UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re:	Chapter 11
DBMP LLC,[1]	Case No. 20-30080 (JCW)
Debtor.	

DEBTOR'S OMNIBUS OBJECTION TO THE ESTATE OF PETER L. BERGRUD'S AND MICHAEL N. AND ANN HERLIHY'S MOTIONS FOR RELIEF FROM THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362(d)

DBMP LLC, the debtor and debtor in possession in the above-captioned chapter 11 case (the "Debtor"), objects to both (a) the *Motion for Relief From the Automatic Stay Pursuant to 11 U.S.C. § 362(d)* [Dkt. 2753] (the "Bergrud Motion") filed by Cheryl L. Bergrud ("Mrs. Bergrud"), individually and as Personal Representative for the Estate of Peter L. Bergrud; and (b) the *Motion for Relief From the Automatic Stay Pursuant to 11 U.S.C. § 362(d)* [Dkt. 2755] (the "Herlihy Motion" and, together with the Bergrud Motion, the "Motions") filed by Michael N. and Ann Herlihy (together with Mrs. Bergrud, the "Movants").[2]

PRELIMINARY STATEMENT

The Movants request that the Court lift the automatic stay to allow them to pursue their state law claims against the Debtor even though they have not demonstrated any cause to do so—either through the assertion of new developments or unique circumstances in the Movants' cases. Instead, the virtually identical Motions spend the bulk of their pages attacking both the prepetition restructuring that created the Debtor and the Debtor's chapter 11 case. These attacks—

[1] The last four digits of the Debtor's taxpayer identification number are 8817. The Debtor's address is 20 Moores Road, Malvern, Pennsylvania 19335.

[2] Local Bankruptcy Rule 9013-2(a) limits briefs to 25 pages. Although each Motion is 36 pages long, the Movants, in violation of the rule, have not sought authority to exceed the page limit.

constructed only on rhetoric—are based on arguments that have been rejected by courts in this District or that otherwise are irrelevant to the lift stay analysis under controlling law. The applicable standard for lifting the automatic stay (from the *Robbins* case) is not even addressed until after page 30 of each Motion.

Contrary to the Movants' assertions that the relief sought will not interfere with the Debtor's chapter 11 case, granting the Motions would establish a precedent for potentially thousands of other similarly situated claimants to seek the same relief in a piecemeal fashion without demonstrating unique facts or circumstances, sabotaging the Debtor's prospects for reorganization. The Motions admit as much[3] and the unsupported rhetoric of the Movants' counsel regarding the Debtor's alleged bad faith is insufficient to overcome this harm. As this Court previously stated, "the way to challenge" the prepetition restructuring and the Debtor's chapter 11 case "is not through piecemeal individual claimant actions in the tort system. It is through plan negotiation and/or an adversary proceeding filed in this case for the benefit of all asbestos claimants." *DBMP LLC v. Those Parties Listed on Appendix A to Complaint and John and Jane Does 1-1000 (In re DBMP LLC)*, 2021 WL 3552350, at *38 (Bankr. W.D.N.C. Aug. 11, 2021).

Although framed as lift stay motions, it is clear from the page-after-page attacks that the Movants wish for dismissal of this case. But the Movants should not be allowed to achieve an effective dismissal of this case through stay relief, especially where (a) no party has to date sought dismissal, (b) dismissal has been denied in cases raising very similar issues (including two dismissal motions in the *Aldrich/Murray* cases and four in the *Bestwall* case), (c) the Fourth

[3] *See*, *e.g.*, Bergrud Mot., 4 ("While it is certainly true that if the Court were to lift the stay for many (or all) claimants, [the Debtor's] primary goal in this proceeding . . . would fail."); Herlihy Mot., 4 (same); Bergrud Mot., 17 ("In instances such as these, multiple motions to lift stay should be expected and should be granted."); Herlihy Mot., 18 (same).

Circuit, in affirming the preliminary injunction order in *Bestwall*,[4] already has recognized that "the time and place to raise" concerns about the chapter 11 case is at "plan confirmation" and not through "challenge[s] that really [go] to the merits of the reorganization," and (d) the official committee of asbestos personal injury claimants (the "Committee") and the legal representative for future asbestos claimants appointed in this case (the "Future Claimants' Representative") already are challenging the prepetition restructuring and the filing of the chapter 11 case in three pending adversary proceedings, including two in which they are acting as estate representatives. *See id.* at *37 (stating the Court is "not in a position to grant a lift stay motion that effectuates their dismissal hopes").

As recognized by the Court, the Debtor needs the protection of the automatic stay to preserve its ability "to obtain a permanent, global, and fair resolution of all current and future asbestos claims against it." *See id.* at *32. Neither the *Robbins* factors used by courts in the Fourth Circuit to assess whether cause exists to lift the automatic stay, nor the *Curtis* factors used in other jurisdictions, weigh in favor of granting the Motions, especially where the Movants have failed to demonstrate any unique facts or circumstances that would distinguish their cases from the tens of thousands of other cases that are pending or might be asserted against the Debtor. Despite the Movants' baseless assertions to the contrary, (a) bankruptcy court expertise is necessary to address estimation and global resolution of the current and future asbestos claims against the Debtor; (b) lifting the automatic stay would undermine, not promote, judicial economy; and (c) the Debtor's estate would be inadequately protected if the automatic stay were lifted. The Motions should be denied.

[4] *Bestwall LLC v. Official Comm. of Asbestos Claimants (In re Bestwall LLC)*, 71 F.4th 168, 183 (4th Cir. 2023).

ARGUMENT

I. NO UNIQUE FACTS OR CIRCUMSTANCES JUSTIFY LIFTING THE AUTOMATIC STAY AS TO THE MOVANTS.

1. Like the recently denied lift stay motions in the *Bestwall* case filed or joined by the same counsel,[5] the Movants do not even attempt to assert any new or unique facts or circumstances that justify treating them differently from the thousands of other similarly situated asbestos-related claimants whose claims also are stayed.[6] The Fourth Circuit's statement in *Bestwall* that, "where appropriate," claimants routinely bring motions "for relief based on the specific facts of a particular claim" is of no benefit to the Movants where they fail to distinguish their claims from the thousands of other asbestos claims currently pending against the Debtor. *See Bestwall*, 71 F.4th at 183.[7] The Fourth Circuit recognized that, while seeking to lift the automatic stay is "routine," it should only occur where it is demonstrated to be "appropriate." *Id.* It is not appropriate to lift the automatic stay here.[8]

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[5] *Order Denying Richard and Joann Dale's Mot. for Relief From the Automatic Stay Pursuant to 11 U.S.C. 362(d)*, *In re Bestwall, LLC*, No. 17-31795 (LTB) (Bankr. W.D.N.C. Dec. 13, 2023), Dkt. 3218; *Order Denying Wilson Buckingham and Angelika Weiss's Mot. for Relief From the Automatic Stay Pursuant to 11 U.S.C. 362(d)*, *In re Bestwall, LLC*, No. 17-31795 (LTB) (Bankr. W.D.N.C Feb. 26, 2024), Dkt. 3290.

[6] The Debtor denies the Movants' allegations that "Old CertainTeed Negligently Caused" Mr. Bergrud's (Bergrud Mot., 9-12) and Mr. Herlihy's (Herlihy Mot., 10-12) mesothelioma. *See Informational Br. of DBMP LLC* [Dkt. 22] and *Debtor's Reply to Informational Br. of the Official Committee of Asbestos Personal Injury Claimants* [Dkt. 1208]. Regardless, these allegations are irrelevant to the issues presented by the Motions.

[7] *See also Bestwall*, Dkt. 3154, Oct. 19, 2023 Hr'g Tr., 70:20-71:1 ("while the Fourth Circuit did say that rather than waiting for plan confirmation, and I quote, 'Claimants can bring individual actions for relief based on the specific facts of a particular claim,' the Dales have not pled any facts specific or unique to them to cause this Court to find that there's cause to grant their motion for relief from stay"); *In re W.R. Grace & Co.*, 2007 WL 1129170, at *3 (Bankr. D. Del. Apr. 13, 2007) ("There is no indication that the state court claims are in any way unique, or that, if proven, Debtors' liability to the State of Montana, if any, will be distinguishable from liability for any of the other hundreds of thousands of asbestos claims asserted against Debtors. The State of Montana is in no different position than any other creditor claiming an injury by the Debtor entities based on asbestos.").

[8] By contrast to the circumstances here, the Debtor previously agreed to modify the automatic stay to allow an appeal to proceed because the unique circumstances of that matter justified such relief. *See Stipulation and Agreed Order Modifying the Automatic Stay*, Dkt. 542 (modifying automatic stay to allow the Supreme Court of California to dispose of appeal and to allow court, on remand, to dispose of the matter given that the judgment was supported by an appellate bond).

2. The Movants also contend that granting individual actions for stay relief here would not be akin to dismissal because doing so would simply frustrate "a bad faith bankruptcy" and an "***illegitimate*** bankruptcy purpose." *See* Bergrud Mot., 15-19 (emphasis in original); Herlihy Mot., 16-19 (emphasis in original). But such assertions are based solely on the views of the Movants' counsel as expressed in heated rhetoric—not on evidence or law. Similarly, the Movants' suggestions for alternatives the Court may implement—notably, terminating the stay for all claimants, appointing a trustee, liquidating the Debtor's assets, etc. (Bergrud Mot., 19; Herlihy Mot., 19)—lack any legal basis, are not before the Court, and simply reveal the Movants' real objective: the effective dismissal of this case. In that regard, it is worth recalling that the Court already denied a request by the Committee to lift the automatic stay as to ***all claimants***,[9] finding that such request "would create bedlam, produce inconsistent results for creditors, and effectively end the bankruptcy case." *DBMP*, 2021 WL 3552350, at *38.

3. Contrary to the Movants' assertions (Bergrud Mot., 29; Herlihy Mot., 29-30), the requests in the Motions are not materially different from the Committee's request that the stay be lifted as to all asbestos claimants—the effect of granting the Motions would be much the same. Granting the Motions would establish a precedent for potentially thousands of other similarly situated claimants to seek the same relief in a piecemeal fashion without demonstrating cause due to unique facts. *See Bestwall*, Dkt. 3268, Jan. 18, 2024 Hr'g Tr., 77:19-78:12 (stating the "issue must be considered in the context of this case being a mass tort case," that if the court "granted Mr. Buckingham's motion for relief from stay," the court "would be obliged to grant the motion for relief from stay of most, if not all, claimants who sought similar relief," that it would

[9] *Mot. of the Official Committee of Asbestos Personal Injury Claimants to Lift the Stay Pursuant to 11 U.S.C. § 362 as to Certain Asbestos Personal Injury Claims*, Dkt. 614; Adv. Pro. No. 20-03004, Dkt. 195 (the "Committee Lift Stay Motion").

"not promote judicial economy" to grant the motion for relief from the stay, and that doing so "would ultimately equate to dismissal"); *Bestwall*, Oct. 19, 2023 Hr'g Tr., 70:1-8 ("if I grant this motion I think I would be hard pressed to deny future motions for relief from stay in this case"); *Aldrich*, Mar. 30, 2023 Hr'g Tr., 67:8-12 (stating that if Court were to "grant relief from stay to one creditor to liquidate the claim, all of the claimants will – not all – but a substantial number of the claimants, enough to wreck the bankruptcy case, will seek like measure and that effectively precipitates a *de facto* dismissal of the case").

4. Other courts likewise have rejected motions to lift the automatic stay when they risk opening the floodgates for other similar claimants. *See*, *e.g.*, *In re Motors Liquidation Co.*, 2010 WL 4630327, at *5 (S.D.N.Y. Nov. 8, 2010) (noting that potential for opening floodgates to claimants with similar allegations is "the very state of affairs the automatic stay was enacted to prevent"); *In re SunEdison, Inc.*, 557 B.R. 303, 308 (Bankr. S.D.N.Y. 2016) ("Granting stay relief to Vivint may encourage other claimants to file their own stay relief motions."). In fact, the Movants' serial requests for this relief on the same day demonstrate that copycat motions are a risk, and one that can be expected to grow exponentially if the Motions are granted. Indeed, as noted above, the Movants concede this. The Motions should be denied.

II. THE *ROBBINS* FACTORS ALL WEIGH AGAINST GRANTING THE MOTIONS.

5. The automatic stay embodied in section 362 of the Bankruptcy Code has been described as "one of the fundamental debtor protections provided by the bankruptcy laws." *Midlantic Nat'l. Bank v. N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 503 (1986) (citation omitted). The bankruptcy court however, in certain appropriate circumstances, may lift the stay "for cause." Section 362(d)(1) provides that:

> On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under

> subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—(1) ***for cause*** . . . .

11 U.S.C. § 362(d)(1) (emphasis added). "Cause" is a flexible concept, and a bankruptcy court is granted discretion to determine when relief is appropriate on a case-by-case basis. *See In re Robbins*, 964 F.2d 342, 345 (4th Cir. 1992).

6. In the Fourth Circuit, courts use the factors laid out in *Robbins* to determine whether there is cause to lift the stay. *DBMP*, 2021 WL 3552350, at *31 (identifying the *Robbins* factors as the appropriate factors for a lift stay analysis); *see also In re Lee*, 461 Fed. App'x. 227, 231 (4th Cir. 2012) (same). Consideration of each of the *Robbins* factors in the context of this case supports denial of the Motions, notwithstanding the Movants' unsupported allegations of bad faith.

A. Whether the Issues in the Pending Litigation Involve Only State Law and, Thus, the Expertise of the Bankruptcy Court Is Unnecessary.

7. The Movants argue that the "Court's expertise related to the Bankruptcy Code . . . is not needed" for the Movants to try their "state law claims to verdict," and take issue with the estimation proceeding that was approved by the Court over two years ago.[10] Bergrud Mot., 30-31, 33-35; Herlihy Mot., 30-31, 33-35. Not only have the Movants' arguments regarding estimation already been addressed by this Court, but, by virtue of the Debtor's chapter 11 case and the Estimation Order, the expertise of this Court is necessary. The Court is in the midst of overseeing an estimation proceeding for the asbestos-related claims against the Debtor and is uniquely equipped to address the myriad of issues involved in estimating the thousands of claims for purposes of negotiating, formulating, and confirming a chapter 11 plan—not for establishing a non-consensual cap on the Debtor's asbestos liability as the Movants claim. *See* Estimation Order

[10] *See Order Authorizing Estimation of Current and Future Mesothelioma Claims*, Dkt. 1239 (the "Estimation Order").

¶ 3. Such estimation is not a proceeding that can occur in state court or any forum other than a bankruptcy court, and "should precede any trials of the claims." *A.H. Robins Co., Inc. v. Piccinin (In re A.H. Robins Co., Inc.)*, 788 F.2d 994, 1012 (4th Cir. 1986); *see also Blair v. Bestwall, LLC*, Nos. 22-1981, 22-1984 (4th Cir. Sept. 22, 2023) Unofficial Hr'g Tr., 12 (Judge Wilkinson: "But here, the proceeding and the purpose of the bankruptcy litigation is to find out what the obligations of Bestwall are, to contribute to this trust fund.") (excerpt attached as Exhibit A hereto).

8. In addition, Congress enacted section 524(g) of the Bankruptcy Code because it contemplated having the bankruptcy court, not individual state courts, address and facilitate the comprehensive resolution of asbestos claims. *See* H. Rep. 103-835, 2d Sess., 40-41 (1994), reprinted in 1994 U.S.C.C.A.N. 3340, 3348-49. The Movants' conclusory statements that the Court can disregard section 524(g) because the Debtor does not qualify for relief under that section are unsupported, and ignore prior rulings of this Court. *See* Bergrud Mot., 34-35; Herlihy Mot., 35. Notably, the Court previously found that "Congress enacted section 524(g) to address precisely the type of state law-based asbestos claims faced by the Debtor." *DBMP*, 2021 WL 3552350, at *36.

9. The Debtor's chapter 11 case is the only proceeding in which the Debtor can achieve a global and equitable resolution of its current and future asbestos-related claims. Lifting the stay undermines the bankruptcy court's ability pursuant to section 524(g) to effectuate such a result. *See id.* at *31 ("the fact that asbestos claims arise under state law does not support a modification of the stay because it necessarily involves individual creditors liquidating their claims against the Debtor outside of the bankruptcy proceeding, . . ., and thwarting any attempt to globally and permanently resolve asbestos claims in a single forum"); *id.* at *32 ("The ability to treat equitably and consistently all similarly situated claimants through a section 524(g) consensual

plan of reorganization would be foreclosed" if stay relief were to be granted); *see also Bestwall*, Oct. 19, 2023 Hr'g Tr., 71:1-4 ("allowing the ongoing litigation of asbestos claims against the debtor in state court could cause irreparable harm to the debtor, which could defeat the purpose of this bankruptcy case and could be akin to the dismissal of the case").

B. Whether Modifying the Stay Will Promote Judicial Economy and Whether There Would Be Greater Interference with the Bankruptcy Case if the Stay Were Not Lifted Because Matters Would Have to Be Litigated in Bankruptcy Court.

10. The Movants assert that relief would be in the interest of judicial economy because the liquidation of the Movants' claims would assist them in analyzing any proposed plan, and there is no legitimate reason to delay determining the value of the Movants' claims. *See* Bergrud Mot., 31-32; Herlihy Mot., 31-33. The Movants also contend that the Debtor and its affiliates are weaponizing and abusing the automatic stay. *See* Bergrud Mot., 17, 22-23, 26; Herlihy Mot., 17-18, 23, 26.

11. The automatic stay is not a weapon of the Debtor or its affiliates. It is a statutory protection critical to achieving the Debtor's objective in this case—a global resolution and payment of all valid current and future claimants on a fair and equitable basis through a chapter 11 plan providing for the establishment of a section 524(g) trust. "[T]he automatic stay allows the bankruptcy court to centralize all disputes concerning property of the debtor's estate in the bankruptcy court so that reorganization can proceed efficiently, unimpeded by uncoordinated proceedings in other arenas." *In re Ionosphere Clubs, Inc.*, 922 F.2d 984, 989 (2d Cir. 1990). This Court and the Fourth Circuit in *Bestwall* recognized the importance of centralizing claims against the Debtor and its affiliates. *See DBMP*, 2021 WL 3552350, at *41 ("And the litigation of DBMP Asbestos Claims in the tort system while the Chapter 11 Case remains pending would undermine the purposes of chapter 11 and section 524(g) to resolve all such current and future claims in a fair

and equitable manner though a chapter 11 plan."); *Bestwall*, 71 F.4th at 179 ("And the possible effect on the Bestwall bankruptcy estate of litigating thousands of identical claims in state court is sufficient to confer 'related to' jurisdiction" over the preliminary injunction request, which the Fourth Circuit affirmed).

12. Further, allowing the Movants' claims to be liquidated in state court will not change the estimation task before this Court or 'aid' the thousands of other claimants in plan evaluation. The Court still will need to estimate on an aggregate basis the thousands of claims pending against the Debtor and those that are expected to be filed in the future. *See Decl. of Robert J. Panaro in Supp. of First Day Pleadings*, Dkt. 24 ¶ 28 (as of January 23, 2020, "more than 60,000 asbestos-related claims and associated lawsuits against the Debtor were pending," with "approximately 32,700" on active dockets and "thousands of additional claims" expected "for decades to come"). There is simply no basis to distinguish the Movants' claims from the thousands of other pending asbestos claims against the Debtor that would justify lifting the automatic stay for these particular claimants.

13. Permitting the Movants to initiate state court litigation against the Debtor under these circumstances undoubtedly would lead to a spate of similar requests in this case, all of which would need to be litigated and addressed by the parties and this Court—a fact conceded by the Movants, demonstrated by the serial nature of the Motions themselves, and recognized as a problem multiple times by this Court. *See LTL Mgmt. LLC*, No. 21-30589 (JCW) (Bankr. W.D.N.C.) Nov. 10, 2021 Hr'g Tr., 155:8-22 ("The problem we have here is 38,000 plus claims, plus all those that are going to come to, to light. If I start with one, I'm going to have to go to dozens, if not hundreds, if not thousands . . . . I don't think I can start making exceptions or this will all unravel and we'll be back at where we were before."); *Bestwall*, Oct. 19, 2023 Hr'g Tr.,

70:6-11 ("if I grant this motion I think I would be hard pressed to deny future motions for relief from stay in this case and that's especially true since the Dales have not pled any unique facts or circumstances that would justify lifting the stay as to them or otherwise distinguish their case from the thousands of cases that are pending in state court."); *Bestwall*, Jan. 18, 2024 Hr'g Tr., 77:10-25 ("Consideration of the *Robbins* factors, particularly . . . whether modifying the stay will promote judicial economy and whether there would be greater interference with the bankruptcy case if the stay were not lifted because matters would have to be litigated in bankruptcy court, I believe and find weighs against modifying the automatic stay. . . . I still conclude that if I granted Mr. Buckingham's motion for relief from stay I would be obliged to grant the motion for relief from stay of most, if not all, claimants who sought similar relief.").

14. The most efficient and economic resolution of not just the Movants' claims, but the thousands of similarly situated current and future asbestos claims against the Debtor, is through the bankruptcy process and the creation of a trust pursuant to a chapter 11 plan that efficiently, timely, and equitably resolves claims.[11] This Court and the Fourth Circuit previously have recognized the benefits to all claimants from bankruptcy and the creation of a section 524(g) trust.[12]

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[11] The purpose of the estimation proceeding is to permit formulation and confirmation of a plan of reorganization with trust procedures that obviate the need to litigate all of the tens of thousands of claims against the Debtor. Under such a plan, the Movants and all other claimants will have the opportunity to accept payment from the eventual trust in lieu of litigating and to pursue the alternative dispute resolution mechanisms common in trust procedures. It is far from certain that any personal injury claims will have to be litigated if a plan of reorganization is confirmed—indeed, it is extremely rare for litigation to be initiated against an asbestos trust, despite claimants' preserved rights to pursue such litigation against a trust under typical trust procedures.

[12] *See DBMP*, 2021 WL 3552350, at *34 ("a section 524(g) trust established by an asbestos debtor in chapter 11 in cooperation with the Representatives, and with each fiduciary acting in good faith and with an earnest desire to achieve a full and fair resolution of asbestos claims, could well provide all asbestos claimants—including future claimants who have yet to initiate litigation—a more efficient means to resolve their claims"); *Bestwall*, 71 F.4th at 183 ("These bankruptcy procedures promote the equitable, streamlined, and timely resolution of claims in one central place compared to the state tort system, which can and has caused delays in getting payment for legitimate claimants."); *Piccinin*, 788 F.2d at 1013 ("If the bankruptcy court could arrive at a fair estimation of the value of all the claims and submit a fair plan of reorganization based

15. If the Motions, which demonstrate no unique circumstances or any cause for relief, are granted, similar motions are certain to follow, judicial economy would not be promoted, and claims would not be resolved globally in a single forum. The Debtor's ability to treat all claimants equitably through a section 524(g) trust would become impossible. *See DBMP*, 2021 WL 3552350, at *32 (concluding that if stay relief was granted, "[t]he ability to treat equitably and consistently all similarly situated claimants through a section 524(g) consensual plan of reorganization would be foreclosed"); *Bestwall*, Jan. 18, 2024 Hr'g Tr., 77:22-25 (concluding that if the court granted motion for relief from the automatic stay, it would be "obliged to grant the motion for relief from stay of most, if not all, claimants who sought similar relief"); *Bestwall*, Oct. 19, 2023 Hr'g Tr., 70:1-8 (stating that it is a fair and reasonable assumption that granting a claimant relief from stay likely would lead to a wave of similar motions and that Court would be hard pressed to deny future motions on similar grounds); *Aldrich*, Mar. 30, 2023 Hr'g Tr., 67:8-12 (finding that granting claimant's motion to lift the stay likely would lead to similar motions from other claimants and "effectively precipitate[] a *de facto* dismissal of the case.").

16. As effectively conceded by the Movants, granting the Motions would result in the "effective dismissal" of the chapter 11 case—a result this Court already rejected in denying the Committee Lift Stay Motion. *See DBMP*, 2021 WL 3552350, at *32 ("if the Court were to grant the Stay Motion, it would amount to an effective dismissal of the Chapter 11 Case without satisfying the Fourth Circuit's stringent *Carolin* dismissal standard, or even such a motion being filed.").

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on such estimation, with some mechanism for dispute resolution and acceptable to all interested parties, great benefit to all the claimants could be achieved and the excessive expense of innumerable trials, stretching over an interminable time, could be avoided.").

C. Whether the Estate Can Be Protected Properly by a Requirement That Creditors Seek Enforcement of Any Judgment Through the Bankruptcy Court.

17. The Movants argue that there will be no harm to the bankruptcy estate as they "seek only to liquidate" their claims and agree "that that amount will not be paid" until this Court allows it. *See* Bergrud Mot., 33; Herlihy Mot., 33. Nevertheless, even without payment, allowing the Movants' claims to proceed to liquidation would still harm the estate. The financial burden of defending against the Movants' claims in the tort system, in addition to the cost of litigation related to follow-on lift stay requests, would be immense. Prior to the chapter 11 case, trying a single case to conclusion cost the Debtor on average $1.2 million.[13] *See Decl. of Charles E. Bates, PHD*, Adv. Pro. No. 20-03004, Dkt. 238 ¶¶ 13, 17. And this additional litigation, in the form of lift stay motions and tort litigation, would divert the parties' attention from the estimation process and negotiation and formulation of a plan, leading to considerable delay.[14] *See DBMP*, 2021 WL 3552350, at *32 (the Debtor and the estate would "suffer substantial prejudice" if the Court granted motion for relief from stay because such relief "would deplete estate resources and irreparably harm the prospects for reorganization"); *see also* Ex. A, 26-27 (Judge Wilkinson: "[W]e are not advancing the ball in terms of the ultimate object of the whole bankruptcy proceeding, which is to allow the bankruptcy judge to make a reliable estimate of what exactly Bestwall's asbestos-related liabilities are to fund the trust."). The circumstances under which the

[13] This burden also would entail time, effort, and costs to the Debtor in retaining defense counsel in the applicable local jurisdictions—who would have to evaluate the status of the cases—and working with that counsel on the defense of each claim, including discovery, retention of experts, and trial preparation that must occur in each case.

[14] *See Piccinin*, 788 F.2d at 1012 (holding that purpose of chapter 11 "to ascertain whether a fair reorganization of the debtor can be achieved" "may well be completely thwarted if the energies of the debtor's executives and officers are initially diverted by, and the resources of the debtor are dissipated in the expenses of litigating, the trial of thousands of personal injury suits in courts throughout the land spread over an interminable period of time.").

Court reached the conclusion that relief from stay would harm the Debtor and its estate have not changed, and this conclusion is just as applicable to the Motions as it was to the Committee Lift Stay Motion. The Movants' proposals thus do not adequately protect the Debtor.

D. The *Curtis* Factors Are Not Binding and Do Not Support Lifting the Stay.

18. Claiming a "more nuanced examination of 'cause'" under the factors set forth in *In re Curtis*, 40 B.R. 795 (Bankr. D. Utah 1984), but without actually analyzing any of those factors, the Movants assert that "the greater balance of hurt is unquestionably born by Movants" because the Debtor "will not be impacted" if the stay is lifted. Bergrud Mot., 35-36; Herlihy Mot., 35-36.

19. This bare assertion, however, ignores that (a) the Movants' claims are indistinguishable from the myriad other asbestos claims against the Debtor; (b) lifting the stay would result in the Movants receiving preferential treatment as compared to other claimants, lead to disparate recoveries on similar claims, and impede the Debtor's ability to make progress toward the establishment of a trust for the benefit of all claimants; (c) the Movants already have achieved recoveries on their claims against other defendants or will be proceeding against those defendants in short order (Bergrud Mot., 31; Herlihy Mot., 32); (d) the establishment of an asbestos trust would result in a far more timely and efficient process that ultimately would reduce delay and eliminate uncertainty and unjustified disparate results, thereby ensuring prompt, consistent, and equitable treatment for current and future asbestos claimants; and (e) delay on its own is insufficient to justify relief from the automatic stay. *See DBMP*, 2021 WL 3552350, at *34 ("While courts seek to minimize the time consumed by these case events, there is no avoiding such 'harm,' if there is to be a bankruptcy case, at all. If delay alone were enough to provide 'cause,' the stay would be terminated in every case.").

III. THE MOVANTS' OTHER ARGUMENTS PREVIOUSLY HAVE BEEN REJECTED OR ARE IRRELEVANT TO THE LIFT STAY ANALYSIS.

20. Unable to demonstrate any unique circumstances or that relief is warranted under the *Robbins* (or *Curtis*) factors, each Motion instead spends most of its 36 pages advancing a narrative about the alleged illegitimacy and bad faith of this chapter 11 case and raising premature and irrelevant arguments about jury trial rights and claim recoveries under a future plan of reorganization. *See* Bergrud Mot., 2-7, 12-29; Herlihy Mot., 2-7, 13-30. These unsupported arguments are misguided.

21. To start, the Movants confuse the standard for evaluating motions for relief from the automatic stay, insisting that bad faith be determined first. But allegations of bad faith should not be considered separate and apart from the governing *Robbins* factors. *See* Bergrud Mot., 29; Herlihy Mot., 30. Bad faith, if relevant, should be considered as part of the Court's balancing under *Robbins*. *See Fairville Co. v. Ramkaran (In re Ramkaran)*, 315 B.R. 361, 365-66 (D. Md. 2004) (in affirming ruling denying motion to lift the automatic stay, finding that *Carolin*'s "strict standard for the use of bad faith as a basis for dismissal applies equally" to section 362 and that "bad faith is one component of, but not necessarily dispositive of, the balance test" under *Robbins*).

22. Moreover, the application of *Carolin Corp. v. Miller*, 886 F.2d 693 (4th Cir. 1989), to lift stay motions in this Circuit is not contrary to well-established precedent in the Fourth Circuit. *See* Bergrud Mot., 5; Herlihy Mot., 5; *compare Ramkaran*, 315 B.R. at 365-66. In *Bestwall*, Judge Beyer properly considered *Carolin* and acknowledged that *Carolin* established the bad faith test for dismissals in this Circuit with specific reference to section 362(d)(1). *See Bestwall*, Jan. 18, 2024 Hr'g Tr., 78:21-79:11; *see also Carolin*, 886 F.2d at 699 ("Just as § 1112(b) inferentially permits inquiry into a debtor's good faith in the context of an interested party's motion

to dismiss, § 362(d)(1)'s 'for cause' language authorizes the court to determine whether, with respect to the interests of a creditor seeking relief, a debtor has sought the protection of the automatic stay in good faith.").

23. Similar to the lift stay motion in *Bestwall*, it would defy "logic to conclude that [*Carolin*'s] two-prong standard doesn't apply" to the Motions' allegations of bad faith, particularly where (a) lifting the stay would essentially constitute a dismissal of the case, (b) the arguments raised in support of lifting the stay are those that have been raised in support of dismissing similar cases, and (c) both this Court (in *Aldrich/Murray*) and Judge Beyer (in *Bestwall*) already have denied motions to dismiss those cases under similar facts. *See Bestwall*, Jan. 18, 2024 Hr'g Tr., 79:12-80:5 ("it can't be that a less stringent standard applies to a relief from stay motion which, if granted, would result in the dismissal of the case.").

24. The Movants' citation to an out-of-circuit, non-mass tort case does not change this analysis. *See* Bergrud Mot., 5, 18-21; Herlihy Mot., 5, 19-20, 22 (citing to *In re Dixie Broad., Inc.*, 871 F.2d 1023 (11th Cir. 1989)). In *Dixie*, the bankruptcy court was considering whether to lift the stay to allow a contract counter-party to pursue state court litigation in a case that was filed during court-ordered settlement negotiations as a result of a two-party contractual dispute. 871 F.2d at 1026-1027. Importantly, the courts in *Dixie* were not contending with a mass-tort case with tens of thousands of claimants alleging the same claims—merely a contract dispute between two parties, which often is the hallmark of a bad faith filing.[15] The Movants also ignore that their long string cite of cases allegedly supporting their argument—*i.e.*, that lack of good faith can constitute cause to lift the automatic stay—are distinguishable and irrelevant here. *See*

[15] The Movants' emphasis on *Dunes Hotel Assocs. v. Hyatt Corp.*, 245 B.R. 492, 507 (D.S.C. 2000) as supporting the reasoning in *Dixie* (Bergrud Mot., 21-22; Herlihy Mot., 22) disregards that, in *Dunes*, the court was not considering a motion for relief from the automatic stay, but rather a motion to dismiss the case.

Bergrud Mot., 29 n.27; Herlihy Mot., 29 n.28. Only a few of these cases addressed bad faith in the context of the automatic stay, and none of the cases involved a mass tort debtor with tens of thousands of actions pending against it as of the filing of the bankruptcy case. In fact, most of the cases focused on dismissal or fee award issues and involved single-asset debtors seeking to avoid foreclosures or other two-party disputes.[16] Indeed, Judge Beyer, in addressing these very same cases (as cited by the lift stay movants in *Bestwall*), stated that the case citations were "somewhat misleading" and the cases did not "stand for the proposition for which [the Court] believe[s] they were cited." *See Bestwall*, Jan. 18, 2024 Hr'g Tr., 80:9-81:3.

25. Further, the Movants' arguments regarding the Debtor's alleged subjective bad faith are incorrect,[17] totally unsupported, and more appropriate in the context of dismissal than

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[16] *See*, *e.g.*, *In re Little Creek Dev. Co.*, 779 F.2d 1068 (5th Cir. 1986) (reversing and remanding bankruptcy court order lifting the automatic stay to allow secured creditor to foreclose on real-estate property); *In re Thirtieth Place, Inc.*, 30 B.R. 503 (Bankr. App. 9th Cir. 1983) (dismissing bankruptcy case filed by debtor to delay foreclosure); *In re Talladega Steaks, Inc.*, 50 B.R. 42 (Bankr. N.D. Ala. 1985) (dismissing bankruptcy case involving dispute between shareholders and management of the debtor); *In re Kinney*, 51 B.R. 840 (Bankr. C.D. Cal. 1985) (imposing sanctions on attorney due to multiple repeat filings in cases that were dismissed for bad faith); *In re Silver*, 46 B.R. 772 (D. Colo. 1985) (reviewing award of attorney's fees as a result of a bad faith filing); *In re Volpe*, 53 B.R. 46 (Bankr. M.D. Fla. 1985) (dismissing bankruptcy case filed primarily to stop pending foreclosure sale); *In re Martin*, 51 B.R. 490 (Bankr. M.D. Fla. 1985) (dismissing bankruptcy case involving two-party dispute); *In re Setzer*, 47 B.R. 340 (Bankr. E.D.N.Y. 1985) (dismissing bankruptcy case filed as a litigation tactic to circumvent a district court order and where debtor faced only a handful of lawsuits); *In re Port Richey Serv. Co.*, 44 B.R. 634 (Bankr. M.D. Fla. 1984) (dismissing bankruptcy case involving two-party dispute); *In re Winn*, 43 B.R. 25 (Bankr. M.D. Fla. 1984) (dismissing bankruptcy case essentially involving two-party dispute); *Basin Elec. Power Co-op v. Midwest Processing Co.*, 47 B.R. 903, (D.N.D. 1984), *aff'd*, 769 F.2d 483 (8th Cir. 1985) (dismissing involuntary bankruptcy case involving two-party dispute); *In re Scott*, 42 B.R. 35 (Bankr. D. Ore. 1984) (granting motion to lift stay to allow foreclosure of real estate property); *Furness v. Lilienfield*, 35 B.R. 1006 (D. Md. 1983) (dismissing bankruptcy case filed to delay a single trial in the district court); *In re Corp. Deja Vu*, 34 B.R. 845 (Bankr. D. Md. 1983) (granting motion to lift stay to allow foreclosure of real-estate project); *In re 299 Jack-Hemp Assocs.*, 20 B.R. 412 (Bankr. S.D.N.Y. 1982) (dismissing bankruptcy case filed to stop foreclosure); *In re Lotus Invs., Inc.*, 16 B.R. 592 (Bankr. S.D. Fla. 1981) (granting motion to lift stay to allow foreclosure of real-estate project); *Matter of Winshall Settlor's Tr.*, 758 F.2d 1136 (6th Cir. 1985) (dismissing bankruptcy case); *In re Albany Partners, Ltd.*, 749 F.2d 670 (11th Cir. 1984) (dismissing bankruptcy case and annulling automatic stay in case filed on the eve of foreclosure).

[17] For example, the Movants' contentions regarding the funding agreement (Bergrud Mot., 13-14; Herlihy Mot., 14-15) misleadingly ignore that the funding agreement here ***does not require***, as a condition to funding, that CertainTeed LLC ("New CT") obtain relief pursuant to section 524(g) or agree to the terms of a confirmed plan. Although already true, the Debtor and New CT entered into a stipulation regarding the Second Amended Funding Agreement, *see* Dkt. 1279, dated as of September 15, 2021, to avoid any argument and make it explicitly clear that funding under the Second Amended Funding Agreement would be available for

a motion for relief from the automatic stay.[18] The Movants repeat arguments regarding lack of financial distress and lack of a proper purpose that already have been rejected by courts in this District. *See In re Bestwall LLC*, 605 B.R. 43, 49 (Bankr. W.D.N.C. 2019) ("Attempting to resolve asbestos claims through 11 U.S.C. § 524(g) is a valid reorganizational purpose, and filing for Chapter 11, especially in the context of an asbestos or mass tort case, need not be due to insolvency. . . . The volume of current asbestos claims that Bestwall faced as of the Petition Date, coupled with the projected number of claims to be filed through 2050 and beyond, is sufficient financial distress for Bestwall to seek resolution under section 524(g) of the Bankruptcy Code."); *In re Aldrich Pump LLC*, 2023 WL 9016506, at *28 (Bankr. W.D.N.C. Dec. 28, 2023) (Court stating in response to the same arguments raised by the same law firm that "since these motions [to dismiss] were filed, both higher courts have stated that the *Carolin* Two-Prong Test applies to Chapter 11 bad faith dismissal motions, even those involving solvent, and arguably financially non-distressed corporate debtors. Those decisions bind this bankruptcy court.").[19] And, as acknowledged by the Movants, the Fourth Circuit recently denied a direct appeal regarding these same arguments.

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a section 524(g) plan of reorganization, "regardless of whether such plan of reorganization provides that [New CT] will receive the protection of section 524(g) of the Bankruptcy Code and regardless of whether [New CT] supports such plan of reorganization." *See* Ex. B, Dkt. 1279. Further, the stipulation made clear the enforceability of the Second Amended Funding Agreement and provided that, upon an Event of Default (as defined in the Second Amended Funding Agreement), the Debtor and New CT agreed not to oppose a request of the Committee and the Future Claimants' Representative to take actions that are necessary or appropriate to pursue remedies in this Court. *See* Dkt. 1279 ¶¶ 2, 6. The Debtor has no intention of foregoing any of its rights under the Second Amended Funding Agreement and does not believe that New CT has any intention of avoiding its obligations under that agreement. Since the funding agreement became effective, the parties have fully complied with their obligations thereunder—further exemplifying the Debtor's (and New CT's) good faith.

[18] *See Bestwall*, Jan. 18, 2024 Hr'g Tr., 81:16-19 ("In my view, this motion for relief from stay is, in many respects, a repeat of the arguments made by Mr. Buckingham in his motion to dismiss and many of the arguments strike me as misplaced in the context of a motion for relief from stay.").

[19] The Movants also ignore the multiple cases involving solvent debtors, each of which had been defending and paying claims in the tort system, that resulted in claimant-supported and court-approved asbestos trusts established under a section 524(g) plan of reorganization. *See In re Mid-Valley, Inc.*, 305 B.R. 425, 429-31 (Bankr. W.D. Pa. 2004) (bankruptcy court stating that the "fact of solvency does not require a finding that the bankruptcy filing was in bad faith"); *In re N. Am. Refractories Co.*, No. 02-20198 (Bankr. W.D. Pa.); *In re Garlock Sealing Techs. LLC*, No. 10-31607 (Bankr. W.D.N.C.); *In re W.R. Grace & Co.*, Nos. 01-1139,

26. The Motions repeat these arguments in a case where no party has moved for dismissal and where the Committee and the Future Claimants' Representative are actively prosecuting three adversary proceedings regarding the prepetition restructuring and the Debtor's filing of the chapter 11 case—an avenue suggested by this Court in the order granting the Debtor's request for a preliminary injunction and extending the automatic stay to non-debtor affiliates, which order was not appealed.[20] *See DBMP*, 2021 WL 3552350, at *38; Adv. Pro. Nos. 21-03023 (JCW) (seeking substantive consolidation of the Debtor with New CT); 22-03000 (JCW) (asserting counts for both intentional and constructive fraudulent conveyance related to the prepetition restructuring); and 22-03001 (JCW) (seeking relief based on theories of breach of fiduciary duty, aiding and abetting a breach of fiduciary duty, and civil conspiracy in connection with the approval and implementation of the prepetition restructuring).[21]

27. In addition, the Movants' assertions regarding "the lack of progress in Two-Step cases" (Bergrud Mot., 15; Herlihy Mot., 16) ignore the many matters concluded in this case (such as the preliminary injunction adversary proceeding), the parties' work towards estimation

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1140 (Bankr. D. Del.); *In re USG Corp.*, No. 01-2094 (Bankr. D. Del.); *In re United Gilsonite Labs.*, No. 11-02032 (Bankr. M.D. Pa.)); *see also In re Kaiser Gypsum Co., Inc.*, 60 F.4th 73, 77-78 (4th Cir. 2023) (Congress passed section 524(g) of the Bankruptcy Code with the stated intention that a debtor with "substantial" asbestos liabilities could access it.); *In re Honx, Inc.*, 2022 WL 17984313, at *2 (Bankr. S.D. Tex. Dec. 28, 2022) ("Congress recognized that while an asbestos bankruptcy differs from a 'classic' bankruptcy with an insolvent or near-insolvent debtor, it is still a forward-looking solution meant to treat fairly all parties in interest. That is the hallmark purpose of chapter 11. That is not a 'bad faith' motive.").

[20] The Motions similarly repeat the argument previously raised by the Committee and the Future Claimants' Representative that the Debtor's non-debtor affiliates are seeking "all the benefits of the stay while taking on none of the burdens" of bankruptcy. *See* Bergrud Mot., 20; Herlihy Mot., 20. But this argument ignores that "Old CertainTeed is no more, and, at present, the Debtor is exclusively responsible for the DBMP Asbestos Claims, " *see DBMP*, 2021 WL 3552350, at *27, and the Debtor retains the same ability to fund the costs of defending and resolving present and future asbestos claims as the former CertainTeed LLC did prior to the prepetition restructuring through the Second Amended Funding Agreement.

[21] Notably, the Movants' arguments are contrary to the assertions of the Committee and the Future Claimants' Representative in the fraudulent transfer and breach of fiduciary duty proceedings that the Debtor was insolvent as a result of the prepetition restructuring. *See*, *e.g.*, *Amended Complaint*, Adv. Pro. No. 22-03000 (JCW), Dkt. 14 ¶¶ 6, 54, 73, 107, 114, 125, 144, 151; *Amended Complaint*, Adv. Pro. No. 22-03001 (JCW), Dkt. 12, ¶¶ 2, 7, 78, 101, 105, 125, 126, 139, 141, 145, 146, 148, 153, 155, 162, 180, 182.

(including ongoing estimation-related discovery), the parties' participation in a Court-ordered mediation process, and the lack of any evidence that the Debtor is the cause of delay here. *See Bestwall*, 71 F.4th at 183-84 ("the main interference with the timely resolution of the claims in Bestwall's bankruptcy proceeding appears to be Claimant Representatives' challenge to the preliminary injunction, thereby prolonging the bankruptcy process and preventing the claimants from obtaining prompt relief."); *see also Aldrich*, 2023 WL 9016506, at *32 (finding no unreasonable delay in the debtors' prosecution of their cases, including because "at every opportunity [the official committee of asbestos claimants and claimant law firms] have sought to force dismissal of these cases").

28. Lifting the stay and allowing the Movants' claims to proceed to liquidation, outside of the chapter 11 case, would (a) be wholly inconsistent with the ultimate goal of estimation—establishing an aggregate value for the asbestos-related claims asserted against the Debtor and avoiding the liquidation of individual asbestos claims—and (b) potentially trigger a wave of similar requests that would, at a minimum, distract the parties from mediation and the estimation proceeding. This is especially so since the Debtor is not seeking to "avoid state law tort liabilities" through the chapter 11 case and the estimation proceeding, but rather to quantify the Debtor's aggregate liability in order to negotiate and confirm a consensual section 524(g) plan. The Movants' conclusory assertions to the contrary are simply wrong.

29. Finally, the Movants' arguments regarding (a) an alleged absolute right to liquidate their individual claims before a jury and (b) the manner in which claims may be treated under a proposed plan of reorganization (Bergrud Mot., 17-18, 32-34; Herlihy Mot., 17-18, 32-34) are not reasons to lift the automatic stay and are raised prematurely. *See Aldrich*, 2023 WL 9016506, at *21 (recognizing that these issues were "a question for another day" in denying the

motions to dismiss the *Aldrich/Murray* cases). Section 524(g) plans do not deprive asbestos claimants of access to the tort system nor do they eliminate claimants' rights to a jury trial.[22] And *Ortiz*—cited by the Movants to support this argument—at its core involved an interpretation of a rule of civil procedure that has no application here. The issue before the Supreme Court was not whether no-opt-out settlements are ever constitutional, but rather whether Rule 23(b)(1)(B), a class action rule that the Court interpreted to require a limited fund, was satisfied where "the only limited fund . . . was a creature of the settlement itself." *Ortiz v. Fibreboard*, 527 U.S. 815, 830 (1999). *Ortiz* did not address any limited fund issues in the context of bankruptcy generally or section 524(g) specifically. *See id.* at 821 ("This case turns on the conditions for certifying a mandatory settlement class on a limited fund theory under Federal Rule of Civil Procedure 23(b)(1)(B)."); *see also id.* at 861 ("The nub of our position is that we are bound to follow Rule 23 as we understood it upon its adoption, and that we are not free to alter it except through the process prescribed by Congress in the Rules Enabling Act."). Indeed, the Supreme Court in *Ortiz*, in discussing due process concerns, explicitly recognized the existence of exceptions to general rules for "special remedial scheme[s] . . . for example in bankruptcy or probate." *Id.* at 846 (internal citation omitted).

30. The Movants' unsupported objections to this chapter 11 case and what they perceive to be the Debtor's approach to a plan are irrelevant at this juncture, especially since the Movants will have the opportunity to assess and object to any proposed plan at the appropriate time. The Motions repackage the same arguments these and other claimant firms have advanced

[22] *See In re Duro Dyne Nat'l Corp.*, No. 19-1543 (Bankr. D.N.J.) [Dkt. 1-2], Trust Distribution Procedures 43, Exhibit F to Third Amended Plan (claimants, after non-binding arbitration and other prerequisites "may file a lawsuit against" the trust); *see also In re Specialty Prods. Holding Corp.*, No. 10-11780, Exhibit I.A.13 at 3-4 [Dkt. 2669-1] (Bankr. D. Del. July 12, 2012) (same); Amended Plan of Reorganization of DBMP LLC, Exhibit I.A.12 at 46 [Dkt. 944] ("Claimants who elect non-binding arbitration and then reject their arbitral awards retain the right to institute a lawsuit in the tort system against the PI Trust.").

in motions for relief from stay and motions to dismiss filed in the *Bestwall* and *Aldrich/Murray* cases and advanced in the Committee Lift Stay Motion in this case. They should be denied for the same reasons those motions were denied.

CONCLUSION

The Debtor respectfully requests that the Court deny the Motions and grant the Debtor such other and further relief as the Court may deem proper.

Dated: May 2, 2024
Charlotte, North Carolina

Respectfully submitted,

/s/ Garland S. Cassada

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ATTORNEYS FOR DEBTOR
AND DEBTOR IN POSSESSION

EXHIBIT A

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

DATE: SEPTEMBER 22, 2023

IN RE: BESTWALL, LLC, DEBTOR

CHAPTER 11

CASE NOS. 22-1981(L), 22-1984

question whether this thing is a proceeding independent enough that it ought to be reviewed on the contempt citation against these lawyers.

MS. TALBOT: Yes, Your Honor. And -- I'm sorry.

JUDGE KING: I practiced law a bit myself. And it's a tough situation.

JUDGE WILKINSON: A lot of times, it's the bankruptcy case itself is the proceeding. But of course, every bankruptcy case spawns potentially hundreds of little subsidiary proceedings.

MS. TALBOT: Yes.

JUDGE WILKINSON: And they may be proceedings. But here, the proceeding and the purpose of the bankruptcy litigation is to find out what the obligations of Bestwall are, to contribute to this trust fund. And taking the appeal of the district court or the court of appeals still does nothing to resolve the basic question, which is what is the best estimate of Bestwall's asbestos-related liabilities? What does Bestwall -- what do they owe to the trust fund? And this sanctions appeal doesn't have anything to say about that.

MS. TALBOT: I agree, Your Honor. It does not. And that is why it is a separable procedural

discovery order reversed. I'll particularly point you to page four of their reply. They freely concede the close link here, and that's why, particularly when civil contempt is entered to enforce a discovery order, it's important to enforce the rule against interlocutory appeals.

JUDGE WILKINSON: We can't resolve the sanctions order without looking at the discovery dispute. And that takes -- it's going to take us right back into the merits of a discovery order. And to me, there might be a more sympathetic case. But I don't like the route that this case has taken from the earlier non-final judgement. And then suddenly, it goes over to Illinois court. And as I say, that's a collateral attack upon the North Carolina order. And if I were the people who were defending that or whatever, or the district court of North -- Western District of North Carolina or what have you, or the bankruptcy judge whose now got to probably put things on hold until these non-final orders are litigated, and we're doing all of this and we are not advancing the ball in terms of the ultimate object of the whole bankruptcy proceeding, which is to allow the bankruptcy judge to make a reliable estimate of what exactly Bestwall's asbestos-related liabilities are to

fund the trust. And that's where we need to get to. And I must say that my friends talk about ten years and 20 years and everything. That is speculation. That is speculation. And the -- to me, I can speculate about how long it's going to take to get to the bottom line in this case, which is finding out what Bestwall's liability is. But I'm not going to speculate about how long that is, because I don't know.

JUDGE KING: I'll agree that that's speculation on my part, and a guess. And the guess of my -- our good lawyer here is 2025, and it's two years. But we're talking about lawyers being held in contempt of court, and then being sanctioned. And the sanctions order is, in my view, firm enough. In 1291, it calls for final decisions for appealing in the federal courts. It does not apply to bankruptcy. It does not. It's separate. Bankruptcy's separate, right? And we're not talking about reviewing it in the court of appeals or the sanctions order or the contempt order, or the discovery order. We're talking about whether the district court had jurisdiction to hear an appeal from the bankruptcy court. And Judge Conrad said he didn't. And that's what the appeal is here, whether that proceeding, these sanctions in

CERTIFICATE OF TRANSCRIBER

I, ASHLEY MATTHEWS, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Dated: October 6, 2023

Ashley Matthews

ASHLEY MATTHEWS