

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

AIO US, Inc., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-11836 (CTG)

Jointly Administered

Re: Dkt. No. 1587, 1600

**JOINT OBJECTION OF THE AVON LIQUIDATION TRUST
AND THE TRUST ADVISORY COMMITTEE TO CERTAIN INSURERS'
MOTION TO STAY THE PLAN CONFIRMATION ORDER PENDING APPEAL**

¹ A complete list of the Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number is available at <https://dm.epiq11.com/case/aiousinc/info>. The Debtors' mailing and service address is 4 International Drive, Suite 110, Rye Brook, NY 10573.

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The Avon Liquidation Trust (the “**Trust**”), and the Trust Advisory Committee (“**TAC**”), by and through their respective undersigned counsel, hereby jointly submit this joint objection to *Certain Insurers’ Motion to Stay the Confirmation Order Pending Appeal* (the “**Original Motion to Stay**”) [Dkt. No. 1587] and *Certain Insurers’ Supplement to Their Motion to Stay the Plan Confirmation Order Pending Appeal* (the “**Motion Supplement**” [Dkt. No. 1600] and, collectively, the “**Motion to Stay**”).²

PRELIMINARY STATEMENT

1. The Motion to Stay is meritless. The Insurers³ seek extraordinary relief that is now moot and thus presents no live case or controversy, that the Court otherwise lacks jurisdiction to grant, and that, in any event, the Insurers have not come close to justifying. The Motion to Stay should be denied in its entirety.

2. The Original Motion to Stay requests that this Court stay its Confirmation Order to prevent the confirmed Plan from going effective pending the Insurers’ appeal. But the Confirmation Order and Plan already have gone effective. Consequently, the terms of the Plan, Trust Distribution Procedures, and Trust Agreement, became binding; the Trust was established; and the Trust received all requisite assets under the Plan, including Insurance Rights, all as of October 7, 2025 (the “**Effective Date**”)—a day before the Insurers noticed their appeal and filed

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them as in the Fourth Amended Joint Plan (the “**Plan**”) [Dkt. No. 1549].

³ “**Insurers**” are: Certain Underwriters at Lloyds, London, Tenecom Limited, f/k/a The Yasuda Fire & Marine Ins. Co. of Europe, Ltd., Tenecom Limited, f/k/a Winterthur Swiss Insurance Company, Cavello Bay Reinsurance Limited (as successor-in-interest to: (i) Brittany Insurance Company Limited; and (ii) Harper Insurance Limited (f/k/a Turegurn Insurance Company)), River Thames Insurance Company Limited (as successor-in-interest to Unionamerica Insurance Company Limited, which was in turn successor-in-interest to certain business of St. Katherine Insurance Company Limited), Accredited Insurance Europe Limited (as successor-in-interest to Ancon (UK) Insurance Company Limited), Wellfleet New York Insurance Company, f/k/a Atlanta International Insurance Company, as successor to Drake Insurance Company of New York (“**AIIC**”), AIG-affiliated underwriting companies including Lexington Insurance Company, AIU Insurance Company, and Granite State Insurance Company, and Starr Indemnity & Liability Company, as successor-in-interest to Republic Insurance Company.

the Original Motion to Stay. Those are the exact effects of this Court's entry of the Confirmation Order that the Insurers now seek to stay pending their appeal from that order. Because the acts the Insurers seek to "stay" already have occurred, the Motion to Stay is constitutionally moot and should be disposed of on that basis alone.

3. The Motion Supplement fares no better jurisdictionally. Two days after filing the Original Motion to Stay, the Insurers filed the Motion Supplement requesting the additional relief of an indefinite injunction of a proceeding that the Trust filed on October 7, 2025 against the Insurers in the Superior Court for the State of Delaware, Case No. N25C-10-064 SKR CCLD (the "**State Court Action**"). Such requested relief is not only outside the scope of the self-styled motion to stay the Confirmation Order pending appeal, but it is also outside this Court's (and any every other federal court's) jurisdiction. The Confirmation Order having been entered, this Court has no jurisdiction over a state court action that has no effect on a non-extant bankruptcy estate. Indeed, absent a live bankruptcy case, no federal court has jurisdiction to enjoin the State Court Action under the Anti-Injunction Act. The Motion Supplement should be summarily disposed of as well. Thus, the Court should deny the Motion to Stay without reaching its merits.

4. Even if the Court were to consider the merits, the Motion to Stay should still be denied. In the Motion to Stay, the Insurers do not, and cannot, show that they are likely to prevail on their appeal. The Insurers point to two grounds for reversing the Confirmation Order. The first—that the Plan's Insurance Entity Injunction violates *Purdue*—was not presented below and thus is waived for purposes of appeal. Regardless, it is flatly foreclosed by the Third Circuit's recent decision in *Boy Scouts of America*. The second—that the Court impermissibly temporarily allowed unfiled Talc Claims to vote on the Plan—is undermined by decades of mass-tort

bankruptcy jurisprudence, unsupported by any other legal authority, and ultimately had no bearing on the confirmation of the Plan.

5. The Insurers also fail to show that they will be irreparably harmed in the absence of the requested relief. As to staying the Confirmation Order, the Insurers' only asserted harm is the risk of their appeal becoming equitably moot: a risk that courts routinely have rejected as insufficient to show irreparable harm. What is more, the "irreparable harm" that the Insurers seek to prevent *already has occurred* now that the Plan is effective. A stay could not reverse that. As to enjoining the State Court Action, the Insurers' purported irreparable harm is the incurrence of litigation expenses and other speculative economic harms, which also are insufficient to constitute irreparable harm under applicable case law.

6. In the absence of any likelihood of success and irreparable harm, it follows that the final two factors courts consider in connection with interim relief pending appeal, i.e., the balance of harms and public interest, also support denying the Motion to Stay. The Insurers have not established any irreparable harm if the Motion to Stay is denied; nor is the public interest served either by undermining the finality of confirmation orders and plans that have gone effective or from federal courts violating the Anti-Injunction Act. On the other hand, granting any relief on the Motion to Stay would delay—and potentially reduce—distributions to creditors, including the sick and dying.

7. In short, if not on jurisdictional grounds then on the merits, the Motion to Stay should be denied.

ARGUMENT

I. THE COURT DOES NOT HAVE JURISDICTION TO GRANT ANY ASPECT OF THE MOTION TO STAY

A. The Original Motion to Stay Is Constitutionally Moot

8. A matter is constitutionally moot⁴ when “the issues presented are no longer live,”⁵ or when events occur that preclude a court “from granting any effective relief.”⁶ Such mootness “implicat[es] the case or controversy requirement of Article III, § 1”⁷—a court’s jurisdiction—as it transforms a request for relief into a request for an impermissible advisory opinion. Consequently, courts must deny moot motions for want of jurisdiction. *See, e.g., Constand v. Cosby*, 833 F.3d 405, 409, 412 (3d Cir. 2016) (denying as moot a request to reseal documents after the order to unseal had already taken effect despite plaintiff’s urging that a court order would slow the dissemination).

9. So too here. The Original Motion to Stay requests a stay of the Confirmation Order pending appeal for the stated reason of preventing the establishment of the Trust and the transfer of certain insurance rights to the Trust. *See* Original Motion to Stay ¶¶ 5, 37. But here the Confirmation Order already has gone into effect, and been substantially, if not fully, performed. More specifically, the Trust has already been established, and the Trust has already received all Insurance Rights.⁸ Indeed, on October 7, 2025 (the “**Effective Date**”)—one day *before* the Insurers filed their Notice of Appeal and Original Motion to Stay—*all* conditions for the

⁴ The term “constitutional mootness” is used herein to distinguish such mootness from the doctrine of “equitable mootness,” which also is at issue in this matter. *See generally In re Cont’l Airlines*, 91 F.3d 553 (3d Cir. 1996) (en banc) (distinguishing the two).

⁵ *Cnty. of Los Angeles v. Davis*, 440 U.S. 625, 631 (1979).

⁶ *Gen. Elec. Co. by Levit v. Cathcart*, 980 F.2d 927, 934 (3d Cir. 1992) (“Generally, an appeal will be dismissed as moot when events occur during its pendency which prevent the appellate court from granting any effective relief.” (citation modified)).

⁷ *In re Cont’l Airlines*, 91 F.3d at 558.

⁸ Notice of Occurrence of Effective Date, Dkt. No. 1577.

Confirmation Order and the Plan to become effective had been satisfied or duly waived.⁹ And, as per the Confirmation Order, the terms of the Plan, Trust Distribution Procedures, Trust Agreement and all other relevant documents became “binding as of the Effective Date.” Confirmation Order ¶ 4.¹⁰

10. As a result, the Court cannot afford any effective relief on the Original Motion to Stay. Any act or effect of the Confirmation Order that the Insurers wish to stay has already occurred. The Trust was created; substantially all assets were transferred to the Trust; and the Liquidating Trustee was vested with all the authority she requires to perform under the Trust. In short, there are no acts, or virtually no acts, that remain to be performed. Therefore, the Original Motion to Stay is (and has been since its filing), moot. *See, e.g., In re Allied Nevada Gold Corp.*, 569 B.R. 213 (D. Del. 2017) (noting bankruptcy court’s observation that “since the plan was confirmed, the motion [for a stay of the confirmation order] has to be denied as moot”), *aff’d*, 725 F. App’x 144 (3d Cir. 2018).

11. Courts within the Third Circuit have routinely denied motions to stay bankruptcy orders pending appeal on mootness grounds where, as here, the motions were filed only after the order had already gone into effect. *See, e.g., In re Genesis Health Ventures, Inc.*, 280 B.R. 339,

⁹ *Id.* The Insurers incorrectly state in the Original Motion to Stay that one of the conditions to the Effective Date is that “the Confirmation Order must be a Final Order.” Original Motion to Stay ¶ 36. However, section 9.1 of the Plan, which includes all conditions precedent to the Effective Date, requires only that the Confirmation Order be entered “and such Confirmation Order has not been stayed, modified, or vacated on appeal.”

¹⁰ Bankruptcy Rule 3020 provides further support that the Insurer’s Motion to Stay is moot. An automatic (but waivable) stay of any confirmation order for 14 days is provided for in subsection (e) of that Rule, which was promulgated “to provide sufficient time for a party to request a stay pending appeal of an order confirming a plan under . . . chapter 11 of the Code before the plan is implemented and an appeal becomes moot.” Fed. R. Bankr. P. 3020 advisory committee’s note to 1999 amendment. If parties could obtain a stay pending appeal of a confirmation order at any time and notwithstanding whether that order and the related plan had already been implemented and become effective, then Rule 3020(e) would be superfluous. Here, the Plan was implemented within the 14-day period because the Court waived Rule 3020(e), which it did only *after* the Insurers, under direct questioning from the Court, did not declare an intention to appeal the Confirmation Order. *See Hr’g Tr. 40:2-41:20, Sep. 22, 2025* (noting that if Insurers “haven’t decided yet” as to whether they want to appeal “then they have decided.”).

344 (D. Del. 2002) (approving of the bankruptcy court’s finding that a motion for partial stay of a confirmation order is moot when the motion was not filed until after the confirmation order went into effect); *see also Free v. Walsh*, No. 2:15-CV-00857, 2015 WL 6393048, at *1 (W.D. Pa. Oct. 22, 2015) (denying a motion to stay a sale of debtor’s assets as moot because the transfer had already occurred when the stay motion was filed); *Strong v. Burtch (In re Strong)*, No. AP 17-50646 (BLS), 2018 WL 936103, at *3 (D. Del. Feb. 14, 2018) (denying as moot a motion to stay a bankruptcy court proceeding when that proceeding was already complete); *Scott v. U.S. Bank Nat’l Ass’n (In re Scott)*, 605 B.R. 372, 380 (Bankr. W.D. Pa. 2019) (holding motion to stay order lifting automatic stay was moot as automatic stay expired during pendency). The Original Motion to Stay must similarly be denied here.

B. The Motion Supplement Requests Relief Outside of This Court’s Jurisdiction

12. While styled as a “supplement” to the Original Stay Motion, the Motion Supplement seeks wholly different relief. It does not seek a stay of the Confirmation Order—or any other order—pending appeal. Instead, it asks the Court to enjoin the State Court Action. The State Court Action was commenced by the Trust to seek a declaratory judgment that the Insurance Policies, as described in the Plan § 1.1, cover certain claims that the Trustee is responsible for paying. *See State Court Action, Complaint ¶¶ 84-85, filed October 7, 2025.*

13. The “extraordinary remedy of injunction . . . directs the conduct of a party . . . with the backing of [the court’s] full coercive powers.” *Nken v. Holder*, 556 U.S. 418, 428 (2009) (citation modified). This is vastly different relief from the stay of a confirmation order pending appeal and, as such, must bear the weight of independent analysis. Under that analysis, this Court clearly does not have jurisdiction to enjoin the State Court Action and should accordingly deny the relief sought in the Motion Supplement.

14. As an initial matter, the Anti-Injunction Act deprives this Court, and any other federal court, of jurisdiction to provide a stay to the State Court Action. The Anti-Injunction Act provides: “[a] court of the United States may not grant an injunction to stay proceedings in a State court” with limited exceptions that must be “expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.” 28 U.S.C. § 2283. Absent an exception to the Anti-Injunction Act, the Court is foreclosed from granting the requested relief.

15. While the Bankruptcy Code can provide bankruptcy courts with a limited exception to the Anti-Injunction Act,¹¹ that exception only applies where the bankruptcy court has appropriate jurisdiction over the matter to be enjoined. *See Roussin v. Johnson (In re Roussin)*, 95 B.R. 270, 274 (Bankr. D.N.H. 1988), *aff’d*, 97 B.R. 130 (D.N.H. 1989). Here, the Court has no such jurisdiction.

16. “[B]ankruptcy court jurisdiction must be confined within appropriate limits and does not extend indefinitely, particularly after the confirmation of a plan and the closing of a case.” *In re Resorts Int’l, Inc. v. PriceWaterhouse & Co. (In re Resorts Int’l, Inc.)*, 372 F.3d 154, 164-65 (3d Cir. 2004) (citation modified). Indeed, while a bankruptcy court’s “related to” jurisdiction may cover “matters connected with the bankruptcy estate,” “[a]t the most literal level, it is impossible for the bankrupt debtor’s estate to be affected by a post-confirmation dispute because the debtor’s estate ceases to exist once confirmation has occurred.” *Id.*

17. “[T]he essential inquiry” into a bankruptcy court’s post-confirmation jurisdiction is “whether there is a close nexus to the bankruptcy plan or proceeding sufficient to uphold bankruptcy court jurisdiction over the matter.” *Id.* at 166-67. Only those post-confirmation

¹¹ *In re Union Tr. Philadelphia, LLC*, 465 B.R. 765, 770 (Bankr. E.D. Pa. 2011), *aff’d*, 460 B.R. 644 (E.D. Pa. 2011).

complaints that affect “an integral aspect of the bankruptcy process” satisfy the “close nexus” test and fall within the jurisdiction of the bankruptcy court. *Id.*¹²

18. When weighing the “close nexus” test, courts first look to the confirmed Plan. The Plan language itself “does not act to confer jurisdiction, [but] it can provide proof of a close nexus between the claims and the bankruptcy case.” *EXDS, Inc. v. CB Richard Ellis, Inc. (In re EXDS, Inc.)*, 352 B.R. 731, 735 (Bankr. D. Del. 2006). Here, the Plan expressly declares that, notwithstanding its express retention of jurisdiction over an array of items closely connected to the Plan, nothing “shall be deemed to be a finding or conclusion that (a) the Bankruptcy Court in fact has jurisdiction with respect to any Insurance Rights or (b) any such jurisdiction is exclusive with respect to any Insurance Rights.” Plan § 11.1(iii). The State Court Action exclusively concerns such Insurance Rights.

19. Next, courts evaluate the nature of the claim itself. Where “the resolution of the dispute would have . . . no impact on any integral aspect of the bankruptcy plan or proceeding” it is “appropriate to find no bankruptcy jurisdiction over that collateral matter.” *Resorts Int’l*, 372 F.3d at 168. Similarly, where the lawsuit does not ask the court “to construe or interpret the confirmed plan or to see that federal bankruptcy laws are complied with,” the matter falls “outside bankruptcy court jurisdiction.” *Id.* Accordingly, in *Resorts Int’l*, the Third Circuit cited with approval two cases where the bankruptcy court had concluded it lacked jurisdiction over post-confirmation lawsuits in state courts. *Id.* (citing *Falise v. Am. Tobacco Co.*, 241 B.R. 48 (E.D.N.Y. 1999); and *Haws v. Graue (In re Haws)*, 158 B.R. 965 (Bankr. S.D. Tex. 1993)). In each of those two cases, the mere fact that the plaintiff happened to be a trustee for a litigation trust created by

¹² Regardless of whether the underlying claim arose pre- or post-petition, if the complaint is *filed* post-confirmation, it is subject to this “close nexus” test. See *Seven Fields Dev. Corp. v. Ernst Young LLP (In re Seven Fields Dev. Corp.)*, 505 F.3d 237, 265 (3d Cir. 2007).

the bankruptcy proceeding was insufficient to confer jurisdiction. *Id.* (finding no jurisdiction where “[t]he only nexus to this bankruptcy case is that the plaintiff in this matter is a liquidating trustee representing a group of creditors appointed pursuant to the confirmed plan of reorganization” (citing *Haws*, 158 B.R. at 971)).

20. So too here, no “close nexus” exists between the State Court Action and the bankruptcy. The Insurance Rights at issue in the State Court Action were transferred to the Trust under the Plan but otherwise “remain subject to the terms and conditions of the applicable Insurance Policies.” Plan § 5.4(iv)(a). As a result, just like the proceedings in both *Falise* and *Haws* (cited approvingly by the Third Circuit), the mere fact that the Insurance Rights are pursued by a trust created by bankruptcy proceedings does not generate a “close nexus” to this bankruptcy case. As such, there is no “close nexus,” and the Court has no jurisdiction to grant the injunction requested in the Motion Supplement. *Resorts Int’l.*, 372 F.3d at 166-67. For these reasons, the Court should deny the Motion to Stay without further analysis.

II. THE MOTION TO STAY DOES NOT SATISFY THE REQUISITE STANDARDS

21. Even if the Court were to find it has jurisdiction to grant any of the relief requested in the Motion to Stay, the Insurers still have failed to show that they are entitled to such relief. As for the Original Motion to Stay, the requested stay “is not a matter of right, even if irreparable injury might otherwise result.” *Nken*, 556 U.S. at 433 (citation omitted). Rather, the party requesting the stay has the burden of showing it is entitled to such relief based on the following factors:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Id. at 433-34 (citation omitted); *see also S.S. Body Armor I., Inc. v. Carter Ledyard & Milburn LLP*, 927 F.3d 763, 772-75 (3d Cir. 2019) (applying these factors to a motion to stay a bankruptcy court order). And “if the movant does not make the requisite showings on either [the likelihood of success or irreparable injury] . . . the stay should be denied without further analysis.” *S.S. Body Armor I.*, 927 F.3d at 775 (citing *In re Revel AC, Inc.*, 802 F.3d 558, 571 (3d Cir. 2015)). As set forth below, that should be the case here.

22. Regarding the Motion Supplement, it does not seek to stay an order pending appeal, but rather seeks to enjoin the State Court Action. As such, even assuming *arguendo* that the Court should reach the merits, the Motion Supplement must be evaluated under the four factors set out in *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 20 (2008). The Insurers “must establish that [they are] likely to succeed on the merits, that [they are] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [their] favor, and that an injunction is in the public interest.” *Id.* “Issuing an injunction requires great caution, deliberation, and sound discretion.” *Del. State Sportsmen’s Assn., Inc. v. Del. Dep’t of Safety & Homeland Sec.*, 108 F.4th 194, 199 (3d Cir. 2024), *cert. denied sub nom. Gray v. Jennings*, 145 S. Ct. 1049 (2025). “Thus, a court should not grant an injunction unless the plaintiff’s right is clear, his impending injury is great, and only an injunction can avert that injury.” *Id.* at 200; *see also In re Diet Drugs Prods. Liab. Litig.*, 369 F.3d 293, 306-07 (3d Cir. 2004) (“[T]he fact that an injunction may issue under the Anti-Injunction Act does not mean that it must issue.”) (citation omitted). Such conditions are not present here.

23. Although “[t]here is substantial overlap between” the stay factors and the injunction factors, this is “not because the two are one and the same.” *Nken*, 556 U.S. at 434. While the likelihood of success on the merits factor is functionally identical for both tests, the remaining

factors must focus on the specific relief requested. The Insurers fail to meet their burden on *any* of the factors under *either* test. The Court should thus deny the Motion to Stay in its entirety.

A. The Appeal Is Unlikely to Succeed on the Merits

24. To meet the first factor under either test, the Insurers must make a “strong showing” that they have a “significantly better than negligible” chance of succeeding on the merits of their appeal. *S.S. Body Armor I*, 927 F.3d at 773. The Insurers fail to do so.

25. In the Original Motion to Stay, the Insurers cite two reasons why the Plan should not have been confirmed: (i) that the Plan’s Insurance Entity Injunction is impermissible under the Supreme Court’s decision in *Purdue* and (ii) that votes cast by persons who did not file proofs of claim were improperly counted. Original Motion to Stay ¶¶ 16-23, 24-34. The first of these arguments has been waived for failure to raise it in the bankruptcy and, thus, has no chance of success on that basis alone. And both of these arguments are highly unlikely to succeed on the merits in any event. The Court should deny the Motion to Stay based on this factor alone. *S.S. Body Armor I*, 927 F.3d at 775 (“Deciding this first stay factor against [movant] is, on its own, fatal to the instant appeal [of denial of the motion to stay pending appeal].”).

1. The Insurers’ Insurance Entity Injunction Argument Is Waived and Meritless in Any Event

26. The Insurers argue that it was error to confirm the Plan because the Insurance Entity Injunction provided for in section 10.5 of the Plan is not permitted under the Supreme Court’s prohibition of non-consensual third-party releases in *Purdue*. See Original Motion to Stay ¶ 16. The likelihood this argument succeeds is fatally low: (i) the Insurers waived their right to raise this argument on appeal; and (ii) the argument is foreclosed by the recent Third Circuit ruling in *In re Boy Scouts of America (BSA)*, 137 F.4th 126 (3d Cir. 2025).

27. Section 10.5(ii)(a) of the Plan enjoins “all Persons” from “commencing, conducting, or continuing, in any manner, directly or indirectly, any suit, action, or other proceeding of any kind” against any Settling Insurer regarding the relevant settled Insurance Policies. The Insurers assert that this injunction operates as a release of their contribution claims against such insurers. *See* Original Motion to Stay ¶¶ 22-23. At the same time, the Insurers recognize that these claims are, in fact, preserved under section 10.5(iii)(g) (entitled “Judgment Reduction for Insurer Contribution Claims Against Settling Insurers”), which allows all such claims to be pursued against the Trust and satisfied in full through a reduction of any judgment against the Insurers payable by the Trust. Thus, the Insurers now argue that any claim for contribution that cannot be satisfied through judgment reduction—i.e., a claim for contribution that arises outside of a liability determination in favor of the Trust—will not be fully satisfied and, consequently, cannot be released or enjoined without their consent.

28. But neither the Insurers nor any other party raised this argument before the Court at confirmation. While the Insurers argued that *other* sections of the Plan conflicted with the ruling in *Purdue* on *different* grounds,¹³ no party objected to section 10.5 of the Plan on these or any other grounds. *See* Debtors’ Mem. Supp. of Confirmation ¶ 91, Dkt. No. 1320 (noting that no party objected to the Insurance Entity Injunction).

29. Where, as here, a party fails to raise an argument at all with a bankruptcy court, it is “waived and may not be considered by the district court on appeal.” *In re Kaiser Grp. Int’l Inc.*, 399 F.3d 558, 565 (3d Cir.2005) (citing *Buncher Co. v. Off. Comm. of Unsecured Creditors of GenFarm Ltd. P’ship IV*, 229 F.3d 245, 253 (3d Cir. 2000)); *see also In re Trib. Media Co.*, 902 F.3d 384, 400 (3d Cir. 2018) (finding that, in bankruptcy appeals, avoiding a waiver determination

¹³ *See* Insurers’ Objection to Debtors’ Plan, at 9, Dkt. No. 1233 (arguing that *Purdue* prohibited the Plan Injunction set forth in section 10.4 of the Plan).

at the district or appellate courts requires a party to have properly brought the argument before the bankruptcy court); *see also In re Ins. Brokerage Antitrust Litig.*, 579 F.3d 241, 262 (3d Cir. 2009) (holding an argument is waived for purposes of appeal when the party failed to raise it with a “minimum level of thoroughness” in the lower court). Consequently, the Insurers’ challenge to section 10.5 cannot even be raised on appeal, and, thus, has no likelihood of success on appeal. *See O’Donnell v. Harris Cnty.*, 260 F. Supp. 3d 810, 815 (S.D. Tex. 2017) (denying motion to stay where party seeking stay waived new arguments brought on appeal and “[t]he waiver undercut[] the defendants’ ability to show a likelihood of succeeding on these arguments”).

30. Even assuming *arguendo* that this argument were not waived, the Insurers still fail to show “a reasonable chance, or probability, of winning” this argument on appeal. *Singer Mgmt. Consultants, Inc. v. Milgram*, 650 F.3d 223, 229 (3d Cir. 2011) (en banc). The recent Third Circuit decision in *BSA* forecloses it.

31. In *BSA*, the Third Circuit observed that, in general, an injunction, like the Insurance Entity Injunction, that enjoins intra-insurer claims against a settling insurer does not run afoul of *Purdue*, provided that the plan includes a judgment reduction provision like that in section 10.5(iii)(g) of the Plan. In the words of the Third Circuit:

Usually, this arrangement will pose no problem because the Settlement Trust will pay claimants under the Plan and, if necessary, initiate a coverage action against the appropriate non-settling insurer. And if the non-settling insurer obtains a judgment against a Settling Insurer, its liability to the Settlement Trust offsets accordingly.

BSA, 137 F.4th at 168. The rationale for the Third Circuit’s conclusion is that by reducing a non-settling insurer’s liability in the same amount as the intra-insurer claims enjoined under the Plan, the Plan fully satisfies such claims and, consequently, complies with *Purdue*.¹⁴ *See id.* at 167-68.

¹⁴ In *Purdue*, the Supreme Court expressly stated that the release issue addressed therein did not provide an occasion to “pass upon a plan that provides for the full satisfaction of claims against a third-party nondebtor.” *Harrington v. Purdue Pharma, L.P.*, 603 U.S. 204, 206 (2024).

32. In *BSA*, the Third Circuit found that the judgment reduction provision in the plan was impermissible under *Purdue*, because, under the facts of that case, “a non-settling insurer will not be fully compensated for defense costs” in the event that a tort claimant were to elect (as permitted under the *BSA* plan) to pursue their claim in the tort system.¹⁵ The Court reasoned that “[i]n such a scenario, there would be no judgment held by the Settlement Trust that the non-settling insurer could reduce, thereby denying it any recovery for . . . [claims] it would otherwise be entitled to recover absent the releases and injunctions [of intra-insurer claims] in the Plan.” *BSA*, 137 F.4th at 168. Because the *BSA* plan did not account for this scenario, the Third Circuit found it did not comport with *Purdue*. *Id.* The Third Circuit in *BSA* thus required the plan proponents to add the following language to its judgment reduction provision in order to comply with the holding in *Purdue*: “if [a] Non-Settling Insurance Company is not subject to any such claim, cause of action, or judgment held by the Settlement Trust . . . then after such determination in the Insurance Action, the Settlement Trust shall pay the amount to the Non-Settling Insurance Company.” *Id.*

33. This Plan, unlike the *BSA* plan, does *not* provide for tort claimants to elect to bring their claims in the tort system. Thus, the rationale in *BSA* for concluding that the judgment reduction clause there was insufficient under *Purdue* is inapplicable here.

34. What is more, out of an abundance of caution, the Plan here already contains the very provision the Third Circuit was needed to satisfy *Purdue*. Therefore, based on the reasoning of the Third Circuit in *BSA*, the Insurers are highly unlikely to prevail on appeal on this argument.

¹⁵ The specific fact pattern the Third Circuit addressed was were (1) abuse claimants pursue the Tort System election, (2) a Settling Insurer is responsible for defending the claim, but (3) a non-settling insurer elects to defend the claim instead, and (4) obtains a judgment in coverage litigation that it is not liable for the claim. *BSA*, 137 F.4th at 168.

2. *The Insurers' Argument Regarding Voting Deficiencies Is Unsupported and Would Constitute Harmless Error in Any Event*

35. The Insurers also assign error to allowing unfiled, but temporarily allowed, Talc Claims to vote on the Plan. *See* Original Motion to Stay ¶¶ 24-25.

36. Even if the Insurers' argument were to prevail, it would not succeed to reverse the Confirmation Order. The likelihood of success prong is not met when the appealed order would have been entered regardless of how the issue on appeal were decided. *See Chevron Corp. v. Donziger*, 37 F. Supp. 3d 653, 668 (S.D.N.Y. 2014) (finding that movant did not demonstrate sufficient likelihood of success to warrant stay where lower court would have granted the relief on other grounds). That is the case here.

37. Here, the Plan was accepted by 100% of holders of Class 4 Claims (i.e., Talc Claims).¹⁶ Thus, even accepting the Insurers' proposition that a filed proof of claim were required to vote, if even a single holder of a Talc Claim filed a proof of claim then the Plan would have met the vote threshold for confirmation. 11 U.S.C. § 1126; *see also* 11 U.S.C. § 1129(a)(8), (a)(10).

38. In addition, section 3.4 of the Plan states: “[a]ny Class that, as of the commencement of the Confirmation Hearing, does not have at least one holder of a Claim or Interest, as applicable, that is Allowed in an amount greater than zero for voting purposes or otherwise included to determine acceptance of the Plan, shall be considered vacant, deemed eliminated from this Plan for purposes of voting to accept or reject this Plan, and disregarded for purposes of determining whether this Plan satisfies § 1129(a)(8) and § 1129(a)(10) of the Bankruptcy Code with respect to such Class.” So, even if the Insurers were to succeed in establishing on appeal that Talc Claimants' who did not file proofs of claim did not hold “Allowed”

¹⁶ *See* Kjontvedt Decl. ¶ 9, Dkt. No. 1221.

claims eligible to vote then, under the Plan, the class of Talc Claims would become a vacant class and be deemed eliminated for voting purposes.¹⁷

39. But, in that case, there would still be an impaired class that voted to approve the Plan, namely, Class 3. *See* Plan § 3.3. The Plan was accepted by 61 (89.71%) holders of Class 3 Claims in the amount of \$8,143,287.51 (96.93%) and rejected by 7 (10.29%) holders of Class 3 Claims in the amount of \$258,000.00 (3.07%). *See* Kjøntvedt Decl. ¶ 9. Consequently, the Plan would still meet the required minimum threshold for confirmation. *See* 11 U.S.C. § 1126; *see also* 11 U.S.C. § 1129(a)(8), (a)(10). As such, even if the Insurers were correct that Talc Claimants had to file proofs of claim to vote (and even if no Talc Claimants did file proofs of claim), the Insurers would still not succeed in their appeal to reverse the Confirmation Order. For this reason, the Insurers' likelihood of success on reversing the Confirmation Order based on their proof of claim argument is exceedingly low.

40. Beyond that, the Insurers fail to cite a single authority in support of their argument that a proof of claim is required to vote on a plan.

41. As this Court did here, courts presiding over mass tort bankruptcy cases routinely have utilized Rule 3018 to allow tort claims temporarily for limited purposes to facilitate voting on plans of reorganization in the manner proposed by the Debtors.¹⁸ This practice dates back at

¹⁷ Moreover, the Solicitation Procedures Order entered by this Court states that “[a]ny Class that contains Claims entitled to vote but for which no valid votes are returned shall be deemed to have accepted the Proposed Plan.” Accordingly, even if the Insurers could establish on appeal that Talc Claimants' votes were not valid or Allowed, then, under the Solicitation Order, the class of Talc Claims would be deemed to accept in any event.

¹⁸ *See, e.g.*, Order (I) Approving Disclosure Statement and Form and Manner of Notice of Hearing Thereon; (II) Establishing Solicitation Procedures; (III) Approving Forms of Ballots; (IV) Approving Form, Manner, and Scope of Confirmation Notices; (V) Establishing Certain Deadlines in Connection with Approval of Disclosure Statement and Confirmation of Plan; and (VI) Granting Related Relief, *In re Paddock Enters., LLC*, No. 1:20-bk-10028 (Bankr. D. Del. Feb. 17, 2022), Dkt. No. 1216 (temporarily allowing asbestos personal injury claims for voting purposes only); Order (I) Approving the Disclosure Statement and the Form and Manner of Notice, (II) Approving Plan Solicitation and Voting Procedures, (III) Approving Forms of Ballots, (IV) Approving Form, Manner, and Scope of Confirmation Notices, (V) Establishing Certain Deadlines in Connection with Approval of the Disclosure Statement and

least to the seminal *Johns-Manville* asbestos bankruptcy, where it was employed to “ensure the protection and participation of the interests of [tort] victims” and “meet[] the desideratum of expanded sufferage and participation in the reorganization by all parties in interest.” *In re Johns-*

Confirmation of the Plan, and (VI) Granting Related Relief, *In re Boy Scouts of Am. and Del. BSA, LLC*, No. 1:20-bk-10343 (Bankr. D. Del. Sep. 30, 2021), Dkt. No. 6438 (temporarily allowing abuse claims for voting purposes only); Order (I) Conditionally Approving the First Amended Combined Disclosure Statement and Plan of Liquidation for Solicitation Purposes; (II) Establishing Procedures for Solicitation and Tabulation of Votes on the First Amended Combined Plan and Disclosure Statement; (III) Approving the Forms of Ballots; (IV) Establishing a Voting Record Date; (V) Scheduling a Combined Hearing to Consider (A) Final Approval of the Disclosure Statement, (B) Confirmation of the Plan, and (C) Approval of the Insurance Settlement Motions; (VI) Approving Procedures for the Notice of Combined Hearing and for Filing Objections; and (VII) Granting Related Relief, *In re ON Marine Servs. Co. LLC*, No. 2:20-bk-20007 (Bankr. W.D. Pa. Nov. 21, 2022), Dkt. No. 1291 (temporarily allowing asbestos personal injury claims for voting purposes only); Order (I) Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes on the Plan; (III) Approving the Forms of Ballots; (IV) Scheduling a Hearing to Consider Confirmation of the Plan and Approval of Related Insurance Settlement Agreements; (V) Approving Procedures for the Notice of Hearing to Consider Confirmation of the Plan and Approval of Related Insurance Settlement Agreements and for Filing Objections Thereto; and (VI) Granting Related Relief, *In re FB Real Estate Holdings Company f/k/a Fairbanks Co.*, No. 4:18-bk-41768 (Bankr. N.D. Ga. May 4, 2021), Dkt. No. 732 (same); Order (I) Approving Amended Disclosure Statement Regarding Second Amended Plan of Liquidation; (II) Establishing Procedures for Solicitation and Tabulation of Votes on the Plan; (III) Approving the Form of Ballots; (IV) Scheduling a Hearing to Consider Confirmation of the Plan; (V) Approving Procedures for Notice of Hearing to Consider Confirmation of the Plan and for Filing Objections Thereto; and (VI) Granting Related Relief, *In re Oakfabco, Inc.*, No. 1:15-bk-27062 (Bankr. N.D. Ill. Jan. 16, 2019), Dkt. No. 771 (same); Modified Order (I) Conditionally Approving the Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes on the Plan; (III) Approving the Forms of Ballots; (IV) Scheduling a Combined Hearing to Consider Adequacy of the Disclosure Statement and Confirmation of the Plan; (V) Approving Procedures for Notice of Combined Hearing and for Filing Objections Thereto; and (VI) Granting Related Relief, *In re Geo. V. Hamilton, Inc.*, No. 2:15-bk-23704 (Bankr. W.D. Pa. Jan. 12, 2018), Dkt. No. 1612 (same); Order (I) Approving Second Amended Disclosure Statement as Providing Adequate Information Within the Meaning of Section 1125(a) of the Bankruptcy Code; (II) Establishing Procedures for Solicitation and Tabulation of Votes on Amended Plan of Reorganization; (III) Approving the Form of Ballots; (IV) Scheduling a Hearing on Confirmation of the Plan; (V) Approving the Form, Manner and Scope of Mailed and Published Notices of the Time Fixed to (A) Vote on the Amended Plan, and (B) File Objections to Confirmation of the Amended Plan; and (VI) Granting Related Relief, *In re Duro Dyne Nat’l Corp.*, No. 3:18-bk-27963 (Bankr. D.N.J. Nov. 20, 2018), Dkt. No. 287 (same); Order Approving Solicitation and Confirmation Procedures and Schedule for Confirmation of the Joint Plan, *In re OldCo., LLC*, No. 3:17-bk-30140 (Bankr. W.D.N.C. Feb. 3, 2017), Dkt. No. 51 (same); Order (I) Approving Disclosure Statement; (II) Establishing Procedures for Solicitation and Tabulation of Votes on the Plan of Reorganization; (III) Approving Forms of Ballots; (IV) Approving Form and Scope of Notice of the Plan and Confirmation Hearing; (V) Establishing Certain Deadlines in Connection with Approval of the Disclosure Statement and Confirmation of the Plan, *In re Yarway Corp.*, No. 1:13-bk-11025 (Bankr. D. Del. Jan. 27, 2015), Dkt. No. 756 (same); Order (I) Approving Disclosure Statement Regarding Plan of Reorganization; (II) Establishing Procedures for Solicitation and Tabulation of Votes on the Plan; (III) Approving the Form of Ballots; (IV) Scheduling a Combined Hearing to Consider Confirmation of the Plan and Approval of Nine Related Insurance Settlement Agreements; (V) Approving Procedures for Notice of Hearing to Consider Confirmation of the Plan and Approval of the Insurance Settlement Agreements and for Filing Objections Thereto; and (VI) Granting Related Relief, *In re Metex Mfg. Corp.*, 1:12-bk-14554 (Bankr. S.D.N.Y. Feb. 25, 2014), Dkt. No. 437 (same); Order (I) Approving the Disclosure Statement, (II) Establishing Procedures for Solicitation and Tabulation of Votes to Accept or Reject Proposed Joint Plan of Reorganization and (III) Scheduling a Hearing on Confirmation of Proposed Joint Plan of Reorganization and Approving Related Notice Procedures, *In re Specialty Prods. Holding Corp.*, No. 1:10-bk-11780 (Bankr. D. Del. Oct. 21, 2014), Dkt. No. 5112 (same).

Manville Corp., 68 B.R. 618, 631 (Bankr. S.D.N.Y. 1986), *aff'd*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd sub nom. Kane v. Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988).

42. Bankruptcy Rule 3018(a) plainly provides for this outcome: “[e]ven if an objection to a claim or interest has been filed, the court may, after notice and a hearing, temporarily allow a claim or interest in an amount that the court considers proper for voting to accept or reject a plan.” Fed. R. Bankr. P. 3018(a)(4). The Insurers argue, however, that the Rule only applies to claims for which both a proof of claim and an objection to that claim have been filed.¹⁹ *See* Original Motion to Stay ¶ 29. But this is contrary to the plain language of the Rule, which states that the Court may temporarily allow claims for purposes of voting *even if* there is an objection, not *only* when there is an objection. Tellingly, the Insurers cannot cite to a single case where a court has agreed with their reading of Rule 3018.

43. The Insurers argue that courts’ longstanding reading of Rule 3018(a) is nevertheless wrong because it renders superfluous Rule 3003(c)(2). The Insurers selectively quote the portion of Rule 3003(c)(2) providing that a creditor who fails to file a proof of claim will “not be treated as a creditor for that claim for voting” in support of their position that filing a proof of claim is a requirement for voting. Original Motion to Stay ¶ 29 (selectively quoting Fed. R. Bankr. P. 3003(c)(2)). But the full text of Rule 3003(c)(2) proves this argument meritless.

44. Rule 3003(c)(2) does not disqualify *every* creditor who fails to file a proof of claim from voting; rather, it applies only to creditors who do not timely file a proof of claim in the face of a bar date. Fed. R. Bankr. P. 3003(c)(2)-(3) (providing consequences for creditors who do not file a claim where the court has set a time to file a proof of claim). If, as here, no bar date were set for tort claims, then Rule 3003 does not apply to holders of those claims. *See Ellis v.*

¹⁹ Insurers conflate a claim under Rule 3018 as synonymous with a proof of claim. Original Motion to Stay ¶¶ 28-28. Under a plain reading of the Code, this is incorrect.

Westinghouse Elec. Co., LLC, 11 F.4th 221, 232 (3d Cir. 2021) (“If no bar date is set, and depending on the terms of the plan, the claim could be filed any time against the debtor or the reorganized debtor, limited only by the relevant statute of limitations.” (citation modified)); *In re Emons Indus., Inc.*, 220 B.R. 182, 192 (Bankr. S.D.N.Y. 1998) (holding that failure to file a claim under Bankruptcy Rule 3003(c)(2) did not “become operative” where no bar date was set). Thus, the Insurers’ reliance on Rule 3003 to limit Rule 3018 is misplaced.

45. The Insurers also argue that the language of § 1126 of the Bankruptcy Code excludes unfiled claims from voting notwithstanding the temporary allowance provision of Rule 3018. But § 1126 *supports* the temporary allowance of unfiled claims for voting purposes.

46. Section 1126 provides that “[t]he holder of a claim or interest allowed under § 502 of this title may accept or reject a plan.” The Insurers read into this section a requirement that a claim be allowed under § 502(a)—which allows claims for which a proof of claim has been filed—to vote on a plan. But § 1126 is not so limited. Section 502(c) provides that a court may “for purposes of allowance under this section [502]” estimate “*any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case.*” 11 U.S.C. § 502(c) (emphasis added). Section 502(c) does not require that a proof of claim be filed before such a claim may be estimated and allowed.²⁰ Accordingly, courts have read Rule 3018 in tandem with § 502(c) to provide authority to temporarily allow claims for voting purposes notwithstanding whether a proof of claim has been filed in mass tort cases where doing otherwise would necessarily delay administration of the case. *See, e.g., In re Lloyd E. Mitchell, Inc.*, 373 B.R. 416, 423 (Bankr. D. Md. 2007) (“The statutory predicate for Rule 3018(a) is § 502(c)

²⁰ The Bankruptcy Court does not have jurisdiction to estimate personal injury or wrongful death claims, such as the Talc Claims here, for purposes of liquidating such claims for distribution. 28 U.S.C. § 157(b)(2). It does, however, have jurisdiction to estimate such claims for the purposes of confirmation, including for voting purposes.

of the Code, which allows for the estimation of any contingent or unliquidated claim The two-step practice of allowing mass tort claimants to cast a ballot and temporarily allow a claim for voting purposes based on that ballot is within this Court’s discretion under § 502(c) of the Bankruptcy Code and Bankruptcy Rule 3018(a) and is regularly employed in mass tort cases with a large number of unliquidated claims.”). Because, by its plain words, § 1126 refers to holders of claims under § 502, and not merely § 502(a), the section contemplates the acceptance of votes of temporarily allowed claims. For this reason, too, the Insurers’ attempt to read into Rule 3018 that a claim must be filed in order to vote on a plan fails.

47. Moreover, the Court found at confirmation that the Insurers’ argument for a proofs of claim requirement for voting turns on a technical distinction between proofs of claim and ballots that the Court concluded is a distinction without a difference:

Here, the ballots, in light of the changes that have been made in response to other objections, provide the principal protections that would otherwise be afforded by the filing of proofs of claim. Beyond making the technical point that the ballot is called a ballot rather than being called a proof of claim, the London Market Insurers have not identified any substantive protection that would be afforded by requiring a proof of claim that is absent under the debtors’ solicitation procedures, as proposed. The Court is accordingly satisfied that the procedures are appropriate.

In re AIO US, Inc., No. 24-11836 (CTG), 2025 WL 1617477, at *11 (Bankr. D. Del. June 6, 2025). Even now, in the Original Motion to Stay, the Insurers still fail to identify any substantive protection that would inure from requiring the filing of a proof of claim in order to vote on the plan in this case.

48. To the contrary, the only protections the Insurers cite equally inure from the ballot requirement in this case. They argue that a “proof of claim requirement” is “critical” because a proof of claim “contain[s] sworn facts” that “conform to Official Form 410, which requires the claimant to declare under penalty of perjury that the information is true and correct.” Original Motion to Stay ¶ 26. But the only substantive information mandated by Rule 3001(a) and Form

410 applicable to Talc Claims are: (1) the identity of the creditor, (2) the amount of the claim, and (3) the basis of the claim. *See id.*; *see also* Official Form 410 (Proof of Claim). And, here, the Talc Claim ballots included *all* such information and required certifications that such information was true and correct to be made under penalty of perjury. *See* Fed. R. Bankr. P. 3001(a); *see also* Order Approving Solicitation Procedures Exhibits. 2-4 & 2-5 (Master and Individual Ballots for Talc Claims). Thus, the Court was entirely correct in observing that, for purposes of voting, the distinction between a filed proof of claim and a submitted ballot is distinction without a difference.

49. As the Insurers have failed to carry their burden of demonstrating that they have a “significantly better than negligible” chance of succeeding on the merits of either their Insurance Entity Injunction argument or their proof of claim requirement argument, the Court should deny the Original Motion to Stay.

B. The Insurers Have Not Made the Requisite Showing of Irreparable Harm

1. Equitable Mootness Is Not Sufficient to Constitute Irreparable Harm

50. In the Original Motion to Stay, the Insurers argue that without a stay they will suffer irreparable injury because their appeal may be dismissed as equitably moot. *See* Original Motion to Stay ¶ 36. But, even if that were so, “the risk of equitable mootness is not, by itself, sufficient to demonstrate irreparable harm to justify a stay pending appeal[.]” *In re W.R. Grace & Co.*, 475 B.R. 34, 208 n.2 (D. Del. 2012) (“Reliance on [equitable mootness] alone, however, is insufficient to establish irreparable injury for purposes of a stay.”), *aff’d*, 729 F.3d 332 (3d Cir.), *and aff’d*, 729 F.3d 311 (3d Cir. 2013); *In re New Cent. TRS Holdings, Inc.*, No. 07-10416 (KJC), 2009 WL 1833875, at *2 (D. Del. June 26, 2009) (“[E]quitable mootness of an appeal, without more, does not constitute irreparable harm.”); *see also Republic of Phil. v. Westinghouse Elec. Corp.*, 949 F.2d 653, 658 (3d Cir. 1991) (“Certainly the fact that the decision on the stay may be dispositive of the appeal in some cases is a factor that an appellate court must consider, but that alone does not justify

pretermittting an examination” of the specific irreparable injury alleged). Indeed, as courts have reasoned, “if equitable mootness alone could serve as the basis of irreparable injury, a stay would be issued in every case of this nature pending appeal.” *W.R. Grace*, 475 B.R. at 208. As the Insurers do not point to any harm other than equitable mootness that they would suffer absent a stay, the Motion to Stay should be denied.

51. The Insurers’ reliance on the Order, *In re Diocese of Camden, N.J.*, No. 24-2065 (3d Cir. Jan. 2, 2025), Dkt. No. 57, does not dictate a contrary conclusion. In *Camden*, the court granted a stay pending appeal where the risk of equitable mootness was raised as potential grounds for irreparable harm. But that decision was rendered purely on an emergency basis, and is non-precedential. *Jamison v. Klem*, 544 F.3d 266, 278 n.11 (3d Cir. 2008) (rejecting as non-binding opinions that “do not circulate to the entire court before they are filed” because “not every judge on the court has had an opportunity to express his/her views about the opinion before it is filed.”).

52. Further, in *Camden*, the plan being appealed had not yet gone effective. Order, at 13, *In re Diocese of Camden, N.J.*, No. 24-2065 (3d Cir. Jan. 2, 2025), Dkt. No. 57. Thus, a stay pending appeal would have prevented the consequences of the Plan becoming effective from occurring. In contrast, here, the Plan has gone effective. And, hence, the consequences that the Insurers seek to avoid already have occurred and the requested stay would not reverse them.

53. As the Insurers state in the Original Motion to Stay:

[T]he Plan also provides that the Debtors may waive conditions precedent to the Effective Date with the consent of the Creditors' Committee and the Bond Trustee. There is a substantial risk that the Plan Proponents could waive the requirement for a Final Order and declare the Plan effective while the appeals are pending, thereby creating a basis for arguing that the appeals should be dismissed as equitably moot. Upon the Effective Date, the Trust will be established and the ALT Assets, including the Debtors' rights under the Non-Settling Insurer Policies, will be transferred to the Trust. The channeling injunction will take effect, permanently enjoining all persons from asserting claims against Settling Insurers and other Released Parties. These actions, if permitted to occur while the appeals are pending, would substantially consummate the Plan"

Original Motion to Stay ¶¶ 36-37.²¹

54. As the alleged irreparable harm that the Insurers seek to prevent already has occurred, denial of the Original Motion to Stay cannot result in any irreparable harm to the Insurers; whatever harm or risk the requested stay might have mitigated has already come to pass.

55. Regardless, the *Camden* court did not rely solely on the potential for equitable mootness to find irreparable harm. Instead, it considered other factors including "the difficulty in quantifying these harms with reasonable certainty so as to be compensable by damages." Order, at 2, *In re Diocese of Camden, N.J.*, No. 24-2065 (3d Cir. Jan. 2, 2025), Dkt. No. 57. In fact, the briefing before the court in *Camden* shows that the parties conceded that, while the potential for equitable mootness is a factor in considering a stay pending appeal, that factor would have to be combined with the potential economic harm, that the appellants alleged would ensue in order for irreparable harm to exist. Insurers' Reply in Support of Motion for a Stay Pending Appeal, *In re Diocese of Camden, N.J.*, No. 24-2065 (3d Cir. Dec. 9, 2024), Dkt. No. 55. In contrast here, the Insurers have not alleged any economic harm that would result in the absence of a stay of the

²¹ The Insurers are incorrect to imply a "requirement for a Final Order" as a condition to the Effective Date here. Rather, the actual condition to the Effective Date imposed by the Plan is that the Confirmation Order has been entered, and "such Confirmation Order has not been stayed, modified, or vacated on appeal," which is true now. Plan § 9.1(i).

Confirmation Order. For all these reasons, the Insurers fail to demonstrate that any irreparable harm would result from the denial of the Original Motion to Stay.

2. *The Motion Supplement Fails to Show the Requisite Irreparable Harm If the State Court Action Is Not Enjoined*

56. Separately, the Insurers also contend that if the State Court Action is not enjoined, (i) they will have to spend money on attorneys' fees to litigate the action and (ii) in the unlikely event that the Confirmation Order is overturned, and the Trust is dissolved, they may not be able to collect damages on hypothetical counterclaims filed in the State Court Action. *See* Motion Supplement ¶ 3. These putative harms are purely economic and, consequently, do not establish the requisite irreparable harm needed to justify an injunction of the State Court Action.

57. In the Third Circuit it is clear that: “[A] purely economic injury, compensable in money, cannot satisfy the irreparable injury requirement . . . [but] an exception exists where the potential economic loss is so great as to threaten the existence of the movant’s business.” *In re Revel AC, Inc.*, 802 F.3d 558, 572 (3d Cir. 2015) (citation omitted).²² The Insurers have not alleged any economic loss of such a magnitude.

58. Moreover, “[i]t has long been recognized that mere litigation expense, even if substantial *and unrecoverable*, does not constitute irreparable injury.” *In re Countrywide Home Loans, Inc.*, 387 B.R. 467, 474 (Bankr. W.D. Pa. 2008) (emphasis added) (citing *Renegotiation Bd. v. Bannerkraft Clothing Co.*, 415 U.S. 1, 24 (1974)).

59. The Insurers’ argument that they “would be unable to recover on any counterclaims,” Motion Supplement ¶ 3, similarly fails to establish irreparable harm, because it is economic and also purely speculative. The Motion Supplement fails to specify any purported

²² *OAO Corp. v. United States*, 49 Fed. Cl. 478, 480 (Fed. Cl. 2001) (citing 11A Charles Alan Wright, Arthur R. Miller & Mary Kay Kane § 2948); see also Motion Supplement ¶ 10 n.4 (citing *OAO Corp.*, 49 Fed. Cl. at 480). .

counterclaims, never mind establish a meaningful chance of prevailing on them. “To establish irreparable harm, a stay movant must demonstrate an injury that is neither remote nor speculative, but actual and imminent.” *In re Maxus Energy Corp.*, 633 B.R. 215, 220 (Bankr. D. Del. 2021). Such speculative economic damages, like the potential inability to collect on merely hypothetical counterclaims, do not constitute irreparable harm. *See Deshmukh v. U.S. Tr. Off.*, No. CV 25-4017 (MAS), 2025 WL 2663696, at *8 (D.N.J. Sep. 17, 2025) (rejecting stay motion given purported harm was both “purely monetary” and “too speculative”). In the absence of any showing of irreparable harm, the Motion to Stay must be denied.

C. Neither the Balance of Equities Nor the Public Interest Favor Granting the Motion to Stay

60. At the outset, because the Insurers have not made the requisite showing that either they can succeed on the merits or will be irreparably harmed, “the[] inquiry into the balance of harms [and the public interest] is unnecessary, and the stay should be denied without further analysis.” *Revel*, 802 F.3d at 571 (citation omitted). Regardless, the final two factors weigh against granting the Motions to Stay.

61. With regard to the Original Motion to Stay, the potential harms the Insurers have asserted are not recognized as irreparable, and any harm that may follow from the Court refusing to stay the Confirmation Order cannot be mitigated now that the Effective Date has occurred. Consequently, a stay of the Confirmation Order (if not completely moot) would do nothing to benefit the Insurers. On the other hand, as the Insurers admit, a stay would delay payments to creditors, including those who are sick and dying.²³ *See, e.g., W.R. Grace & Co.*, 475 B.R. at 208

²³ The Insurers argue that the distribution process is lengthy and as such, a delay from a stay pending appeal will have “minimal impact” on the timing of distributions to Talc Claimants. Original Motion to Stay ¶ 40. This ignores that a stay pending appeal as envisioned by the Insurers would halt the distribution process altogether, adding significant delay to distributions, not matter how long they would take to process otherwise.

(“In the bankruptcy context, there is a general public policy weighing in favor of affording finality to bankruptcy judgments.”); *In re World Trade Ctr. Disaster Site Litig.*, 503 F.3d 167, 170 (2d Cir. 2007) (recognizing public interest in having persons “who might be entitled to recovery receive compensation while still living and able to use it to cover medical costs and improve the quality of their lives”); *see also* Sara Youngblood Gregory, *Diagnosed with mesothelioma?*, MAYO CLINIC (Jan. 30, 2025), <https://mcpres.mayoclinic.org/cancer/diagnosed-with-mesothelioma-heres-what-to-know-about-life-expectancy-and-prognosis/> (asserting that the life expectancy for victims of mesothelioma is generally 18 months). When weighed against the inconsequential benefit to the Insurers of staying a substantially consummated Plan, this impact to Trust claimants clearly disfavors a stay.

62. The public interest also weighs against granting the Motion to Stay here. Now that the Confirmation Order has gone into effect, the public interest is not merely a balance between “the correct application of the law” and “expediency,” as the Insurers suggest. Motion to Stay ¶ 43. Rather, the Court must consider “[t]he strong public policy in favor of maximizing debtors’ estates and facilitating successful reorganization.” *In re Cont’l Airlines*, 91 F.3d at 565. That policy serves to “encourage . . . reliance by investors and others on the finality of bankruptcy confirmation orders.” *Id.*

63. Any stay of an already effectuated Confirmation Order would erode reliance on the finality of such orders, not only in this proceeding but in others too. The public interest is served by the finality of a bankruptcy and by paying creditors, including those who are sick and dying. Conversely, there is no public interest in staying an order that has already been effectuated.

64. Turning to the Motion Supplement, the Insurers do not even attempt to argue that the balance of harms or the public interest weigh in favor of staying the State Court Action. With good reason, those factors so clearly weigh against the requested injunction.

65. The potential harm the Insurers allege is principally the expenditure of legal fees. On the other hand, an injunction would delay the determination of the Insurance Rights, which would, in turn, delay payments to creditors. The harm to innocent creditors, some of whom are dying, should heavily outweigh the “harm” of the Insurers paying legal fees to defend against their own coverage liability.

66. Nor does the public interest support enjoining the State Court Action. As the Anti-Injunction Act makes clear, the public interest does not favor federal court intervention in state court cases. *See* 28 U.S.C. § 2283; *United States v. Dougherty*, 627 F. App’x 97, 102 (3d Cir. 2015) (“[P]rinciples of comity, federalism, and equity always restrain federal courts’ ability to enjoin state court proceedings”); *Chick Kam Choo v. Exxon Corp.*, 486 U.S. 140, 146 (1988) (“The [Anti-Injunction] Act, which has existed in some form since 1793 . . . is a necessary concomitant of the Framers’ decision to authorize, and Congress’ decision to implement, a dual system of federal and state courts. . . . Prevention of frequent federal court intervention is important to make the dual system work effectively.”). Enjoining the State Court Action would cut sharply against that interest.

67. As each of the relevant factors weigh against a stay of the Confirmation Order and any injunction of the State Court Action, the Motion to Stay should be denied across the board.

CONCLUSION

For the foregoing reasons, the Trust and TAC respectfully request that the Motion to Stay be denied.

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Respectfully submitted,

CAMPBELL & LEVINE, LLC

/s/ Marla R. Eskin

Marla R. Eskin (Bar No. 2989)
Katherine L. Hemming (Bar No. 5496)
222 Delaware Ave, Suite 905
Wilmington, DE 19801
Phone: (302) 426-1900
meskin@camlev.com
khemming@camlev.com

OTTERBOURG, P.C.

Adam C. Silverstein (*pro hac vice* pending)
230 Park Avenue
New York, NY 10169-0075
Telephone: (212) 905-3628
asilverstein@otterbourg.com

Counsel to the Avon Liquidation Trust

-and-

A.M. SACCULLO LEGAL, LLC

/s/ Mark T. Hurford

Mark T. Hurford (Bar No. 3299)
27 Crimson King Drive
Bear, DE 19701
Telephone: (302) 836-8877
mark@saccullolegal.com

CAPLIN & DRYSDALE, CHARTERED

Kevin C. Maclay (*pro hac vice* pending)
Todd E. Phillips (*pro hac vice* pending)
Kevin M. Davis (*pro hac vice* pending)
1200 New Hampshire Avenue NW, 8th Floor
Washington, DC 20036
Telephone: (202) 862-5000
kmaclay@capdale.com
tphillips@capdale.com
kdavis@capdale.com

*Counsel to the Trust Advisory Committee
for the Avon Liquidation Trust*