No. __________

In the Supreme Court of the United States

ALLONHILL, LLC,

Petitioner,

v.

STEWART LENDER SERVICES, INC.,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, in determining insolvency under 11 U. S. C. § 547(b)(3), a court may disregard the value of a disputed liability as established by either (1) a court judgment close in time to the challenged transfers; or (2) a probability-discount approach, and instead may base the valuation of the liability on a post-petition settlement that was reached years after the prepetition transfers.

PARTIES TO THE PROCEEDINGS

Petitioner and debtor-plaintiff-appellee below is Allonhill, LLC (Allonhill).

Respondent and creditor-defendant-appellant below is Stewart Lender Services, Inc. (SLS).

CORPORATE DISCLOSURE STATEMENT

Allonhill is a privately held limited liability company and it became a reorganized debtor pursuant to the Bankruptcy Court's Order Confirming Third Amended Plan of Reorganization dated December 17, 2015. It has no parent corporations.

BHC Allonhill, LLC holds 49% of Allonhill's equity interests, but no publicly held corporation directly or indirectly owns 10% or more of Allonhill's equity interests.

RELATED PROCEEDINGS

United States Bankruptcy Court (D. Del.):

Allonhill, LLC v. *Stewart Lender Services, Inc.*, Adv. Pro. No. 1:16–ap–50419–KG (Apr. 25, 2019) (opinion and order entered after trial denying Allonhill's preference claim and other claims and denying SLS's counterclaims)

United States District Court (D. Del.):

In re Allonhill, LLC; *Allonhill, LLC* v. *Stewart Lender Services, Inc.*, No. 1:19–cv–00879–LPS (Mar. 31, 2020) (consolidated bankruptcy appeal; District Court reversed the preference-claim solvency ruling and remanded; reconsideration denied Nov. 20, 2020)

In re Allonhill, LLC; *Stewart Lender Services, Inc.* v. *Allonhill, LLC*, No. 1:19–cv–00938–LPS (Mar. 31, 2020) (cross-appeal consolidated with No. 1:19–cv–00879–LPS and decided in the same judgment; reconsideration denied Nov. 20, 2020)

United States Court of Appeals (CA3):

In re Allonhill, LLC; *Allonhill, LLC* v. *Stewart Lender Services, Inc.*, No. 25–1810 (Mar. 16, 2026) (judgment reversing the District Court and remanded)

In re Allonhill, LLC; *Allonhill, LLC* v. *Stewart Lender Services, Inc.*, No. 25–1810 (May 22, 2026) (panel rehearing granted and amended opinion issued, and rehearing en banc denied)

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The Third Circuit's opinions are not published but is available at 2026 WL 1453194 and 2026 WL 735177, and are reproduced in the Appendix at App. 1–21. The District of Delaware's decision is not published by is available at 2020 WL 1542376 and is reproduced in the Appendix at App. 22–60. The Bankruptcy Court's order is not published but is available at 2019 WL 1868610, and is reproduced in the Appendix at App. 61–201.

JURISDICTION

The Third Circuit's Amended Opinion was entered on May 22, 2026, following the granting of panel rehearing. This Court has jurisdiction under 28 U. S. C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 547 of the Bankruptcy Code provides in relevant part:

> (b) Except as provided in subsections (c) and (i) of this section, the trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (c), avoid any transfer of an interest of the debtor in property —
>
> (1) to or for the benefit of a creditor;
>
> (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
>
> (3) made while the debtor was insolvent;
>
> (4) made —

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if —

(A) the case were a case under chapter 7 of this title;

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title." 11 U. S. C. § 547(b).

STATEMENT OF THE CASE

I. Introduction

This petition involves an issue that arises when a Bankruptcy Court is assessing a preferential transfer claim under Section 547(b) of the Bankruptcy Code and, as is often the case, it was a contemporaneous adverse judgment from a related court proceeding that triggered the bankruptcy filing. Pursuant to Section 547(b)(3), the bankruptcy court must determine whether the debtor was insolvent at the time of the alleged preferential transfer, which requires a valuation of the liability that resulted in a court judgment.

Here, the Third Circuit made new law and adopted a divergent approach when it (a) held that a contemporaneous court judgment imposing a "crippling" $25.8 million liability on Allonhill and precipitating the bankruptcy filing should be ignored; and (b) instead reinstated the Bankruptcy Court's analysis retroactively ascribing a value of approximately $2 million to the liability based on Allonhill's post-confirmation settlement in the bankruptcy claims process with a financially troubled creditor that occurred more than *four years* after the transfers at issue. The Third Circuit held that the subject claim is a disputed liability, and its holding illustrates that the valuation method used for disputed liabilities can lead to unpredictable and harmful results in a vital area of bankruptcy law.

This case provides an ideal vehicle for the Court to establish a uniform rule for the valuation of litigation liabilities. Given how frequently such liabilities (actual or potential) lead to bankruptcy filings, the valuation issue will continue to cause confusion and confound the lower courts in the absence of guidance from this Court.

By contrast, the valuation approaches proposed by Allonhill below would provide certainty to the parties involved in a bankruptcy case on the critical issue of solvency. Specifically, the Court could provide guidance by holding that the bankruptcy courts should focus on contemporaneous court judgments (or other contemporaneous events) in determining the value of litigation-related liabilities and limit their reliance on subsequent developments, including appeals and post-appeal settlements that occur several years after the bankruptcy filing. In the alternative, the Court could similarly lessen the uncertainty and unpredictable results by holding that the bankruptcy courts should determine the value of litigation-related liabilities by applying the probability-discount method.

The bankruptcy courts have successfully used such an approach for years in cases involving contingent liabilities, and they are well-versed in that method. Therefore, the adoption of the probability-discount method to litigation-related liabilities would not impose an undue burden on bankruptcy courts, especially when it is balanced against the benefits to debtors and creditors.

Moreover, by directing the lower courts to decide the solvency issue shortly after the filing of the bankruptcy petition, this Court would give all parties involved with the estate at that time (or in the future) certainty to order their affairs without fear that a future ruling would upset the fundamental foundation for their financial decisions.

II. Statement of Facts

A. Relevant Facts Regarding Allonhill's Preferential Transfer Claim

The preference claim at the center of this case relates to payments (the Preferential Transfers) that Allonhill made to SLS shortly before Allonhill's bankruptcy petition was filed on March 26, 2014 (the Petition Date).[1] As discussed below, a March 5, 2014 judgment entered by a Colorado trial court in an action against Allonhill (the March 2014 Judgment) was the direct cause of Allonhill's bankruptcy filing.

[1] The Preferential Transfers were on January 13, 2014, January 24, 2014, and February 18, 2014. App. 124–125.

1. March 2014 Judgment and Allonhill's Bankruptcy Filing

Among other things, Allonhill was in the business of performing loan review services relating to mortgages issued by banks. App. 211. Aurora Bank, FSB (Aurora), a Colorado bank ultimately owned by Lehman Brothers Holdings, Inc. (LBHI), hired Allonhill in 2011 to serve as an independent reviewer of Aurora's foreclosure practices in response to a consent order administered by the Office of the Comptroller of the Currency (OCC). *Ibid.* In May 2012, Allonhill self-reported a potential conflict arising from a separate Fannie Mae loan review. App. 211–212. The OCC initially stated that there was no conflict of interest but, in May 2012, it ordered Aurora to terminate Allonhill's loan review work. App. 212.

In October 2012, Allonhill brought a state court action in Colorado (the Aurora Trial Court) against Aurora (the Aurora Litigation) to collect on $22 million in outstanding fees owed by Aurora. Aurora counterclaimed for $24 million that Aurora had previously paid Allonhill (the Aurora Claim). *Ibid.* In the Aurora Litigation, Allonhill argued that Aurora's damages (if any) were limited to a $2 million limitation in the Allonhill-Aurora contract (the $2 Million Cap). *Ibid.* The Aurora Litigation was tried in December 2013, ending on December 16, 2013, which was less than a month before the first transfer. *Ibid.*

The Aurora Trial Court issued the March 2014 Judgment on March 5, 2014, supporting its ruling with 69 pages of detailed analysis of the facts and law. The Aurora Trial Court found against Allonhill on its claim for $22 million and awarded Aurora

$25,845,329.00 for the Aurora Claim. The Aurora Trial Court held that the $2 Million Cap did not apply because it had awarded the $25.8 million in damages under a fraud/rescission theory pursuant to well-established Delaware law. *Ibid.*

2. The "Potential Crippling Liability" Posed by the Aurora Claim and the Preferential Transfers

Well before the March 2014 Judgment, Allonhill and SLS knew that the Aurora Claim posed an existential threat to Allonhill. App. 212–213. For example, when Allonhill and SLS entered into an Asset Purchase Agreement (APA) in late August 2013, SLS insisted on a carve-out of liability arising out of the Aurora Claim. App. 213. Moreover, the Bankruptcy Court made two factual findings on the Aurora Claim that are undisputed and critical. *First*, the Bankruptcy Court expressly found that the Aurora Claim was a "potential crippling liability" looming over Allonhill. *Ibid.* *Second*, the Bankruptcy Court similarly criticized Allonhill's expert for not accounting for the Aurora Claim in his opinion, finding that pre-petition "Allonhill was burdened with the Aurora litigation and the potential $25 million liability that this claim represented." *Ibid.*

It was against this backdrop that the Preferential Transfers occurred. For several months before the first transfer, the parties had been discussing an amendment to the APA relating to the payments that were later made in the transfers, but SLS delayed signing it. *Ibid.* Suddenly, in January 2014—just after the Aurora Trial ended and with a judgment looming—SLS began insisting on executing the APA amendment and receiving those payments. *Ibid.* The first transfer was on January 13, 2014, and the last of the Preferential Transfers was on February 18, 2014. Thus, the last transfer occurred just 36 days before the Petition Date.

3. Allonhill's Bankruptcy Shortly After the March 2014 Judgment and Pursuit of Preference Claim

Within three weeks of the March 2014 Judgment, Allonhill filed for bankruptcy protection under Chapter 11 of the Bankruptcy Code. App. 214. It is undisputed that the March 2014 Judgment was the precipitating factor in Allonhill's bankruptcy filing. *Ibid.* The Preferential Transfers represented a large source of recovery for the Allonhill estate (and creditors). Therefore, in early 2016, Allonhill filed an adversary proceeding against SLS seeking, among other things, the recovery of the Preferential Transfers (approximately $6.6 million). *Ibid.*

4. Subsequent Events Relating to Aurora Litigation

On October 16, 2016 (more than two and a half years after Allonhill's bankruptcy filing), a Colorado appellate court (the Aurora Appellate Court) reversed the Aurora Trial Court on the damages awarded. The Aurora Appellate Court held that Aurora was not entitled to rescission and instead was limited to the $2 Million Cap. App. 214. The Aurora Appellate Court remanded the case to the Aurora Trial Court for a determination of damages after applying the $2 Million Cap. *Ibid.* The decision of the Aurora Appellate Court was not unanimous, and Judge Fox dissented from the holding that Aurora was not entitled to $25.8 million in damages. *Ibid.*

Following remand, the Aurora Trial Court entered a judgment on November 17, 2017, awarding Aurora $2 million in damages on the Aurora Claim and denying expenses and interest. *Ibid.*[2] ACC and Allonhill both appealed from the judgment (rendering it non-final), but, prior to any decision on the appeals, Allonhill entered into a June 4, 2018 settlement with ACC (the June 2018 Settlement) in which Allonhill agreed that Aurora would have an "allowed claim" in the bankruptcy of $2.05 million. App. 214–215.[3]

At the time of the June 2018 Settlement, Allonhill was in the post-confirmation phase of its bankruptcy, and it sought to enter into settlements (if possible) with its largest creditors. App. 215. On the other side of the equation, Aurora and ACC were subsidiaries of LBHI, which, as of June 2018, was also involved in bankruptcy proceedings. *Ibid.* Shortly after the June 2018 Settlement, ACC itself filed for Chapter 11 bankruptcy in March 2019. See *In re Aurora Commercial Corp.*, No. 19–10843 (Bankr. SDNY) (SCC), ECF Doc. 3.[4]

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[2] At some point, Aurora became known as Aurora Commercial Corp. (ACC). App. 212.

[3] An "allowed claim" means that a creditor will receive a distribution of no more than the agreed-upon amount, with the exact amount to be determined by the assets available for distribution.

[4] As of 2023, ACC was dissolved pursuant to the terms of its confirmed plan. ECF Doc. 621.

B. Procedural History

Allonhill's preference claim against SLS was tried in late 2018. After the trial, the Bankruptcy Court dismissed the preference claim, ruling that Allonhill was solvent at the time of the Preferential Transfers because several years later it had settled the Aurora Claim for $2.05 million. App. 215. The Bankruptcy Court thus held that the liability value of the Aurora Claim was the $2.05 million from the June 2018 Settlement as opposed to the $25.8 million awarded in the March 2014 Judgment. *Ibid.*

The District Court reversed this holding, finding that the case law cited by the Bankruptcy Court did not support its conclusion and concluding that the "contemporaneous" March 2014 Judgment is the "more appropriate" measure of the Aurora Claim liability. *Ibid.*; App. 43. The District Court also noted the potentially disruptive effect of the Bankruptcy Court's ruling if it were allowed to stand. App. 44.

The Third Circuit reversed the District Court and, in the Opinion dated March 16, 2026 (the March 2026 Opinion), it reinstated the Bankruptcy Court's ruling that the Aurora Claim should be valued at $2.05 million. App. 11. The Third Circuit noted that the selection and interpretation of a valuation method is a "question of law" for it to determine on *de novo* review. App. 17–18.

There are two problems with the March 2026 Opinion. *First*, the Third Circuit held that the Bankruptcy Court properly valued the claim "based upon the final judgment." App. 19. The Third Circuit apparently construed the $2.05 million figure as the result of a "final judgment," but the June 2018

Settlement was not a judgment and there was no "final judgment" relating to the Aurora Claim (since the matter was on appeal at the time of the settlement). Also, the Third Circuit cited to several cases in support of its conclusion, but none refers to a "final judgment." Instead, each case simply holds that a post-transfer judgment may form the basis of the valuation of the liability. App. 19–20. Thus, the March 2026 Opinion failed to answer the critical question of why the March 2014 Judgment—which the District Court accurately described as "contemporaneous" with the Preferential Transfers and the Petition Date—is not the more appropriate measure of value for the Aurora Claim.

Second, the March 2026 Opinion did not address the impact of the ruling on other bankruptcies. Allonhill, however, repeatedly raised this issue in the appellate briefing and at oral argument. App. 216.

Allonhill filed a petition for rehearing *en banc*, pointing out that the March 2026 Opinion is contrary to Third Circuit law and inconsistent with valuation cases from other circuits. App. 202. The Third Circuit granted a rehearing by the panel and it issued the Amended Opinion dated May 22, 2026 (the May 2026 Opinion) in place of the March 2026 Opinion. App. 1. The Third Circuit again acknowledged (as it did in the March 2026 Opinion) that the criteria or standard for determining value is a question of law, and thus reviewed *de novo*. App. 7.[5]

[5] The Eleventh Circuit, in *In re Advanced Telecommunication Network, Inc.*, 490 F. 3d 1325 (CA11 2007), similarly held that the court's choice of a valuation method is reviewed *de novo*. *Id.*, at 1333, n. 10. The same standard of review applies here.

The May 2026 Opinion did not cure the deficiencies in the March 2026 Opinion discussed above. Instead, the Third Circuit relied on irrelevant evidence regarding Allonhill's financials (see pp. 12–14, *infra*) and, on the main question of whether the March 2014 Judgment should control the valuation issue, the Third Circuit merely relied on the same cases cited in the March 2026 Opinion. App. 9. The Third Circuit changed its description of those cases, stating that they stand for the proposition that a court may rely on post-transfer judgments in assessing the value of a liability. *Ibid*. While that general description of the case law is accurate, the Third Circuit once again did not answer the essential question of why it ruled that the June 2018 Settlement is the better measure of the value of the Aurora Claim than the March 2014 Judgment. The Third Circuit also did not address the fact that the June 2018 Settlement is not even a "judgment." Thus, the Third Circuit endorsed the Bankruptcy Court's reliance on the June 2018 Settlement, but without any justification as a matter of law.

As discussed below, the May 2026 Opinion is not consistent with the valuation decisions from other circuits, which have warned against using remote events in valuing litigation liabilities. See pp. 16–22, *infra*. It is also the only reported decision where a court used an event—let alone a consensual post-confirmation settlement—from several years after the bankruptcy filing to find that the debtor was *solvent*. App. 222. In addition, allowing such a reversal on solvency several years down the road will interfere with the adjudication of preference claims in other cases, thereby depriving bankruptcy estates of a valuable source of recovery for all creditors. See pp. 22–26, *infra*.

The Third Circuit tried to lessen the clear impact of the May 2026 Opinion by designating it as "not precedential." However, the lower courts in the Third Circuit have nonetheless relied on such decisions as "strongly persuasive authority." *In re Boyd*, 401 B. R. 137, 141 (Bankr. D. NJ 2008) (citing *In re Grand Jury Investigation*, 445 F. 3d 266, 276 (CA3 2006)). The lower courts, therefore, will cite the Third Circuit's valuation holding in the May 2026 Opinion. In addition, the Third Circuit's approval of the Bankruptcy Court's valuation method means that the Bankruptcy Court's holding on this issue will continue to be cited favorably by other courts. The bottom line is that the May 2026 Opinion decided a frequently confronted issue that is important to the bankruptcy bar, will have the far-reaching effect described below, and is from an influential circuit. The ruling has also drawn attention in legal valuation circles and will likely continue to do so. See, *e. g.,* Business Valuation Resources, "Is It Known or Knowable? Lessons from In re Allonhill" (May 12, 2026), online at https://tinyurl.com/mpmub432 (as visited Aug. 19, 2026, and archived on the Internet Archive).

In the May 2026 Opinion, the Third Circuit further attempted to downplay its reliance on the June 2018 Settlement by moving the case law discussion to a footnote and by citing "the fact that Allonhill valued the claim at $2 million on its December 31, 2013 balance sheet, which was prepared before the Transfer Dates." App. 9. This shifting of the cases to a footnote does not alter the centrality of the Third Circuit's reliance on the June 2018 Settlement, which was also the centerpiece of the Bankruptcy Court's decision and the sole focus of the District Court's opinion.[6]

In addition, Allonhill's balance sheet is not relevant to the solvency issue. Allonhill pointed out in its briefing to the Third Circuit that Allonhill's accounting treatment of the Aurora Claim should not be considered in the valuation analysis because the 2013 financial statement was issued under Generally Accepted Accounting Principles (GAAP). App. 246. Courts have held that GAAP assessments of value may not be used in determining solvency. See *In re Waccamaw's HomePlace*, 325 B. R. 524, 528–530 (Bankr. D. Del. 2005) (rejecting use of GAAP); *In re Imagine Fulfillment Services, LLC*, 2014 WL 3867531, at *4 (B.A.P. CA9 Aug. 6, 2014) (holding that GAAP could not be used to determine the value because GAAP reporting of liabilities differs from the standards in the Bankruptcy Code). Notably, the Bankruptcy Court cited an article by the National Association of Certified Valuators and Analysts (NACVA) entitled "Valuing Contingent or Disputed Assets and Liabilities in Solvency Opinions" dated July 19, 2017. App. 184. The article from NACVA specifically advises *against* using GAAP balance sheet liabilities in determining the value of a disputed liability. App. 226–229. The May 2026 Opinion does not address this issue (which was raised by Allonhill), and does not say why, as a matter of law in assessing the

[6] The May 2026 Opinion also refers to the $2 Million Cap (*ibid.*), but it raises the same issue as the June 2018 Settlement, *i. e.*, it was upheld in a post-transfer decision several years after the Petition Date and the March 2014 Judgment. Moreover, the $2 Million Cap was considered and rejected by the Aurora Trial Court in the March 2014 Judgment.

right valuation method, GAAP financial statements are relevant.

The May 2026 Opinion also states that Allonhill "presented no evidence [on insolvency] beyond the state trial court's $25.9 [sic] million judgment" (App. 10), but the Third Circuit's statement inaccurately minimizes the evidentiary value of the March 2014 Judgment. Allonhill used the March 2014 Judgment, which related to a claim that the Bankruptcy Court described as a "crippling liability" looming over the company and a burden on Allonhill, to rebut SLS's expert testimony and the other evidence presented by SLS. Given that the estate's assets totaled only approximately $9.6 million at the time of the Preferential Transfers (see p. 28, *infra*), the Bankruptcy Court's acceptance of the March 2014 Judgment as the measure of value would have established insolvency.

In sum, the amendments in the May 2026 Opinion do not change the fundamental problem, which is that the Third Circuit embraced the use of a settlement several years after the transfer dates as the basis for valuing the Aurora Claim. That holding will have the detrimental impact described below.

REASONS FOR GRANTING THE PETITION

Rule 10 provides that the reasons for granting a petition for certiorari include that "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court." S. Ct. R. 10(c). The May 2026 Opinion decided such an important question, and it did so in a manner that calls for this Court's action.

First, prior to the May 2026 Opinion, courts in the Ninth, Tenth, and Eleventh Circuits, as well as multiple lower courts, took similar approaches on how a bankruptcy court should value a litigation-related liability in determining whether a debtor was solvent at the time of the transfers. They did not rely on later events, such as an appeal from the judgment or settlement, in valuing the liability. Instead, those courts either looked to events around the time of the transfers (including judgments) or estimated the liability under a probability-discount method. The Third Circuit, however, took a divergent approach in the May 2026 Opinion by (a) disregarding a court judgment that was close in time to the transfers; and (b) basing the value of the liability on a post-appeal, post-confirmation settlement occurring more than four years after the Preferential Transfers. The Third Circuit's approach, if left in place, will likely result in inconsistent rulings across the nation on the central issue of solvency and disrupt preference claims in other bankruptcies.

Second, the May 2026 Opinion relates to an issue that this Court has not yet decided, but should. Litigation-related liabilities, including court judgments, frequently trigger bankruptcies and there should be a uniform rule for how to value them in the bankruptcy court's solvency analysis. Otherwise, the pursuit of preference claims—which is an important tool for marshaling assets in a bankruptcy—could be delayed; that is because, in reliance on the May 2026 Opinion, the targets of those actions will argue that solvency cannot be determined until the relevant court judgment goes through the full appellate or claims resolution process. As discussed below, there are two valuation approaches for the Court to choose from that will bring uniformity and avoid such a detrimental impact on bankruptcy proceedings.

Accordingly, the Court should grant the petition.

I. The Courts Have Applied Divergent and Irreconcilable Approaches to the Use of Post-Transfer Events in Assessing the Value of Litigation-Related Liabilities

Other circuits require the court to determine expected or fair value as of the statutory measurement date, whereas the Third Circuit took a different approach by allowing the amount of a settlement reached years later to function as the liability's value. Those courts have expressed a concern that the use of hindsight without limitation (including a temporal one) will result in inaccurate valuations of the liabilities or will have an adverse impact on the debtor.

The decisions in the *In re Imagine Fulfillment Services, LLC* cases are illustrative. The district court determined the value of the liability based on a court judgment that was contemporaneous with the subject transfers. See *In re Imagine Fulfillment Services, LLC*, 489 B. R. 136, 142, 150 (Bankr. CD Cal. 2013) (*IFS I*) (judgment was within a month and a half of first transfer), *aff'd*, 2014 WL 3867531 (B.A.P. CA9 Aug. 6, 2014) (*IFS II*). While the court judgment in *IFS I* was before the first transfer, the key is that it was close in time to the transfer. Even more importantly, the Ninth Circuit BAP held that events after the original judgment, including the appeal from it, did *not* alter the analysis of the claim's value. See *IFS II*, 2014 WL 3867531, at *5–6. Also, the Ninth Circuit BAP rejected the argument that the liability's value should be affected by future events because "[i]n the 90 days before the Debtor filed its bankruptcy petition, the unstayed court judgment was subject to collection." *Id.*, at *6. In this case, Allonhill was likewise concerned that—absent a bankruptcy stay—the March 2014 Judgment could be enforced immediately and this concern provided an impetus for the bankruptcy filing. App. 106. Thus, the valuation approach from *IFS*—if it had been applied here, as Allonhill urged—would have barred the consideration of the post-appeal, post-confirmation June 2018 Settlement in assessing the value of the Aurora Claim.

The Tenth Circuit also took a different view from the Third Circuit on a related issue. See *In re Mama D'Angelo, Inc.*, 55 F. 3d 552 (CA10 1995). The Tenth Circuit held that post-transfer information can shed light on the value of an asset or liability. See *id.*, at 554–556. It used just a six-day lookback period, assessing solvency as of July 31, 1989 to determine if a July 25, 1989 transfer was a preference. *Id.*, at 556. The Tenth Circuit relied on a lower court case stating that a court "may consider information 'originating subsequent to the transfer date *if* it tends to shed light on a fair and accurate assessment of the asset or liability as of the pertinent date (transfer date).'"*Ibid.* (quoting *In re Chemical Separations Corp.*, 38 B. R. 890, 895 (Bankr. ED Tenn. 1984)) (emphasis added).

Importantly, however, the Tenth Circuit put limits on when post-transfer information will shed light on a "fair and accurate assessment" of an asset or liability. It cautioned that "a company's assets must be valued at the time of the alleged transfer and not at what they turned out to be worth at some time after the bankruptcy intervened." *Ibid.* The same is true for liabilities, and the May 2026 Opinion fell into the trap that the Tenth Circuit warned about: the Third Circuit valued the Aurora Claim on what it allegedly turned out to be worth several years into the bankruptcy proceeding and in a fire-sale settlement.

In analogous circumstances, the courts have been wary of using such post-petition value of liabilities because it reflects the creditor's view that it might not get paid. See, *e. g.*, *In re Heilig-Meyers Co.*, 319 B. R. 447, 466 (Bankr. ED Va. 2004) ("the court agrees it should ignore a decline in value of the debtors' liabilities in the hands of creditors resulting from creditors' post[-]petition fears that debtors would not honor their debts"), *aff'd*, 328 B. R. 471 (ED Va. 2005). In fact, in *Advanced Telecommunication*, the Eleventh Circuit expressly *rejected* the reliance on settlement value in assessing solvency. That case involved a lawsuit that was pending when the subject transfer was made, but, before the court could determine whether there was a fraudulent transfer, the lawsuit had been settled. *Id.*, at 1334–1335. The Eleventh Circuit held that the value of the lawsuit should not be determined by the settlement amount. See *id.*, at 1335–1336. Instead, the Eleventh Circuit applied the probability-discount method, finding that "the proper approach would have simply discounted the expected value of the judgment by the probability of its ever occurring." Thus, the May 2026 Opinion is also contrary to the Eleventh Circuit's valuation holding in *Advanced Telecommunication*.

In the March 2026 Opinion, the Third Circuit distinguished the *Advanced Telecommunication* case on the grounds that it involved a contingent liability and the Eleventh Circuit calculated the value using the approach for such liabilities. App. 19. As an initial matter, it is not clear why the Eleventh Circuit classified the pending litigation in *Advanced Telecommunication* as a contingent liability since that type of case is generally categorized as disputed. All the facts necessary to determine the liability in that matter had occurred. App. 8. It is telling that the NACVA Article relied upon by both SLS's expert and the Bankruptcy Court referred to *Advanced Telecommunication* as involving a "disputed liability." App. 236. Moreover, the point in *Advanced Telecommunication* about the limited utility of settlements is pertinent whether the liability is contingent or disputed. Finally, as discussed below, the same valuation method could be used for both disputed and contingent liabilities. See p. 26–30, *infra*. Indeed, the Third Circuit asked the parties to discuss at oral argument whether it should apply *Advanced Telecommunication* (and similar cases) as the valuation method for the Aurora Claim. See p. 26–27, *infra*.

The lower courts have similarly focused on events that occurred around the time of the transfers rather than basing their valuations on subsequent events, let alone post-petition or post-confirmation events. See *In re F-Squared Inv. Mgmt., LLC*, 2019 WL 426116, at *16 (Bankr. D. Del. Sept. 6, 2019) (determining value of liability based on the SEC penalty that debtor paid around the time of the subject transfers and refusing to consider later events); *In re Turner & Cook, Inc.*, 507 B. R. 101, 107–108, 110–111 (Bankr. D. Vt. 2014) (earliest transfer was six months before judgment); *In re Pilavis*, 233 B. R. 1, 7–9 (Bankr. D. Mass. 1999) (three months). The May 2026 Opinion cites *Turner & Cook* and *Pilavis* (App. 9), but the Third

Circuit ignored the specific holdings in those cases. Instead, the Third Circuit relied on the cases solely for the general proposition that a bankruptcy court may base the value of a liability on post-transfer judgments. The question is what to do when there are multiple post-transfer events, including ones occurring several years later.

The May 2026 Opinion additionally cites *SEC* v. *Antar*, 120 F. Supp. 2d 431 (D.N.J. 2000), *aff'd*, 44 F. App'x 548 (CA3 2002), and *In re W.R. Grace & Co.*, 281 B. R. 852 (Bankr. D. Del. 2002). App. 9. Both cases are distinguishable.

In *Antar*, the defendant's transfers were in 1991 and 1997. 120 F. Supp. 2d, at 435. The court held that the defendant was insolvent at the time of the transfers based on a securities fraud judgment in 1998 for approximately $15 million (which related to fraud that was ongoing as of the transfer dates). The *Antar* court stated that, based on the 1998 judgment, "[i]t is *now* clear that the value of the SEC's unliquidated claim against [the defendant] was, and is, approximately $15 million …." *Id.*, at 443 (emphasis added). *Antar*, therefore, is factually distinguishable from this case in two material ways.

First, the court emphasized that the amount of defendant's liability was unknown until the entry of the 1998 judgment. See *id.*, at 443–444. That is why the *Antar* court said that the value of the claim was "now" clear. In this case, by contrast, the value of the Aurora Claim was not unknown until the June 2018 Settlement. The value of the liability was known as of the date of the March 2014 Judgment.

Second (and relatedly), the question here was whether the Bankruptcy Court should have used the

March 2014 Judgment or the June 2018 Settlement as its guide. That issue was not before the *Antar* court. In *Antar*, there was only one judgment and the issue was whether the court could use that single judgment in its solvency analysis to confirm insolvency. Here, the Third Circuit relied on the later event to *reverse* the presumption of insolvency.

W.R. Grace is similarly distinguishable. The *W.R. Grace* court relied on *Antar* for the proposition that post-transfer events are relevant to the valuation of a liability if the debtor, at the time of the transfer, knew that a claim of undetermined amount existed and then later events determined the claim's amount. As the court stated: "Like the debtor in *Antar*, in 1998 *W.R. Grace* knew that it had an existing liability, it just did not know how big that liability was." See *W.R. Grace*, 281 B. R., at 863. In this case, in contrast to *W.R. Grace* (and *Antar*), Allonhill knew the size of the liability around the time of the Preferential Transfers because of the March 2014 Judgment, which forced Allonhill into bankruptcy. Even under the holdings in *Antar* and *W.R. Grace*, the relevant post-transfer event here is the March 2014 Judgment.

Thus, as with the other lower court cases cited in the May 2026 Opinion, *Antar* and *W.R. Grace* do not support the Third Circuit's holding.

Finally, the May 2026 Opinion is inconsistent with Third Circuit precedent. The Third Circuit has noted that "[t]he use of hindsight to evaluate a debtor's financial condition for purposes of the Code's 'insolvency' element has been criticized by courts and commentators alike." *In re R.M.L.*, 92 F. 3d 139, 155 (CA3 1996). The *R.M.L.* panel did not ban the use of hindsight, but it was clearly urging caution in its application. *R.M.L.* cited *Credit Managers Ass'n of S. Cal.* v. *Federal Co.*, 629 F. Supp. 175, 186 (CD Cal. 1985), and noted that the court in that case "look[ed] at whether projected cash flows were reasonable when made, *not whether they ultimately panned out*." *R.M.L.*, 92 F. 3d, at 155 (emphasis added). Thus, *R.M.L.* warned against exactly what happened here: the May 2026 Opinion looked at how the liability "ultimately panned out" as opposed to what was happening around the time of the Preferential Transfers.

The Third Circuit cited *R.M.L.* in the March 2026 Opinion, but then limited it to cases involving contingent liabilities. App. 18. *R.M.L.*, however, referred to solvency valuation as a general matter, and it did not limit its warning about hindsight to the valuation of contingent liabilities. Instead, *R.M.L.*—like decisions from other circuits—says that courts must put guardrails on the use of hindsight in making any solvency determination. One essential limitation on hindsight is the temporal one because later events (especially those involving the value of an asset or liability) can easily be skewed by intervening developments in a bankruptcy.

II. The May 2026 Opinion Involves a Question of Exceptional Importance and It Will Have a Wide-Ranging, Detrimental Effect

The preference provisions in Section 547 have a twofold purpose: "First, by permitting the trustee to avoid prebankruptcy transfers that occur within a short period before bankruptcy, creditors are discouraged from racing to the courthouse to dismember the debtor during his slide into bankruptcy … . Second, and more important, the preference provisions facilitate the prime bankruptcy policy of equality of distribution among creditors of the debtor." H. Rep. No. 95–595, at 177–178 (1977). This case involves the prototypical preference because SLS demanded the payments of $6.6 million right after the conclusion of the Aurora Trial and shortly before the Petition Date. See pp. 6–7, *supra*. The return of the preferential transfer amounts to Allonhill would significantly increase the funds available for distribution to all creditors. And it would prevent SLS from jumping ahead of other creditors.

It is also well recognized that preference claims under Section 547 are a powerful and oft-employed tool for debtors. See *Merit Mgmt. Grp., LP* v. *FTI Consulting, Inc.*, 583 U. S. 366, 369 (2018) ("To maximize the funds available for, and ensure equity in, the distribution to creditors in a bankruptcy proceeding, the Bankruptcy Code gives a trustee the power to invalidate a limited category of transfers by the debtor or transfers of an interest of the debtor in property."). In *Merit*, this Court noted that: "These avoiding powers help implement the core principles of bankruptcy. For example, some deter the race of diligence of creditors to dismember the debtor before bankruptcy and promote equality of distribution." *Id.*, at 370 (citation modified); see also Yann Geron, "Litigation Issues in Avoidance Actions: Hot Topics," 48th Annual Southeastern Bankruptcy Law Institute (March 23–25, 2022) online at https://tinyurl.com/3dbvuc8j (as visited Aug. 19, 2026, and archived on the Internet Archive) ("Avoidance actions under sections 544, 547, 548, and 549 of the Bankruptcy Code are a key component of estate administration and often a significant source of funding for the estate and its creditors.”). As a result, the number of preference actions in many bankruptcy cases can be in the hundreds or even thousands. See, *e. g.*, *In re Celsius Customer Preference Actions*, 672 B. R. 822, 832 (Bankr. SDNY 2025); *In re Hayes Lemmerz Intern. Inc.*, 312 B. R. 44, 47 (Bankr. D. Del. 2004).

The May 2026 Opinion will unfairly impede preference claims in cases where, as here, an adverse judgment drove the debtor into bankruptcy. That is because the recipients of preferences—who are constantly searching for defenses to avoidance actions—will cite the May 2026 Opinion and argue that the bankruptcy court must stay any preference actions because it cannot determine the solvency issue until all (i) appeals relating to adverse judgments have been resolved and/or (ii) prepetition claims have been addressed. The appellate process, in turn, can often take years. The inevitable stays of preference claims will obstruct and delay the debtor’s efforts to marshal assets. Moreover, given the chance that (as in this case) a reversal by the appellate court may render the debtor solvent, the debtor may choose to forego the assertion of preference claims altogether for fear of wasting assets in pursuit of those claims. Thus, the May 2026 Opinion (if left in place) will likely deprive estates of valuable recoveries.

The uncertainty and delay regarding preference claims will have a further effect on the other creditors in a bankruptcy and their dealings with the debtor. As in this case, debtors will often strike deals with creditors to bring assets into the estate rather than going through the expense of litigating claims. However, debtors and creditors make their settlement decisions based on an assessment of what the estate’s eventual assets will likely be, which often depends on the outcome of preference claims. If the preference claims are delayed or could be rendered valueless by an appellate reversal of a judgment, the parties have far less incentive to enter into settlements (to the estate's detriment).

Unresolved issues regarding the value of avoidance actions to the bankruptcy estate will also have an impact on parties other than the debtor and creditors. For example, debtor-in-possession (DIP) lenders—which play an important role in funding the debtor's operations—will not have an accurate view of the estate's financial condition, and in turn the sturdiness of their potential DIP liens. As a result, DIP lenders will be less likely to extend loans or will increase the cost of doing so. This could, in turn, mean that potentially viable companies will lack the requisite funding for reorganization.

Finally, the May 2026 Opinion will have far-reaching consequences because debtors frequently seek bankruptcy protection as a result of an adverse litigation judgment. See, *e. g.*, *In re Wilson*, 666 B. R. 828, 835 (Bankr. M.D. Ga. 2024) (noting that "bankruptcies are often filed due to pending litigation"); *In re Autterson*, 547 B. R. 372, 400 (Bankr. D. Colo. 2016) (noting that "debtors often file for bankruptcy protection after suffering adverse judgments"). Prominent examples include the bankruptcies of Gawker Media (2016) and Texaco (1988), but the multiple cases cited by the parties below (and in this petition) further illustrate that court judgments regularly lead to bankruptcy filings. Just a few days ago, a major ice cream maker filed for Chapter 11 protection because a federal court had entered a $23.8 million judgment against it last month. See TheStreet, "Major ice cream brand seeks Chapter 11 bankruptcy after lawsui" (Aug. 17, 2026) online at https://tinyurl.com/3hswh8w6 (as visited Aug. 19, 2026, and archived on the Internet Archive). As in this case, the ice cream maker is also pursuing an appeal from the judgment during bankruptcy. *Ibid.*

In summary, the May 2026 Opinion will create material roadblocks for debtors (in a broad array of cases) that did not exist until recently and are unwarranted. The Court can sidestep such issues and delays in the bankruptcy process by holding that courts must use contemporaneous judgments—and not any subsequent appellate decision regarding the judgments—as the guide to assessing the value of litigation-related liabilities.

III. In the Alternative, the Bankruptcy Courts Could Use the Probability-Discount Approach for Litigation-Related Liabilities

In the May 2026 Opinion, the Third Circuit stated that the Aurora Claim is a disputed liability and that it was relying solely on cases involving the valuation of disputed liabilities. App. 8–9. The Third Circuit nonetheless cited one contingent liability case, *W.R. Grace*. App. 9.

Also, prior to oral argument, the Third Circuit entered the following order:

> "In addition to any arguments that the parties wish to make, the panel requests that [a]t argument, the parties be prepared to discuss (1) the probability-discount valuation approach taken in *In re Advanced Telecomm. Network, Inc.*, 490 F. 3d 1325, 1335 (CA11 2007), *Matter of Xonics*

> *Photochemical, Inc.*, 841 F. 2d 198, 200 (CA7 1988), and *In re R.M.L., Inc.*, 92 F. 3d 139, 155 (CA3 1996); (2) whether that approach should apply to this case; and (3) if so, the result given the record evidence in this case." *In re Allonhill, LLC*, 25–1810, Dkt. 36 (Feb. 19, 2026) (alteration in original).

In accordance with the Third Circuit's order, the parties discussed those three questions extensively at oral argument. The Third Circuit, therefore, gave serious consideration to the application of the probability-discount method to the Aurora Claim, but it did not use the approach in the May 2026 Opinion. Thus, the question was squarely presented and passed upon: despite requesting briefing and argument on the method, the Third Circuit affirmed without requiring a probability-weighted valuation as of the transfer dates.

Of course, this Court is not limited by the Third Circuit's rejection of the probability-discount approach or the fact that the lower courts have tended to use different methods of valuation for disputed and contingent liabilities. Instead, for the reasons discussed below, it is a viable alternative for the Court to establish a rule that litigation-related liabilities must be valued through the same probability-discount method that the courts have historically used for valuing contingent liabilities.

A Seventh Circuit case, *Xonics*, is a landmark decision in the valuation of contingent liabilities in preference cases. In *Xonics*, Judge Posner (joined by Judges Easterbrook and Coffey) held: "It makes no difference whether the firm has a contingent asset or a contingent liability; the asset or liability must be reduced to its present, or expected, value before a determination can be made whether the firm's assets exceed its liabilities." *Xonics*, 841 F. 2d, at 200. "To value the contingent liability it is necessary to discount it by the probability that the contingency will occur and the liability will become real." *Ibid.*; see also *Advanced Telecommunication*, 490 F. 3d, at 1336 ("The court was instead required to calculate the present value of the liability—the expected cost of the liability times the estimated chance of it ever occurring."). The Third Circuit has explained the application and benefits of the probability-discount approach from *Xonics*: "Far from 'hindsight' or 'post-hoc' analysis, a court looks at the circumstances as they appeared to the debtor and determines whether the debtor's belief that a future event would occur was reasonable. The less reasonable a debtor's belief, the more a court is justified in reducing the assets (or raising liabilities) to reflect the debtor's true financial condition at the time of the alleged transfers." *R.M.L.*, 92 F. 3d, at 156. *Xonics* and its progeny are influential, and bankruptcy courts follow the probability-discount approach for valuing contingent liabilities.

The Court could also hold that the bankruptcy courts should undertake the valuation analysis at the outset of the main case so the debtor's solvency or insolvency is established and the bankruptcy may proceed in an orderly fashion. In other words, applying the probability-discount valuation approach would avoid the issues identified above and the result in this case, where the insolvency of the debtor was reversed several years into the bankruptcy.

This case illustrates the feasibility of applying the probability-discount approach early in a case to confirm insolvency. The undisputed evidence in the record shows that Allonhill's assets at the time of the transfers were no more than $9.6 million. App. 106. The non-Aurora liabilities were $3.6 million. *Ibid.* The potential value of the Aurora Claim was $25.8 million. Even if the Bankruptcy Court had held that there was no more than a 50–50 chance of a $25.8 million judgment at the time of the Preferential Transfers, that would result in a value for the Aurora Claim of approximately $12.9 million and total liabilities of around $16.5 million (*i. e.*, $12.9 million for the Aurora Claim plus $3.6 million for the non-Aurora liabilities). That far exceeds Allonhill's $9.6 million in assets. Indeed, the Bankruptcy Court would have had to find a low likelihood of an approximately $26 million judgment to hold that Allonhill was solvent.

This is the type of determination that a bankruptcy court can readily make at the outset of a case after the debtor lists its assets and liabilities. Bankruptcy courts routinely estimate the value of contingent liabilities, and they can apply the same probability-discount approach to litigation-related liabilities. In turn, the bankruptcy court can compare those liabilities to the assets and make a determination, early in the proceeding, whether the debtor is solvent or insolvent. Such an approach would enhance the ability of the debtor and all the other interested parties to arrange their affairs in a quick and orderly manner.

The courts have recognized in an analogous context that the "[e]stimation [of contingent liabilities] helps the court 'avoid the need to await the resolution of outside lawsuits to determine issues of liability or amount owed by means of anticipating and estimating the likely outcome of these actions.'" *In re Federal-Mogul Global, Inc.*, 330 B. R. 133, 154 (Bankr. D. Del. 2005) (quoting *Matter of Ford*, 967 F. 2d 1047, 1053 (CA5 1992)). Similarly, in the claims allowance process, Section 502 of the Bankruptcy Code states that a court "shall" estimate a contingent liability if failing to do so "would unduly delay the administration of the case." 11 U. S. C. §502(c). Therefore, with respect to contingent liabilities, Congress and the courts have acknowledged that estimating those liabilities can reduce harmful delay and disruption. The same principle should apply to litigation-related liabilities.

In sum, the adoption of the probability-discount approach to litigation-related liabilities would avoid the myriad issues that can arise when the courts use the disputed liability approach, as the Third Circuit did in the May 2026 Opinion.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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AUGUST 2026

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