

No. 26-263

IN THE

Supreme Court of the United States

OFFICIAL COMMITTEE OF TALC CLAIMANTS,
Petitioner,

v.

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

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

**BRIEF OF AMICI CURIAE
CONNECTICUT AND EIGHTEEN OTHER STATES
IN SUPPORT OF PETITIONER**

WILLIAM M. TONG
Attorney General of Connecticut

MICHAEL SKOLD
Solicitor General
EVAN O'ROARK
Deputy Solicitor General
MATTHEW LEVINE
Deputy Associate Attorney General
CHRISTOPHER PATRICK KELLY
Counsel of Record
Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
165 Capitol Avenue
Hartford, CT 06106
(860) 808-5250
christopher.kelly@ct.gov

Counsel for Amicus Curiae the State of Connecticut
(Additional counsel on signature page)

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INTRODUCTION AND INTEREST OF THE STATE AMICI

Amici curiae are the States of Connecticut, Arizona, Colorado, Illinois, Indiana, Louisiana, Maine, Michigan, Minnesota, Nevada, New Mexico, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, Vermont, and Virginia, and the District of Columbia (collectively, the “State Amici”).¹

The State Amici serve an essential role in federal bankruptcy proceedings. State legislatures and state courts define the property rights that allow bankruptcy courts to equitably distribute debtor assets. It is a feature of our federal system that property rights can vary across state jurisdictions.

In an explicit break from standard bankruptcy practice, the Third Circuit declared that it will no longer consider state law when determining property interests in successor liability claims. The court elected to instead give the debtor companies ownership over all successor liability claims against their affiliates, despite state law reserving those claims for the plaintiffs asserting them. In doing so, the lower court wrongly dismissed state laws and the policy considerations and priorities they embody, diminished the legal authority of the State Amici, and adopted its own policy without the authorization of the Bankruptcy Code (“Code”). It did all that to permit debtors to assume and settle plaintiffs’ claims against

¹ Under Supreme Court Rule 37.2, amici curiae notified counsel of record of their intent to file this brief at least 10 days before the due date for the brief.

the debtor companies' affiliates and insiders. The ruling enables debtors to release claims that they could not have asserted before seeking bankruptcy protection. This incentivizes defendants facing substantial liabilities to use bankruptcy as a shield, by placing their subsidiaries into bankruptcy and settling pending claims against themselves for pennies on the dollar.

Such a scheme would not only frustrate the tort liability policies that States have enacted (or may choose to enact) but would directly impair the legal rights of States themselves. States often participate in Chapter 11 bankruptcies, asserting claims in their own right as creditors or on behalf of their residents as *parens patriae*. See, e.g., *In re Kidde-Fenwal, Inc. (KFI)*, No. 23-10638, 2025 Bankr. LEXIS 1450, at *12 (Bankr. D. Del. June 16, 2025). If allowed to stand, the Third Circuit's decision threatens to deprive the State Amici and their residents of their property and their access to justice. The State Amici look to safeguard those interests.

The State Amici have fundamental legal and sovereign interests that are jeopardized by the decision below. Therefore, the State Amici submit this brief in support of the Official Committee of Talc Claimants' petition for certiorari so this Court may review and overrule the Third Circuit decision below.

SUMMARY OF ARGUMENT

*“Corporations have neither bodies to be punished, nor souls to be condemned; they therefore do as they like.”*²

Bankruptcy is “a simple bargain: A debtor can win a discharge of its debts if it proceeds with honesty and places virtually all its assets on the table for its creditors.” *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 209 (2024). But “[i]f left unchecked, bankruptcy can serve as an accelerant for the gravest due-process threats facing mass-tort victims.” Lindsey D. Simon, *Bankruptcy Grifters*, 131 Yale L.J. 1154, 1159 (2022). Nondebtors may try to obtain releases of their own liability through another entity’s bankruptcy without ponying up all their assets—a play sanctioned by the Third Circuit’s decision here. These “grifters” are “like a Trojan horse in the bankruptcy system, undermining the integrity of the bankruptcy process at the expense of claimants who will lose procedural protections and rights.” *Id.* at 1158.

This case concerns one particularly problematic bankruptcy maneuver. The debtor companies here tried using bankruptcy as a litigation shield, assuming and settling all causes of action that individual plaintiffs wanted to bring against those companies’ affiliates under a successor theory of liability, even though state law would never allow those debtor companies to assert those causes of action

² Attributed to Edward Thurlow, First Baron Thurlow. Quoted in John Poynder, *Literary Extracts* 268 (1844).

themselves.³ The Third Circuit’s decision condones that scheme and means plaintiffs will lose the ability to pursue claims that are victim-specific and do not derive from any injury to the debtor companies themselves. Indeed, by the Third Circuit’s logic, a debtor might even be able to release a nondebtor affiliate from sovereign police power actions that enforce state environmental, consumer protection, and product safety laws.

The Third Circuit’s decision was wrong for all the reasons that Petitioners assert. Rather than expand on those merits arguments, the State Amici instead submit this brief to emphasize this case’s exceptional importance. If allowed to stand, the Third Circuit’s ruling will harm two crucially important state interests.

First, the decision disempowers States in bankruptcy proceedings. Property interests are created and defined by state law. *Butner v. United States*, 440 U.S. 48, 55 (1979). Yet the decision below abandons the rule that a debtor only owns—and may settle—a particular cause of action if state law allowed the debtor to file that cause of action prepetition. Pet. App. 32a. The court’s disregard for state law deprives States of their right to define property rights within their jurisdictions and invalidates tort liability policies that help tort victims recover for their injuries. States also directly assert claims against corporate wrongdoers in bankruptcy proceedings and

³ Consistent with the Third Circuit’s decision, this brief uses the terms “claim” and “cause of action” interchangeably. See Pet. App. 28a n.11.

may be deprived of those claims to the detriment of their own interests and those of their residents.

Second, the decision threatens state enforcement actions outside of bankruptcy. By declaring all successor liability claims to be property of the estate, the court gave debtors control over the liability of their own affiliates. This creates a compelling incentive for mass tort defendants to manufacture bankruptcies to eliminate claims pending in other civil litigation for cents on the dollar. This Court should put a stop any such scheme.

REASONS FOR GRANTING THE PETITION

I. The Third Circuit’s Decision Sidelines State Laws and Disrupts the Balance of State and Federal Power.

The decision below significantly disrupts the balance of authority between state law and federal bankruptcy courts. It departs from “the basic rule” that a claim can only be property of the estate when the debtor could have asserted the claim under state law prior to filing for bankruptcy. The Third Circuit instead concluded that it need not consider whether state law creates a property interest in any claim that depends on the successor’s relationship to a debtor. Pet. App. 39a. Despite recognizing it must “look to state law to determine if a property right exists and to stake out its dimensions,” *id.* at 47a (quoting *In re Nejberger*, 934 F.2d 1300, 1302 (3d Cir. 1991)), the court disregarded state law. The effect of the Third Circuit’s decision is to deprive plaintiffs of the ability to assert claims using a theory of successor liability.

To ensure that parties are “afforded in federal bankruptcy court the same protection [they] would have under state law if no bankruptcy has ensued,” this Court has repeatedly held that bankruptcy courts may not redefine or expand State-created property rights. *Butner*, 440 U.S. at 56. In *Travelers* and *Raleigh*, the Court reaffirmed *Butner*’s foundational rule that bankruptcy does not create new property interests and cannot alter the ownership or substance of state-law claims. *Travelers Cas. & Sur. Co. of Am. v. PG&E*, 549 U.S. 443, 450-51 (2007) (recognizing that the Code’s use of “claim” refers to a “right to payment recognized under state law”); *Raleigh v. Ill. Dep’t of Revenue*, 530 U.S. 15, 20 (2000).

The Third Circuit justified its departure from “the basic rule” by declaring it “unworkable” where a claim—if property of the estate—could contribute to the collective recovery of all creditors but could not be asserted by the debtor pre-petition. Pet. App. 32a.⁴ And the court warned that deferring to state law could allow States to “endow certain creditors with a windfall recovery,” *id.* at 39a, and “commandeer[] the bankruptcy process.” *Id.* at 47a.

This conclusion diminishes the essential role that state law plays in bankruptcy. Where there is a conflict between state law and federal bankruptcy provisions enacted under Congress’s constitutional

⁴ The Court also justified its decision as consistent with earlier decisions designating fraudulent transfer claims as property of the estate. *See, e.g., In re Wilton Armetale, Inc.*, 968 F.3d 273, 278 (3d Cir. 2020); *In re Emoral, Inc.*, 740 F.3d 875, 877 (3d Cir. 2014).

authority, federal law may control—but it may do so “only to the extent of *actual conflict* with the system provided by the [Bankruptcy Code].” *Butner*, 440 U.S. at 54 n.5 (emphasis added). But there are many questions that the Code leaves unanswered. Where, as in this case, Congress has not specified the treatment of certain property rights in the Code, state law controls. *Id.* at 54. The Third Circuit’s refusal to apply governing state law therefore departs from long-settled precedent and is not authorized by the Code.

The Third Circuit’s disregard for state property law interferes with the sovereign and legal interests of state governments in bankruptcy proceedings in at least two ways. First, the decision ignores state laws that allow tort victims to recover for their injuries. Second, the decision threatens to commandeer claims brought by States themselves within bankruptcy proceedings, jeopardizing their ability to recover for themselves and their residents. This Court should remedy this disruption to the balance of state and federal power.

A. The Decision Negates State Decisions Concerning Tort Liability.

The court’s position tramples States’ authority to define civil liability within their jurisdictions. While the court discounted the decision of “a small minority of states” to recognize the “product-line claims” at issue here, Pet. App. 13a, many States have adopted liberal successor liability laws in an effort to ensure that tort victims can recover for their claims. Richard L. Cupp, Jr. & Christopher L. Frost, *Successor*

Liability for Defective Products: A Redesign Ongoing, 72 Brook. L. Rev. 1173, 1177 n.20, 1183 n.57 (2007) (identifying California, Connecticut, Mississippi, New Jersey, New Mexico, Pennsylvania, and Washington as States that recognize a liberal product-line approach to successor liability); *see also id.* 1177 n.19, 1183 n.52 (identifying Alabama, Alaska, Michigan, Mississippi, New Hampshire, Ohio, and South Carolina as States that recognize a liberal “continuity of enterprise” approach to successor liability).

It does not matter that only *some* States have adopted a liberal approach to successor liability. What matters is that States get to decide how successor liability works in their jurisdictions. And just as the Third Circuit justified its decision in the name of equity, States reasonably permit claims alleging successor liability “to promote equity and avoid unfairness.” *Emoral*, 740 F.3d at 881. Indeed, the successor liability doctrine promotes “the protection of otherwise defenseless victims” of defective products. *Ray v. Alad Corp.*, 560 P.2d 3, 8 (Cal. 1977) (citing *Price v. Shell Oil Co.*, 466 P.2d 722, 725-26 (Cal. 1970)); *see also Milliken & Co. v. Duro Textiles, LLC*, 451 Mass. 547, 556 (Mass. 2008) (“The public policy underlying the imposition of successor liability is the fair remuneration of innocent corporate creditors.”).

Successor liability aims to put the costs of injuries on the party better positioned to spread the risks rather than on individual, injured plaintiffs. *See, Ramirez v. Amsted Industries, Inc.*, 86 N.J. 332, 350-52 (N.J. 1981). Many courts have determined that manufacturers are better able to bear the cost of

injuries resulting from product defects. And in the case of a successor corporation, that reasoning is no less applicable: the successor carries over the experience and expertise of the original manufacturer, it “knows the product, is as able to calculate the risk of defects as the predecessor, is in position to insure therefor and reflect such cost in sale negotiations, and is the only entity capable of improving the quality of the product.” *Cyr v. B. Offen & Co.*, 501 F.2d 1145, 1154 (1st Cir. 1974). Thus, imposing liability on successors is justified when the plaintiff would be otherwise unable to meaningfully recover from the primary tortfeasor. *See Ray*, 560 P.2d at 9; *Kline v. Johns-Manville*, 745 F.2d 1217, 1220 (9th Cir. 1984); *see also* Mark J. Roe, *Mergers, Acquisitions, and Tort: A Comment on the Problem of Successor Corporation Liability*, 70 Va. L. Rev. 1559, 1561 (1984).

These considerations are not alien to the Bankruptcy Code. Congress has adopted legislation that recognizes bankruptcy’s due process risks and provides specialized protections for the rights of plaintiffs, as well as legislation that ensures access to courts and compensation for personal injury and wrongful death plaintiffs.⁵ Congress has also made

⁵ *See, e.g.*, 28 U.S.C. § 1411 (preserving personal injury claimant’s right to trial by jury in connection with bankruptcy cases); 28 U.S.C. § 157(b)(2)(B) (limiting bankruptcy court’s core proceeding jurisdiction with respect to estimation and liquidation of personal injury claims); 28 U.S.C. § 157(b)(5) (preserving personal injury claimants’ right to trial in district court); 11 U.S.C. § 524(g) (providing for special trusts under Chapter 11 plans to pay personal injury claims); 11 U.S.C. § 1171(a) (providing administrative priority status for personal injury claims in railroad bankruptcy cases).

pragmatic changes to the Code to address particularly complex and unwieldy mass-tort bankruptcies, particularly for asbestos. *See, e.g.*, 11 U.S.C. § 524(g) (authorizing courts to issue an injunction in asbestos-related bankruptcies that bar actions directed against certain third parties).

It is also true that the Code evinces a federal interest in “promot[ing] an equitable distribution of debtor assets,” Pet. App. 47a (quoting *In re Tronox Inc.*, 855 F.3d 84, 106 (2d Cir. 2017)). But it does not follow that the Code instructs courts to disregard state law in that pursuit. *See Butner*, 440 U.S. at 56 (“[U]ndefined considerations of equity provide no basis for adoption of a uniform federal rule . . .”). The Third Circuit’s decision wrongly sidelines States’ decisions and stands at odds with state law.

B. The Decision Jeopardizes States’ Ability to Hold Defendants Accountable.

The lower court decision also obstructs State participation in bankruptcy proceedings. States play an essential role in holding wrongdoers accountable and protecting their residents from harmful products—like asbestos, here. Often, they may serve as the last best hope for accountability. Where individuals cannot practically or legally bring a corporate tortfeasor to justice, state attorneys general use their sovereign powers to enjoin the tortfeasor from causing further suffering and to recover for the harms inflicted on their residents. But before States have the chance to fully litigate their claims, corporate wrongdoers may seek shelter in the bankruptcy process, staying civil investigations and litigation.

States thus often find themselves actively participating in Chapter 11 bankruptcies, asserting claims on behalf of themselves or their residents and scrutinizing proposed plans that threaten to leave creditors high and dry. *See, e.g., KFI*, 2025 Bankr. LEXIS 1450, at *9 (States objecting to nonconsensual third-party releases in proposed plan of liquidation); *In re Celsius Network LLC*, 647 B.R. 631, 643-44 (Bankr. S.D.N.Y. 2023) (States objecting to debtors' attempt to sell off consumers' assets); *In re LTL Mgmt., LLC*, 645 B.R. 59, 66 (Bankr. D.N.J. 2022) (States opposing injunction against their tort actions); *see also Purdue*, 603 U.S. at 213 (States initially objecting to nonconsensual third-party releases in proposed plan of reorganization).

Under the Third Circuit's ruling, all claims for successor liability are subject to expropriation, regardless of the nature of the underlying claims asserted or the parties asserting them.⁶ But States suffer under this regime more than other plaintiffs because they may face the loss of unique sovereign claims that cannot be asserted by private parties.

Consider *KFI*, where thousands of plaintiffs, including many States, sued a company and its affiliates over its use of toxic perfluoroalkyl and polyfluoroalkyl substances ("PFAS") in its products. The debtor proposed a Chapter 11 liquidation plan, which included an estate release for the debtor's

⁶ It remains to be seen how this ruling is intended to apply to governmental claims considered to be an exercise of "police and regulatory power" under 11 U.S.C. § 362(b)(4).

parent company (and its former parent company) that would absolve it of most tort liability for its products. Several States objected to the plan, in part because the plan contemplated releasing claims that could only be brought by state sovereigns. *See* Objection of the States of Maine and Vermont at 28, *KFI*, No. 23-10638 (Bankr. D. Del. May 19, 2025), Dkt. 2137; Objection of the States of California, Colorado, Connecticut, Delaware, and New York, and the District of Columbia at 27-28, *KFI*, No. 23-10638 (Bankr. D. Del. May 19, 2025), Dkt. 2140 (identifying claims asserted by some of the objecting States that could never be asserted by the debtor). These States protested that “[s]tate actions protecting health, safety, and the environment are of a different kind and scope than claims brought by private litigants for individualized harm” and those actions should not be releasable by the debtor under Third Circuit law. *Id.* The fate of those state actions may depend upon whether the decision here is allowed to stand.

Letting a debtor assume the claims of a sovereign and terminate litigation brought by a State against the debtor’s own affiliates would undermine States’ sovereign interests. That is especially true considering that such debtors could never assert a State’s claims outside of bankruptcy. But that is what it appears the Third Circuit’s decision proposes to allow.

II. The Third Circuit’s Decision Incentivizes Abusing Bankruptcy to Escape Litigation.

The threat to States, and all plaintiffs, from the Third Circuit’s decision extends to other civil litigation. By authorizing debtors to assume and settle

claims against their own affiliates, the decision creates a powerful incentive for mass-tort defendants to strategically use bankruptcy to release their liability. In a system that is already fraught with due process and federalism concerns, the playbook for bankruptcy abuse has never been so clear. The decision virtually invites mass-tort defendants to short-circuit pending litigation and dismantle plaintiffs' lawsuits.

The consequences of such liability laundering are substantial. States could be impeded from bringing meaningful enforcement actions against companies that can be shielded by a subsidiary or predecessor. State laws that would otherwise hold certain corporate defendants liable could be rendered toothless. Individual plaintiffs would be unable to prosecute their claims in return for a recovery that they would ever willingly accept. And by reducing complex claims to a settlement among affiliated companies, lawsuits that augur important public policy changes may never see the light of day. It is critical that tort defendants cannot abuse bankruptcy simply to gain a litigation advantage.

1. The bankruptcy system is not meant to permit financially healthy companies to avoid liability in other forums. *See In re Cedar Shore Resort, Inc.*, 235 F.3d 375, 381 (8th Cir. 2000). Courts frequently turn away corporate debtors that are not in financial distress or that merely serve as a decoy for a solvent corporation facing substantial litigation risk. *See, e.g., In re Aeero Techs. LLC*, Case No. 22-02890, 2023 Bankr. LEXIS 1519, at *61-62 (Bankr. S.D. Ind. June

9, 2023); *In re LTL Mgmt., Inc.*, 64 F.4th 84, 110-11 (3d Cir. 2023). Bankruptcy abuse has become such an ordinary business practice that there is even a colloquial name for a well-known maneuver—the Texas Two-Step.⁷

Bad faith debtors are typically looking for an advantage over plaintiffs in non-bankruptcy litigation. *See Aearo*, 2023 Bankr. LEXIS 1519, at *56 (describing dismissed bankruptcy case as “a litigation management tactic and not a rehabilitative effort”). The initial advantage gained is an automatic stay, which immediately halts all litigation against the debtor upon the filing of a bankruptcy petition until the resolution of the case. 11 U.S.C. § 362.⁸ Where the debtor has corporate affiliates, bankruptcy courts may also grant requests to extend the automatic stay to those nondebtor affiliates as well. *See In re LTL*

⁷ In the Texas Two-Step, a mass-tort defendant reincorporates itself in a state that permits a “divisional merger,” which allows the company to split itself into two, nominally new companies. One new company (BadCo) assumes the liabilities of the old company; the other new company (GoodCo) takes the assets and promises to support the liability-laden BadCo. Then BadCo files for bankruptcy, sparing its wealthy sibling and sticking plaintiffs with the bill. *See* Ralph Brubaker, *Assessing the Legitimacy of the “Texas Two-Step” Mass-Tort Bankruptcy*, 42 Bankr. L. Ltr. 1, 1 (2022).

⁸ Under 11 U.S.C. § 362(b)(4), State actions to enforce their “police and regulatory power” are exempt from the automatic stay. How to assess whether a State’s action qualifies for this determination varies. *See, e.g., Granaio, LLC v. City of New Orleans*, No. 26-cv-25133, 2026 U.S. Dist. LEXIS 188541, at *11-14 (S.D. Fla. Aug. 21, 2026) (identifying inconsistent case law over whether a statutory governmental action that creates a lien is stayed by a bankruptcy filing).

Mgmt., Inc., 64 F.4th at 97 (describing bankruptcy court’s extension of the automatic stay to over six hundred nondebtors). Following the bankruptcy filing, the debtor gains the exclusive right to propose the Chapter 11 reorganization plan and may seek substantive advantages that would never be available through litigation defense, such as the discharge of certain debts and the ability to enjoin or release plaintiffs’ claims without their consent.

In *Purdue*, this Court fortified a firewall against certain bankruptcy abuses. After draining the company’s assets of an estimated \$11 billion, members of the Sackler family—who served as owners, directors, and officers of the opioid-peddling debtor—also wanted a discharge of any claims against them from the ever-growing number of opioid plaintiffs. *Purdue*, 603 U.S. at 210-12. This Court limited the expansive reading of § 1123(b) of the Code, which contains a generic catch-all provision allowing bankruptcy plans to include “any other appropriate provision not inconsistent with the applicable provisions of this title,” 11 U.S.C. § 1123(b)(6). At the time, this provision was used by many courts to “insulate third parties from liability even though they have not undertaken the burdens of bankruptcy.” Melissa B. Jacoby, *Shocking Business Bankruptcy Law*, 131 Yale L.J.F. 409, 411 (2021).

This Court rejected that practice and held that a plan “address[ing] claims and property belonging to a debtor or its estate” could not “extinguish claims against third parties . . . without the consent of the affected claimants.” *Purdue*, 603 U.S. at 216. In doing

so, the Court explained that “a bankruptcy court may resolve derivative claims,” but that the tort claims against the Sacklers were “nothing like” derivative claims and could not “be bargained away without the consent of those affected, as if the claims were somehow Purdue’s own property.” *Id.* at 219-20.⁹

2. Only two years after *Purdue*, the Third Circuit’s decision offers debtors and their affiliates a backdoor. By recharacterizing victim-specific claims as estate property, debtor companies may seek to release solvent nondebtors without obtaining claimant consent—precisely the outcome *Purdue* prohibits. The decision tries to circumvent *Purdue*’s prohibition on such releases by reassigning ownership of plaintiffs’ claims to the estate. Pet. App. 37a n19. Thus, a debtor company may settle claims brought against its affiliates without violating *Purdue* under the Kafkaesque logic that—as of the bankruptcy filing—the claims did not really belong to the plaintiffs at all.

Corporate defendants can now insulate themselves from most liability, evading state laws to hold them liable. Corporations that incur liability under state law through the operations of their subsidiaries will be well-positioned to shed that liability; others can take advantage of this scheme through simple corporate maneuvering. Defendants facing material

⁹ The Court identified certain circumstances where its holding may not directly apply, but those circumstances are not present here. 603 U.S. at 226 (“Nor do we have occasion today to express a view on what qualifies as a consensual release or pass upon a plan that provides for the full satisfaction of claims against a third-party nondebtor.”).

mass tort liabilities may, for example, sell their assets pre-petition, file for bankruptcy protection, and then settle claims against the purchaser for some discounted amount in return for maximal releases to the purchaser and other affiliates. Under the relaxed Bankruptcy Rule 9019 review, the proposed settlement “need not be the best that could have been achieved, but only must fall ‘within the reasonable range of litigation possibilities.’” *In re O’Grady*, No. 20-cv-18906, 2022 U.S. Dist. LEXIS 65721, at *19-20 (D.N.J. Apr. 8, 2022) (citing *In re Penn Cent. Transp. Co.*, 596 F.2d 1102, 1114 (3d Cir. 1979)); see Fed. R. Bankr. P. 9019.

The Third Circuit is thus letting the fox guard the henhouse, and the consequences are tragically predictable. Financially viable companies could short-circuit pending litigation by placing a sacrificial lamb in bankruptcy, which will then settle claims against its affiliates for pennies on the dollar without regard to whether the claimants themselves would ever consent to those settlements. Under the Third Circuit’s framework, which the court made clear in its amended opinion applies to all claims that depend on the defendant’s relationship to the debtor, debtors can foreclose the ability of plaintiffs to sue solvent nondebtor companies. Pet. App. at 40a.

The decision needlessly deprives the States and other plaintiffs of their claims against solvent nondebtors and will likely frustrate opportunities to achieve consensual settlements of those claims. Recent examples of mass-tort defendants that were denied bankruptcy relief suggest that meaningful

settlements can be achieved when defendants are forced to proceed in civil litigation. *See, e.g., In re Purdue Pharma L.P.*, 675 B.R. 632, 652 (Bankr. S.D.N.Y. 2025) (describing Purdue Pharma bankruptcy plan that pays creditors over \$1 billion more after this Court sent the debtors “back to the drawing board”); *In re 3M Combat Arms Earplug Prods. Liab. Litig.*, No. 19-md-2885, 2024 U.S. Dist. LEXIS 11772, at *6-7 (N.D. Fla. Jan. 8, 2024) (noting that 3M announced universal settlement in August 2023, only two months after a bankruptcy court dismissed the bankruptcy filed by 3M’s subsidiary in bad faith). But as a consequence of the Third Circuit’s decision, mass-tort defendants will no longer have any incentive to negotiate with plaintiffs over their successor liability claims—their debtor company affiliates now own those claims and can settle them at a bargain.

3. The Third Circuit’s ruling will be a problem for plaintiffs, including States, everywhere. The incentives created by the decision will likely only drive additional bankruptcy filings where successor liability claims are at issue. Since *Purdue*, debtor companies have increasingly proposed using estate releases to relieve their affiliates of claims based on theories of alter ego, veil piercing, and successor liability. *See KFI*, 2025 Bankr. LEXIS 1450, at *13 (“I am finding that this issue is becoming more prevalent as it has recently surfaced in three of my cases.”).

The ubiquity of forum shopping in bankruptcy will make this particular question all the more likely to recur. By splitting from all other circuits to have

considered the issue, the Third Circuit risks incentivizing bankruptcy filers to manufacture venue there. Under the Bankruptcy Code’s current venue provision, 28 U.S.C. § 1408, corporations may file in any district in which they are incorporated, have their principal place of business, have their principal assets, or in any district in which an affiliated entity has filed for bankruptcy.

Most big corporations will be able to take advantage of the erroneous ruling below. The Third Circuit includes Delaware, where more than two million businesses are incorporated, including over two-thirds of the Fortune 500.¹⁰ All those corporations will be able to establish venue there. So, even though the circuit split might seem lopsided, the Third Circuit’s outlier ruling poses an outsized threat to uniform federal law, state sovereignty, and the principles underpinning *Purdue*.

Even in those cases where corporations have no preexisting ties to the Third Circuit, they can—and regularly do—manufacture venue in order to file in a desirable forum.

For example, in January 2026, Multi-Color Corporation filed for Chapter 11 in New Jersey despite having no formal connections to the state. *In re Multi-Color Corp.*, No. 26-10910, 2026 Bankr. LEXIS 650 (Bankr. D.N.J. Mar. 16, 2026). The company is incorporated in Ohio, based in Batavia, Ohio, and has

¹⁰ Del. Div. of Corps., 2025 *Annual Report*, <https://perma.cc/YP9H-XLXK>.

facilities in California, Utah, Texas, Minnesota, Wisconsin, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New York, Virginia, Kentucky, Tennessee, North Carolina, South Carolina, Georgia, and Florida. Multi-Color blatantly created venue, sixteen days before filing for bankruptcy, using one of its nonoperating subsidiaries—also an Ohio LLC—to open a bank account in New Jersey into which Multi-Color wired funds. The subsidiary then argued that venue was proper in New Jersey because New Jersey was the principal place of its assets. While the United States Trustee and an ad hoc group challenged venue, they lost.

By disregarding state law and adopting a uniform liability rule, the court sanctioned corporate defendants manipulating the bankruptcy process and laundering their liabilities. But without explicit statutory authorization, the court cannot override state laws; Congress alone can amend the Code to sweep all successor liability claims into bankruptcy estates. *See Nat’l Pork Producers Council v. Ross*, 598 U.S. 356, 383-84 (2023). This Court’s review is necessary to address the Third Circuit’s needless intrusion into state prerogatives.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

WILLIAM M. TONG
Attorney General
State of Connecticut

MICHAEL SKOLD
Solicitor General

EVAN O'ROARK
Deputy Solicitor General

MATTHEW LEVINE
Deputy Associate Attorney
General

CHRISTOPHER PATRICK KELLY
Assistant Attorney General
Counsel of Record

OFFICE OF THE CONNECTICUT
ATTORNEY GENERAL
165 Capitol Avenue
Hartford, CT 06106
(860) 808-5250
christopher.kelly@ct.gov

Counsel for Amicus Curiae
State of Connecticut

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KRISTIN K. MAYES
Attorney General
State of Arizona
2005 N. Central Ave.
Phoenix, AZ 85004

PHILIP J. WEISER
Attorney General
State of Colorado
1300 Broadway
10th Floor
Denver, CO 80203

KWAME RAOUL
Attorney General
State of Illinois
115 South LaSalle St.
Chicago, IL 60603

THEODORE E. ROKITA
Attorney General
State of Indiana
302 E. Washington St.
IGCS-5th Floor
Indianapolis, IN 46204

ELIZABETH B. MURRILL
Attorney General
State of Louisiana
1885 N. 3rd St.
Baton Rouge, LA 70802

AARON M. FREY
Attorney General
State of Maine
6 State House Station
Augusta, ME 04333

DANA NESSEL
Attorney General
State of Michigan
P.O. Box 30212
Lansing, MI 48909

KEITH ELLISON
Attorney General
State of Minnesota
102 State Capitol
75 Rev. Dr. Martin
Luther King Jr. Blvd.
St. Paul, MN 55155

AARON D. FORD
Attorney General
State of Nevada
100 North Carson St.
Carson City, NV 89701

JENNIFER DAVENPORT
Attorney General
State of New Jersey
25 Market St.
Trenton, NJ 08625

RAÚL TORREZ
Attorney General
State of New Mexico
408 Galisteo St.
Santa Fe, NM 87501

LETITIA JAMES
Attorney General
State of New York
28 Liberty St.
New York, NY 10005

JEFF JACKSON
Attorney General
State of North Carolina
114 W. Edenton St.
Raleigh, NC 27603

DAVID W. SUNDAY
Attorney General
Commonwealth of
Pennsylvania
Strawberry Square,
16th Floor
Harrisburg, PA 17120

PETER F. NERONHA
Attorney General
State of Rhode Island
150 South Main St.
Providence, RI 02903

CHARITY R. CLARK
Attorney General
State of Vermont
109 State St.
Montpelier, VT 05609

JAY JONES
Attorney General
Commonwealth of
Virginia
202 N. 9th St.
Richmond, VA 23219

BRIAN L. SCHWALB
Attorney General
District of Columbia
400 6th Street NW,
Suite 8100
Washington, D.C.
20001