

No. 26-263

In the Supreme Court of the United States

OFFICIAL COMMITTEE OF TALC CLAIMANTS, PETITIONER

v.

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

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

**BRIEF FOR THE HONORABLE SHELLEY C.
CHAPMAN (RET.), IN HER CAPACITY AS COURT-
APPOINTED FUTURE CLAIMANTS' REPRESENTATIVE,
AS AMICUS CURIAE IN SUPPORT OF PETITIONER**

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INTEREST OF AMICUS CURIAE*

Amicus, the Honorable Shelley C. Chapman (Ret.), submits this brief in her capacity as the court-appointed legal representative for future claimants (Future Claimants' Representative) in respondents' pending bankruptcy proceedings under Chapter 11 of the Bankruptcy Code, 11 U.S.C. 1101 *et seq.* *Amicus* was appointed by the bankruptcy court to represent and protect the legal rights of persons who have been exposed to respondents' asbestos-contaminated products but have not yet manifested injuries,

* Counsel for all parties received notice of *amicus*'s intention to file this brief at least ten days prior to the deadline for filing the brief. No counsel for a party has written this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person or entity, other than *amicus* or her counsel, has made a monetary contribution to this brief's preparation or submission.

and hence by definition lack any ability to participate in respondents' bankruptcy proceedings in their own right. In the decision below, the court of appeals erred by allowing the respondent debtors to seize control of what may prove to be those future claimants' most meaningful source of recovery as their injuries manifest in the future—*viz.*, valuable successor-liability claims that asbestos victims could assert against solvent third parties outside of bankruptcy. *Amicus* thus has a strong interest in this Court's review and reversal of the decision below.

Amicus also brings to bear significant experience that may assist the Court in evaluating the petition for a writ of certiorari. As a United States Bankruptcy Judge in the Southern District of New York from 2010 to 2022, *amicus* presided over numerous large Chapter 11 cases, including the Chapter 11 proceedings of Lehman Brothers Holdings Inc. and its affiliated debtors—the largest bankruptcy case in history. *Amicus* has also served as a court-appointed mediator in several large Chapter 11 cases, including other mass-tort bankruptcies, and has served, or currently is serving, as Future Claimants' Representative in other cases. *Amicus* therefore has a deep understanding of the important ways in which the court of appeals' mistaken decision threatens to destabilize the negotiating dynamics that frequently drive the resolution of Chapter 11 proceedings.

INTRODUCTION AND SUMMARY OF ARGUMENT

The petition for a writ of certiorari presents a question of critical importance in the resolution of complex mass-tort bankruptcies, which the court of appeals resolved in conflict with decisions of this Court and of other circuits: Whether a creditor's tort claims against solvent non-debtor third parties can become property of the debtor's bankruptcy estate even if the debtor could not have

asserted those claims under state law before the bankruptcy filing.

This case involves the bankruptcy proceedings of respondents Whittaker, Clark & Daniels, Inc. and its affiliates. Respondents sold asbestos-contaminated talc for decades and now face claims by thousands of victims who allege that respondents' talc caused their mesothelioma, lung cancer, or other asbestos-related diseases. Respondents' operating assets were sold in 2004 to a newly formed Brenntag entity, leaving respondents' historical tort liabilities behind in non-operating corporate shells that a Berkshire Hathaway entity later acquired. In connection with these corporate transactions, the Berkshire Hathaway entity became responsible for indemnifying Brenntag for liabilities related to respondents' operations. Brenntag's liabilities—and Berkshire Hathaway's corresponding indemnification obligations—have proved to be substantial as asbestos victims asserted successor-liability claims seeking to recover from Brenntag as the successor owner of the respondents' former assets and operations. Those claims include state-law tort claims based on “product line” theories recognized in certain States, which are available *only* to victims injured by defective products from a product line that is subsequently sold and operated by another company. See Pet. 6-7; *Ray v. Alad Corp.*, 560 P.2d 3, 8-9 (Cal. 1977); *Ramirez v. Amsted Indus., Inc.*, 431 A.2d 811, 825 (N.J. 1981).

In the decision below, the court of appeals held that tort victims' successor-liability claims against Brenntag became property of respondents' bankruptcy estates upon their bankruptcy filing, even though the court did not suggest that respondents could have pursued any of these claims outside of bankruptcy. The consequences of that decision are startling. As property of the estate, these valuable claims against solvent nondebtor defendants can

be prosecuted, settled, and extinguished by the respondent debtors—*i.e.*, the parties whose asbestos-contaminated products caused the harms at issue—without the consent of the injured tort victims. This case presents a particularly egregious example of the problem: Respondents reached a conflicted settlement after closed-door negotiations with Brenntag (respondents’ successor and co-defendant in the tort system) and the Berkshire Hathaway entity (respondents’ own corporate affiliate). That settlement would extinguish the tort victims’ claims against Brenntag without their consent at a small fraction of the amount the victims assert those claims are worth—all for the ultimate financial benefit of respondents’ own corporate affiliate, Berkshire Hathaway.

As the petition correctly explains (at 21-27), there is no basis for that deeply unjust result in the Bankruptcy Code. To the contrary, the Code defines “property of the estate” to include “legal or equitable interests *of the debtor* in property as of the commencement of the case.” 11 U.S.C. 541(a)(1) (emphasis added). The plain text of that provision does not encompass causes of action that belong to creditors under applicable nonbankruptcy law and which the debtor could not assert outside of bankruptcy. Indeed, the court of appeals made no effort to square its holding with the text of Section 541(a)(1). It suggested instead that displacing state law—and seizing the tort victims’ property interests in their claims against third parties—was necessary to avoid “subvert[ing] the goals that Congress sought to advance through the Bankruptcy Code.” Pet. App. 39a.

This Court’s decisions decisively reject that free-wheeling atextual approach. “[T]he basic federal rule is that state law governs” property entitlements in bankruptcy. *Butner v. United States*, 440 U.S. 48, 57 (1979). In the absence of “textual support” in the Bankruptcy Code,

a court may not invoke a “rule of [its] own creation” to override state law. *Travelers Cas. & Sur. Co. of Am. v. Pacific Gas & Elec. Co.*, 549 U.S. 443, 451-452 (2007). It is unsurprising, then, that the decision below creates a split with many other courts of appeals. See Pet. 11-20.

The court of appeals’ error is also highly consequential. With no grounding in the Bankruptcy Code, the decision below permits debtors to seize control of and extinguish tort victims’ own claims against third parties without consent. That result contravenes the “deep-rooted historic tradition that everyone should have his own day in court.” *Martin v. Wilks*, 490 U.S. 755, 762 (1989) (citation omitted).

Of particular concern for the interests of future claimants, the decision below also invites obvious evasion of the specific and carefully circumscribed rules that Congress adopted in 11 U.S.C. 524(g) to address the precise scenario at issue here, in which claims resulting from exposure to asbestos are asserted against nondebtors based on specified legal relationships with a debtor manufacturer. Section 524(g) creates a limited exception to the Bankruptcy Code’s general rule that “discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.” 11 U.S.C. 524(e). It permits the bankruptcy court to enjoin claims asserted against specified nondebtor entities, but only after compliance with rigorous substantive and procedural safeguards. In particular, a Section 524(g) injunction is premised on the creation of a trust that “will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner.” 11 U.S.C. 524(g)(2)(B)(ii)(V). The court must “appoint[] a legal representative for the purpose of protecting the rights of persons that might subsequently assert demands” covered by the injunction. 11

U.S.C. 524(g)(4)(B)(i). And the tort claimants whose claims will be addressed by that trust must vote in favor of any reorganization plan that contains a Section 524(g) injunction “by at least 75 percent of those voting.” 11 U.S.C. 524(g)(2)(B)(ii)(IV)(bb).

Under Section 524(g), alleged third-party successors to the debtor’s asbestos liabilities must negotiate directly with the asbestos claimants and the court-appointed fiduciary for future claimants in order to obtain resolution of their claims. Congress’s requirement that the settlement be approved by a supermajority of claimants gives the claimants significant leverage in those negotiations and, at the same time, ensures that any agreed outcome will command broad support. But holding that these claims against third parties belong to the bankruptcy estate allows the claims to be settled away by debtors in conflicted negotiations with their co-defendants and corporate affiliates, without any of the protections that Section 524(g) mandates. That result undermines victims’ private property rights in ways neither permitted nor required by the Bankruptcy Code and is a recipe for costly and protracted litigation, dissipating value that should be available for distribution to creditors and delaying asbestos debtors’ emergence from bankruptcy.

This Court should grant review and reverse the court of appeals’ profoundly mistaken decision.

ARGUMENT

A. The Court Of Appeals Erred In Holding That Causes Of Action Which A Debtor Could Not Have Asserted Outside Of Bankruptcy May Nonetheless Be The Property Of A Debtor's Bankruptcy Estate

1. Section 541(a)(1) provides that, as a general matter, “property of the estate” includes “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. 541(a)(1). Under that provision’s

plain meaning, a cause of action that belongs to creditors under state law and could not be asserted by the debtor outside of bankruptcy does not qualify as estate property.

To state the obvious, a claim that can be asserted only by third parties, such as creditors, and would produce recovery only for those third parties cannot plausibly be characterized as a property “interest[] *of the debtor*.” 11 U.S.C. 541(a)(1) (emphasis added). And because that determination is to be made “as of the commencement of the case”—*i.e.*, *prior to* the application of the Bankruptcy Code’s detailed rules governing parties’ respective rights in bankruptcy—it is necessarily governed by state law (or applicable nonbankruptcy law more broadly). Section 541(a)(1) thus stands in marked contrast with other paragraphs of Section 541(a) that serve to augment the estate by encompassing additional property interests that may arise pursuant to other specifically identified provisions of the Code. See 11 U.S.C. 541(a)(3) and (4). Unlike those other portions of Section 541(a), the plain text of Section 541(a)(1)’s baseline definition of estate property makes clear that it “is not intended to expand the debtors’ rights against others more than they exist at the commencement of the case.” H.R. Rep. No. 595, 95th Cong., 1st Sess. 367 (1977); S. Rep. No. 989, 95th Cong., 2d Sess. 82 (1978) (same).

The conclusion that Section 541(a)(1) does not encompass claims that a debtor could not assert under state law is reinforced by the long-settled principle that “[p]roperty interests are created and defined by state law” and that, “[u]nless 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.” *Butner v. United States*, 440 U.S. 48, 55 (1979). In *Butner*, this Court rejected lower court decisions that had applied a “federal rule of equity”

to afford mortgagees a security interest in rents collected in the period between a mortgagor's bankruptcy filing and a foreclosure sale, "even if state law would not recognize any such interest until after foreclosure." *Id.* at 53. The Court noted that, although Congress's authority to legislate on this topic was unquestioned, Congress had "not chosen to exercise its power to fashion any such rule." *Id.* at 54. Instead, with the exception of specific "provisions invalidating certain security interests as fraudulent, or as improper preferences over general creditors," Congress had "generally left the determination of property rights in the assets of a bankrupt's estate to state law." *Ibid.* Accordingly, "undefined considerations of equity" offered "no basis for adoption of a uniform federal rule affording mortgagees an automatic interest in the rents as soon as the mortgagor is declared bankrupt." *Id.* at 56.

The *Butner* principle squarely governs the interpretation of Section 541(a)(1)'s controlling language here. By defining estate property to include "all legal or equitable interests of the debtor in property as of the commencement of the case," 11 U.S.C. 541(a)(1), the Bankruptcy Code takes a debtor's property rights under nonbankruptcy law as it finds them, with no indication that a superseding federal rule should apply. Thus, Section 541(a)(1) is governed by the default rule that property rights "should not be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." *Butner*, 440 U.S. at 55. And under that well-settled principle, a cause of action that does not belong to the debtor under state law prior to bankruptcy does not become estate property under Section 541(a)(1) upon the commencement of a bankruptcy case.

2. In the decision below, the court of appeals began by paying lip service to *Butner*'s "basic idea * * * that state law defines a debtor corporation's property interests."

Pet. App. 28a. But it quickly departed from that fundamental rule, instead concluding that “a claim may constitute property of the estate notwithstanding whether the debtor corporation was authorized to assert it outside of bankruptcy,” *id.* at 39a, and that a debtor’s “ability to assert a claim under applicable non-bankruptcy law is sufficient—but not necessary—for that claim to constitute property of the estate,” *id.* at 39a n.21. Thus, rather than looking to state law to determine whether the respondent debtors could have asserted any of the successor-liability claims at issue here, the court applied a judge-made rule of federal common law under which any claims that “turn[] on [a] successor’s relationship with the manufacturer” become property of the estate under Section 541(a)(1). *Id.* at 40a.

In the court of appeals’ view, that holding was necessary to avoid “subvert[ing] the goals that Congress sought to advance through the Bankruptcy Code.” Pet. App. 39a. In particular, the court posited that displacing state law with a judge-made federal rule was appropriate because “Section 541 safeguards property to enable orderly administration and equitable distribution to all creditors of the bankrupt entity’s estate.” *Ibid.* And the court hypothesized that applying state law “would invite any number of states to endow certain creditors with a windfall recovery by vesting causes of action predicated on an injury to the debtor corporation exclusively with those creditors.” *Ibid.* That rationale cannot withstand even casual scrutiny.

a. The court of appeals erred by supplanting state law—and tort victims’ private property rights in their claims against nondebtor third parties—with a judge-made rule of federal common law based solely on the court’s policy concerns. As an initial matter, the court had no basis “for the expansion of limited text by the positing

of an unlimited purpose.” *Freeman v. Quicken Loans, Inc.*, 566 U.S. 624, 637 (2012). This Court has frequently cautioned that “no legislation pursues its purposes at all costs.” *Rodriguez v. United States*, 480 U.S. 522, 525-526 (1987); see, e.g., *Freeman*, 566 U.S. at 637; *Azar v. Allina Health Servs.*, 587 U.S. 566, 581 (2019). That lesson applies just as much to the Bankruptcy Code, which, “like all statutes, balances multiple, often competing interests.” *Bartenwerfer v. Buckley*, 598 U.S. 69, 81 (2023). Thus, the Code’s “generalized statutory purpose[s]” cannot “overcome the specific manner” in which those purposes have been implemented in the Code’s text. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 649 (2012). Rather, as with other statutes, courts must “interpret the Code clearly and predictably using well established principles of statutory construction.” *Ibid.* Under those principles, courts “are not free to rewrite” the Code’s text based on their own views of sound bankruptcy policy. *Bartenwerfer*, 598 U.S. at 81.

The court of appeals sought to support its atextual analysis by noting that this Court “cautioned in *Butner* that property interests should be analyzed in accordance with state law ‘[u]nless some federal interest requires a different result.’” Pet. App. 48a (quoting *Butner*, 440 U.S. at 55). As this Court’s more recent cases applying *Butner* confirm, however, the “federal interest” that may override state law’s allocation of property rights in bankruptcy must derive from *enacted statutory text*—not from vague, unstated notions of bankruptcy policy that judges may independently divine.

In *Barnhill v. Johnson*, 503 U.S. 393 (1992), for instance, this Court explained that “[i]n the absence of *any controlling federal law*, ‘property’ and ‘interests in property’ are creatures of state law.” *Id.* at 398 (citing *Butner*, 440 U.S. at 54) (emphasis added). The Court echoed that

observation in *Nobelman v. American Savings Bank*, 508 U.S. 324 (1993), explaining that state law governs property rights in bankruptcy “in the absence of *any controlling federal rule*.” *Id.* at 328 (emphasis added). Thus, “[c]reditors’ entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor’s obligation, *subject to any qualifying or contrary provisions of the Bankruptcy Code*.” *Raleigh v. Illinois Dep’t of Revenue*, 530 U.S. 15, 20 (2000) (emphasis added).

Travelers Casualty & Surety Co. of America v. Pacific Gas & Electric Co., 549 U.S. 443 (2007) (*Travelers Casualty*), provides a particularly clear illustration of *Butner*’s proper application. There, the Ninth Circuit had rejected a creditor’s contract-based claim for attorney’s fees based “solely on a rule of that court’s own creation” disallowing fees incurred in litigating issues of federal bankruptcy law. *Id.* at 452. In reversing that decision, this Court first noted that the claim for fees was not covered by any of the specific grounds for disallowance set forth in 11 U.S.C. 502(b)(2)-(9). See 549 U.S. at 449-450. Thus, the claim was valid unless it was subject to disallowance under Section 502(b)(1)’s general catch-all rule, which requires courts to disallow a claim that “is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.” 11 U.S.C. 502(b)(1); see 549 U.S. at 450.

This Court held that Section 502(b)(1) “is most naturally understood to provide that, with limited exceptions, any defense to a claim that is available outside of the bankruptcy context is also available in bankruptcy.” 549 U.S. at 450. That reading followed not only from the “plain statutory text,” but also from “the settled principle” that state law controls creditors’ entitlements in bankruptcy in the first instance. *Ibid.* And in the face of that default rule,

“[t]he absence of textual support” in the Code for the Ninth Circuit’s rule proved “fatal.” *Id.* at 452. Thus, instead of adopting such judge-made rules based on their own views of bankruptcy policy, courts must “presume that claims enforceable under applicable state law will be allowed in bankruptcy unless they are *expressly* disallowed.” *Ibid.* (emphasis added).

The decision below repeats the same fundamental error that this Court unanimously corrected in *Travelers Casualty*. The court of appeals did not identify *any* textual basis for its holding that any cause of action that is based in part on an alleged successor’s relationship with the debtor necessarily belongs to the debtor’s bankruptcy estate, let alone any provision of the Bankruptcy Code that expressly overrides state law vesting creditors with ownership of such a claim. The court thus erred by invoking a “rule of [its] own creation” to strip creditors of their property interest in claims against third parties that they hold under state law, without any “textual support” in the Bankruptcy Code. *Travelers Cas.*, 549 U.S. at 451, 453.

b. As just explained, generalized appeals to bankruptcy policy cannot substitute for interpretation of the Bankruptcy Code’s text. Thus, even if the policy judgments underlying the decision below were sound, they would not justify a departure from Section 541(a)(1)’s plain text. In fact, the policy concerns that the court of appeals invoked are unfounded.

As an initial matter, the court of appeals’ concern for “orderly administration and equitable distribution to all creditors of the bankrupt entity’s estate,” Pet. App. 39a, is logically irrelevant here. To be sure, that interest might be relevant to a dispute over the rules for distributions *from* a debtor’s bankruptcy estate. But it does not bear on the logically prior question of whether a particular cause of action is or is not *part of* the estate in the first place.

There is likewise no force to the court of appeals' suggestion that state law must yield because otherwise States may "endow certain creditors with a windfall recovery by vesting causes of action predicated on an injury to the debtor corporation exclusively with those creditors." Pet. App. 39a. What the court described as a "windfall" is simply the inevitable result of following *Butner's* "basic federal rule * * * that state law governs" property entitlements in bankruptcy. 440 U.S. at 57. As the petition correctly observes (at 31-32), decisions about the circumstances under which a tort victim may seek relief from a successor of the manufacturer that produced an injurious product represent considered policy judgments by the States, which "possess the 'traditional authority to provide tort remedies to their citizens' as they see fit." *Wos v. E.M.A.*, 568 U.S. 627, 639-640 (2013) (quoting *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984)). The same is true of legal rules allocating ownership and control over such claims as between tort victims and the manufacturers that caused the victims' injuries. To the extent that States resolve such policy judgments in different ways, there is nothing improper about giving effect to those varying decisions in bankruptcy cases, as *Butner* and its progeny require.

Indeed, the court of appeals' approach undermines the "[u]niform treatment of property interests by both state and federal courts within a State." *Butner*, 440 U.S. at 55. As this Court has explained, uniform treatment "serves to reduce uncertainty, * * * discourage forum shopping, and * * * prevent a party from receiving 'a windfall merely by reason of the happenstance of bankruptcy.'" *Ibid.* (quoting *Lewis v. Manufacturers Nat'l Bank of Detroit*, 364 U.S. 603, 609 (1961)). By holding that claims that are owned and controlled by individual creditors outside of bankruptcy nonetheless become estate property

immediately upon a bankruptcy filing—at which point they will be controlled and can be settled by the debtor—the decision below creates a powerful incentive for tortfeasors and their corporate affiliates to pursue bankruptcy relief for tactical advantage. And it confers an unjustified windfall on those parties by allowing them to extinguish valuable tort claims in conflicted settlements, without the consent of the victims who would control the claims outside of bankruptcy.

Finally, and contrary to the court of appeals’ suggestion, the policy concerns that the court imputed to the Bankruptcy Code cannot be justified by analogy to the Code’s treatment of fraudulent transfer claims. See Pet. App. 41a-48a. The court viewed creditors’ claims to recover fraudulently transferred property as canonical examples of estate causes of action. See *id.* at 38a, 43a. And it held that the successor-liability claims at issue here are relevantly similar to fraudulent transfer claims because, in its view, both theories “serve[] the same general purposes” of addressing transactions that unfairly deplete a debtor’s assets and impose a secondary harm on creditors, *id.* at 41a, and both theories would “turn on the same generally available facts,” *id.* at 42a.

That argument proceeds from an incorrect premise. Under the correct reading of Section 541(a)(1), see pp. 6-9, *supra*, state-law fraudulent transfer claims generally do not qualify as estate property because, as the court of appeals acknowledged, Pet. App. 38a-39a, those claims ordinarily can be asserted only by creditors outside of bankruptcy. See, *e.g.*, Uniform Voidable Transactions Act §§ 4(a), 5(a) (defining transactions that are “voidable as to a creditor”); *id.* § 7(a) (providing remedies that “a creditor” may pursue); N.Y. Debtor & Creditor Law § 276(a) (remedies for “a creditor”). Rather, state-law fraudulent transfer claims may be asserted by a bankruptcy trustee

(or debtor in possession) pursuant to Section 544(b) of the Bankruptcy Code, which authorizes the trustee to “avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor” with an allowable unsecured claim. 11 U.S.C. 544(b)(1). Property recovered in a successful avoidance action in turn becomes property of the estate. See 11 U.S.C. 541(a)(3) and (4).

The statutory context thus confirms that creditors’ state-law fraudulent transfer claims are not vested in the bankruptcy estate by Section 541(a)(1). See Pet. App. 43a. If they were, Section 544(b)’s specific authorization for the trustee to pursue those avoidance claims would be unnecessary. And because fraudulent transfer claims are not estate property under Section 541(a)(1), successor-liability claims cannot be converted into estate property simply because, in a court’s view, they share a similar theory of liability.

Successor-liability claims also differ from fraudulent transfer actions in a critical way that explains Congress’s choice to vest the trustee with control over state-law fraudulent transfer claims. Creditors’ individual fraudulent transfer actions pose a collective-action problem because the liability of a defendant who has received a fraudulent transfer from the debtor is generally capped by “the value of the asset transferred.” Uniform Voidable Transactions Act § 8(b)(1). As a result, one creditor’s recovery diminishes the value available for other creditors. This “race to recovery” dynamic is addressed by Section 544(b)’s centralization of control in the trustee, who can then pursue avoidance actions for the collective benefit of all unsecured creditors.

By contrast, creditors pursuing successor-liability claims against solvent third parties (that have not themselves sought bankruptcy protection) are not competing

against one another in the same way. Rather, a successor corporation “succeed[s] to *all* of [the debtor’s] liability,” *In re Emoral, Inc.*, 740 F.3d 875, 879 (3d Cir. 2014) (emphasis added), or in the case of a product-line claim, succeeds to all liabilities resulting from the debtor’s operation of the defective product line. Because successor-liability claims do not pose a collective-action problem in which one creditor’s recovery may diminish the value remaining for others, there is no special bankruptcy policy favoring centralized control over this type of claim. It therefore makes abundant sense that the Bankruptcy Code defers to state law, pursuant to Section 541(a)(1), and leaves control over these claims with individual tort victims seeking to vindicate their own injuries.

* * *

In sum, the court of appeals unmistakably erred in concluding that causes of action that belong to creditors under state law and could not be asserted by the debtor outside of bankruptcy may qualify as estate property under Section 541(a)(1). The Bankruptcy Code’s text and this Court’s consistent case law applying it flatly contradict the court of appeals’ holding that state law can be displaced based solely on a court’s own view of sound bankruptcy policy. Unsurprisingly, the court of appeals’ erroneous holding conflicts with the precedent of other circuits that have properly hewed to this Court’s controlling decisions. See Pet. 11-20 (discussing conflict with decisions from eight other circuits). These considerations, standing alone, warrant this Court’s review. See Sup. Ct. R. 10(a) and (c).

B. The Court Of Appeals’ Error Has Dramatic Consequences, Particularly For Future Claimants

This Court’s review is also warranted because the consequences of the decision below are significant and far-

reaching, especially for the future claimants whose interests *amicus* has been charged with representing.

1. The practical effect of the decision below is to seize valuable claims that nondebtor tort victims hold against solvent nondebtor successor defendants and transfer exclusive control over those claims to the debtor manufacturer whose products injured the victims. At that point, the tort victims can no longer pursue their claims, see 11 U.S.C. 323, and the debtor manufacturer is free to settle the claims without the victims' consent. See Fed. R. Bankr. P. 9019; Pet. App. 30a (acknowledging these consequences). By allowing a debtor to extinguish a tort victim's claims against third parties without consent, the decision below contravenes the "deep-rooted historic tradition that everyone should have his own day in court." *Martin v. Wilks*, 490 U.S. 755, 762 (1989) (citation omitted).

In this manner, the decision below effectively resurrects the practice of nonconsensual third-party releases that this Court recently rejected in *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024). There, the Court held that the Bankruptcy Code generally does not permit a Chapter 11 plan of reorganization to extinguish claims against a nondebtor "without the consent of affected claimants." *Id.* at 227. The Court reasoned that such third-party releases could not be justified by the Bankruptcy Code's generalized purposes or by the bankruptcy courts' admittedly broad equitable authority. The Court instead held that "a bankruptcy court's powers are not limitless and do not endow it with the power to extinguish without their consent claims held by nondebtors * * * against other nondebtors." *Id.* at 220-221. That holding would be a dead letter if, as the court of appeals held below, courts could rely on their own views of sound bankruptcy policy to seize claims held by creditors against third parties and

transfer ownership of those claims to the bankruptcy estate.

2. The court of appeals' error is especially consequential for future claimants in asbestos bankruptcies because it permits the debtor to evade the carefully calibrated substantive and procedural protections that Congress has provided for asbestos victims. By vesting a debtor manufacturer with control over tort victims' successor-liability claims, the decision below allows a solvent nondebtor asbestos defendant to obtain the functional equivalent of the relief provided for in 11 U.S.C. 524(g)—*i.e.*, an injunction barring the prosecution of asbestos-related tort claims against nondebtor defendants based on their relationships with the debtor—without filing for bankruptcy itself or complying with any of the strict statutory requirements for that extraordinary form of nondebtor relief.

The court of appeals' holding thus creates perverse negotiating incentives that will systematically undermine the interests of asbestos victims and frustrate the orderly progress of asbestos bankruptcies. Section 524(g) contemplates negotiations in which alleged third-party successors to the debtor's asbestos liabilities must negotiate directly with the asbestos claimants and the court-appointed fiduciary for victims whose injuries will manifest in the future. See 11 U.S.C. 524(g)(4)(B)(i). The requirement of obtaining approval from at least 75 percent of the affected tort claimants who vote on the plan, see 11 U.S.C. 524(g)(2)(B)(ii)(IV)(bb), gives the victims significant leverage in those negotiations and helps ensure that a negotiated resolution will enjoy broad consensus support. By handing control of these claims to the debtor, however, the court of appeals' rule gives a debtor authority to settle away the tort victims' claims in negotiations with the debtor's co-defendants, including the debtor's own corporate affiliates. The tort victims will be excluded,

leaving no one in the negotiating room with an incentive to maximize recovery for them. Meanwhile, the debtor's inherent conflict creates an obvious incentive for the debtor to agree to a settlement in which the third-party defendants buy peace on the successor-liability claims at a significant discount.

The facts of this case clearly illustrate this risk. As the petition explains (at 6-7), the dispute here involves tort victims' successor-liability claims against Brenntag, for which the respondent debtors' corporate affiliate, a Berkshire Hathaway entity, agreed to indemnify Brenntag. Respondents announced a settlement with Brenntag and Berkshire Hathaway only days after obtaining the bankruptcy court's ruling that the tort victims' claims against Brenntag were property of the estate. With the tort victims excluded from the negotiations, respondents agreed to cap Berkshire Hathaway's ultimate liability as indemnitor at a fraction of the amount that tort victims assert those claims are worth.

When tort victims are excluded from negotiations to settle their own successor-liability claims against third parties, the inevitable outcome is a settlement that significantly undervalues those claims—particularly in cases like this one, where the debtor faces a conflict because it is negotiating with its own corporate affiliate. And when an inadequate settlement is announced after closed-door negotiations, tort victims are forced into a pitched battle in which they must object to the debtor's settlement of their claims against alleged successors. That is likely to result in costly and potentially protracted litigation, which both reduces the resources available for distributions to creditors and delays the debtor's emergence from bankruptcy. By contrast, recognizing that tort victims' successor-liability claims do not become property of the estate would mean that, if third-party defendants wish to secure releases

of those claims, they must negotiate with and obtain support from the affected victims, as Congress contemplated in Section 524(g). A settlement reached under those circumstances would, by definition, command broad support from the asbestos claimants, thereby facilitating a consensual resolution of the debtor’s bankruptcy proceedings.

3. Review is warranted not only to address the significant consequences of the court of appeals’ error in this case, but also because the notably permissive venue rules for bankruptcy cases will allow other mass-tort debtors to quickly take advantage of the decision below. A debtor may choose to file in any one of several districts, including the debtor’s principal place of business or where its “principal assets in the United States” were located for the greater part of the 180 days before the bankruptcy filing. 28 U.S.C. 1408(1). Affiliated debtors may file where a bankruptcy case concerning an affiliate of the debtor is already pending. 28 U.S.C. 1408(2). Taken together, these rules have allowed families of corporate debtors to file in districts where just a single affiliated entity may have a tenuous connection. See, *e.g.*, *In re Multi-Color Corp.*, No. 26-10910 (MBK), 2026 WL 735405, at *1 (Bankr. D.N.J. Mar. 16, 2026) (grounding venue for corporate family on funds transferred to one non-operating affiliate’s bank account only weeks before bankruptcy); *In re AmeriFirst Fin., Inc.*, No. 23-11240 (TMH), 2023 WL 7029873, at *5 (Bankr. D. Del. Oct. 25, 2023) (venue for Arizona-based affiliate’s Chapter 11 petition based on LLC formed in Delaware two months before bankruptcy). Thus, although the decision below is inconsistent with precedent in many other circuits (see Pet. 11-20), there is little practical barrier to other mass-tort debtors’ filing in the Third Circuit to avail themselves of its outlier decision.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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