Docket #0995 Date Filed: 09/30/2026

**THE UNITED STATES BANKRUPTCY COURT**
**FOR THE NORTHERN DISTRICT OF NEW YORK**

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| In re: | Chapter 11 |
| Vanderbilt Minerals, LLC,[1] | Case No. 26-60110 (WAK) |
| Debtor. | |

**NOTICE OF FILING OF AMICUS BRIEF OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS WITH THE UNITED STATES SUPREME COURT**

**PLEASE TAKE NOTICE** that on September 21, 2026, the Official Committee of Unsecured Creditors, by and through proposed amicus counsel, MoloLamken LLP[2], filed the *Brief of Official Committee of Unsecured Creditors in the Chapter 11 Case of Vanderbilt Minerals, LLC as Amicus Curiae Supporting Petitioners* (the "Amicus Brief") supporting the petitioners in *Mei Guo and HK International Funds Investments (USA) Limited, LLC, v. Luc A. Despins, Chapter 11 Trustee*, No. 26-194. Attached hereto as **Exhibit A** is a copy of the Amicus Brief.

Dated: September 30, 2026

Respectfully submitted,

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[1] The Debtor is Vanderbilt Minerals, LLC (EIN 13-1432885). The Debtor's noticing address in this chapter 11 case is 33 Winfield Street, Norwalk, Connecticut 06855.

[2] The Committee's application to retain MoloLamken LLP as amicus counsel will be timely filed.



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**CERTIFICATE OF SERVICE**

I certify that on September 30, 2026, I caused a true and correct copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Northern District of New York on those parties registered to receive electronic notices.

*/s/ David J. Molton*
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# Exhibit A

**No. 26-194**

IN THE

# Supreme Court of the United States

MEI GUO AND HK INTERNATIONAL FUNDS INVESTMENTS (USA) LIMITED, LLC,

*Petitioners,*

v.

LUC A. DESPINS, CHAPTER 11 TRUSTEE,

*Respondent.*

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

## BRIEF OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN THE CHAPTER 11 CASE OF VANDERBILT MINERALS, LLC AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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IN THE

# Supreme Court of the United States

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NO. 26-194

MEI GUO AND HK INTERNATIONAL FUNDS INVESTMENTS (USA) LIMITED, LLC,

*Petitioners,*

v.

LUC A. DESPINS, CHAPTER 11 TRUSTEE,

*Respondent.*

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

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## BRIEF OF OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN THE CHAPTER 11 CASE OF VANDERBILT MINERALS, LLC AS *AMICUS CURIAE* SUPPORTING PETITIONERS

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### INTERESTS OF *AMICUS CURIAE* [1]

*Amicus* is the Official Committee of Unsecured Creditors in the Chapter 11 bankruptcy case of Vanderbilt

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[1] Pursuant to this Court's Rule 37.6, *amicus* states that no counsel for a party authored this brief in whole or in part, that no such counsel or party made a monetary contribution intended to fund the preparation or submission of the brief, and that no person other than *amicus* and its counsel made such a monetary contribution. Counsel was engaged by the Committee, and the Committee will be seeking bankruptcy court approval of that retention. In accordance with this Court's Rule

Minerals, LLC, currently pending in the United States Bankruptcy Court for the Northern District of New York, *In re Vanderbilt Minerals, LLC*, No. 26-60110 (WAK). In that capacity, the Committee represents the interests of various individuals who suffered severe injuries from exposure to asbestos-containing talc produced by Vanderbilt's predecessor, and of the holders of resulting personal-injury and wrongful-death claims.

The Committee has a significant interest in this case. The decision below directly affects the asbestos claimants whose interests the Committee represents. Just three weeks after the Second Circuit issued the decision below, the bankruptcy court in *Vanderbilt Minerals* invoked the Second Circuit's holding to approve a collusive settlement between Vanderbilt and its non-debtor affiliates. Under the terms of that settlement, Vanderbilt—the entity responsible for the claimants' injuries—purported to extinguish the claimants' rights to recover for their injuries from *its own solvent affiliates*, obtaining no identifiable consideration in return for releasing those claims. The Committee is now pursuing an appeal.

## INTRODUCTION AND SUMMARY OF ARGUMENT

This case implicates an important issue that has divided the courts of appeals—whether and when a trustee in bankruptcy may take control of creditor lawsuits against non-bankrupt third parties. This Court's decision in *Harrington* v. *Purdue Pharma L.P.*, No. 23-124 (U.S. June 27, 2024), held that bankruptcy courts lack authority to discharge tort claims against non-debtors—that they cannot absolve third-parties of tort liability to injured

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37.2, counsel for *amicus* provided notice to all counsel of record at least 10 days prior to this brief's due date.

claimants—without the claimants' consent. Since *Purdue*, however, the circuits have splintered on whether trustees and debtors-in-possession can effectively achieve the same result by other means—through § 541 or § 544 of the Bankruptcy Code.

Section 541 of the Bankruptcy Code, 11 U.S.C. § 541, defines the property of the bankruptcy estate (effectively what the bankrupt entity owns). The Third Circuit recently read that provision to afford bankruptcy trustees exclusive authority to assert and resolve personal-injury tort claims, brought by grievously injured individuals who sought to hold non-debtor third-parties liable as the debtors' alter egos or successors. See *In re Whittaker, Clark & Daniels, Inc.*, 176 F.4th 241 (3d Cir. 2026).

The Third Circuit did not dispute that such tort claims ordinarily belong to and can be asserted only by the injured tort claimants themselves. But it held that § 541 of the Bankruptcy Code hands their causes of action to one of the very entities that caused their injury—the bankrupt debtor—and allows that entity to dispose of those claims in concert with its own, potentially liable affiliates. Such claims, the Third Circuit held, *belong to the debtor* upon the filing of a bankruptcy case as a matter of federal common law, even though the debtor could not assert them on its own behalf outside of bankruptcy. That decision creates a profound circuit conflict and is the subject of a petition now pending before the Court, *Official Committee of Talc Claimants* v. *Whittaker, Clark & Daniels, Inc.*, No. 26-263 (response due Nov. 6, 2026).

In this case, the Second Circuit construed § 544(a) of the Bankruptcy Code in a way that permits the same result. Section 544 allows a bankruptcy trustee to avoid certain prepetition transfers and unperfected liens. That provision was never meant as a license for trustees to hijack and

dispose of common-law claims seeking relief for creditors' *personal* injuries against non-debtors. Yet the Second Circuit's decision threatens precisely that result. The Second Circuit held that § 544(a) authorizes a trustee to assume control of and resolve claims that seek to hold third parties liable as alter egos of the debtor, without regard to which party holds the state-law right to the underlying cause of action.

Both decisions reflect the same flawed theory: that claims seeking relief from the bankrupt debtor's solvent alter egos or successors are "general claims that enlarge the size of the bankruptcy estate for all creditors—not particular[ized] claims that only certain subsets of creditors could assert." Pet. App. 14a; *see Whittaker*, 176 F.4th at 267 (holding that alter ego and successor-liability "'theor[ies] of recovery'" are "'not personal, but derivative of harm to the estate'"). That might be a reasonable characterization of claims that seek, for example, to avoid prepetition transfers that removed property from the bankruptcy estate. In those sorts of cases, the Bankruptcy Code provides mechanisms for the estate to recover property that is rightfully its own. But those provisions do not permit the debtor to seize control over, and dispose of, tort victims' personal-injury claims against the debtor's solvent alter egos or successors in interest—much less to do so over the tort victims' vehement objections. Such claims do *not* seek to "enlarge the size of the bankruptcy estate for all creditors." Pet. App. 14a. They seek redress for the claimants *personally* and are property of the claimants under state law.

In *Caplin* v. *Marine Midland Grace Trust Co. of New York*, 406 U.S. 416 (1972), this Court explained that the Bankruptcy Act of 1898 made no provision for a trustee to "collect money not owed to the estate" by "suing third

parties on behalf of" a debtor's creditors. *Id.* at 428. There is no indication the Bankruptcy Code was meant to change that rule. Yet the Third Circuit's reading of §541 in *Whittaker* allows precisely what *Caplin* read bankruptcy law to forbid. The Second Circuit's decision in this case read §544(a) to offer another pathway to the same unauthorized result.

The implications of those atextual expansions of bankruptcy authority are staggering. The claims asserted in this particular case may resemble a traditional turnover action in which the debtor demands recovery of its own property from a third party. See 11 U.S.C. §542(a); *Chicago* v. *Fulton*, 592 U.S. 154, 159-161 (2021). If so, they may be asserted as such. But the rule the Second Circuit announced threatens to sweep far more broadly. Under the Second Circuit's interpretation of §544(a), for example, a debtor-in-possession (which enjoys the same powers as a trustee) might take control of and extinguish tort claims asserted by seriously injured individuals against the debtor's *own solvent affiliates*, all over the injured claimants' vociferous objections.

Indeed, just three weeks after the Second Circuit decided this case, the bankruptcy court in the *Vanderbilt* case approved precisely such a maneuver. It approved a settlement in which the debtor purported to release tort claims against *the debtor's own solvent affiliates*—for nothing. However administratively convenient that may seem for tortfeasors, it unjustifiably leaves tort victims, who previously had claims for compensation against solvent third parties, empty handed. It takes their cause of action, their property, and their Seventh Amendment right to seek a jury trial for redress, and gives them to their opponent in exchange for nothing.

The impact of these decisions thus extends well beyond the already important circuit conflicts they implicate. The rules that now prevail in the Second and Third Circuits threaten claimants' rights to control their own lawsuits, undermine claimants' property rights in those suits, erode the limits on bankruptcy courts' authority to dispose of claims against non-debtors, and upend the central role of state law in defining property ownership (particularly the *Whittaker* case). Review is warranted.

## ARGUMENT

### I. THE CIRCUITS ARE IN DISARRAY OVER THE SCOPE OF A TRUSTEE'S AUTHORITY TO LITIGATE CREDITORS' CLAIMS AGAINST NON-DEBTOR THIRD PARTIES

There is an open and acknowledged circuit conflict over the scope of a trustee's authority to litigate creditor claims against third parties under § 541(a)(1). And this case implicates a similar division of authority over whether trustees may do so under § 544(a).

#### A. The Circuits Are Divided Over Whether Creditor Claims Against Third Parties Are "Property of the Estate" Under § 541 Where the Debtor Could Not Assert the Claims Outside of Bankruptcy

In *Caplin* v. *Marine Midland Grace Trust Co. of New York*, 406 U.S. 416 (1972), this Court held that the Bankruptcy Act of 1898 does not authorize trustees to "collect money not owed to the estate" by "suing third parties on behalf of" a debtor's creditors. *Id.* at 428. Applying that same principle to the Bankruptcy Code of 1978, myriad courts of appeals have held that § 541 does not permit a trustee to take control of claims seeking to recover against non-bankrupt entities under alter ego or successor-liability theories if, under state law, the debtor could not have brought those claims outside of bankruptcy on its own behalf. See, *e.g.*, *In re Ozark Rest. Equip. Co.* v.

*Anderson*, 816 F.2d 1222 (8th Cir. 1987); *In re RCS Engineered Prods. Co.*, 102 F.3d 223 (6th Cir. 1996).

Section 541, those courts explain, concerns "property of the estate," which comprises only the "'legal and equitable interests *of the debtor*.'" *Ozark*, 816 F.2d at 1224. Thus, only "causes of action belonging to the *debtor* at the commencement of the case" can be "property of the estate." *Id.* at 1225. Where state law makes a cause of action the debtor's property outside bankruptcy, the trustee may assert it on behalf of the estate in bankruptcy. See, *e.g.*, *In re Educators Grp. Health Tr.*, 25 F.3d 1281, 1284 (5th Cir. 1994); see *Kalb, Voorhis & Co.* v. *Am. Fin. Corp.*, 8 F.3d 130, 132 (2d Cir. 1993). But where a cause of action belongs to a *creditor*, and resulting liability runs to the *creditor* under state law, only the *creditor* is entitled to assert it.

The courts of appeals, however, are now divided. As explained by the petitioner in No. 26-263, the Third Circuit has charted an entirely different path. See *In re Whittaker, Clark & Daniels, Inc.*, 176 F.4th 241 (3d Cir. 2026). The *Whittaker* decision recognized that "many courts" had ruled that a "claim is property of the estate" only if state law would have permitted the debtor "to assert it" outside bankruptcy and "the claim vindicates an injury to the debtor corporation," with the injury to creditors being merely "secondary." *Id.* at 261. But it parted company with those cases, deeming that rule "unworkable" for successor-liability and alter ego theories asserted by tort victims. *Id.* at 262. Instead, the court announced a federal common-law rule that § 541 makes those claims property of the estate. *Id.* at 265. A clearer conflict is hard to imagine.

### B. The Circuits Are Likewise Divided Over When Trustees May Take Control of Creditor Claims Against Non-Debtor Third Parties Under § 544

Section 544(a) of the Bankruptcy Code permits a bankruptcy trustee (or debtor-in-possession) to stand in the shoes of a hypothetical holder of a judicial lien on the debtor's property. Acting in that hypothetical capacity, the trustee can defeat any interest in the debtor's property that an actual lien creditor could have defeated under state law as of the date the debtor entered bankruptcy. See 5 Collier on Bankruptcy ¶ 544.02[1] (16th ed.). The courts of appeals, however, openly disagree on whether that authority allows the debtor's trustee to take over creditor claims asserting alter ego or successor liability against non-debtors.[2]

1. The Second and Seventh Circuits hold that a trustee's authority to commandeer creditor alter ego or veil-piercing claims against third parties under § 544(a) "'depends on whether the action vests in the trustee as an assignee for the benefit of creditors'" *generally* "'or, on the other hand, accrues to *specific* creditors.'" *Koch Refin.* v. *Farmers Union Cent. Exch., Inc.*, 831 F.2d 1339, 1348 (7th Cir. 1987); see Pet. App. 12a ("'If a claim is a general one, with no particularized injury arising from it, and if that claim could be brought by any creditor of the debtor, the trustee is the proper person to assert the claim.'").

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[2] See, *e.g.*, *Whittaker*, 176 F.4th at 253 n.5 (acknowledging the disagreement); *In re Icarus Holding, LLC*, 391 F.3d 1315, 1319 n.4 (11th Cir. 2004) (noting that "[m]any courts have completely rejected 544's use as a means for debtor corporations to bring alter ego actions"); *Steyr-Daimler-Puch of Am. Corp.* v. *Pappas*, 852 F.2d 132, 135-136 (4th Cir. 1988) (similar).

The Fifth and Eighth Circuits reject any distinction between "general" and "personal" claims. Instead, those courts focus exclusively on identifying the party whose injuries the claim is intended to redress.

The Fifth Circuit, for example, has held that any "distinction between claims that are 'personal' to some creditors or 'general' as to all is relevant only '*after* a claim has been analyzed to determine whether it is properly assertable by the debtor or creditor, and *not as a substitute* for the analysis itself.'" *In re Bradley*, 326 F. App'x 838, 839 (5th Cir. 2009) (per curiam). Thus, in *Bradley*, the Fifth Circuit held that § 544 did not permit the trustee to assert civil conspiracy claims against an individual who allegedly helped the debtor fraudulently transfer assets out of his estate. *Id.* at 839-840. Even though the trustee's suit sought to "remedy an injury to all of [the debtor's] creditors," there was no cognizable injury to the debtor, who had no legal or equitable interest in damages intended "to replace assets that he conspired to fraudulently transfer." *Ibid.*

The Eighth Circuit has likewise held that § 544(a) does not "encompass the ability to litigate claims"—including an "alter ego cause of action"—"on behalf of [a] debtor corporation's creditors." *Ozark*, 816 F.2d at 1226. The trustee in *Ozark* sued the debtor corporation's principals "on behalf of all [the corporation's] creditors," seeking to hold them "personally liable" for the corporation's debts. *Id.* at 1223. Section 544, the Eighth Circuit held, does not permit a trustee to bring claims "on behalf of the estate's creditors." *Id.* at 1229. Invoking this Court's decision in *Caplin*, the Eighth Circuit held that § 544 does not authorize trustees to assume creditors' alter ego claims against

third parties. *Id.* at 1226.[3] To the contrary, the powers conferred by § 544 are intended "to avoid 'transfers' of the debtor." *Id.* at 1229. That did not cover alter ego claims because "[a]n alter ego action * * * does not entail invalidating of a transfer of interest, but instead imputes the obligations of one party to another regardless of any 'transfers.'" *Ibid.*

2. That contrast understates the conflict. Even though the Second and Seventh Circuits both distinguish between "general" and "personal" claims, they diverge on what that means. To determine whether an action is "general" or "specific," the Seventh Circuit asks who was injured: It "look[s] to the injury for which relief is sought and consider[s] whether it is peculiar and personal to the claimant" or instead "general and common to the corporation and creditors." *Koch*, 831 F.2d at 1349. "If the [debtor] *corporation* is injured by the shareholders' disregard of corporate formalities," the Seventh Circuit holds, then the trustee may "maintain a 'veil piercing' suit on behalf of the bankrupt corporation." *Steinberg* v. *Buczynski*, 40 F.3d 890, 892 (7th Cir. 1994) (emphasis added). But "[w]hen a third party has injured not the bankrupt corporation itself but a *creditor* of that corporation, the trustee in bankruptcy cannot bring suit against the third party." *Id.* at 893 (emphasis added).

Thus, in *Steinberg*, the Seventh Circuit rejected the trustee's effort to pierce the corporate veil and hold the

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[3] The Eighth Circuit found it "extremely noteworthy" that Congress had rejected a proposal to overrule *Caplin* by permitting trustees to "'enforce *any* cause of action that a creditor * * * has against *any* person.'" *Ozark*, 816 F.2d at 1227 & n.9 (emphasis added). This Court "will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Pa. Dep't of Pub. Welfare* v. *Davenport*, 495 U.S. 552, 563 (1990).

debtor corporation's owners "personally liable for the corporation's debt" to a pension fund. 40 F.3d at 891. The problem, the court explained, was that the trustee "was unable to identify any injury *to the corporation* resulting from" the alleged disregard of corporate formalities. *Id.* at 892 (emphasis added). Any such injury accrued only to the creditor pension fund, and only it (if anyone) could assert the claim. *Id.* at 892-893.

The Second Circuit takes a different view. It does not ask who was injured by the conduct giving rise to liability. It asks only whether the claim would "enlarge the size of the bankruptcy estate for all creditors." Pet. App. 14a. Put another way, if the suit could be brought by *any* creditor and benefit *all* creditors, it can be brought by the trustee under §544(a)—even if the debtor corporation itself was not a victim. *Ibid.* Not so in the Seventh Circuit. The trustee in *Steinberg* urged that, because "any judgment he obtain[ed]" would "enure to the benefit of the bankrupt estate," he was "suing on behalf of the estate, as he [was] authorized to do." 40 F.3d at 892. The Seventh Circuit rejected that reasoning as "perfectly circular." *Ibid.* Yet it was enough for the decision below.

## II. THE ISSUE IS PROFOUNDLY IMPORTANT

The circuit conflicts at issue in this case and *Whittaker* are important, recurring, and deeply problematic. Different claimants get different treatment under the Bankruptcy Code—a law the Constitution requires to be "uniform"—based on the happenstance of where the debtor chooses to file for bankruptcy. The result is not just unfairness. Debtors now shop for the most favorable forum for their bankruptcies, based not on efficiency or geography, but instead on which side of the split the regional circuit has taken. But the implications go much deeper. As the *Whittaker* petition explains, the answers to

the questions presented by these cases will determine "who controls tort victims' claims against third parties in every mass-tort bankruptcy: the victims who suffered the injuries, or the debtors whose conduct caused that harm." Pet. at 27, *Off. Comm. of Talc Claimants* v. *Whittaker, Clark & Daniels, Inc.*, No. 26-263 (Aug. 25, 2026). By handing control to the debtors, the decisions in this case and *Whittaker* offer a roadmap for tortfeasors to extinguish liability for the torts of their solvent parents and affiliates, upsetting the Bankruptcy Code's carefully calibrated balance between state and federal law, and threatening tort victims' rights to redress for their injuries.

### A. The Second and Third Circuits' Decisions Offer a Roadmap for Extinguishing Tort Victims' Claims Without Consultation or Consideration

In *Purdue*, this Court considered Second and Third Circuit precedent that had allowed debtors to release creditor claims against third parties "without the consent of [the] affected claimants." *Harrington* v. *Purdue Pharma L.P.*, 603 U.S. 204, 227 (2024). This Court overturned that rule, finding the Bankruptcy Code provided no such authority. Yet *Whittaker* and the decision below allow debtors to achieve the same result with even fewer guardrails. In *Purdue*, the debtors sought to compromise claims against third-party non-debtors in exchange for valuable consideration that would have been used to compensate tort victims. The decisions in these cases provide debtors like Vanderbilt Minerals with a means and method to hijack tort victims' causes of action against their solvent affiliates and extinguish them, over vociferous objection, for nothing.

*Amicus* is the representative for asbestos claimants in a case where precisely that occurred—based on and just

three weeks after the Second Circuit issued its decision in this case. For decades, the R.T. Vanderbilt Company ("RTVC") sold talc contaminated with asbestos. After suffering a string of adverse jury verdicts in cases brought by individuals suffering from mesothelioma, RTVC underwent a restructuring to separate its operating assets from its asbestos-related liabilities. A new entity, Vanderbilt Minerals ("Minerals"), was saddled with over $500 million in liabilities but given limited assets. The lion's share of RTVC's assets went to other newly formed entities.

In February 2026, Minerals filed for bankruptcy and immediately moved for court approval of a pre-baked settlement—between itself and its affiliates—that purported to extinguish all the asbestos claimants' claims against those (better-funded) affiliates for nothing. See Debtor's Settlement Mot., *In re Vanderbilt Mins., LLC*, No. 26-60110 (WAK) (Bankr. N.D.N.Y. Feb. 16, 2026), ECF No. 22-2 (Settlement Agreement).[4] The settlement faced overwhelming opposition from claimants, *amicus* Committee of Unsecured Creditors, and the United States Trustee.[5] But Minerals did not need stakeholder support.

Unlike a plan of reorganization, the settlement did not require consultation or a vote. Instead, the company

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[4] As the United States Trustee observed, Minerals' submissions were "notably devoid of any clear explanation" of what Minerals was "receiving in exchange for the sweeping releases being granted to non-debtor parties," never "identify[ing], let alone valu[ing], the consideration being provided." *In re Vanderbilt Mins., LLC*, No. 26-60110 (WAK) (Bankr. N.D.N.Y. Apr. 8, 2026), ECF No. 306 at 11. There was no "clear explanation" because there was no actual consideration.

[5] See Obj. of Off. Comm. of Unsecured Creditors, *In re Vanderbilt Mins., LLC*, No. 26-60110 (WAK) (Bankr. N.D.N.Y. Apr. 8, 2026), ECF No. 309; U.S. Trustee's Obj., *In re Vanderbilt Mins., LLC*, No. 26-60110 (WAK) (Bankr. N.D.N.Y. Apr. 8, 2026), ECF No. 306.

entered bankruptcy with a settlement agreement already negotiated, behind closed doors, by a one-man "special committee," without ever consulting the asbestos claimants or their counsel. At the settlement-approval hearing, Minerals' negotiator testified that he agreed to settle the claimants' alter ego claims for nothing because, in his view, the claims were "not valid and viable." Tr. of Cross-Exam. of B. Pickering at 160:25-161:1, *In re Vanderbilt Mins., LLC*, No. 26-60110 (WAK) (Bankr. N.D.N.Y. Apr. 16, 2026), ECF No. 466.

Minerals invoked § 544(a) to argue it had the exclusive right to assert and settle alter ego and veil-piercing claims against its non-debtor affiliates. Just three weeks after the Second Circuit issued its decision in this case, the bankruptcy court agreed. Citing the decision below, the court approved the settlement, rejecting the argument that Minerals' release of third-party claims violated this Court's decision in *Purdue*. *In re Vanderbilt Mins., LLC*, No. 26-60110 (WAK), 2026 WL 1138767, at *5-6 (Bankr. N.D.N.Y. Apr. 27, 2026), appeal filed, No. 8:26-cv-00986 (BKS) (N.D.N.Y. May 4, 2026).

The Bankruptcy Code does include mechanisms for addressing claims of the sort at issue in *Vanderbilt Minerals*. But § 544 is not one of them. For example, § 524(g) allows the establishment of an asbestos trust to compensate past and future victims. Under that provision, courts can "bar actions seeking to impose liability on a third party in circumstances in which a plaintiff might have alleged that the third party was responsible for claims against the debtor on a 'piercing the corporate veil' theory." *In re Quigley Co.*, 676 F.3d 45, 60 (2d Cir. 2012); see 11 U.S.C. § 524(g)(4)(A)(ii). But § 524(g) imposes significant guardrails. It requires, among other things, the support of seventy-five percent of the affected claimants. 11 U.S.C.

§ 524(g)(2)(B)(ii)(IV)(bb). Under *Whittaker* and the Second Circuit's decision in this case, no such approval is required. The debtor needs only the agreement of its own affiliates.

### B. The Second and Third Circuits' Decisions Threaten Constitutionally Protected Rights

By giving debtors control over tort victims' personal-injury claims against the debtor's solvent alter egos or successors, the decisions in *Whittaker* and this case effectively confiscate the victims' property, handing it over to their adversary in litigation. That upends the Bankruptcy Code's balance of federal and state law and implicates a host of constitutional concerns.

"Property interests are created and defined by state law." *Butner* v. *United States*, 440 U.S. 48, 55 (1979). "[T]here is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." *Ibid.* To the contrary, "[u]niform treatment of property interests by both state and federal courts within a State serves to reduce uncertainty, to discourage forum shopping, and to prevent a party from receiving 'a windfall merely by reason of the happenstance of bankruptcy.'" *Ibid.*

The rules that now govern in the Second and Third Circuits do the opposite. They *increase* uncertainty for tort claimants by raising the possibility that tortfeasors could seize control of and dispose of claims against them without consultation or consideration. They *encourage* forum shopping, giving tortfeasors a devastating advantage in federal bankruptcy courts the tortfeasors could never enjoy in state trial courts. And they *promise* a windfall for tortfeasors who effect the kind of restructuring that created the debtors in *Whittaker* and *Vanderbilt Minerals*.

That creates problems of constitutional proportions. A cause of action is a constitutionally recognized property interest. See *Phillips Petroleum Co.* v. *Shutts*, 472 U.S. 797, 807 (1985); *Logan* v. *Zimmerman Brush Co.*, 455 U.S. 422, 428 (1982). Yet the interpretation of § 544 below, and of § 541 in *Whittaker*, effectively permits debtors to confiscate causes of action from tort claimants without notice or opportunity to contest the deprivation. Worse, by allowing the kinds of collusive settlements approved in *Whittaker* and *Vanderbilt Minerals*, the Second and Third Circuits undermine tort claimants' Seventh Amendment jury-trial rights. That is particularly perverse given that Congress enacted a statute *specifically* providing that the Bankruptcy Code does "not affect any right to trial by jury that an individual has under applicable nonbankruptcy law with regard to a personal injury or wrongful death tort claim." 28 U.S.C. § 1411(a). Review is warranted.

## III. The Decision Below Is Wrong

The decision below and in *Whittaker* do not merely threaten to deprive tort claimants of their rights. They are also incorrect.

**A.** Nothing in § 544(a) suggests Congress intended to give trustees plenary authority to litigate or settle claims seeking redress against third parties for injuries *the debtor* itself inflicted *on creditors*. To the contrary, by its own terms, § 544(a) vests a trustee with the "rights and powers" of a hypothetical creditor that "extend[ed] credit to the debtor" and thereby obtained a priority interest in the debtor's property. 11 U.S.C. § 544(a)(1)-(2); see *Merit Mgmt. Grp., LP* v. *FTI Consulting, Inc.*, 583 U.S. 366, 371 (2018) (§ 544(a) "set[s] out circumstances under which a trustee can avoid unrecorded liens and conveyances"). The provision's purpose is to "cut off unperfected security interests, secret liens[,] and undisclosed prepetition claims

against *the debtor's property* as of the commencement of the case." 5 Collier on Bankruptcy ¶544.02[2] (16th ed.) (emphasis added).

The Second Circuit asserted that veil-piercing claims fall within the trustee's §544(a) authority because they "enlarge the size of the bankruptcy estate for all creditors." Pet. App. 14a. In the court's view, that was sufficient to treat any assets the trustee recovered as "'corporate assets.'" *Id.* at 12a. As the Seventh Circuit observed in *Steinberg*, that reasoning is "perfectly circular." 40 F.3d at 892. That all creditors may *benefit* from making a third party's assets available to satisfy their claims against the bankruptcy estate does not mean those assets *belong* to the estate.

That points to a related problem: The Second Circuit simply declared—apparently as a matter of federal common law—that assets recovered from a non-debtor third party under a veil-piercing theory belong to the debtor's estate. Pet. App. 14a-15a. That violates the "'basic federal rule'" that *state* law governs property rights in bankruptcy. *Raleigh* v. *Ill. Dep't of Revenue*, 530 U.S. 15, 20 (2000); see *Butner*, 440 U.S. at 55. The Second Circuit observed that state law permits creditors to pierce the veil of corporate debtors. Pet. App. 10a-11a. But that is only the first step of the analysis. Although the court of appeals referred to veil-piercing "claims," *id.* at 14a, doctrines like veil piercing are not causes of action. They are "'means of imposing liability on an underlying cause of action.'" *Peacock* v. *Thomas*, 516 U.S. 349, 354 (1996).[6] Without

[6] See, *e.g.*, *Crosse* v. *BCBSD, Inc.*, 836 A.2d 492, 497 (Del. 2003) (veil piercing is a means to hold third parties "directly liable" for corporation's misconduct); *Morris* v. *N.Y. State Dep't of Tax'n & Fin.*, 623 N.E.2d 1157, 1160 (N.Y. 1993) (piercing "the corporate veil does not constitute a cause of action independent of that against the corpora-

identifying the party with rights to the underlying cause of action under state law, it is impossible to determine who is entitled to recover.

In some cases, the party entitled to recover *might* be the debtor's estate. For example, creditors sometimes bring derivative actions—suits that belong to the corporation but the corporation refuses to assert—against corporate directors; such actions may invoke veil-piercing theories to recover pilfered assets. State law generally holds that such claims and any resulting recovery belong to the corporation. See *Ross* v. *Bernhard*, 396 U.S. 531, 538 (1970). But where a tort claimant seeks to pierce the corporate veil to recover damages for harms the corporation inflicted on her, and to recover from potentially liable third parties, the underlying cause of action and any resulting proceeds belong to the injured *claimant* under state law. Yet the Second Circuit draws no distinction between alter ego or veil-piercing theories based on claims that belong to the debtor and those that belong to the creditors alone.

**B.** *Whittaker* suffers from the same defects, just under §541, rather than §544. Section 541 addresses "property of the estate," which means the "legal [and] equitable interests *of the debtor*." 11 U.S.C. §541(a)(1) (emphasis added). But the *Whittaker* decision disregards whether, before bankruptcy, the debtor could have asserted the cause of action on its own behalf. To the contrary, *Whittaker* treats the debtor's ability to assert a claim under state law as "sufficient" but "not necessary." 176

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tion" but a means "to impose the corporate obligation on its owners"). Exacerbating this confusion, some courts use "claim" to refer to rights to payment under the Bankruptcy Code. See, *e.g.*, *In re Nordlicht*, 115 F.4th 90, 110-111 (2d Cir. 2024) (citing *Morris* to hold that "an alter-ego theory of liability is a claim" under 11 U.S.C. §101(5)).

F.4th at 264-265 & n.21. It thus effectively transfers the claimants' rights—rights *only the claimant* could assert outside of bankruptcy—to the debtor, the claimants' opponent in litigation.

That is not merely profoundly counter-textual: It converts a provision addressing the treatment and recovery of "property of the estate" into a provision that converts *other* people's property into the estate's property. It is indifferent to the predominant role of state law in defining property rights under *Butner*, 440 U.S. at 55. It effectively overturns the result in *Caplin* with no "clear indication" Congress intended to depart from that rule. *Davenport*, 495 U.S. at 563; p. 10 n.3 *supra*. And it transfers control over injured parties' causes of action to their adversaries, allowing the very entities that harmed them to extinguish their claims and constitutionally protected jury-trial right without their consent. If Congress had intended that result, it would have said so. But § 541 does not even hint at such a result.

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As this Court recognized just two Terms ago in *Purdue*, whether trustees or debtors-in-possession may use the Bankruptcy Code to resolve tort claims without the injured claimants' consent is an issue of surpassing importance. The petitions in *Whittaker* and this case concern two alternative paths—§§ 541(a)(1) and 544(a)—to the same, fundamentally atextual and inequitable result the Court rejected in *Purdue*. Both petitions are suitable vehicles. They cleanly present the questions for review.

This Court nonetheless may wish to grant the petition in *Whittaker*, hold this petition pending decision in that case, and dispose of this petition in light of its decision in *Whittaker* as an alternative to granting review in both

cases. *Whittaker* would allow the Court to put an end to both workarounds at once. The bankruptcy court in *Whittaker* expressly held that § 544(a) provided an independent alternative source of authority, in addition to § 541, for the debtors' release of the claimants' causes of action. See 176 F.4th at 253. Although the Third Circuit found it unnecessary to reach the issue given its ruling under § 541(a)(1), the parties' appeal briefs addressed the applicability of § 544. See *id.* at 253 n.5. The issue thus was pressed and is properly presented for this Court's review.

The reasoning of the Third Circuit's decision also overlaps with the Second Circuit's reasoning in this case. In *Whittaker*, the Third Circuit held that talc claimants' successor-liability claims were "property of the estate" under § 541(a)(1) because the "'factual allegations'" on which their "theory of liability" depends are not "'unique to'" specific creditors and because recovery would "'benefit all creditors.'" 176 F.4th at 263; see *id.* at 265. That is essentially the same reasoning the Second Circuit applied under § 544 here. The Second Circuit held below that a claim seeks to "'recover corporate assets'" within the scope of § 544(a) when it invokes a theory of liability that could be asserted "by any creditor" and for the "'benefit of all creditors'"—regardless of who would be entitled to assert and recover on the underlying cause of action under state law. Pet. App. 12a-13a.

Consequently, a decision of this Court in *Whittaker* may well resolve both cases. If the Court, for example, held that a cause of action cannot be "property of the estate" under § 541(a)(1) unless it could be brought by the debtor on its own behalf under state law, that would necessarily undermine the Second Circuit's rationale in this case. If state-law rights in the underlying cause of action and resulting recovery determine whether a claim is property

of the estate, then the hypothetical availability of further liability theories cannot determine whether a claim implicates estate assets.

*Whittaker*'s facts vividly illustrate the problem with the reasoning embraced by the courts in both cases. Although the Second Circuit's rationale in this case is wrong and deeply problematic, the underlying facts here may be thought to resemble an action to compel delivery of estate property under the Bankruptcy Code's turnover provision, 11 U.S.C. § 542; one might re-imagine this as an action by the estate to recover property (the yacht but not the Pomeranian) that rightfully belongs to it. For that reason, § 544(a) may not have been necessary to the result below, and the Court may find itself confronted by an unrelated (and uncertworthy) alternative rationale for affirmance—that § 542 allows the trustee to seek recovery of the yacht and other property held by the supposed alter ego.[7] To be sure, this case is an entirely suitable vehicle. The mere possibility of alternative rationales for affirmance is no barrier; such alternatives can be addressed or left for the court of appeals following any remand. But such considerations may weigh in the Court's determination of whether to grant review just in *Whittaker* or in both cases.

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[7] Respondent's second counterclaim—the only claim relevant here—sought a determination that all property held by petitioner HK USA was "property of the estate" under § 541 and demanded its delivery under § 542. Pet. App. 87a-88a. The bankruptcy court invoked § 544 in concluding that respondent had standing to pursue that action. *Id.* at 53a. It is not clear why that was necessary given that trustees unquestionably have standing to enforce § 542 as the estate's representative under 11 U.S.C. § 323. See *Est. of Spirtos* v. *One San Bernardino Cnty. Super. Ct. Case Numbered SPR 02211*, 443 F.3d 1172, 1175-1176 (9th Cir. 2006) (describing consensus among Second, Fourth, Fifth, Sixth, Eighth, and Eleventh Circuits).

## CONCLUSION

The petition should be granted or, in the alternative, held pending this Court's decision in No. 26-263, *Official Committee of Talc Claimants* v. *Whittaker, Clark & Daniels, Inc.*, and disposed of in light of the Court's decision in that case.

Respectfully submitted.

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