No. 23-1236

IN THE

Supreme Court of the United States

LAW OFFICE OF ROGELIO SOLIS and ANA GOMEZ,

Petitioners,

v.

CATHERINE STONE CURTIS, TRUSTEE,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

RESPONSE BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

This case involves the payment of insurance proceeds under an insured's liability policy, arising from an accident caused by one of the insured's employees. The claimant received payment shortly before the insured was placed into bankruptcy. After the bankruptcy was filed, the trustee sought to use § 547 of the Bankruptcy Code to avoid the prepetition transfer so it could be equitably distributed between all of the claimants arising from the accident. Relying on precedent examining state law, the Fifth Circuit held that § 547 allowed the trustee to avoid the transfer of the insurance policy proceeds.

The questions presented are:

1. Whether the Fifth Circuit looked to state law to ascertain whether the debtor had a property interest in the insurance policy at issue?

2. What law governs the disposition of property after it has been recognized as "property of the estate"—federal bankruptcy law, or state law?

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Petitioners' Question Presented solicits outrage by confusing two separate issues. To resolve this bankruptcy dispute about an insurance payment in a trucking accident, the Bankruptcy Code and this Court's precedents required the courts to answer two questions in this order:

(1) Under state law, does the debtor have a property interest in the disputed insurance policy?

(2) If so, are the Petitioners correct in arguing that state law should supersede federal bankruptcy law when determining how the bankruptcy court should allocate the policy proceeds?

The Fifth Circuit Panel correctly answered question (2) by holding, "Appellants' arguments that Texas law, not federal bankruptcy law, controls are incorrect." Opinion, App. 8a n.4. Federal bankruptcy law always controls the allocation of the property of the debtor's estate.

Petitioners then flipped the questions to try to salvage their case. They sought rehearing *en banc* by arguing that this quote wrongly answered *question (1)*. They repeat that error in their Petition to this Court, but the Panel's opinion dispels their confusion. The opinion correctly answered question (1) by relying on precedent that had already interpreted Texas property law. Opinion, App. 4a–6a. The opinion then correctly answered question (2) by distinguishing the Petitioners' inapposite cases.

This case presents no threat to "federalism, bankruptcy law and the principles of stare decisis." *Cf.* Petition at 9. Instead, it is just another demonstration of the saying, "It is difficult to get a man to understand something, when his salary depends on his not understanding it."[1] This Court should deny review.

STATEMENT OF THE CASE

I. The Underlying Accident

On December 19, 2020, the trailer from a tractor trailer owned by Josiah's Trucking LLC (the "Debtor"), crossed over into oncoming traffic and collided with a vehicle carrying Carlos Tellez, Jr. and Anna Isabel Ortiz, ultimately resulting in both their deaths (the "Accident"). Anna Isabel Ortiz is survived by her mother, Petitioner Gomez ("Ms. Gomez"), and father, Reyes Adrian Ortiz (the "Ortiz Family"). Carlos Tellez Jr. is survived by Sonia Tellez, Carlos Tellez, Rose Mary Rodriquez, and I. Tellez (collectively, the "Tellez Family"). Opinion, App. 2a.[2]

At the time of the Accident, the Debtor was insured by Brooklyn Specialty Insurance Company RRG, Inc. ("Brooklyn Specialty") under a policy with a limit of $1,000,000 (the "Policy"). Opinion, App. 2a. Shortly after the Accident, the families of both victims engaged separate counsel and began the insurance claims process. Opinion, App. 2a. Ms. Gomez

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[1] Upton Sinclair, *I, Candidate for Governor: And How I Got Licked* (Univ. of Cal. Press 1934).

[2] All citations to the Appendix are to the Appendix included with Petitioners' *Petition for Writ of Certiorari* (*See* App. 1a–37a).

employed the Law Office of Rogelio Solis, PLLC (the "Solis Law Firm"), which is the other Petitioner in this case. Opinion, App. 2a. The Tellez Family engaged in discussions with Brooklyn Specialty regarding their claims and ultimately filed suit against the Debtor, its owner, and the driver of the tractor trailer. Meanwhile, Ms. Gomez, through her counsel, made a *Stowers* demand on Brooklyn Specialty for the policy limits of $1,000,000. Opinion, App. 2a.

On January 12, 2021, Brooklyn Specialty transferred $1,000,000 (the "Policy Proceeds") to Solis Law Firm's IOLTA account in settlement of Ms. Gomez's claims (the "Transfer"). Opinion, App. 2a–3a. That same day, Brooklyn Specialty informed the Tellez Family that "the policy limits under Josiah's Trucking, LLC have been exhausted." Opinion, App. 3a. On January 18, 2021, two checks were issued from Solis Law Firm's IOLTA account: (1) a check for $680,000 to Ms. Gomez, and (2) a check for $320,000 to the Solis Law Firm. Opinion, App. 3a.

II. The Bankruptcy

On January 24, 2021, the Tellez Family, having received none of the Policy Proceeds, filed an involuntary bankruptcy petition against the Debtor under chapter 7 of title 11 of the United States Code (the "Bankruptcy Code"). Opinion, App. 3a. Shortly thereafter, in order to ensure an equitable distribution of the bankruptcy estate's assets between the families of the two victims, Catherine S. Curtis, the Interim Trustee at the time (now, the "Trustee" and "Respondent") brought an adversary proceeding against the Petitioners to avoid and recover the

Transfer pursuant to 11 U.S.C. §§ 547 and 550. Opinion, App. 3a.

Petitioners filed a motion to dismiss the Trustee's complaint (the "Motion"), asserting, in part, that the Trustee failed to allege a transfer of an interest in the Debtor's property because the Debtor had neither legal title in nor a contractual right to receive the Policy Proceeds and otherwise lacked control over their disbursement. Opinion, App. 3a.

On November 9, 2022, the Bankruptcy Court denied the Motion. Opinion, App. 3a. Applying the well-pled facts standard under *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Bankruptcy Court found that the claims against the Debtor's bankruptcy estate arising from the Accident amounted to $8,000,000, far beyond the Policy's limits of $1,000,000. Bankruptcy Opinion, App. 19a. The Bankruptcy Court further found that the facts of this case "appear to be the 'limited circumstances' in *In re [OGA] Charters, L.L.C.*," Bankruptcy Opinion, App. 19a, where the Fifth Circuit held that insurance policy proceeds are classified as property of the bankruptcy estate when there is "a siege of tort claimants [that] threaten the debtor's estate over and above the policy limits." Bankruptcy Opinion, App. 18a, quoting *Martinez v. OGA Charters, L.L.C., (In re OGA Charters, L.L.C.)*, 901 F.3d 599, 604 (5th Cir. 2018). The Bankruptcy Court considered whether the prepetition payment of the Policy Proceeds affected this equitable interest. Opinion, App. 19a.–20a. Applying the rationale set forth by this Court in *Begier v. IRS*, 596 U.S. 53 (1990), the Bankruptcy Court held the prepetition transfer did not eliminate the Debtor's interest in the Policy Proceeds because the purpose of the

Bankruptcy Code's avoidance statute is to preserve for creditors the value of property interests transferred within the ninety days before the bankruptcy filing that would have been included in the bankruptcy estate, and the Debtor had an interest in the Policy Proceeds but for the transfer. Bankruptcy Opinion, App. 20a.

III. The Appeal

The District Court ultimately certified the following question for appeal directly to the United States Court of Appeals for the Fifth Circuit:

> Whether the pre-petition payment of insurance proceeds to a tort claimant creditor of a debtor constitutes a 'transfer of an interest of the debtor in property' under 11 U.S.C. § 547 when such payment is made by an insurer of the debtor pursuant to a valid *Stowers* settlement demand under Texas law. App. 36a.

On October 6, 2023, the three-judge panel (the "Panel") of the Fifth Circuit issued its opinion (the "Opinion") affirming the Bankruptcy Court's finding that the prepetition payment of insurance proceeds to a tort-claimant creditor of the debtor, made in accordance with state law, constituted a "transfer of an interest of the debtor in property" under § 547 of the Bankruptcy Code. Opinion, App. 7a. The Panel noted the Petitioners failed to address the Fifth Circuit's prior holding in *OGA Charters*, in which it held that:

> 'in those limited circumstances, as here, where a siege of tort claimants threaten the debtor's estate over and above the policy limits, we classify the proceeds as property of the estate.' As we [the Fifth Circuit] explained, 'this interest does not bestow upon the debtor a right to pocket the proceeds, but instead serves to reduce some claims and permit more extensive distribution of available assets in the liquidation of the estate.'

Opinion, App. 4a–5a (quoting *OGA Charters*, 901 F.3d at 604).

Importantly, the Panel noted that Petitioners neither disputed that the allegations in this case fall within the "limited circumstances" addressed in *OGA Charters*, nor did they "distinguish *In re OGA Charters* or otherwise explain why it does not control this case." Opinion, App. 5a.

Addressing the Petitioners' state law argument, the Panel determined that "appellants' arguments that Texas law, not federal bankruptcy law, controls are incorrect" because "*In re OGA Charters* similarly dealt with insurance proceeds governed by Texas law and explicitly rejected Appellants' argument that the Texas Supreme Court's decision in *Texas Farmers Ins. Co. v. Soriano*, 881 S.W.2d 312 (Tex. 1994) dictates the outcome of this case." Opinion, App. 8a. The Opinion went on to state that *Soriano* did not dictate the outcome "because categorizing the insurance proceeds as property of the estate does not involve any sort of determination regarding the negligent-settlement liability of an

insurer or the lack thereof, its holding was not a collateral attack on state law, including *Soriano*." Opinion, App. 8a.

Finding that the Policy Proceeds were property of the Debtor's estate, the Panel turned to the issue of whether the prepetition Transfer terminated or otherwise affected the Debtor's interest in those proceeds and determined that it did not. Opinion, App. 6a–7a. Citing this Court's opinion in *Begier*, the Fifth Circuit noted that § 541 of the Bankruptcy Code, which governs the creation of an estate in bankruptcy, states that "such estate is comprised of all . . . legal or equitable interests of the debtor in property as of the commencement of the case," is coextensive with § 547(b)'s "interest of the debtor in property." Opinion, App. 6a. Again relying on *Begier*, the Opinion found that

> 'because the purpose of the avoidance provision [under 11 U.S.C. § 547] is to preserve property includable within the bankruptcy estate … 'property of the debtor' subject to the preferential transfer provision is best understood as that property that would have been part of the estate had it not been transferred before the commencement of the bankruptcy proceeding.'

Opinion, App. 7a (quoting *Begier*, 496 U.S. at 58 (internal quotations omitted)).

Applying these principles to the facts of this case, the Fifth Circuit Panel held that because the Policy Proceeds would have been property of the

Debtor's estate had they not been transferred to the Petitioners prepetition, for purposes of § 547, the Transfer of the Policy Proceeds was a transfer of an interest of the debtor in property. Opinion, App. 7a. Utilizing its holding in *OGA Charters* and this Court's *Begier* rationale, the Fifth Circuit Panel thus held that the Complaint alleges facts falling under the "limited circumstances" in which liability insurance proceeds are considered property of the estate for purpose of the avoidance statute. Opinion, App. 7a.

Petitioners subsequently filed a petition for rehearing *en banc*, in which they argued for the first time that *OGA Charters* was improperly decided. On February 14, 2024, the Fifth Circuit denied Petitioners' request for rehearing *en banc*, with nine justices voting against rehearing. App. 30a–31a. Judge Oldham, writing for the dissent, argued that the Opinion improperly determined property rights that are under the purview of state law; however, he failed to identify any state law property rights that were in conflict with the Opinion. *See generally* App. 31a–35a.

REASONS FOR DENYING PETITION

I. The Petition is based on a legal theory that was raised for the first time in Petitioners' motion for *en banc* rehearing.

The Petitioners have engaged in a round of bait and switch. In their briefing for both the Bankruptcy Court and the Fifth Circuit Panel, they consistently took the position that the Fifth Circuit's prior opinion in *OGA Charters* did not apply to the facts of this case. After the Panel rejected that theory, however, the Petitioners changed their minds and adopted a new theory for the first time in their motion for *en banc* rehearing—that the *OGA Charters* decision was just wrong and should be overturned.

The Petitioners' about-face matters here because it causes them to badly misread the Panel's Opinion. The Panel correctly resolved the only issues presented to it in the parties' briefs, but those issues did not include the Question Presented in the Petition. The Petitioners then took a portion of the Opinion out of context and used it to claim the Panel wrongly resolved a new issue that had never been briefed. This bait-and-switch maneuver evidently confused the dissenters to the Fifth Circuit's denial of the motion for *en banc* rehearing, who clearly did not understand that the Panel had applied Texas law by following established Fifth Circuit precedent. The Fifth Circuit applied the right tests to the questions it was presented and achieved the correct result. Despite the Petitioners' best efforts to create confusion on the issues, there is no basis to grant certiorari in this case.

II. The Fifth Circuit applied the approach required under *Butner*.

Everyone agrees that a court must look to state law to determine what constitutes the debtor's "property," which is what becomes property of the bankruptcy estate. *Butner v. United States*, 440 U.S. 48, 54–55 (1979). By enacting the Bankruptcy Code, Congress did not change the fact that "[p]roperty rights are created and defined by state law." *Id.*

Petitioners' new theory claims the Fifth Circuit didn't look to Texas law to determine that the Debtor had a property interest in the Policy Proceeds and, therefore, the Opinion conflicts with this Court's rulings in *Erie* and *Butner*. They claim the Fifth Circuit "failed to look at state law to determine the nature and extent of the Debtor's interest in the Policy Proceeds" but instead reached a holding that "establishes a property interest that does not exist under applicable state law." Petition, at 11. But that is a contrived reading of how the Fifth Circuit reached its holding. The Fifth Circuit determined Texas law created a property interest in the Policy Proceeds by first relying on precedent *that had already made that analysis* and then by rejecting Petitioners' reliance on two inapposite cases. Thus, the Panel did exactly what *Erie* and *Butner* require—it ascertained Texas law.

The Petitioners claim the Panel ignored Texas law because they read the Fifth Circuit's Opinion in a vacuum—ignoring that court's prior decisions on related questions. This leads them to pluck a convenient sound bite from a footnote to the Opinion: "Appellants' arguments that Texas law, not federal

bankruptcy law, controls are incorrect." Petition at 8 (citing Opinion, App. 8a). The dissenting judges appear to have been alarmed by that statement. Dissenting Opinion, App. 31a. That quote, however, correctly decides a different question than the one the Petitioners argue here.

Two material points contradict Petitioners' attempt to use this sentence out of context—first, the Fifth Circuit previously analyzed Texas law in *OGA Charters* and found that a debtor has an equitable interest in liability policy proceeds, and second, the Petitioners failed to cite any authority that would have required the court to revisit that prior analysis.

In *OGA Charters*, the Fifth Circuit directly confronted the argument that a debtor has no equitable property interest in liability policy proceeds under Texas state law:

> Thus, the issue in *this* case is whether, under the *Edgeworth* framework, liability policy proceeds are property of the estate when the policy limit is insufficient to cover a multitude of tort claims. The Settled Claimants argue that no such fact-specific exception exists and (if it did) it would contravene both the bankruptcy code and state law. We disagree.

OGA Charters, 901 F.3d at 603–04 (emphasis in original), *citing Houston v. Edgeworth (In re Edgeworth)*, 993 F.2d 51 (5th Cir. 1993). That is, the Fifth Circuit expressly found that its holding did not "contravene … state law." *Id.*

The *OGA Charters* court went on to explain *why* it disagreed with those appellants. First, it noted that the holding did not contravene the Bankruptcy Code because "'[t]he language of § 541(a)(1) is broad enough to cover an interest in liability insurance, namely, the debtor's right to have the insurance company pay money to satisfy . . . debts accrued through . . . the insured's negligent behavior.'" *Id.* at 605 (quoting *Tringali v. Hathaway Mach. Co.*, 796 F.2d 552, 560 (1st Cir. 1986)).

The *OGA Charters* court then rejected the *OGA Charters* appellants' argument that the holding was contrary to state law. The court explained *Texas Farmers Inc. Co. v. Soriano*, 881 S.W.2d 312, 315 (Tex. 1994) did not decide whether the debtor had a property interest—it addressed only "the negligent-settlement liability of an insurer or lack thereof." *Id.* Tellingly, *Soriano* is the same case the Petitioners urge in support of their contention that there is no equitable interest in liability policy proceeds under Texas law. The Fifth Circuit concluded that its holding did not "constitute a 'collateral attack' on state law," thus confirming the court had done what *Butner* requires. *OGA Charters*, 901 F.3d at 605.[3]

Because *OGA Charters* already considered Texas law, the Fifth Circuit Panel in *this* case was not

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[3] The Appellants in *OGA Charters* relied on *Butner* and used the words "collateral attack on Texas law" to describe the consequences of failing to follow *Butner*, so the Fifth Circuit's use of this phrase leaves no doubt that it determined its ruling complied with *Butner*. *See* Brief of Appellants at 26–27, *In re OGA Charters, LLC*, No. 17-40920 (5th Cir. Dec. 10, 2017).

obligated to belabor the point. By following *OGA Charters*, the Fifth Circuit Panel ascertained whether Texas law created a property interest, as *Butner* requires. Opinion, App. 4a–6a. Petitioners were not able to distinguish this case from *OGA Charters*, nor did they offer up any new authority regarding property rights under Texas law that called the court's prior ruling into question. Against this backdrop, it is at best disingenuous to contend that the Fifth Circuit failed to comply with this Court's ruling in *Butner* by ignoring Texas law.

III. The Fifth Circuit's holding is consistent with Texas law.

The Fifth Circuit not only looked to Texas law as required by *Butner*, but its ruling is, in fact, consistent with Texas law on the property rights of an insured. Respondent does not mean to imply this Court should burden itself with reviewing a question of Texas state law. But Respondent addresses this point to clarify the legal concept that the Petitioners have thrown into confusion by their misreading of the Panel's Opinion.

Petitioners assert that "Texas state law is clear that an insured has no interest in, nor the ability to direct or control, insurance proceeds." Petition at 12. The problem is that neither the Petitioners nor the dissent can cite a single authority that actually supports the assertion that an insured "has no interest in" insurance proceeds. And they now accuse the Fifth Circuit of ignoring Texas law that, despite multiple rounds of briefing, they haven't proven exists.

The reality is that the Fifth Circuit got it right: its holding that a debtor has a property interest in liability policy proceeds is consistent with Texas law. Texas law acknowledges that an insurance policy is a contract between the insurer and the insured. *In re Farmers Tex. Cty. Mut. Ins. Co.*, 621 S.W.3d 261, 270 (Tex. 2021) ("An insurance policy is a contract that establishes the respective rights and obligations to which an insurer and its insured have mutually agreed …") (citing *USAA Tex. Lloyds Co. v. Menchaca*, 545 S.W.3d 479, 488 (Tex. 2018)). And specifically, Texas law speaks of liability policies such as the one here as "assets" of the insured. *See In re Illinois Nat'l Ins. Co.*, 685 S.W.3d 826, 838 (Tex. 2024) ("The policies at issue are assets that belong to Cobalt."); *see also Great Am. Ins. Co. v. Hamel*, 525 S.W.3d 655, 667 (Tex. 2017) (referring to liability policy as insured's "asset").

As a party to the contract, the insured has certain rights. Among those is the right to have the insurer pay valid covered claims to the extent of the policy limits. *See In re Illinois Nat'l Inc. Co.*, 685 S.W.3d at 838 ("in a liability policy the insurer agreed to pay 'on behalf of' the insured amounts within the policy limits that the insured is legal obligated to pay") (citation omitted); *Farmers Tex. Cty. Mut.*, 621 S.W.3d at 275 (holding that an insurance contract requires the insurer to pay covered claims).

Accordingly, Texas law supports the Fifth Circuit's original holding in *OGA Charters*. Through the debtor's status as the insured under a liability policy, Texas law creates a property interest of the debtor in the right to have the proceeds of that policy used to pay valid covered claims against it. The Fifth

Circuit's holding that the debtor has an equitable interest in the policy proceeds implicitly arises from this property right and, like all other rights a debtor holds under its insurance policy, that interest in the policy proceeds is "property of the [bankruptcy] estate." *Edgeworth*, 993 F.2d at 55. *Edgeworth* begins by talking about ownership of insurance policies:

> Insurance policies are property of the estate because, regardless of who the insured is, the debtor retains certain contract rights under the policy itself. Any rights the debtor has against the insurer, whether contractual or otherwise, become property of the estate.

Id. (citations omitted). However, a party might try to distinguish ownership of the proceeds from ownership of the policy, depending on the facts of the case. *See id.* *Edgeworth* explains that where "the policy limit was insufficient to cover appellants' claims or competing claims to proceeds," this "secondary impact" gives the insured an equitable property interest in the proceeds. *Id.* at 56.

OGA Charters applied this explanation from *Edgeworth* and rejected the argument that the property interest created by this rule "contravened … state law." *OGA Charters*, 901 F.2d at 603–05. In turn, the Panel in this case relied on *OGA Charters*, and thereby adopted a correct statement of Texas law. Opinion, App. 4a–5a.

The Fifth Circuit did not hold that the Debtor *owned* the Policy Proceeds. Instead, it found that under Texas law, the Debtor had an *interest* in the

Policy Proceeds that arises from the Debtor's right under the Policy to have valid covered claims paid from the Policy Proceeds. *OGA Charters*, 901 F.2d at 603–05. That interest became property of the Debtor's bankruptcy estate. *Id.*

That property interest was sufficient to satisfy § 541(a)(1) of the Bankruptcy Code, which provides that the "[bankruptcy] estate is comprised of … all legal or equitable interests of the debtor in property as of the commencement of the case." Interpreting this section, this Court has found that "[t]he House and Senate Reports on the Bankruptcy Code indicate that § 541(a)(1)'s scope is broad," quoting the following from the legislative history:

> The scope of this paragraph [§ 541(a)(1)] is broad. It includes all kinds of property, including tangible and intangible property, causes of action … and all other forms of property currently specified in section 70a of the Bankruptcy Act.[4]

United States v. Whiting Pools, Inc., 462 U.S. 198, 204–205 & n.9 (1983). Thus, *any* interest of the Debtor of *any* kind—regardless of whether that interest is legal or equitable, contingent or fixed, divided or undivided, disputed or undisputed—all became property of the Debtor's estate.

The Petitioners haven't cited a single Texas authority that contradicts the Fifth Circuit on this

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[4] The Bankruptcy Act is the predecessor to the Bankruptcy Code.

point. Instead, they cite *Soriano*, along with its predecessor, *G.A. Stowers Furniture Co. v. American Indem. Co.*, 15 S.W.2d 544 (Tex. Comm'n App. 1920, holding approved), and *Travelers Indem. Co. v. Citgo Petrol. Corp.*, 166 F.3d 761, 764–65 (5th Cir. 1999), claiming that these cases preclude a finding that the Debtor had an interest in the Policy Proceeds under Texas law. But as the Fifth Circuit Panel correctly explained, Opinion, App. 7a–8a, those cases don't address whether an insured has an interest in the proceeds of a liability policy. Instead, they address the relationship between the insured and the insurer—in particular, whether the insurer is liable to its insured when it pays valid covered claims in a manner that is objectionable to the insured.

Texas law is clear that when an insurer is "faced with a settlement demand arising out of multiple claims and inadequate proceeds, an insurer may enter into a reasonable settlement with one of the several claimants even though such settlement exhausts or diminishes the proceeds available to satisfy other claims." *Soriano*, 881 S.W.2d at 315. That is, of course, what happened here—Brooklyn Specialty entered into a reasonable settlement with the Petitioners that exhausted the proceeds available to satisfy other claims. Texas law therefore shields Brooklyn Specialty from any lawsuit by the insured arguing that the funds should have been paid to a different person. *Id.* But that principle of Texas law, which is generally referred to as the *Stowers* doctrine, has not been challenged here. No one—neither the Respondent nor any of the lower courts—has suggested that Brooklyn Specialty should not have paid the Policy Proceeds to the Petitioners. The question instead is and has always been how the

Policy Proceeds should be treated *under the Bankruptcy Code* once they were received *by the Petitioners*. And, as the Fifth Circuit noted, that is not a question that is controlled by Texas law. Federal bankruptcy law always governs the disposition of the property of the debtor's estate.

This is the part of the Panel's Opinion where the Petitioners found the rogue sentence they cite in their Petition: "Appellants' arguments that Texas law, not federal bankruptcy law, controls are incorrect." Opinion, App. 8a n.4. In this sentence, the Fifth Circuit Panel correctly held that federal bankruptcy law governs the disposition of the Policy Proceeds once they were received by Petitioners. That has nothing to do with *Butner* or the prior question of whether Texas law recognizes a property interest in an insurance policy.

The Panel could not have meant this sentence in the way Petitioners read it because Petitioners never made these arguments to the Panel in the first place. But Petitioners' about-face on their legal theory left confusion in its wake. Petitioners and the dissenting *en banc* judges insist that federal bankruptcy law does not determine whether a debtor has a property interest in an insurance policy. *No one said it did. See supra.* The Panel decided the different question that Petitioners originally posed to them—can Texas law supersede federal bankruptcy law after the property interest has been created? It cannot.

The Fifth Circuit's Opinion is thus consistent with Texas law and does not violate this Court's holdings in *Erie* and *Butner*. The Petitioners'

arguments to the contrary are without merit, and the Petition should be denied.

IV. The Fifth Circuit did not create any "federal common law" in this case.

The Petitioners' claim that the Fifth Circuit's holding is based on some newly-created "federal common law" conjured up under Bankruptcy Code § 105(a) is nothing more than an attempt to capture this Court's attention by obscuring the real reasoning behind the Fifth Circuit's ruling. That reasoning is based solidly on applicable state law and the provisions of Bankruptcy Code §§ 541(a) and 547, as evidenced by *Edgeworth*, *OGA Charters*, and the Opinion.

As further evidence that the Fifth Circuit hasn't created any new "federal common law," it is worth noting that the Panel's reasoning is echoed in decisions by Federal Courts of Appeal for the First, Fourth, and Eighth Circuits—not because of "common law" but because of common sense. Like the Fifth Circuit, none of these courts resorted to Bankruptcy Code § 105(a) to find a statutory basis for their decisions, nor did they rely on some vague notion of "federal common law." All those courts found that in the limited circumstances where, as in the case at bar, when there is "a siege of tort claimants [that] threaten the debtor's estate over and above the policy limits," the insurance policy proceeds are classified as property of the bankruptcy estate. *OGA Charters*, 901 F.3d at 604; *see also Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Titan Energy, Inc. (In re Titan Energy, Inc.)*, 837 F.2d 325, 330 (8th Cir. 1988) (finding that under the broad scope of § 541(a)(1), "if

the policies are held to cover [ ] damage claims, that holding will reduce the total amount of damage lodged against the estate … [and] [t]hough the policy proceeds do not flow directly into the coffers of the estate, they do serve to reduce some claims and permit more extensive distribution of available assets in liquidation of the estate"); *Tringali,* 796 F.2d at 560 (holding the language of § 541(a)(1) is broad enough to cover an interest in liability insurance, namely the debtor's right to have the insurance company pay money to satisfy one kind of debt—debts accrued through, for example, the insured's negligent behavior); *A.H. Robins Co. v. Piccin*, 788 F.2d 994, 1001–02 (4th Cir. 1986) (finding products liability policy is property of the estate where debtor is confronted with substantial liability claims).

These circuits did not reach the same conclusion because they applied a uniform "federal common law." Each court complied with this Court's ruling in *Butner*, looking first to applicable non-bankruptcy law to determine the nature and extent of the debtor's property interest and only then applying § 541(a)(1) to find that interest was property of the estate.[5]

Petitioners' arguments about "federal common law" are simply beside the point.

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[5] It is also worth noting that, although the *Stowers* doctrine is specific to Texas, it is not unique—most states have rules that operate similarly, including the states relevant to the Circuit Court cases cited *supra*. And the principles of the *Stowers* doctrine are also incorporated into the Restatement of the Law of Liability Insurance. RESTATEMENT OF THE LAW OF LIABILITY INSURANCE § 24.

CONCLUSION

The petition for a writ of certiorari should be denied.

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