FILED: October 30, 2025

PUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1493
(17-31795)

BESTWALL LLC, f/k/a Georgia-Pacific LLC, a Texas limited liability company and a North Carolina limited liability company,

Debtor – Appellee,

v.

THE OFFICIAL COMMITTEE OF ASBESTOS CLAIMANTS OF BESTWALL, LLC,

Creditor – Appellant.

AMERICAN ASSOCIATION FOR JUSTICE; CLAIMANTS; THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS IN IN RE ALDRICH PUMP LLC AND IN RE MURRAY BOILER LLC,

Amici Supporting Appellant.

ANTHONY J. CASEY; BROOK E. GOTBERG; JOSHUA C. MACEY; JOSEPH W. GRIER, III, Future Asbestos Claimants Representative appointed in In re Aldrich Pump LLC, et al.; TRANE TECHNOLOGIES COMPANY LLC; TRANE U.S. INC.; CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA,

Amici Supporting Appellee.

PROFESSOR D. THEODORE RAVE,

Amicus Supporting Rehearing.

ORDER

The court denies appellant's petition for rehearing en banc.

A requested poll of the court failed to produce a majority of judges in regular active service and not disqualified who voted in favor of rehearing en banc. Judges King, Gregory, Wynn, Thacker, Benjamin, and Berner voted to grant rehearing en banc. Chief Judge Diaz and Judges Wilkinson, Niemeyer, Agee, Harris, Quattlebaum, Rushing, and Heytens voted to deny rehearing en banc. Judge Richardson did not participate.

Judge King wrote an opinion dissenting from the denial of rehearing en banc.

Entered at the direction of Judge Quattlebaum.

For the Court

/s/ Nwamaka Anowi, Clerk

KING, Circuit Judge, dissenting from the denial of rehearing en banc:

This appeal should have been accorded en banc consideration because these proceedings not only "involve[] . . . questions of exceptional importance," but because the panel decision conflicts with Article I of the Constitution. *See* Fed. R. App. P. 40(b)(2)(B), (D). Regrettably, by a narrow 8-6 vote, our Court has left intact the panel's erroneous ruling concerning the bankruptcy court's subject-matter jurisdiction in Bestwall LLC's sham Chapter 11 bankruptcy. For the sake of the Constitution and the thousands of asbestos claimants seeking their day in court, I regrettably dissent.[1]

I.

A.

The corporate misconduct underlying these so-called "bankruptcy" proceedings is not some big secret. *See, e.g.*, *In re Bestwall LLC*, 71 F.4th 168, 185-86 (4th Cir. 2023) (King, J., dissenting); *Bestwall LLC v. Off. Comm. of Asbestos Claimants of Bestwall, LLC*, 148 F.4th 233, 246-58 (4th Cir. 2025) (King, J., dissenting). Owing to its extensive use of asbestos in commercial products such as joint compound and industrial plasters, Georgia-Pacific has faced — and continues to face — thousands of asbestos-related personal injury lawsuits since at least 1979, the vast majority of which have been filed by individuals suffering from the scourge of asbestosis and mesothelioma. Georgia-Pacific stands as one

[1] Circuit Judges Gregory, Wynn, Thacker, Benjamin, and Berner voted with me to grant an en banc rehearing. Chief Judge Diaz, along with Judges Wilkinson, Niemeyer, Agee, Harris, Quattlebaum, Rushing, and Heytens, voted to deny en banc rehearing. Our fine colleague Judge Richardson did not participate in the decisional process.

of the most frequently sued defendants in this Country's tide of asbestos litigation, having spent more than $2.9 billion defending such claims. And Georgia-Pacific has acknowledged that thousands of additional asbestos-related claims will be filed against it each year for decades to come. All those liabilities notwithstanding, Georgia-Pacific has remained a fully-solvent, multibillion-dollar business leader in the pulp and paper industry.

In July 2017, through a novel and provocative corporate sleight-of-hand maneuver called the "Texas Two-Step," Georgia-Pacific was restructured to isolate its asbestos liabilities into a new entity called "Bestwall." More specifically, Georgia-Pacific — then a Delaware corporation — reorganized under Texas law and promptly made use of the Lone Star State's "divisional merger" statute to carve itself into two new entities: Bestwall and the "new" Georgia-Pacific (hereinafter, "New Georgia-Pacific"). For its part, Bestwall was assigned nearly all of Georgia-Pacific's existing asbestos liabilities. Otherwise, Bestwall received minimal assets and no formal business operations. Meanwhile, New Georgia-Pacific was entrusted with the lion's share of the legacy Georgia-Pacific assets, along with non-asbestos-related liabilities. Almost immediately, New Georgia-Pacific resumed its predecessor's status as a Delaware corporation — where it has continued business operations — while Bestwall was reorganized in North Carolina. Stunningly, Bestwall and New Georgia-Pacific were Texas business entities for less than five hours.

As was the plan all along, Bestwall did not hire any employees, did not engage in any new business ventures, nor did it do much of anything else following its relocation to the Old North State. Rather, in November 2017 — some three months after its "inception"

— Bestwall filed for Chapter 11 bankruptcy in the Western District of North Carolina, a favored judicial forum for massively profitable companies seeking to execute a Texas Two-Step "bankruptcy." *See, e.g.*, *In re Bestwall LLC*, No. 17-31795 (Bankr. W.D.N.C.); *In re DBMP LLC*, No. 20-30080 (Bankr. W.D.N.C.); *In re Aldrich Pump LLC*, No. 20-30608 (Bankr. W.D.N.C.); *In re Murray Boiler LLC*, No. 20-30609 (Bankr. W.D.N.C.).

Of especial relevance to this appeal, despite filing its Chapter 11 bankruptcy, Bestwall is not at all a debtor in distress. Indeed, Bestwall has no business operations and generates no independent income as a business concern, but exists solely to carry forward the asbestos-related liabilities of Georgia-Pacific, which Bestwall is able to fully pay through a so-called "funding agreement" with New Georgia-Pacific. And that agreement is backed by New Georgia-Pacific's billions of dollars in assets. By Bestwall's admission here, the agreement guarantees that Bestwall is able to fully satisfy its asbestos-related financial obligations. *See In re Bestwall*, 658 B.R. 348, 355 (Bankr. W.D.N.C. 2024).

B.

On account of Bestwall's Chapter 11 bankruptcy petition, an automatic stay was imposed pursuant to 11 U.S.C. § 362(a), and a corresponding bankruptcy court preliminary injunction extended all the protections of the automatic stay to New Georgia-Pacific. As a result, thousands of pending civil suits in courts across our Country — initiated by plaintiffs who are dying from mesothelioma and other diseases caused by the asbestos-riddled products of Georgia-Pacific — are at a screeching halt. In effect, a financially-healthy and fully-solvent corporation (that is, New Georgia-Pacific) has placed its asbestos-related tort

liabilities involving thousands of American workers behind the firewall of bankruptcy protection. Yet critically, New Georgia-Pacific is not undergoing the scrutiny, transparency, and risk that a Chapter 11 bankruptcy petition should entail.

Unlike run-of-the-mill Chapter 11 bankruptcies, the asbestos claimants in this situation are neither corporate lenders nor institutional creditors. Instead, they are simply ordinary and hardworking Americans who have spent their workdays installing drywall, laying insulation, cutting pipe, and then simply returning to their homes. They are factory workers, veterans, tradespeople, and laborers. They are also the widows, adult children, and family members of thousands of New Georgia-Pacific's and Bestwall's deceased victims, seeking to pursue tort claims in the civil courts on behalf of their loved ones who have died or are suffering from harrowing asbestos-related diseases.

Tragically, many of the New Georgia-Pacific and Bestwall claimants suffer from mesothelioma — a rare, incurable cancer almost exclusively caused by asbestos exposure. Others have been diagnosed with asbestosis, lung cancer, or respiratory diseases linked to asbestos fibers. And while these tort plaintiffs fight the diseases caused by their asbestos exposures, they also encounter the legal process that has been suspended by Bestwall's bankruptcy. The sacred right of the New Georgia-Pacific and Bestwall asbestos claimants to pursue justice through the tort system of America's civil courts — deeply rooted in the laws and constitutional fabric of our Nation — has been placed on hold by a solvent profitable enterprise called Bestwall, acting through a manufactured sham bankruptcy.

All told, Bestwall's entry into its Chapter 11 bankruptcy was the strategic decision of lawyers and executives. And it was a concerted boardroom effort designed to pause active civil court tort litigation, consolidate thousands of asbestos-related claims against Georgia-Pacific into Bestwall, and then extract more favorable settlement terms from their suffering and dying victims through litigation delay. *See* Bestwall En Banc Response 18 (admitting that these Chapter 11 bankruptcy proceedings are designed to "end[] the inefficiencies and erratic results experienced in the tort system" for asbestos claims).

II.

Against this backdrop, the exceptionally important issue that our en banc Court should have addressed is whether a bankruptcy court can possess subject-matter jurisdiction over a bankruptcy proceeding involving fully-solvent corporate entities who lack any semblance of financial distress? To frame that issue in a slightly different way, can ultra-wealthy corporations — like New Georgia-Pacific and its stooge subsidiary, Bestwall — utilize a bankruptcy court and a sham Chapter 11 bankruptcy proceeding to restructure this Country's civil justice system, trample on fundamental principles of federalism, and blatantly ignore the jurisdictional limitations placed on bankruptcy under Article I of the Constitution? *See* U.S. Const. art. 1, § 8 (granting Congress the power to "establish . . . uniform Laws on the subject of Bankruptcies throughout the United States") (the "Bankruptcy Clause"). Put most simply, the answer should emphatically be NO.

Drastically departing from Article I's foundational moorings, our panel majority concluded otherwise. As the majority sees it, although "a debtor's financial condition . . . may be relevant in a number of contexts" under the Bankruptcy Code, it is "irrelevant" for the purpose of assessing federal court subject-matter jurisdiction in a bankruptcy proceeding. *See Bestwall LLC v. Off. Comm. of Asbestos Claimants of Bestwall, LLC*, 148 F.4th 233, 236 (4th Cir. 2025). That is so, according to the majority, because "the Constitution grants Article III judicial power over all cases arising under the laws of the United States." *Id.* En banc rehearing was warranted to correct that erroneous and unconstitutional decision.

A.

1.

As I have heretofore explained, *see Bestwall LLC*, 148 F.4th at 246-58 (King J., dissenting), our distinguished Chief Justice recently emphasized that our understanding of the Constitution must "accord with history and faithfully reflect the understanding of the Founding Fathers." *See Kennedy v. Bremerton Sch. Dist.*, 597 U.S. 507, 535-36 (2022) (citation modified). Of relevance here, it is "history and tradition" — not merely "Congress's say-so" — that informs the appropriate scope of the Bankruptcy Clause, and therefore constrains Congress's authority to enact laws granting jurisdiction to the bankruptcy courts. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 424-26 (2021).

To discern those limits, the panel majority should have consulted the relevant language of the Constitution itself and, more specifically, the Bankruptcy Clause. *See*

Food & Drug Admin. v. All. for Hippocratic Med., 602 U.S. 367, 378 (2024) ("[W]e begin as always with the precise text of the Constitution."); *see also Altman v. City of High Point*, 330 F.3d 194, 200 (4th Cir. 2003) ("[O]ur inquiry begins with the text of the Constitution."). That is so because any faithful reading of the Bankruptcy Clause must be informed by the very nature of the Constitution — that is, its status as a "written instrument" with provisions that carry meaning rooted in the historical moment when they were adopted, as well as the legal and societal traditions that informed their drafting. *See South Carolina v. United States*, 199 U.S. 437, 448 (1905) ("The Constitution is a written instrument. As such, its meaning does not alter. That which it meant when adopted, it means now."). In so doing, our interpretive role is not to update or revise the Constitution to meet modern preferences, but to faithfully apply the meaning of its provisions at Ratification in November 1789. *See Lewis v. Casey*, 518 U.S. 343, 367 (1996) (Thomas, J., concurring) (cautioning against courts "infusing the constitutional fabric with our own political views").[2]

At the time of the Founding in 1789, the protections of bankruptcy were made available only to a debtor who was truly and actually bankrupt — that is, a financially distressed debtor unable or unwilling to pay its debts. *See, e.g.*, *Cont'l Ill. Nat'l Bank & Trust Co. v. Chi., Rock Island & Pac. Ry. Co.*, 294 U.S. 648, 670 (1935) (explaining that "the [Bankruptcy] act of 1841 and the later acts proceeded upon the assumption that [a

[2] Ratification of the Constitution by the necessary 12th State — that is, North Carolina — occurred at Fayetteville on November 23, 1789. By those proceedings, the Old North State's delegates voted 194-77 for Ratification.

debtor] might be honest but unfortunate"); *id.* at 670 (recognizing that "[the] primary purposes of these acts [were] to 'relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh'"); *see also Grogan v. Garner*, 498 U.S. 279, 286-87 (1991) (same). As James Madison explained, the Bankruptcy Clause responded to a need for uniformity in the laws governing insolvency and bankruptcy. *See* The Federalist No. 42, at 282 (James Madison) (Clinton Rossiter ed., 1961).

Critically, neither the inclusion of the Bankruptcy Clause, nor its delegation to Congress of "power . . . to establish uniform laws on the subject of bankruptcies throughout the United States," redefined bankruptcy itself. *See Int'l Shoe Co. v. Pinkus*, 278 U.S. 261, 265 (1929). The word "bankruptcy," as utilized in the Constitution, retained the meaning it had acquired through its English and colonial usage. Indeed, "those from whom the word was doubtless transferred into the constitution, treat it as exactly commensurate with insolvency." *See Kunzler v. Kohaus*, 5 Hill 317, 320 (N.Y. 1843).[3]

[3] Founding-era dictionaries reflecting the ordinary usage of legal and economic terms confirm that the concepts of "bankruptcy" and "bankrupt" were tightly bound to the condition of insolvency — that is, a debtor's inability to pay his debts. *See, e.g.*, William Perry, *The Royal Standard English Dictionary* 51 (1777) (defining a "bankrupt" as "one who cannot pay his debts"); *see also, e.g.*, Samuel Johnson, *Dictionary of the English Language* (1773) (defining "bankruptcy" as "[t]he state of a man broken, or bankrupt"); 1 Thomas Sheridan, *Dictionary of the English Language* (4th ed. 1797) (defining "bankrupt" and "bankruptcy" as "[t]he state of a man" "in debt beyond the power of payment"). These definitions plainly reflect the public understanding of bankruptcy as "the act of declaring oneself a bankrupt," or "[b]roken for debt, incapable of payment, insolvent." *See* John Ash, *New and Complete Dictionary of the English Language* (1775) (defining a "bankrupt" and "bankruptcy"); *see also D.C. v. Heller*, 554 U.S. 570, 605 (2008) (explaining that "the examination of a variety of legal and other sources to determine the public understanding of a legal text in [a] period . . . is a critical tool of constitutional interpretation").

This history reflects two key features: First, that bankruptcy primarily involved commercial actors, such as merchants or traders, and second, that it required financial failure or nonpayment. Remarkably, none of the relevant authorities define bankruptcy as a mechanism for strategic civil liability management by solvent entities, nor do they suggest that a party with the means to pay its lawful debts could be properly described as "bankrupt." And uniformity in the term's usage is particularly significant given the broader legal context of the day, as early bankruptcy legislation necessarily presumed a debtor's insolvency as a precondition for obtaining an award of bankruptcy relief.

The Founders, in using the term "Bankruptcies" in the Bankruptcy Clause, would have drawn upon that established understanding. After all, "[t]he Constitution was written to be understood by the voters; its words and phrases were used in their normal and ordinary as distinguished from technical meaning." *See United States v. Sprague*, 282 U.S. 716, 731 (1931). And that historical understanding should circumscribe our interpretation of the Bankruptcy Clause, along with the permissible scope of federal bankruptcy jurisdiction. *See, e.g., Ariz. State Legislature v. Ariz. Indep. Redistricting Comm'n*, 576 U.S. 787, 813-14 (2015) (using Founding-era dictionaries to ascertain original meaning).

Early American bankruptcy statutes likewise reinforced such an understanding. For example, the Bankruptcy Act of 1800 — the first bankruptcy law passed after Ratification — applied only to merchants and traders, and "was in many respects a copy of the English bankruptcy statute then in force." *See Katz*, 546 U.S. at 373. The Act of 1800 provided

no protection to debtors able to meet their obligations and, "like the English law, was conceived in the view that the bankrupt was dishonest." *See Cont'l Ill.*, 294 U.S. at 670.

Consistent with the Founding-era view of bankruptcy as a remedy for the honest but unfortunate debtor, Congress progressively extended voluntary bankruptcy to non-merchants and non-traders burdened by debt and in need of relief. *See Cont'l Ill.*, 294 U.S. at 670-71 (explaining that "the [Bankruptcy] act of 1841 and the later acts proceeded upon the assumption that [a debtor] might be honest but unfortunate"). To be sure, the "primary purposes of these acts [were] to 'relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh[.]'" *Id.* at 670. Notably, although the early American bankruptcy statutes were repealed and later replaced with broader legislation, the required and necessary constitutional baseline for the remedy of bankruptcy remained tied to insolvency, which is "consistent with the principles that underpin the Nation's [bankruptcy] tradition." *See United States v. Rahimi*, 602 U.S. 680, 681 (2024).

2.

With these Founding-era principles front and center, it is apparent that nothing in the Constitution permits Congress — or the federal courts — to authorize bankruptcy as a strategic weapon of the powerful, to be used to avoid accountability to the harmed. Instead, as history and tradition teach us, "Bankruptcies" under Article I of the Constitution are limited to the truly bankrupt, not those who merely pretend to be bankrupt.

Diverging from that principle, however, the panel majority — and now, our 8-6 en banc Court — has blessed the Georgia-Pacific effort to manufacture a sham Chapter 11

bankruptcy proceeding. Such a result is repugnant to our Country's history and tradition, neither of which support the unconstitutional extension of bankruptcy protections to solvent tort defendants who seek a strategic advantage over their creditors and victims.

To justify its rejection of our Country's controlling Founding-era history and tradition, the panel majority erroneously assumed that Congress's broad grant of jurisdiction under 28 U.S.C. § 1334 can override the Constitution's more limited delegation of power under the Bankruptcy Clause. But that is not permitted as a matter of constitutional design. To be sure, although § 1334 grants the federal courts jurisdiction over cases "under Title 11," *see* 28 U.S.C. § 1334(a), that "authority is not freewheeling," *see Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2551 (2025). Section 1334 does not — and cannot, because of the Bankruptcy Clause — independently determine what constitutes a "case" that Congress can authorize under Article I of the Constitution. Nor can that Code provision override the Constitution's limited delegation of power to Congress vis-à-vis the Bankruptcy Clause, which empowers Congress to *only* enact "uniform Laws on the subject of Bankruptcies." *See Bowles v. Russell*, 551 U.S. 205, 212 (2007) ("Within constitutional bounds, Congress decides what cases the federal courts have jurisdiction to consider.").

In these novel circumstances, because Bestwall is not a "bankrupt" — as envisioned by our Founding Fathers and enshrined in the Bankruptcy Clause — Bestwall cannot establish subject-matter jurisdiction to maintain a Chapter 11 bankruptcy in federal court. I have previously further explained why that is so. *See Bestwall LLC*, 148 F.4th at 246-258 (King, J., dissenting). Distilled to the core:

> By treating Bestwall's petition as a bankruptcy filing within its jurisdiction, the bankruptcy court — and now [the panel majority] — have given their imprimatur to a corporate strategy that mocks the structure of Article I, subverts our Nation's history and tradition of bankruptcy, and inflicts grievous harm on our fellow Americans. The majority's failure to confront the constitutional infirmity at the heart of this appeal does more than ratify the abuse of our bankruptcy system. It reduces the Constitution's careful allocation of legislative power relating to "Bankruptcies" to an afterthought. In doing so, it rewrites the Constitution to suit the needs of a profitable tortfeasor. And it strips tens of thousands of asbestos victims of their Seventh Amendment right to have their claims heard before a jury of their peers.

Id. at 257.

B.

That this exceptionally important appeal qualifies for en banc rehearing is further underscored by the human cost of the eight-year bankruptcy delay that has already occurred — caused *solely* by New Georgia-Pacific and Bestwall. Asbestos-related disease progresses swiftly, and also very painfully. The window for obtaining meaningful legal relief is, for many victims, heartbreakingly short. In the near-decade since Bestwall filed for bankruptcy in 2017, nearly 25,000 asbestos claimants have died without resolving their tort claims in the various State and federal courts against Georgia-Pacific and Bestwall. Approximately 10,000 asbestos claimants have died from mesothelioma, the asbestos-related disease nearly always fatal within months of diagnosis. Other claimants have seen their families saddled with staggering medical debts and left without recourse.

Perhaps most distressing, not even one of the estimated 56,000 active plaintiffs has been able to pursue his pending tort claim against New Georgia-Pacific or Bestwall in the State and federal courts, on account of the automatic stay favoring Bestwall and

preliminary injunction extending those protections to New Georgia-Pacific. Meanwhile, New Georgia-Pacific and Bestwall have secured the protections of Bestwall's Chapter 11 bankruptcy, all while New Georgia-Pacific is reaping substantial and stable profits.

III.

Over 40 years ago, a wise and able federal judge in Maryland alerted us to the dangers of ultra-wealthy corporations abusing and manipulating the Bankruptcy Code:

> This Court has watched with alarm as major corporations have filed for Chapter 11 reorganization or threatened to file Chapter 11 petitions to evade existing labor contracts, or to invoke the automatic stay provision to evade pending litigation. [T]he Court considers such practices to be a gross abuse of the bankruptcy proceedings. Chapter 11 [of the Bankruptcy Code] was designed to give those teetering on the verge of a fatal financial plummet an opportunity to reorganize on solid ground and try again, not to give profitable enterprises an opportunity to evade contractual or other liability. And the purpose of the automatic stay is to preserve a debtor's assets and permit an orderly, as opposed to chaotic, distribution or reorganization. The automatic stay was not intended to grant defendants a last-minute escape chute out of pending civil litigation.

See Furness v. Lilienfield, 35 B.R. 1006, 1009 (D. Md. 1983) (Young, J.).

Sadly, the disturbing behavior that Judge Young recognized occurs to this day, but at a more profound and troubling level. At the expense of thousands of dying asbestos claimants, fully-solvent and multi-billion-dollar corporations have the audacity — indeed, an incentive under our Court's dubious precedent — to delay and evade civil tort liability. And they do so by creating corporate alter-egos, which they plunder into sham Chapter 11 bankruptcies with impunity. Meanwhile, the orchestrating corporations reap enormous profits and preserve their assets. Such an obscene — and, under the proper reading of the

Bankruptcy Clause, unconstitutional — result is far from the fundamental proposition that "[b]ankruptcy offers individuals and businesses in financial distress a fresh start to reorganize, discharge their debts, and maximize the property available to creditors." *See Truck Ins. Co. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268, 272 (2024).

Pursuant to the foregoing, our en banc Court has blundered in declining to recognize that there is simply a lack of subject-matter jurisdiction for Bestwall to maintain its manufactured sham Chapter 11 bankruptcy. And it does so at the expense of thousands of plaintiffs that are seeking tort relief in the Nation's civil courts against the likes of New Georgia-Pacific and Bestwall. Because we should have convened as an en banc Court and recognized that Bestwall's manufactured sham Chapter 11 bankruptcy is subject to dismissal on jurisdictional grounds, I respectfully dissent.