Docket #0147 Date Filed: 03/10/2026

THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
Vanderbilt Minerals, LLC,[1]	Case No. 26-60110 (WAK)
Debtor.	

MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO DISMISS THE CHAPTER 11 CASE PURSUANT TO 11 U.S.C. § 1112(b)

[1] The Debtor is Vanderbilt Minerals, LLC (EIN 13-1432885). The Debtor's noticing address in this chapter 11 case is 33 Winfield Street, Norwalk, Connecticut 06855.

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The Official Committee of Unsecured Creditors (the "Committee") in the above-captioned chapter 11 case (the "Chapter 11 Case") of Vanderbilt Minerals, LLC (the "Debtor"), by and through its undersigned proposed counsel, submits this motion (the "Motion") seeking the entry of an order, in the form attached hereto as **Exhibit A**, dismissing this Chapter 11 Case pursuant to 11 U.S.C. § 1112(b). In support of this Motion, the Committee respectfully states as follows:

PRELIMINARY STATEMENT

1. This bankruptcy was filed as a litigation tactic. The purpose of this bankruptcy is not to maximize value for creditors or reorganize a going concern. Rather, the purpose of this bankruptcy is to deprive tort victims of access to the civil justice system and circumvent the Supreme Court's ruling in *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024) ("*Purdue*").

2. The Debtor does not need to package its assets with those of non-debtors to complete a sale. Nor does the Debtor need to settle estate claims to sell its assets. The Committee submits that the so-called special committee is not independent and did not conduct a good-faith investigation, and that the evidence will demonstrate this. This bankruptcy case is designed to transfer value from creditors to equity holders. This is not a valid purpose for bankruptcy. In fact, this is the opposite of how bankruptcy is supposed to work.

3. This case is part of an ongoing effort by tortfeasors to force upon plaintiffs a mass resolution of their asbestos claims—which belong in the civil justice system—in bankruptcy, instead. This case is best understood in the context of other bankruptcy cases that have come before it. The context of this history, when combined with the Debtor's filings, reveals the bad faith animating this case. This motion is broken down into four sections.

4. This case marks a new chapter in an ongoing effort to resolve asbestos liability through bankruptcy. This case is best understood in the context of other bankruptcy cases that

have come before it. The context of this history, when combined with the Debtor's filings, reveals the bad faith animating this case. This motion is broken down into four sections.

5. In the ***first*** section, the Committee discusses the nature of the tort liability that the ***non***-Debtor affiliates are trying to evade. In the ***second*** section, the Committee discusses the relevant legal background, including the three bankruptcy mechanisms non-debtor tortfeasors have historically used to shield themselves from litigation. In the ***third*** section, the Committee discusses how the Debtor's scheme operates and how the Debtor is attempting to settle the tort victims' claims against these non-debtor affiliates—*i.e.*, circumvent *Purdue*. In the ***fourth*** section, the Committee discusses why dismissal is proper under established case law, including cases that have addressed the very litigation tactic that is now before this Court.

BACKGROUND

I. THE TORT LIABILITY

6. The Debtor's predecessors operated talc mines contaminated with asbestos, including a talc mine in Gouverneur, New York. *See* Dkt. No. 3 (the "First Day Decl.") at ¶ 46.

7. As a result, individuals who were exposed to asbestos contracted fatal illnesses and died; and, because the latency period for asbestos-related diseases can be decades, many more will become sick and die in the future. For these victims—current and future—their right to access the civil justice system is critical to obtaining just compensation for their injuries.

8. Prior to this bankruptcy, victims exercised their jury trial rights and obtained such compensation through verdicts and settlements against the Debtor in the tort system. This bankruptcy, combined with years of intercompany asset and liability shifting, is designed to cut off these rights and minimize tort victim recoveries solely for the benefit of equity: a design fully at odds with the proper purposes for bankruptcy.

9. Companies like Vanderbilt have known for decades that their talc contained asbestos, yet they concealed this information and sought to avoid regulation. Notwithstanding these efforts, the link between Vanderbilt talc and asbestos-related diseases became known and resulted in successful litigation of personal injury claims. Vanderbilt ceased mining talc in 2008 due to a rise in talc-related litigation.

10. Around this time, the enterprise also began shifting assets and liabilities to minimize its exposure in this litigation. Before 2012, the Debtor's predecessor R.T. Vanderbilt Company, Inc. ("RTVC"), operated as a ***single***, ***unified*** entity.

11. In 2012, in response to increasing talc litigation and liability, RTVC underwent a restructuring ("2012 Restructuring"), which included separating the historical talc liabilities associated with the mining operations from the valuable chemicals business. First Day Decl. ¶ 39. The 2012 Restructuring also resulted in the creation of the Debtor's parent. *Id.*

12. After, and notwithstanding, the 2012 Restructuring, the Debtor and its non-Debtor affiliates continued to operate as a single, integrated unit, dependent on each other for corporate services and for selling and moving their products between themselves. *Id.* ¶¶ 39-40.

13. The Debtor relies on non-debtor affiliates for corporate services. The Debtor does not have an independent board. Ownership of all corporate entities has remained the same—*i.e.*, the Vanderbilt family. Business operations are intertwined, and insurance is shared.

14. Notwithstanding the 2012 Restructuring, the Debtor's affiliates continue to have talc-related liability. State law arms tort victims with the right to recover damages from the successors and alter egos for the damage they suffered. Successor liability[2] and alter ego and veil

[2] *See Robbins v. Physicians for Women's Health, LLC*, 90 A.3d 925 (Conn. 2014); *Alesco Preferred Funding VIII, Ltd. v. ACP RE, Ltd.*, 74 Misc. 3d 1230(A), 164 N.Y.S. 3d 808 (N.Y. Sup. Ct., N.Y. Cty. Apr. 11, 2022), *aff'd* 209 A.D.3d 558 (1st Dep't 2022); *Featherston v. Katchko & Sons Constr. Servs., Inc.*, 244 A.3d 621, 733 (Conn. App. Ct. 2020); *Getintent USA, Inc. v. Sileo, LLC*, No. 650980/2019,

piercing[3] theories of liability are remedies available to claimants who suffered personal injuries and have standing to tort claims. This bankruptcy exists because the corporate chicanery has not limited the enterprise's talc-related liability to the Debtor.

15. The goal of this bankruptcy is not to reorganize a going concern, save jobs, or maximize creditor recoveries, but the contrary. This bankruptcy seeks to prevent tort victims from asserting the claims and rights available to them under state law so that they cannot recover on account of the injuries that they have suffered from non-debtor affiliates.

II. THE LEGAL BACKGROUND

16. Tortfeasors have historically used (or attempted to use) three mechanisms to resolve tort liability in bankruptcy and prevent tort victims from seeking to recover from non-debtors.

2019 WL 4962549, at *3 (N.Y. Sup. Ct., N.Y. Cty. Oct. 8, 2019); *Columbia State Bank v. Invicta Law Group PLLC*, 402 P.3d 330, 332 (Wash. Ct. App. 2017); 19 C.J.S. CORPORATIONS § 901 (2023); *see also City of Syracuse v. Loomis Armored US, LLC*, 900 F. Supp. 2d 274, 290 (N.D.N.Y. 2012); *Automotive Indus. Pension Trust Fund v. Ali*, No. C–11–5216, 2012 WL 2911432, *8 (N.D. Cal. July 16, 2012); *Tindall v. H & S Homes, LLC*, No. 5:10–CV–044, 2012 WL 369286, *2 (M.D. Ga. Feb. 3, 2012); *In re Fairchild Aircraft Corp*., 184 B.R. 910, 920 (Bankr. W.D. Tex. 1995), *vacated on other grounds*, 220 B.R. 909 (Bankr. W.D. Tex. 1998).

[3] *Peacock v. Thomas*, 516 U.S. 349, 866 (1996); *Commonwealth by Shapiro v. Golden Gate Nat'l Senior Care, LLC*, 648 Pa. 604, 644 (Pa. 2018); *Comm'r of Env't Prot. v. State Five Indus. Park, Inc.*, 37 A.3d 724, 733 (Conn. 2012); *Providence Grp.. Inc. v. Holbrook*, No. 2022-CA-01279-MR, 2024 WL 1335534, at *6 (Ky. App. Ct. Mar. 29, 2024); *Wurtzebach v. Flooring Depot FTL, Inc*., 384 So. 3d 251, 255 (Fla. Dist. Ct. App. 2024); *Villnave Constr. Servs., Inc. v. Crossgate Mall Gen. Co. Newco, LLC*, 201 A.D.3d 1183, 1187-88 (N.Y. Sup. Ct. 2022); *A.L. Dougherty Real Estate Mgmt. Co., LLC v. Su Chin Tsai*, 98 N.E.3d 504, 515 (Ill. App. Ct. 2017); *Gallagher v. Persha*, 891 N.W.2d 505, 509 (Mich. Ct. App. 2016); *Secrest v. Gibbs*, 2015-Ohio-42 (Ohio App. Ct. 2015); *Kapur v. IMW EMR, LLC*, No. 20 CVS 5753, 2020 WL 7480541, at *13 (Super Ct. N.C. Dec. 18, 2020); *Paulus, Sokolowski & Sartor, LLC v. Darden*, No. A-4004-13T2, 2015 WL 6456124, at *6 (N.J. Super. Ct. Oct. 27, 2015); *Ferro Fabricators, Inc. v. 1807-1811 Park Ave. Dev. Corp.*, 127 A.D.3d 479, 480 (1st Dep't 2015); *Verni ex rel. Burstein v. Harry M. Stevens, Inc.*, 903 A.2d 475, 498 (N.J. Super. Ct. Aug. 3, 2006); *Phillips v. United Heritage Corp.,* 319 S.W.3d 156, 158 (Tex. App. 2010); *In re Texas Am. Exp., Inc.*, 190 S.W.3d 720, 725 (Tex. App. 2005); *Turner Murphy Co. v. Specialty Constructors*, 659 So. 2d 1242, 1245 (Fla. Dist. Ct. App. 1995); *see also ITP, Inc. v. OCI Co., Ltd*., 865 F. Supp. 2d 672, 684 (E.D. Pa. 2012); *Blair v. Infineon Techs. AG*, 720 F. Supp. 2d 462, 469 n.10 (D. Del. 2010); Brendan Faulkner, *Piercing the Corporate Veil in Connecticut*, 83 CONN. B.J. 251 (2009).

A. SECTION 524(G)

17. The first mechanism is section 524(g). Under section 524(g), a provision uniquely applicable to companies that face overwhelming current and future asbestos liability,[4] it is possible to shield non-debtors from asbestos claims—specifically, claims that fall within the scope of subsection (4)(A)(ii) of the statute.

18. The first mechanism is section 524(g). Under section 524(g), a provision uniquely applicable to asbestos bankruptcies, it is possible to shield non-debtors from asbestos claims—specifically, claims that fall within the scope of subsection (4)(A)(ii) of the statute.

19. To obtain section 524(g) relief, the debtor must be properly within chapter 11, and its plan of reorganization must enjoy the support of at least 75% of the affected claimants.[5] Defendants cannot unilaterally determine the amount they will allocate to their tort liability and then impose that allocation on victims.[6]

20. A section 524(g) injunction is supplemental to the debtor's discharge.[7] When a corporate debtor is liquidated and ceases to engage in business, it does not reorganize and is not eligible for a discharge.[8] This means, as the Court in *In re AIO US, Inc*. recognized, that debtors seeking to liquidate cannot confirm plans that include section 524(g) injunctions.[9]

21. Here, the Debtor is not seeking section 524(g) relief, and as explained below, the Debtor cannot confirm a plan that includes a section 524(g) injunction in any event. The Debtor lacks claimant support and is not seeking to reorganize.

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4 *See* H.R. Rep. No. 103-835, at 40–41 (1994), as reprinted in 1994 U.S.C.C.A.N. 3340.

5 *See* 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb).

6 *See In re Fed.-Mogul Global Inc.*, 684 F.3d 355, 361 (3d Cir. 2012).

7 *See* 11 U.S.C. § 524(g)(1)(A).

8 *See* 11 U.S.C. § 1141(d)(3); 11 U.S.C. § 727(a)(1).

9 *See In re AIO US, Inc*., --- B.R. ---, 2025 WL 2426380, at *32 (Bankr. D. Del. 2025).

B. THE ERSTWHILE *PURDUE* RELEASE

22. The second mechanism ***was*** the *Purdue* release. While this release is now called the "*Purdue* release," based on how it was featured in the first bankruptcy plan proposed by Purdue Pharma, it traces its genesis to the 1994 decision in *In re Master Mortgage Investment Fund, Inc*., 168 B.R. 930 (Bankr. W.D. Mo. 1994) ("*Master Mortgage*").

23. Like section 524(g), this release also required overwhelming claimant support, often thresholds higher than section 524(g)'s 75% requirement.[10] The Plan in *Purdue* enjoyed the support of 96% of claimants who voted. However, claimants who did not consent to or support the plan would be bound by the plan's injunction; the third-party release in the *Purdue* plan was nonconsensual. *See Purdue*, 603 U.S. at 206.

24. The Supreme Court held that such a release is unlawful, holding that the "bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants." *Id.* at 227. The second mechanism—*i.e.*, the *Purdue* release—is not an option for the Debtor.

C. THE ESTATE RELEASE

25. The third mechanism is the estate release, which is the cornerstone of the Debtor's bankruptcy strategy. This mechanism is counterintuitive and rests on a legal construct whereby the ***tort victims' claims*** against non-debtors (that the tort victims have the ***exclusive*** right to assert ***outside*** of and prior to bankruptcy) become property of the tortfeasors' estate (***inside*** of

[10] *See*, *e.g.*, *In re Millennium Lab Holdings II*, 945 F.3d 126, 132 (3d Cir. 2019) (93% acceptance); *In re Specialty Equip. Cos*., 3 F.3d 1043, 1045 (7th Cir. 1993) (95% acceptance); *In re A.H. Robins Co., Inc.*, 880 F.2d 694, 702 (4th Cir. 1989) (94% acceptance); *In re AOV Indus.*, 792 F.2d 1140, 1143 (D.C. Cir. 1986) (90% acceptance); *In re Am. Family Enters.*, 256 B.R. 377, 392 (D.N.J. 2000) (99% acceptance); *Master Mortg.*, 168 B.R. at 935 (95% acceptance).

bankruptcy) that the debtor/tortfeasor can settle without the tort victims' consent.

26. When a debtor/tortfeasor is permitted to settle the tort victims' claims without their consent, the result is a non-consensual third-party release procured outside of the plan confirmation context and without satisfying section 524(g)'s requirements. How could this be possible? The answer lies in the various types of claims that Courts have found to constitute "estate claims" or "estate causes of action," which have historically fit within one of three buckets.

1. Traditional Section 541(a) Claims

27. The first bucket includes claims that the debtor could have brought on its own behalf under ***state law*** prior to the commencement of its case ("Traditional § 541(a) Claims"). Section 541(a), by its terms, states that a debtor's estate is comprised of "all legal or equitable interests ***of the debtor*** in property as of the commencement of the case." 11 U.S.C. § 541(a) (emphasis added). Examples of Traditional § 541(a) Claims include lawsuits based on harm suffered by a debtor that the debtor possessed and/or commenced before the bankruptcy case.

2. Derivative Claims

28. The second bucket includes derivative claims. A derivative claim involves an injury suffered by a claimant that is derivative of an injury that the debtor suffered directly ("Derivative Claims").[11] The injury in a derivative lawsuit is an injury suffered by the corporation.

29. Stakeholders suffer an indirect or *derivative* injury because of the harm inflicted upon the corporation (*e.g.*, the loss in the value of their equity interest). But they do not suffer "any loss *in addition to* the loss sustained by the corporation," and the loss they suffer is not unique to them individually but is the same loss suffered by all stakeholders generally.[12]

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[11] *See Berman, Tr. for Estate of Michael S. Goldberg, LLC v. LaBonte*, 622 B.R. 503, 519 (D. Conn. 2020); *accord In re Wilton Armetale*, 968 F.3d 273, 283 (3d Cir. 2020); *Matter of Buccaneer Res., L.L.C.,* 912 F.3d 291, 293 (5th Cir. 2019); *In re SemCrude L.P.*, 796 F.3d 310, 319 (3d Cir. 2015).

[12] *SemCrude*, 796 F.3d at 316-319 (emphasis in original).

30. Derivative Claims, including "breach of fiduciary duty lawsuits," belong "to the debtor outside of bankruptcy, but are largely brought derivatively because the debtor will not sue its own directors/parent/sponsor" to recover damages based on an injury suffered by the debtors.[13]

31. Outside of bankruptcy, if a Derivative Claim results in a recovery, that recovery flows to all shareholders based on their respective ownership interests in the company, mirroring the relative harm they suffered due to the injury to the corporation. Likewise, in bankruptcy, if a Derivative Claim results in recovery by the estate, that recovery flows to all creditors based on the value of their respective debt holdings in the debtor.

3. Avoidance Actions

32. The third bucket includes avoidance actions. An avoidance action is an action authorized by statute to avoid a transfer or an obligation for the estate's benefit ("Avoidance Actions"). Avoidance Actions do not make the defendant liable for all claims asserted against the debtor. Rather, the liability (or damages) for an avoidance action is generally limited to the value of the property (or funds) that was transferred pre-filing.[14]

33. The Code—namely, sections 544, 547, and 548—gives a debtor the ability to assert fraudulent transfer and preference claims. During a bankruptcy proceeding, if a prepetition transfer or obligation is to be avoided, the action must be maintained by, or on behalf of, the debtor's estate.[15] If a transfer is avoided and property is returned to the estate, that property can be distributed to creditors in accordance with the Code's priority scheme.

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[13] *See In re Kidde-Fenwal, Inc*., Case No. 23-10638 (LSS), 2025 WL 1693173, at *fn. 20 (Bankr. D. Del. June 16, 2025).

[14] *See* 11 U.S.C. § 550(a).

[15] *See In re Cybergenics Corp*., 226 F.3d 237, 243-45 (3d Cir. 2000). If the debtor fails to pursue a valid fraudulent transfer claim, a committee can seek standing to do so. *See In re Commodore Int'l Ltd*., 262 F.3d 96, 99 (2d Cir. 2001); *In re STN Enters*., 779 F.2d 901, 904 (2d Cir. 1985); *accord Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 569 (3d Cir. 2003).

4. *Emoral* Claims

34. The fourth bucket includes what are called *Emoral* claims ("*Emoral* Claims"), based on a Third Circuit case that is discussed below.

35. Emoral Claims are **not** Traditional § 541(a) Claims (because the debtor could **not** have asserted the claim on its own behalf under state law prior to the bankruptcy), are **not** Derivative Claims (because they do **not** involve an injury suffered by the debtor), and are **not** Avoidance Actions (because they do **not** seek to avoid any transfers or obligations).

36. *Emoral* Claims are based on a controversial rule that treats tort victims' claims (based on injuries that the tort victims suffered) against non-debtors based on the doctrines of alter ego, veil piercing, and successor liability as "estate claims." Under this rule, tort claims belonging exclusively to tort victims ***outside*** of bankruptcy become, upon the filing of the bankruptcy case, estate property ***inside*** bankruptcy.

37. The ruling in *In re Emoral, Inc*., 740 F.3d 875 (3d Cir. 2014), which provides the blueprint for the Debtor's strategy, shows how the Debtor seeks to use bankruptcy to assert control over tort claims asserted against non-Debtor affiliates.

38. In *Emoral*, certain individuals, called the "Diacetyl Plaintiffs," were creditors of Emoral (the debtor), having sued Emoral in state court asserting claims for personal injury and product liability based on their exposure to "diacetyl," a chemical manufactured by Emoral. *Id.* at 877. Diacetyl is a food flavoring agent, often used in artificial butter flavorings

39. Diacetyl has been identified as a cause of bronchiolitis obliterans, a serious and often irreversible lung disease. Diacetyl lawsuits, like talc lawsuits, can include claims for medical expenses, lost wages, pain and suffering, emotional distress, and wrongful death.

40. Pre-bankruptcy, a company named Aaroma Holdings LLC ("Aaroma") purchased certain of Emoral's assets. The asset purchase agreement for this sale "specifically provided that

Aaroma was not assuming Emoral's liabilities related to 'the Diacetyl Litigation.'" *Id.* Notwithstanding, the Diacetyl Plaintiffs sought to recover from Aaroma on account of their injuries under the doctrine of successor liability.

41. Post-sale, Emoral filed for bankruptcy, and a chapter 7 trustee brought a motion to settle disagreements between Emoral and Aaroma, which he settled for $500,000 and a mutual release. *Id.* The Diacetyl Plaintiffs objected to the extent that the trustee's release might bar personal injury claims against Aaroma under the doctrine of successor liability. *Id.*

42. In response, the order approving the settlement provided that "[n]othing contained in this Order or in the Aaroma Settlement Agreement will operate as a release of, or bar to the prosecution of any claims held by any person which do not constitute Estate's Released Claims as defined in the Aaroma Settlement Agreement." *Id.* The chapter 7 trustee also confirmed at the hearing to approve the settlement that the estate release did not include the Diacetyl Plaintiffs' claims against Aaroma asserted under the doctrine of successor liability. *Id.*

43. Notwithstanding, post-settlement, Aaroma relied on the trustee's release as a defense to the Diacetyl Plaintiffs' claims (based on the doctrine of successor liability) pending against it in the Superior Court of New Jersey.

44. Under New Jersey law, a purchaser (like Aaroma) that acquires substantially all the manufacturing assets of a company (like Emoral) and undertakes similar manufacturing operations post-sale can be held liable for personal injuries caused by the seller's products.[16] Aaroma's decision to go forward with the sale pre-bankruptcy placed it at risk of being held liable for the tort claims against Emoral.

[16] *See*, *e.g.*, *Lefever v. K.P. Hovnanian Enters., Inc.*, 160 N.J. 307, 310 (1999); *Bussell v. DeWalt Products Corp.*, 259 N.J. Super. 499, 514 (App. Div. 1992).

45. Consistent with its approval of the settlement, the Bankruptcy Court held that the settlement did not release Aaroma from these claims. *Emoral*, 740 F.3d at 878. The Bankruptcy Court found that Diacetyl Plaintiffs' claims against Aaroma could not be considered estate claims settled by the trustee because the underlying injury alleged was personal harm to the individual plaintiffs. *Id.* Emoral, as a corporation, did not suffer from shortness of breath, coughing, or reduced lung capacity due to exposure to diacetyl.

46. The Third Circuit, however, reversed and held that the Diacetyl Plaintiffs' causes of action against Aaroma based on the doctrine of successor liability fell within the definition of the "Estate's Released Claims" within the meaning of the settlement agreement between the trustee and Aaroma. *Id.* at 882. Even though the term "Estate's Released Claims" was **not** understood ***by the Bankruptcy Court*** or the trustee to include the plaintiffs' tort claims against Aaroma when the Court approved the settlement, the Court's order was interpreted ***after the fact*** in this way.

47. The Third Circuit found that the "factual allegations that would establish" that the Diacetyl Plaintiffs could recover from Aaroma based on the doctrine of successor liability were not "unique to them as compared to other creditors." *Id.* at 880.

48. The Third Circuit found that this meant that "the Diacetyl Plaintiffs' cause[s] of action against Aaroma [are] 'general' rather than 'individualized'" and, as general claims, were property of Emoral's estate. *Id.* In its analysis, the theory of liability—*i.e.*, whether demonstrating facts that trigger a doctrine's application means that the non-debtor defendant would succeed to all the debtor's liabilities—was paramount. *Id.*

49. The Third Circuit further found that it would "promote equity and avoid unfairness" for the trustee (*i.e.*, a single plaintiff) to pursue a successor (like Aaroma) and maintain an estate claim for damages equal to the debtor's aggregate liability. *Id.* at 881.

50. However, the Third Circuit's determination that the plaintiffs' claims against Aaroma were estate claims did **not** promote equity or fairness in *Emoral*. Rather, it meant that tort victims who "suffered serious personal injuries resulting from exposure to a harmful chemical" manufactured by Emoral were enjoined from asserting personal injury and wrongful death claims against Aaroma under the doctrine of "successor liability" due to a settlement that purported to release Aaroma from any estate cause of action and did not, on its face, purport to release the plaintiffs' tort claims *or even reflect the value of the plaintiffs' tort claims*. *Id.* at 877, 882.

51. The Bankruptcy Court's order approving the settlement (as interpreted by the Third Circuit) left the individual tort victims with no "recourse" whatsoever against Aaroma and *abrogated the right to trial by jury* that such claimants held under applicable non-bankruptcy law regarding their personal injury claims against a non-debtor entity. *Id.* at 882. Tort victims could not appear in court and seek just compensation for their injuries from a defendant that did not file for bankruptcy or make its non-exempt assets available to pay its creditors.

III. FACTUAL BACKGROUND

52. The Debtor seeks to settle all estate claims against its affiliates, including *Emoral* Claims, and obtain a *Purdue-type* release (*i.e.*, a "*Purdue* End Around"). The Debtor's goal is to secure a settlement that protects its non-Debtor affiliates from the tort victims' claims so that the tort victims will have no recourse and no ability to recover on account of their injuries.

53. The Debtor seeks to achieve this result by implementing what is now called the "*Purdue* End Around" strategy. The *Purdue* End Around involves three steps.

A. STEP ONE OF THE *PURDUE* END AROUND STRATEGY

54. As part of the first step, the tortfeasor—*i.e.*, a company (like the Debtor) that caused grave injuries—engages in transactions designed to divert value away from tort victims.

55. Assets are transferred to existing or newly formed entities. This can occur as part of a single transaction or a series of transactions. The net impact is the same: the tortfeasor becomes insolvent and unable to pay tort victims.

56. Consistent with the *Purdue* End Around strategy, the Debtor—*i.e.*, a company that caused grave injuries—engaged in transactions designed to divert value away from tort victims.

57. Public records show that in December 2006, seven entities merged into the debtor's predecessor RTVC. The seven entities that merged into RTVC included: (i) Gouvernuer Talc Company, Inc, (ii) Vanderbilt Minerals Corporation, which was originally formed as "Western Talc Company," and (iii) The Vanderbilt Chemical Corporation.

58. Thus, in 2006, the liability of these entities (including any talc liability accrued from talc operations that began in 1947) ***was consolidated at the debtor predecessor RTVC***. This presumably made RTVC the successor in interest to all value once held by RTVC. Multiple Vanderbilt family members sat at the helm of RTVC in the years leading up to this time.

59. Six years later, in 2012, four new entities were created: Vanderbilt Minerals (the sole debtor in this chapter 11 case), R.T. Vanderbilt Holdings (the non-Debtor parent), Vanderbilt Chemicals, and Vanderbilt Global Services.

60. As part of the 2012 Restructuring, effective January 1, 2013, RTVC was merged into the Debtor, becoming the Debtor's predecessor-in-interest. Upon information and belief, significant assets that belonged to RTVC were transferred to newly formed affiliates as part of this restructuring, leaving the Debtor significantly undercapitalized given its asbestos liability.

61. Following the 2012 Restructuring, multiple Vanderbilt family members sat at the helm of R.T. Vanderbilt Holdings ("Holdings"), where they appear to have taken a new post from which to coordinate and control the activity of the newly formed entities.

62. Following the 2012 Restructuring, the entities continued to rely on one another through a web of intercompany activities, which are currently "supported" by separate intercompany agreements, which undermine the Debtor's independence.

63. Holdings provides "management, consulting and advisory services, including in connection with strategy planning and [the Debtor]'s ongoing business operations in the ordinary course" under a Management Services Agreement between the Debtor and Holdings. Other intercompany agreements raise questions about the arm's-length nature of the transactions.

64. Collectively, the Debtor's pre-2012 history and post-2012 intercompany activity suggest that the Vanderbilts continue to control the Debtor and its affiliates, coordinating all the entities as a single unit, potentially making the various affiliates multiple alter egos of historical businesses (all under common ownership). The purpose (or consequence) of these transactions in a *Purdue* End Around is to trigger doctrines such as successor liability, alter ego, and veil-piercing.

B. STEP TWO OF THE *PURDUE* END AROUND STRATEGY

65. The second step involves the tortfeasor filing for bankruptcy. The parent company, which is often the entity that orchestrated the asset-stripping transactions, directs the appointment of a chief restructuring officer and a special committee. The tortfeasor and certain of its affiliates will then file for bankruptcy. Critically, the insiders and affiliates to which substantial value was diverted in the lead-up to bankruptcy do not file for bankruptcy themselves.

66. Instead, these entities remain outside of the bankruptcy case but nonetheless exert significant influence. This influence can be overt—*e.g.*, insider DIP loans and bidding procedures that impose case milestones—or subtle—*e.g.*, directing the debtor to take actions that conveniently benefit insiders at the tort victims' detriment.

67. Consistent with the *Purdue* End Around strategy, the Debtor filed for bankruptcy on February 16, 2026. ***The Debtor spent at least nine months preparing for this bankruptcy***. In

May 2025, a Chief Restructuring Officer was appointed. And, on September 15, 2025, the Debtor's Board of Managers adopted resolutions appointing Mr. Ben Pickering as the sole member of the so-called "Independent Special Committee." *See* Dkt. No. 3 at ¶ 42.

68. Mr. Pickering, of course, is not independent. Rather, the Committee submits that the evidence will demonstrate that he was tasked with performing a sham and incomplete investigation and reaching a preordained conclusion that all the Debtor's estate claims—*i.e.*, Traditional § 541(a) Claims, Derivative Claims, Avoidance Actions, and *Emoral* Claims, could be settled for an amount acceptable to the Debtor's insiders and affiliates.

C. STEP THREE OF THE *PURDUE* END AROUND STRATEGY

69. The third step of the *Purdue* End Around requires Court assistance. Specifically, the tortfeasor will ask the Bankruptcy Court to authorize it to settle and release the tort victims' claims (based on injuries suffered by the tort victims) against non-debtor affiliates.

70. Step one and step two, as described above, are not, *per se*, obstacles for tort claimants to recover on account of their injuries. State law provides tort claimants with various legal remedies triggered by abuses of the corporate form. State law alter ego or veil-piercing doctrines give claimants the right to hold a parent liable for its subsidiary's debts when the parent engages in asset-stripping maneuvers. *See supra* fn. 3. Likewise, state law successor liability doctrines give claimants the right to hold a successor liable for its predecessor's debts when certain conditions are met. *See supra* fn. 2. These doctrines are designed to punish (and not reward) parties that effectively engage in fraud to deprive tort victims of fair compensation.

71. The "*Purdue* End Around" attempts to flip these legal doctrines on their head. In a "*Purdue* End Around," the tortfeasor (that is now a debtor in bankruptcy) asks the Bankruptcy Court to rule that the *tort victims'* claims, to the extent asserted against non-debtors under these

state law doctrines, are "estate claims" that the debtor/tortfeasor can release without the affected claimants' consent. When sanctioned by a Court, as *Emoral* shows, the outcome is devastating.

72. The tort victims' claims, to the extent asserted against the debtor in bankruptcy, have become worthless. By design, the transactions that preceded the filing leave the debtor insolvent. The tort victims' claims, to the extent asserted against the non-debtor insiders and affiliates under state law alter ego, veil-piercing, and successor liability doctrines, are treated as estate property that can be settled by the ***very*** insiders and affiliates that fleeced the company before the bankruptcy case.

73. The tort claimants are deprived of their rights under state law to recover damages from non-debtors and their right to a trial by jury. The doors of the civil justice system are shut.

74. In sum, state law doctrines that *protect* tort victims outside of bankruptcy by penalizing parties that engage in asset stripping transactions and other abuses of the corporate form function as a tool to *harm* tort victims in bankruptcy by giving tortfeasors and their owners the ability to assert control over and extinguish such victims' rights without their consent.

75. This mechanism seeks the exact same result as in *Purdue*—the effective abrogation of tort victims' right to access the civil justice system to seek compensation from non-debtors without their consent—but without any vote on a plan or any showing of claimant support.

76. Consistent with this strategy, the Debtor seeks (on an expedited basis) this Court's approval of a settlement of the *Emoral* Claims. The Debtor's version of the *Purdue* End Around is among the most aggressive seen to date, given its use of DIP financing and a proposed sale transaction to create case controls and a false sense of urgency. The Debtor seeks to implement step three of the *Purdue* End Around through three devices within its bankruptcy case.

1. The Settlement Motion

77. The first device is the Rule 9019 settlement supported by Mr. Pickering, based on his sham and incomplete investigation. *See* Dkt. No. 22 (the "Settlement Motion").

78. Section 5.1 of the Settlement Agreement makes it clear that the proposed settlement and release are intended to include Traditional § 541(a) Claims, Derivative Claims, Avoidance Actions, and *Emoral* Claims. *See* Dkt. No. 22-2 at § 5.1.

79. Among the claims that the Debtor is seeking to settle are claims "under Chapter 5 of the Bankruptcy Code" and claims "based on a theory of veil piercing, alter-ego, vicarious liability, predecessor liability, successor liability, mere continuation, domination and control, mere instrumentality, inadequate capitalization, single business enterprise or common enterprise." *Id.*

80. If approved by this Court, this Court's order could have the same impact as the original chapter 11 plan in *Purdue* (except without the overwhelming *Purdue* creditor vote supporting the approximately $6 billion settlement with the Sackler family). As the Committee will show, even if the *Purdue* End Around is a valid means to circumvent the Supreme Court's ruling in *Purdue*, the proposed settlement falls well below the range of reasonableness when the tort victims' claims are taken into account.

81. True to form, the Settlement Motion does not disclose the true reality of the proposed settlement. The Debtor is rushing to obtain Court approval of a settlement before any real investigation or discovery takes place.

2. The Sale Motion

82. The second device is the sale motion. *See* Dkt. No. 16 (the "Sale Motion"). This motion, also filed on February 16, 2026, is intended to create a ***false*** sense of urgency.

83. The Sale Motion is designed to appeal to the Bankruptcy Court's instincts to protect jobs and preserve a going concern. Cases involving pure sale transactions often move quickly, particularly when a debtor's business could suffer while in bankruptcy.

84. But the need to complete a sale transaction in the near term is not real. Rather, it is a tool the Debtor will try to use to oppose the Committee's discovery efforts and to obtain Court approval of the settlement before it is appropriately scrutinized.

3. The DIP Motion

85. The third device is the DIP Motion. *See* Dkt. No. 17 (the "DIP Motion"). The DIP Motion is typically the device through which lenders impose case controls. Specifically, funds are advanced in accordance with a budget that directs the Debtor to take certain actions.

86. In recent cases, the mechanism—whether styled as a DIP Loan or a Funding Agreement—used to fund the case has been used to punish estate professionals that act in accordance with their fiduciary obligations. Here, the DIP Loan exists to ensure that limited funds are available to pay estate professionals—*i.e.*, if the Committee seeks dismissal, its professionals will not be paid. The Debtor's "three-legged stool" is designed to deprive tort victims of their right to appear, to be heard, and to seek just compensation for their injuries from non-debtors.

87. The Committee will object to the settlement. The Committee will argue that the Bankruptcy Code violates the Fifth and Seventh Amendments if it means that tort victims' claims become estate property, without notice and compensation, on the petition date. Alternatively, the Committee will argue, *inter alia*, that the settlement cannot be approved absent compliance with heightened scrutiny, and that the Debtor cannot satisfy this burden.

88. But this Court need not go down this path and indulge the Debtor's efforts to use this bankruptcy as a litigation tactic. Filing for bankruptcy to take control over claims that can be

asserted by plaintiffs against non-debtor defendants in the tort system is one of the classic examples of bad faith. This case can and should end right now with dismissal.

JURISDICTION

89. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for the relief requested herein is section 1112(b) of the Bankruptcy Code.

RELIEF REQUESTED

90. By this Motion, the Committee seeks an order dismissing the Chapter 11 Case pursuant to section 1112(b) of the Bankruptcy Code.

ARGUMENT

91. The Court should dismiss this case for cause. Section 1112(b)(1) provides that a chapter 11 case may be dismissed "for cause":

> Except as provided in paragraph (2) and subsection (c), on 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 a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1). The Code does not define "cause," but provides a non-exhaustive enumerated list of examples.[17] Here, at least two reasons establish "cause" that requires dismissal: (I) the Debtor filed this case as a litigation tactic to release claims being pursued by tort victims

[17] 11 U.S.C. § 1112(b)(4); *see In re C-TC 9th Ave. P'ship*, 113 F.3d 1304, 1311 (2d Cir. 1997) ("It is important to note that [§ 1112(b)(4)'s] list is illustrative, not exhaustive."); *In re Ghatanfard*, 666 B.R. 14, 23 (Bankr. S.D.N.Y. 2024) ("Section 1112(b)(4) of the Bankruptcy Code provides a number of examples of 'cause' but that list is not exhaustive and courts are free to consider other factors.").

against non-debtors in the tort system; and (II) the Debtor's inability to confirm a plan within a reasonable time (or ever).

I. FILING A CHAPTER 11 CASE AS A LITIGATION TACTIC IS CAUSE FOR DISMISSAL FOR LACK OF GOOD FAITH

92. The Debtor's prosecution of this case for the benefit of its affiliates at the expense of its tort victim claimants is a litigation tactic that constitutes a bad faith use of the bankruptcy system. "[L]ack of good faith constitutes proper cause to dismiss a Chapter 11 petition."[18] Courts "will be able to consider other factors as they arise, and to use [their] equitable powers to reach an appropriate result in individual cases."[19]

93. A petition filed in bad faith "is an abuse of judicial process or of the jurisdiction of the bankruptcy court."[20] Courts inquiring into bad faith may "consider any factors which evidence an 'intent to abuse the judicial process and the purposes of the reorganization provisions[.]'"[21] Where, as here, "the primary purpose of the filing of a Chapter 11 case is as a litigation tactic, the petition may be dismissed for lack of good faith."[22]

94. Courts within the Second Circuit have dismissed bankruptcies as bad faith filings where a debtor files for bankruptcy on the eve of trial or shortly following a judgment.[23] That is

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[18] *Fraternal Composite Servs., Inc. v. Karczewski*, 315 B.R. 253, 256 (N.D.N.Y. 2004); *see also In re Kaplan Breslaw Ash, LLC*, 264 B.R. 309, 334 (Bankr. S.D.N.Y. 2001) ("Cause, for either dismissal or relief from the stay, may be found based on unenumerated factors, including 'bad faith[.]'").

[19] *In re C-TC 9th Ave. P'ship*, 113 F.3d at 1311 n.5 (internal quotation omitted).

[20] *In re Kingston Square Assocs.*, 214 B.R. 713, 724 (Bankr. S.D.N.Y. 1997).

[21] *Clear Blue Water, LLC v. Oyster Bay Mgmt. Co., LLC*, 476 B.R. 60, 71 (E.D.N.Y. 2012) (quoting *In re Island Helicopters, Inc.*, 211 B.R. 453, 462 (Bankr. E.D.N.Y. 1997)).

[22] *In re C-TC 9th Avenue P'ship*, 193 B.R. 650, 654 (Bankr. N.D.N.Y. 1995), *aff'd*, 113 F.3d 1304; *see also In re HBA East, Inc*., 87 B.R. 248, 258-263 (Bankr. E.D.N.Y. 1988); *accord In re 15375 Mem'l Corp*., 589 F.3d 605,618 (3d Cir. 2009); *In re SGL Carbon Corp.*, 200 F.3d 154, 169 (3d Cir. 1999); *In re Antelope Techs., Inc.*, 431 F. App'x. 272, 275 (5th Cir. June 24, 2011).

[23] *See, e.g.*, *In re Grasso*, No. 25-10548 (PGR), 2025 WL 2827765, at *1, 6 (Bankr. N.D.N.Y. Oct. 3, 2025) (dismissing a Chapter 11 case upon finding that it had been filed to avoid paying an appellate bond after a judgment and therefore was an improper litigation tactic); *In re Encore Prop. Mgmt. of W. New York, LLC*, 585 B.R. 22, 26, 30-31 (Bankr. W.D.N.Y. 2018) (dismissing a Chapter 11 case for bad

the case here.[24] Additionally, aside from the administrative burn rate, which is the result of filing for bankruptcy,[25] there is little evidence that the Debtor is in financial distress.

95. Prior to bankruptcy, the Debtor had no secured debt (*see* First Day Decl. ¶ 58), and there is no evidence that the talc liabilities, while increasing, were overwhelming the Debtor's ability to operate. Courts have found such a lack of financial distress relevant to whether a bankruptcy is a litigation tactic.[26]

96. But the Debtor's litigation tactic here is even ***worse*** than those this Court has uncovered and dismissed, as it extends far beyond a debtor avoiding a day of reckoning in state court. Instead, the Debtor and its affiliates structured this bankruptcy to cut off the talc claimants' rights against non-Debtor entities. The Court need not turn a blind eye to this abuse, as it is empowered under its broad equitable powers to assess the totality of the circumstances to determine whether a bankruptcy is a bad-faith filing meant to harm creditors.[27]

97. When faced with similar bad actors, courts in the Third and Fifth Circuits have dismissed those bankruptcies. These Courts, have, consistent with Second Circuit precedent that

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faith where it had been filed after an adverse judgment of foreclosure); *see also In re HBA E., Inc.*, 87 B.R. 248, 260 (Bankr. E.D.N.Y. 1988) (dismissing a Chapter 11 petition as a bad faith litigation tactic where it had been filed for the primary purpose of avoiding having to appear in a lawsuit even though there was not yet a judgment or imminent trial).

[24] *See* Hr'g Tr. Feb. 17, 2026 at41: 10-15 (Busch, L.) ("[L]ast week we did have . . . [a] living mesothelioma client who was on trial. This debtor came into the courtroom and there was a settlement that happened last week. We had two other cases that [were] supposed to go to trial on Monday [Feb. 22, 2026]).

[25] *See* Approved Budget (Dkt. No. 100-1) at 2.

[26] *See Grasso*, 2025 WL 2827765, at *5 (Bankr. N.D.N.Y. Oct. 3, 2025) (noting the debtor's lack of financial distress as a factor in ordering dismissal).

[27] *In re Armstrong*, 409 B.R. 629, 634 (Bankr. E.D.N.Y. 2009); *see also In re JJ Arch LLC.*, 663 B.R. 258, 275 (Bankr. S.D.N.Y. 2024) ("The Court [must] be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases . . . [and] [i]t is clear that Congress amended section 1112(b) to make it broader, more strict as to debtors, and more encompassing.") (quoting *In re Ameribuild Const. Mgmt., Inc.*, 399 B.R. 129, 131 n.3 (Bankr. S.D.N.Y. 2009)).

also supports the dismissal of chapter 11 filed as a litigation tactic, had little difficulty rejecting debtors' attempt to manufacture a bankruptcy for the benefit of non-debtors.

A. *15375 MEMORIAL CORP.*

98. In *15375 Memorial*, the Third Circuit upheld the District Court's ruling that a Bankruptcy Court erred when it failed to dismiss two debtors' bankruptcies as bad faith filings where the bankruptcies were filed as a litigation tactic to protect their parent corporation. 589 F.3d at 609, 612. The debtors, two dormant companies, were revived and filed for bankruptcy to assert control and ownership over tort claims asserted against their parent. *Id.* at 613.

99. In bankruptcy, the debtors argued that any tort claims asserted against their affiliates based on the "alter ego" doctrine were "property of their estates" and could no longer be asserted by the plaintiffs who suffered injury. *Id*. at 614. The plaintiffs, like the Committee here, moved to dismiss the bankruptcy cases. *Id.* at 616. The debtors contended that they filed for bankruptcy because "they were concerned about their ongoing and pending litigations" and they "feared alter ego liability for" their non-debtor parent and affiliates. *Id.*

100. Days after the filings, the debtors accused the plaintiffs of "violating the automatic stay." *Id.* at 614. The debtors "insisted that any alter ego claim against" their affiliates "was property of their estates" and that the prosecution of such claims by the plaintiffs constituted a section 362(a)(3) violation. *Id.* The debtors were not trying to avail themselves of the automatic stay's protection so much as they were trying to use the stay to protect non-debtor affiliates.

101. But the Bankruptcy Court did not see it this way and denied the plaintiffs' motion to dismiss, a decision that both the District Court and the Third Circuit found to constitute an "abuse of discretion." *Id.* at 618. The Bankruptcy Court's ruling set the stage for the debtors (as controlled by their parent) to negotiate a settlement with their parent of the estate claims (as defined

to include the plaintiffs' claims to recover from the parent based on the alter ego doctrine), and then use that settlement to bar the plaintiffs from continuing to seek a recovery from the parent.

102. The Third Circuit found that the debtors' decision-maker "lacked an incentive to vigorously negotiate" on the debtors' behalf against the defendants/insiders. *Id*. at 624. The plaintiffs' claims against the parent (based on the alter ego doctrine) had more value in the hands of the plaintiffs (who were incentivized to maximize their own recoveries) than in the hands of the debtors, which were controlled by the ***very defendants*** that were trying to use the bankruptcy cases to minimize their own tort liability. *Id*.

103. The Third Circuit found that if the debtors and their affiliates "had their way," and were permitted to treat and settle the plaintiffs' claims against the parent as estate claims, then the plaintiffs "would be left without any opportunity to litigate [their] alter ego claims" against the non-debtor affiliates/insiders and, "conveniently, for the [affiliates/insiders]," the debtors "would not bring the claims because they do not believe the claims have value." *Id*. at 626.

104. The Third Circuit faulted the Bankruptcy Court for failing to consider the fact that the debtors were "*primarily concerned*" with protecting their affiliates and insiders and "*not the [d]ebtors]*." *Id*. at 624 (emphasis in original). The Third Circuit held that the debtors' petitions "were filed primarily as a litigation tactic" so that its affiliates and insiders could "avoid liability" in civil litigation and, therefore, did not serve "a valid bankruptcy purpose" by preserving a going concern or maximizing the value of the debtors' estates. *Id*. at 619.

B. ***ANTELOPE TECHNOLOGIES***

105. The ruling in *15375 Memorial* accords with Fifth Circuit case law. In *Antelope*, a group of minority shareholders filed a derivative action against the debtor's controlling shareholders, the CEO, and other insiders, alleging violations of the Lanham Act, RICO, and the

conversion of corporate assets. 431 F. App'x 272. Two years into the litigation, the defendants attempted to use bankruptcy to effectuate a release of their own liability.

106. During the lawsuit, "lawyers" advised the debtor's CEO that the "derivative claims" would be treated as "assets owned" by the debtor, Antelope, if it filed for bankruptcy.[28] Then, in bankruptcy, Antelope (as controlled by the litigation targets) could negotiate a settlement with the defendants/insiders of the estate's claims (including the derivative lawsuit) and use that settlement to bar the minority shareholders from continuing their litigation.

107. After filing for bankruptcy, Antelope, acting at the defendants' direction and control, proposed a plan that conveniently released the derivative claims. *Antelope*, 431 Fed. App'x at 273. Antelope then convinced the Bankruptcy Court to confirm this plan over the objections of the affected stakeholders and their demand for dismissal. *Id.*

108. On appeal, the District Court "vacated the [confirmation] order" and held that the chapter 11 petition was filed as a litigation tactic—*i.e.*, a scheme by litigation defendants to gain control over the claims asserted against them—and, therefore, was not "filed in good faith." *Id.*

109. On remand, the Bankruptcy Court dismissed the case as not having been "filed in good faith" based, *inter alia*, on the "terms of the proposed plan," which provided the litigation targets with releases. *Id.* The Court went so far as to describe the scheme to control the litigation and release the defendants as "illegal" and "unethical." *Antelope*, 2010 WL 2901017, at *5.

C. THE DEBTOR'S BAD FAITH

110. This case is also an egregious abuse of bankruptcy. The Debtor and its affiliates are attempting to implement the same scheme that the Courts rejected in *15375 Memorial* and *Antelope*. This case was not meant to fulfill the fundamental purposes of bankruptcy. Bankruptcy

[28] *In re Antelope Techs., Inc.*, No. 07-31159-H3-11, 2010 WL 2901017, at *9 (S.D. Tex. July 21, 2010).

has "twin objectives[:] 'preserving going concerns and maximizing property available to satisfy creditors.'"[29] A debtor has a fiduciary duty that imposes "a duty to maximize a fair and equitable distribution among all creditors," and it may not provide benefits to insiders at the expense of those creditors.[30] Instead of fulfilling these duties, this case was engineered to benefit insiders, including the Debtor's shareholders, *at the expense* of sick and dying talc victims.

111. The Debtor's bankruptcy was designed from its inception by its parent to shield itself from liability. ***Jones Day, the Debtor's proposed bankruptcy counsel, and its Chief Restructuring Officer, Dean Vomero, both started working for the Debtor's parent in March 2025***. First Day Decl. ¶ 4. They both transitioned to working for the Debtor, Mr. Vomero in May 2025 (First Day Decl. ¶ 1) and Jones Day in September 2025 (Letter from H. Lennox to J. Brohel dated Sept. 1, 2025 (Dkt. No. 115-2) at 2), to implement the scheme to shield the parent.

112. This case is the culmination of nearly a year's worth of methodical planning to put the Debtor into bankruptcy so that the non-Debtor Vanderbilt entities can obtain a release of what the Committee believes is substantial liability for the non-Debtor Vanderbilt entities based on successor liability, alter ego, and other theories of liability.

113. Every aspect of this case was crafted so that the Debtor's parent would maintain control of the case and obtain the broad releases for itself and other affiliates. The Debtor manufactured a "three-legged stool"—consisting of the DIP Motion, the Settlement Motion, and the Sale Motion—to ensure that this bankruptcy includes improper third-party releases for the Debtor's affiliates by settling causes of action against the non-Debtors.[31]

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[29] *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 50 (2008) (quoting *Bank of America Nat. Trust and Sav. Assn. v. 203 North LaSalle Street P'ship*, 526 U.S. 434, 453 (1999)).

[30] *In re Northstar Dev. Corp.*, 465 B.R. 6, 17 (Bankr. W.D.N.Y. 2012).

[31] *See* Hr'g Tr. Feb. 17, 2025 at 18:17-19 (Lennox, H.) ("[W]e have a stool that requires three legs, all of which are necessary to make this happen.").

114. The artificial link between these motions is evident, where the Debtor proposes selling *assets that are not part of the estate* to the DIP Lender/Stalking Horse,[32] and proposes to gain these assets through a settlement that purports to forever release *all claims* against its affiliates at the talc claimants' expense.[33] The primary consideration of the settlement is a mine and a processing plant that the Debtor's affiliates own, yet the Debtor's investment banker had no consultations with the non-Debtor affiliates regarding those assets.[34]

115. These assets could have been transferred just as easily through a private sale or a long-term lease outside of bankruptcy. Conveniently, the Debtor now asserts that this non-estate property is essential to the sale of its assets and justifies the settlement based on the aggressive timeline set out in the DIP Motion. This is even though the Debtor has successfully operated without owning these assets ***for over a decade***.

116. The Debtor also chose to make the DIP Lender the Stalking Horse, and the Debtor's investment banker began soliciting DIP financing *before* negotiating the sale of the Debtor's assets, to tie the relief sought in all three motions together.[35] The structure of these three interconnected motions is designed to trap creditors while providing the non-Debtor affiliates with a clear path to avoid their own liability.

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[32] *See* Settlement Motion ¶ 4 (describing the non-Debtor affiliate assets to be included in the sale).

[33] *See* Settlement Agreement § 5.1 (Dkt. No. 22-2) (providing that the Debtor will release these entities "from any and all claims or causes of action (whether direct, indirect, or derivative) that any of the Debtor Releasing Parties have against any or all of them including in any capacity in which any Vanderbilt Entities Released Party may have been or are alleged to have been a Representative of the Debtor.").

[34] *See* Hr'g Tr, March 4, 2026 at 37:7-11, 38:12-17 (Mendelsohn, E.) ("At Greenhill, I don't recall any interaction with non-debtor affiliate professionals that I had [regarding selling the non-debtor assets].").

[35] *See* Hr'g Tr. March 4, 2026 at 38:1-5 (Mendelsohn, E.) ("[W]e launched the DIP process before we launched the sale process.").

117. At the first day hearing, counsel for the DIP Agent (and also the Stalking Horse) further reinforced the improper nature of the Debtor's "three-legged stool," when he indicated that certain aspects of this case that may prejudice creditors, including terms of the proposed sale and settlement, ***may not have been demands of the DIP Agent/Stalking Horse, but rather of the Debtor itself***.[36] That prejudicial terms of the DIP Facility, the Settlement Motion, and Sale Motion were insisted upon by the Debtor to gain leverage over creditors, shows bad faith.

118. To lend this scheme a veneer of objectivity, the Debtor hired an "independent manager" to conduct and give optical, talking-point credibility to a sham investigation. This investigation consisted of a review of fewer than 700 documents and interviews of just "six members of the Debtor's and Related Parties' management." Settlement Motion ¶¶ 28-29.

119. What is more, the primary, if not sole, focus of this investigation was evaluating the Debtor's "claims" for money due and owing from intercompany receivables and a $27.9 million note worth approximately $42 million combined.[37] The total of these accounts receivable ***exceeds*** the total proceeds the Debtor would receive under the proposed Stalking Horse arrangement.

120. That the Debtor's "independent manager" is choosing to "settle" these receivables *and* provide releases that extend ***well beyond*** any cause of action related to them *and* provide a share of sale proceeds[38] to non-Debtor affiliates in exchange for assets that only make up a portion

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[36] Hr'g Tr. Feb. 17, 2026 at 98:12-15 (Agay, D.) ("***The debtor came to us . . . and they were the ones who said to us, oh, you need these other assets [being transferred in the settlement] to sort of complete the package***") (emphasis added); 99:9-10 ("***[T]he releases, that doesn't involve us . . . . We're just looking for the assets[.]***") (emphasis added).

[37] *See* Settlement Motion ¶ 19 ($7.6 million intercompany receivables balance); ¶ 20 ($6.4 million in start-up costs to a non-Debtor affiliate); ¶ 20 ($27.9 million promissory note).

[38] *See* Settlement Motion at 23 ("Minerals shall retain all Sale Proceeds regardless of whether the proceeds are allocable to the Settlement Assets until gross Sale Proceeds reach $60,000,000. RTV shall receive 50% of all cash Sale Proceeds in excess of $60,000,000 . . . .").

of those that the Debtor is seeking to sell raises questions about the proposed settlement. It also raises questions about the Debtor's bankruptcy filing and strategy.

121. Indeed, this "independent investigation" ***did not investigate at all*** the 2012 Restructuring, successor liability claims, or theories of alter ego that the Debtor is seeking to release.[39] The Pickering declaration does not describe *any* investigation into potential liability the released parties may have for the Debtor's personal injury claims despite their being the primary justification for the bankruptcy petition. The only mention of those claims in the declaration is a brief comment on the preservation of insurance coverage. Dkt. No. 23 ("Pickering Decl.") at ¶ 27.

122. As discussed, the entities created following the 2012 Restructuring remain hopelessly intertwined. First Day Decl. at ¶¶ 38-39. They share services, depend on intercompany transactions, and it appears they may not have formally kept track of all intercompany transactions and investments.[40] Moreover, the First Day Declaration makes it clear the Debtor's predecessor company, RTVC, was aware of significant talc liability at the time of the 2012 Restructuring.[41] The 2012 Restructuring was a liability management exercise, where the Debtor was split off from the other RTVC assets and saddled with its legacy talc liability. First Day Decl. ¶ 39.

123. In such circumstances, it seems improbable that a truly independent manager would not vigorously and completely investigate alter ego or successor liability claims (not to mention

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[39] *See* Pickering Decl. ¶ 10 ("[T]he primary focus was on analyzing … (i) obligations due under the Intercompany Note; (ii) the Distributions; (iii) the Holdings Management Fee; (iv) the General Expense Allocation; (v) the June Set-Offs; and (iv) the Cash Deposits executed in support of the Centralized Cash Management System.").

[40] *See* Settlement Motion ¶ 20. ("Over the course of 2022, the Debtor funded certain start-up costs to Worldwide, a then newly formed, wholly-owned subsidiary of Holdings . . . . . Worldwide issued intercompany payables in favor of the Debtor in its accounting records. There is otherwise no formal documentation related to this intercompany accounting balance.").

[41] *See* First Day Decl. ¶ 46 ("RTVC discontinued sales of five of the grades of talc it obtained from International Talc in 1977 and stopped selling talc altogether in 2008 in response to several factors, ***including increased litigation*** . . . .) (emphasis added); ¶ 51 (Starting in the mid-2000s, however, both the number of claims and the settlement amounts [from talc litigation] began to materially increase.").

various avoidance actions). And it seems beyond cavil that a bankruptcy proceeding that releases those claims for no value and without investigation is a bad-faith attempt to prejudice litigation adversary creditors for the benefit of equity. This bankruptcy attempt seeks to accomplish what the 2012 Transaction could not: permanently cut off the potential liability of the non-debtor Vanderbilt enterprises by settling what now purportedly constitute "estate" causes of action at a low cost. These causes of action would, outside of bankruptcy, freely belong to talc claimants.

124. The Debtor's "independent manager," Mr. Pickering, cannot be trusted to enter into a settlement that maximizes claimant recoveries where he did not seriously consider potential successor liability and alter ego claims arising out of the 2012 Restructuring. Pickering Decl. ¶ 10.

125. As in *15375 Memorial*, the tort claimants' claims against the Debtor's affiliates have far more value in the hands of the tort claimants (who are incentivized to maximize their own recoveries) than in the hands of a Debtor that is controlled by the very defendants that are trying to minimize their own tort liability (as any economically rational actor would).

126. If the Debtor is successful and is permitted to treat and settle the tort claimants' claims as "estate claims," then the tort claimants could be left without any opportunity to litigate their claims against the non-debtor affiliates and insiders. As in *15375 Memorial* and *Antelope*, these non-debtor releases are the entire point of this case, which warrants dismissal.

127. The Debtor's aggressive timeline and engineering of the interconnected motions attempted to make this outcome a *fait accompli* before the creditor body could even organize, but fortunately, the diligence of this Court and the U.S. Trustee prevented that unjust result.

128. Now, assessed on its own merits, this entire bankruptcy comes into focus as a litigation tactic intended to allow non-Debtor affiliates to benefit from the Debtor's bankruptcy without subjecting themselves to the burdens or oversight of this Court. When analyzing the

totality of the circumstances, this Court should dismiss the Debtor's bankruptcy as being filed in bad faith.

II. THE DEBTOR CANNOT CONFIRM A PLAN IN A REASONABLE TIME

129. The Second Circuit's precedent does not bar dismissal absent a finding of objective futility in the presence of subjective bad faith.[42] Courts within the Second Circuit regularly dismiss bad-faith chapter 11 petitions without specifically analyzing objective futility.[43]

130. Regardless, here, the Debtor is unable to confirm a plan, which is itself a basis for dismissal. *See* 11 U.S.C. § 1112(b)(4)(A) & (J). That a debtor can point to one or more theoretically possible paths to reorganization does not suffice to rebut objective futility where other factors combine to make that path unlikely.[44] Courts need not entertain theories of rehabilitation that are "speculative at best."[45] As part of the bad faith inquiry, any analysis of objective futility must consider the totality of the circumstances and may sweep broadly in its conclusions.[46]

131. As explained above, the court may consider "any factors" when analyzing the objective futility of a bankruptcy proceeding. *JJ Arch LLC*, 663 B.R. at 286. "The objective

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[42] *See Sapphire Dev., LLC v. McKay*, 549 B.R. 556, 567 (D. Conn. 2016) (analyzing *Cohoes* and *CTC 9th Ave.* and concluding neither supports that objective futility is a mandatory element for bad faith dismissal).

[43] *See, e.g.*, *Neilson v. Estate of Benedict*, No. 1:18-CV-1101, 2020 WL 1140493, at *3 (N.D.N.Y. Mar. 9, 2020) (affirming dismissal for bad faith without analyzing objective futility); *Clear Blue Water, LLC v. Oyster Bay Mgmt. Co., LLC*, 476 B.R. 60, 74 (E.D.N.Y. 2012) (same); *In re Squires Motel, LLC*, 416 B.R. 45, 51 (Bankr. N.D.N.Y. 2009) (identifying objective futility as an element of bad faith but finding cause to dismiss without specifically analyzing it)*, aff'd, sub nom. Squires Motel, LLC v. Gance*, 426 B.R. 29 (N.D.N.Y. 2010).

[44] *See JJ Arch LLC*, 663 B.R. at 286 (holding that the Debtor having a plan on file did not defeat objective futility where the path to confirming that plan was implausible).

[45] *In re Loco Realty Corp.*, No. 09-11785 (AJG), 2009 WL 2883050, at *7 (Bankr. S.D.N.Y. June 25, 2009).

[46] *C-TC 9th Ave.*, 113 F.3d at 1312 (explaining the bad faith inquiry "is a highly factual determination but also one that may sweep broadly").

futility test is directed at 'rehabilitation' of the [d]ebtor and not 'reorganization.'"[47] "Rehabilitation" in the bankruptcy dismissal context means "to put back in good condition and reestablish on a sound basis." *In re AdBrite Corp.*, 290 B.R. 209, 215 (Bankr. S.D.N.Y. 2003).

132. It signifies that the debtor will be reestablished on a secure financial basis, implying the establishment of cash flow sufficient to meet its current obligations. *Id.* Rehabilitation of the business is paramount, and so "[t]he ability to confirm a liquidating plan does not demonstrate a likelihood of rehabilitation." *In re E. 81st, LLC*, No. 13–13685 (SMB), 2014 WL 4548551, at *6 (Bankr. S.D.N.Y. March 17, 2014).

133. A debtor's sale of all or most of its business assets demonstrates no likelihood of rehabilitation.[48] Without a business left to reorganize, chapter 11 proceedings cannot serve the purpose of rehabilitating a debtor's business.[49] It makes no difference that the Debtor entered chapter 11 with a business that it has not yet sold.

134. *Dunes Hotel* is instructive.[50] In that case, the debtor filed a chapter 11 petition, and the court initially denied motions to dismiss because it concluded that a certain creditor, Aetna,

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[47] *In re RCM Glob. Long Term Capital Appreciation Fund, Ltd.*, 200 B.R. 514, 521 (Bankr. S.D.N.Y. 1996), *corrected* (Sept. 18, 1996). The inquiry is the same as that under 1112(b)(4)(A)'s second prong regarding the likelihood of rehabilitation. *See, e.g.*, *In re RainTree Healthcare of Winston-Salem, LLC*, 585 B.R. 777, 783, 786 (M.D.N.C. 2018) (holding that the "same facts" prove both section 1112(b)(4)(A)'s second prong regarding likelihood of rehabilitation and the objective futility bad faith inquiry such that the analysis is identical); *In re Landmark Atl. Hess Farm*, 448 B.R. 707, 717-18 (Bankr. D. Md. 2011) (noting that the objective futility analysis concentrates on whether there is "no hope of rehabilitation," mimicking the language of section 1112(b)(4)(A), and then later noting that the court had already determined there was no rehabilitation "that would inure to the benefit of any non-insiders," relying on its prior analysis of section 1112(b)(4)(A)).

[48] *See Loop Corp. v. U.S. Tr.*, 379 F.3d 511, 516 (8th Cir. 2004) (affirming that "cause" to dismiss or convert was present where debtors with negative cash flow intended to liquidate rather than revive their business).

[49] *See In re Gonic Realty Tr.*, 909 F.2d 624, 627 (1st Cir. 1990) (affirming dismissal of a Chapter 11 case where the debtor had sold its assets).

[50] *See In re Dunes Hotel Associates*, No. C/A 94-75715, 1997 WL 33344253 (Bankr. D.S.C. Sept. 26, 1997), *aff'd*, 245 B.R. 492 (D.S.C. 2000).

might benefit from the reorganization. *Id.* at *15. After the debtor's owner bought Aetna's claim a few years into the bankruptcy case, however, the only remaining goal of the debtor was to avoid a lease held by its only other creditor. *Id.* Noting that using bankruptcy solely to escape a valid contract to the benefit of the debtor or its owners was well-recognized as a litigation tactic, the Bankruptcy Court concluded that continued prosecution of the bankruptcy was in bad faith. *Id.* That alone was sufficient to establish cause for dismissal. *Id.* at *16. Additionally, the *Dunes* court found that the remaining creditor's consent would be necessary for reorganization to occur and was unlikely, making the effort futile. *Id.* at 18-19.

135. What is more, where reorganization hinges on running a gauntlet of legal difficulties (such as obtaining the improper third-party releases that the Debtor has staked its case on) or obtaining the consent of parties where there is no evidence they will consent, Courts have found objective futility present.[51] This is especially relevant where the consent needed is that of creditors who have demonstrated unwillingness to compromise on their rights.[52]

136. Here, the Debtor has no path to rehabilitation that does not involve addressing the large number of current and future personal injury claims arrayed against it. Any such path, such as the establishment of a section 524(g) trust or obtaining releases of the plaintiffs' claims against non-Debtor affiliates, would require creditor consent that does not exist here. Even if this Court approves the sale, then following that sale, as in *Dunes*, the only further reason for bankruptcy would be to litigate the non-Debtor's potential releases, which is not a valid bankruptcy purpose. This leads to the same, inevitable conclusion that this case should be dismissed.

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[51] *See, e.g.*, *Sapphire Development*, 549 B.R. at 573 (affirming dismissal and holding objective futility was present where a debtor had not established it could likely obtain necessary third-party consent to implement its reorganization scheme).

[52] *See Dunes Hotel*, 1997 WL 33344253, at *13, 18-19 (finding both objective futility and subjective bad faith after finding that a creditor would refuse to assent to a plan satisfying the debtor's goal and that confirmation was impossible without it).

A. THIS CASE CANNOT END WITH A SECTION 524(G) INJUNCTION

137. As a threshold matter, this case cannot end with a section 524(g) injunction. After the Debtor completes a sale, it will have no business to reorganize. The supplemental discharge contemplated by section 524(g) will not be available to the Debtor.[53] Further, the Debtor does not have the votes. Section 524(g) does not contain a cramdown mechanism.[54]

B. THE CLAIMS AGAINST NON-DEBTOR INSIDERS AND AFFILIATES CANNOT BE EXTINGUISHED THROUGH AN ESTATE RELEASE

138. Without the ability to utilize section 524(g) or a *Purdue* release, the Debtor must resort to a settlement of *Emoral* Claims. But even assuming, *arguendo*, that a debtor can remain in bankruptcy to assert control over and settle the ***plaintiffs'*** tort claims against non-debtor parties, the Debtor's ownership theory is flawed.

1. Claimants' Claims Against Non-Debtors Cannot be Treated as Estate Causes of Action

139. The Debtor will likely point to recent Circuit Court decisions, including *In re Nordlicht*, 115 F.4th 90 (2d Cir. 2024) and *In re Whittaker Clark & Daniels Inc*., 152 F.4th 432 (3d Cir. 2025), to support its position that it can settle and release the tort victims' claims without their consent. But there is more to this story than a cursory reading of *Nordlicht* and *Whittaker* suggests. Circuit Court decisions dating back decades involving the doctrines of alter ego, veil piercing, and successor liability show that Circuit Courts did not view themselves as creating federal common law or contradicting the Supreme Court's clear guidance that state law, and not federal law, governs where a cause of action is an estate claim under section 541(a).[55]

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53 *See In re AIO US, Inc*., No. 24-11836-CTG, 2025 WL 2426380, at *32 (Bankr. D. Del. Aug. 21, 2025).

54 *See In re Fed.-Mogul Global Inc.*, 684 F.3d 355, 361 (3d Cir. 2012).

55 *See In re Tronox Inc*., 855 F.3d 84, 99-104 (2d Cir. 2017) (Pennsylvania law); *In re Emoral, Inc.*, 740 F.3d 875 (3d Cir. 2014) (New Jersey and New York law); *Ahcom, Ltd. v. Smeding*, 623 F.3d 1248, 1250-51 (9th Cir. 2010) (California law); *Board of Trustees of Teamsters Local 863 v. Foodtown, Inc.*, 296 F.3d 164, 170 (3d Cir. 2002) (New Jersey law); *In re RCS Eng'g Products Co.*, 102 F.3d 223, 226-

140. In fact, multiple Circuit Court have held that claims against non-debtors based on the alter ego and veil piercing doctrines are not estate claims where the debtor could not have asserted such claims on its own behalf under applicable state law.[56]

141. Under *Butner v. United States*, for a claim to be an "estate claim," it must be a claim that the debtor could have asserted on its own behalf under state law prior to the commencement of its bankruptcy case. 440 U.S. 48, 55 (1979). "Property interests are created and defined by state law" and are not analyzed differently "merely by reason of the happenstance of bankruptcy." *Id.* The Supreme Court has made it clear that state law (and not federal common law) governs the substance of claims in bankruptcy.[57]

142. Under *Caplin v. Marine Midland Grace Trust Co. of N.Y.*, a debtor lacks "standing" to step into the *claimants'* shoes and assert claims that belong to claimants (based on harms that they suffered directly) against non-debtors. 406 U.S. 416, 434 (1972); *accord In re Bernard L. Madoff Inv. Sec. LLC*, 721 F.3d 54, 67 (2d Cir. 2013).

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27 (6th Cir. 1996) (Michigan law); *Steinberg v. Buczynski*, 40 F.3d 890, 893 (7th Cir. 1994) (Illinois law); *St. Paul Fire & Marine Ins. Co. v. PepsiCo, Inc.*, 884 F.2d 688, 704-05 (2d Cir. 1989) (Ohio law); *Steyr-Daimler-Puch of Am. Corp. v. Pappas*, 852 F.2d 132, 135-36 (4th Cir. 1988) (Virginia law); *In re Ozark Rest. Equip. Co.*, 816 F.2d 1222, 1225-26 (8th Cir. 1987) (Arkansas law); *Koch Refining v. Farms Union Cent. Exchange, Inc.*, 831 F.2d 1339, 1346 (7th Cir. 1987) (Illinois law); *Matter of S.I. Acquisition, Inc.*, 817 F.2d 1142, 1153 (5th Cir. 1987) (Texas law).

[56] *See*, *e.g.*, *Ahcom*, 623 F.3d at 1250-51 (California law); *Foodtown*, 296 F.3d at 170 (New Jersey law); *RCS Eng'g Products*, 102 F.3d at 226-27 (Michigan law); *Steinberg*, 40 F.3d at 893 (Illinois law); *Ozark Rest. Equip.*, 816 F.2d at 1225-26 (Arkansas law).

[57] *See Rodriguez v. FDIC*, 589 U.S. 132, 136-137 (2020) (holding federal courts should rely on the law of the relevant state, and not federal common law, when determine what is property of the estate); *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15, 20 (2000) (stating that the basic rule "in bankruptcy is that state law governs the substance of claims...."); *Barnhill v. Johnson*, 503 U.S. 393, 397–98 (1992) (concluding that "in the absence of any controlling federal law, 'property' and 'interest[s] in property' are creatures of state law.") (quoting *McKenzie v. Irving Trust Co*., 323 U.S. 365, 370, (1945)).

143. Under Supreme Court precedent, a claim cannot be considered property of a debtor's estate under section 541(a) unless the debtor could have asserted the claim on its own behalf under state law prior to the commencement of the bankruptcy case.

144. While Supreme Court precedent supports treating Traditional § 541(a) Claims, Derivative Claims, and Avoidance Actions as estate claims, it does **not** support treating *Emoral* Claims as estate claims. The *Erie* doctrine is the key to understanding ***why***.

145. ***After*** Circuit Courts ruled that a debtor or trustee in bankruptcy could assert a cause of action for alter ego, veil-piercing, and successor liability, plaintiffs began asserting such claims in state court proceedings. *See supra* fns. 2 & 3. As a result, state appellate courts considered whether there is an independent cause of action for alter ego, veil-piercing, and successor liability.

146. State appellate courts have now ruled that there is no such thing as a cause of action for cause of action for alter ego, veil piercing, or successor liability. *Id.* Rather, they are legal remedies that are available exclusively to claimants who were harmed by tortfeasors. *Id.* They are not independent causes of action that a tortfeasor can assert on its own behalf. *Id.*

147. The Supreme Court also made this point clear in *Peacock*: "Piercing the corporate veil is not itself an independent . . . cause of action, 'but rather is a means of imposing liability on an underlying cause of action." 516 U.S. at 354.

148. Likewise, claims based on these doctrines are not derivative claims. The injury arises from the debtor's conduct. To state the matter simply, the debtor *caused* the injury. The debtor did not *suffer* the injury. A debtor/tortfeasor cannot sue *itself* for injuries that it caused.

149. It follows that a debtor/tortfeasor cannot invoke doctrines like alter ego, veil-piercing, or successor liability as remedies to recover on account of such injuries under state law.

150. This shift in case law is critical. Under *Erie Railroad Co. v. Tompkins*, state law is determined by the rulings made by state appellate courts.[58] Federal courts applying state law must look to how the state's highest court would decide the issue. *See DiBella v. Hopkins*, 403 F.3d 102, 112 (2d Cir. 2005). When such a court has not ruled, a federal court must make an *Erie* guess as to how the state's highest court would decide the issue. *Id.*

151. There are three recognized ways that a Circuit Court's rulings can be overruled. The ***first*** is a contrary ruling by the Supreme Court. The ***second*** is a contrary ruling by the Circuit Court sitting *en banc*. The ***third*** is a subsequent, contrary ruling by a state appellate court on an issue of state law. *See Global Reinsurance Corp. of Am. v. Century Indem. Co.*, 22 F.4th 83, 101 (2d Cir. 2021) (a "decision of a panel of [the Circuit]" ceases to be "binding" and must be treated as "overruled" when it is based on "state substantive law" and a subsequent state appellate court ruling "conflicts with [Circuit] precedent" because a "federal Court of Appeals is in the same position as a lower state court vis-à-vis" a state appellate court "in construing state substantive law.").[59] This follows from the fact that a federal court is not free to disregard a state appellate court ruling when ascertaining state law. A Circuit Court's ruling based on an incorrect *Erie* guess, therefore, is just as infirm as a ruling that is inconsistent with Supreme Court precedent.

152. This means that the holding in *Emoral*, to the extent based on state law, is no longer binding authority.[60] The *Erie* guesses made by the Circuit Circuits in *Tronox*, *St. Paul Fire*, *Koch*

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[58] 304 U.S. 64, 79 (1938) (only a state, whether through its legislature or its supreme court, has the authority to declare state law); *see West v. Am. Tel. & Tel. Co*., 311 U.S. 223, 236 (1940).

[59] *Accord McMahan v. Toto*, 311 F.3d 1077, 1081 (11th Cir. 2002); *Blair v. Sealift, Inc*., 91 F.3d 755, 761 (5th Cir. 1996); *Rogers v. Corrosion Products, Inc*., 42 F.3d 292, 295 (5th Cir. 1995).

[60] *Compare Emoral*, 740 F.3d at 879-880 (finding that New York and New Jersey state courts would recognize a "cause of action for successor liability"); *with Alesco Preferred Funding*, 164 N.Y.S. 3d 808 ("alter-ego and successor liability claims" cannot be "maintained as separate and distinct causes of action in New York"); *Ferro Fabricators*, 127 A.D.3d at 480 ("alter-ego liability is not an independent cause of action"); *Getintent USA*, 2019 WL 4962549, at *3 ("The third cause of action for successor

Refining, and *S.I. Acquisitions* that state law would recognize a cause of action for veil piercing have likewise proven to be incorrect based on subsequent rulings by state appellate courts.[61]

153. If this Court today were to rule in a manner consistent with *Butner* (state law governs), *Caplin* (the debtor cannot step into the claimants' shoes), *Erie* (state appellate court rulings control), and the state appellate courts that have decided these issues (*see supra* fns. 2 & 3), it could not reach the conclusion today that tort victims' claims against non-debtors based on the doctrines of alter ego, veil piercing, and successor liability are estate claims.

154. Not only is there no provision in the Bankruptcy Code that grants courts the power "to discharge claims brought by nondebtors against other nondebtors," but, as the Supreme Court found in *Purdue*, there is also no provision in the Bankruptcy Code that "suggests" that a tort claimant's claim against a non-debtor "can be bargained away without the consent of those affected, as if the claims were somehow [the tortfeasor's] own property." 603 U.S. at 220.

155. The recent Third Circuit decision in *Whittaker* shows that it may take another Supreme Court ruling to make this point clear. In this case, the Third Circuit confronted the fact that the debtor could not assert claims based on the doctrine of successor liability "outside of bankruptcy," but nonetheless held that such claims become "property of the estate inside bankruptcy." *Whittaker*, 152 F.4th at 450. But, according to the Supreme Court, "[p]roperty

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liability is also dismissed … as successor liability does not constitute an independent cause of action but is merely a theory of recovery on an underlying liability").

[61] *Compare Tronox*, 855 F.3d at 99-104 (finding veil piercing cause of action is cognizable under ***Pennsylvania*** law); *St. Paul Fire*, 884 F.2d at 703 (finding veil piercing cause of action is cognizable under ***Ohio*** law); *Koch Refining*, 831 F.2d at 1346 (finding veil piercing cause of action is cognizable under ***Illinois*** law); *S.I. Acquisition*, 817 F.2d at 1153 (finding veil piercing cause of action is cognizable under ***Texas*** law); *with Golden Gate*, 648 Pa. at 644 (finding veil piercing is **not** a cause of action under ***Pennsylvania*** law); *A.L. Dougherty*, 98 N.E.3d at 515 (finding veil piercing is **not** a cause of action under ***Illinois*** law); *Texas Am. Exp.*, 190 S.W.3d at 725-26 (finding veil piercing is **not** a cause of action under ***Texas*** law); *Secrest*, 2015-Ohio-42 (finding veil piercing is **not** a cause of action under ***Ohio*** law).

interests are created and defined by state law" and are not analyzed differently "merely by reason of the happenstance of bankruptcy." *Butner*, 440 U.S. at 55

156. The Second Circuit's decision in *Nordlicht* did not purport to repudiate *Butner*. In fact, the Second Circuit based its ruling that claims asserted by investors against a chapter 7 debtor's family-owned entities under the alter ego and reverse veil piercing doctrines were property of the debtors' estate on state law—namely, New York law. 115 F.4th at 109-111.

157. The doctrine of reverse veil piercing is inapplicable here because the Debtor has no subsidiaries. But, even putting this aside, *Nordlicht* cannot be cited for the proposition that a trustee in bankruptcy can step into the claimants' shows and assert claims that belong to them under state law without bringing *Nordlicht* into direct conflict with the Supreme Court's ruling in *Caplin* and the Second Circuit's ruling in *Madoff* (as discussed below).[62]

2. The Debtor Lacks Article III Standing to Assert and Settle the Claimants' Claims against Non-Debtors

158. The Debtor's ownership theory also fails because the Debtor lacks Article III standing to assert and settle the claimants' claims against non-debtors. The Supreme Court has recognized that to have Article III standing, a plaintiff must show that it suffered an injury.[63] The Second Circuit's decision in *Bernard L. Madoff Investment Securities* illustrates this point.

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[62] A Circuit panel cannot overrule another Circuit panel. *See Abdulai v. Ashcroft*, 239 F.3d 543, 553 (3d Cir. 2001); Amy Coney Barrett, *Stare Decisis and Due Process*, 74 U. COLO. L. REV. 1011, 1017-1018 (2003) ("the rule ... that one panel cannot overrule another" is "followed in every circuit"). When faced with an intra-circuit conflict, a federal court is required to follow earlier precedent over a subsequent deviation therefrom. *See Elevate Fed. Credit Union v. Elevations Credit Union*, 67 F.4th 1058, 1072 (10th Cir. 2023); *Morrison v. Amway Corp.*, 323 F.3d 920, 929 (11th Cir. 2003); *Indep. Cmty. Bankers of Am. v. Bd. of Governors of the Fed. Reserve Sys*., 195 F.3d 28, 34 (D.C. Cir. 1999); *Walker v. Mortham*, 158 F.3d 1177, 1188 (11th Cir. 1998)); *Haynes v. Williams*, 88 F.3d 898, 900 n.4 (10th Cir. 1996). Thus, if *Nordlicht* and *Madoff* conflict, *Madoff* controls.

[63] *California v. Texas*, 593 U.S. 659, 668 (2021); *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

159. In *Madoff*, Irving Picard, a SIPA trustee, sought to assert claims against various financial institutions, including JPMorgan, on behalf of Madoff's customers on the grounds that such institutions were complicit in Madoff's fraud. 721 F.3d at 57.

160. Although a SIPA liquidation is not a traditional bankruptcy, a SIPA trustee is vested with the "same powers and title with respect to the debtor and the property of the debtor ... as a trustee in a case under Title 11." 15 U.S.C. § 78fff–1(a).

161. Picard alleged that all of Madoff's creditors were harmed by the alleged fraud and that the claims against JPMorgan were claims that could be brought by a bankruptcy trustee. In rejecting this argument, the Second Circuit found that Article III standing requirements, including those that require the plaintiff to "allege personal injury," apply to "actions brought by a bankruptcy trustee.[64] Bernard L. Madoff Investment Securities ("BLMIS" could not prove that it suffered any injury; indeed, BLMIS was a party to the fraud.

162. The Second Circuit held that a bankruptcy trustee can collect only money owed to the bankrupt entity and lacks standing to collect money owed to creditors. *Id.* at 67. Thus, even though all BLMIS creditors were harmed by the same fraudulent conduct (and could assert a right to recover from JPMorgan based on the same legal theory and the same operative facts), this did not mean that Picard, by invoking his powers as a trustee in a case under Title 11, had standing to assert those claims on behalf of BLMIS's customers.

163. The Supreme Court has never suggested that a corporate debtor could establish an injury in fact based on concrete and particularized injuries suffered by tort claimants.

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[64] *Madoff*, 721 F.3d at 66 ("'To have standing, [a] plaintiff must [1] allege personal injury [2] fairly traceable to the defendant's allegedly unlawful conduct and [3] likely to be redressed by the requested relief.'" *Hirsch v. Arthur Andersen & Co.*, 72 F.3d 1085, 1091 (2d Cir. 1995) (alterations in original) (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)).").

164. Here, the Debtor cannot show that it suffered an injury in fact. The claimants suffered the injury. The Debtor does not have mesothelioma. The Debtor did not experience physical pain and suffering. The Debtor has no standing to assert claims based on the damages suffered by the tort victims. Nor can the Debtor credibly contend that the victims' claims brought against non-debtors under the alter ego or veil piercing doctrines are "derivative claims."

165. A derivative claim is a claim that derives from an injury to the debtor. *See supra* fn. 11. Dying from mesothelioma is not an injury that derives from any harm suffered by the Debtor. The claimants' loss does not derive from any loss sustained by the Debtor.

166. Claims asserted against alleged successors and alter egos do not involve or allege any harm suffered by the Debtor, whether as a factual underpinning to each tort claim or as an element to invoking the alter ego doctrine. The Debtor cannot allege an injury, which means that they lack standing to assert and settle the claimants' claims against non-debtors.

3. Section 541(a) Cannot be Used to Circumvent Section 524(g)

167. Furthermore, an estate release cannot be used to circumvent section 524(g) or render this statute surplusage in a bankruptcy involving asbestos liability. The Debtor's theory of what is an estate claim would render section 524(g) surplusage.

168. In *In re Quigley Co.*, the Second Circuit found that the subsection of section 524(g) that permits a Court to enter an injunction barring certain actions brought against non-debtor third parties—*i.e.*, 11 U.S.C. § 524(g)(4)(A)(ii)—authorizes a Court to "bar actions seeking to impose liability on a third party in circumstances in which a plaintiff might have alleged that the third party was responsible for claims against the debtor on a '***piercing the corporate veil***' theory." 676 F.3d 45, 60 (2d Cir. 2012) (emphasis added).

169. Thus, the Second Circuit found that subparagraph I of section 524(g)(4)(A)(ii), which refers to a third party's liability arising by reason of "the third party's ownership of a

financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor," provides a statutory basis for such relief. *Id.*

170. Likewise, in *In re Combustion Engineering Inc*., the Third Circuit held that "[b]ecause § 524(g) expressly contemplates the inclusion of third parties' liability within the scope of a channeling injunction—and sets out the specific requirements that must be met in order to permit inclusion—the general powers of § 105(a) [could] [] not be used to achieve a result not contemplated by the more specific provisions of § 524(g)." 391 F.3d 190, 236-37 (3d Cir. 2004).

171. Since section 524(g) occupies the sphere for obtaining releases or injunctions for asbestos liability in bankruptcy, a debtor cannot rely on other provisions of the Bankruptcy Code or Bankruptcy Rules to achieve the same result.

172. Herein lies the issue: under the Debtor's theory of what is estate property, a debtor would not need to satisfy section 524(g) and its high bar for resolving claims asserted against third parties to release a third party from claims based on the alter ego or veil piercing doctrines. A debtor could simply settle such claims under the less stringent Rule 9019 standard by treating them as estate claims, which is what the Debtor here is trying to accomplish.

173. The Debtor is attempting to obtain section 524(g) relief without the super-majority consensus of the affected plaintiffs, which, if sanctioned by this Court, would make section 524(g) superfluous. But the canon against surplusage counsels against adopting interpretations that render a statute superfluous or insignificant. This rule applies with "special force" when a construction would not only render an entire subparagraph of a statute meaningless but would allow another provision of the Code—namely, section 541—to achieve a result reserved for section 524(g).

4. Section 541(a) Violates the Fifth Amendment If It Means that the Claimants' Claims Are Now Property of the Debtor's Estate

174. The Bankruptcy Code, like other federal statutes, should not be interpreted in a

manner that renders the Bankruptcy Code unconstitutional.[65] But, if the Court finds that the claimants' state law rights are estate property under section 541(a) that the Debtor can settle or release, then section 541(a) is unconstitutional.

175. Fundamental rights are protected in bankruptcy.[66] The right to sue and defend in court is a fundamental right.[67] In fact, "[i]t is one of the highest and most essential privileges of citizenship," particularly when the lawsuit involves bodily injuries. *Id*. This makes sense because no right, whether a property right or liberty right, has meaning if it cannot be judicially enforced.[68] Indeed, the United States has a "deep-rooted historic tradition that everyone should have his own day in court." *Martin v. Wilks*, 490 U.S. 755, 762 (1989).

176. Consistent with this deep-rooted historic tradition, the Fifth Amendment provides that "[n]o person" shall be "deprived" of "property" without "due process of law" and "without just compensation." U.S. Const. amend. V.[69] It is well established that a cause of action is a property right protected by the Fifth Amendment and the Fourteenth Amendment.[70]

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65 *Blanchette v. Connecticut Gen. Ins. Corp*., 419 U.S. 102, 134 (1974).

66 *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 192 (1902).

67 *Chamber v. Baltimore & O.R. Co*., 207 U.S. 142, 148 (1907).

68 *Marbury v. Madison*, 5 U.S. 137, 163 (1803).

69 The Fourteenth Amendment also provides that "[n]o state" shall "deprive any person" of "property[] without due process of law." *Id.* at amend. XIV.

70 *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 807, 813 (1985) (a "chose in action is a constitutionally recognized property interest possessed by each of the plaintiffs"); *Dallas Cabana, Inc. v. Hyatt Corp.*, 441 F.2d 865, 868, n.9 (5th Cir. 1971) ("A 'cause of action' is an asset or a property right of the individual to whom it belongs."); *see Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982) ("[A] cause of action is a species of property protected by the Fourteenth Amendment's Due Process Clause.") (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)); Adam J. Levitin, *The Constitutional Problem of Nondebtor Releases in Bankruptcy*, 91 FORDHAM L. REV. 429, 440 (2022) ("Nonconsensual nondebtor releases are inconsistent with … due process requirements. Creditors who have direct claims against nondebtors have property interests: their direct claims are 'choses in action.' Like other types of property interests, these choses in action are protected by the Due Process Clause."); *see also Pan Am. Production Co. v. United Lands Co*., 96 F.2d 26, 27 (5th Cir. 1938) ("The phrase 'chose in action' is the antithesis of chose in possession … and refers to a right to money … which is not in hand and can be reached and enjoyed only by an action.").

177. A cause of action is a "right to redress"—*i.e.*, a claim for compensation or judicial relief. *Logan*, 455 U.S. at 431. The due process protection focuses on ensuring access to the civil justice system to be heard and to seek just compensation for an injury. *Mullane*, 339 U.S. at 313. To protect the right to redress, every citizen of the United States is entitled to free access to its judicial tribunals in every State of the Union.[71]

178. The "hallmark of property" is "an individual entitlement grounded in ***state law***,"[72] including "state law-rules" that "support claims of entitlement."[73] It follows that a constitutionally protected right plaintiffs possess includes the legal rights and remedies to which plaintiffs are entitled under state law to seek compensation for an injury.[74]

179. A tort claimants' state law rights and remedies include the right to seek recovery from alleged successors and alter egos. *See supra* fns. 2 &. 3. Under state law, these remedies are available to plaintiffs—*i.e.*, the parties who suffered an injury. *Id.* A plaintiff's rights under state law include the right to invoke remedies like alter ego and successor liability and seek compensation from parties that can be held liable under these doctrines. *Id.*

180. Just as the ability to collect rent for the use of one's land is "one of the most fundamental sticks in the bundle of [property] rights" available to a landowner,[75] the rights

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[71] *Slaughter-House Cases*, 83 U.S. 36, 79 (1873) (Every citizen "has the right of free access to … courts of justice in the several States."); *Crandall v. Nevada*, 73 U.S. 35, 48 (1867) ("[E]very citizen of the United States … is entitled to free access … to its judicial tribunals."); *see Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 846 (1999) ("[O]ne is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he [or she] has not been made a party by service of process …, it being 'our deeply-rooted historic tradition that everyone should have his [or her] own day in court.'") (quoting *Hansberry v. Lee*, 311 U.S. 32, 40 (1940) and *Martin v. Wilks*, 490 U.S. 755, 762 (1989)).

[72] *Logan*, 455 U.S. at 430 (emphasis added); *accord Smith v. Davis*, 507 Fed. Appx. 359 (5th Cir. Jan. 10, 2013); *Dee v. Borough of Dunmore*, 549 F.3d 225, 230 (3d Cir. 2008); *Woodward v. Andrus*, 419 F.3d 348, 354 (5th Cir. 2005); *Hidden Oaks Ltd. v. City of Austin*, 138 F.3d 1036, 1046 (5th Cir. 1998).

[73] *See Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972).

[74] *See Logan*, 455 U.S. at 430; *accord In re Croft*, 737 F.3d 372, 375 (5th Cir. 2013).

[75] *Hidden Oaks*, 138 F.3d at 1046.

afforded to claimants under state law to seek compensation for an injury from alter egos and successors is a fundamental stick in their bundle of property rights because such rights protect victims from schemes to deprive them of fair compensation.

181. Under the Debtor's theory of estate property, however, the claimants' property rights were severed and taken from them on the petition date. Claimants retained their right to seek recovery from the Debtor (by filing a proof of claim against the Debtor's estate). But claimants lost the right to seek recovery from non-debtors. These rights, according to the Debtor, were taken from the plaintiffs and vested in the Debtor's estate.

182. However, under *Purdue*, for a party to successfully contend that the Bankruptcy Code permits a debtor to sell or monetize a personal injury or wrongful death suffered by a claimant—indeed, an injury or death caused by the debtor itself—it must be able to point to a specific Code section that permits this. 603 U.S. at 215. The only provision in the Bankruptcy Code to which the Debtor can point to answer this question is section 541(a).[76]

183. But the estate created under section 541(a) is created upon the "commencement" of a bankruptcy case. 11 U.S.C. § 541(a). And no notice is provided to tort victims prior to the petition date. Under the Debtor's theory, one moment, pre-petition, the tort claimants had the right under state law to appear in court and seek compensation from non-debtor alter egos and successors. But, the next moment, upon the petition date, that right became estate property.

184. Indeed, under this legal construct, the Debtor can assert (as estate property) the plaintiffs' rights under state law to recover from alter egos and successors, recover the damages

[76] Reliance on section 544(a) would fare no better since the taking would occur "as of the commencement of the case." 11 U.S.C. § 544(a).

suffered by the plaintiffs (and not the Debtor), and then use the funds recovered on account of the plaintiffs' personal injuries and wrongful death to pay commercial creditors.

185. But, under the Fifth Amendment, due process must be afforded ***before*** a plaintiff's rights can be taken.[77] That notice may be provided to plaintiffs after the petition date in connection with a sale or settlement of estate claims, or in connection with plan confirmation, does not cure the due process violation. If section 541(a) operates to take the claimants' rights (arising from injuries that they suffered) and transfers them to the Debtor, it must do so on the petition date—*i.e.*, as of the "commencement of the case"—without due process or notice. 11 U.S.C. § 541(a).

186. This offends the Fifth Amendment. When the Supreme Court has considered the issue of what constitutes estate property under section 541(a), it has been very careful to make it clear that if a claim or remedy is specific to a creditor, it is a personal claim or remedy and is a legal interest only of the creditor that suffered the injury and not the debtor. *See Caplin*, 406 U.S. at 434.[78] Removing this guardrail creates a Fifth Amendment issue because the creation of the bankruptcy estate occurs before claimants receive any form of notice in a bankruptcy case.

187. The due process violation goes beyond inadequate notice. Due process in bankruptcy requires that when a party receives a discharge of its liabilities, that party's assets must be distributed in a manner that is "consonant with a fair, reasonable, and equitable distribution of those assets."[79] Our bankruptcy laws have never allowed a party to receive a discharge unless

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[77] *See Logan*, 455 U.S. at 433 (it is a "truism" that "some form of hearing" is required "before" a "protected property interest" is taken); *Int'l Transactions, Ltd. v. Embotelladora Agral Regiomontana, SA de CV*, 347 F.3d 589, 594–95 (5th Cir. 2003) ("Parties in interest must receive notice and an opportunity to be heard before their interests may be adversely affected.").

[78] *See also Bernard L. Madoff*, 721 F.3d at 67 ("'[N]owhere in the statutory scheme is there any suggestion that the trustee in reorganization is to assume the responsibility of suing third parties' on behalf of creditors.") (quoting *Caplin*, 406 U.S. at 428).

[79] *Kuehner v. Irving Tr. Co.*, 299 U.S. 445, 452 (1937) (emphasis added); *see R.F.C. v. Denver & R.G.W.R. Co.*, 328 U.S. 495, 533 (1946).

creditors receive the full value of the debtor-estate's non-exempt assets, and they share that value on a fair basis.[80] Providing co-liable and solvent non-debtors with a release, while the claimants are paid nothing on account of their injuries and state law rights, is not an "equitable distribution."

188. If section 541(a) permits such an unlawful taking of property rights, then that section is unconstitutional. Interpretations of statutes that render them unconstitutional should be disfavored.[81] This Court need only follow Supreme Court case law to find that the claimants' causes of action against non-debtors are not estate property. But if section 541(a) does permit an unlawful taking here, it is section 541(a) that must yield.

5. Section 541(a) Violates the Seventh Amendment and Title 28 If It Means that the Claimants' Claims Can be Treated as Estate Property

189. Assuming, *arguendo*, that this Court finds that section 541(a) can be used to treat the claimants' claims and rights to seek recovery from non-debtors as estate property, then section 541(a) also violates the Seventh Amendment and 28 U.S.C. § 1411(a).

190. The Seventh Amendment provides: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law." Const. amd. 7.

191. "If the right is legal in nature, then it carries with it the Seventh Amendment's guarantee of a jury trial."[82] An action to recover monetary damages on account of a personal injury

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[80] *See Purdue*, 603 U.S. at 223-224 ("Every bankruptcy law … from 1800 until 1978 [has] generally reserved the benefits of discharge to the debtor who offered a 'fair and full surrender of [its] property.") (quoting *Sturges v. Crowninshield*, 4 Wheat. 122, 176 (1819), and citing *Central Va. Community College v. Katz*, 546 U. S. 356, 363–364 (2006); Bankruptcy Act of 1800, §5, 2 Stat. 23 (repealed 1803); Act of Aug. 19, 1841, §3, 5 Stat. 442–443 (repealed 1843); Act of Mar. 2, 1867, §§11, 29, 14 Stat. 521, 531–532 (repealed 1878); Bankruptcy Act of 1898, §§7, 14, 30 Stat. 548, 550 (repealed 1978)).

[81] *See Blanchette*, 419 U.S. at 134.

[82] *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 55 (1989).

is legal in nature.[83] Likewise, a plaintiff who seeks monetary damages from an alter ego or successor has a right to a jury trial on the alter ego and successor liability issue. *See Wm. Passalacqua Builders, Inc. v. Resnick Developers S., Inc.*, 933 F.2d 131, 136 (2d Cir. 1991).[84] Thus, the claimants' state law right to seek monetary damages from alter egos and successors includes the Seventh Amendment's guarantee of a jury trial.

192. Under "28 U.S.C. § 1411 Congress has expressly preserved the right to a jury trial for personal injury and wrongful death actions" notwithstanding anything to the contrary in the Bankruptcy Code."[85] 28 U.S.C. § 1411(a) expressly provides: "Except as provided in subsection (b) of this section, this chapter and title 11 do not affect any **right** to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim." 28 U.S.C. § 1411(a) (emphasis added).

193. Under "28 U.S.C. § 1411 Congress has expressly preserved the right to a jury trial for personal injury and wrongful death actions" notwithstanding anything to the contrary in the Bankruptcy Code."[86] 28 U.S.C. § 1411(a) expressly provides: "Except as provided in subsection

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[83] *See Great–West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 210 (2002); *Pernell v. Southall Realty*, 416 U.S. 363, 375 (1974); *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 476 (1962); *In re W.R. Grace & Co*., 475 B.R. 34, 168 (D. Del. 2012), *aff'd* 532 F. App'x 264 (3d Cir. 2013), *aff'd* 729 F.3d 311 (3d Cir. 2013), and *aff'd* 729 F.3d 332 (3d Cir. 2013)).

[84] *Accord FMC Finance Corp. v. Murphree*, 632 F.2d 413, 421, n. 5 (5th Cir.1980); *Delchamps, Inc. v. Borkin*, 429 F.2d 417 (5th Cir. 1970); *Continental Casualty Co. v. United States*, 308 F.2d 846 (5th Cir. 1962); *Iantosca v. Benistar Admin. Servs., Inc*., 843 F. Supp. 2d 148, 153 (D. Mass. 2012); *U.S. v. Vacante*, No. 1:08cv1349, 2010 WL 2219405, *3-5 (E.D. Cal. June 2, 2010); *In re G-I Holdings, Inc*., 380 F. Supp. 2d 469, 476 (D.N.J. 2005); *Cantiere Diportovenere Piesse S.p.A. v. Kerwin*, 739 F. Supp. 231, 236 (E.D. Pa. 1990); *In re Bonds Distributing Co*., No. 97–52130C–7W, 98–6044. 2000 WL 33682815, at *10 (Bankr. M.D.N.C. Nov. 15, 2000).

[85] *R.H. Smith v. Lynco-Electric Co. (In re El Paso Refinery, L.P.)*, 165 B.R. 826, 828 (W.D. Tex. 1994); *see also Purdue*, 603 U.S. at 222; *Kozec v. Murphy (In re Murphy)*, 569 B.R. 402, 410 n.6 (Bankr. E.D.N.C. 2017).

[86] *R.H. Smith v. Lynco-Electric Co. (In re El Paso Refinery, L.P.)*, 165 B.R. 826, 828 (W.D. Tex. 1994); *see also Purdue*, 603 U.S. at 222; *Kozec v. Murphy (In re Murphy)*, 569 B.R. 402, 410 n.6 (Bankr. E.D.N.C. 2017).

(b) of this section, this chapter and title 11 do not affect any **right** to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim." 28 U.S.C. § 1411(a) (emphasis added).

194. Likewise, what good is a victim's right to a trial by jury if it cannot be exercised? Under the Debtor's scheme, if a claimant were to attempt to exercise her right to a jury trial in litigation against an alter ego or successor, she could be found in contempt of the Bankruptcy Court's order approving a settlement of estate claims.

195. Instead of presenting evidence to a jury in support of her state law remedies, the claimant would be told that she has no right to appear in Court and seek payment from non-debtors because the very debtor that caused her injury sold her rights without her consent.

196. The legal right to a trial by jury in a personal injury and wrongful death action against the non-debtor alter ego or successor that existed immediately prior to the commencement of these cases under state law would not be available to the claimants. The right to a jury trial would not only be affected but would be abrogated entirely. 28 U.S.C. § 1411 makes it clear that the Bankruptcy Code does not authorize a Bankruptcy Court to abrogate such a right.

6. Lack of Claimant Support Is Also Fatal to the Debtor's Ability to Confirm a Plan that Discharges Non-Debtors

197. Assuming, *arguendo*, that this Court finds that the claimants' claims and rights to seek recovery from the Debtor's insiders and affiliates are estate property that the Debtor can settle and that treating such claims as estate property does not violate the Fifth Amendment, the Seventh Amendment or 28 U.S.C. § 1411, the Debtor still cannot confirm a plan within a reasonable time period that completes the Debtor's liability management exercise.

198. Courts have begun applying heightened scrutiny to Rule 9019 settlements that purport to treat the tort victims' claims against non-debtors as estate property. *See Kidde-Fenwal,*

Inc., No. 23-10638, 2025 WL 1693173, at *2 (Bankr. D. Del. June 16, 2025); *accord Whittaker Clark & Daniels*, 152 F.4th at fn. 16 (holding that a Bankruptcy Court is required to apply "rigorous[]" scrutiny to insider settlements involving *Emoral* claims).

199. This reflects an awareness that parties may attempt to circumvent *Purdue* by engaging in transactions that trigger doctrines such as successor liability, alter ego, and veil-piercing, so they can use bankruptcy to take control of and release tort claims that can be asserted against them without the claimants' consent—*i.e.*, a *Purdue* End Around.

200. The recent ruling in *Kidde-Fenwal* creates a barrier to this tactic by effectively reinstating the *Master Mortgage* factors, including the requirement that the debtor demonstrate overwhelming claimant support for the settlement.

201. Under *Kidde-Fenwal*, when "causes of action that creditors can bring on their own behalf prepetition"—*i.e.*, claims based on doctrines like alter ego, veil piercing, and successor liability—are treated as "causes of action" that the "debtors" can settle in a manner that deprives creditors of their rights, any settlement of those causes of action must satisfy a heightened legal standard—*i.e.*, the "now-abrogated standard for third-party releases" under "*Continental*" and "*Master Mortgage*" (*i.e.*, the cases overruled by *Purdue*). 2025 WL 1693173 at *5.

202. The ruling in *Kidde-Fenwal* acknowledges that the estate claims settlement in *Emoral* had the same legal effect as the chapter 11 plan release in *Purdue*—*i.e.*, tort victims were deprived of access to the civil justice system and their right to a jury trial without their consent—and that a settlement involving *Emoral* Claims should not be approved in the future absent, *inter alia*, the overwhelming support of the affected claimants and a showing that the settlement would result in the payment of all or substantially all of the affected claims.

203. This comports with case law holding that estate settlements, like the one here, that are negotiated by and between insiders, are subject to heightened scrutiny and should not be approved in the face of creditor opposition. *See*, *e.g.*, *Matter of Foster Mortg. Corp*., 68 F.3d 914, 919 (5th Cir. 1995); *Fabricators Inc. v. Tech. Fabricators, Inc. (In re Fabricators, Inc.)*, 926 F.2d 1458, 1465 (5th Cir. 1991). Here, the Debtor has offered no evidence that tort victims support the settlement or that Court approval of the settlement would result in the payment of all or substantially all the affected tort claims.

204. If the Debtor's affiliates want to compensate the asbestos claimants for their injuries, they can do so outside a bankruptcy proceeding, in the civil justice system, where the leverage provided by that system informs the decision to settle and the amount.

205. But, again, the entire point of this case is to minimize claimant recoveries and, as a necessary consequence, maximize value for equity holders. Transferring value from claimants to equity holders that are not in financial distress is not, and has never been, a valid bankruptcy purpose. *See In re Rent-A-Wreck of Am., Inc*., 580 B.R. 364, 374-75 (Bankr. D. Del. 2018).

206. This Court must make a choice. As explained herein, this Court does not need to entertain the Debtor's proposed settlement or sale transaction, or even address the Constitutional issues raised herein. Litigation over these matters can be avoided by simply recognizing this case for what it is: a litigation tactic that should end with its immediate dismissal.

REQUEST FOR SANCTIONS

207. The Committee has incurred fees and expenses to oppose the Debtor's bad faith bankruptcy. As noted above, the Debtor's bankruptcy is structured so that if the Committee stands up for the tort victims, as it must, there may be no funding available to pay administrative claims. The Committee and its professionals should not be penalized for doing the right thing.

208. Section 105(a) provides a Court with the discretion to award sanctions where a party abuses the bankruptcy process, "including conduct that unreasonably and vexatiously multiplies bankruptcy proceedings."[87] A Bankruptcy Court has inherent authority under section 105(a) to sanction those who commence or continue an action in bad faith. *See In re 680 Fifth Ave. Assocs*., 218 B.R. 305, 323 (Bankr. S.D.N.Y. 1998).

209. Litigation conduct sanctionable under section 105(a) can be shown by showing a "deliberate abuse [of] the judicial process" through "maneuvers and schemes which would have the effect of undermining the integrity of the bankruptcy system." *In re Rodriguez*, 652 B.R. 750, 761 (Bankr. S.D. Tex. 2023); *see In re D&G Construction Dean Gonzalez, LLC*, 635 B.R. 232, 241-242 (Bankr. E.D.N.Y. 2021) (awarding sanctions for filing bankruptcy petition in bad faith); *In re Spectee Grp., Inc*., 185 B.R. 146, 159-160 (Bankr. S.D.N.Y. 1995) (awarding sanctions against the debtor, its president, and its attorney for prosecuting a chapter 11 case in bad faith).

210. In addition to dismissing this Chapter 11 Case, the Committee requests that R.T. Vanderbilt Holdings be ordered to pay (a) the fees and expenses incurred by the Committee's retained professionals, (b) the fees and expense incurred by the Claims Agent, and (c) the quarterly fees owed to the U.S. Trustee through the date of the date of this Order, in each case to the extent such fees and expenses are not timely paid by the Debtor.

NOTICE

211. Notice of this Motion has been served on: (a) the U.S. Trustee; (b) counsel to the Debtor; and (c) all persons who have formally appeared in this Chapter 11 Case and requested

[87] *Matter of Volpert*, 110 F.3d 494, 501 (7th Cir. 1997); *In re Rainbow Mag., Inc.*, 77 F.3d 278, 284-85 (9th Cir. 1996); *In re Courtesy Inns, Ltd., Inc.*, 40 F.3d 1084, 1089-90 (10th Cir. 1994); *In re Saldana,* 531 B.R. 141, 168 (Bankr. N.D. Tex. 2015), *aff'd in part, remanded in part*, 534 B.R. 678 (N.D. Tex. 2015).

service pursuant to Bankruptcy Rule 2002. Considering the nature of the relief requested herein, the Committee respectfully submits that no other or further notice need be provided.

NO PRIOR REQUEST

212. No prior request for the relief sought in this Motion has been made to this or any other Court in connection with this case.

CONCLUSION

WHEREFORE, based on the foregoing, the Committee respectfully requests that the Court grant the Motion, dismiss the Chapter 11 Case for cause, and grant such other and further relief as the Court deems necessary and appropriate.

Dated: March 10, 2026

Respectfully submitted,

BROWN RUDNICK LLP

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EXHIBIT A

PROPOSED ORDER

THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
Vanderbilt Minerals, LLC,[1]	Case No. 26-60110 (WAK)
Debtor.	

ORDER DISMISSING CHAPTER 11 CASE

This matter, having come before the Court upon the *Motion of the Official Committee of Unsecured Creditors to Dismiss the Chapter 11 Case Pursuant to 11 U.S.C. § 1112(b)* (the "Motion")[2] filed by the Official Committee of Unsecured Creditors (the "Committee"); the Court having reviewed the Motion and having heard the statements of counsel and the evidence introduced with respect to the Motion at a hearing before the Court (the "Hearing"); the Court having found that (a) the Court has jurisdiction to consider the Motion and the relief requested

[1] The Debtor is Vanderbilt Minerals, LLC (EIN 13-1432885). The Debtor's noticing address in this chapter 11 case is 33 Winfield Street, Norwalk, Connecticut 06855.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Motion.

therein pursuant to 28 U.S.C. §§ 157 and 1334; (b) venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; (c) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and (d) cause exists within the meaning of 11 U.S.C. § 1112(b) for dismissal of the Chapter 11 Case; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein;

IT IS HEREBY ORDERED AS FOLLOWS:

1. Dismissal. This Chapter 11 Case shall be dismissed pursuant to section 1112(b) of the Bankruptcy Code.

2. Closing the Chapter 11 Case. This Court directs the Clerk of this Court to close this Chapter 11 Case promptly following the filing of a notice by the Committee, with the prior written acknowledgement from the U.S. Trustee, that there is no objection to the closing of the case and confirming the completion of the following conditions: (a) all monthly operating reports of the Debtor have been filed, (b) all fees due and owing in the Chapter 11 Case to the Clerk of this Court and/or the U.S. Trustee pursuant to 28 U.S.C. § 1930 have been paid in full, (c) notice of the Appeal Exhaustion Date (as defined below) has been filed with this Court, and (d) all amounts requested pursuant to a Final Fee Application (as defined below) or a Post Dismissal Fee Application (all as defined below) have been paid by the Debtor or, if not paid, determined by this Court not to be allowable. The date that the parties jointly file a notice with the Court indicating that all appellate proceedings, including proceedings for review or otherwise before the U.S. Supreme Court, involving this Order ("Appeals") are exhausted or resolved, or that the parties will not pursue the Appeals, shall hereinafter be referred to as the "Appeal Exhaustion Date."

3. Procedures for Final Allowance of Fees and Expenses. All professionals retained or that may be retained pursuant to sections 105, 327, 328 or 1103 of the Bankruptcy Code

("Retained Professionals"), seeking compensation pursuant to sections 330 or 331 of the Bankruptcy Code shall file and serve monthly, interim and final fee applications for periods through and including the date of this Order within thirty (30) days of the date of this Order (the "Final Fee Applications"); and shall file and serve any fee applications for periods from the date of this Order through and including the Appeal Exhaustion Date ("Post-Dismissal Fee Applications" and together with the Final Fee Applications, the "Fee Applications") within thirty (30) days of the Appeal Exhaustion Date. The Fee Applications shall be in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of this Court, and any order establishing procedures for interim compensation and reimbursement of expenses of professionals entered in the Chapter 11 Case (the "Compensation Procedures Order"). Any objections to the Fee Applications shall be filed and served on counsel for the Debtor and the entity submitting the application to which an objection is being filed no later than twenty-one (21) days following the filing of such Fee Application. The Court will schedule hearings, at the Court's convenience, to consider the Fee Applications, any retention applications (if necessary), and issue orders allowing the professional fees and expenses of the Retained Professionals.

4. Compensation Procedures Order; Reimbursement Requests; Post-Dismissal Monthly Fees. The Compensation Procedures Order shall remain in full force and effect through and including the Appeal Exhaustion Date, including as to requests for reimbursement of expenses incurred by members of the Committee and their representatives (a "Reimbursement Request") and the submission and payment of monthly fee statements by Retained Professionals. After the Appeal Exhaustion Date, the Compensation Procedures Order shall remain in effect as to the submission and payment of Fee Applications.

5. Limited Continued Existence of the Committee. The Committee shall remain in existence after the date of this Order solely to pursue or defend any Appeals, and its Retained Professionals shall be authorized to continue to perform services on the Committee's behalf and communicate with its constituents concerning the pursuit or defense of any Appeals. On the Appeal Exhaustion Date, the Committee shall be automatically dissolved, and all members and professionals retained by the Committee shall be discharged from all duties, responsibilities, and obligations arising from or related to the Committee. Following such dissolution, any attorney-client privilege and similar rights previously held by the Committee shall remain in existence and shall be enforceable by any person or entity that was a member of the Committee as of its dissolution (directly or indirectly through their respective counsel or other representative). Notwithstanding anything contained herein to the contrary, the Committee, Committee members, and their representatives and the Committee's Retained Professionals shall be authorized to seek payment of fees and reimbursement of expenses in accordance with this Order.

6. Services of Claims Agent. The claims and noticing agent appointed in this Chapter 11 Case (the "Claims Agent") is authorized to assist the Debtor with service of this Order. On or about thirty (30) days after the entry of this Order, the Debtor's claims and noticing agent, shall (a) forward to the Clerk of the Court an electronic version of all imaged claims; (b) upload the creditor mailing list into CM/ECF; and (c) docket a combined final claims register containing claims against the Debtor. The Claims Agent shall be discharged from all duties, responsibilities, and obligations as the Debtor's claims and noticing agent in this Chapter 11 Case following the conclusion of such services pursuant to this Order and the closing of this Chapter 11 Case. The Claims Agent shall be entitled to payment and reimbursement of its fees and costs. The Claims

Agent is authorized to take all actions necessary and appropriate to effectuate the terms of this Order.

7. Payment of Quarterly Fees. Not later than thirty (30) days after the date of this Order, the Debtor shall pay to the U.S. Trustee any quarterly fees owed through the date of this Order pursuant to 28 U.S.C. § 1930(a)(6). Any disbursements, including but not limited to the payments of professional fees and expenses by the Debtor between the date of this Order through and including the Appeal Exhaustion Date must be reported on the Debtor's final report and shall be subject to the payment of fees owed pursuant to 28 U.S.C. § 1930.

8. Sanctions. As a sanction for orchestrating the filing of the Chapter 11 Case, R.T. Vanderbilt Holdings is ordered to pay (a) the fees and expenses incurred by the Committee's retained professionals, (b) the fees and expense incurred by the Claims Agent, and (c) the quarterly fees owed to the U.S. Trustee through the date of the date of this Order, in each case to the extent such fees and expenses are not timely paid by the Debtor.

9. Continued Effect of Confidentiality Orders. Notwithstanding any other provision of this Dismissal Order, any obligations arising under confidentiality agreements, joint interest agreements, and protective orders, if any, entered into during the Chapter 11 Case in connection with the Chapter 11 Case shall remain in full force and effect in accordance with their terms.

10. Notice. On or before seven (7) days following the date of this Order, the Debtor shall serve notice of this Order (including a copy of this Order) pursuant to Bankruptcy Rules 2002(f)(2) and 2002(k) on the Committee, the U.S. Trustee, the Master Service List, all entities that have requested notice pursuant to Bankruptcy Rule 2002, and such additional persons and entities deemed appropriate by the Debtor.

11. Retained Jurisdiction. Notwithstanding the dismissal of the Chapter 11 Case, this Court shall retain jurisdiction to hear and determine all matters arising from or related to the Chapter 11 Case, including without limitation, certification of any appeal of this Order, the interpretation, implementation, or enforcement of this Order and the Court's prior orders, and to hear and consider any objection to a Fee Application.

12. Immediate Effectiveness. Notwithstanding any provisions in the Bankruptcy Rules to the contrary, this Order shall be immediately effective and enforceable upon its entry.

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