

Subject Matter Jurisdiction No Block to the Texas Two Step

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Over the last several years, companies plagued with massive toxic tort liabilities have attempted to utilize a statutory process known as the “Texas Two Step,” created under Texas’ Business Organizations Code Section 1.002(55)(A), to effectively divide into two separate legal entities, one of which contains most of the healthy, profitable operations and the other assumes the legacy liabilities while being funded with what some argue are insufficient assets. In 2017, Georgia Pacific faced approximately 64,000 asbestos claims. To address the problem, it effectuated a divisional merger under the Texas statute and split into two separate entities, with Bestwall LLC assuming responsibility for the personal injury claims. In connection with the merger, the new entity entered into a funding agreement with Bestwall to fund its Chapter 11 case and establish a trust to handle asbestos liabilities.

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