UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

In re BESTWALL LLC, Debtor.	Chapter 11 Case No. 17-31795 (LTB)

MOTION OF THE OFFICIAL COMMITTEE OF ASBESTOS CLAIMANTS TO (I) DISMISS THE DEBTOR'S CHAPTER 11 CASE FOR CAUSE AS A BAD FAITH FILING PURSUANT TO 11 U.S.C. § 1112(b), OR ALTERNATIVELY, (II) TRANSFER VENUE IN THE INTEREST OF JUSTICE AND FOR THE CONVENIENCE OF THE PARTIES PURSUANT TO 28 U.S.C. § 1412

The Official Committee of Asbestos Claimants (the "Committee"), by and through its undersigned counsel, hereby moves to dismiss the Debtor's chapter 11 case for cause as a bad faith filing pursuant to 11 U.S.C. § 1112(b) or alternatively, to transfer venue in the interest of justice and for the convenience of parties pursuant to 28 U.S.C. § 1412. In support thereof, the Committee states as follows:

PRELIMINARY STATEMENT[1]

"[F]raud will not prevail, [] substance will not give way to form, [and] technical considerations will not prevent substantial justice from being done" in a bankruptcy proceeding. *Pepper v. Litton*, 308 U.S. 295, 305 (1939). In enforcing this maxim, the bankruptcy court has the power to exercise equity jurisdiction and "sift the circumstances surrounding any claim to see that injustice or unfairness is not done." *Id.* at 307-08. Equity requires this "especially [] when the claim seeking allowance accrues to the benefit of an officer, director, or stockholder." *Id.* The Debtor's bankruptcy proceeding is little more than a bad-faith litigation tactic as evidenced

[1] Capitalized terms used in the Preliminary Statement and not otherwise defined shall have the meanings ascribed to them *infra*.

by its gerrymandering of assets and liabilities pursuant to a unique—and as the Committee argues in its contemporaneously filed pleading,[2] preempted—provision of Texas corporate law. The Debtor filed this bankruptcy case in an attempt to manipulate the provisions of the Bankruptcy Code, exploit venue loopholes, and gain approval from a court in a jurisdiction it perceives is a favorable jurisdiction for asbestos-related bankruptcies all for the benefit of the Debtors' corporate shareholder, affiliates, and ultimate corporate parent.

This case exemplifies the concept of a corporate sacrificial lamb. Georgia-Pacific LLC f/k/a Georgia-Pacific Corporation ("Old GP") is not the victim here. With full knowledge of the known dangers of asbestos, Old GP poisoned thousands of Americans through the manufacture and sale of its asbestos containing products and thereby contributed to the suffering and death of countless men, women, and children (the "Georgia-Pacific Asbestos Liabilities"). Old GP formed the Debtor on July 31, 2017—barely more than one year ago—with a single purpose: to abscond with billions of dollars of equity and assets after divesting itself of billions of dollars of Georgia-Pacific Asbestos Liabilities (and foisting those liabilities on a nascent holding company), while leaving tens of thousands of asbestos victims—sick and dying asbestos victims—to recover only a small fraction of what is rightfully owed to them by Old GP.

Executing on a deliberately planned and carefully orchestrated contrivance (the "Corporate Restructuring"), Old GP re-domiciled itself in Texas from Delaware for less than a day to split into two separate entities using Texas' unique divisive merger provisions. The first entity, Georgia Pacific LLC ("New GP"), received virtually all of the corporate assets before quickly re-domiciling itself in Delaware, continuing its Atlanta-based business operations

[2] *Objection of the Official Committee of Asbestos Claimants to Debtor's Motion for an Order (I) Preliminarily Enjoining Certain Actions Against Non-Debtors, or (II) in the Alternative, Declaring that Automatic Stay Applies to Such Actions and (III) Granting Temporary Restraining Order Pending a Full Hearing on the Motion.*

uninterrupted, all while being purportedly cleansed of the Georgia-Pacific Asbestos Liabilities. To the second entity, the Debtor, Old GP assigned billions of dollars of asbestos-related liabilities along with a handful of assets worth approximately $175 million and a "funding agreement" from New GP that purports to cover all of the Debtor's asbestos liability. Old GP provided the Debtor with no employees, no operations or ongoing business, and no viable plan for the bankruptcy it would ultimately file.

As the final step of the Corporate Restructuring—also completed on July 31, 2017, a mere 94 days before the Debtor filed for relief in this Court—the Debtor re-domiciled itself in North Carolina from Texas. By spending *less than one day* as Texas entities, Old GP and New GP attempted to utilize state law and manipulate statutory venue provisions in order to provide relief from legacy asbestos liabilities that only the Bankruptcy Code can provide, all while attempting to avoid the scrutiny and transparency mandated by the bankruptcy process.

It is also no coincidence that Old GP, New GP, and the Debtor selected North Carolina, and specifically this district, for the Debtor's bankruptcy filing. The Debtor touts *In re Garlock Sealing Technologies, LLC*, 504 B.R. 71 (Bankr. W.D.N.C. 2014), as a decision that is both highly critical of asbestos victims while simultaneously supportive of GP's effort to downplay the magnitude of the Georgia-Pacific Asbestos Liabilities.[3] The Debtor's obvious forum

[3] *Garlock* involved a debtor that manufactured a limited product line used in highly limited applications. Georgia-Pacific is not Garlock and *Garlock* ***is not*** the Debtor's bankruptcy case. Unlike Garlock, Old GP manufactured numerous asbestos-containing products for use in a multitude of different settings. Old GP not only distributed and sold its own asbestos products (operating in the industrial, skilled trade, and consumer product markets), but also distributed and sold asbestos products made by other companies into those product markets as well. Additionally, Georgia-Pacific, with factories and mills across the country where hundreds of thousands of people were exposed to asbestos over many decades, has vast premises liability for exposures to insulation, asbestos cement, dryer felts, asbestos cloth, gaskets, packing, brakes (vehicle and machine brakes), clutches and other things. The Debtors have limited their briefing to drywall products, but this is just a portion of the Georgia-Pacific Asbestos Liabilities.

shopping evidences a clear effort to take advantage of Fourth Circuit law and to taint this case with the factual findings made in *Garlock*, a vastly different—and unrelated—case.

Old GP had no reason to seek protection from the Bankruptcy Code: as a multi-billion dollar corporate enterprise, it has for decades paid all of its liabilities—including the Georgia-Pacific Asbestos Liabilities—as they became due. Instead, Old GP contrived the Corporate Restructuring and Bestwall's bankruptcy filing as a tactic to hinder, delay, and defraud its creditors in order to shield Old GP and New GP from the Georgia-Pacific Asbestos Liabilities and shift the true value of Old GP's equity to its insiders without technically running afoul of fraudulent transfer laws. A debtor cannot file chapter 11 merely to take advantage of the Bankruptcy Code's distribution scheme to benefit its insider. The bankruptcy process should be used to maximize value to creditors, not funnel that value to corporate insiders while simultaneously denying present and future asbestos victims their due process rights as creditors.

This Court, in the exercise of its equitable powers, must not allow the sham to continue; the Debtor's bankruptcy case should be immediately dismissed pursuant to 11 U.S.C. § 1112(b) for "cause" as a bad faith filing or, in the alternative, transferred to the District of Delaware (or another appropriate venue) for adjudication pursuant to 28 U.S.C. § 1412. Rejecting the Corporate Restructuring's effect on the Georgia Pacific Asbestos Liabilities and the Debtor's related venue manipulation is necessary to protect the integrity of the bankruptcy process. Accepting the Corporate Restructuring and the Debtor's venue choice as a *fait accompli* without delving into the Debtor's motives or the resulting inequity to the asbestos victims may lead to the subversion of the bankruptcy process and the eradication of creditor protections generally. Endorsing the Corporate Restructuring would give a green light to all debtors, especially those facing mass tort liabilities, to engage in manipulations and sham transactions in order to cabin

liabilities, eliminate onerous contracts, abrogate debt and credit agreements, or preserve shareholder equity for corporate insiders to the detriment of all creditors. Such an outcome is not what the Bankruptcy Code contemplates; the equities mandate that the Court dismiss the Debtor's bankruptcy case or, at the very least, transfer venue to an appropriate district.

JURISDICTION

1. This Court has subject matter jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and may be determined by the Bankruptcy Court. For purposes of a hearing on this Motion, venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory authority for the relief requested is 11 U.S.C. §§ 105(a) and 1112(b), 28 U.S.C. § 1412, and Rules 1014, 1017(f)(1) and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

PROCEDURAL BACKGROUND

2. On November 2, 2017 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor continues to act as a debtor-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108. No trustee or examiner has been appointed in this case.

3. On November 16, 2017, the Court entered its *Order Appointing Official Committee of Asbestos Claimants* [Docket No. 97].

4. The Committee is comprised of individuals suffering with mesothelioma, a debilitating, painful, and ultimately fatal form of asbestos-related cancer, and the families of individuals who have died as a result of mesothelioma.

5. The Committee selected (i) Montgomery, McCracken, Walker & Rhoads, LLP as its counsel; (ii) Hamilton Stephens Steele + Martin, PLLC and JD Thompson Law as its joint

local co-counsel; (iii) FTI Consulting as its financial advisor; and (iv) Legal Analysis Systems, Inc. as its asbestos consultant.

6. On February 23, 2018, the Bankruptcy Court entered an Order Appointing Sander L. Esserman as Legal Representative for Future Claimants ("FCR") [Docket No. 278]. The FCR selected (i) Young Conaway Stargatt & Taylor LLP as his counsel, (ii) Hull & Chandler, P.A. as his local co-counsel; and (iii) Ankura Consulting Group, LLC as his asbestos consultant. The FCR is sharing the services of FTI with the Committee.

FACTUAL BACKGROUND

A. The Debtor's Corporate History[4]

7. Old GP incorporated as a Georgia corporation under the name Georgia Hardwood Lumber Company, Inc. in 1927 and changed its name to Georgia-Pacific Corporation in 1956. Koch Industries, Inc. acquired the publicly-traded company in 2005, with Old GP becoming a wholly-owned subsidiary of Georgia-Pacific Holdings LLC, a Delaware limited liability company ("GP Holdings"). On December 29, 2006, Old GP converted into a Delaware corporation and a few days later converted into Georgia Pacific LLC.

8. On July 31, 2017, Old GP executed the Corporate Restructuring pursuant to which Old GP moved to Texas (for less than a day) to utilize Texas's divisive merger statute for the purpose of forming the Debtor and New GP as direct, wholly-owned subsidiaries of GP Holdings. Immediately thereafter, three things happened: Old GP ceased to exist, New GP "moved" back to Delaware and continued operations under the same name used by Old GP prior to the Corporate Restructuring, and the Debtor "moved" to North Carolina for purposes of

[4] All information on the Debtor's corporate history is derived from the Declaration of Tyler L. Woolson in Support of First Day Pleadings ("Decl.") [Docket No. 2]. While the Committee does not concede that the information contained in the Declaration is complete or accurate, for purposes of this Motion, this information is deemed true.

accessing this Court for its intended bankruptcy filing. In truth, this was purely a paper transaction—nothing "moved." As summarized in the following table, Old GP, New GP, and the Debtor existed as Texas entities for less than a day:

Corporate Restructuring Timeline

Date & Time	Corporate Action
12/2005	Koch Industries acquires Old GP; Old GP becomes a wholly-owned subsidiary of Georgia-Pacific Holdings, LLC (a Delaware limited liability company)
12/29/2006 at 12:00 p.m. (ET)	Georgia-Pacific Corporation (a Georgia corporation) is converted to Georgia-Pacific Corporation (a Delaware corporation)
12/31/2006 at 8:00 p.m. (ET)	Georgia-Pacific Corporation (Delaware corporation) is converted to Georgia-Pacific LLC (a Delaware limited liability company)
2/15/2007 at 9:43 p.m. (ET)	Georgia-Pacific LLC (a Delaware limited liability company) qualifies to do business in North Carolina
6/30/2017 at 3:23 p.m. (ET)	Georgia-Pacific Procurement LLC (a Delaware limited liability company) merges into Georgia-Pacific LLC (a Delaware limited liability company)
7/31/2017 at 8:00 a.m. (CT)	Georgia-Pacific LLC (a Delaware limited liability company) converts to Georgia-Pacific LLC (a Texas limited liability company) [Texas filing]
7/31/2017 at 9:00 a.m. (ET)	Georgia-Pacific Corporation (a Delaware limited liability company) converts to Georgia-Pacific LLC (a Texas limited liability company) [Delaware filing]
7/31/2017 at 11:30 a.m. (CT)	Georgia-Pacific LLC (a Texas limited liability company) divides into Georgia-Pacific LLC (a Texas limited liability company) and Georgia-Pacific DE LLC (a Texas limited liability company)
7/31/2017 at 1:30 p.m. (ET)	Georgia-Pacific DE LLC (a Texas limited liability company) converts to Georgia-Pacific LLC (a Delaware limited liability company)
7/31/2017 at 4:50 p.m. (ET)	Georgia-Pacific LLC (a Delaware limited liability company) withdraws from North Carolina
7/31/2017 at 4:51 p.m. (ET)	Georgia-Pacific LLC (a Texas limited liability company) converts to Georgia-Pacific LLC (a North Carolina limited liability company)
11/1/2017	Georgia-Pacific LLC (a North Carolina limited liability company) renames itself Bestwall LLC
11/2/2017 at 6:43 p.m. (ET)	Bestwall LLC files for bankruptcy protection and assigned Case No. 17-31795

9. Through the Corporate Restructuring, Bestwall received certain of Old GP's assets allegedly related to the historical Bestwall gypsum business (which the Debtor asserts was the genesis of Old GP's asbestos liability) while being saddled with all the Georgia-Pacific Asbestos Liabilities. The Debtor also received land (but not the improvements) at a facility located in Mt. Holly, North Carolina ("Mt. Holly Land"), purchased by Old GP from an indirect subsidiary of GP Holdings. In turn, Old GP caused the Debtor to enter into a long-term ground lease of the Mt. Holly Land with the indirect subsidiary that originally owned the land ("Mt. Holly Lease").

10. New GP received all other business, operations, and assets of Old GP and became solely responsible for all other non-asbestos liabilities of Old GP. New GP, through its domestic and foreign subsidiaries, manufactures and sells tissue, pulp, paper, packaging and building products.

B. Bestwall's Present Business Operations

11. Bestwall does not operate an active business, has no ongoing business operations, and, therefore, generates no cash. Bestwall has no funded indebtedness and minimal, if any, insurance assets. *See* Schedules of Assets and Liabilities [Docket No. 156], Schedule A/B, Part 11, at Question 74 (identifying disputed insurance-related causes of action); *id.*, at Question 77 (identifying undisputed and liquidated cause of action). In fact, its sole corporate purpose is to manage and defend thousands of claims related to the Georgia-Pacific Asbestos Liabilities through the bankruptcy process and the development of a section 524(g) asbestos claimants' trust.

12. As part of the Corporate Restructuring, the Debtor became a holding company for a new subsidiary, GP Industrial Plasters LLC ("PlasterCo"), a North Carolina limited liability

company. PlasterCo develops, manufactures, sells, and distributes gypsum plaster products and owns or leases three operating facilities, none of which are located in North Carolina. PlasterCo is, in turn, a holding company for two other entities: Industrial Plasters Canada ULC ("PlasterCo Canada"), a Nova Scotia unlimited company, and Blue Rapids Railway Company LLC ("BRRC"), a Kansas limited liability company. BRRC operates a short line railway system associated with PlasterCo's facility in Kansas. PlasterCo Canada holds assets for the benefit of the plaster business that are located in Canada.

13. None of PlasterCo, BRRC, or PlasterCo Canada is a debtor.

14. With no employees, Bestwall receives certain centralized corporate and administrative services including legal, accounting, tax, human resources, information and technology, risk management, and other support services from New GP.[5] New GP assigns an in-house legal team that primarily manages the defense of asbestos-related claims. Non-debtor affiliate Georgia-Pacific Building Products LLC provides an employee to Bestwall for finance and related services

15. Bestwall pays for its expenses through $32 million in cash and a funding agreement with New GP ("Funding Agreement"), which Bestwall obtained as part of the Corporate Restructuring. The Funding Agreement is not a loan agreement; Bestwall has *no obligation* to repay New GP for the advanced funds. The Funding Agreement defines a "Permitted Funding Use" as, among other things, "the payment of any and all costs and expenses of [Bestwall] incurred during the pendency of any Bankruptcy Case that are necessary or appropriate in connection therewith, including the costs of administering the Bankruptcy Case

[5] PlasterCo and New GP are parties to a similar services agreement. PlasterCo, PlasterCo Canada, and Bestwall have entered into a cash pooling agreement that provides for a coordinated cash system among Bestwall and its subsidiaries. While PlasterCo does generate cash, should it need additional capital, it has entered into a revolving credit agreement with New GP which allows it to access such capital.

and any and all other costs and expenses of [Bestwall] incurred in the normal course of its business . . . ." (Decl. Annex 1, Funding Agreement, p. 5).

16. New GP is also obligated to cover Bestwall's Georgia-Pacific Asbestos Liabilities. (Decl. Annex 1, Funding Agreement, ¶¶A-I). A "Permitted Funding Use" also includes "funding of any amounts necessary or appropriate to satisfy . . . (ii) [Georgia-Pacific Asbestos Liabilities] in connection with the funding of a trust under section 524(g) of the Bankruptcy Code for the benefit of existing and future claimants that is included in a plan of reorganization . . . ." *Id.* Finally, for purposes of this Motion, it also provides for "any ancillary costs and expenses of [Bestwall] associated with such [Georgia-Pacific Asbestos Liabilities] and any litigation thereof, including the costs of any appeals." *Id.*

17. While the Funding Agreement obligates New GP to provide an undisclosed, and apparently unlimited, level of funding sufficient to satisfy Bestwall's normal business obligations as they come due (including chapter 11 fees and expenses), it is less clear with regard to the protections available to Bestwall to protect the funding. The Funding Agreement does not provide any security or corporate guarantee. Further, the Funding Agreement does not state whether a "Permitted Funding Use" includes allowing Bestwall to incur the costs and fees associated with bringing a fraudulent transfer action against New GP or Old GP. Finally, the Funding Agreement did not prohibit the pre-petition transfer of assets and does not protect Bestwall, as the beneficiary of the Funding Agreement, from New GP transferring assets to third-parties in order to negatively impact New GP's ability to fund Bestwall.

18. In short, the Debtor's corporate existence and ability to pay its asbestos liabilities depends solely upon New GP's benevolent whims.

C. Bestwall's Asbestos Liability

19. Bestwall traces its asbestos liability, primarily, to a gypsum business that manufactured wallboard, joint compound, and industrial plasters, which was acquired by Old GP in 1965 and then merged into Old GP. Moreover, Old GP's asbestos liabilities may ultimately extend well beyond the Consumer Products Safety Commission's July 1977 ban on using asbestos in joint compound. While Old GP resisted pre-petition discovery of the nature and extent of its use of asbestos-containing talc, it is likely that Old GP replaced asbestos with asbestos-containing talc when is marketed and sold its "asbestos-free" products. Therefore, Bestwall's asbestos-related liabilities are undoubtedly substantial and include liabilities from the manufacture and sale of its own (or its affiliate's) products, the resale of third-party manufactured asbestos containing products, use of asbestos products in its facilities (*i.e.*, premises liability), and the decision to use asbestos-containing talc to go "asbestos free."

20. Old GP has been a defendant in asbestos litigation since at least 1979 and has spent over $2.9 billion dollars defending and resolving more than 430,000 personal injury lawsuits related to asbestos exposure. As of September 30, 2017, there were approximately 64,000 asbestos claims pending, including approximately 22,000 claims that were being actively litigated and approximately 13,300 claims pending on inactive dockets in various jurisdictions.

LEGAL ARGUMENT

I. THE CHAPTER 11 CASE SHOULD BE DISMISSED PURSUANT TO SECTION 1112(b) "FOR CAUSE"

21. It is apparent that Old GP gerrymandered its assets as a litigation tactic to create bankruptcy jurisdiction and to forum shop for a resolution to the Georgia Pacific Asbestos Liabilities. Bestwall sought chapter 11 protection to take advantage of the automatic stay and obtain stay relief for its affiliates even though its predecessor was solvent and paying its asbestos

liabilities as they became due. In short, Old GP, New GP, and Bestwall orchestrated Bestwall's bankruptcy filing not to maximize the recovery to Bestwall's creditors, but solely to change the distribution scheme outside of bankruptcy to benefit Old GP, New GP, and the non-Debtor affiliates. Bestwall seeks to misappropriate an otherwise valid legal framework to obtain an inequitable outcome. This Court should dismiss Bestwall's bankruptcy case for bad faith pursuant to Bankruptcy Code section 1112(b).

A. Bad Faith Constitutes "Cause" Under Fourth Circuit Law

22. Section 1112(b) of the Bankruptcy Court provides for a bankruptcy case to be dismissed for "cause" and states as follows:

> [o]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 *or dismiss the case under this chapter*, whichever is in the best interests of the estate and creditors, *for cause*, ...

11 U.S.C. § 1112(b) (emphasis added).

23. The Bankruptcy Code does not define "cause." The legislative history indicates that "the facts of each request will determine whether relief is appropriate under the circumstances." H.R. Rep. No. 95-595, at 344 (1977), *reprinted in* 1978 U.S.C.C.A.N. 6963, 6299-300. However, because only an "honest but unfortunate debtor" is eligible to seek the protections afforded by the Bankruptcy Code, the right to file a bankruptcy petition is predicated on good faith. *Marrama v. Citizens Bank of Mass.*, 549 U.S 365, 374 (2007) (quoting *Grogan v. Garner*, 498 U.S. 279, 287 (1991)). The United States Court of Appeals for the Fourth Circuit has reached a similar conclusion: a bankruptcy petition may be dismissed for cause pursuant to Bankruptcy Code section 1112(b) if such petition was filed in bad faith. *See In re Premier Auto. Servs., Inc.*, 492 F.3d 274, 279 (4th Cir. 2007) (concluding that "the ability of the Bankruptcy Court to conduct a threshold inquiry into the good faith of a petitioner is indispensable to proper

accomplishment of the basic purpose of chapter 11 protection.") (internal quotation omitted); *Carolin Corp. v. Miller*, 886 F.2d 693, 697-98 (4th Cir. 1989) (noting that a good faith requirement "protects the jurisdictional integrity of the bankruptcy courts by rendering their equitable weapons . . . available only to those debtors and creditors with clean hands" and "prevents abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefitting them in any way or to achieve reprehensible purposes.") (internal quotation omitted).

24. The Fourth Circuit has also determined that a good faith requirement provides a means for inquiring into the critical question as to whether there is a "going concern to preserve" by requiring a showing to the court's satisfaction that there is a "realistic possibility of an effective organization." *Carolin Corp.*, 886 F.2d at 1072 (noting that if there is no viable business to rehabilitate and preserve, there is no reason for pursuing chapter 11) (citations omitted). Thus, a "good faith standard furthers the balancing process between the interests of debtors and creditors which characterizes so many provisions of the bankruptcy laws and is necessary to legitimize the delay and costs imposed upon parties to a bankruptcy." *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1072 (5th Cir. 1986). Therefore, dismissal of a bankruptcy case for cause where the debtor lacked good faith in filing the case protects the integrity of the bankruptcy process and honors the equitable tenets supporting the Bankruptcy Code.

B. Two-Prong Test Under Fourth Circuit Law for Establishing Bad Faith

25. In the Fourth Circuit, a Court may dismiss a Chapter 11 filing for cause where there is "subjective bad faith on the part of the debtor, in that the motive for filing the Chapter 11 petition was to abuse the reorganization process, coupled with an objective element that reorganization is in fact unrealistic." *In re Superior Siding & Window, Inc. v. Associated Materials, Inc.*, 14 F.3d 240, 242 (4th Cir. 1994) (citing *Carolin Corp.*, 886 F.2d at 700-02)).

The subjective bad faith inquiry "is designed to insure that the petitioner actually intends 'to use the provisions of Chapter 11 . . . to reorganize or rehabilitate an existing enterprise, or to preserve going concern values of a viable or existing business.'" *Carolin Corp.*, 886 F.2d at 702 (citing *In re Victory Constr. Co.*, 9 B.R. 549, 564 (Bankr. C.D. Cal. 1981)). The objective futility inquiry ensures that "there is embodied in the petition 'some relation to the statutory objective of resuscitating a financially troubled [debtor].'" *Carolin Corp.*, 886 F.2d at 701 (citing *In re Coastal Cable TV, Inc.*, 709 F.2d 762, 765 (1st Cir. 1983)).

26. Both the objective futility and subjective bad faith prongs must be satisfied in order to warrant dismissal. *Carolin Corp.*, 886 F.2d at 700-01. The courts in the Fourth Circuit, however, have not articulated any specific tests or other standards of proof preferring to "rel[y] upon various 'indicia' and 'recurring patterns' of conduct thought to suggest either or both subjective bad faith and/or objective futility." *Carolin*, 886 F.2d at 701 (citing *Little Creek*, 779 F.2d at 1070-72).

27. As explained below, the Committee is able to demonstrate that the chapter 11 case should be dismissed under both the subjective and objective tests.

C. Bestwall's Bankruptcy Filing is an Abuse of the Bankruptcy Process and Fails the Subjective Bad Faith Inquiry

28. Under the subjective test, the Court must determine "whether a Chapter 11 petition is motivated by an honest intent to effectuate reorganization or is instead motivated by some improper purpose." *Premier Auto.*, 492 F.3d at 280. What was Bestwall's purpose in filing this case? The Committee contends that the true purpose for Bestwall's filing was improper and is nothing more than an effort "to abuse the reorganization process" with an intent to "cause hardship or to delay" to the asbestos victims' efforts to seek compensation for the

Georgia Pacific Asbestos Liabilities by "invoking the automatic stay, without an intent or ability to reorganize . . . ." *See Carolin*, 886 F.2d at 702 (internal quotation omitted).

1. Bestwall's Bankruptcy Seeks to Redistribute Creditor Recoveries to Corporate Affiliates and Insiders and Fails to Maximize Recoveries for Asbestos Victims

29. Two issues relevant to an analysis of good faith are (a) whether the petition serves a valid bankruptcy purpose; and (b) whether the petition is filed merely to gain a tactical advantage. *In re 15375 Memorial Corp*., 589 F.3d 605, 618 (3d Cir. 2009); *In re Paradigm Elizabeth, LLC*, 2015 WL 435067, at *3 (Bankr. D.N.J. 2015) ("Even if a debtor is not a going concern and the bankruptcy was filed for liquidation purposes, a petition may maximize value for creditors if it adds or preserves value that would be unavailable to creditors outside of bankruptcy."). Maximizing value of the debtor's estate for the benefit of creditors is a valid bankruptcy purpose. *15375 Memorial*, 589 F.3d at 619; *see also In re Integrated Telecom Express, Inc*., 384 F.3d 108, 119 (3d Cir. 2004) (same). Additionally, the filing must do more than "merely invoke some distributional mechanism in the Bankruptcy Code. It must seek to create or preserve some value that would otherwise be lost—not merely distribute to a different stakeholder outside of bankruptcy. This threshold inquiry is particularly sensitive where, as here, the petitioner seeks to distribute value directly from a creditor to a company's shareholders." *Integrated Telecom*, 384 F.3d at 129.

30. Because a finding of bad faith is a fact-intensive inquiry, a series of cases from the Third Circuit are instructive: *In re Integrated Telecom Express, Inc.,* 384 F.3d 108 (3d Cir. 2004); *In re 15375 Memorial Corporation*, 589 F.3d 605 (3d Cir. 2009); and *In re Rent-A-Wreck of America, Inc*., 580 B.R. 364 (Bankr. D. Del. 2018). In each of these cases, the debtor's bankruptcy case was dismissed because the debtor engaged in an inappropriate use of the Bankruptcy Code or manipulated bankruptcy procedure to the detriment of its creditor. Each of

these courts recognized the debtor's machinations for what they were; we ask this Court to do the same here.

31. *Integrated Telecom*'s debtor supplied software and equipment to the broadband communications industry and had signed a lease for real property in Silicon Valley in 2000. About one year later, the debtor's board began preparing a plan for the liquidation and dissolution of the company under Delaware law. 384 F.3d at 113. By April, 2002, only two issues remained, including how to address the remaining obligations under the Silicon Valley lease. The debtor attempted to negotiate an accord and satisfaction of its lease obligations for approximately $8 million, but the landlord refused to accept the settlement. The debtor then filed for bankruptcy protection, in part, to avail itself of the cap on landlord damages under Bankruptcy Code section 502(b)(6). The landlord filed a claim for $26 million.

32. After filing, the debtor moved to reject the landlord's lease; the landlord opposed on the grounds that the debtor had filed its petition in bad faith. Following an evidentiary hearing, the court denied the motion to dismiss on the ground that the debtor had offered a number of reasons for the filing, not just the cap on landlord damages. *Id.* at 115. On appeal, the district court affirmed. *Id*. at 117. The Third Circuit reversed after concluding that the debtor filed its petition solely to take advantage of the Bankruptcy Code's cap on landlord damages while intending to redistribute that benefit to the debtor's shareholders at the expense of the landlord. *Id.* at 112-126. The court noted that because the debtor was "highly solvent and cash rich" and never in financial distress, the bankruptcy filing failed to maximize the debtor's estate for the creditors. *Id.* at 112, 122; *see also In Premier Auto. Servs., Inc*., 492 F.3d 274, 284-85 (4th Cir. 2007) (chapter 11 case of financially healthy company dismissed for bad faith where case was filed as litigation tactic to stall state court eviction proceedings).

33. In *15375 Memorial Corp.*, the Third Circuit Court of Appeals upheld the dismissal of a Chapter 11 case as a bad faith filing "as a litigation tactic to protect the [d]ebtors and [related entities] from liability in [various] pending litigations." 589 F.3d at 608. The debtor was a part of a larger global offshore drilling enterprise. *Id.* at 610. Shortly before the filing of the bankruptcy cases, the debtor received $500,000 from a non-debtor affiliate in exchange for (i) accepting all liabilities on account of certain affiliates' activities; and (ii) an acknowledgement that the debtor was not a single business enterprise with its corporate parent. *Id.* at 613. The bankruptcy court concluded that the agreement's purpose was to insulate the parent and its affiliated entities from liability and eliminate any claim the debtor may have against the parent under a single enterprise or alter ego theory. *Id.* In addition, the debtor revealed that it would not pursue certain other claims against its affiliates. *Id.* at 611.

34. The Third Circuit reiterated its earlier position that where a debtor had no going concern to preserve (other than managing litigation, as in *Integrated Telecom.*), the remaining issue was whether the debtor's bankruptcy filing maximized value for the creditors. *Id.* at 619. Contrary to the debtor's assertions, the Third Circuit concluded that the bankruptcy did not maximize value for the creditors because the debtor's only assets were insurance policies that could be collected on outside of bankruptcy. *Id.* at 620-22.

35. Finally, in *Rent-A-Wreck of America, Inc.*, the bankruptcy court dismissed the chapter 11 cases of a car rental franchise business as not being filed in good faith because the debtors were not in financial distress when they filed their chapter 11 cases. *Id.* at 366, 376-77. The bankruptcy court concluded that the debtors' purpose in filing was to take advantage of the ability to reject a franchise agreement in order to open up a lucrative territory *for the benefit of insiders* and resolve pending litigation over the franchise relationship. *Id.* at 382-84. The

bankruptcy court noted that the good faith inquiry is "particularly sensitive where the petition seeks to distribute value directly from a creditor to a company's shareholders." *Id.*

36. As demonstrated by the above decisions, Bestwall likewise lacks a proper basis for filing its bankruptcy cases. The Debtor has not indicated that Old GP was in financial distress—and indeed Old GP paid on its Georgia Pacific Asbestos Liabilities—and the Funding Agreement makes it plain that New GP has the financial wherewithal to provide an unlimited funding obligations that would permit the Debtor to satisfy its obligations as they become due in the ordinary course of business, including any liability for the Georgia-Pacific Asbestos Liabilities and the fees and expenses related to the chapter 11 proceeding.

37. The Debtor's bankruptcy case was not filed in order to maximize the recoveries of the asbestos creditors; in fact, the exact opposite is patently obvious. Old GP formed Bestwall with the intent of shunting billions in asbestos-related liabilities to an entity whose sole function was to seek bankruptcy relief and win a channeling injunction of all asbestos-related liabilities for the benefit of Old GP, New GP, and a host of non-Debtor affiliates. Bestwall's bankruptcy filing is a bad faith litigation tactic by Old GP (and its successor in interest, New GP) to avoid the tort system through the extension of the automatic stay, to reduce its asbestos liability by having that liability revalued in a bankruptcy case while intending to threaten and criticize the asbestos victims and lawyers in the hope of negotiating leverage, and use the court's estimation process solely to take advantage of the Bankruptcy Code's distribution scheme. In doing so, Bestwall will improperly limit the recoveries of asbestos victims while redistributing the benefits to its corporate affiliates and other insiders. There can be no more concrete example of subjective bad faith; the Debtor's effort to manipulate the chapter 11 process to gain a litigation advantage for the benefit of Bestwall's predecessor is *not* a valid reorganizational purpose.

2. Bestwall Seeks an Extension of Certain Advantages of the Automatic Stay to Non-Debtor Affiliates

38. The Fourth Circuit has previously indicated that "[s]ubjective bad faith is present when the petitioner's motive for filing is to abuse the bankruptcy process and to invoke the automatic stay without the intent or ability to reorganize." *Carolin*, 886 F.2d at 702 (citations omitted). As this Court previously noted, "[t]he subjective bad faith inquiry is designed to insure that the petitioner actually intends to use the provisions of chapter 11 . . . to reorganize or rehabilitate an existing enterprise or to preserve going concern of a viable existing business." *In re Woodend, LLC*, 2011 WL 3741077 (Bankr. W.D.N.C. 2011) (citing *In re Landmark Atl. Hess Farm, LLC*, 448 B.R. 707, 712 (Bankr. D. Md. 2011)).

39. Despite Debtor's intent to develop a section 524(g) trust as part of its reorganization plan, section 524(g) is simply not available to Bestwall. Section 524(g)(2)(B)(i)(II) requires a trust to be funded in whole or in part by the securities of one or more debtor involved in the plan and by the obligation of such debtor or debtors to make future payments, including dividends. 11 U.S.C. §524(g)(2)(B)(i)(II). As noted in the legislative history:

> In plain English, this means that when an asbestos-producing company goes into bankruptcy and is faced with present and future asbestos-related claims, the bankruptcy court can set up a trust to pay the victims. The underlying company funds the trust with securities and the company remains viable. Thus, the company continues to generate assets to pay claims today and into the future. In essence, the reorganized company becomes the goose that laid the golden egg by remaining a viable operation and maximizing the trust's assets to pay claims.

See 140 Cong. Rec. S4523 (April 20, 1994) (stmt. Sen. Brown).

40. The purpose of section 524(g) is to generate sufficient assets to fund an evergreen trust. *See In re Combustion Eng'g, Inc*., 391 F.3d 190 (3d Cir. 2004) (reorganized debtor must

be going concern such that it is able to make future payments to a trust to provide an "evergreen" funding source for future asbestos creditors); *In re W. Asbestos Co.*, 313 B.R. 832 (Bankr. N.D. Cal. 2003) (defunct company that could not satisfy future payment requirement of section 524(g) was not entitled to discharge injunction).

41. Bestwall's stock is essentially worthless because it has no ongoing business or operations and its lack of cash flow (independent of the Funding Agreement) prevents it from providing an evergreen source of funding. Bestwall cannot "reorganize or rehabilitate an existing enterprise" or "preserve [the] going concern of a viable existing business" because the very Code section that Bestwall relies on expressly prohibits its use if Bestwall is unable to provide evergreen funding. Because it lacks the ability to reorganize, and is prevented from reorganizing by the express provision of Section 524(g), Bestwall's continued use of the automatic stay—and indeed extension of the automatic stay to Old GP, New GP, and a host of non-Debtor affiliates—is subjective bad faith.

3. Bestwall's Bankruptcy Petition is Based on Forum Shopping

42. As of July 30, 2017, none of the entities involved in this bankruptcy case was a North Carolina entity. The Corporate Restructuring changed that. In one day, a Delaware LLC re-domiciled in Texas, split itself into Bestwall and New GP, assigned all of its extensive asbestos-related liabilities to the Debtor, domiciled New GP in Delaware without any perceptible change in its business or operations, and domiciled Bestwall in North Carolina only 94 days before the Petition Date. North Carolina was not selected because of some long standing corporate history or even a center of main interest for the corporate enterprise; North Carolina was selected because a non-Debtor affiliate owned some land there, one of Bestwall's new/assigned subsidiaries was incorporated there, and the United States Bankruptcy Court for

the Western District of North Carolina had issued a decision in *In re Garlock Sealing Technologies, LLC.*[6] The Debtor's (and Old GP's and New GP's) near complete lack of any connection to North Carolina is certainly indicia of subjective bad-faith by engaging in forum shopping.

D. With No Business or Operations, Cash Flow, Employees, or Reason to Reorganize, Bestwall's Bankruptcy Filing is Objectively Futile

43. The objective futility test should "concentrate on assessing whether 'there is no going concern to preserve . . . and . . . no hope of rehabilitation, except according to the debtor's 'terminal euphoria.'" *Carolin*, 886 F.2d at 701-02 (citing *In re Little Creek Development Co.*, 779 F.2d 1068, 1073 (5th Cir. 1986)). Thus, "[t]he objective test focuses on whether there exists the realistic possibility of an effective reorganization." *Premier Auto.*, 492 F.3d at 280 (citing *Carolin Corp.*, 886 F.2d at 698). When there is no realistic possibility of an effective reorganization, the bankruptcy proceeding is objectively futile. *See generally Carolin Corp.*, 886 F.2d at 703 (concluding that because debtor "was more akin to a shell corporation than a viable enterprise" and did not have "an ongoing business to protect," there was no objective possibility of an effective reorganization); *Woodend, LLC*, 2011 WL 3741071, at *3 (concluding that objective futility satisfied where debtor had: no cash flow, revenues, employees, going concern value, current operations or business "other than the pursuit of litigation"; nothing to rehabilitate; and was "wholly dependent upon an infusion of funds from investors or its owners, neither of which has been committed.").

44. Bestwall has no business operations; its sole function is to manage the litigation resulting from the Georgia-Pacific Asbestos Liabilities. It has no employees; New GP provides

[6] The importance that the Debtor places on the *Garlock* decision is highlighted by the sheer number of times the case is cited in its Informational Brief. *See* Information Brief [Docket No. 12], at pp. 1, 2, 6, 7, 12, 14, 15, 18, 19, 20, 21, 24-28, 29, 35, 41, 42.

employees to the Debtor under a secondment agreement. The Debtor has no cash flow; New GP provides funding to the Debtor pursuant to the Funding Agreement. It is merely a holding company for a non-debtor subsidiary. Its total assets are valued at approximately $175 million, including about $32 million in cash and some land assigned to it in the Corporate Restructuring. Bestwall is wholly dependent on money received from New GP pursuant to the Funding Agreement to cover its operation costs, litigation expenses, asbestos liability, and chapter 11 fees and expenses.

45. Bestwall has no business in pursuing its chapter 11 case. Prior to July 31, 2017, Old GP paid all of its asbestos liabilities as they became due. Now, all that is left is Bestwall, a non-operating holding company with worthless stock, minimal assets, and an anemic cash flow that will make it virtually impossible to make future payments to a section 524(g) asbestos claimants' trust. Bestwall is simply unable to satisfy the requirements of section 524(g) or take advantage of the *Garlock* decision—the very reasons for Old GP concocting the Corporate Restructuring and setting Bestwall on a collision course with bankruptcy.

46. With no viable business to reorganize, and no need to seek bankruptcy protection except to avail itself of the automatic stay, the Committee has demonstrated objective bad faith.

II. ALTERNATIVELY, THE COURT SHOULD TRANSFER VENUE OF THE DEBTOR'S BANKRUPTCY CASE TO THE DISTRICT OF DELAWARE, OR ANOTHER APPROPRIATE DISTRICT, PURSUANT TO 28 U.S.C. §1412

47. The Debtor's formation serves only one purpose: to allow Old GP to divest its liability for the Georgia Pacific Asbestos Liabilities in what it believed—and undoubtedly what the Debtor and New GP continue to believe—is a favorable jurisdiction for debtors in asbestos-related bankruptcies. The Corporate Restructuring, pursuant to which the Debtor was not only formed and also chose to domicile itself in North Carolina only 94 days prior to the Petition Date, epitomizes the very definition of forum shopping. As previously stated, the Debtor has no

current business operations other than managing the entirety of the Georgia Pacific Asbestos Liabilities, and has no material tangible assets. Aside from domiciling in North Carolina as part of the Corporate Restructuring, Bestwall's only other ties to North Carolina stem from Old GP's allocation of the Mt. Holly Land and PlasterCo—itself nothing more than a holding company for Nova Scotia and Kansas incorporated entities—to the Debtor in the Corporate Restructuring. While the Debtor undoubtedly takes the position that its formation as part of the Corporate Restructuring and domestication in North Carolina complies with the venue requirements for filing its case in this District,[7] the Corporate Restructuring should be seen for what it truly is—a litigation tactic designed to manufacture venue in this District in order to merely technically comply with the statutory venue provisions in an effort to forum shop for a court based on the *Garlock* decision. Because the effect of the Corporate Restructuring, including mere technical compliance with the venue statute, is antithetical to the purpose of the venue statute, this Court should transfer the Debtor's bankruptcy proceedings to the District of Delaware—the state of formation of both Old GP and New GP and the location of the Debtor's largest asset, the receivable from New GP for payment of the Georgia Pacific Asbestos Liabilities under the Funding Agreement—or another appropriate district.

[7] Pursuant to 28 U.S.C. § 1408(a), venue is proper in the district:

> (1) in which the domicile, residence, principal place of business in the United States, or principal asset in the United States, of the person or entity that is the subject of such case have been located for the one hundred and eighty days immediately preceding such commencement, or for a longer portion of such one-hundred-and eighty-day period than the domicile, residence, or principal place of business, in the United States, or principal assets in the United States, of such person were located in any other district; . . .

Bestwall's formation as a Texas limited liability company on July 31, 2017 and immediate transfer of its domicile to North Carolina—all done only 94 days prior to the Petition Date—only *technically* satisfies venue, making the Western District of North Carolina merely the *technically* proper district for these proceedings.

A. Debtor's Venue Selection Does Not End the Venue Inquiry

48. Acknowledging venue in this district based on the Debtor's purported technical compliance with the venue provisions elevates form over substance and provides judicial approval of Old GP's, New GP's, and Bestwall's forum shopping and subversion of the bankruptcy process. The Court should end the Debtor's farce and transfer the Debtor's bankruptcy case to the United States District Court for the District of Delaware, or another appropriate district, in the interests of justice and convenience of the parties.[8] As provided for in section 1412 of title 28 of the United States Code (the "Judicial Procedure Code"): "A district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice or for the convenience of the parties." 28 U.S.C. §1412. Similarly, Bankruptcy Rule 1014(a) provides:

> (1) *Cases Filed in Proper District*. If a petition is filed in the proper district, the court, on timely motion of a party in interest or on its own motion, and after hearing on notice to the petitioners, the United States trustee, and other entities as directed by the court, *may transfer the case to any other district of the court determines that the transfer is in the interests of justice or for the convenience of the parties*.

Fed. R. Bankr. P. 1014(a)(1) (emphasis added).

49. Judicial Procedure Code section 1412 contains two *independent grounds* justifying venue transfer. *See In re Velocita Corp.*, 285 B.R. 188, 190 (Bankr. M.D.N.C. 2002) (noting that "because statutory criteria is stated in disjunctive, a case or proceeding is transferrable upon a sufficient showing of either the interest of justice or the convenience of the parties"); *see also In re Patriot Coal Corp.*, 482 B.R. 718, 738-39 (Bankr. S.D.N.Y. 2012) ("A

[8] Venue challenges are waived by inaction. *See* 28 U.S.C. § 1406(b) ("Nothing in this chapter shall impair the jurisdiction of a district court of any matter involving a party who does not interpose timely and sufficient objection to the venue.").

district court may transfer a case or proceeding under title 11 to a district court for another district, in the interest of justice *or* for the convenience of the parties.") (emphasis added). The Court has the discretion to transfer venue to another district based on an "individualized and case-by-case consideration of convenience and fairness." *Patriot Coal*, 482 B.R. at 739. A party moving to transfer venue bears the burden of establishing that venue transfer is proper by a preponderance of the evidence. *See In re Grand Dakota Partners, LLC*, 573 B.R. 197, 201 (Bankr. W.D.N.C. 2017) (Beyer, J.) (transferring North Carolina case to North Dakota in interests of justice and for convenience of parties pursuant to 28 U.S.C. § 1412).

B. The Court Should Transfer Venue to the District of Delaware or Another Appropriate District

1. The Interests of Justice Support Transferring Venue

50. The interest of justice prong is a broad and flexible standard. In evaluating this prong, courts consider the following: "(a) the economic administration of the bankruptcy estate; (b) the presumption in favor of trying proceedings related to a bankruptcy case in the court in which the bankruptcy is pending; (c) judicial efficiency; (d) ability to receive a fair trial; (e) the state's interest in having local controversies decided within its borders; (f) enforceability of any judgment rendered; and (g) the plaintiff's original choice of forum." *See Velocita*, 285 B.R. at 190 (citing *Blanton v. IMN Financial Corp.*, 260 B.R. 257, 266 (M.D.N.C. 2001)).

51. *Patriot Coal* is particularly instructive regarding the interests of justice prong. Patriot Coal and its affiliates operated a large-scale, international mining enterprise headquartered in St. Louis, Missouri. 482 B.R. at 722-23, 730. It had mining facilities in West Virginia and Kentucky, *id.* at 729, and other property, including shipping terminals, located in multiple other states. *Id.* About a month before filing bankruptcy Patriot Coal incorporated two subsidiaries in New York. *Id.* at 726-27. Post-petition, certain of Patriot Coal's creditors sought

to transfer venue of the cases to the Southern District of West Virginia, citing 28 U.S.C. §1412. *Id*. at 722-23. The creditors asserted that the incorporation of the two New York subsidiaries was impermissible forum shopping that justified a venue transfer in the interests of justice. *Id.* at 723-728. Patriot Coal conceded that it formed the New York subsidiaries—neither of which had operations or employees—because it saw the Southern District of New York as the optimal venue for its bankruptcy. *Id.* at 736.

52. In granting the venue transfer, the Court noted that fairness and convenience—not geography—historically played a role in determining the appropriateness of venue. *Id.* at 738. A transfer was appropriate in the interests of justice, notwithstanding the normal deference applied to a debtor's venue choice, because Patriot Coal's purposeful creation of venue on the eve of filing "elevate[d] form over substance in a manner that courts have found impermissible[;] . . . it would run afoul of any reasonable application of the intent of the venue statute." *Id.* at 743. Technical compliance with Judicial Procedure Code section 1408 did not prevent the Court from taking into account "*how* [Patriot Coal] complied with the statute . . . when considering the 'interest of justice' prong of section 1412." *Id.* The court transferred venue despite the debtor's "literal compliance with the section 1408" because Patriot Coal's manufactured venue was "an affront to the purpose of the bankruptcy venue statute and the integrity of the bankruptcy system." *Id.* at 744. The *Patriot Coal* court, relying on *In re Winn-Dixie Stores Inc.*, Case No. 05-11063 (RDD) (Bankr. S.D.N.Y. 2005), a decision that granted a venue transfer where the debtor exploited a venue loophole, noted:

> Whether one characterizes the creation of venue as exploiting a loophole or as simply not fair, one thing is clear: it is not the thing the statute intended. . . . [N]othing in our jurisprudence requires the court to condone every strategy devised by clever attorneys to outsmart statutory purpose and language, even where, as here, they do so with the best of intentions. To do so here would violate Judge Friendly's oft-quoted maxim that "the

> conduct of bankruptcy cases not only should be right but must seem right." *In re Haupt & Co.*, 361 F.2d 164, 168 (2d Cir. 1966). Since the integrity of the bankruptcy process is implicated, and in the absence of any evidence upsetting the Debtor's selected venue will have dire consequences for the Debtor's stakeholders, the case should and must be transferred.

Id. at 745. As a final caution, the *Patriot Coal* court noted that "the creation of facts to fit the statute is a far cry from taking advantage of the facts as they existed before the Debtors embarked on their path to a chapter 11 filing." *Id.* at 746.

53. Here, Old GP (and New GP and the Debtor) engaged in the Corporate Restructuring, in part, to manufacture venue in this District. Upholding the Debtor's forum choice elevates form over substance, sanctions Old GP's effort to create facts to fit Judicial Procedure Code section 1408, and dismisses the facts as they existed mere months before the Petition Date: Old GP, a Delaware limited liability company with its principal place of business in Atlanta, Georgia, facing the possibility of filing bankruptcy in the Third Circuit, a circuit with a history of, and significant case law governing, asbestos bankruptcies. Because the Debtor's bankruptcy seeks a section 524(g) injunction, and not a true reorganization, the forum choice of the asbestos victims—the Debtor's only creditors—should bear greater weight. *See Patriot Coal*, 482 B.R. at 748 (noting "collective wisdom" of parties with "money on the line" important in deciding venue disputes).

2. Venue Transfer is Appropriate for the Convenience of the Parties

54. Courts evaluate six factors in determining convenience of the parties: "(i) proximity of creditors of every kind to the court; (ii) proximity of the debtor; (iii) proximity of witnesses necessary to administer the estate; (iv) location of the assets; (v) economic administration of the estate; and (v) necessity for ancillary administration of liquidation should result." *In re Lakota Canyon Ranch Development, LLC*, Case No. 11-03739-8, 2011 WL

5909630, at *3 (Bankr. E.D.N.C. 2011) (citing factors and transferring case to Colorado). "The consideration given the most weight is the economic and efficient administration of the estate." *In re Dunmore Homes, Inc.*, 380 B.R. 663, 672 (Bankr. S.D.N.Y. 2008). Courts have also considered the learning curve of a case if transferred and the ability of interested parties to participate in the proceedings and the additional costs that might be incurred in doing so. *Id.*

55. Convenience of the parties supports transferring venue. The Debtor is not reorganizing its business affairs. It is a non-operational entity that sought Chapter 11 protection to deal with the full amount of the Georgia Pacific Asbestos Liabilities by establishing a section 524(g) trust for asbestos claims. Counsel to the Committee and the FCR are located in Delaware; New GP is subject to the jurisdiction of the District of Delaware. Also, courts within the Third Circuit, including the Court of Appeals, have significant experience with, and a comprehensive body of case law governing, asbestos bankruptcies.

56. New GP directs the business and affairs of the Debtor from outside of North Carolina. Neither Old GP nor New GP has operations in North Carolina. Old GP was—and since immediately following the Corporate Restructuring, New GP is—a Delaware entity with a principal place of business in Atlanta, Georgia. The Debtor's purported largest asset is an unsecured, unguaranteed receivable due from New GP under the terms of the Funding Agreement. Although Bestwall scheduled this receivable as "unliquidated," the Committee presently believes this is a receivable due to the Debtor from a presently solvent entity that values itself in the billions of dollars. This receivable, the value of which will undoubtedly far exceed the value of Bestwall's other token assets, is not located in North Carolina. Finally, Bestwall's connections to North Carolina are tenuous at best: it domiciled 94 days before Petition Date and the Debtor's PlasterCo subsidiary is also a holding company with operating

subsidiaries in Kansas and Nova Scotia, Canada. Aside from owning the land, there does not appear to be any business operations that justify venue in North Carolina.

57. Because of significant connections to Delaware, the nature and status of the cases, the locations of the key parties, and Old GP's use of Texas' divisive merger provisions to manipulate venue in order to avoid for itself—and now New GP—the transparency required by the bankruptcy process and the comprehensive body of asbestos bankruptcy law in the Third Circuit, the efficient and economic administration of Bestwall's estates is best conducted in the District of Delaware or in another appropriate district.

CONCLUSION

WHEREFORE, for reasons set forth herein, the Committee respectfully requests that the Court: (i) enter an order in the form annexed hereto dismissing the Debtor's bankruptcy case pursuant to section 1112(b) of the Bankruptcy Code as filed in bad faith; (ii) in the alternative, transfer the case to the District of Delaware or another appropriate district; and (iii) grant such other relief as is just and appropriate.

Dated: Charlotte, North Carolina
August 15, 2018

HAMILTON STEPHENS STEELE
+ MARTIN, PLLC

/s/ Glenn C. Thompson
Glenn C. Thompson (Bar No. 37221)
525 North Tryon Street, Suite 1400
Charlotte, North Carolina 28202
Telephone: (704) 344-1117
Facsimile: (704) 344-1483
gthompson@lawhssm.com

Judy D. Thompson
Linda W. Simpson
JD THOMPSON LAW
Post Office Box 33127
Charlotte, North Carolina 28233

Telephone: (828) 749-1865
jdt@jdthompsonlaw.com
lws@jdthompsonLaw.com

Natalie D. Ramsey (DE Bar No. 5378)
Davis Lee Wright (DE Bar No. 4324)
MONTGOMERY, McCRACKEN, WALKER & RHOADS, LLP
1105 North Market Street, 15th Floor
Wilmington, Delaware 19801
Telephone: (302) 504-7800
Facsimile: (302) 504-7820
nramsey@mmwr.com
dwright@mmwr.com

Counsel to the Official Committee of Asbestos Claimants