

No. 26-263

IN THE
Supreme Court of the United States

OFFICIAL COMMITTEE OF TALC CLAIMANTS,

Petitioner,

v.

WHITTAKER, CLARK & DANIELS INC., ET AL.,

Respondent.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit**

**BRIEF OF AMICUS CURIAE
AMERICAN ASSOCIATION FOR JUSTICE
IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE¹

The American Association for Justice (“AAJ”) is a national, voluntary bar association established in 1946 to strengthen the civil justice system, preserve the right to trial by jury, and protect access to the courts for those who have been wrongfully injured. With members in the United States, Canada, and abroad, AAJ is the world’s largest plaintiff trial bar. AAJ members primarily represent plaintiffs in personal injury actions, employment rights cases, consumer cases, and other civil actions. Throughout its 80-year history, AAJ has served as a leading advocate for the right of all Americans to seek legal recourse for wrongful conduct.

AAJ urges this Court to grant the Petition. The lower court fundamentally misinterprets and misapplies the plain text of the Bankruptcy Code. And it does so in a manner that runs roughshod over vital interests of the States and robs those who have suffered wrongful injury of their due process right of access to the courts to present their legal claim for monetary damages to a jury.

INTRODUCTION AND SUMMARY OF ARGUMENT

1. The decision below is an exercise in alchemy.

¹ Pursuant to Rule 37.6, amicus affirms that no counsel for any party authored this brief in whole or in part and no person or entity, other than amicus, its members, or its counsel has made a monetary contribution to its preparation or submission. The parties received timely notice of our intention to file.

Plaintiffs developed cancer from exposure to Whitaker, Clark & Daniels's (WCD) asbestos-containing products. Under New Jersey law, Brenntag, which purchased WCD's assets in 2004 and continued making the products, may be held vicariously liable for the torts of WCD. The Third Circuit ignored state law and reimagined plaintiffs' product liability causes of action as dependent upon WCD's own claims against Brenntag arising out of the asset sale. In this way, the lower court transformed personal injury causes of action that were not property interests "of the debtor" into claims based on Brenntag's vicarious liability, which is not a cause of action at all, and therefore not "property" for the estate under Section 541(a)(1) of the Bankruptcy Code.

Nevertheless, the Third Circuit found that plaintiffs' products liability suits belonged to the estate and upheld their disposal by the trustee in a settlement with Brenntag.

Intangible property, such as a tort cause of action, can be property of the estate under 11 U.S.C. § 541(a)(1) if it is property "of the debtor." A products liability cause of action against a nondebtor third party is personal to the injured plaintiff, and recovery is an award of monetary damages for her individualized harm due to an unreasonably dangerous product. The action does not seek return or recompense for the predecessor's assets. Nor could the predecessor itself sue for the plaintiff's bodily harm if bankruptcy had not ensued. Nor would a plaintiff's success in her products liability lawsuit result in any financial benefit to other WCD creditors.

Because the trustee can dispose of only that property and settle only those causes of action that are included in the estate under Section 541(a)(1), the trustee had no authority to settle the plaintiffs' injury claims against nondebtor Brenntag.

The lower court's determination to the contrary was based on the court's view of plaintiffs' claims as "derivative" or "secondary" to WCD's potential claims arising out of its sale of assets to Brenntag. The court gave no weight to the fact that WCD could not itself have brought those injury causes of action. Yet, the ability to plead a set of facts in court to seek a legal remedy is the definition of a "cause of action." The rule attaching liability to Brenntag was not a "cause of action," and therefore was not "property" under Section 541(a)(1).

The general rule of state corporations law is that an acquiring corporation is not liable for the torts of its predecessor. The "product-line" exception is a vicarious liability rule adopted by New Jersey and other states for the same policy reasons that underlie strict product liability. Not unlike respondeat superior, the product-line liability rule is not a separate cause of action. It simply requires the acquiring corporation to stand in the shoes of the predecessor and answer for the same causes of action that might have been asserted against the predecessor. It is not a property interest that could become part of the estate under Section 541(a)(1).

In view of the millions of Americans who are or may be seeking redress from financially healthy defendants, and who may nevertheless be swept out of

the civil justice system and into bankruptcy proceedings, this Court should grant the Petition and enforce Congress's clear limits on the bankruptcy power.

2. This Court should also grant review because the lower court's atextual expansion of the reach of the bankruptcy power directly undermines the States' vital interest in protecting their residents through tort lawsuits that compensate injured victims and incentivize safety. The decision below, if allowed to stand, would frustrate States' efforts to improve product safety for millions of Americans.

The Founders designed our federalist system of dual sovereignty to create a national government of broad but limited powers, reserving a generalized police power to the States. This Court has afforded the States great latitude in exercising their police powers to protect the health and safety of their residents. One tool that the States have employed is to adopt and develop common-law duties as to potentially dangerous activities and to afford persons who suffer injury access to the courts to seek legal redress.

The States have a direct interest in preserving access to the civil justice system for injured persons to obtain monetary damages. In the absence of legal redress, the cost of wrongful injury not only falls on the injured individual, but often burdens State governments as well. The State also has a strong interest in minimizing preventable injuries in the future by imposing the costs on the responsible parties, thus incentivizing investment in safety.

The same powerful state interest supports the application of product-line liability. The court below took

the product liability causes of action out of the hands of the plaintiffs who were severely harmed by WCD's talc products and turned them over to the trustee acting for WCD to negotiate a settlement. This not only victimizes the plaintiffs a second time, but it deals a blow to the States' efforts to make it financially advantageous to invest in preventing such harms in the first place.

This Court has, itself, acted to prevent courts from expanding bankruptcy jurisdiction into areas traditionally relegated to state law. Most importantly, the Court has instructed the federal courts that the Constitution does not create property interests. State law does. Most importantly, this Court has emphasized that the definition of "property" for inclusion in the bankruptcy estate under Section 541(a)(1) is supplied by state law alone.

This Court has stated that the constitutional mandate of uniformity of bankruptcy law supports deference to state law in defining "property" of the estate. The Third Circuit's assertion that the "orderly administration and equitable distribution" of the bankruptcy estate could justify its disregard of state law has been explicitly rejected by this Court.

This Court should grant the Petition to undo this judicial overreach.

3. This Court should also grant the Petition to scrutinize and reject the lower court's curtailment of Plaintiffs' right to trial by jury.

Bankruptcy courts exercising their core powers are courts of equity to which the Seventh Amendment

jury right does not apply. However, this Court has cautioned, when the bankruptcy court affects legal actions seeking monetary damages from nondebtors, the bankruptcy court must not disregard Americans' fundamental right to present their claims before a jury.

The decision below exemplifies just such an encroachment. The lower court's refashioning of plaintiffs' product liability suits as estate property set the table for a settlement in which the alleged tortfeasor and the entity vicariously liable on the tortfeasor's behalf could effectively set their price for the settlement value of plaintiffs' claims.

This Court should set firm guardrails at the intersections where expanded scope of the bankruptcy power to provide a new start for financially distressed businesses collides with the mission of the civil justice system to afford legal redress for injured victims. This Court has already made clear that Congress may not "conjure away" injured victims' right to trial by jury simply by shunting their claims to the federal bankruptcy machinery. The Court should grant review to make clear that the federal appeals courts may not do so either.

Nor should this Court delay in addressing these matters. This case is merely the latest in a growing series of instances in which well-resourced entities facing mass tort liabilities have attempted to exploit uncertainties at the bankruptcy/civil justice boundary. Stratagems often broadly referred to as the "Texas Two-Step" have attempted to use bankruptcy jurisdiction to turn common-law personal injury claims into collective property for discounted distribution to creditors.

Denial of certiorari in this case will be construed as a green light for ever-more creative and far-reaching abuses of the Bankruptcy Code.

This Court also must not ignore the human cost of delaying review. Many plaintiffs and their families are battling incurable mesothelioma and other serious cancers because of their exposure to WCD's talc products. At the same time, they have been forced to fight their way through a legal shell game "too tortured to describe," created by an interconnected and very wealthy enterprise whose wealth grows by protracting delays in the pay-out of compensation. The controversy is important to them and to thousands of victims of mass torts and is ripe for this Court's attention.

ARGUMENT

I. THE THIRD CIRCUIT'S DECISION CONSTRUED INJURED PLAINTIFFS' OWN INDIVIDUAL CAUSES OF ACTION AS PROPERTY BELONGING TO THE ESTATE IN DISREGARD OF NEW JERSEY LAW.

AAJ urges this Court to grant the Petition for Certiorari. The Third Circuit's decision fundamentally misinterprets and misapplies the plain text of the Bankruptcy Code. It does so in a manner that runs roughshod over vital interests of the States and robs those who have suffered wrongful injury of their due process right of access to the courts to present their legal claim for monetary damages to a jury.

The decision below is an exercise in alchemy. The Third Circuit reimagined plaintiffs' product liability

causes of action, which are indisputably property interests belonging to each injured plaintiff for their own individual injuries, and pronounced them to be dependent upon WCD's claims regarding its sale of assets. In this way, the lower court transformed personal injury causes of action that were not property interests "of the debtor" into claims based on WCD's sale of assets, which is not a cause of action at all, and therefore not "property" for the estate under the Bankruptcy Code. *See* 11 U.S.C. § 541(a)(1).

A. The Plaintiffs' Strict Liability Causes of Action Seeking Individual Personal Injury Damages from a Non-debtor Third Party Are Not Property of the Estate.

Debtors² were once in the business of processing, manufacturing, storing, and distributing industrial chemicals and minerals, including asbestos-laden talc. App'x 7a. Consumers who developed cancer and other illnesses caused by their exposure to those chemicals filed liability lawsuits against WCD. *Id.* In 2004, in a series of transactions "too tortured to recount in full," *id.* at 8a, the company sold its assets to Brenntag,³ which continued to market the talc products for a time. WCD ceased its manufacturing and distributing activities and continued in business for the next 20 years responding to and processing product liability

² For convenience, amicus refers to the group of corporations named as Debtors in the bankruptcy proceeding as "WCD" herein.

³ Amicus uses "Brenntag" to refer to the subsidiaries of Brenntag North America that are named in this lawsuit, as did the court of appeals below.

claims. *Id.* In 2024, facing a growing volume of such claims, WCD sought bankruptcy protection and filed claims against Brenntag, seeking to hold the successor corporation liable for plaintiffs’ injuries caused by WCD’s own unreasonably dangerous talc products. *Id.* at 12a.

The trustee entered into an agreement with Brenntag to release all of the successor liability claims against Brenntag in exchange for \$535 million. *Id.* The bankruptcy court issued an order effectively ending the plaintiffs’ lawsuits nationwide. The district court adopted the findings of the bankruptcy court and granted summary judgment to WCD. *Id.* at 191a–192a. The Third Circuit affirmed, holding that the injured plaintiffs’ tort causes of action were property of the estate under Section 541(a)(1) and could therefore be settled by the trustee alone without consent of the plaintiffs. *Id.* at 47a–48a.

The Bankruptcy Code defines property of the estate as “all legal or equitable interest *of the debtor* in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1) (emphasis added). A “cause of action” is a species of property protected by the Due Process Clause. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). Section 541(a)(1) includes such intangible property. *See United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 n.9 (1983). *See also In re Polis*, 217 F.3d 899, 901 (7th Cir. 2000) (noting that Section 541(a) has “uniformly been interpreted to include causes of action”).

AAJ submits that the lower court’s ruling amounts to a drastic expansion of the estate’s “prop-

erty” and of the authority of the trustee in contradiction of the definition of plaintiffs’ cause of action under state law and far beyond the reach of the text of the statute.

The strict products liability cause of action asserted by plaintiffs under the law of most states reflects the widely adopted formulation:

One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer.

Restatement (Second) of Torts § 402A (1965). New Jersey adopted this formulation of strict liability cause of action as a matter of state law. *Cepeda v. Cumberland Eng’g Co.*, 386 A.2d 816, 829 (N.J. 1978), *overruled on other grounds by Suter v. San Angelo Foundry & Mach. Co.*, 406 A.2d 140 (N.J. 1979). The court also indicated that the ultimate issue of defectiveness was a question for the jury. *Id.* at 831.

The trustee is authorized to sue or settle causes of action belonging to the estate, not those of the creditors of the estate. *Caplin v. Marine Midland Grace Tr. Co.*, 406 U.S. 416, 428–34 (1972); *Whiting Pools*, 462 U.S. at 204 n.8 (“[T]he estate succeeds to no more or greater causes of action against third parties than those held by the debtor.”). AAJ contends that the plaintiffs’ product liability claims are individual and specific to them, seeking compensation for each plaintiff’s own injuries. Any claims that might be brought by WCD are entirely separate.

The court trained the focus of its analysis on the 2004 sale of WCD’s assets to Brenntag as an injury serving as the basis for WCD’s cause of action against Brenntag. Indeed, the court repeatedly deemed the injured plaintiffs’ individualized cancer claims as merely “derivative” or “secondary” to the harm done by Brenntag to WCD in purchasing its assets. App’x. 30 n.13, 35a, 41.⁴

The Third Circuit conceded that WCD could not have itself brought suit against Brenntag for plaintiffs’ cancers had bankruptcy not ensued. App’x 34a. But the very definition of “cause of action” is the entitlement of “one person to obtain a remedy in court from another person.” *Cause of Action*, Black’s Law Dictionary (12th ed. 2024).

By restating plaintiffs’ claims as based on the acquisition of the assets of WCD by Brenntag, the lower court turned their claims for individual injuries into something that is not a “cause of action” belonging to the debtor and therefore cannot be a property interest belonging to the estate under 11 U.S.C. § 541(a)(1).

⁴ AAJ also clarifies that plaintiffs’ cause of action is not *in rem*; it does not follow WCD’s property into Brenntag’s hands. The only significance of the 2004 transaction to plaintiffs lies in showing that WCD no longer manufactured the offending talc products and is no longer a source of compensation, so that shifting the liability for their injuries is appropriate. *Ramirez v. Amsted Indus., Inc.*, 431 A.2d 811, 821 (N.J. 1981). The fact that “the resources that had previously been available to (the manufacturer) for meeting its responsibilities to persons injured by defects in (products) it had produced,” is not an element of liability but justifies imposing the predecessor’s liability on the successor. *Id.* (quoting *Ray v. Alad Corp.*, 560 P.2d 3, 8–9 (Cal. 1977)).

B. The Liability of Successor Corporation Brenntag Is Based on a State Law Rule of Vicarious Liability That Is Not a Cause of Action and Therefore Not Property.

The Third Circuit set aside plaintiffs’ New Jersey product liability state law cause of action as too “focus[ed] on the individualized nature of their personal injury claims.” App’x 35a. Instead, the court reframed their claims as “their cause of action based on successor liability.” *Id.* See also *id.* at 14a (referring to plaintiffs’ suits as “product-line claims”). As reworked by the court, the cancers and other harms that were the object of plaintiffs’ lawsuits practically vanish from the court’s interpretation of their cause of action:

[T]he asbestos injuries endured by the tort claimants do not stem from the facts underlying Brenntag’s status as a successor to the Debtors cause of action which more appropriately, in the court’s view, focuses on the relationship between the debtor and the successor corporation.⁵

App’x 40a. The lower court looked away from plaintiffs’ personal illnesses and latched onto Brenntag’s acquisition of WCD’s assets as the primary injury. In the court’s reconstruction of plaintiffs’ claims, plaintiffs’ injuries “trace only to their exposure to asbestos-

⁵ The court below repeatedly refers to successor corporation liability as a “cause of action.” See, e.g., App’x 12a n.3 (stating that the term “refers to a collection of different *causes of action* that can be asserted against a successor corporation at common law”) (emphasis added).

contaminated products manufactured by the Debtors before Brenntag came into the picture.” App’x 40a.⁶

The court appears to have conflated plaintiffs’ product liability cause of action with the state law rule that transfers liability from the former manufacturer of the product to a successor corporation that continued the product-line. That rule is not cause of action; it simply makes the successor liable for the same cause of action that had been directed at its predecessor.

In *Ramirez v. Amsted Indus., Inc.*, the Supreme Court of New Jersey recognized the strong public policy that warrants imposing strict liability on manufacturers, who profit from product sales and can spread the costs of injury through pricing and insurance. 431 A.2d at 820–21. Rather than permit those societal benefits to be extinguished when a manufacturer ceases operations and sells its assets, the court required a purchasing corporation, if it continues the product line, to assume the predecessor’s product liability. *Id.*

This doctrine is not itself a cause of action. It is simply an exception to “the general rule that a corporation which acquires the assets of another is not liable for the torts of its predecessor.” *Schumacher v. Richards Shear Co.*, 451 N.E.2d 195, 198 (N.Y. 1983). The successor corporation simply “stand[s] in the shoes of the original manufacturer” and is accountable for predecessor’s torts regardless of fault on the successor’s part. *Nieves v. Bruno Sherman Corp.*, 431 A.2d 826, 832 (N.J. 1981). It is a vicarious liability

⁶ Without explanation, the court suggests that recovery by the individual plaintiffs for their own injuries would *increase* the benefits available to all other creditors. App’x 36a.

rule, not unlike the doctrine of respondeat superior under which Brenntag could be held liable for the negligence of its driver while out on delivery. Nor would liability depend upon how that employer-employee relationship was created. In the same way, any defect in the sale of assets that led to the predecessor-successor relationship in this case has no impact on whether Brenntag is liable to the victims harmed by WCD.

Because the claim as construed by the lower court is not a cause of action under state law, it is not an interest in “property” under Section 541(a)(1). It cannot be included in the estate, and any contemplated settlement of the plaintiffs’ claims would be outside the authority of the trustee.

This dramatic extension of bankruptcy jurisdiction over property to include state law claims by creditors against non-debtor third parties violates the plain text of Section 541(a)(1). Millions of Americans are or may be seeking redress from financially healthy defendants might nevertheless be swept out of the civil justice system and into bankruptcy proceedings. This Court should grant the Petition to enforce Congress’s clear limits on the bankruptcy power.

II. THE LOWER COURT’S DISREGARD OF NEW JERSEY LAW IN TRANSFERRING PLAINTIFFS’ CLAIMS TO THE ESTATE FOR DISPOSITION BY THE TRUSTEE UNDERMINES FUNDAMENTAL STATE INTERESTS IN SAFEGUARDING THE HEALTH AND SAFETY OF THEIR RESIDENTS BY PROVIDING LEGAL RECOURSE FOR WRONGFUL INJURY.

AAJ urges this Court to grant the Petition also because the lower court’s atextual expansion of the reach of the trustee for the estate directly undermines the States’ vital interest in protecting their residents through tort lawsuits that compensate injured victims and incentivize safety. To allow the Third Circuit’s decision to stand would undermine States’ efforts to improve the safety of products used by Americans every day.

A. The States Play a Constitutionally Essential Role in Safeguarding the Health and Safety of Their Residents by Providing Legal Recourse for Tortious Harms.

When we adopted our federalist plan, this Court has explained, “[t]he Constitution created a Federal Government of limited powers,” while reserving a generalized police power to the States.” *United States v. Morrison*, 529 U.S. 598, 619 n.8 (2000) (quoting *New York v. United States*, 505 U.S. 144, 155 (1992), and *Gregory v. Ashcroft*, 501 U.S. 452, 457 (1991)). Our constitutional structure highlights “the legitimate and substantial interest of the State in protecting its citizens,” *Farmer v. United Bhd. of Carpenters & Joiners*, 430 U.S. 290, 302–04 (1977), and this Court has historically accorded the several States “great latitude under their police powers” to do so. *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 475 (1996) (quoting *Metro. Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 756 (1985)).

A State has “manifest interest in providing effective means of redress for its residents.” *McGee v. Int’l*

Life Ins. Co., 355 U.S. 220, 223 (1957).⁷ When those who are injured by unreasonably dangerous products are unable to sue for their full damages, their medical expenses, lost income, and suffering are not diminished. The costs that cannot be borne by the injured individuals and their families often fall to the State.

The State also has a strong interest in reducing preventable future harms to the people within its borders. As this Court recently noted, “common-law duties and standards of care form part of a State’s authority to regulate safety.” *Montgomery v. Caribe Transp. II, LLC*, 608 U.S. 219, 226 (2026). Tort lawsuits play an essential role in “enforcing [the State’s] own safety regulations.” *Ford Motor Co. v. Montana Eighth Jud. Dist. Ct.*, 592 U.S. 351, 368 (2021), because “[t]he obligation to pay compensation can be, indeed is designed to be, a potent method of governing conduct and controlling policy.” *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 521 (1992). There are numerous examples of manufacturers who adopted safety improvements in their products following successful lawsuits brought by injured victims. See, e.g., Carl T. Bogus, *Why Lawsuits are Good for America* 212–14 (2001).

New Jersey’s courts have “led the country in [their] . . . protection of consumers” through lawsuits concerned “not only with compensation of the victims

⁷ Indeed, this Court has pronounced it “the duty of every State to provide, in the administration of justice for the redress of private wrongs” as a matter of due process. *Missouri Pac. Ry. Co. v. Humes*, 115 U.S. 512, 521 (1885).

but with admonition of the wrongdoer and . . . preventing future harm.” *Gantes v. Kason Corp.*, 679 A.2d 106, 111 (N.J. 1996). The landmark decision in *Henningsen v. Bloomfield Motors, Inc.*, 161 A.2d 69 (N.J. 1960), served as a foundation for the Restatement (Second) of Torts § 402A, which has been widely adopted as the paradigm for strict product liability causes of action. See 1 Owen & Davis on Prod. Liab. § 5:6 (4th ed.) (listing state decisions).

The policy reasons supporting vicarious liability of successor corporations under the “product-line” rule are the same reasons that underlie strict liability itself. For example, the New Jersey Supreme Court itself took note of the *Ramirez* court’s reliance on the policies of compensating “otherwise remediless victims of a defective product” and “spreading the risk to society at large for the costs of injuries from defective products” to support product-line liability. *Lefever v. K.P. Hovnanian Enters., Inc.*, 734 A.2d 290, 299 (N.J. 1999).

B. This Court Has Been Consistently Vigilant Against Unwarranted Intrusions by Federal Bankruptcy Law on State Common Law Tort Remedies.

The Constitution bestows the authority upon Congress “[t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.” U.S. Const. art. I, § 8, cl. 4. But as this Court has pointedly noted, “Congress did not intend for the Bankruptcy Code to pre-empt all state laws.” *Midlantic Nat’l Bank v. N.J. Dep’t of Env’t Prot.*, 474 U.S. 494, 505 (1986) (citing 28 U.S.C. § 959, which provides that a trustee

must manage property in according to requirements of state law and may be sued in that regard with the right to trial by jury).

Most importantly, this Court in *Butner v. United States*, 440 U.S. 48 (1979), declared: “Property interests are created and defined by state law.” *Id.* at 55. *See also Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972) (“Property interests [protected by the Due Process Clause] . . . are not created by the Constitution. Rather, they . . . stem from an independent source such as state law.”). The *Butner* Court added that, “Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding.” 440 U.S. at 55.

The constitutional requirement of uniformity of bankruptcy law strongly supports reliance on state law to define the property interests of the debtor under Section 541(a)(1). As this Court explained, “[u]niform treatment of property interests by both state and federal courts within a State serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving ‘a windfall merely by reason of the happenstance of bankruptcy.’” *Id.* (quoting *Lewis v. Mfrs. Nat’l Bank*, 364 U.S. 603, 609 (1961)). *Accord. Barnhill v. Johnson*, 503 U.S. 393, 398 (1992) (“In the absence of any controlling federal law, ‘property’ and ‘interests in property’ are creatures of state law.”); *Raleigh v. Ill. Dep’t of Revenue*, 530 U.S. 15, 20 (2000) (“Creditors’ entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor’s obligation.”).

C. The Court Below Explicitly Rejected New Jersey’s Definition of Plaintiffs’ Property Interest in Their Product Liability Causes of Action.

Despite this Court’s clear instruction in *Butner*, the lower court rejected New Jersey law which clearly describes plaintiffs’ causes of action as personal and individual claims for individual damages, wholly independent of WCD’s putative claims against Brenntag arising out of its 2004 asset transaction.

According to the lower court, accepting New Jersey’s focus on compensation for plaintiffs’ mesothelioma and other personal injuries, rather than on the asserted harm suffered by WCD,

would invite any number of states to endow certain creditors with a windfall recovery by vesting causes of action . . . exclusively with those creditors. Accordingly, . . . a claim may constitute property of the estate notwithstanding whether the debtor corporation was authorized to assert it outside of bankruptcy.

App’x 39a. *See also id.* at 47a (cautioning that courts must be vigilant lest “certain states” authorize “nominal plaintiffs” to “commandeer[] the bankruptcy process.”)

The court below suggested that the federal interest in “orderly administration and equitable distribution” of the bankruptcy estate justified its disregard of state tort law. *Id.* at 39a. But that interest cannot precede the determination of what property ought to be

included in the estate. Indeed, this Court in *Butner* specifically disapproved the Third Circuit’s rule that “equitable administration” of bankruptcies warranted establishing a federal property right to override state law. 440 U.S. at 56.

The overbroad interpretation of the bankruptcy power in this case amounts to “granting Congress an unlimited police power inconsistent with a Constitution of enumerated and limited federal powers.” *Brzonkala v. Va. Polytechnic Inst. & State Univ.*, 169 F.3d 820, 852 (4th Cir. 1999), *aff’d sub nom. United States v. Morrison*, 529 U.S. 598 (2000). This Court should grant the Petition to undo this judicial overreach.

III. THE DECISION BELOW ALLOWS CORPORATIONS FACING MASS TORT CLAIMS TO EVADE ACCOUNTABILITY BY ABUSING THE BANKRUPTCY CODE AND DEPRIVE INJURED AMERICANS OF THEIR RIGHT TO PRESENT THEIR PERSONAL INJURY CAUSES OF ACTION TO A JURY.

A. The Right of Trial by Jury for Common-Law Claims Seeking Damages Is Fundamental and Must be Safeguarded, Even in Bankruptcy Proceedings.

This Court has recently reaffirmed the right to trial by jury is “of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right’ must be ‘scrutinized with the utmost care.’” *Sec. & Exch. Comm’n v. Jarkesy*, 603 U.S. 109, 121 (2024) (quoting *Dimick v. Schiedt*, 293 U.S. 474, 486 (1935)). Suits for monetary

damages, including Plaintiffs’ state-law causes of action in this case, “must be heard by a jury” as they seek “the prototypical common law remedy.” *Jarkesy*, 603 U.S. at 120, 123.

Bankruptcy courts are Article I courts that “are essentially courts of equity,” to which the Seventh Amendment jury right does not attach. *Katchen v. Landy*, 382 U.S. 323, 377 (1966); *see also Young v. United States*, 535 U.S. 43, 50 (2002) (same).

Nevertheless, this Court has instructed that the jury right must be safeguarded, even in bankruptcy proceedings. Courts may not disregard the jury right simply because it “would impede swift resolution of bankruptcy proceedings and increase the expense of Chapter 11 reorganizations.” *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 63 (1989). Such considerations “are insufficient to overcome the clear command of the Seventh Amendment.” *Id.* (quoting *Curtis v. Loether*, 415 U.S. 189, 198 (1974)).⁸

The court’s decision below exemplifies just such an

⁸ In fact, Congress took special care to protect plaintiffs with personal injury and wrongful death claims from being deprived of their jury rights by the otherwise broad powers Congress gave to the Bankruptcy Courts. For example, Congress expressly provided that “this chapter and title 11 do not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim.” 28 U.S.C. § 1411(a). *See also* 28 U.S.C. § 157(b)(2)(B) (limiting bankruptcy court’s core proceeding jurisdiction with respect to estimation of personal injury claims); 28 U.S.C. § 157(b)(5), 157(e) (preserving personal injury claimants’ right to trial in district court including trial by jury).

encroachment. The lower court’s refashioning of plaintiffs’ product liability suits as property belonging to the estate set the table for a potential settlement in which the alleged tortfeasor and the entity vicariously liable on the tortfeasor’s behalf could effectively set their price for the settlement value of those claims. App’x 11a–12a. This Court has emphatically declared that Congress may not “conjure away the Seventh Amendment by mandating that traditional legal claims be” shunted into the federal bankruptcy machinery. *Jarkesy*, 603 U.S. at 135 (quoting *Granfinanciera*, 492 U.S. at 52).

This Court should grant the Petition to instruct that the judicial branch may not do so either.

B. This Court Should Not Delay in Erecting Guardrails Against the Abuse of the Bankruptcy Code to Evade Accountability in the Civil Justice System.

This is not the first time that corporations with considerable resources on hand but facing massive tort liabilities have exploited the Bankruptcy Code in an effort to escape the civil justice system. The stratagems employed vary, but they commonly involve turning common-law claims for damages into property to be distributed on a discounted basis with no opportunity for a trial in open court before a jury of ordinary citizens.

The growing number of companies that have attempted to exploit bankruptcy law include the makers of products that have inflicted widespread harms. See *Bestwall LLC v. Off. Comm. of Asbestos Claimants of*

Bestwall, LLC, 148 F.4th 233, 244 (4th Cir. 2025) (dry-wall building materials); *In re LTL Mgmt., LLC*, 64 F.4th 84 (3d Cir. 2023) (Johnson & Johnson; talcum powder products); *In re Aeero Techs. LLC*, No. 22-02890-JJG11, 2023 WL 3938436 (Bankr. S.D. Ind. June 9, 2023), *appeal dismissed*, 2024 WL 5277357 (7th Cir. July 11, 2024) (3M Company; military ear protection equipment); *In re Red River Talc LLC*, 670 B.R. 251 (Bankr. S.D. Tex. 2025) (Johnson & Johnson; talcum powder products); *In re Aldrich Pump LLC*, No. 20-30608 (JCW), 2021 WL 3729335 (Bankr. W.D.N.C. Aug. 23, 2021) (Trane Technologies; climate control products for buildings, homes, and transportation); *In re DBMP LLC*, No. 20-30080, 2021 WL 3552350 (Bankr. W.D.N.C. Aug. 11, 2021) (CertainTeed; asbestos-containing building materials).

This trend has prompted scholars to call for review by this Court. *See, e.g.*, Lindsey D. Simon, *Bankruptcy Grifters*, 131 Yale L.J. 1154, 1216 n.81 (2022); Ralph Brubaker, *Mandatory Aggregation of Mass Tort Litigation in Bankruptcy*, 131 Yale L.J. Forum 960, 964 (2022).

Denying the Petition in this case will likely be welcomed as a green light for further and even more adventurous attempts to game the bankruptcy system. As the bankruptcy trustee informed this Court in *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024), allowing tortfeasors to successfully withdraw their victims' claims from the civil justice system would provide a "roadmap for corporations and wealthy individuals to misuse the bankruptcy system in future cases to avoid mass-tort liability." *Id.* at 226 (citation omitted). The same considerations weigh heavily in favor

of granting the Petition in this case.

The Court cannot be unmindful of the human costs at stake. As Fourth Circuit Judge Robert Bruce King in a powerful dissent reminded his colleagues, many of the claimants in this case are living “on borrowed time.” *Bestwall*, 148 F.4th at 247 (King, J., dissenting). They suffer from mesothelioma, a rare, incurable form of cancer that is almost exclusively caused by asbestos exposure or from other cancers. *Id.* at 248. And while plaintiffs and their families battle these horrific diseases, they have been forced to also fight through a legal process that has dragged their legal claims against nondebtor Brenntag into WCD’s bankruptcy proceeding where those claims might be “settled” without their consent. All for no better reason than to “give a defendant a better deal” *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 839 (1999).

CONCLUSION

For the foregoing reasons, the American Association for Justice urges this Court to grant the Petition for Writ of Certiorari.

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Respectfully submitted,

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