No. 11-1229

In The Supreme Court of the United States

MICHIGAN WORKERS' COMPENSATION INSURANCE AGENCY and MICHIGAN FUNDS ADMINISTRATION,

Petitioners,

v.

ACE AMERICAN INSURANCE COMPANY, PACIFIC EMPLOYERS INSURANCE COMPANY, and DPH HOLDINGS CORP.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

DPH HOLDINGS CORP.'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440 (2004), the Court held that a state's sovereign immunity did not bar an adversary proceeding that fell within a bankruptcy court's *in rem* jurisdiction over a debtor's property and estate. In *Central Virginia Community College v. Katz*, 546 U.S. 356 (2006), it reached the same conclusion with respect to an adversary proceeding that was ancillary to or necessary to effectuate that *in rem* jurisdiction. The question presented is whether *Hood* and *Katz* cover an adversary proceeding that (i) seeks an adjudication of rights under insurance policies that are property of a debtor's estate and (ii) is a necessary step in the process of allowing or disallowing parties' administrative claims against the debtor under 11 U.S.C. § 503.

PARTIES

The State of Michigan Workers' Compensation Agency and the State of Michigan Funds Administration (the "Michigan Petitioners") are petitioners and were defendants-appellants in the court of appeals.

ACE American Insurance Company and Pacific Employers Insurance Company (the "Insurers") are respondents and were plaintiffs-appellees in the court of appeals.

DPH Holdings Corp. ("DPH Holdings"), formerly known as Delphi Corporation, is a respondent and was a defendant-appellee in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

DPH Holdings has no parent corporation and no publicly held company owns 10% or more of its stock.

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JURISDICTION

The United States Court of Appeals for the Second Circuit entered its summary order in this case on November 29, 2011. App. 1a-9a.[1] The Michigan Petitioners filed a petition for panel rehearing on December 13, 2011, within the applicable 14-day period under Fed. R. App. P. 40(a)(1). 2d Cir. Docket No. 119.[2] The court of appeals entered an order denying the petition on January 12, 2012. 2d Cir. Docket No. 122. The Michigan Defendants filed their petition for a writ of certiorari on April 11, 2012, within the applicable 90-day period under S. Ct. R. 13.1 and 13.3. The statutory basis for this Court's jurisdiction is 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

The Adversary Proceeding

DPH Holdings, formerly known as Delphi Corporation, was an automotive-parts supplier headquartered in Michigan. Michigan employers must secure the payment of compensation under the Michigan Worker's Disability Compensation Act of 1969, as amended (the "Act"), by receiving authorization from the director of the Michigan Workers' Compensation

[1] Citations to App. ___a refer to the appendix to the Michigan Petitioners' petition for writ of certiorari.

[2] Citations to 2d Cir. Docket No. ___ refer to documents that appear on the Second Circuit's docket in this case.

Agency to be a self-insurer or by obtaining insurance from an insurer authorized to transact the business of worker's compensation insurance in Michigan. Mich. Comp. Laws § 418.611(1). It is undisputed that DPH Holdings was a self-insurer at all relevant times. The Michigan Petitioners have nonetheless asserted that DPH Holdings had full worker's compensation coverage under certain insurance policies issued by the Insurers.

In October 2009, the Insurers commenced an adversary proceeding against DPH Holdings and the Michigan Petitioners within DPH Holdings' bankruptcy case under chapter 11 of title 11 of the United States Code.[3] App. A-77–A-89.[4] In their three-count complaint, the Insurers asked the United States Bankruptcy Court for the Southern District of New York to determine whether and to what extent the insurance policies provide coverage for payments due under the Act. App. A-78. The first and second counts seek declaratory judgments concerning the coverage provided under sets of policies known as the deductible policies and the retention policies. App. A-10–A-12. The third asserts a claim in the alternative for reformation of the deductible policies. App. A-12.

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[3] DPH Holdings and certain of its affiliates filed voluntary petitions under chapter 11 in October 2005.

[4] Citations to App. A-___ refer to the joint appendix filed with the Second Circuit in this case.

The Relationship Between The Adversary Proceeding And The Allowance Or Disallowance Of Administrative Claims Against DPH Holdings

In July 2009, the Michigan Self-Insurers' Security Fund (the "Fund") – which is part of the Michigan Funds Administration, one of the Michigan Petitioners – filed with the bankruptcy court a contingent administrative claim against DPH Holdings in the estimated amount of $5.6 million. App. A-723–A-732. Under the Act, the Fund makes payments to employees and dependents of employees of insolvent self-insured employers under certain circumstances. Mich. Comp. Laws § 418.537. When the Fund makes payments, it has a right to reimbursement from the employer. *Id.* § 418.553.

The Fund's claim against DPH Holdings is based on that right to reimbursement. App. A-723–A-732. The Michigan Funds Administration has described the Fund as the payor of last resort. App. A-419:22–A-420:3. Thus, to the extent that the insurance policies at issue in the adversary proceeding provide coverage for payments under the Act, the Fund will not make payments, and its claim against DPH Holdings will be disallowed under 11 U.S.C. § 503. Indeed, the Michigan Funds Administration has acknowledged that, insofar as the policies provide coverage, the Fund's claim against DPH Holdings "will disappear." App. A-420:4–A-420:7.

In November 2009, the Insurers filed contingent administrative claims against DPH Holdings in the

estimated aggregate amount of $67.3 million. App. A-842–A-891. The Insurers' claims are based on their contractual rights to reimbursement under the so-called deductible policies. App. A-842–A-891. If the deductible policies do not provide coverage, then the Insurers will not make payments under the deductible policies, and their claims against DPH Holdings will be disallowed under 11 U.S.C. § 503.

Under 11 U.S.C. § 1129(a)(9) and DPH Holdings' modified plan of reorganization, allowed administrative claims must be paid in cash and in full unless the holder of the claim agrees to other treatment. App. A-758, A-784–A-785. As a result, the allowance or disallowance of the Fund's $5.6 million claim and the Insurers' $67.3 million claim will have a substantial impact on the amount of cash available for distribution to DPH Holdings' creditors.

The Relationship Between The Insurance Policies And The Forms 400

As mentioned above, the Michigan Petitioners have asserted that the Insurers are liable under the insurance policies at issue in the adversary proceeding. They have also asserted that the Insurers are liable because they filed with the Michigan Workers' Compensation Agency, one of the Michigan Petitioners, certain notices known as Forms 400. The Insurers' complaint in the adversary proceeding is limited to the policies, and does not ask the bankruptcy court to determine whether the Insurers are liable under the Forms 400. App. A-77–A-89.

The Insurers have taken the position that they cannot be liable unless the insurance policies provide coverage. Under that view, a ruling in their favor in the adversary proceeding will provide them with a defense to the Michigan Petitioners' assertion that they are liable under the Forms 400. In that sense, the question whether the Insurers are liable under the policies is related to the separate question whether they are liable under the Forms 400.

The Michigan Petitioners' Amended Motion To Dismiss

In December 2009, the Michigan Petitioners filed an amended motion to dismiss the Insurers' complaint in the adversary proceeding. App. A-302–A-307. The Michigan Petitioners argued that, among other things, they were not subject to the proceeding based on state sovereign immunity. The bankruptcy court denied the motion in January 2010, ruling that, among other things, the Michigan Petitioners do not have a valid immunity defense based on *Tennessee Student Assistance Corp v. Hood*, 541 U.S. 440 (2004), and *Central Virginia Community College v. Katz*, 546 U.S. 356 (2006). App. 40a-82a.

The United States District Court for the Southern District of New York affirmed that ruling in September 2010.[5] App. 10a-34a. The United States

[5] The Michigan Petitioners had the right to take an immediate appeal from the bankruptcy court's sovereign-immunity

(Continued on following page)

Court of Appeals for the Second Circuit affirmed the district court's decision in a summary order entered in November 2011, App. 1a-9a, and denied the Michigan Petitioners' petition for a panel rehearing in January 2012, 2d Cir. Docket No. 122. The Michigan Petitioners filed their petition for a writ of certiorari on April 11, 2012.

ARGUMENT

I. THE COURT SHOULD DENY THE PETITION INSOFAR AS IT ADDRESSES THE BANKRUPTCY COURT'S AUTHORITY TO DETERMINE WHETHER THE INSURERS ARE LIABLE UNDER THE FORMS 400 BECAUSE THAT QUESTION IS NOT PRESENTED HERE.

At each stage of the litigation of their amended motion to dismiss, the Michigan Petitioners have argued that sovereign immunity precludes the bankruptcy court from determining whether the Insurers are liable under the Forms 400. Indeed, it seems that obtaining a favorable ruling on that question has been the Michigan Petitioners' primary goal throughout the litigation. Consistent with that goal, a substantial part of the petition is directed toward the Michigan Petitioners' request that the Court review

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ruling under the collateral-order doctrine. *See Puerto Rico Aqueduct & Sewer Auth. v. Metcalf & Eddy, Inc.*, 506 U.S. 139, 147 (1993).

whether the bankruptcy court has the authority to determine the Insurers' potential liability under the Forms 400.

The problem with that request is that the Insurers' complaint is limited to whether the Insurers are liable under the insurance policies. As a result, in ruling against the Michigan Petitioners on their amended motion to dismiss, the Second Circuit did not decide whether the bankruptcy court has the authority to determine whether the Insurers are liable under the Forms 400. Neither did the district court or the bankruptcy court. In fact, the courts below went out of their way to explain to the Michigan Petitioners that their motion did not properly present the question they are now asking the Court to review. To the extent the petition addresses that question, it is frivolous and should be denied.

A. The Insurers' Complaint Does Not Ask The Bankruptcy Court To Determine Whether The Insurers Are Liable Under The Forms 400.

On its face, the complaint is limited to the Insurers' potential liability under the insurance policies. App. A-77–A-89. The opening paragraph of the complaint states, "This is an action to confirm the scope of insurance coverage for workers' compensation claims under certain multi-state insurance policies . . . issued by [the Insurers] to certain of the debtors and debtors in possession in this chapter 11 case." App. A-78. In line with that statement of purpose, the

insurance policies are the sole focus of the three claims pleaded in the complaint. The first and second claims seek declaratory judgments concerning the coverage provided under the insurance policies. App. A-10–A-12. The third requests reformation of the so-called deductible policies under certain circumstances. App. A-12. The complaint does not mention the Forms 400.

B. The Courts Below Did Not Decide Whether The Bankruptcy Court Has The Authority To Determine Whether The Insurers Are Liable Under The Forms 400.

The petition arises from the Michigan Petitioners' amended motion to dismiss. In their presentations to the bankruptcy court, the district court, and the court of appeals, the Michigan Petitioners stressed their argument that the bankruptcy court lacks the authority to determine whether the Insurers are liable under the Forms 400. In connection with that argument, each court observed that the Insurers' complaint does not ask the bankruptcy court to make that determination. App. 7a-8a, 9a n.2, 16a n.4, 20a; *see* Bankr. S.D.N.Y. Docket No. 107 at 22:21-22:24, 23:18-24:19, 26:8-27:1, 27:25-28:6.[6] And as a result each court declined to decide whether the

[6] Citations to Bankr. S.D.N.Y. Docket No. ___ refer to documents that appear on the bankruptcy court's docket in the adversary proceeding.

bankruptcy court has the authority to make that determination. App. 7a-8a, 9a n.2, 16a n.4, 20a; *see* Bankr. S.D.N.Y. Docket No. 107 at 22:21-22:24, 23:18-24:19, 26:8-27:1, 27:25-28:6.

The Second Circuit's decision is most relevant here because that is the decision subject to the Court's review. As an initial matter, the Second Circuit recognized that the complaint concerns the Insurers' potential liability under the insurance policies, not the Forms 400. The Second Circuit addressed that point as follows:

> The Michigan Defendants' argue that the adversary proceeding is only nominally about the insurance contracts and is actually about whether the Insurers are liable under Michigan law for filing Form 400 Notices of coverage. We disagree. As the District Court and the Bankruptcy Court concluded, the dispute at issue in the adversary proceeding is one sounding in contract. The adversary complaint makes clear that the proceeding is focused on the parties' responsibilities under the contracts. . . . There is no Form-400 based claim in the Insurers' adversary complaint.

App. 7a-8a.

The Second Circuit also recognized that, in light of the limited nature of the complaint, the Michigan Petitioners' amended motion to dismiss and subsequent appeals do not implicate the question whether the bankruptcy court has the authority to determine

the Insurers' potential liability under the Forms 400. In that regard, the Second Circuit observed that that potential liability "ultimately bears on the merits of whether the Insurers are liable *apart from their contractual obligations, which is not the question before us on collateral review of the District Court's denial of the motion to dismiss the adversary complaint*."[7] App. 8a (emphasis added).

In an apparent effort to eliminate any doubt as to the scope of its ruling, the Second Circuit stated that "[t]his decision is limited to the matters before us," and went on to explain that:

> *We express no view and render no decision* as to whether the Bankruptcy Court has jurisdiction over any claim or challenge to the liability of the Insurers for filing the Form 400 Notices. Likewise, *we express no view and render no decision* as to whether resolution of any such claim brought in federal court against the Michigan Defendants would invade their sovereign immunity.

App. 9a n.2 (emphasis added).

As demonstrated above, the Insurers' complaint does not ask the bankruptcy court to determine

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[7] Strictly speaking, the bankruptcy court denied the Michigan Petitioners' amended motion to dismiss, and the Second Circuit reviewed the district court's decision affirming the bankruptcy court's order. Those technical distinctions do not affect the thrust of the Second Circuit's observation.

whether the Insurers are liable under the Forms 400, and neither the Second Circuit, the district court, nor the bankruptcy court decided whether the bankruptcy court has the authority to make that determination. Ignoring all of that, the Michigan Petitioners would have the Court exercise its certiorari jurisdiction over a question that was not properly presented and was not decided in the courts below. In making that request, they have once again caused the other parties and the judiciary to waste resources addressing an issue that is invisible to everyone but the Michigan Petitioners. To the extent the petition relates to the Forms 400, it should be denied.

II. THE COURT SHOULD DENY THE PETITION INSOFAR AS IT ADDRESSES THE BANKRUPTCY COURT'S AUTHORITY TO DETERMINE WHETHER THE INSURERS ARE LIABLE UNDER THE INSURANCE POLICIES BECAUSE THERE IS NO COMPELLING REASON TO REVIEW THE SECOND CIRCUIT'S DECISION OF THAT QUESTION.

In addition to their request concerning the Forms 400, the Michigan Petitioners urge the Court to review whether sovereign immunity bars the bankruptcy court from determining the Insurers potential liability under the insurance policies. The Second Circuit (and the district and bankruptcy courts) considered that question and decided that the Michigan Petitioners do not have a valid immunity defense

under *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440 (2004), and *Central Virginia Community College v. Katz*, 546 U.S. 356 (2006). The Court should deny the petition insofar as it relates to that decision because there is no "compelling reason" justifying further review, as required under S. Ct. R. 10.

A. The Second Circuit's Decision Does Not Conflict With The Decision Of Another Court Of Appeals Or A State Court Of Last Resort.

One of the considerations governing review on certiorari is whether "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter" or "has decided an important federal question in a way that conflicts with a decision by a state court of last resort." S. Ct. R. 10(a). Along those lines, the Court has explained that "[a] principal purpose for which we use our certiorari jurisdiction . . . is to resolve conflicts among the United States courts of appeals and state courts concerning the meaning of provisions of federal law." *Braxton v. United States*, 500 U.S. 344, 347 (1991).

The Michigan Petitioners cannot point to any such conflict here. Indeed, the Michigan Petitioners do not even allege that the Second Circuit's decision on sovereign immunity is inconsistent with any decision by any other court of appeals or state court of

last resort. The absence of a conflict weighs heavily against the petition.

B. This Case Does Not Call For An Exercise Of The Court's Supervisory Power.

Another consideration governing certiorari review is whether a "United States court of appeals . . . has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power." S. Ct. R. 10(a). The Michigan Petitioners do not invoke the Court's supervisory power in their petition and there is no basis for doing so under the circumstances of this case. This weighs against the petition as well.

C. The Second Circuit Did Not Decide An Important Question Of Federal Law That Has Not Been, But Should Be, Settled By The Court.

In ruling on the petition, the Court may also consider whether the court of appeals "has decided an important question of federal law that has not been, but should be, settled by this Court." S. Ct. R. 10(c). Although the Michigan Petitioners make a number of arguments relating to this consideration, those arguments fail on several grounds.

First and foremost, as discussed in more detail in Part II.D below, the Second Circuit's decision on sovereign immunity involved a straightforward

application of *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440 (2004), and *Central Virginia Community College v. Katz*, 546 U.S. 356 (2006). The decision was based on points of federal law that were settled by the Court in those cases.

Second, while the Michigan Petitioners point out that the bankruptcy and district courts' sovereign-immunity rulings were subject to immediate appeal under the collateral-order doctrine, that does not mean that the Second Circuit's ruling qualifies for review by this Court. The collateral-order doctrine concerns appeals as of right from bankruptcy courts to district courts under 28 U.S.C. § 158(a)(1) and from district courts to courts of appeals under 28 U.S.C. § 1291. It is not a recognized ground for granting discretionary review under 28 U.S.C. § 1254(1). In addition, the considerations relevant to whether a decision falls within the collateral-order doctrine – whether the decision is conclusive, resolves important questions separate from the merits, and is effectively unreviewable on appeal from final judgment, *Mohawk Indus., Inc. v. Carpenter*, 130 S. Ct. 599, 605 (2009) – are completely different from those relevant to deciding a certiorari petition.

Furthermore, although the Michigan Petitioners suggest that there is a great need for further guidance from the Court concerning sovereign immunity in the bankruptcy context, the truth is that *Hood* and *Katz* have generated fairly little activity in the appellate courts. For example, according to statistics compiled by the Administrative Office of the United

States Courts, there have been at least 480,000 bankruptcy filings in the Second Circuit since this Court decided *Hood* in May 2004.[8] Yet until this case, the Second Circuit never had occasion to rule on a sovereign-immunity issue under *Hood* or *Katz*.[9] The

[8] As of this writing, the statistics referenced here are available online at http://www.uscourts.gov/statistics/bankruptcystatistics.aspx. The AO statistics show 480,000 filings from July 1, 2004, through June 30, 2011. The filings for subsequent periods have not been posted.

[9] Aside from this case, the Second Circuit has cited *Hood*, *Katz*, or both in 11 decisions. *See A.Q.C. ex rel. Castillo v. United States*, 656 F.3d 135, 140 n.2 (2d Cir. 2011) (citing *Katz*); *Willis Mgmt. (Vt.), Ltd. v. United States*, 652 F.3d 236, 243 (2d Cir. 2011) (*Katz*); *In re Lehman Bros. Mortgage-Backed Sec. Litig.*, 650 F.3d 167, 180 (2d Cir. 2011) (*Katz*); *Johns-Manville Corp. v. Chubb Indem. Ins. Co.* (*In re Johns-Manville Corp.*), 600 F.3d 135, 152 (2d Cir. 2010) (per curiam) (*Hood*); *Wong ex rel. Wong v. Doar*, 571 F.3d 247, 257 (2d Cir. 2009) (*Katz*); *Martinez v. Mukasey*, 551 F.3d 113, 121 n.10 (2d Cir. 2008) (*Katz*); *Khulumani v. Barclay Nat'l Bank Ltd.*, 504 F.3d 254, 261 n.9 (2d Cir. 2007) (per curiam) (*Katz*); *Deposit Ins. Agency v. Superintendent of Banks of N.Y.* (*In re Deposit Ins. Agency*), 482 F.3d 612, 617-18 (2d Cir. 2007) (*Hood* and *Katz*); *Whelton v. Educ. Credit Mgmt. Corp.*, 432 F.3d 150, 153, 155-56 (2d Cir. 2005) (*Hood*); *Gies, LLC v. Juno Online Servs., Inc.* (*In re Smart World Techs., LLC*), 423 F.3d 166, 180-81 & n.24 (2d Cir. 2005) (*Hood*); *Universal Oil Ltd. v. Allfirst Bank* (*In re Millenium Seacarriers, Inc.*), 419 F.3d 83, 92, 101 (2d Cir. 2005) (*Hood*). In all but one of the cases, the citation did not relate to sovereign immunity. In the remaining case, the Second Circuit briefly discussed *Hood* and *Katz* before deciding the case on other grounds. *See Deposit Ins. Agency*, 482 F.3d at 618 ("We do not reach the question of whether *Katz* provides an alternate basis for our holding today because we think this case squarely resolved by the well-established doctrine set out in *Ex parte Young*.").

general dearth of decisions addressing hard or even easy questions about *Hood* and *Katz* is another indication that there is no compelling reason for the Court to address this area of the law again.

Furthermore, the Second Circuit's decision in this case took the form of a summary order. Under Second Circuit rules, "[r]ulings by summary order do not have precedential effect." 2d Cir. R. 32.1.1(a). That is because "such orders, being summary, frequently do not set out the factual background of the case in enough detail to disclose whether its facts are sufficiently similar to those of a subsequent unrelated case to make [the] summary ruling applicable to the new case." *Jackler v. Byrne*, 658 F.3d 225, 244 (2d Cir. 2011). The fact that the Second Circuit's decision will have no precedential effect in other cases further undercuts the Michigan Petitioners' assertion that the decision is important enough to warrant this Court's review.

It also shows that the Michigan Petitioners are pursuing further review not because the Second Circuit's decision will have a nationwide effect on sovereign immunity in bankruptcy cases, but rather because they have a mistaken belief that an injustice has been done in this particular case. That is not a sufficient basis for granting their petition. *See Layne & Bowler Corp. v. W. Well Works*, 261 U.S. 387, 392 (1923) (explaining that "it is very important that we be consistent in not granting the writ of certiorari except in cases involving principles the settlement of

which is of importance to the public, as distinguished from that of the parties").

D. The Second Circuit Did Not Decide An Important Federal Question In A Way That Conflicts With Relevant Decisions Of The Court.

The final consideration set forth in S. Ct. R. 10(c) looks to whether "a United States court of appeals . . . has decided an important federal question in a way that conflicts with relevant decisions of this Court." That consideration weighs against the petition because the Second Circuit's decision is consistent with *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440 (2004), and *Central Virginia Community College v. Katz*, 546 U.S. 356 (2006).

In *Hood*, the Court held that a state's sovereign immunity did not bar an adversary proceeding that fell within a bankruptcy court's *in rem* jurisdiction over a debtor's property and estate. 541 U.S. at 451. In *Katz*, it reached the same conclusion with respect to an adversary proceeding that was ancillary to or necessary to effectuate that *in rem* jurisdiction. 546 U.S. at 373, 378.

In deciding that sovereign immunity is not a valid defense to the adversary proceeding at issue here, the Second Circuit correctly identified *Hood* and *Katz* as the relevant precedents and correctly stated the governing rules from those decisions. App. 7a-9a. The Michigan Petitioners assert that the Second

Circuit erred in its application of those rules to the facts and circumstances of this case, but an alleged error of that sort is generally not a valid basis for granting a petition. *See* S. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of . . . the misapplication of a properly stated ruled of law.").

Moreover, the Second Circuit did not, in fact, err in its application of *Hood* and *Katz*. To the contrary, the Second Circuit's decision is in complete harmony with those cases. The Second Circuit determined that the adversary proceeding does not offend the Michigan Petitioners' sovereign immunity because it "is an *in rem* proceeding (or, at least, is otherwise necessary to effectuate the *in rem* jurisdiction of the Bankruptcy Court)." App. 7a. That is correct for two reasons.

First, as the Second Circuit recognized, the adversary proceeding seeks an adjudication of rights and obligations under the insurance policies issued by the Insurers. App. 8a-9a. The policies constitute property of DPH Holdings' estate. App. 8a. The bankruptcy court has exclusive *in rem* jurisdiction over that property. App. 8a; *accord Katz*, 546 U.S. at 363-64 (stating that "the exercise of exclusive jurisdiction over all of the debtor's property" is one of the "[c]ritical features of every bankruptcy proceeding"); *Hood*, 541 U.S. at 447 ("Bankruptcy courts have exclusive jurisdiction over a debtor's property, wherever located, and over the estate."). Thus, resolving the Michigan Petitioners' claim that the Insurers are liable under the policies involves the bankruptcy

court's *in rem* jurisdiction over the policies or is at least necessary to effectuate that jurisdiction. App. 8a-9a.

Second, as the Second Circuit also recognized, determining whether the Insurers are liable under the policies is a necessary step in the process of allowing or disallowing the Fund's and the Insurers' substantial administrative claims against DPH Holdings under 11 U.S.C. § 503. App. 9a. As explained earlier, if the Insurers are liable under the policies, then the Fund, the payor of last resort, will not make payments, and its $5.6 million claim for reimbursement under the Act will be disallowed. If the Insurers are *not* liable under the policies, then their $67.3 million claim for reimbursement under the policies will be disallowed. Furthermore, because DPH Holdings must pay allowed administrative claims in cash and in full (unless the claimholders agree otherwise), the allowance or disallowance of the administrative claims filed by the Fund and the Insurers will have a substantial impact on the amount of cash available for distribution to DPH Holdings' creditors.

Those are critical facts for purposes of *Hood* and *Katz* because the process of allowing or disallowing claims and the resulting distributions to creditors are at the very heart of the bankruptcy court's *in rem* jurisdiction. *See Katz*, 546 U.S. at 363-64 (stating that "the equitable distribution of [the debtor's] property among the debtor's creditors" is one of the "[c]ritical features of every bankruptcy proceeding"); *Hood*, 541 U.S. at 448 ("A bankruptcy court's *in rem*

jurisdiction permits it to determine all claims that anyone . . . has to the property or thing in question.") (internal quotation marks and brackets omitted); *Gardner v. New Jersey*, 329 U.S. 565, 574 (1947) ("The whole process of proof, allowance, and distribution is, shortly speaking, an adjudication of interests claimed in a res.").

In short, determining whether the Insurers are liable under the policies is, at minimum, necessary to effectuate the bankruptcy court's *in rem* jurisdiction because the policies are property of DPH Holdings' estate and because making that determination is a necessary step in the process of allowing or disallowing the Fund's and the Insurers' administrative claims against DPH Holdings. The Second Circuit's holding that the Michigan Petitioners do not have a valid immunity defense under these circumstances is wholly consistent with *Hood* and *Katz*.

CONCLUSION

DPH Holdings respectfully requests that the Court deny the Michigan Petitioners' petition for a writ of certiorari and enter an appropriate order under S. Ct. R. 16.3.

Respectfully submitted,

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