No. 23-1236

IN THE

Supreme Court of the United States

LAW OFFICE OF ROGELIO SOLIS PLLC; 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

REPLY BRIEF FOR PETITIONERS

DAVID L. CURRY, JR.
Counsel of Record
MATTHEW S. OKIN
EDWARD A. CLARKSON, III
OKIN, ADAMS, BARTLETT, CURRY, LLP
1113 Vine Street, Suite 240
Houston, Texas 77002
(713) 228-4100
dcurry@okinadams.com

Attorneys for Petitioners

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

REPLY BRIEF OF PETITIONERS 1

A. The Counterstatement of Questions Presented Misconstrues the Issue Before the Court 3

B. The Panel Opinion Below Failed to Analyze Texas Law by Relying on Circular Precedent 4

C. The Response's *Erie* Analysis Relies on More Misdirection 7

D. The Petitioners Did Not Violate the Party Presentation Principle 8

CONCLUSION 9

TABLE OF AUTHORITIES

Cases

A. H. Robins Co. v. Piccinin,
788 F.2d 994 (4th Cir. 1986) 8

Butner v. United States,
440 U.S. 48, 99 S. Ct. 914 (1979) 2, 4

Coral Petroleum, Inc. v. Banque Paribas-London,
797 F.2d 1351 (5th Cir. 1986) 10

Erie Railroad Co. v. Tompkins,
304 U.S. 64 (1938) 2

G. A. Stowers Furniture Co. v. Am. Indem. Co.,
15 S.W.2d 544 (Tex. Civ. App. 1929) 10

Houston v. Edgeworth (In re Edgeworth),
993 F.2d 51 (5th Cir. 1993) 3, 5, 6, 7

In re Jaggers,
48 B.R. 33 (Bankr. W.D. Tex. 1985)..... 10

Kamen v. Kemper Fin. Servs.,
500 U.S. 90 (1991) 9

*Martinez v. OGA Charters, LLC
(In re OGA Charters)*,
901 F.3d 599 (5th Cir. 2018) 3, 5, 6, 7, 8

*Nat'l Union Fire Ins. Co. of Pittsburgh, PA v.
Titan Energy, Inc. (In re Titan Energy, Inc.)*,
837 F.2d 325 (8th Cir. 1988) 7

Stettner v. Smith (*In re IFS Fin. Corp.*),
669 F.3d 255 (5th Cir. 2012) 4

*Templeton v. O'Cheskey
(In re Am. Hous. Found.)*,
785 F.3d 143 (5th Cir. 2015) 2

Tringali v. Hathaway Machinery Co., Inc.,
796 F.2d 553 (1st Cir. 1986) 8

Statutes

11 U.S.C. § 101, *et seq.*
("Bankruptcy Code") 2, 4, 9

11 U.S.C. § 541 8

11 U.S.C. § 541(a)(1) 8

11 U.S.C. § 544(b) 5

11 U.S.C. § 547 2

No. 23-1236

In the Supreme Court of the United States

LAW OFFICE OF ROGELIO SOLIS, PLLC; ANA GOMEZ,
Petitioners,

v.

CATHERINE STONE CURTIS, TRUSTEE,
Respondent.

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

REPLY BRIEF OF PETITIONERS

Petitioners Law Office of Rogelio Solis, PLLC and Ana Gomez (collectively "Petitioners") respectfully assert this *Reply to Response Brief in Opposition to Petition for Writ of Certiorari* (the "Response") to the Appellees *Response Brief in Opposition to Petition for Writ of Certiorari* (the "Reply") to the *Petitioners' Petition for a Writ of Certiorari* (the "Petition") to review the judgment of the United States Court of Appeals for the Fifth Circuit.

As set forth in the Petition, the question presented in this appeal is whether, for purposes of applying 11 U.S.C. § 547, a debtor's "interest in property" is determined under state law or the Bankruptcy Code (11 U.S.C. § 101, *et seq.*). The Petition further questions whether, having recognized an interest in property not existing under applicable state law, the holding below impermissibly establishes a federal common law property right in contravention of this Court's holding in *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 78 (1938).

Facing an insurmountable line of precedent resolving the above questions in Petitioners' favor,[1] Respondent goes to great lengths to reframe the relevant issues and questions presented in a manner more favorable to Respondent's arguments. For example, rather than address whether the Debtor in this case owned or held an interest in the transferred *policy proceeds*, Respondent argues that the Debtor owned "the disputed insurance policy." Ownership of the underlying policy is not and never has been at issue contested in these proceedings.

Attacking this strawman issue, the Response fails to cite a single case that even analyzes whether, much less finds that, Texas law provides to an insured a property interest in *proceeds* paid under an insurance policy owned by the insured. Instead, both the Response and the Panel Opinion rely upon a circular

---

[1] *See, e.g., Butner v. United States*, 440 U.S. 48, 55, 99 S. Ct. 914 (1979); *Templeton v. O'Cheskey* (*In re Am. Hous. Found.*), 785 F.3d 143, 158 (5th Cir. 2015) (citing *De La Pena Stettner v. Smith* (*In re IFS Fin. Corp.*), 669 F.3d 255, 261-62 (5th Cir. 2012).

line of precedent in which Texas law is never properly considered. *See Martinez v. OGA Charters, LLC (In re OGA Charters),* 901 F.3d 599 (5th Cir. 2018); *Houston v. Edgeworth (In re Edgeworth),* 993 F.2d 51, 56 (5th Cir. 1993).

Moreover, in recognizing an interest in property that does not exist under applicable Texas law, the Court of Appeals and the Bankruptcy Court have impermissibly established a federal common law property right not soundly rooted in any legitimate federal interest. Such a result conflicts with the principles established under this Court's *Erie* Doctrine.

A. The Counterstatement of Questions Presented Misconstrues the Issue Before the Court

Respondent's strategy of obfuscation is apparent from the first lines of their Response. The Response deliberately misconstrues the questions presented on appeal as asking whether "[u]nder state law, does the debtor have a property interest in the disputed insurance *policy*." Response, at 1 (emphasis added). Employing further attempts at misdirection, Respondent further states that this Court must answer, "If [the debtor has a property interest in the disputed insurance policy], are Petitioners correct in arguing that state law should supersede federal bankruptcy law when determining how the bankruptcy court should allocate the policy proceeds." Again, neither question put forth by Respondent addresses an issue relevant to the matter at hand.

The issue actually certified by the District Court to the Fifth Circuit is as follows:

> "[w]hether 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.

Certification of Direct Appeal.

Accordingly, the question to be analyzed in this matter is not whether the Debtor has a property interest in the insurance *policy*, but whether ownership of such *policy* gives the Debtor a property interest in *proceeds* paid pursuant to such policy.

Respondent's second question presented further misconstrues the issues on appeal. Petitioners have never asserted that state law supersedes federal bankruptcy law in determining how the bankruptcy court should allocate property of the debtor's estate. Instead, Petitioners assert that federal bankruptcy law, or more specifically, the bankruptcy court's authority to administer assets under the Bankruptcy Code (11 U.S.C. § 101, *et seq*) may not be used to presume the existence of a property right under applicable state law.

B. The Panel Opinion Below Failed to Analyze Texas Law by Relying on Circular Precedent

This Court has held that "Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law." *Butner*, 440 U.S. at 54, *see also, Stettner v. Smith (In re IFS Fin. Corp.)*, 669 F.3d 255, 261-62 (5th Cir. 2012) (applying Texas

law to determine whether, under section 544(b) of the Bankruptcy Code, bank accounts constituted "an interest of the debtor in property"). Accordingly, courts are instructed to first analyze state law to ascertain the Debtor's interest in property, then, determine how such interest in property may be administered in a Title 11 proceeding.

The Response argues that *Butner* is satisfied here because "[t]he Fifth Circuit determined Texas law created a property interest in the Policy Proceeds by first relying on the precedent *that had already made that analysis*." Response, at pg. 10. The referenced precedent is set forth in *Martinez v. OGA Charters, LLC (In re OGA Charters),* 901 F.3d 599 (5th Cir. 2018) and *Houston v. Edgeworth* (*In re Edgeworth*), 993 F.2d 51, 56 (5th Cir. 1993). Neither case analyzes whether the Debtor has a property interest in policy proceeds under Texas law.

In *Charters*, the Fifth Circuit was asked to decide whether "proceeds of the debtor's liability policy are property of the estate." *Charters*, 901 F.3d at 601. In answering this question, the Fifth Circuit started with the proposition that ownership of an insurance policy is distinct from ownership of policy proceeds. *Id*. at 603 (citing *Louisiana World Exposition, Inc. v. Federal Insurance Co. (In re Louisiana World Exposition, Inc.)*, 832 F.2d 1391-1401 (5th Cir. 1987) ("The question is not who owns the policies, but who owns the proceeds."). Next, the *Charters* court noted that "[t]he overriding question when determining whether insurance proceeds are property of the estate is whether the debtor would have a right to receive and keep those proceeds" and that "when the debtor has no legally cognizable claim to the insurance proceeds,

those proceeds are not property of the estate." *Id*. at 602-03. (citing *Houston v. Edgeworth (In re Edgeworth)*, 993 F.2d 51, 53-56).

The *Charters* court then interpreted one line in *Edgeworth* as establishing an exception to the above general rule. *Id*. at 603 ("*Moreover, no secondary impact has been alleged upon Edgeworth's estate, which might have occurred if, for instance, the policy limit was insufficient to cover appellants' claims or competing claims to proceeds.*") (quoting *Edgeworth*, 993 F.2d at 56). Notably, as such facts were not present in the *Edgeworth* matter, the *Edgeworth* court was not asked to consider, nor did it analyze, whether Texas law would recognize an interest of the debtor in the policy proceeds when such secondary impacts *are* present.

Indeed, critically addressing authority having found that policy proceeds were property of the estate, the *Edgeworth* court noted the following:

> In the mass tort context, the decisions by several courts to include the proceeds as property of the estate appear to be motivated by a concern that the court would not otherwise be able to prevent a free-for-all against the insurer outside the bankruptcy proceeding. *See* cases cited *supra* note 13. There was also a threat that unless the policy proceeds, were marshalled in the bankruptcy proceeding, they would not cover plaintiffs' claims and would expose the debtor's estate. These concerns are answered once the court finds that the policy itself is property of the estate; the section 362

> stay should adequately protect the interests of all parties involved.

Edgeworth, 993 F.2d at 56, n. 21.

A close reading of *Charters* and *Edgeworth* thus exposes the failure of Respondent's argument. Neither opinion actually addresses whether Texas law recognizes an interest of the debtor in liability policy proceeds that may arise when claims against the debtor exceed available policy limits. Indeed, a better reading of *Edgeworth* illustrates that such right does not exist under Texas law. Thus, contrary to Respondent's claim, neither the Panel Opinion nor the precedent cited therein made the proper initial determination of whether the alleged interest of the debtor in the policy proceeds existed under Texas law.[2]

C. The Response's *Erie* Analysis Relies on More Misdirection

Addressing the *Erie* doctrine concerns Petitioners raise, Respondent once again turns to misdirection and obfuscation. Relying again on the circular analysis set forth in *Charters*, Respondent argues that the Panel Opinion does not constitute an improper creation of federal common law property rights. As further support, Repondent cites *Nat'l Union Fire Ins. Co. of*

---

[2] Indeed, the only reference to Texas law came in the *Charters* court's determination that the case was not a "collateral attack" on *Soriano*. *Charters,* 901 F.3d at 605. On this point, the *Charters* court noted that, "categorizing the 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." *Id.* This was not an analysis of whether the insured has a property right in the proceeds of a liability policy to which the insured is not the beneficiary under Texas law.

Pittsburgh, PA v. Titan Energy, Inc. (In re Titan Energy, Inc.), 837 F.2d 325, 330 (8th Cir. 1988); *Tringali v. Hathaway Machinery Co., Inc.*, 796 F.2d 553 (1st Cir. 1986); *A. H. Robins Co. v. Piccinin*, 788 F.2d 994 (4th Cir. 1986) for the general proposition that "§ 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." *OGA Charters*, 901 F.3d at 603-04.

This argument misses the point. Again, the question is not who owns the policy, but who owns the proceeds. In answering this question, the Bankruptcy Court and the Panel Opinion both assume the existence of a state law property right solely because the *Charters* court found that Section 541 of the Bankruptcy Code is broad enough to cover a debtor's interest in an insurance policy and, therefore, the proceeds thereof without first ever considering whether applicable state law recognizes such an interest. In doing so, the Panel Opinion impermissibly recognizes a federal common law of property.

D. The Petitioners Did Not Violate the Party Presentation Principle

The Respondent also asserts that the Petitioners "waived" arguments regarding whether the existence of a property right is a question of state law. Again, Respondent's argument relies upon a patent misrepresentation of the proceedings below.

As stated in the Dissent "[h]ere, the parties squarely presented the issue: whether the property

rights at issue are governed by state law or federal common law." Dissent, at pg. 4. Indeed, this specific issue was raised in the Petitioner's Opening Brief at the Fifth Circuit with the section title "Texas Law Controls – Whether a debtor owns property is a question of applicable state law." Dissent, App. 33a

This Court has held that "[w]hen an issue or claim is properly before the court, the court is not limited to the particular legal theories advanced by the parties, but rather retains the independent power to identify and apply the proper construction of governing law." *Kamen v. Kemper Fin. Servs.*, 500 U.S. 90, 99 (1991) (citing *Arcadia* v. *Ohio Power Co.*, 498 U.S. 73, 77, 112 L. Ed. 2d 374, 111 S. Ct. 415 (1990)).

CONCLUSION

Bankruptcy courts must act within the confines of the authority given to them by Congress, the Bankruptcy Code, and this Court. There is a tendency among bankruptcy courts to view many issues through the lens of equity and the philosophical underpinnings of the Bankruptcy Code, namely, that the bankruptcy court is the arbiter of distributing all assets equitably. In this case, as in *Charters*, there is a tempting logic that appeals to every jurist's sense of "fairness" that insurance proceeds should be divided up equally among claimants. However, bankruptcy courts do not have unbridled authority to create property interests of a debtor in or to specific property in order to achieve this lofty goal.

Here, the state of Texas has simply not recognized that an insured has an interest in liability proceeds. In fact, Texas has specifically withheld recognition of

such a property interest in favor of a legal framework designed to promote faster settlement of claims. *See G. A. Stowers Furniture Co. v. Am. Indem. Co.*, 15 S.W.2d 544 (Tex. Civ. App. 1929).[3] Bankruptcy courts do not have the authority to supplant Texas property law because it deems it unfair to claimants.

Accordingly, the Petitioners submit that the Petition be granted.

Dated September 25, 2024

Respectfully submitted,

/s/ David L. Curry, Jr.
David L. Curry, Jr.
Counsel of Record
Matthew S. Okin
Edward A. Clarkson, III
OKIN ADAMS
BARTLETT CURRY LLP
1113 Vine St., Suite 240
Houston, Texas 77002
Telephone: (713) 228-4100
Fax: (346) 247-7158
dcurry@okinadams.com

Counsel for Petitioners

[3] Respondent's argument that the Texas Stower's Doctrine is limited to addressing liability of an insurer misses the significance of this doctrine. Under Texas law, ownership of funds is determined through control over the disposition of such funds. *See In re Jaggers*, 48 B.R. 33, 36 (Bankr. W.D. Tex. 1985); *see also Coral Petroleum, Inc. v. Banque Paribas-London*, 797 F.2d 1351, 1358 (5th Cir. 1986). Petitioners have highlighted the Stower's Doctrine precedents to show that, under Texas law, an insurer lacks control over the disposition of liability insurance proceeds.