pet. 23.

The Committee never raised this argument below. Instead, it emphasized the truism that a bankruptcy court must have *jurisdiction* over a proceeding to exercise § 105(a) authority. *See* No. 22-1127, ECF 30, at 48–49 (4th Cir.); Pet.App.9a–10a. It did not contend that a court has *statutory authority* to issue orders under § 105(a) only when implementing powers enumerated elsewhere in the Code. This argument is thus forfeited. *See Kingdomware Techs., Inc. v. United States*, 579 U.S. 162, 173 (2016). This Court is a "court of review, not of first view." *Johnson v. Arteaga-Martinez*, 596 U.S. 573, 583 (2022) (alterations and citation omitted).

B. The decision below implicates no split concerning § 105(a).

Nor does the decision below implicate any split of authority concerning the scope of § 105(a).

1. There is no circuit split. The Committee purports to divide the circuits into two camps—those with a "broad" reading of § 105(a), and those with its preferred narrower reading. *See* Pet. 23–26. But not one of the cases invoked acknowledges the asserted split.

Instead, they demonstrate general agreement about the scope of § 105(a). The Committee's "narrow" cases recognize § 105(a) as "a powerful, versatile tool" conferring "considerable discretion." *In re Joubert*, 411 F.3d 452, 455 (3d Cir. 2005); *Bessette v. Avco Fin. Servs., Inc.*, 230 F.3d 439, 444 (1st Cir. 2000) (approving order), *amended on denial of reh'g* (Dec. 15, 2000). And its "broad" cases recognize that § 105(a) may not be exercised "in a manner that is inconsistent with" "specific statutory provisions" of the Code. *In re Archdiocese of Saint Paul & Minneapolis*, 888 F.3d 944, 947, 952 (8th Cir. 2018) (disapproving order); *In re Scrivner*, 535 F.3d 1258, 1263, 1265 (10th Cir. 2008) (same).

2. Regardless, the Committee's purported distinction among the circuits' views of § 105(a) would make no difference here. The Bankruptcy Court's order satisfies the Committee's preferred test because it advances at least two provisions of the Code, §§ 362(a) and 524(g). Not even Judge King's dissent questioned whether § 105(a) supplied authority to enter the stay, just reserving whether the Bankruptcy Court "applied the correct legal standard" for issuing one. Pet.App.34a n.5; *see* Pet.App.10a; Pet.App.63a–64a.

First, the preliminary injunction protects Bestwall's ability to pursue "the equitable,

streamlined, and timely resolution of claims in one central place" under § 524(g). Pet.App.23a; *see* Pet.App.7a n.5. As the Bankruptcy Court observed, "[p]ermitting claimants to indirectly establish claims against the Debtor" during bankruptcy, "through actions against third parties," would be "inconsistent" with that goal. Pet.App.108a.

Second, the preliminary injunction prevents an end-run around the automatic stay under § 362(a), in two respects. *See supra* pt. II.B. Section 362(a)(1) stays any "action" for pre-bankruptcy claims "against the debtor." It extends to third parties when "there is such identity" between the third party and debtor that the debtor "may be said to be the real party defendant." *Robins*, 788 F.2d at 999. Here, there is *complete* "identity" because the Bestwall Asbestos Claims asserted against Bestwall and New GP are one and the same. Section 362(a)(3) also stays "any act to … exercise control over property of the estate." Here, any claims against New GP would necessarily rest on theories of third-party liability—like fraudulent transfer or successor liability—that would be actions indisputably owned by the bankruptcy estate under 11 U.S.C. § 541(a).

The Bankruptcy Court's preliminary injunction thus "carr[ies] out" multiple provisions of the Code. 11 U.S.C. § 105(a). Any question whether § 105(a) grants bankruptcy courts yet broader powers is irrelevant.

C. There is no reason to hold this case for *Purdue*.

The Court should not hold this case for *Purdue*. Pet. 27. *Purdue* involves a challenge to a

nonconsensual third-party *release* in a *confirmed plan* of reorganization—which, per the Question Presented, "extinguishes claims held by nondebtors against nondebtor third parties." No. 23-124, Order of Aug. 10, 2023. Even that question does not implicate the split over § 105(a) that the Committee alleges. *See id.,* Reply Br. for the Pet'r. 5 n.2 (noting debtor and circuit court both "recognized" that § 105(a) "cannot itself authorize the release," which would need to be carrying out § 1123(b)(6)). But *Purdue* is irrelevant for two additional reasons.

First, the § 105(a) order here is different in kind. The Committee challenges a *temporary stay* under § 105(a), not a release in a final plan under § 1123(b)(6). (No claims have been released here, and no plan confirmed.) There is thus no reason to expect *Purdue* to address any question at issue here.

Second, to the extent one might think the sort of plan provision at issue in *Purdue* could be relevant to a § 105(a) temporary stay, Congress has mooted the issue for asbestos cases. In bankruptcy cases involving asbestos-related liability, § 524(g) specifically authorizes nonconsensual third-party releases upon specified conditions, including 75% approval by current claimants. 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb); *see* Pet'r. Br. 21, No. 23-124, (recognizing this). Bestwall is pursuing a plan under § 524(g). Thus, the statutory question at issue in *Purdue* is irrelevant in this asbestos bankruptcy.

IV. THE PETITION IMPLICATES NO IMPORTANT ISSUE.

Finally, the petition implicates no important issue worthy of this Court's review.

A. The Petition is a "back-door" attack on Bestwall's bankruptcy case.

The Committee's pleas about the importance of this case repackage an issue not presented here—the validity of Bestwall's bankruptcy petition. The Fourth Circuit recognized the Committee's "jurisdictional arguments" as "a back-door way to challenge the propriety of the reorganization and the merits of a yet-to-be-filed chapter 11 plan." Pet.App.22a. It appropriately considered this approach "improper." *Id.* In the Bankruptcy Court, the Committee in this proceeding attacked as pre-empted the state law that authorized the restructuring; the court rejected that challenge; and the Committee did not appeal that ruling. Pet.App.99a–103a. The Committee since has filed additional motions to dismiss raising similar issues, the latest of which remains pending on appeal below. *Supra* at 8. But the Petition presents none of those issues. Indeed, the Committee below conceded that this proceeding "is not about the legal validity of the corporate restructuring that preceded the filing of this bankruptcy and formed Bestwall—or even whether Bestwall's bankruptcy itself was proper." ECF 37 at 1, No. 22-1127 (4th Cir.).

Instead, the only question here is whether the Bankruptcy Court had subject-matter jurisdiction, according to a universally accepted standard, to enter a preliminary injunction the Committee does not dispute on the merits. The answer on the facts of this bankruptcy is yes. Nothing about that question or its answer merits this Court's review.

B. The decision below does not undermine the tort system.

The Fourth Circuit's decision is consistent with Congress's efforts in § 524(g) to address the "asbestos-litigation crisis." *Amchem*, 521 U.S. at 597–98. To employ § 524(g) according to its terms is not to undermine the tort system (Pet. 29) but to legitimately employ Congress's remedy to address an area where the tort system has failed. As the Bankruptcy Court explained, that remedy provides "all claimants—including future claimants"—with an "efficient means through which to equitably resolve their claims." Pet.App.111a. Bestwall is committed to confirming a § 524(g) plan for the very reason it filed its bankruptcy case in the first place—to "address in one forum all potential asbestos claims against it, both current and future, as well as current and potential future claims against third parties alleged to be liable on account of asbestos claims against the debtor." Pet.App.95a.

Any "delay" is no fault of Congress's mechanism or Bestwall's efforts to use it. Pet. 29. When Bestwall filed its bankruptcy, 75% of the 64,000 Bestwall Asbestos Claims had been pending for ten years or more. Pet.App.23a. The Committee "complain[ed]" below, as here, that the preliminary injunction had "impeded the resolution" of those claims. *Id.*; Pet. 29. But the truth is the opposite, as the Fourth Circuit saw: "[T]he main interference with the timely resolution of the claims … appears to be Claimant Representatives' challenge to the preliminary injunction" in the first place. Pet.App.23a. It is such "relentless[] attempt[s] to circumvent the bankruptcy proceeding" that delay claimants' recovery. *Id.*; *see*

also In re Bestwall, LLC, 47 F.4th 233 (3d Cir. 2022) (rejecting collateral attack on subpoena that Bankruptcy Court issued at Bestwall's request).

C. The decision below does not encourage forum shopping.

Nor does the decision below encourage forum shopping. Pet. 30. As explained, the Petition implicates no circuit split. It thus presents no issue that would cause a bankruptcy court in another jurisdiction to act differently in a similar case. *Supra* pts. I & II.

Bankruptcy courts—including those in the same district from which the preliminary injunction here issued—can and do transfer cases where warranted. *See, e.g., In re LTL Mgmt., LLC*, 2021 WL 5343945, at *5 (W.D.N.C. Nov. 16, 2021) (transferring to New Jersey). When they do, a transferee bankruptcy court may exercise the same subject-matter jurisdiction, and employ the same authority under § 105(a), that supported the preliminary injunction here—as has happened. *See In re LTL Mgmt.*, 638 B.R. at 303 (continuing preliminary injunction).

CONCLUSION

The Petition should be denied.

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