

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 U.S. COURT
OF APPEALS FOR THE THIRD CIRCUIT

**BRIEF OF RETIRED BANKRUPTCY JUDGES
AS *AMICI CURIAE* IN SUPPORT OF
PETITIONER**

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INTEREST OF THE AMICI CURIAE

Amici curiae are former Bankruptcy Judges who have expertise bearing directly on the structure of the Bankruptcy Code and the operation of the bankruptcy system.¹ Tom Waldrep, a partner at Waldrep, Wall, Babcock, & Bailey PLLC, was a United States Bankruptcy Judge on the U.S. Bankruptcy Court for the Middle District of North Carolina from 2004 to 2013. Melanie L. Cyganowski, a Member at Otterbourg P.C., served for 14 years as a United States Bankruptcy Judge in the Eastern District of New York. She is a Fellow in the American College of Bankruptcy, on the Editorial Advisory Board of Norton Journal of Bankruptcy Practice & Law, and an adjunct professor at St. John's University School of Law. As experts in the field of bankruptcy law, amici have a professional interest in ensuring that this Court is fully informed regarding the bankruptcy issues presented by this case.

SUMMARY OF ARGUMENT

The Third Circuit held in this case that tort claims including so-called “product-line-liability” claims that debtors could not have asserted prepetition under state law are nonetheless property of the bankruptcy

¹ Pursuant to Rule 37.2(a), amici certify that counsel of record for the parties received timely notice of the intent to file this brief. Pursuant to Rule 37.6, amici certify that no counsel for any party authored this brief in whole or in part, no party or party's counsel made a monetary contribution to fund its preparation or submission, and no person other than amici or their counsel made such a monetary contribution.

estate. This decision warrants this Court's plenary review for several reasons.

First, the Third Circuit's decision creates a circuit split, conflicts with this Court's precedent, and is inconsistent with the text of the Bankruptcy Code. Until the decision below, eight circuits uniformly held that state law determines whether a creditor's cause of action against a nondebtor is property of the estate. The Third Circuit's decision—fashioning what amounts to a new rule of federal common law under which claims are estate property based solely on their factual connection to the debtor, without any anchor in state law—cannot be reconciled with this Court's precedent or with the text of the Bankruptcy Code. Section 541(a)(1) of the Code defines the property of a bankruptcy estate as the debtor's prepetition “legal or equitable interests of the debtor in property.” The Code does not create a federal body of property law; rather, this Court has long held that property interests are created and defined by state law and that Congress deliberately left to state law the determination of property rights in a bankrupt's estate. *Butner v. United States*, 440 U.S. 48, 55 (1979). The same principle governed under Section 70(a) of the Bankruptcy Act of 1898, and when Congress enacted Section 541 in the Bankruptcy Reform Act of 1978, it broadened the scope of estate property but preserved this foundational rule. The Third Circuit's decision disrupts this settled law.

Second, the Third Circuit's decision allows tortfeasors to circumvent this Court's holding in

Harrington v. Purdue Pharma L. P., 603 U.S. 204 (2024). In *Purdue*, this Court held that bankruptcy courts lack the power to extinguish creditor claims against third parties without the affected creditors’ consent. The Third Circuit’s decision does precisely what *Purdue* forbids. By recharacterizing tort victims’ product-line-liability claims as estate property, the decision permits debtors to settle those claims through Bankruptcy Rule 9019—which requires no creditor vote, no supermajority, and no consent—thereby releasing solvent nondebtors from liability without the consent of the victims. This approach strips away the core protections of Chapter 11 and creates a recipe for corporate families facing mass-tort liability to shed those liabilities through bankruptcy without meaningful judicial oversight or claimant participation.

Third, the decision provides a blueprint for evading the protections that Congress built into Section 524(g) of the Bankruptcy Code, which governs third-party releases in asbestos-related bankruptcies. Congress enacted Section 524(g) to establish “high standards” for nonconsensual third-party releases, including approval by seventy-five percent of affected claimants and the creation of a trust funded with substantial debtor assets. The Third Circuit’s approach renders Section 524(g) a nullity in the very context Congress intended it to govern: asbestos-related bankruptcies. Under its rule, a debtor need not satisfy any of Section 524(g)’s conditions or obtain any claimant’s consent. It need only persuade a bankruptcy court that victims’ claims against the

nondebtor depend on general facts about the nondebtor's relationship with the debtor. This Court should grant certiorari to prevent the gutting of the carefully calibrated statutory framework Congress created.

ARGUMENT

I. The Third Circuit's Decision Creates a Circuit Split and Conflicts With This Court's Precedent That, Under Section 541, Property of the Estate Is Determined by Reference to State Law

The Bankruptcy Code provides that the commencement of a bankruptcy case creates an estate comprising “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C. § 541(a)(1). This provision defines the *scope* of the estate, but it does not create a federal body of property law. Rather, the nature and extent of a debtor's property interests—and thus the content of the estate—are determined by reference to state law. That principle is one of the most deeply rooted in American bankruptcy jurisprudence, and the Third Circuit's departure from it warrants this Court's review.

The foundational authority is this Court's decision in *Butner v. United States*, 440 U.S. 48 (1979). There, the Court held that “[p]roperty interests are created and defined by state law,” and that Congress “has generally left the determination of property rights in the assets of a bankrupt's estate to state law.” *Id.* at 54–55. The Court recognized that Congress had the

constitutional authority to establish a uniform body of federal property law for bankruptcy purposes, but it concluded that Congress chose not to exercise that authority. *Id.* at 55. Instead, Congress deliberately preserved the role of state law in defining the debtor's property rights, and federal courts are obligated to honor that legislative choice.

The Court in *Butner* expressly considered—and rejected—the Third Circuit's reasoning that uniformity concerns justify federal judicial creation of property rights in bankruptcy. The *Butner* Court opined that uniform treatment of property interests by reference to state law within each 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)). This Court's reasoning in *Butner* reflects the foundational insight that parties structure their affairs and transact against the backdrop of state property law. To displace those settled expectations through judicial invention of federal bankruptcy property rules would destabilize commercial relationships and undermine the predictability upon which all creditors—not just those in bankruptcy—depend.

The same principle governed under the predecessor to Section 541. Under Section 70(a) of the Bankruptcy Act of 1898, the trustee received title to all property that the bankrupt “could by any means have transferred or which might have been levied

upon and sold under judicial process against him” at the time of the filing. This Court consistently interpreted Section 70(a) by reference to state law to determine the nature and extent of the debtor’s property interests. In *Board of Trade of Chicago v. Johnson*, 264 U.S. 1 (1924), for example, the Court held that whether a seat on the Board of Trade was “property” of the bankrupt depended on the applicable state law and the rules of the exchange—not on any federal standard. *See also Portuguese-Am. Bank of S.F. v. Welles*, 242 U.S. 7, 11 (1916) (looking to state law under the Bankruptcy Act to determine the nature of the debtor’s interest). The Court in *Butner* itself traced the state-law principle to these earlier authorities. *See Butner*, 440 U.S. at 54–55.

When Congress enacted Section 541 in the Bankruptcy Reform Act of 1978, it broadened the scope of estate property by replacing Section 70(a)’s more restrictive categories with the expansive phrase “all legal or equitable interests of the debtor in property.” But Congress preserved the foundational principle that state law defines what constitutes the debtor’s property interests. The legislative history confirms this: Section 541 was designed to be “broad,” but the nature of the debtor’s interest is still determined by applicable nonbankruptcy law. Both the House and Senate Reports accompanying the 1978 Act explained that although the new definition was intended to be comprehensive, it “is not intended to expand the debtor’s rights against others” beyond what existed under applicable nonbankruptcy law. H.R. Rep. No. 95-595, at 367 (1977), *as reprinted in*

1978 U.S.C.C.A.N. 5963, 6323; S. Rep. No. 95-989, at 82 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5868.

This Court has repeatedly reaffirmed *Butner*'s holding in the decades since it was decided. In *Travelers Casualty & Surety Co. of America v. Pacific Gas & Electric Co.*, 549 U.S. 443 (2007), the Court stated that “we have long recognized that the basic federal rule in bankruptcy is that state law governs the substance of claims, Congress having generally left the determination of property rights in the assets of a bankrupt’s estate to state law.” *Id.* at 450–51 (internal quotation marks and citation omitted). The *Travelers* decision underscored that this principle is not a mere default rule that can be set aside when inconvenient; it is a structural feature of the bankruptcy system that reflects Congress’s considered judgment about the allocation of authority between federal and state sovereignty.

The States’ role in defining property rights is itself grounded in constitutional principles. As this Court recognized in *Riley v. New York Trust Co.*, 315 U.S. 343, 349 (1942), the states possess the “sovereignty” to “determine[] personal and property rights within [their] territory.” When a bankruptcy court purports to redefine the scope of a debtor’s property rights without reference to the state law that created them, it trenches upon this sovereign prerogative. The *Butner* principle thus serves not only the practical purposes of predictability and uniformity, but also the deeper structural value of respecting the

constitutional allocation of lawmaking power between the federal government and the states.

Until the decision below, every federal court of appeals to address the question had faithfully applied *Butner* and its progeny to determine whether a creditor’s cause of action against a nondebtor is estate property. Eight circuits held that state law governs this inquiry—that is, the relevant question is whether the debtor could have asserted the claim under state law prior to the bankruptcy.² This consensus is not surprising, because the text of Section 541(a)(1)—which limits the estate to “legal or equitable interests of the debtor in property”—demands it. If the debtor had no state-law right to assert a particular claim, then the debtor had no “legal or equitable interest” in that claim, and it cannot be property of the estate. This analysis is compelled by the statute’s plain text, by *Butner*, and by common sense.

The Third Circuit’s decision is the first court of appeals ruling to interpret Section 541 without reference to state law. Rather than asking whether

² See *Ahcom, Ltd. v. Smeding*, 623 F.3d 1248, 1250–52 (9th Cir. 2010); *In re Icarus Holding, LLC*, 391 F.3d 1315, 1321 (11th Cir. 2004); *In re RCS Engineered Prods. Co.*, 102 F.3d 223, 225–26 (6th Cir. 1996). *In re Educators Grp. Health Tr.*, 25 F.3d 1281, 1284 (5th Cir. 1994); *Kalb, Voorhis & Co. v. Am. Fin. Corp.*, 8 F.3d 130, 132 (2d Cir. 1993); *Steyr-Daimler-Puch of Am. Corp. v. Pappas*, 852 F.2d 132, 135 (4th Cir. 1988); *Koch Refin. v. Farmers Union Cent. Exch., Inc.*, 831 F.2d 1339, 1344–46 (7th Cir. 1987); *In re Ozark Rest. Equip. Co.*, 816 F.2d 1222, 1225–26 (8th Cir. 1987); see also *Giron v. Zeytuna, Inc.*, 597 F. Supp. 3d 29, 47–48 (D.D.C. 2022) (collecting cases).

the debtors had a prepetition right under state law to assert product-line-liability claims against Brenntag, the court fashioned what amounts to a new rule of federal common law. The court held that the claims were estate property because they “turn[] on the successor’s relationship with the manufacturer,” not facts “specific to the creditor.” Pet. App. 40a (internal quotation marks and citation omitted). This reasoning has no textual anchor in Section 541 and no grounding in state law. It is, in substance, a judge-made federal rule that expands the scope of the bankruptcy estate beyond anything Congress authorized.

But federal common law is disfavored. “Federal courts, unlike state courts, are not general common-law courts and do not possess a general power to develop and apply their own rules of decision.” *City of Milwaukee v. Illinois*, 451 U.S. 304, 312 (1981). Federal common law is limited to a “few and restricted” areas in which “a federal rule of decision is necessary to protect uniquely federal interests, and those in which Congress has given the courts the power to develop substantive law.” *Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 640 (1981) (internal quotation marks and citations omitted); see also *Sosa v. Alvarez-Machain*, 542 U.S. 692, 740–42 (2004) (Scalia, J., concurring in part and concurring in judgment).

This Court has repeatedly cautioned against judicial creation of federal common law in bankruptcy. In *Truck Insurance Exchange v. Kaiser*

Gypsum Co., 602 U.S. 268, 283 (2024), the Court unanimously rejected the “insurance neutrality” principle—a judge-made rule that had been widely adopted in the lower courts—holding that it had no basis in the text of the Bankruptcy Code. The principle at issue in *Kaiser Gypsum* was entrenched in lower court practice, yet this Court did not hesitate to strike it down when it lacked statutory support. The same fate should befall the Third Circuit’s novel rule here, which likewise lacks any textual foundation.

The Third Circuit’s appeal to “the orderly administration and equitable distribution to all creditors of the bankrupt entity’s estate,” Pet. App. 39a, cannot justify its decision. The Code’s text limits estate property to the debtor’s prepetition “legal or equitable interests . . . in property.” 11 U.S.C. § 541(a)(1). That text necessarily incorporates the substantive law—predominantly state law—that defines those interests. The Third Circuit’s decision to bypass state law in favor of a judge-made test based on factual overlap between claims overrides the textual limitations that Congress embedded in Section 541. The Third Circuit’s approach is thus inconsistent with this Court’s longstanding recognition that the Bankruptcy Code must be interpreted in light of its text, not its perceived purposes. “Nothing in the generalized statutory purpose[s]” of the Code “can overcome” the Code’s text. *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 649 (2012). The Third Circuit’s reliance on the Code’s “goals” of orderly

administration and equitable distribution—while disregarding the textual limitation of Section 541(a)(1) to the debtor’s “legal or equitable interests” as defined by state law—is precisely the kind of purposivist overreach that *RadLAX* condemned.

The Third Circuit’s error is not merely academic. Bankruptcy judges routinely apply state law in every facet of their work—from determining the validity and priority of liens, to adjudicating contract disputes, to resolving fraudulent transfer actions. State-law analysis is not an aberration in bankruptcy practice; it is the warp and woof of the system. The suggestion that requiring bankruptcy courts to consult state law when determining whether a cause of action is property of the estate would introduce unworkable complexity into the system is belied by decades of practice. Bankruptcy courts perform precisely this analysis every day, and the eight circuits that have applied state law in this context have encountered no administrability difficulties. The Third Circuit offered no evidence to the contrary.

Moreover, the Third Circuit’s departure from state law has deeply troubling federalism implications. When a federal court declares that a claim is property of the debtor’s estate without reference to state law, it effectively overrides the state’s determination of who may bring that claim and under what circumstances. State legislatures and state courts develop their substantive tort law—including doctrines of successor liability and alter ego—with careful attention to the balance between compensating victims and protecting

legitimate business expectations. The Third Circuit’s rule subordinates these considered state-law judgments to a federal court’s ad hoc assessment of whether a claim has a sufficient factual connection to the debtor. That approach disrespects state sovereignty and upsets the carefully calibrated balance that state law strikes between competing interests.

The jurisprudential infirmity of the Third Circuit’s rule extends beyond its departure from *Butner* and the text of Section 541. The rule also suffers from an absence of any limiting principle. The court held that claims are estate property whenever they “turn on” the relationship between the successor and the debtor. But virtually every successor-liability and alter-ego claim, by definition, turns on the relationship between the successor or alter ego and the debtor. Under the Third Circuit’s reasoning, all such claims would be estate property—regardless of whether state law vests those claims in creditors, regardless of whether the debtor suffered any injury, and regardless of whether the debtor could ever have asserted such claims outside of bankruptcy.

The consequences are sweeping. The existence of common parties and shared facts—features present in any successor-liability or alter-ego case—does not make claims property of the debtor’s estate under Section 541. The fact that a tort victim’s claim against a successor arises from the same product line as the debtor’s liability does not mean the debtor has a “legal or equitable interest” in that claim. The victim’s claim

is the victim's own: it is predicated on the victim's personal injury, the victim's exposure to the defective product, and the victim's right under state law to seek compensation from the entity that continued the product line. The debtor suffered no injury, has no cause of action, and has no state-law property interest in the victim's claim. To hold otherwise is to erase the distinction between the debtor's property and the creditor's property—a distinction that Section 541(a)(1) draws in unmistakable terms.

The Third Circuit's rule thus effectively allows the bankruptcy system to extinguish every successor-liability and alter-ego claim, sweeping them all into the estate regardless of what state law provides. That result is without precedent and without justification. It transforms the estate from a repository for the debtor's own property interests into a device for capturing the claims of third parties—claims that, under state law, those third parties alone are entitled to pursue.

This Court should grant certiorari to restore the well-established principle that property of the estate is determined by reference to state law, and to repudiate the Third Circuit's unprecedented departure from that foundational rule.

II. The Third Circuit's Decision Allows Tortfeasors To Circumvent This Court's Decision In *Purdue*

In *Harrington v. Purdue Pharma L. P.*, 603 U.S. 204 (2024), this Court addressed the fundamental

question of whether a bankruptcy court may discharge the liabilities of a nondebtor without that nondebtor's filing for bankruptcy and without the consent of the affected creditors. The Court answered resoundingly in the negative: the Bankruptcy Code "does not authorize a release and injunction that . . . effectively seeks to discharge claims against a nondebtor without the consent of affected claimants." *Id.* at 227. This holding reflected the Court's recognition that permitting such releases would allow a nondebtor to "pay less than the code ordinarily requires and receive more than it normally permits." *Id.* at 222. *Purdue* established a critical safeguard for tort victims caught up in the bankruptcy process: their claims against solvent nondebtors cannot be extinguished without their consent.

The Third Circuit's decision in this case does precisely what *Purdue* forbids—but through a different mechanism. Rather than directly ordering a nonconsensual third-party release, the court recharacterized tort victims' product-line-liability claims as property of the bankruptcy estate. This recharacterization has a devastating practical consequence: once claims are deemed estate property, they may be settled by the debtor under Bankruptcy Rule 9019, which governs the approval of compromises and settlements in bankruptcy cases. Crucially, Rule 9019 requires no creditor vote, no supermajority consent, and no individual claimant approval. A debtor need only persuade the bankruptcy court that a proposed settlement is

reasonable, and the court may approve it over the objection of every affected creditor.

The result is a two-step maneuver that renders *Purdue*'s protections illusory. Step one: the debtor obtains a judicial declaration that the victims' direct claims against a nondebtor are estate property—not by demonstrating that the debtor has any state-law right to those claims, but merely by arguing that the claims share common facts with the debtor's history. Step two: the debtor proposes a settlement under Rule 9019 that releases the nondebtor from liability, and the bankruptcy court approves the settlement without the consent of the affected creditors. The net effect is identical to the nonconsensual third-party release that *Purdue* prohibited, yet the debtor avoids *Purdue*'s requirements by relabeling the claims as its own property.

This Court's reasoning in *Purdue* underscores why the Third Circuit's approach is impermissible. The Court drew a sharp distinction between claims that "substantively belong to" the debtor and claims that belong to the debtor's "victims." 603 U.S. at 219. The Court explained that "a bankruptcy court may resolve derivative claims . . . because those claims belong to the debtor's estate." *Id.* But the Court emphasized that tort claims against nondebtors are "nothing like" derivative claims because they "belong to their victims" rather than "substantively belong[ing] to" the debtor. *Id.* The tort victims in this case suffered personal injuries—mesothelioma, a fatal disease—caused by exposure to asbestos-contaminated talc.

Their claims against Brenntag as the successor to WCD's product line are predicated on their own injuries, their own exposure, and their own rights under state law. These are paradigmatic victim claims, not claims that "substantively belong to" the Debtors.

The Third Circuit's decision is particularly alarming because it creates a roadmap for circumventing not just *Purdue's* holding, but the entire framework of Chapter 11 protections designed to safeguard creditors' interests. The Chapter 11 process is built upon a series of carefully calibrated safeguards that ensure transparency, judicial oversight, and fair treatment of creditors. These include: full transparency through the scheduling and reporting requirements of 11 U.S.C. § 521; judicial oversight over non-ordinary-course transactions under 11 U.S.C. § 363; the absolute priority rule, under which equity holders may "receive nothing until all previously listed creditors have been paid in full," *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 457 (2017) (citing §§ 726(a)(6), 1129(a)(7), 1129(b)(2)); and court control over the debtor's non-exempt property and operations under 11 U.S.C. § 1104(a).

When a debtor settles claims under Rule 9019 after obtaining a declaration that those claims are estate property, these Chapter 11 protections do not apply in the same manner as they would in a contested plan confirmation. The settlement need not comply with the absolute priority rule, need not be submitted to a creditor vote, and need not satisfy the

disclosure requirements applicable to a plan of reorganization. The bankruptcy court need only find that the settlement falls within the range of reasonableness—a standard that affords the debtor enormous discretion and provides tort victims with far less protection than a plan confirmation process would.

The danger is compounded by the fact that the debtor's interests and the victims' interests are fundamentally misaligned in this context. A debtor that has sold its operating assets to the very entity whose liability is at stake has no incentive to maximize recovery for the victims; to the contrary, the debtor's incentive is to minimize the nondebtor's exposure—particularly when a nondebtor affiliate has indemnification obligations. Placing control of the victims' claims in the hands of a debtor with conflicting interests is antithetical to the foundational principles of fiduciary duty that animate the Bankruptcy Code. As this Court observed in *Purdue*, the concern with nonconsensual third-party releases is precisely that they allow nondebtors to resolve their liabilities at a fraction of their potential cost while the victims bear the shortfall. 603 U.S. at 222. The Third Circuit's rule facilitates this very outcome.

The concrete risk posed by the Third Circuit's rule is not hypothetical. Under this decision, a corporate family facing mass-tort liability could engineer an outcome that shields its solvent affiliates from liability while providing minimal compensation to tort victims. The recipe is straightforward: the

corporate family separates its assets from its liabilities by placing valuable assets with affiliates or third-party purchasers—in exchange for indemnification obligations—and then places the liability-laden shell into bankruptcy. The shell debtor then obtains a declaration that the victims’ successor-liability claims are estate property and uses Rule 9019 to settle those claims for a fraction of their value, releasing the solvent affiliates and purchasers from all liability. The victims never vote on a plan, never consent to the release, and never receive the protection that *Purdue* and the Chapter 11 process were designed to provide.

That is, in substance, what occurred in this very case. The Debtors sold their operating business to Brenntag, leaving behind only corporate shells with limited assets. The Debtors owe Brenntag indemnification obligations as a result, and those indemnification obligations are backstopped by the Debtor’s nondebtor affiliates. When the mounting successor-liability claims against Brenntag threatened to overwhelm the indemnification obligations, the Debtors filed for bankruptcy—not to reorganize a viable business, but to purchase peace for Brenntag and the Debtor’s own corporate affiliates. The Third Circuit’s decision blessed this strategy, transferring control of the victims’ direct claims to the very entities that caused their injuries. Unless this Court intervenes, *Purdue*’s central holding—that a bankruptcy court cannot extinguish creditor claims against third parties without the affected creditors’ consent—will be reduced to a

formality, easily circumvented through the simple expedient of relabeling the victims' claims as estate property.

III. The Third Circuit's Decision Provides a Blueprint for Evading the Protections of Section 524(g)

Section 524(g) of the Bankruptcy Code is a carefully constructed statutory provision that governs the issuance of channeling injunctions in asbestos-related bankruptcies—the precise context at issue in this case. Section 524(g) establishes the exclusive mechanism by which a bankruptcy court may enjoin claims against third parties that are related to the debtor's asbestos liabilities. The provision imposes exacting conditions before any such injunction may issue, including the requirement that at least seventy-five percent of the affected claimants approve the injunction by vote. 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb). This supermajority requirement is the linchpin of Section 524(g)'s protective framework: it ensures that the tort victims whose claims are being channeled have a meaningful voice in determining whether the terms of the proposed resolution are acceptable.

Beyond the supermajority consent requirement, Section 524(g) imposes substantive protections designed to ensure that tort creditors receive adequate compensation. The statute requires the establishment of a trust to receive, review, and pay present and future asbestos claims, and it requires the reorganized debtor to fund that trust with

substantial assets—including equity in the reorganized entity and a commitment of future earnings—to provide an “evergreen” source of funding for future claims as they arise. *In re Combustion Eng’g, Inc.*, 391 F.3d 190, 234 (3d Cir. 2004). These requirements ensure that the nondebtor entities receiving the benefit of the channeling injunction contribute meaningful value in exchange for the protection they receive.

Congress modeled Section 524(g) on the trust-injunction mechanism used in the landmark *Johns-Manville* bankruptcy—at the time, the most significant asbestos bankruptcy in American history. H.R. Rep. No. 103-835, at 40, (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3348. In that case, the debtor made extraordinary contributions to the Manville Personal Injury Settlement Trust: eighty percent of its common stock, \$150 million in direct cash, a \$1.3 billion note, an additional \$505 million note, and approximately \$770 to \$850 million from insurance settlements. The House Report accompanying Section 524(g) stated that the provision embodies “high standards” and “explicit requirements simulating those met in the Manville case.” 1994 U.S.C.C.A.N. at 3349. Congress thus made clear that Section 524(g) was not intended to provide an easy or inexpensive path to third-party releases; it was designed to ensure that any such releases would be accompanied by massive infusions of value for the benefit of tort creditors.

The legislative history further confirms that Section 524(g) was designed to benefit only those companies “willing to submit to the jurisdiction of the U.S. Bankruptcy Courts.” 140 Cong. Rec. S4523 (daily ed. Apr. 20, 1994) (statement of Sen. Graham). This statement underscores a fundamental premise of Section 524(g): the nondebtors that benefit from a channeling injunction must accept the burdens of the bankruptcy process, including the contribution of substantial assets and the supervision of the bankruptcy court. The nondebtors in this case—Brenntag and the Debtor’s parent companies—have not submitted to the jurisdiction of the bankruptcy court in the manner that Congress contemplated. They have not filed for bankruptcy, they have not placed their assets on the table, and they have not agreed to fund a trust with the kind of substantial contributions that Section 524(g) demands.

The Third Circuit’s decision bypasses every one of Section 524(g)’s carefully constructed safeguards. Under its approach, a debtor in an asbestos-related bankruptcy need not comply with Section 524(g)’s requirements at all. Instead, the debtor need only persuade a bankruptcy court that the tort victims’ claims against the nondebtor depend on general facts about the nondebtor’s relationship with the debtor—a showing the court below held requires no consideration of whether state law gave the debtor any right to those claims. Once the claims are declared estate property, the debtor may settle them under Rule 9019 without the seventy-five percent supermajority vote required by Section 524(g),

without establishing a trust funded with substantial debtor assets, and without the appointment of a future-claimants' representative. The statutory framework that Congress painstakingly constructed is rendered a dead letter.

This Court recognized in *Purdue* that Section 524(g) represents the narrow “statutorily specified circumstances” in which the Code does permit nonconsensual third-party releases. *Purdue*, 603 U.S. at 222 (citing 11 U.S.C. § 524(g)(4)(A)(ii)). The Court’s reasoning reflected the common-sense understanding that where Congress has created a specific and detailed statutory mechanism for addressing a particular problem, courts may not circumvent that mechanism through judicial innovation. Section 524(g) is Congress’s answer to the problem of third-party releases in asbestos bankruptcies. The Third Circuit’s approach renders Section 524(g) a nullity in this very context—asbestos-related bankruptcies—the precise area Congress intended Section 524(g) to govern.

The irony is acute. Section 524(g) was enacted precisely because Congress recognized that asbestos bankruptcies present unique challenges that require specialized protections for tort victims. Congress devoted years of study to the problem, consulted extensively with practitioners and stakeholders, and crafted a detailed statutory framework that balanced the interests of debtors, nondebtors, and tort claimants. The Third Circuit’s decision takes the very category of cases that Congress singled out for

heightened protection and strips away every safeguard that Congress provided. If the Third Circuit's approach stands, Section 524(g) will have no practical application in the cases that inspired its enactment.

The future-claimants' representative requirement of Section 524(g) is particularly significant. Congress recognized that in asbestos cases, many victims have not yet manifested symptoms and cannot yet know they have been injured. Section 524(g) therefore requires the appointment of a representative to advocate on behalf of these future claimants—individuals who, by definition, cannot advocate for themselves. The Third Circuit's rule eliminates this protection entirely. When claims are recharacterized as estate property and settled under Rule 9019, there is no statutory requirement for a future-claimants' representative, no mechanism for ensuring that future victims will have access to adequate compensation, and no structural safeguard against the debtor settling claims for less than their true value in order to benefit its corporate affiliates. The human toll of this omission is staggering: individuals who do not yet know they have mesothelioma may discover, years hence, that their claims have already been extinguished in a settlement they never knew about and could not have challenged.

The implications of the Third Circuit's rule are not limited to the facts of this case. Any debtor in an asbestos-related bankruptcy could invoke the same reasoning to recharacterize the claims of tort victims

as estate property and then settle those claims without compliance with Section 524(g). The nondebtor beneficiaries of such settlements would receive protection from liability without contributing substantial assets, without submitting to the jurisdiction of the bankruptcy court, and without obtaining the consent of the victims. The result would be a systematic circumvention of the statutory framework that Congress carefully designed to protect the most vulnerable participants in the bankruptcy process.

The scale of the Manville contributions illustrates the seriousness with which Congress approached the problem. The requirement that a debtor contribute a majority of its equity, along with other assets (in Manville's case, hundreds of millions of dollars in cash and notes), was Congress's mechanism for ensuring that third-party releases in asbestos cases would come at a meaningful price. Under the Third Circuit's rule, those contributions are unnecessary. A debtor need only characterize the victims' claims as estate property, settle them under Rule 9019 for whatever amount the bankruptcy court deems reasonable, and release the nondebtor from all liability. The contrast with the Manville paradigm is stark: where Congress required billions of dollars in trust funding, the Third Circuit's approach requires nothing more than a judicial declaration and a modest settlement.

Amici, as former Bankruptcy Judges who have presided over complex bankruptcy proceedings and

who are intimately familiar with the operation of Section 524(g), urge this Court to grant certiorari. The Third Circuit's decision threatens to undermine the statutory framework that has governed asbestos bankruptcies for three decades. It allows debtors and their nondebtor affiliates to obtain the benefits of a channeling injunction without bearing any of its costs—a result that Congress plainly did not intend and that this Court should not permit.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted.

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