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

BRIEF OF AMICUS CURIAE THE AMERICAN ASSOCIATION FOR JUSTICE IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

The American Association for Justice ("AAJ") is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world's largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions. Throughout its 80-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

AAJ urges this Court to grant the Petition, as this case presents important constitutional questions concerning federal jurisdiction that warrant this Court's review and resolution. *See* Sup. Ct. R. 10(c).

INTRODUCTION AND SUMMARY OF ARGUMENT

1. The American Association for Justice urges this Court to grant the Petition to resolve uncertainty concerning the constitutional limits on the subject-matter jurisdiction of bankruptcy courts.

First, this Court should make clear that Article I, Section 8 of the Constitution, the Bankruptcy Clause,

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[1] Pursuant to Rule 37.6, amicus affirms that no counsel for any party authored this brief in whole or in part and no person or entity, other than amicus, its members, or its counsel has made a monetary contribution to its preparation or submission.

does not authorize Congress or the federal courts to bestow benefits available under the Bankruptcy Code on corporations that are not "bankrupt" or in such financial distress as to be unable to pay foreseeable liabilities.

Bestwall is not the debtor facing financial hardships that Congress had in mind in enacting Chapter 11's rehabilitative measures. Bestwall was the product of a maneuver dubbed the "Texas Two-Step." Facing tort claims by people harmed by its asbestos products, Georgia-Pacific Corporation divided itself into two corporations. "New GP" inherited the company's assets, while Bestwall got its asbestos liabilities. Importantly, Bestwall also received a Funding Agreement committing New GP to pay all of Bestwall's asbestos liability payments and associated expenses. The plan was for the bankruptcy court to qualify Bestwall to establish an asbestos personal injury fund under 11 U.S.C. § 524, issue an injunction, and channel the tort claims arising out of Georgia-Pacific's asbestos products to the trust—with the goal of paying far less in compensation than a similar victim would recover in the civil justice system. The Fourth Circuit held that the bankruptcy court had subject matter jurisdiction to approve Bestwall's petition, stating that "bankruptcy" is not confined to its meaning to the Founders, but is defined by 28 U.S.C. § 1334. The court essentially ruled that the Bankruptcy Clause imposes no limit on the scope of subject-matter jurisdiction Congress can bestow on district and bankruptcy courts.

This Court should grant the tort claimants' Petition to reverse and make clear that the meaning of

crucial constitutional text cannot be untethered from its original meaning.

2. This Court should also grant the Petition to enforce the proper scope of "related-to" jurisdiction under 28 U.S.C. § 1334. Bestwall sought to invoke the bankruptcy court's jurisdiction to move thousands of victims' state law tort claims out of state courts and federal Article III courts and into an asbestos trust administrative compensation process.

There is no constitutional provision authorizing an Article I court to exercise jurisdiction over asbestos victims' state law actions against a nondebtor third party for its own misconduct. On the contrary, the maneuver in this case threatens to deprive tort plaintiffs of their right to trial by jury in an Article III court. Congress cannot conjure away the Seventh Amendment merely by requiring that legal claims be brought to an Article I tribunal. Nor can a federal court.

The Fourth Circuit erred in asserting that those lawsuits are "related to" Bestwall's petition for bankruptcy under 28 U.S.C. § 1334. Because all things can be related, the lower court has again determined that the Constitution imposes no limit on the scope of bankruptcy jurisdiction that Congress can bestow. This Court has held that related-to jurisdiction may be broad, but it is not boundless. Because Section 1334 is designed to preserve the bankruptcy estate, only those third-party suits that have some effect on the estate can come within the bankruptcy court's related-to jurisdiction. In this case, because the Funding Agreement provided that New GP would bear all the costs of compensating the asbestos injury claimants, there

could be no effect on the estate and no basis for federal subject-matter jurisdiction.

This Court should grant the Petition to make clear that bankruptcy courts, like all federal courts, have limited jurisdiction. The Constitution's grant of federal jurisdiction cannot serve as a roving commission for courts to solve any problems that might come their way. Nor can it support an effort to construct an alternative justice system that rejects those protections the Framers saw fit to guarantee in Article III and the Seventh Amendment.

3. The Petition in this case involves substantial questions that warrant this Court's review. Other major corporations have followed Georgia-Pacific's use of the Texas Two-Step maneuver. This Court's denial of a writ of certiorari will be viewed as a green light by others seeking greater protections from mass tort liability to develop even more adventurous attempts to game the system. This Court's resolution of the jurisdictional issues that form the basis for these attempts will avert a great deal of litigation surrounding those precise issues.

Additionally, it must not be forgotten that many of the thousands of plaintiffs whose day in court has been indefinitely suspended by the cynical use of the Bankruptcy Code continue to suffer from mesothelioma and other severe diseases caused by Georgia-Pacific's asbestos products. The uncertainty that surrounds the jurisdictional issues presented here has kept these cases from moving forward. For those claimants, justice delayed truly is justice denied.

ARGUMENT

I. THIS COURT SHOULD GRANT CLAIMANTS' PETITION TO RESOLVE THE UNCERTAINTY CONCERNING THE CONSTITUTIONAL LIMITS OF THE BANKRUPTCY POWER.

A. Georgia-Pacific Created Bestwall as a Puppet Pretending to Be a Bankrupt Company to Obtain for Itself the Benefits of an Asbestos Trust.

Georgia Pacific Corporation was a century-old company that produced and sold wood products and construction materials. It marketed joint compound and other building materials containing asbestos from 1965 until such products were banned in 1977. *See Georgia-Pacific Corp. v. Bostic*, 320 S.W.3d 588, 592 (Tex. App. 2010). During that time, the link between inhalation of asbestos fibers and mesothelioma and other cancers was well known. *See, e.g.*, *Borel v. Fibreboard Paper Prods. Corp.,* 493 F.2d 1076, 1085 n.14 (5th Cir. 1973) (noting the findings of Dr. Irving Selikoff and others published in 1965).

In 2017, anticipating a tide of asbestos injury and death claims, the company executed a maneuver that has been dubbed the "Texas Two-step." *See Bestwall LLC v. Off. Comm. of Asbestos Claimants of Bestwall, LLC*, 148 F.4th 233, 237 n.2 (4th Cir. 2025) [hereinafter "*Bestwall II*"]. Georgia-Pacific moved to Texas for about five hours—long enough to make use of the state's divisive merger statute to divide into two entities. Georgia-Pacific LLC ("New GP") inherited the company's profitable, ongoing businesses and most of

its assets. Bestwall LLC inherited the company's present and future asbestos injury liabilities. Importantly, Bestwall also received a Funding Agreement whereby New GP agreed to pay all of Bestwall's liability obligations, as well as all expenses for establishing and fully funding a Section 524(g) asbestos trust.

Bestwall then moved to North Carolina, where it filed for Chapter 11 bankruptcy in the Western District, triggering an automatic stay of lawsuits against it. Bestwall also obtained a preliminary injunction under 11 U.S.C. § 105(a) that protected the entire Georgia-Pacific enterprise from asbestos litigation. *See In re Bestwall LLC*, 71 F.4th 168, 185 (4th Cir. 2023) [hereinafter "*Bestwall I*"]. New GP moved back to Delaware to continue Georgia-Pacific's business as usual. *See Bestwall II*, 148 F.4th at 236–38; *id.* at 246–49 (King, J., dissenting); *Bestwall LLC v. Off. Comm. of Asbestos Claimants of Bestwall, LLC*, 157 F.4th 579, 580 (4th Cir. 2025) (King, J., dissenting from denial of rehearing en banc) [hereinafter "*Bestwall II Rehearing Order*"].

The court below correctly stated that this case "is not about the validity of the controversial Texas two-step maneuver." *Bestwall II*, 148 F.4th at 239. Petitioners do not challenge the Texas divisive merger statute.[2]

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[2] Indeed, if Georgia-Pacific's aim was simply to isolate its asbestos liability obligations, remove them from the books of its ongoing businesses, and resolve them in an orderly fashion, it could

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Nor is the case about a financially distressed debtor's ability to obtain relief under the Bankruptcy Code from "oppressive indebtedness, and to permit him to start afresh." *Williams v. U.S. Fid. & Guar. Co.*, 236 U.S. 549, 554–55 (1915). New GP, as the heir to Georgia-Pacific's billions and profitable business operations, and Bestwall, by virtue of its access to New GP's assets under the funding agreement, were both "able to pay any conceivable liabilities now and in the foreseeable future." *In re Bestwall LLC*, 658 B.R. 348, 373 (Bankr. W.D.N.C. 2024).

The issue here is the bankruptcy court's authority to grant Georgia-Pacific's true wish: "to utilize section 524(g) of the Bankruptcy Code without subjecting the entire Old GP enterprise to [C]hapter 11." *Bestwall I,* 71 F.4th at 174. Specifically, Georgia-Pacific created Bestwall to establish an asbestos personal injury trust under 11 U.S.C. § 524(g), paid for by New GP, and obtain an injunction channeling "all potential asbestos claims against it, both current and future, as well as current and potential future claims against third parties" into the trust. *Bestwall II*, 148 F.4th at 237–38. Payouts by the trust, under the Funding Agreement, would also be paid by New GP.

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easily have done so without having Bestwall petition for bankruptcy. "Structural optimization and disaffiliation" involves assigning present and future mass tort liabilities to a separate corporation that independent auditors can verify is sufficiently capitalized or insured to satisfy those obligations. That company can then be sold, often at a discounted price, to a buyer who will litigate or settle tort suits as they arise in the civil justice system.

Section 524(g) asbestos personal injury trusts typically do not provide victims the full compensation they might reasonably expect in the civil justice system. Major asbestos personal injury trusts have paid generally "pennies on the dollar." Stephen J. Carroll et al., RAND Corp., *Asbestos Litigation* 102 (2005), https://www.rand.org/pubs/monographs/MG162.html. A subsequent study found that payments by the largest trusts ranged from 69% down to 1.1% of the full, liquidated value of the tort claim. Lloyd Dixon, Geoffrey McGovern, & Amy Coombe, RAND Corp., *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts* 21, 38 fig. 4.5 (2010). *See also Norfolk & W. Ry. Co. v. Ayers*, 538 U.S. 135, 186 (2003) (Breyer, J., dissenting in part) ("[The] Johns-Manville Trust for asbestos claimants, for example, [went] from a fund that promised to pay 100% of the value of liquidated claims to a fund that now pays only 5%.") (citation omitted).

In short, Georgia-Pacific was able to buy its own ticket out of state and federal Article III courts, and force victims into a protracted administrative compensation system that Congress authorized to assist mass-tort defendants facing financial catastrophe. The bankruptcy court rejected Claimants' objection that it lacked subject matter jurisdiction to bestow the benefits of the Bankruptcy Code on an entity that does not even purport to be unable to compensate those harmed by Georgia-Pacific's asbestos products. *In re Bestwall LLC*, 658 B.R. at 379 ("[F]inancial distress is not a prerequisite for bankruptcy subject matter jurisdiction pursuant to the Constitution."). The Fourth

Circuit affirmed in a 2-1 decision and denied rehearing en banc by a vote of 8 to 6. *Bestwall II Rehearing Order*, 157 F.4th at 579.

That decision presents a constitutional issue that warrants this Court's review. The Court should grant the Petition to make clear that the bankruptcy court does not have subject-matter jurisdiction to do what this Court recently held it could not: "[E]ffectively extend to *nondebtors* the benefits of a Chapter 11 discharge usually reserved for *debtors*." *Harrington v. Purdue Pharma L.P.*, 144 S. Ct. 2071, 2081 (2024) (emphasis in original).

B. The Fourth Circuit Erroneously Held That the Constitution's Bankruptcy Clause Imposes No Limit on the Power of Congress to Create Subject Matter Jurisdiction of Federal Bankruptcy Courts.

"Federal courts," this Court has often explained, "are courts of limited jurisdiction." *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 26 (2025). They can only exercise power conferred upon them by the Constitution. *See Bowles v. Russell*, 551 U.S. 205, 212 (2007) ("*Within constitutional bounds*, Congress decides what cases the federal courts have jurisdiction to consider.") (emphasis added). In this instance, as the lower court noted, the "Bankruptcy Clause of the Constitution determines the limits of constitutional subject-matter jurisdiction for bankruptcy." *Bestwall II*, 148 F.4th at 239.[3] Georgia-Pacific was able to ob-

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[3] The Bankruptcy Clause provides: "Congress shall have Power

Footnote continued on next page.

tain what it expects to be a better deal under Title 11 than in the civil justice system by convincing the court to expand the "subject of Bankruptcies" to include the financially healthy Bestwall LLC.

It is difficult to square this outcome with the constitutional text. Those who drafted the Constitution, as well as those who voted to ratify it, would have understood the "subject of Bankruptcies" to encompass the relations between creditors and debtors facing substantial financial distress. "English bankruptcy acts, the English insolvency acts, and the American statutes," which were largely based on them, shared many common features: "Significantly, all governed debtors who demonstrated an inability or, in the case of involuntary proceedings, an unwillingness to repay their creditors." Thomas A. Plank, *The Constitutional Limits of Bankruptcy*, 63 Tenn. L. Rev. 487, 513–17 (1996). The original intent of those who drafted the Bankruptcy Clause, Professor Plank concluded, was "to empower Congress to pass legislation addressing insolvent debtors and their creditors." *Id.* at 532.[4]

This Court, as well, has "previously defined 'bankruptcy' as the 'subject of the relations between an insolvent or nonpaying or fraudulent debtor and his creditors.'" *Ry. Lab. Executives' Ass'n v. Gibbons*, 455 U.S. 457, 472 (1982) (quoting *Wright v. Union Central Life Ins. Co.*, 304 U.S. 502, 513–14 (1938)). The Fourth

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. . . To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. art. I, § 8, cl. 4.

[4] Judge King adds that 18th Century dictionaries (not unlike today's) plainly defined "bankrupt" debtors to be insolvent or unable to pay their debts. *Bestwall II*, at 254 (King, J., dissenting).

Circuit itself has previously noted that federal courts "have consistently dismissed Chapter 11 petitions filed by financially healthy companies" *In re Premier Auto. Servs., Inc.*, 492 F.3d 274, 280 (4th Cir. 2007) (quoting *In re SGL Carbon Corp.*, 200 F.3d 154, 166 (3d Cir. 1999)) (citing cases).

But the Fourth Circuit panel majority in this case cast aside any semblance of originalism. In fact, the Court found that the Bankruptcy Clause imposed no real limitation of Congress's power to define the subject-matter jurisdiction of federal bankruptcy courts. "The Bankruptcy Code is a law of the United States. Bestwall petitioned to reorganize under Chapter 11 of the Code. So, that petition is a case arising under the laws of the United States. Seems straightforward." *Bestwall II*, 148 F.4th at 239 (citing 28 U.S.C. § 1331). It should be equally straightforward that an entity cannot create bankruptcy jurisdiction in a federal court simply by filing a bankruptcy petition. *See Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) ("[N]o action of the parties can confer subject matter jurisdiction upon a federal court.").

More specifically, the court below continued, "Whether a bankruptcy court may exercise subject-matter jurisdiction over a proceeding is determined by reference to 28 U.S.C. § 1334," which "vests district courts with 'original and exclusive jurisdiction of all cases under title 11 . . . or arising in or related to cases under title 11.'" *Bestwall II,* 148 F.4th at 241. Although the court correctly acknowledged Congress may not exceed its authority under the Bankruptcy Clause, it negated any real limitation by stating that the scope

of "bankruptcy" subject matter jurisdiction is a determination that "[o]nly Congress can make." *Id.* at 241.

Judge Agee's concurrence makes this point more explicitly. "[T]he power of Congress under the [B]ankruptcy [C]lause is not to be limited by the English or Colonial law in force when the Constitution was adopted." Rather,

> the most satisfactory approach to the problem of interpretation [of the Bankruptcy Clause] is to examine it in the light of the acts, and the history of the acts, of Congress which have from time to time been passed on the subject; for . . . the nature of this power and the extent of it can best be fixed by the gradual process of historical and judicial inclusion and exclusion.

Id. at 244 (Agee, J., concurring) (citations omitted).[5]

The notion that crucial elements of the constitutional text not only evolve, but also are completely untethered to their original meaning and subject to redefinition by Congress at its convenience is wholly at

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[5] Judge Agee quotes selectively from this Court's opinion in *Cont'l Ill. Nat'l Bank & Tr. Co. of Chi. v. Chicago, R.I. & P. Ry. Co.*, 294 U.S. 648, 669 (1935), which held that the Bankruptcy Clause was not limited to involuntary bankruptcies, as the English statute was, but allowed legislation permitting voluntary petitions "with the direct aim and effect of relieving insolvent persons . . . from the payment of their debts." *Id.* at 680. This Court's reading was not the result of evolving judicial interpretation, as Judge Agee suggests, but rather was "within the contemplation of the framers of the Constitution when the power was granted." *Id.* at 681.

odds with this Court's settled modes of constitutional analysis. For example, in an early decision, this Court held that a provision in the Judiciary Act that "extend[ed] the jurisdiction beyond the limits of" Article III to include suits between non-citizens was invalid, with the result that the federal court in that case lacked subject-matter jurisdiction. *Hodgson v. Bowerbank*, 9 U.S. (5 Cranch) 303, 304 (1809).

Similarly, and more recently, in *Reid v. Covert*, 354 U.S. 1, 14 (1957), this Court held that Article I, Section 8, Clause 14—which empowers Congress "To make Rules for the Government and Regulation of the land and naval Forces"—did not allow Congress to authorize a military trial in a non-Article III court for certain spouses of servicemembers stationed abroad. Congress was not entitled to alter the definition of "land and naval Forces" to include civilians. *Id.* at 19–20.

Judge King sharply criticized the majority's "assumption that Congress's broad grant of jurisdiction under 28 U.S.C. § 1334 can override the Constitution's more limited delegation of power under the Bankruptcy Clause." *Bestwall II*, 148 F.4th at 249–50 (King, J., dissenting). Judge King later re-emphasized:

> [N]othing in the Constitution permits Congress — or the federal courts — to authorize bankruptcy as a strategic weapon of the powerful, to be used to avoid accountability to the harmed. Instead, as history and tradition teach us, "Bankruptcies" under Article I of the Constitution are limited to the truly

> bankrupt, not those who merely pretend to be bankrupt.

Bestwall II Rehearing Order, 157 F.4th at 584 (King, J., dissenting).

This Court should grant review to make clear that federal jurisdiction cannot simply evolve by judicial increments, untethered to the original meaning of the constitutional grant of authority by the people of the United States in their Constitution. Federal courts may not treat such a provision as a free-floating authorization for federal courts to tackle whatever problems they perceive in the civil justice system.

II. THIS COURT SHOULD GRANT THE PETITION TO MAKE CLEAR THAT THE SEVENTH AMENDMENT LIMITS THE BANKRUPTCY POWER OF CONGRESS AND THE FEDERAL COURTS.

A. The Individuals and Families Georgia-Pacific's Asbestos Products Have Harmed Have a Fundamental Right to Trial by Jury of Their Actions for Damages.

Judge Beyer, of the Bankruptcy Court below, lamented that, as to the meaning of Article I, Section 8, "the Framers did not give us much with which to work." *In re Bestwall LLC*, 658 B.R. at 365. But the founding generation left no doubt as to the importance they attached to preserving the right to trial by jury in civil actions.

The American colonists viewed the Crown's ac-

tions in "evading American juries by siphoning adjudications to juryless admiralty, vice admiralty, and chancery courts" as "justification for severing our ties to England." *Securities & Exch. Comm'n v. Jarkesy*, 603 U.S. 109, 121 (2024). The omission of an explicit guarantee of the right to a trial by jury in civil actions, particularly in disputes between debtors and creditors, "was one of the chief motivations for opposition to the Constitution." Charles W. Wolfram, *The Constitutional History of the Seventh Amendment*, 57 Minn. L. Rev. 639, 679 (1973). Proponents won ratification only by promising and delivering a Bill of Rights that enshrined the jury right in the Seventh Amendment. *Jarkesy*, 603 U.S. at 122.

Mindful of this history, this Court has consistently emphasized:

> Maintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.

Dimick v. Schiedt, 293 U.S. 474, 486 (1935). The Court has repeated and reaffirmed this principle. *See, e.g.*, *Chauffeurs, Teamsters & Helpers, Loc. No. 391 v. Terry*, 494 U.S. 558, 565 (1990); *Jarkesy*, 603 U.S. at 121. *See also Jacob v. New York*, 315 U.S. 752, 752–53 (1943) ("The right of jury trial in civil cases at common law . . . should be jealously guarded by the courts.").

Common-law claims for money damages, including those pursued by Claimants here, "must be heard by a jury" as they seek "the prototypical common law

remedy." *Jarkesy*, 603 U.S. at 120, 123. Bankruptcy courts, however, are Article I courts that "are essentially courts of equity," to which the jury right does not attach. *Katchen v. Landy*, 382 U.S. 323, 377 (1966).

Congress clearly recognized the danger that persons with personal injury and wrongful death claims could be deprived of their jury rights by the exercise of the broad authority Congress gave to the Bankruptcy Courts. Congress therefore reaffirmed that the Bankruptcy Court's statutory authority must always yield to constitutional command: "[T]his chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim." 28 U.S.C. § 1411(a).[6]

The Fourth Circuit nevertheless held that Bestwall's bankruptcy petition falls within the subject matter of the bankruptcy court. It thereby gave a green light to Georgia-Pacific's plan to have Bestwall establish and fund a Section 524(g) trust and obtain an injunction channeling claimants' tort actions to the trust.

In short, Georgia-Pacific is engaging in corporate alchemy to transform claimants' causes of action, including MDLs, in Article III federal courts and state common-law courts into Article I claims to be processed by an administrative Section 524(g) mechanism. This Court should make clear once again that

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[6] Significantly, Section 1411(a) preserves an individual's jury right under an applicable state law or state constitution, as well as the Seventh Amendment.

neither Congress nor the Courts are entitled to a magic wand with which they may conjure away the rights of personal injury victims to have a jury decide the facts of their cases.

B. Congress Cannot Conjure Away the Seventh Amendment Rights of Victims of Tortious Misconduct by Requiring Them to Submit Their Claims to an Administrative Tribunal.

Georgia-Pacific's purpose in having Bestwall file its bankruptcy petition was not to get Bestwall back up on its feet again. Bestwall had never taken a step in the business world. Its only function was to walk into bankruptcy court, loaded with the liabilities Georgia-Pacific assigned to it, and set up a Section 524 trust, paid for by Georgia-Pacific, which would resolve those lawsuits at lower prices and on much more favorable conditions than Georgia-Pacific could expect in the civil justice system.

The Fourth Circuit's "straightforward" assertion of federal-question jurisdiction to grant Bestwall's petition, *Bestwall II*, 148 F.4th at 239, cannot get Georgia-Pacific over the finish line. The Claimants' personal injury and wrongful death claims that Georgia-Pacific seeks to enjoin and channel into the asbestos trust arise under state law. There is simply no constitutional basis for the bankruptcy court to assert jurisdiction over a state-law tort action between an injured plaintiff and nondebtor that is based on the nondebtor's own wrongful conduct. The Fourth Circuit's statement that it merely confirmed Congress's creation of jurisdiction as "determined by reference to 28

U.S.C. § 1334," *Bestwall II*, 148 F.4th at 241, is far wide of the mark.

To the contrary, this Court has declared that bankruptcy courts must safeguard the Seventh Amendment jury right, even "in the face of Congress' decision to allow a non-Article III tribunal to adjudicate" claims involving private rights, including tort lawsuits. *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 50 (1989). Justice Brennan wrote for the Court that "[w]holly private tort, contract, and property cases . . . are not at all within Congress's constitutional authority to create subject matter jurisdiction in non-Article III courts." *Id.* at 51 (quoting *Atlas Roofing Co. v. Occupational Safety & Health Rev. Comm'n*, 430 U.S. 442, 458 (1977)). "Congress [cannot] conjure away the Seventh Amendment by mandating that traditional legal claims be brought" in a non-Article III tribunal. *Id.* at 52.

As the Supreme Court underscored in *Jarkesy*, the Seventh Amendment's jury-trial right works hand-in-glove with Article III's guarantee of a neutral adjudicator on questions of law. *See* 603 U.S. at 127.("Congress may not avoid a jury trial by preventing the case from being heard before an Article III tribunal."). Access to Article III courts with their guarantee of trial by jury is necessary to "vindicate the Constitution's promise of a 'fair trial in a fair tribunal.'" *Id.* at 141 (Gorsuch, J., concurring) (quoting *In re Murchison*, 349 U.S. 133, 136 (1955)). The mandatory channeling of claimants' common-law claims into the asbestos trust poses the same fairness considerations as the global settlement process this Court rejected in *Ortiz*

v. Fibreboard Corp., 527 U.S. 815 (1999). "[C]ertification of a mandatory class followed by settlement of its action for money damages obviously implicates the Seventh Amendment jury trial rights of absent class members," *id.* at 845–46, as well as Americans' "deep-rooted historic tradition that everyone should have his own day in court." *Id.* at 846 (quoting *Martin v. Wilks,* 490 U.S. 755, 762 (1989)).

For that reason, the Constitution prohibits Congress from "withdraw[ing] from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law." *Murray's Lessee v. Hoboken Land & Improvement Co.*, 18 How. 272, 284 (1856). Once such a suit "is brought within the bounds of federal jurisdiction," an Article III court must decide it, with a jury if the Seventh Amendment applies. *Stern v. Marshall*, 564 U.S. 462, 484 (2011).

This Court recently reaffirmed that Congress cannot "conjure away the Seventh Amendment by mandating that traditional legal claims be . . . taken to an administrative tribunal." *Jarkesy*, 603 U.S. at 134 (quoting *Granfinanciera*, 492 U.S. at 52). Nor, this Court should add, can the federal courts.

C. This Court Should Grant the Petition to Make Clear That "Related-To" Jurisdiction Under 28 U.S.C. § 1334(b) Does Not Extend to Bad-Faith Schemes to Immunize Non-debtor Third Parties from Liabilities That Can Have No Impact on the Bankruptcy Petitioner.

The Fourth Circuit below asserted a statutory basis for jurisdiction over Claimants' common-law

claims. District courts under 28 U.S.C. § 1334(b) have jurisdiction "of all civil proceedings arising under title 11 or arising in or *related to cases under title 11*." (emphasis added). Because Bestwall's bankruptcy petition is a "case[] under title 11," the bankruptcy court "had 'related to' jurisdiction to enjoin the claims against New GP." *Bestwall I*, 71 F.4th at 178–79. *See also Bestwall II,* 148 F.4th at 238 n.6.

The Fourth Circuit essentially held, once again, that Article I, Section 8 of the Constitution imposes no limit on Congress's power to enlarge the subject-matter jurisdiction of bankruptcy courts—this time over state-law cases. The only limitation imposed by Congress on this power, in the court's view, is that the state lawsuits be "related" in some way to the bankrupt's petition. That is not a limitation at all. As Justice Scalia famously pointed out, "applying the 'relate to' provision according to its terms was a project doomed to failure, since . . . everything is related to everything else." *Labor Standards Enf't v. Dillingham Constr., N. A., Inc.*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring).

In fact, this Court has emphatically stated that "related-to" subject-matter jurisdiction is broad, but not unlimited. Bankruptcy courts can exercise related-to jurisdiction over "suits between third parties" only if they "have an effect on the bankruptcy estate." *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 n.5 (1995). Simply put, "bankruptcy courts *have no jurisdiction* over proceedings that have no effect on the estate of the debtor." *Id.* at 308 n.6 (emphasis added).

In this case, Bestwall never produced or marketed asbestos products during its three-month pre-petition

lifetime, so none of Claimants' asbestos injury claims arose out of Bestwall's conduct. Their harms were caused by the business activities of Georgia-Pacific, which New GP inherited.

If the asbestos victims' lawsuits were permitted to go forward against New GP, the Funding Agreement requires Bestwall to indemnify New GP for any damages and expenses paid out. But the agreement also entitles Bestwall to seek payment from New GP to cover all of the expenses that Bestwall paid to New GP. *Bestwall II*, 148 F.4th at 237–38. In the end, all financial responsibility for compensating present and future asbestos claims falls entirely on New GP. Bestwall's and New GP's repayment obligations "are in fact wholly circular, essentially a legal fiction," so that the litigation of the tort claims against New GP "would not 'affect' the valuation of the bankruptcy estate at all." *Bestwall I*, 71 F.4th at 191 (King, J., dissenting).

It should have been crystal clear from this Court's decision in *Celotex* that the bankruptcy court had no jurisdiction over state lawsuits that would have had no effect on the estate. *See, e.g.*, *In re Aearo Techs. LLC*, 642 B.R. 891, 908–12 (Bankr. S.D. Ind. 2022) (holding that a similar circular financing arrangement could not serve as basis for related-to jurisdiction).

This Court should grant the Petition to instruct the bench and bar that the Bankruptcy Code is not a super-statute that authorizes bankruptcy courts to exercise subject matter jurisdiction far beyond what the drafters of the Constitution contemplated. The Constitution does not provide the bankruptcy court "with a roving commission to resolve all such problems that

happen its way." *Harrington*, 144 S. Ct. at 2084. It certainly does not allow federal courts at the urging of corporate mass tort defendants to construct an alternative justice system, rejecting the protections the Framers saw fit to guarantee in Article III and the Seventh Amendment—all for no better reason than to "give a defendant a better deal." *Ortiz*, 527 U.S. at 839.

III. THE ISSUES PRESENTED BY PETITIONERS ARE SUBSTANTIAL AND RIPE FOR THIS COURT'S REVIEW.

A. Denial of Review in This Case Will Invite Further Abuse of the Bankruptcy Code by Large and Profitable Corporations.

Georgia-Pacific was the first major corporation to make use of the Texas Two-Step maneuver to obtain advantages over injured tort plaintiffs that it could not obtain in the civil justice system. A growing number of companies have since brought very similar plans to federal courts. *See In re LTL Mgmt., LLC*, 64 F.4th 84 (3d Cir. 2023) (Johnson & Johnson; talcum powder products); *In re Aearo Techs. LLC*, No. 22-02890-JJG-11, 2023 WL 3938436 (Bankr. S.D. Ind. June 9, 2023), *appeal dismissed*, 2024 WL 5277357 (7th Cir. July 11, 2024) (3M Company; military ear protection equipment); *In re Red River Talc LLC*, 670 B.R. 251 (Bankr. S.D. Tex. 2025) (Johnson & Johnson; talcum powder products); *In re Aldrich Pump LLC*, No. 20-30608 (JCW), 2021 WL 3729335 (Bankr. W.D.N.C. Aug. 23, 2021) (Trane Technologies; climate control products for buildings, homes, and transportation); *In re DBMP LLC*, No. 20-30080, 2021 WL 3552350 (Bankr.

W.D.N.C. Aug. 11, 2021) (CertainTeed; asbestos-containing building materials).

This trend has prompted scholars to call for review by this Court. *See, e.g.*, Lindsey D. Simon, *Bankruptcy Grifters*, 131 Yale L.J. 1154, 1216 n.81 (2022); Ralph Brubaker, *Mandatory Aggregation of Mass Tort Litigation in Bankruptcy*, 131 Yale L.J. Forum 960, 964 (2022).

This Court's denial of Claimants' Petition will likely be construed as a green light for further and even more adventurous attempts to game the system. As the bankruptcy trustee informed this Court in *Harrington*, allowing tortfeasors to win immunity for themselves in this fashion would provide a "roadmap for corporations and wealthy individuals to misuse the bankruptcy system" in future cases "to avoid mass-tort liability." 144 S. Ct. at 2087. The same considerations weigh in favor of granting the Petition here.

B. Further Delay of This Court's Resolution of the Crucial Issues of Subject Matter Jurisdiction in this Case Will Result in Unnecessary Suffering and Injustice.

Finally, as Judge King powerfully reminded his colleagues, many of the claimants in this case are living on borrowed time. They "suffer from mesothelioma — a rare, incurable cancer that is almost exclusively caused by asbestos exposure" or from lung cancer, or other severe respiratory diseases. *Bestwall II*, 148 F.4th at 248 (King, J., dissenting).

> And while these individual Claimants are fighting the effects of horrific diseases caused by asbestos exposure, they

> have now been forced to fight through a legal process that has been indefinitely suspended by Bestwall's bankruptcy filing. Their right to pursue justice through the tort system of the civil courts — a right that is deeply rooted in the laws of our Nation and grounded in the most basic principles of accountability — has been put on hold by a solvent and profitable enterprise acting through a wholly manufactured bankruptcy proceeding.

Id.

This Court's resolution of the question presented in this case is needed to move the wheels of justice forward. Bankruptcy Judge Whitley, in the Western District of North Carolina, described the present situation plainly:

> Until the propriety of the "Texas Two-Step" and its use by solvent "non-distressed" corporations is determined by the higher courts, no progress will be made in these bankruptcy cases. . . . These cases are simply spinning round and about, to the growing frustration of all.

In re Aldrich Pump LLC, No. 20-30608, 2023 WL 9016506, at *11 (Bankr. W.D.N.C. Dec. 28, 2023).

CONCLUSION

For the foregoing reasons, the American Association for Justice urges this Court to grant the Petition for Writ of Certiorari.

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Respectfully submitted,

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