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 IN OPPOSITION

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QUESTION PRESENTED

The Bankruptcy Code defines "property of the estate" 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). Under settled law, that definition includes derivative actions that are nominally brought by a third party but where the substantive claim belongs to the debtor. *See, e.g.*, *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 219 (2024).

In a decision by Judge Ambro, the unanimous Third Circuit panel below applied that established rule to conclude that the specific successor-liability claims at issue here are property of the Debtors' estates. As the panel explained in a footnote, a debtor's ability to assert a claim under state law outside of bankruptcy is "sufficient—but not necessary—for that claim to constitute property of the estate," because derivative actions that are nominally brought by third parties outside of bankruptcy may still be property of the estate if the substantive claim belongs to the debtor. Pet.App.39a n.21. Applying that well-established rule, the Third Circuit panel unanimously concluded that the successor-liability claims here are property of the estate even if the Debtors themselves could not have asserted those claims outside of bankruptcy. Petitioner sought rehearing en banc, and no judge voted for rehearing.

The question presented is:

Whether the successor-liability claims at issue here are property of the Debtors' estates even if the Debtors could not have asserted those claims in their own names outside of bankruptcy.

CORPORATE DISCLOSURE STATEMENT

Whittaker, Clark & Daniels, Inc.'s parent corporations are Soco West, Inc., Brilliant National Services Inc., Ringwalt & Liesche Co., Columbia Insurance Company, BH Columbia Inc., and Berkshire Hathaway Inc. No publicly held companies hold 10% or more of Whittaker, Clark & Daniels, Inc.'s stock directly. Berkshire Hathaway Inc., however, holds 10% or more of Whittaker, Clark & Daniels, Inc.'s stock indirectly.

Brilliant National Services Inc.'s parent corporations are Ringwalt & Liesche Co., Columbia Insurance Company, BH Columbia Inc., and Berkshire Hathaway Inc. No publicly held companies hold 10% or more of Brilliant National Services Inc.'s stock directly. Berkshire Hathaway Inc., however, holds 10% or more of Brilliant National Services Inc.'s stock indirectly.

L.A. Terminals, Inc.'s parent corporations are Brilliant National Services Inc., Ringwalt & Liesche Co., Columbia Insurance Company, BH Columbia Inc., and Berkshire Hathaway Inc. No publicly held companies hold 10% or more of L.A. Terminals, Inc.'s stock directly. Berkshire Hathaway Inc., however, holds 10% or more of L.A. Terminals, Inc.'s stock indirectly.

Soco West, Inc.'s parent corporations are Brilliant National Services Inc., Ringwalt & Liesche Co., Columbia Insurance Company, BH Columbia Inc., and Berkshire Hathaway Inc. No publicly held companies hold 10% or more of Soco West, Inc.'s stock directly. Berkshire Hathaway Inc., however, holds 10% or more of Soco West, Inc.'s stock indirectly.

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INTRODUCTION

After selling substantially all of their assets in 2004, the Debtors here spent nearly two decades using the proceeds to resolve liabilities from their historic operations, including talc- and asbestos-related claims. Those efforts consumed more than $300 million and depleted the Debtors' resources. Faced with mounting liabilities and few options, the Debtors sought Chapter 11 relief.

At the time, hundreds of lawsuits were pending against both the Debtors and Brenntag North America ("Brenntag"), the purchaser of the Debtors' operating assets. The suits against Brenntag included numerous actions asserting successor-liability theories, which sought to hold Brenntag responsible as the Debtors' successor for the Debtors' pre-sale conduct. Under settled precedent, those derivative successor-liability claims belong to the debtor's estate and cannot be pursued by individual claimants outside of bankruptcy. And because the 2004 sale agreement provided that the Debtors would indemnify Brenntag against certain claims arising from the Debtors' pre-sale conduct, allowing individual claimants to assert those successor-liability claims threatened to further diminish the Debtors' estates and reduce recoveries for all creditors while permitting certain claimants a disproportionate recovery.

To prevent that result, the Debtors sought a declaration that successor-liability suits against Brenntag based on the Debtors' historic operations belonged to the Debtors' estates. Petitioner—the official committee representing claimants with talc-

related claims—conceded that most successor-liability claims against Brenntag are property of the Debtors' estates, but sought to carve out a narrow category of "product-line" successor-liability claims that petitioner insisted were property of the claimants. The bankruptcy court entered summary judgment for the Debtors, holding that all the successor-liability claims against Brenntag (including the product-line claims) are property of the Debtors' estates.

In an appeal that likewise focused on whether the product-line claims differed from other successor-liability claims, the Third Circuit unanimously affirmed. In a decision by Judge Ambro, joined by Judges Krause and Matey, the court applied the plain text of the Bankruptcy Code to reject petitioner's argument that product-line claims (unlike all other successor-liability claims) were not property of the estate because they (arguably) could not be brought by the Debtors themselves outside of bankruptcy. As the panel explained, there are "a variety of so-called derivative actions in which 'the named plaintiff is only a nominal plaintiff' and 'the substantive claim belongs to the corporation'" as a matter of state law. Pet.App.29a (quoting *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 219 (2024)). As a result, "a debtor corporation'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." Pet.App.39a n.21. Applying that settled law, the panel unanimously concluded that the product-line claims here (like other successor-liability claims) are property of the estate regardless of whether the Debtors could assert those claims outside of bankruptcy because of particular state-law rules such

as those precluding a corporation from initiating a derivative action or piercing its own corporate veil. Regardless of such state-law rules, those claims are property of the estate because they are based on the relationship between Brenntag and the Debtors, not any injury directly caused by Brenntag to the individual claimants.

Nothing about that decision warrants this Court's review, let alone opens up the new 8-1 circuit split petitioner imagines (and not a single Third Circuit judge even mentioned). The Third Circuit repeatedly acknowledged that state law defines property rights in bankruptcy, while recognizing that in some cases (including this one), a debtor may have a property interest in a claim even if the debtor could not bring that claim in its own name outside of bankruptcy. No one even questioned that principle below, as the parties focused their dispute on whether product-line claims were somehow different from other successor-liability claims in any relevant way.

There is certainly no circuit split on that question, and the decision below is correct on both the specific question addressed below and the more general principle that some successor-liability claims are property of the estate without regard to whether the debtor itself could bring them outside of bankruptcy. As this Court recognized in *Purdue*, in a derivative action, "the named plaintiff is only a nominal plaintiff," and the underlying "substantive claim belongs to the [debtor]," whether or not the debtor can assert that claim outside of bankruptcy. 603 U.S. at 219. A claim can therefore be property of the estate even if the debtor could not assert it in the debtor's

own name outside of bankruptcy—a rule that comports with the statutory text, settled precedent, and common sense. Even if this Court were inclined to consider the merits of that well-established rule, this would be a poor vehicle, given the multiple alternative reasons for concluding that the claims here are property of the estate. This Court should deny certiorari.

STATEMENT OF THE CASE

A. Statutory Background

When a debtor files a Chapter 11 petition, its property becomes the property of a bankruptcy estate. 11 U.S.C. §541. A trustee can then be appointed to manage the estate. *Id.* §§323, 541(a), 701. In the absence of a trustee, the debtor exercises the trustee's powers as a "debtor-in-possession." *See id.* §1107(a). Both a trustee and a debtor-in-possession hold fiduciary duties to creditors, including chiefly the obligation to "maximize the value of the estate" for the benefit of all creditors and to resist efforts by a subset of creditors to jump the priority line by pursuing claims involving property of the estate outside of the bankruptcy. *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985).

As relevant here, the estate encompasses all the debtor's property, "wherever located and by whomever held," including "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. §541(a)(1). That sweeping language covers not only concrete and tangible assets but also contingent and intangible property interests, including causes of action. *See, e.g.*, *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 n.9 (1983). The

Code furnishes a trustee (or debtor-in-possession) with broad powers to manage the estate, including the ability to pursue, abandon, or settle causes of action that are property of the estate. *See* Fed.R.Bankr.P.9019; *accord, e.g.*, *In re Emoral, Inc.*, 740 F.3d 875, 879 (3d Cir. 2014).

B. Factual Background

1. The Debtors here—Whittaker, Clark & Daniels ("WCD"), Soco West, L.A. Terminals, and Brilliant National Services—spent most of their existence processing, manufacturing, and distributing talc, industrial chemicals, and solvents. Pet.App.7a. In 2004, the Debtors sold nearly all of their operating assets to Brenntag and its subsidiaries. Pet.App.8a. WCD and Soco retained liability for asbestos-related tort claims concerning their historic operations, and agreed to indemnify Brenntag and its affiliates for any liability arising out of such claims. Pet.App.8a. Brilliant likewise took on asbestos-related indemnification obligations to Brenntag and its affiliates. Pet.App.8a. Three years later, National Indemnity Company bought the equity in Brilliant and L.A. Terminals, and agreed to indemnify the seller for any indemnification obligations it owed to Brenntag arising out of the 2004 asset sale if the Debtors failed to indemnify Brenntag. Pet.App.8a. That transaction, however, did not change the indemnification obligations that WCD, Soco, and Brilliant owed to Brenntag.

Since 2007, the Debtors have paid over $300 million in connection with the resolution of over 1,000 lawsuits asserting asbestos-related and environmental claims. Pet.App.9a-10a; C.A.App.274,

283-84. By 2023, liability was mounting, and between 100 and 200 new plaintiffs sued each year. C.A.App.275, 283-84.

Brenntag was also named as a defendant in hundreds of lawsuits seeking to hold it liable for the Debtors' conduct under various theories of successor liability. C.A.App.554. Because of the Debtors' indemnification obligations, any successful claim against Brenntag based on the Debtors' conduct or product line risked flowing back to the Debtors. C.A.App.554-55. Indeed, even unsuccessful claims could generate defense costs triggering the Debtors' indemnification obligations. *See* C.A.App.557.

C. Procedural Background

1. To prevent the ongoing flood of litigation from draining their remaining resources entirely, the Debtors sought relief under Chapter 11 of the Bankruptcy Code. Pet.App.10a. And to maximize the value of their assets for their creditors (and the chances of negotiating a global resolution to their asbestos- and talc-related liabilities), the Debtors filed an adversary proceeding seeking an order enjoining the individual talc plaintiffs from pursuing successor-liability claims against Brenntag and a declaratory judgment that those successor-liability claims are property of the Debtors' bankruptcy estates. Pet.App.11a-12a.

The Debtors then moved for summary judgment, and petitioner intervened to oppose that motion. Pet.App.12a. Petitioner did not (and does not) seriously dispute that nearly all the successor-liability claims at issue (e.g., alter-ego claims) were property of the Debtors' estates; instead, it "focused its objection

on [a] subset of [the] successor liability claims," arguing that the so-called "product-line" claims against Brenntag were not property of the Debtors' estates even if all other successor-liability claims were. Pet.App.13a. Those "product-line" claims, like the other successor-liability claims asserted against Brenntag, seek to hold Brenntag liable for the Debtors' past operations, not for Brenntag's own actions. The claims are based on a "controversial theory of liability," recognized by only "a handful of state courts," that "imposes strict liability for injuries caused by defects of a product line on a corporation that acquires the manufacturer's assets and undertakes essentially the same operation and production practices." Pet.App.13a.

2. The bankruptcy court granted summary judgment for the Debtors. Pet.App.195a-243a. As it explained, because the successor-liability claims here "seek to hold non-debtor entities indirectly liable for the Debtors' tort liabilities, rather than remedy a harm that a [tort plaintiff] or creditor can directly trace to a non-debtor third party," those claims are property of the estate. Pet.App.208a-209a. As the court observed, product-line claims "seek, at their core, to hold a non-debtor entity liable for Debtors' tort liabilities" for harms that "cannot be traced directly to Brenntag or any other non-debtor third party," and are grounded on "the subsequent acquisition of assets by the successor and its ensuing operations." Pet.App.230a-231a. The court accordingly concluded that the product-line claims here "are indistinguishable from claims brought under other theories of successor liability," and likewise belong to the Debtors' estates under §541(a). Pet.App.233a.

The bankruptcy court also held that the product-line claims here are independently property of the Debtors' estates under §544(a), which grants the trustee the "rights and powers" of a hypothetical judgment lien creditor "at the time of the commencement of the case." 11 U.S.C. §544(a)(1); *see* Pet.App.211a-226a, Pet.App.234a-235a. As the bankruptcy court explained, those rights include "the ability to pursue claims against non-debtor third parties premised upon alter ego or successor liability claims." Pet.App.211a; *see, e.g.*, *In re Kwok*, 172 F.4th 145 (2d Cir. 2026). Because the court found that the claims here were property of the estate under both §541(a) and §544(a), it did not address the Debtors' additional alternative argument that the Debtors were in fact entitled to assert product-line claims against Brenntag under the relevant state laws. *See* Pet.App.228a (assuming without analysis that the Debtors could not pursue certain successor-liability claims under state law).

3. The Debtors proceeded to negotiate a settlement of their claims against Brenntag and others. Those parties agreed to pay $535 million to the Debtors' estates—money that will be available, once the settlement is consummated, to pay the Debtors' creditors equitably based on their priorities in bankruptcy. In addition, all parties to the settlement agreed to a mutual release of all causes of action against one another, including any claims arising out of the Debtors' indemnification obligations from the 2004 asset sale, further reducing the Debtors' potential liabilities. Pet.App.12a. The settlement does not in any way affect any direct claims by any other person against the settling parties, meaning

that claims that any plaintiffs might have against Brenntag for injuries arising from Brenntag's own actions remain unaltered. C.A.App.317.

After executing the settlement agreement, the Debtors moved for the bankruptcy court to approve the settlement under Rule 9019. C.A.App.315; *see* Fed.R.Bankr.P.9019. The court held a four-day evidentiary hearing, in which it heard testimony from ten witnesses and admitted hundreds of documents into evidence. Bankr.Dkt.3013.at.28. The court then issued an exhaustive 126-page opinion approving the settlement. Bankr.Dkt.3013. That opinion squarely rejected petitioner's attempts to portray the settlement as conflicted and undervalued, concluding after careful scrutiny that the "hard-fought" negotiation by the Debtors' disinterested directors was procedurally fair and that the $535 million settlement "likely exceeds the value of the claims being compromised." Bankr.Dkt.3013.at.42-43, 122-23.

Meanwhile, at petitioner's request, the bankruptcy court certified its summary judgment order for direct appeal to the Third Circuit. *See* 28 U.S.C. §158(d)(2). The Third Circuit accepted petitioner's appeal and consolidated it with a separate appeal asking the court to decide whether WCD properly filed its bankruptcy petition. *See* Pet.App.15a.

D. The Decision Below.

The Third Circuit unanimously affirmed. In an opinion by Judge Ambro, joined by Judges Krause and Matey, the court rejected petitioner's arguments and held that the product-line claims at issue here are

property of the Debtors' estates. Pet.App.100a-182a.[1] Petitioner sought rehearing, and the panel issued a slightly amended (and still unanimous) opinion reaching the same conclusion. Pet.App.245a.

The panel began with the statutory text, explaining that under §541(a)(1), the bankruptcy estate extends to "all legal or equitable interests of the debtor in property," "wherever located and by whomever held." Pet.App.28a. Those property interests, the panel recognized, "are created and defined by state law." Pet.App.28a (quoting *Butner v. United States*, 440 U.S. 48, 55 (1979)); *see* Pet.App.28a (acknowledging that "state law defines a debtor corporation's property interests").

At the same time, the panel explained, state law often "sends mixed signals" with respect to property interests in causes of action. Pet.App.29a. In particular, states have established "a variety of so-called derivative actions in which 'the named plaintiff [e.g., a shareholder] is only a nominal plaintiff' and 'the substantive claim belongs to the corporation.'" Pet.App.29a (quoting *Purdue*, 603 U.S. at 219). As a result, causes of action nominally brought by third-party plaintiffs "must undergo substantive scrutiny" to determine whether the debtor has a property interest in those actions under state law because they are "based on an injury to the debtor's estate that

[1] The panel also unanimously held that WCD properly filed its bankruptcy petition, with concurrences from Judge Ambro and Judge Krause on whether federal or state choice-of-law rules govern (though both agreed on the ultimate result). Pet.App.16a-28a, 49a-99a. A separate petition challenging that ruling is pending as No. 26-159.

creates a secondary harm to all creditors regardless of the nature of their underlying claims." Pet.App.29a & n.13.

The Third Circuit therefore rejected petitioner's categorical assertion that a claim can never be property of the estate if the debtor itself could not have brought that claim outside of bankruptcy. *See* Pet.App.37a-39a. At the same time, the court made clear that state law remains central to the inquiry. As the court explained, "a debtor corporation'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." Pet.App.39a n.21. And even as to claims that the debtor could not assert outside of bankruptcy, it is ultimately state law that determines whether the claims at issue assert "a direct, particularized injury that can be directly traced to the defendant's conduct" (and so are property of the individual plaintiff), or instead assert "an injury to the debtor's estate that creates a secondary harm to all creditors" (and so are property of the estate). Pet.App.36a.

Applying that analysis, the panel unanimously concluded that the product-line claims at issue here "address derivative injuries to the full creditor constituency that resulted from the prepetition diversion of corporate assets," and so are property of the estate. Pet.App.43a. As the court explained, product-line claims "grew out of the traditional corporate view that successor liability claims apply in the absence of adequate consideration for a sale or transfer," and serve "to prevent the destruction of creditor remedies based on complex commercial

transactions involving the transfer of corporate assets that would otherwise be available to creditors." Pet.App.41a. Because those claims "depend on harm suffered directly by the debtor corporation and only indirectly by creditors," they "belong squarely to the estate." Pet.App.43a.

The panel also rejected petitioner's argument that recognizing product-line claims as property of the estate would contravene this Court's decision in *Purdue*. That argument, the panel explained, "places the cart before the horse." Pet.App.37a n.19. *Purdue* makes clear that bankruptcy courts "lack the power to extinguish creditor claims against third parties absent consent from the affected creditors." Pet.App.37a n.19. (citing 603 U.S. at 227). But *Purdue* also recognizes that a debtor "may address in its own bankruptcy plan claims … derivatively asserted by another on its behalf." Pet.App.37a n.19 (quoting 603 U.S. at 219). The panel's determination that the product-line claims at issue here are derivative actions that "substantively belong to … the estate" accordingly addresses an "antecedent question" that was not at issue in *Purdue*. Pet.App.37a n.19. And as the panel noted, "[o]ther courts have adopted the same view when creditors asserted successor liability claims predicated on the prepetition diversion of corporate assets." Pet.App.43a; *see* Pet.App.43a-46a (discussing *In re Tronox Inc.*, 855 F.3d 84 (2d Cir. 2017), and *National American Insurance Co. v. Ruppert Landscaping Co.*, 187 F.3d 439 (4th Cir. 1999)).

In light of its conclusion that the product-line claims here are property of the Debtors' estates under §541(a), the panel did not address the bankruptcy

court's alternative holding that the claims at issue here are also property of the estate under §544(a), *see* Pet.App.14a n.5, or the Debtors' alternative argument that they could in fact have brought product-line claims in their own names under state law, *see* C.A.Dkt.30.at.29-31.

The Third Circuit denied petitioner's request for rehearing en banc, with no judge voting for rehearing. Pet.App.245a.

REASONS FOR DENYING THE PETITION

The unanimous decision below does not merit this Court's review. It implicates no genuine circuit split, faithfully applies the Bankruptcy Code and this Court's precedents, and rests on multiple alternative grounds for affirmance.

Petitioner claims that the decision below broke new ground and opened up a brand-new 8-1 split by holding that a cause of action can be property of the estate even if the debtor could not bring that cause of action itself outside of bankruptcy. There is a reason that a conscientious panel of the Third Circuit dealt with this issue in a footnote and that no member of the Third Circuit identified this lopsided split: It is entirely illusory. In reality, under settled law, a derivative action—one that is premised on some injury to the debtor corporation that causes a secondary injury to its creditors—may be property of the estate even if only a shareholder and not the corporation itself could bring the action in its own name outside of bankruptcy. Indeed, this Court itself recognized that settled rule just two years ago in *Purdue*. That is why in the courts below the debate was about whether product-line claims were an exception to this rule, and

not about the existence of the rule itself. Petitioner cites no case rejecting that established rule, either in general or as to product-line claims in particular.

The Third Circuit panel correctly applied that rule in this case. As Judge Ambro explained for the unanimous panel, the product-line claims here—like the other successor-liability claims here, which petitioner does not dispute are property of the estate—rely on the theory that Brenntag harmed the Debtors by leaving the Debtors with insufficient assets to satisfy the individual plaintiffs' claims. That makes those product-line claims derivative actions that are property of the estate, because they rely on alleged harm to the Debtors that allegedly caused further harm to its creditors—regardless of whether the Debtors themselves could assert those same product-line claims against Brenntag outside of bankruptcy. Those claims are property of the estate to be resolved for the benefit of all creditors (consistent with their priorities in bankruptcy), not opportunities for some creditors to try to jump the line by pursuing remedies outside of bankruptcy. That analysis comports with the statutory text, settled precedent, and common sense, and does not remotely warrant this Court's review.

Nor does the unanimous decision below implicate any issue of pressing importance. Petitioner breathlessly asserts that the decision below will allow debtors to end-run this Court's decision in *Purdue* and lead to collusive settlements that will deprive tort victims of their remedies. But this Court recognized in *Purdue* itself that derivative actions are property of the estate, not of plaintiffs who may nominally initiate

the claims under state law, and the Third Circuit conscientiously applied settled law in concluding that the product-line claims here (like the other successor-liability claims here) are derivative actions. And treating those claims as property of the estate will not leave tort creditors unprotected; debtors-in-possession remain subject to a fiduciary obligation to manage their estates in the best interest of their creditors, and Rule 9019 ensures that any proposed settlement must be scrutinized by the bankruptcy court after notice and a hearing. As the bankruptcy court's careful analysis and meticulous 126-page opinion approving the proposed settlement here demonstrates, that scrutiny is anything but a rubber stamp. Finally, given the multiple alternative grounds for affirmance here, this case would be a poor vehicle for review in all events. This Court should deny the petition.

I. The Decision Below Does Not Create A Circuit Split.

Petitioner makes the bold assertion that the decision below contravenes "decades" of prior decisions and opens a brand-new 8-1 split with "every circuit to address the question." Pet.11. That is flatly incorrect. In reality, petitioner cannot identify any appellate decision conflicting with the actual decision below—i.e., any decision holding that a cause of action that was based on harm to the debtor nevertheless did not qualify as property of the estate because the debtor could not have brought that claim in its own name outside of bankruptcy. The unanimous panel below did not create any circuit conflict by rejecting that mistaken position.

1. Petitioner begins with the Eighth Circuit's decision nearly four decades ago in *In re Ozark Restaurant Equipment Co. v. Anderson*, 816 F.2d 1222 (8th Cir. 1987), asserting that *Ozark* held that a cause of action can be property of the estate "only if the debtor itself could have asserted the claim under state law before the bankruptcy." Pet.11-12. That attributes a holding to *Ozark* that the Eighth Circuit never reached.

In *Ozark*, the Eighth Circuit considered whether alter-ego claims under Arkansas law are property of the estate or of individual creditors. 816 F.2d at 1225. In answering that question, the Eighth Circuit did not adopt the categorical rule petitioner (mis)attributes to it. On the contrary, it explicitly recognized that a trustee has "authority to bring an action for damages on behalf of a debtor corporation" when that action "could have been asserted by the debtor corporation, *or by its stockholders in a derivative action*." *Id.* at 1225 (emphasis added).

As a result, the Eighth Circuit did not focus its analysis on whether a debtor could bring an Arkansas alter-ego claim outside of bankruptcy; instead, the Eighth Circuit examined the *substance* of that claim, asking whether "the applicable state law makes such obligations or liabilities run to the corporate creditors personally, rather than to the corporation." *Id.* at 1225. That is the same analysis the Third Circuit undertook in this case, by asking whether under state law the product-line claims here assert "particularized injuries directly traceable to the conduct of Brenntag," or instead depend on "a prepetition injury to the debtors that resulted in secondary harm to all

creditors." Pet.App.39a, 41a (capitalization altered). The Third Circuit's conclusion that the product-line claims at issue here fall in the latter camp, and so are property of the estate, *see* Pet.App.39a-43a, does not conflict with the Eighth Circuit's holding that Arkansas alter-ego claims fall in the former camp, *see Ozark*, 816 F.2d at 1225.

Petitioner next turns to the Sixth Circuit's three-decade-old decision in *In re RCS Engineered Products Co.*, 102 F.3d 223 (6th Cir. 1996), but its reliance on that decision is equally misplaced. *Contra* Pet.13-14. In *RCS*, the Sixth Circuit considered whether a Michigan alter-ego claim constituted property of the estate. 102 F.3d at 225. Like the Third Circuit below, the Sixth Circuit recognized that a debtor's ability to bring a claim outside of bankruptcy "is sufficient … for that claim to constitute property of the estate." Pet.App.39a n.21; *see RCS*, 102 F.3d at 225 ("[I]f Michigan law allows a corporation to assert an alter ego claim … the claim is property of the estate."). But *RCS* did not treat a debtor's ability to bring a claim outside of bankruptcy as *necessary*; instead, *RCS* examined the substance of the claim at issue, and concluded that a Michigan alter-ego claim is not property of the estate because it arises from "fraud or injustice perpetuated not on the corporation but on third parties dealing with the corporation." 102 F.3d at 226.[2]

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[2] Although *RCS* does say at one point that a Michigan alter-ego claim "does not become the property of the estate" because "a subsidiary may not bring an alter ego claim against its parent company under Michigan law," it is clear in context that the Sixth Circuit was looking to whether the claim belonged to the debtor

That analysis fully comports with the Third Circuit's reasoning here. Because the Sixth Circuit found that a Michigan alter-ego claim asserts a *direct* "fraud or injustice" suffered by the individual plaintiff, rather than a derivative injury caused by some underlying harm to the debtor, the court found that claim was not property of the estate. Here, by contrast, the Third Circuit found that the product-line claims at issue *are* premised on harm to the debtor, and so *are* property of the estate. Pet.App.39a-43a. That demonstrates consistency, not conflict.

2. Petitioner next cites decisions from "[t]he Second, Fourth, Fifth, and Seventh Circuits," but has equally little luck there. Pet.14-15. On the contrary, as the unanimous Third Circuit panel explained in detail, both the Second Circuit and the Fourth Circuit "have adopted the same view" as the decision below. Pet.App.43a-46a (discussing *Tronox*, 855 F.3d at 100-06, and *Ruppert Landscaping*, 187 F.3d at 440-42).

Petitioner points to the Second Circuit's decision in *Kalb, Voorhis & Co. v. American Financial Corp.*, 8 F.3d 130 (2d Cir. 1993), but that decision squarely *rejects* petitioner's view, explaining that a claim is property of the estate if it is a "general" claim that "could be brought by any creditor of the debtor"—regardless of whether that claim could be brought outside of bankruptcy by the debtor itself. *Id.* at 132 (quoting *St. Paul Fire & Marine Ins. Co. v. PepsiCo,*

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as a *substantive* matter, not just (as petitioner would have it) whether the debtor could have served as the nominal plaintiff outside of bankruptcy. 102 F.3d at 227.

Inc., 884 F.2d 688, 701 (2d Cir. 1989)).[3] Petitioner entirely fails to address that analysis, let alone the Second Circuit's *explicit adoption of the Third Circuit's approach* in *Tronox* (more than two decades after *Kalb*). *Tronox*, 855 F.3d at 102-04; *see* Pet.App.44a-46a.

Petitioner likewise draws no support from the Fourth Circuit's decision in *Steyr-Daimler-Puch of Am. Corp. v. Pappas*, 852 F.2d 132 (4th Cir. 1988), which is entirely "consistent with" the Third Circuit's approach, *In re Anderson & Strudwick, Inc.*, 2015 WL 1651146, at *8 (Bankr. E.D. Va. Apr. 8, 2015). Indeed, *Steyr-Daimler-Puch* explicitly agrees with the holding below that in deciding whether a claim is property of the estate, the key question is "the nature of that claim under state law," not simply whether the debtor could have brought that claim in its own name outside of bankruptcy. 852 F.2d at 135-36. Petitioner likewise has no meaningful response to the Fourth Circuit's decision in *Ruppert Landscaping*, which came more than a decade after *Steyr-Daimler-Puch* and which held a successor-liability claim to be property of the estate because the trustee could bring claims "similar in object and purpose" on behalf of all creditors, *without* asking whether the debtor could bring the same successor-liability claim outside of bankruptcy. *Ruppert Landscaping*, 187 F.3d at 441-42; *see* Pet.App.43a-44a. *Contra* Pet.20.

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[3] *Kalb* likewise agrees with the decision below that a debtor's ability to bring a claim outside of bankruptcy is *sufficient* to make that claim property of the estate. *Compare* Pet.App.39a n.21, *with Kalb*, 8 F.3d at 132 (claim "constitutes property of the bankrupt estate" if "the debtor could have asserted [it]").

The Fifth and Seventh Circuit decisions are no different. While the Fifth Circuit in *Educators Group* began its analysis by saying that whether a claim is property of the estate "depends on whether under applicable state law the debtor could have raised the claim," it immediately clarified that the inquiry turns on "the nature of the injury for which relief is sought," and in particular whether the action "alleges only indirect harm to a creditor (i.e., an injury which derives from harm to the debtor)." *In re Educators Grp. Health Tr.*, 25 F.3d 1281, 1284 (5th Cir. 1994). That mirrors the Third Circuit's approach. *See* Pet.App.46a-47a (claim is property of the estate if it is "based on an injury to the debtor corporation that resulted in secondary harm to all creditors"). The Seventh Circuit takes the same view. *See Koch Refin. v. Farmers Union Cent. Exch.*, 831 F.2d 1339, 1349 (7th Cir. 1987) (courts "must look to the injury for which relief is sought and consider whether it is peculiar and personal to the claimant or general and common to the corporation and creditors"); *accord id.* at 1345-46 (holding that an alter-ego claim that "may be asserted by any creditor" is property of the estate, without asking whether the debtor itself could assert that claim). *Contra* Pet.15.

Petitioner finally resorts to the Ninth and Eleventh Circuits, but again to no avail. The Ninth Circuit's decision in *Ahcom* found that the trustee could not bring a "substantive alter ego claim" that did not exist *at all* under state law, and thus could not be brought by the debtor *or* the creditor. *Ahcom, Ltd. v. Smeding*, 623 F.3d 1248, 1251-52 (9th Cir. 2010). And while the Eleventh Circuit in *Icarus* suggested that a trustee must "be allowed by state law" to bring a claim

in order for that claim to be property of the estate, it focused on whether the bankruptcy trustee had that authority as "the representative of a debtor corporation," not whether the corporation could have brought that claim itself outside of bankruptcy. *In re Icarus Holding, LLC*, 391 F.3d 1315, 1321-22 (11th Cir. 2004) (capitalization altered). That is decidedly not the rule that petitioner advocates. *Contra* Pet.16-18.[4]

In short, there is no conflict at all here for this Court to resolve, and certainly no clear 8-1 split between the decision below and every other circuit to consider the question. At best, there is some language that is imprecise about necessary and sufficient conditions and some differences in how the laws of different states draw the notoriously elusive line between direct and derivative claims, as opposed to any conflict on a question of federal law. Moreover, the Third Circuit, far from being some outlier, has addressed this issue carefully in a manner other circuits have found persuasive and adopted. *See Tronox*, 855 F.3d at 102-04 (adopting Third Circuit's earlier decision in *Emoral*).[5] And to the extent the

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[4] The First Circuit, which petitioner does not mention, likewise agrees with the decision below. *See, e.g.*, *In re Am. Cartage, Inc.*, 656 F.3d 82, 90 (1st Cir. 2011).

[5] Notably, this Court likewise denied review of the Third Circuit's decision in *Emoral* even though the petitioners there claimed a split with many of the same cases that petitioner cites here. *See Diacetyl Plaintiffs v. Aaroma Holdings, LLC*, 574 U.S. 974 (2014) (mem.) (denying certiorari); *see also* Pet. for Certiorari, *Diacetyl Plaintiffs*, 2014 WL 3589798, at *7-25 (U.S. filed July 18, 2014) (No. 14-71) (asserting conflict between *Emoral* and *Ozark*, *Koch*, *Ahcom*, and *Icarus*).

question presented is a "recurring" issue, Pet.32, this Court will have no shortage of opportunities to address it if and when another circuit actually rejects the Third Circuit's reasoning. Until then, there is no circuit split and no basis for this Court's review.

II. The Decision Below Is Correct.

The decision below is consistent not only with decisions from other circuits, but also with the text of the Bankruptcy Code and with this Court's precedent. The panel below did not err in unanimously concluding that a cause of action can be property of the estate even if the debtor could not bring that cause of action in its own name outside of bankruptcy.

1. The panel properly began with the plain statutory text, explaining that under §541(a), the estate extends to "all legal or equitable interests of the debtor in property," and reaches such interests "wherever located and by whomever held." Pet.App.28a (quoting 11 U.S.C. §541(a)(1)). Contrary to what the petition suggests, the panel then turned immediately to state law to determine the scope of those interests, explicitly quoting this Court's teaching in *Butner* that "property interests are created and defined by state law." Pet.App.28a (quoting *Butner*, 440 U.S. at 55); *accord* Pet.App.28a (repeating that "state law defines a debtor corporation's property interests").

But as the panel explained, it is "often difficult" to determine whether causes of action are property of the estate, because state law "sends mixed signals." Pet.App.29a. In particular, state law "establishes a variety of so-called derivative actions in which 'the named plaintiff is only a nominal plaintiff' and 'the

substantive claim belongs to the corporation.'" Pet.App.29a (quoting *Purdue*, 603 U.S. at 219). As a result, the panel explained, a court cannot look solely to whether the debtor could bring a claim in its own name outside of bankruptcy to determine whether that claim is property of the estate; instead, claims that would nominally be brought by creditors outside of bankruptcy "must undergo substantive scrutiny" to determine whether, under the relevant state law, they actually belong entirely to those creditors or instead are derivative claims in which the debtor corporation has a property interest. Pet.App.29a.

In conducting that inquiry, the panel explained, the key question is whether the claim asserts "a direct, particularized injury that can be directly traced to the defendant's conduct," or instead "an injury to the debtor's estate that creates a secondary harm to all creditors." Pet.App.36a. Where a claim, as a matter of state law, relies on "a general theory of recovery derivative of harm done to the debtor corporation," such as "the prepetition depletion of corporate assets," that claim substantively belongs to the corporation and so is property of the estate regardless of whether the debtor could have asserted that claim in its own name outside of bankruptcy. Pet.App.36a-37a; *see, e.g.*, *Tronox*, 855 F.3d at 100 (looking to whether the asserted injury can be "directly traced to the third party's conduct" or instead "based upon a secondary effect from harm done to the debtor").

The panel then proceeded to apply that analysis to the specific product-line claims here, and concluded that those claims (again, as a matter of state law) "involve a theory of recovery derivative of harm that

[the Debtors] suffered directly." Pet.App.41a. As the panel explained, product-line successor liability "grew out of the traditional corporate view that successor liability claims apply in the absence of adequate consideration for a sale or transfer," and "serves to prevent the destruction of creditor remedies based on complex commercial transactions involving the transfer of corporate assets that would otherwise be available to creditors." Pet.App.41a; *see* Pet.App.42a (product-line successor liability "requires proof that the non-debtor defendant's purchase of the product line destroyed the plaintiff's available remedies"). Product-line claims thus "address derivative injuries to the full creditor constituency that resulted from the prepetition diversion of corporate assets." Pet.App.43a. "[B]ecause those claims depend on harm suffered directly by the debtor corporation and only indirectly by creditors, the theory of recovery is not personal, but derivative of harm to the estate," and the claims "belong squarely to the estate." Pet.App.43a.

2. Petitioner offers only a single criticism of that analysis, claiming that the Third Circuit erred by "failing to consider state law in defining the property of the estate." Pet.21 (capitalization altered). That sorely misreads the decision below. On the contrary, as the Third Circuit's opinion repeatedly makes clear, the panel relied heavily on state law in concluding that the product-line claims at issue here are property of the estate. The panel recognized that property interests "are created and defined by state law," Pet.App.28a (quoting *Butner*, 440 U.S. at 55), and acknowledged the "basic idea" that "state law defines a debtor corporation's property interests," Pet.App.28a. It explained that state law determines

whether a debtor has a property interest in a cause of action, but that the inquiry is "often difficult" because state law sometimes "sends mixed signals"—in particular, by creating derivative actions in which "the named plaintiff is only a nominal plaintiff" while "the substantive claim belongs to the corporation." Pet.App.29a. The Third Circuit accordingly looked to state law to determine whether the product-line claims here are derivative actions, and concluded that they are derivative actions because under the relevant state laws, they "are based on a prepetition injury to the Debtors that resulted in secondary harm to all creditors." Pet.App.41a (capitalization altered); *see* Pet.App.41a-43a. The decision below thus squarely refutes petitioner's assertion that the Third Circuit "refused to consider state law" in deciding whether the product-line claims at issue here are property of the estate. *Contra* Pet.i.

In reality, petitioner's critique of the decision below is far more narrow. The core of petitioner's argument is not that the Third Circuit "fail[ed]" or "refused" to consider state law at all, *contra* Pet.i, 18, 21 (capitalization altered), but that the Third Circuit erred in holding that a claim can be property of the estate even if the debtor could not bring that claim in its own name outside of bankruptcy. *See, e.g.*, Pet.2-3 (asserting the panel erred in holding that the claims at issue were property of the estate "even though the Debtors could not themselves have asserted those claims under state law"); Pet.18-19 (asserting the panel erred in holding that "a claim may constitute property of the estate notwithstanding whether the debtor corporation was authorized to assert it outside of bankruptcy"); Pet.24 (similar). In other words,

petitioner contests the panel's view that "a debtor corporation'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." Pet.App.39a n.21.

But on that point, the law is squarely on the Third Circuit's side. By its plain text, §541(a) includes as property of the estate "all legal or equitable interests of the debtor in property," "wherever located and by whomever held," 11 U.S.C. §541(a)(1); it does not exclude causes of action in which the debtor has a substantive interest just because those causes of action are nominally initiated by third parties outside of bankruptcy. *Contra* Pet.24 (incorrectly claiming that if a debtor cannot itself "assert a cause of action under state law prior to the bankruptcy, that cause of action cannot be property of the estate"). When a cause of action under state law seeks recovery based on an underlying harm to a debtor corporation that causes some derivative harm to its creditors, that claim substantively "belongs to the corporation," even if state law permits only the creditors and not the corporation itself to initiate that claim outside of bankruptcy. Pet.App.29a.

In fact, this Court itself made precisely that point barely two years ago in *Purdue*, in a discussion that petitioner studiously ignores (even though the decision below cited that discussion prominently, *see* Pet.App.29a). As the Court explained, "In a derivative action, the named plaintiff 'is only a nominal plaintiff. The substantive claim belongs to the corporation.'" *Purdue*, 603 U.S. at 219 (quoting 2 J. Macey, *Corporation Laws* §1320[D] (2020)). As a result,

"those claims belong to the debtor's estate" regardless of whether the debtor could bring them in its own name outside of bankruptcy. *Id.*; *see also id.* (recognizing that the estate includes "claims derivatively asserted by another on [the debtor's] behalf"). *Purdue* thus confirms that the unanimous Third Circuit panel here did not err in concluding that a claim can be property of the estate even if the debtor could not have brought that claim in its own name outside of bankruptcy. *Contra* Pet.24.

Petitioner's contrary arguments would create strange inconsistencies. For instance, petitioner did not dispute below (and does not appear to dispute here) that the *other* successor-liability claims in this case are property of the estate. That is not surprising: As the panel below explained, the Third Circuit has twice before held that other kinds of successor-liability claims are property of the estate even if the debtor could not have brought those claims in its own name outside of bankruptcy. *See* Pet.App.33a-38a (discussing *Emoral* and *In re Wilton Armetale, Inc.*, 968 F.3d 273 (3d Cir. 2020)). Notably, this Court was asked to review one of those decisions, and denied certiorari. *See Diacetyl Plaintiffs v. Aaroma Holdings, LLC*, 574 U.S. 974 (2014) (mem.). That leaves petitioner in the unenviable position of asserting that although all the other successor-liability claims in this case are property of the estate (even though the Debtors may not have been able to bring all of those claims outside of bankruptcy), there should be a narrow exception to that rule for product-line claims. That position has no basis in the statutory text and makes no sense.

The inconsistencies in petitioner's arguments do not end there. Petitioner "readily concedes that fraudulent transfer claims are property of the estate," regardless of whether the debtor could have brought those state-law claims in its own name outside of bankruptcy (which a debtor typically cannot). Pet.App.43a; *see* Pet.App.38a (noting that state law "vests [fraudulent transfer] claims exclusively with the creditors of a debtor corporation outside of bankruptcy"). Yet petitioner makes no attempt to explain why state-law fraudulent transfer claims should be property of the estate even though the debtor cannot bring them outside of bankruptcy, but product-line claims should not. *See* Pet.App.41a-43a.

Petitioner's approach would also create a wholly unworkable rule. According to petitioner (at least as to product-line claims), a claim cannot be property of the estate unless the debtor could bring that claim in its own name outside of bankruptcy. But a corporation will typically have little if any reason to bring a product-line claim against its own successor outside of bankruptcy, meaning that state courts will have few if any opportunities to opine on whether debtor corporations can assert such claims. *See Emoral*, 740 F.3d at 881. Petitioner's approach would therefore force bankruptcy courts to struggle with difficult and hypothetical state-law questions, even as to creditor claims that are clearly based on an injury to the corporation rather than any direct injury caused by the third-party defendant to the creditors themselves. That approach has nothing to recommend it.

Because petitioner cannot meaningfully contest the Third Circuit's legal analysis, it focuses instead on

the panel's discussion of the practical advantages that follow from applying §541(a) in accordance with its text and settled precedent (and the practical disadvantages that would follow from adopting petitioner's contrary approach). *See* Pet.24-27. Those practical considerations are real, as petitioner's view would provide incentives for creditors to try to jump the line in bankruptcy and frustrate trustees' effort to maximize the value of the estate for all creditors. Remarkably, petitioner makes no real attempt to dispute the practical advantages of the Third Circuit's approach; instead, it simply suggests that such practical considerations cannot trump the background principle that state law creates and defines property interests. Pet.24-27. As already explained, that criticism is misguided, as the Third Circuit properly followed the statutory text and settled law. *See supra* pp.22-24. The fact that the Third Circuit's approach also comports with "the goals that Congress sought to advance through the Bankruptcy Code," by promoting "orderly administration and equitable distribution to all creditors," merely confirms that the Third Circuit's approach is correct. Pet.App.39a.

III. This Case Presents Neither An Important Issue Nor A Good Vehicle For Resolving It.

For similar reasons, petitioner and its amici also miss the mark in asserting that this case presents an "exceptionally important" question and provides an "ideal vehicle" for resolving it. Pet.27, 32 (capitalization altered). The question presented will have little if any significant practical effect, including in this very case. And even if this Court were inclined to address it, this case is a poor candidate for doing so.

1. Petitioner and its amici dramatically overstate the importance of the question presented. They insist that the decision below carries "enormous consequences," because (they say) it "undermines the central role of state law in federal bankruptcy" and will "determine[] who controls tort victims' claims against third parties in every mass-tort bankruptcy." Pet.27-28. But those extravagant assertions rest on the same misreading of the decision below as petitioner's merits arguments, by portraying that decision as simply ignoring state law rather than applying it. As already explained, the decision below explicitly recognized that state law controls in defining the property interests of the debtor, and explicitly relied on state law in determining that the Debtors have a property interest in the specific product-line claims at issue here. *See* Pet.App.28a-29a, 39a-43a. That state-law-focused analysis does not remotely "undermine[] the core tenet of federalism incorporated in the Bankruptcy Code." *Contra* Pet.32.

Despite repeatedly (and incorrectly) accusing the Third Circuit of ignoring state law completely, petitioner ultimately asks this Court to decide only the narrower question of whether a claim can be property of the estate "when, before the bankruptcy, the debtor could not have asserted the claim on its own behalf under governing state law." Pet.i. That narrower question has nowhere near the practical importance that petitioner suggests. It hardly arises in "every mass-tort bankruptcy," *contra* Pet.27; instead, it arises only in the rare case where a creditor seeks to assert a claim against a third party that is based on some underlying harm to the debtor (rather than any harm caused directly by the defendant to the creditor

itself), and yet state law does not permit the debtor to bring that claim in its own name outside of bankruptcy. As this case illustrates, there are remarkably few state-law tort claims that fall into that category—which is why petitioner did not dispute below (and does not dispute here) that the vast majority of the successor-liability claims in this case are property of the estate. *See supra* pp.6-7. In fact, even the narrow class of product-line claims on which petitioner focuses here do not fall into that category, as the Debtors *could* have brought product-line claims in their own names under state law outside of bankruptcy. *See* C.A.Dkt.30.at.29-31.

Moreover, those claims are also property of the estate under §544(a) in any event, as the bankruptcy court correctly held (and the Second Circuit has recently confirmed on materially similar facts). Pet.App.211a-226a, 234a-235a; *see Kwok*, 172 F.4th at 153-54. Petitioner cannot plausibly assert that its question presented will arise in "every mass-tort bankruptcy" and have "enormous consequences" when that question does not even affect the outcome in this very case, and when petitioner cannot identify any appellate decision holding that a cause of action based on harm to the debtor nevertheless was not property of the estate because the debtor could not bring that claim in its own name outside of bankruptcy.

Petitioner next contends that the decision below "supplies a blueprint for evading *Purdue*" and the specific Code provision governing third-party releases in asbestos cases. Pet.28. But *Purdue* itself rejects that argument, explaining that in derivative actions "the named plaintiff is only a nominal plaintiff," and

"[t]he substantive claim belongs to the corporation" even if that claim would be "derivatively asserted by another on its behalf" outside of bankruptcy. 603 U.S. at 219. Allowing debtors to resolve claims that are property of the estate is "nothing like" allowing bankruptcy courts to approve non-consensual third-party releases. *Id.*; *see also id.* (recognizing that "no one questions that [a debtor] may address in its own bankruptcy plan" claims in which the debtor has a property interest, "wherever located and by whomever held"). The Third Circuit panel therefore correctly rejected petitioner's attempt to paint its decision as an end-run around *Purdue*. *See* Pet.App.37a n.19.

Petitioner similarly asserts that the decision below "reallocates control over billions of dollars in pending and future tort claims from the victims to the parties responsible for their injuries." Pet.28. But that simply begs the question, by assuming that the product-line claims at issue—which, again, are premised as a matter of state law on harm to the debtor—are not property of the estate in the first instance. And petitioner does not dispute that all the other various successor-liability claims that were asserted below are property of the estate, making its efforts to carve out product-line claims from that general rule impossible to defend. *See supra* pp.6-7.

Petitioner declares that the decision below creates "perverse" incentives by allowing debtors to settle claims against third-party defendants "in a hopelessly conflicted transaction." Pet.30. But a debtor is not free to settle claims that are property of the estate however it sees fit, let alone "extinguish those claims at a discount that benefits its corporate allies," Pet.32;

instead, debtors have a fiduciary duty to their creditors to handle claims so as to "maximize the value of the estate," which is precisely what the Debtors have sought to do here. *Weintraub*, 471 U.S. at 352-55; *see Wolf v. Weinstein*, 372 U.S. 633, 651 (1963). And if and when a debtor seeks to settle a claim that is property of the estate, it can only do so after providing notice and a hearing and obtaining the approval of the bankruptcy court. *See* Fed.R.Bankr.P.9019(a). As the bankruptcy court's meticulous 126-page opinion approving the settlement here demonstrates, that requirement is more than adequate to prevent debtors from engaging in conflicted settlements or settling claims for less than their reasonable value. *See* Bankr.Dkt.3013.at.31-43 (exhaustively considering and rejecting petitioner's arguments that the settlement was conflicted and procedurally unfair, and concluding that the Debtors' disinterested directors "took their responsibilities seriously and performed their duties with objectivity and zeal," resulting in "hard-fought negotiations"); Bankr.Dkt.3013.at.43-123 (rejecting petitioner's argument that the settlement value was too low, and concluding that the $535 million settlement "likely exceeds the value of the claims being compromised").

Petitioner likewise misses the mark in asserting that "[t]he decision below nullifies remedies that States deliberately created for tort victims." Pet.31. Once again, petitioner's argument relies on misreading the decision below as if it ignored state law altogether. *See* Pet.31-32. In reality, the Third Circuit properly looked to state law to determine whether the claims at issue are based on "a particularized injury directly traceable to the conduct of the defendant" or

instead on "an injury to the debtor corporation that resulted in secondary harm to all creditors," Pet.App.46a-47a, and properly determined that the claims here fall in the latter category and so are property of the estate. That approach respects the full range and variety of causes of action created by state law—while also ensuring that any action in which a debtor has a substantive property interest is included within the estate, as §541(a) explicitly requires. Nothing about that reasoning "embraces a sweeping new form of bankruptcy jurisdiction" or "erodes the protections afforded to tort victims under federal law." *Contra* Pet.32.

2. Even if this Court were inclined to address some version of the question that petitioner has attempted to raise here, this case would be an exceptionally poor vehicle in which to do so. Petitioner's challenge to the decision below is based on a misreading of what that decision actually says—as shown by the fact that petitioner claims that the key "holding" that provides "the foundation of the judgment" is found in a footnote. Pet.33 (citing Pet.App.39a n.21). And petitioner's claim that the case is "unencumbered by factual disputes" is likewise incorrect, *contra* Pet.33; in reality, as the panel noted, "it is unclear precisely how many of [petitioner's] constituents have or could have asserted" product-line claims below, making it unclear to what extent that "controversial" theory is even properly at issue here. Pet.App.13a-14a. Indeed, in approving the settlement, the bankruptcy court—based on a fact-intensive choice-of-law analysis—expressed serious doubt as to whether any product-line claim against

Brenntag would be viable. *See* Bankr.Dkt.3013.at.46-80.

Petitioner is also flat wrong to claim that any answer to the question presented "will be dispositive." *Contra* Pet.32. On the contrary, the bankruptcy court squarely (and correctly) held that the claims here are also independently property of the estate under §544(a)—a holding that the Third Circuit had no need to reach, given its holding that the claims here are property of the estate under §541(a), but that the Second Circuit has recently confirmed. *See* Pet.App.14a n.5; Pet.App.211a-226a, 234a-235a; *Kwok*, 172 F.4th at 153-54. And neither the bankruptcy court nor the Third Circuit addressed the Debtors' alternative argument that the Debtors could in fact assert product-line claims in their own name outside of bankruptcy, providing yet another alternative ground for concluding that the claims at issue are property of the estate. C.A.Dkt.30.at.29-31. Given those circumstances, even if this Court were inclined to consider some version of the question presented, it should wait for a case in which that question would actually "make any difference" to the outcome. *Ticor Ins. Co. v. Brown*, 511 U.S. 117, 122 (1994).

CONCLUSION

This Court should deny the petition.

Respectfully submitted,

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