No. 21-1047

In the Supreme Court of the United States

ANNICK ROY, ET AL., PETITIONERS,

v.

CANADIAN PACIFIC RAILWAY CO.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Federal Rules of Bankruptcy Procedure govern procedure in a civil proceeding that has been transferred to a federal district court under 28 U.S.C. 157(b)(5) by virtue of being related to a bankruptcy case under 28 U.S.C. 1334(b).

2. Whether Bankruptcy Rule 9023 governs the deadline to file a post-judgment motion entered in a bankruptcy proceeding over which the federal district court has related-to bankruptcy jurisdiction under 28 U.S.C. 1334(b).

CORPORATE DISCLOSURE STATEMENT

Respondent Canadian Pacific Railway Company is a wholly owned subsidiary of Canadian Pacific Railway Limited. No publicly held company owns 10% or more of Canadian Pacific Railway Limited's stock.

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BRIEF FOR THE RESPONDENT IN OPPOSITION

Respondent respectfully submits that the petition for a writ of certiorari should be denied.

OPINIONS BELOW

The opinion of the court of appeals dismissing petitioners' appeal for lack of jurisdiction (Pet. App. 1a-20a) is reported at 999 F.3d 72. The opinion of the district court granting respondent's motion to dismiss is reported at 210 F. Supp. 3d 218. The opinion of the district court denying petitioners' motion for leave to file a second amended complaint (Pet. App. 21a-27a) is not reported but is available at 2016 WL 5416943.

JURISDICTION

The judgment of the court of appeals was entered on June 2, 2021. The petition for rehearing was denied on September 8, 2021 (Pet. App. 30a-36a). On November 30, 2021, Justice Breyer extended the time within which to file a petition for a writ of certiorari to and including January 24, 2022, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

In July 2013, a freight train operated by the Montreal Maine & Atlantic Railway (MMA) derailed in the town of Lac-Mégantic, Quebec. The train was carrying crude oil, and the resulting explosions killed 47 people. Their representatives, who are the petitioners here, filed personal-injury and wrongful-death

suits against MMA and a number of other defendants, eventually including respondent Canadian Pacific Railway Company. While some of those suits were pending, MMA filed for bankruptcy in the District of Maine, and all of the tort and wrongful-death suits (including this one) were transferred to that court under 28 U.S.C. 157(b)(5) as related to MMA's bankruptcy.

On September 28, 2016, the district court dismissed this case based in part on lack of personal jurisdiction and forum non conveniens. The court held that Canadian Pacific did not have sufficient, relevant contacts with the United States and that Quebec—where the derailment occurred and where all of the plaintiffs resided—was a more convenient forum than Maine. See 210 F. Supp. 3d 218. That same day, the court denied petitioners' motion for leave to file a second amended complaint adding various Canadian Pacific subsidiaries as parties. See Pet. App. 21a-27a. Twenty-eight days later, on October 26, petitioners filed a motion for reconsideration of the denial of leave to file a second amended complaint. Canadian Pacific responded as relevant here that the reconsideration motion was untimely under Federal Rule of Bankruptcy Procedure 9023, which allows 14 days to file certain post-judgment motions. The district court summarily denied the reconsideration motion. See Pet. App. 29a.

On January 19, 2017, petitioners filed a notice of appeal from the district court's denial of the motion for leave to amend. The court of appeals dismissed the appeal as untimely. See Pet. App. 1a-20a. The court explained that petitioners had appealed long after the 30-day period permitted by Federal Rule of Appellate Procedure 4(a)—which expired October 28,

2016—because the reconsideration motion had not tolled that deadline given that it too had been untimely under Bankruptcy Rule 9023. See Pet. App. 20a. The court denied rehearing en banc without noted dissent, *id.* at 35a-36a, and this petition followed.

1. In July 2013, a train operated by MMA derailed in the town of Lac-Mégantic, Quebec, killing 47 people. C.A. J.A. 1136. Shortly thereafter, petitioners filed dozens of personal-injury and wrongful-death suits against MMA and others. In August 2013, the derailment and the litigation caused MMA to file for Chapter 11 bankruptcy protection in Maine. Petitioners later sued Canadian Pacific in both Illinois and Texas state courts. *Id.* at 1136-1137.[1] Canadian Pacific removed all of those cases to federal court. See No. 15-mc-00355-JDL (D. Me.), Docket entry No. 37 at 1-3 (transfer order detailing procedural history of Illinois and Texas cases). The parties agreed there was federal "subject-matter jurisdiction over the Illinois and Texas claims because they are 'related to' the MMA bankruptcy which is subject to title 11 of the United States Code." *Id.* at 3; see C.A. J.A. 1140 ("[S]ubject matter jurisdiction derives from a federal statute, 28 U.S.C.A. § 1452(a) (2016), insofar as it is 'related to' the MMA bankruptcy.").

In February 2016, the district court granted the transfer motion under 28 U.S.C. 157(b)(5). See No. 15-mc-00355-JDL (D. Me.), Docket entry No. 37. Section 157(b)(5) provides in part that a district court

[1] Although the Texas suit initially covered property-damage claims as well as personal-injury and wrongful-death claims, the Texas plaintiffs agreed to abandon their property-damage claims so that the court could exercise its transfer powers under 28 U.S.C. 157(b)(5).

having jurisdiction over a bankruptcy proceeding "shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending." The court found that petitioners' claims against Canadian Pacific were related to MMA's bankruptcy for two reasons: (1) the confirmed MMA bankruptcy plan includes "a 'proportionate judgment reduction provision' under which Canadian Pacific's liability for the Lac-Mégantic disaster, if any, may be reduced by the comparative fault of MMA, which operated the train"; and (2) the bankruptcy estate would need to be involved in determining the comparative fault of MMA, and litigating in a single forum would help conserve estate resources. *Id.* at 4-5.[2]

After the transfer, Canadian Pacific moved to dismiss the suits based on lack of personal jurisdiction, insufficiency of service of process, and forum non conveniens. C.A. J.A. 40. In opposing the personal-jurisdiction motion, petitioners argued that the Federal Rules of Bankruptcy Procedure, not the Federal Rules of Civil Procedure, should apply—and they relied on one of the very cases they now criticize in their petition. Specifically, petitioners argued that, "unlike Rule 4 of the Federal Rules of Civil Procedure, Rule 7004(d) of the Federal Rules of Bankruptcy Proce-

[2] Petitioners incorrectly argue (at 7-8) that related-to jurisdiction was based solely on a shared insurance policy. In the relevant transfer order, the district court found that this case is related to the MMA bankruptcy for reasons other than merely the insurance policy. No. 15-mc-00355-JDL (D. Me.), Docket entry No. 37 at 4-5. Petitioners mistakenly rely on an earlier transfer order that predated Canadian Pacific's involvement in this litigation.

dure applies in this removed case (*Diamond Mtg. Corp. v. Sugar*, 913 F.2d at 1242-43) and that rule provides for nationwide jurisdiction." C.A. J.A. 260.

On September 28, 2016, the district court granted Canadian Pacific's motion to dismiss. The court agreed with petitioners that they needed to show only "that the defendant has adequate contacts in the United States as a whole, rather than with a particular state." C.A. J.A. 1140. But the court determined that Canadian Pacific lacked such contacts because it is a Canadian company with no relevant presence in the United States. *Id.* at 1142-1143. In the alternative, the court found that Canadian Pacific had not been properly served with process and that Quebec was a more appropriate forum. *Id.* at 1150-1157. At the same time it granted the motion to dismiss, the court denied petitioners' motion for leave to file a second amended complaint adding certain Canadian Pacific subsidiaries as defendants. Pet. App. 21a-27a. The court reasoned that the second amended complaint did not contain any "factual allegations" that would "support the conclusion that [Canadian Pacific] and its affiliates are in fact a common enterprise." *Id.* at 25a. Having dismissed petitioners' claims and denied leave to amend, the court entered judgment. *Id.* at 28a.

Twenty-eight days later, on October 26, petitioners filed what they styled as a motion to reconsider the denial of leave to file a second amended complaint. C.A. J.A. 1162-1169. That motion, however, did not contend either that the judgment dismissing Canadian Pacific was incorrect, or that the district court had wrongly denied the motion for leave to amend. Instead, the motion sought post-judgment permission to file an entirely new amended complaint that would

have replaced Canadian Pacific as a defendant and substitute one of Canadian Pacific's subsidiaries. *Id.* at 1170-1191. Canadian Pacific opposed the motion on a number of grounds, including timeliness. *Id.* at 1263-1274. As relevant here, it argued that the Bankruptcy Rules, which allow a 14-day window for motions to alter or amend a judgment, controlled and that the motion for reconsideration therefore came too late. See Fed. R. Bankr. P. 9023. The district court summarily denied petitioners' reconsideration motion. Pet. App. 29a.

2. On January 19, 2017, petitioners appealed the denial of leave to file a second amended complaint, and the court of appeals dismissed the appeal for want of appellate jurisdiction. Pet. App. 1a-20a. Petitioners had filed their notice of appeal more than 30 days after the district court had entered judgment on September 28, see Fed. R. App. P. 4(a)(1)(A), and so their appeal was timely only if the October 26 reconsideration motion had tolled the 30-day deadline. That post-judgment motion, in turn, tolled the deadline only if it was timely filed. See Fed. R. App. P. 4(a)(4). Civil Rule 81(a)(2) states that the Federal Rules of Civil Procedure apply in bankruptcy cases "to the extent provided by the Federal Rules of Bankruptcy Procedure." Fed. R. Civ. P. 81(a)(2). And Bankruptcy Rule 9023 adopts Civil Rule 59 in the bankruptcy context but shortens the time for filing certain post-judgment motions from 28 to 14 days. Although petitioners' reconsideration motion was filed within 28 days, it was not filed within 14 days. Thus, if Bankruptcy Rule 9023 governed in this case, then petitioners' reconsideration motion was untimely and did not toll their appeal period. Pet. App. 3a. The appeal itself would then have been untimely as well. *Ibid.*

The court of appeals held that the Bankruptcy Rules apply to non-core, related-to proceedings like this case. The court first observed that "all three of the courts of appeals to have considered the issue have concluded that the Bankruptcy Rules apply to a non-core, 'related to' case pending in a federal forum." Pet. App. 11a. The court then examined the language of the Bankruptcy Rules for itself, and found it "strongly suggest[ive] that the procedural aspects of non-core, 'related to' cases adjudicated in federal district courts are governed by the Bankruptcy Rules." *Id.* at 14a. That suggestion is supported, the court further explained, by "the practicalities attendant to the efficient operation of the modern bankruptcy system." *Ibid.* In particular, it would not make sense for the federal district court overseeing a bankruptcy to apply two different sets of rules to matters within or related to the bankruptcy. *Id.* at 14a-15a. Given the uniform decisions from its sister circuits, the agreement of the leading bankruptcy treatise, and the fact that petitioners had themselves requested transfer of this case to the District of Maine on related-to grounds, the court of appeals concluded that petitioners' "notice-based concerns ring hollow." *Id.* at 19a.

ARGUMENT

Congress provided that, when a bankruptcy petition is filed in federal court, related proceedings may also be filed in or removed to the same federal court. Petitioners' primary contention (Pet. 12-25) is that the Federal Rules of Bankruptcy Procedure apply to only the original bankruptcy case, not any related proceedings pending before the same district court. The three other courts of appeals to directly consider that argument—the Third, Fourth, and Seventh Circuits—

have rejected it as inconsistent with the language of the Bankruptcy Rules and sound bankruptcy policy. And at least two other courts of appeals—the Fifth and Eleventh Circuits—have acknowledged that the Bankruptcy Rules apply to related-to proceedings. No court of appeals has concluded otherwise. Petitioners are thus mistaken that there is a circuit split (Pet. 12-17) or that chaos looms in the lower courts (Pet. 17-21). Moreover, petitioners affirmatively argued for application of the Bankruptcy Rules before the district court, making this case an exceptionally poor vehicle given that petitioners effectively invited any error.

Petitioners also briefly contend (Pet. 25-27) that even if the Bankruptcy Rules govern, the court of appeals applied the wrong rule in determining the timeliness of their reconsideration motion. Again, the decision below is both correct and not the subject of any split. Further review is not warranted.

A. The First Question Presented Does Not Warrant Review

Petitioners do not dispute that, if the Bankruptcy Rules governed the reconsideration motion they filed in district court, that motion was untimely. The motion therefore would not toll the deadline for filing an appeal, which would be similarly untimely. The question then is whether, as the lower courts held, the Bankruptcy Rules apply to this case. They do. The text and history of Bankruptcy Rules 1001 and 7001 require that result, as every court of appeals to address the issue has agreed. And even if the issue otherwise warranted review, petitioners affirmatively argued before the district court for application of the

Bankruptcy Rules, making this case a poor one for considering their supposed notice concerns.

1. Federal courts' bankruptcy jurisdiction is quite broad. Section 1334(a) of Title 28 provides that federal district courts "shall have original and exclusive jurisdiction of all cases under title 11." As petitioners note (at 12-13), that provision grants exclusive federal jurisdiction over a bankruptcy petition itself. Section 1334(b) then provides that district courts "shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." This Court has explained that civil proceedings that "could conceivably have any effect on the estate being administered in bankruptcy" are "related to cases under title 11" for purposes of Section 1334(b). *Celotex Corp.* v. *Edwards*, 514 U.S. 300, 307, 308 n.6 (1995). Congress chose expansive language in order to grant "comprehensive bankruptcy jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate." *Id.* at 308.

Because federal courts do not have exclusive original jurisdiction over related-to proceedings, Congress provided a mechanism for removal from state court to federal court. See 28 U.S.C. 1452(a). After removal (and, if necessary, transfer), the removed matter becomes an "adversary proceeding" in the bankruptcy case. See Fed. R. Bankr. P. 7001(10) (defining "adversary proceeding" to include "a proceeding to determine a claim or cause of action removed under 28 U.S.C. § 1452"). Here, petitioners brought a number of wrongful-death suits against various defendants in both Illinois and Texas state courts. Those suits were removed to federal court and eventually

transferred to the Maine federal district court where MMA's bankruptcy was pending. See 210 F. Supp. 3d 218, 222.

In general, "[d]istrict courts may refer any or all [bankruptcy] proceedings to the bankruptcy judges of their district." *Stern* v. *Marshall*, 564 U.S. 462, 473 (2011) (citing 28 U.S.C. 157(a)). "The manner in which a bankruptcy judge may act on a referred matter depends on the type of proceeding involved." *Ibid.* A bankruptcy judge may hear and enter final judgments in core bankruptcy proceedings, see *id.* at 474 (quoting 28 U.S.C. 157(b)(1)), and those judgments are reviewed by the district court under "traditional appellate standards," *id.* at 475. When, however, "a referred 'proceeding . . . is not a core proceeding but . . . is otherwise related to a case under title 11,'" the bankruptcy judge may only submit a recommendation that the district court reviews *de novo*. *Ibid.* (quoting 28 U.S.C. 157(c)(1)). Congress drew certain exceptions to the core/non-core scheme, among them that "personal injury tort and wrongful death claims" must be tried by the district court. 28 U.S.C. 157(b)(5). Accordingly, the Maine district court here did not refer, but addressed itself, petitioners' wrongful-death claims against Canadian Pacific.

2. Petitioners contend that in adjudicating their claims, the district court was required to apply the Federal Rules of *Civil* Procedure, not the Federal Rules of *Bankruptcy* Procedure. As petitioners see it, the Bankruptcy Rules govern the bankruptcy case itself, whereas the Civil Rules govern related-to proceedings like this case. As explained below, that is a newfound position for petitioners. See *infra* at 16-18. In any event, it is incorrect. When proceedings are consolidated in a single federal court as related to a

bankruptcy under Section 1334(b), there is no textual or common-sense basis for applying different procedural rules than to the bankruptcy itself.

a. The court of appeals correctly began with the text of Bankruptcy Rule 1001, which establishes the scope of the Bankruptcy Rules and provides that they "govern procedure in cases under title 11 of the United States Code." That language does not refer to cases *arising* under Title 11—*i.e.*, bankruptcy petitions themselves and perhaps core related-to proceedings. See Pet. App. 12a ("Rule 1001 omits the word 'arising.'"). Rather, Rule 1001 refers broadly to "cases under title 11," which naturally encompasses *all* proceedings in federal court by virtue of federal bankruptcy jurisdiction. As it is used in Rule 1001, a "case[] under title 11" is "the umbrella under which all other matters take place." *In re Moody*, 817 F.2d 365, 367 (5th Cir. 1987). It includes under its canopy *all* bankruptcy proceedings that comprise sub-actions in such a case, even non-core proceedings like this one that are tried before a district court while exercising its related-to bankruptcy jurisdiction.

In the bankruptcy context, this Court has used the term "case" to refer broadly to proceedings litigated in connection with a federal bankruptcy. The Court recently observed that "[a] bankruptcy case embraces 'an aggregation of individual controversies.' " *Ritzen Grp., Inc.* v. *Jackson Masonry, LLC*, 140 S. Ct. 582, 586 (2020) (quoting 1 Collier on Bankruptcy ¶ 5.08[1][b], p. 5-43 (16th ed. 2019)). And "Congress has long provided that orders in bankruptcy cases may be immediately appealed if they finally dispose of discrete disputes within the larger case." *Bullard* v. *Blue Hills Bank*, 575 U.S. 496, 501 (2015) (quoting *Howard Delivery Serv., Inc.* v. *Zurich Am. Ins. Co.*,

547 U.S. 651, 657 n.3 (2006)). The Court's language reflects a common usage and understanding in bankruptcy, which is that a case under Title 11 is not merely the bankruptcy petition that "arises" under Title 11. The larger bankruptcy case may include many discrete and related proceedings.

The last sentence of Rule 1001 confirms a broad reading of the term "case" in Rule 1001's first sentence. The last sentence provides: "These rules shall be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of *every case and proceeding*" (emphasis added). That wording is critical for two reasons. First, it shows that the earlier reference in Rule 1001 to "cases under title 11" cannot mean only the bankruptcy petition itself—because Rule 1001 immediately gives general instructions on how the Rules are to be applied in "every case and proceeding." Second, when Rule 1001 refers to "every . . . proceeding," that language plainly encompasses adversary proceedings like this case.

The Advisory Committee Notes are to the same effect: they say that the Bankruptcy Rules are "applicable to cases and *proceedings* under title 11," and "the civil rules do not apply to *proceedings* in bankruptcy, except as they may be made applicable by rules promulgated by [this] Court." Fed. R. Bankr. P. 7001 advisory committee note (emphases added). Both Rule 1001's complete text and the accompanying Notes make clear that the Bankruptcy Rules apply beyond the specific case commenced by the filing of a bankruptcy petition and encompass related proceedings that are part of the same overall bankruptcy.

Indeed, there is an air of unreality to petitioners' argument. The Bankruptcy Rules are quite compre-

hensive, covering everything from the bankruptcy case commenced by the filing of a petition (Part I), to adversary proceedings that are either filed within the bankruptcy case or that are brought into it by removal (Part VII). Part VII contains more than fifty Rules that span pleading, discovery, and judgment. It begins with Rule 7001, which states that "[a]n adversary proceeding is governed by the rules of this Part VII." It then lists the types of adversary proceedings, including "a proceeding to determine a claim or cause of action removed under 28 U.S.C. §1452." Fed. R. Bankr. P. 7001(10). As the district court's dismissal order stated, "subject matter jurisdiction derives from a federal statute, 28 U.S.C.A. § 1452(a) (2016), insofar as it is 'related to' the MMA bankruptcy." C.A. J.A. 1140. Petitioners' position is thus that although Rule 7001 (and with it Part VII) by its terms applies to petitioners' litigation against Canadian Pacific, that is trumped by the phrase "cases under title 11" in Rule 1001. But courts should favor a construction of the term "case" in the first sentence of Rule 1001 that would not nullify Rule 7001 and Part VII's application to adversary proceedings more generally. And in any event, if there were an irreconcilable conflict, the specific language in Rule 7001 would control the more general language in Rule 1001.

b. In addition to Rule 1001's text, the court of appeals also considered "the efficiency goals of the bankruptcy system." Pet. App. 15a. As that court explained, Congress created a system in which related proceedings could be removed or transferred to the same federal district court overseeing the bankruptcy. It would not make any sense for the district court to apply the Bankruptcy Rules to the case commenced by the bankruptcy petition, but the Civil Rules to re-

lated proceedings—which, after all, may be in federal court only by virtue of their connection to the bankruptcy. Employing petitioners' approach that Rule 1001 is limited to cases "arising" under Title 11, the Civil Rules would apply to all related-to proceedings, even *core* proceedings—meaning that the Civil Rules would apply whenever a bankruptcy judge adjudicated traditional bankruptcy matters in a core related-to proceeding. See 28 U.S.C. 157(b)(2) (listing core proceedings).

To forestall that impracticable result, petitioners suggest, but do not clearly state, that the Bankruptcy Rules would apply not just in the specific case commenced by the bankruptcy petition but also in core proceedings. See, *e.g.*, Pet. 22-23. But "[n]othing in the literal terms of the pertinent rules—and, in particular, nothing in Rules 1001, 7001 or 7004(d)—even remotely suggests that they are to be applied differently in core and non-core proceedings." *Diamond Mortg. Corp. of Ill.* v. *Sugar*, 913 F.2d 1233, 1243 (7th Cir. 1990). Indeed, as far as Canadian Pacific is aware, no court has ever accepted that position.

3. As petitioners acknowledge (at 2, 11), the only other three courts of appeals to consider their argument have rejected it. See Pet. App. 11a; see also *In re Celotex Corp.*, 124 F.3d 619, 629 (4th Cir. 1997); *Phar-Mor, Inc.* v. *Coopers & Lybrand*, 22 F.3d 1228, 1237 (3d Cir. 1994); *Diamond Mortg.*, 913 F.2d at 1242. Consistent with those decisions, two additional courts of appeals have recently concluded, though without extensive analysis, that the Bankruptcy Rules apply in related-to proceedings. See *Reynolds* v. *Behrman Cap. IV L.P.*, 988 F.3d 1314, 1323-1325 (11th Cir.), cert. denied, 142 S. Ct. 239 (2021); *Double Eagle Energy Servs., L.L.C.* v. *MarkWest Utica*

EMG, L.L.C., 936 F.3d 260, 264 (5th Cir. 2019). No court of appeals has concluded otherwise.

As the Fourth Circuit held in *Celotex*, when a proceeding "is properly in federal district court on 'related to' jurisdiction under § 1334(b)," then "[t]he entire body of Bankruptcy Rules . . . applies to [the] action." 124 F.3d at 629. The Third Circuit gave a historical reason in addition to Rule 1001's current text: "Before 1987, Bankruptcy Rule 1001, which defines the scope of the Bankruptcy Rules, stated that '[t]he Bankruptcy Rules and Forms govern procedure *in United States Bankruptcy Courts*.' " *Phar-Mor*, 22 F.3d at 1237 (emphasis in original). That language was amended in 1987 to "cases under title 11," which broadened the Rules' reach to matters in district court in the wake of the Court's decision in *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982). *Phar-Mor*, 22 F.3d at 1237; see *Diamond Mortg.*, 913 F.2d at 1241. Rule 1001 thus covers bankruptcy-related matters, like this one, where a district court sits as a trial court—not just the core proceedings tried in bankruptcy court.

In the face of the circuit consensus, petitioners attempt to manufacture a split by relying on cases involving not Rule 1001, but 28 U.S.C. 1334(a). To be sure, Section 1334(a) also refers to "cases under title 11." And courts have construed that language as a reference to the bankruptcy petition itself. But that construction follows from the different statutory context. Section 1334(b) separately refers to "civil proceedings arising under title 11, or arising in or related to cases under title 11." In other words, Section 1334—unlike Rule 1001—is broken into two subsections: the first grants "original and exclusive jurisdiction" of the bankruptcy petition; the second grants

"original but not exclusive jurisdiction" of related-to proceedings. The plain text of Section 1334(b) makes clear that "cases under title 11" in Section 1334(a) does not include related-to proceedings, just as the plain text of Rule 1001 makes clear that the phrase there *does* include related-to proceedings. See pp. 11-15, *supra*. There is nothing odd about recognizing that the same phrase in a statutory provision and in the Bankruptcy Rules may have two different meanings depending on the surrounding context. See, *e.g.*, *General Dynamics Land Sys., Inc.* v. *Cline*, 540 U.S. 581, 595 (2004). Accordingly, there is not even "serious tension" (Pet. 15), let alone any circuit split, between the uniform line of cases interpreting Rule 1001 and the parallel and equally uniform line interpreting Section 1334(a).

4. a. Even if there were tension in the lower courts, this case would not be an appropriate vehicle for resolving it because petitioners effectively invited the asserted error below and should be estopped from changing positions now. In the district court, Canadian Pacific moved to dismiss petitioners' claims for lack of personal jurisdiction. Petitioners responded that, "unlike Rule 4 of the Federal Rules of Civil Procedure, Rule 7004(d) of the Federal Rules of Bankruptcy Procedure applies in this removed case (*Diamond Mtg. Corp. v. Sugar*, 913 F.2d at 1242-43) and that rule provides for nationwide jurisdiction." C.A. J.A. 260. Petitioners thus argued for application of Bankruptcy Rule 7004 and cited one of the very cases—the Seventh Circuit's decision in *Diamond Mortgage*—with which they now take issue. Petitioners maintained that Canadian Pacific had "the requisite minimum contacts with the United States for purposes of personal jurisdiction in this civil action" under

Rule 7004(d). *Id.* at 262. Although the district court rejected that argument and dismissed petitioners' claims for lack of personal jurisdiction, it did so because Canadian Pacific lacked the requisite minimum contacts with the United States, see 210 F. Supp. 3d at 226, not because the district court had rejected petitioners' legal rule.

As the briefing below makes clear, petitioners are simply wrong that "the district court and the parties all understood the ordinary rules of civil procedure to apply." Pet. 1. They understood precisely the opposite. Petitioners misleadingly point out (at 8) that the district court applied certain Federal Rules of Civil Procedure, including Rules 15(a), 42(a), and 54(b). But the Bankruptcy Rules determine the extent to which the Civil Rules apply in bankruptcy, see Fed. R. Civ. P. 81(a)(2), and the Bankruptcy Rules apply Civil Rules 15, 42, and 54(b) without modification. See Fed. R. Bankr. P. 7015, 7042, and 7054.

For similar reasons, petitioners cannot plausibly suggest (at 19) that they lacked notice that the Bankruptcy Rules would apply, nor can petitioners' amici plausibly contend that petitioners were victims of a "surprise switch" that violated due process, Br. of Law Professors 11. As the court of appeals noted, petitioners "joined in the request to transfer their cases from other federal courts to the District of Maine as cases 'related to' a pending bankruptcy proceeding." Pet. App. 19a. "At that time, the existing case law, though sparse, put them squarely on notice that the Bankruptcy Rules would apply." *Ibid.* And, as discussed, petitioners thereafter relied on the Bankruptcy Rules in an attempt to establish personal jurisdiction. Given petitioners' own briefing below and the uniform circuit case law, petitioners had plenty of no-

tice that the Bankruptcy Rules would apply to their reconsideration motion.

b. Beyond petitioners' invited error, this case is a poor vehicle because resolving the question presented would have no effect on the outcome. Even if petitioners could have brought a timely appeal, dismissal would have been required on several grounds.

First, if petitioners are correct that the Civil Rules should have governed the timeliness of their reconsideration motion, those Rules equally would have controlled its merits. Petitioners sought reconsideration of the court's denial of leave to file a second amended complaint. Post-judgment, petitioners wanted to substitute a Canadian Pacific subsidiary as the sole defendant. See Pet. App. 21a-27a. Petitioners wanted to add that defendant because Canadian Pacific had argued that it lacked minimum contacts with the United States—a position with which the district court agreed in granting Canadian Pacific's motion to dismiss. See C.A. J.A. 1140-1150. But if the court had been applying Civil Rule 4 rather than Bankruptcy Rule 7004, and had been looking to contacts with *Maine* rather than the United States, it would have been obvious that the proposed new complaint was futile because the Canadian Pacific subsidiary lacked the requisite contacts with Maine. That subsidiary was not incorporated in Maine and did not have its principal place of business in Maine; none of the alleged tortious acts occurred in Maine; and the proposed new complaint did not include any allegations connecting the putative new defendant to Maine. C.A. J.A. 1170-1191.

Second, all of the factors that led the district court to alternatively dismiss on forum non conveniens grounds would still have applied to the substituted

defendant. C.A. J.A. 1153-1157. Although the subsidiary is a U.S. entity, it had no residence in Maine; the plaintiffs were all Canadian; and the derailment took place in Canada.

Third, under controlling First Circuit law, a plaintiff cannot seek to amend a complaint after the judgment without demonstrating that the judgment itself was erroneous. See, *e.g.*, *Gaudet* v. *Boyajian*, 50 F.3d 1 (1st Cir. 1995). Yet here, plaintiffs conceded that the judgment dismissing Canadian Pacific was proper and simply wanted to file a new post-judgment complaint against a different defendant.

In short, even though petitioners could have taken an appeal if their reconsideration motion had been timely, there is no reasonable prospect that the ultimate outcome of their appeal would have been any different.

B. The Second Question Presented Does Not Warrant Review

Petitioners briefly argue (Pet. 25-27) that even if the Bankruptcy Rules applied before the district court, Rule 9023 did not. According to petitioners, Rule 9023 applies "only to appeals from the bankruptcy court to the district court, and not to appeals from the district court to the court of appeals." Pet. 25 (quoting *In re Butler, Inc.*, 2 F.3d 154, 155 (5th Cir. 1993)); see *In re Bli Farms, P'ship*, 465 F.3d 654, 658 (6th Cir. 2006); *English-Speaking Union* v. *Johnson*, 353 F.3d 1013, 1019 (D.C. Cir. 2004). Petitioners contend that the timeliness of their reconsideration motion should have been governed by Civil Rule 59(e)'s 28-day deadline rather than Bankruptcy Rule 9023's 14-day deadline. In that event, their motion would have been timely, and thus would have tolled the

deadline to file their appeal (and rendered the appeal timely) under Federal Rule of Appellate Procedure 4.

As an initial matter, petitioners do not make any argument based on Rule 9023 itself, and with good reason. "[I]f the First Circuit were correct that the bankruptcy rules, as a general matter, apply to civil cases like this one," Pet. 25, then there is no textual or logical basis for treating Rule 9023 differently. It is simply one of the many Bankruptcy Rules that apply. And the text of Rule 9023 confirms that unremarkable conclusion. It specifies that Civil Rule 59 "applies in cases under the Code," but shortens from 28 to 14 days the time for filing "[a] motion for a new trial or to alter or amend a judgment." Once one accepts that this case is "under the Code" for purposes of Rule 1001 and the other Bankruptcy Rules, it follows textually that this case is equally subject to Rule 9023. See Fed. R. Bankr. P. 9001 (as used in the Bankruptcy Rules, " 'Code' means title 11 of the United States Code").

Petitioners are correct that Rule 9023 governs the granting of a new trial or the alteration of a judgment, so it applies only in the *trial court*. But that can be either the bankruptcy court or the district court, depending on whether the matter is core or non-core and whether the district court refers it to a bankruptcy judge. Petitioners try to manufacture another circuit conflict by relying on cases involving core matters referred to and adjudicated by a bankruptcy judge. In that context, it is correct that Rule 9023 applies "only to appeals from the bankruptcy court to the district court, and not to appeals from the district court to the court of appeals." *In re Butler*, 2 F.3d at 155. "Rule 9024 is applicable to bankruptcy courts sitting as trial courts and not to the district court sitting as

an appellate court." *In re Bli Farms*, 465 F.3d at 657. But the converse is also true: when, as here, the district court sits as a trial court in a proceeding to which the Bankruptcy Rules apply, Rule 9023 plainly governs requests for a new trial or to amend the judgment. None of petitioners' cases says otherwise. The decision below does not conflict with any decision of any other court of appeals, and further review is not warranted.

CONCLUSION

For the reasons set forth above, the petition for a writ of certiorari should be denied.

Respectfully submitted.

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