No. 14-71

IN THE
Supreme Court of the United States

DIACETYL PLAINTIFFS,
ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,

Petitioners,

v.

AAROMA HOLDINGS, LLC,

Respondent.

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

BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, respondent Aaroma Holdings, LLC states that it is wholly owned by a privately held corporation, Aaroma Holdco LLC, and no publicly held corporation owns 10% or more of its stock.

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INTRODUCTION

As the Third Circuit recognized, this case turns on the fundamental principle that individual "creditors lack standing to assert claims that are property of the [bankruptcy] estate." Pet. App. 7 (internal quotation omitted). Petitioners seek to pursue a state-law claim that respondent, which purchased certain assets from the debtor before the bankruptcy filing, thereby became the debtor's "mere continuation" and succeeded to all of the debtor's liabilities. Applying settled state and federal law, the Third Circuit held that this successor-liability claim against respondent—as opposed to petitioners' underlying personal-injury claims against the debtor—belongs to the bankruptcy estate.

Petitioners' challenge to that holding is primarily a challenge to the Third Circuit's interpretation of state law. In essence, petitioners contend that their putative state-law "mere continuation" claim against respondent is inextricably tied to their personal-injury claims against the debtor, so that their undisputed right to pursue the latter necessarily entails the right to pursue the former. But individual creditors cannot pursue a claim that the debtor itself can pursue for the benefit of all creditors. And, as the Third Circuit recognized, under applicable state law a corporation can pursue a freestanding successor-liability claim for the benefit of all its creditors. *See* App. 10-12 (citing *In re Keene Corp.*, 164 B.R. 844, 851-53 (Bankr. S.D.N.Y. 1994) (New York law); *In re Buildings by Jamie, Inc.*, 230 B.R. 36, 41-44 (Bankr. D.N.J. 1998) (New Jersey law)). Because the bankruptcy trustee

here was entitled to pursue such a freestanding claim, it follows that individual creditors are not.

The various circuit splits alleged by petitioners are all variations on their foundational argument that the bankruptcy trustee here had no freestanding successor-liability claim against respondent under state law. Because the Third Circuit correctly rejected that foundational argument, and this Court does not grant review to interpret state law, this case does not warrant review. Petitioners identify no conflict of authority on any question of federal law.

Contrary to petitioners' assertion, the decision below also reflects sound public policy. Petitioners remain free to pursue their individual personal-injury claims against the debtor and other alleged tortfeasors, and in fact are doing so. The decision below simply holds that a generalized successor-liability claim against respondent—which, if successful, would benefit *all* creditors—belongs to the bankruptcy estate, not individual creditors. That holding, as the Third Circuit underscored, promotes fairness by "increas[ing] the pool of assets available to all creditors," Pet. App. 13, and avoiding a race to judgment among individual creditors pursuing identical successor-liability claims. If petitioners are unhappy about the terms on which the trustee settled such a claim on behalf of the estate, their remedy is to pursue a claim against the trustee, not to pursue a claim released by the trustee.

Because petitioners fail to identify any conflict of authority on a question of federal law, or any untoward policy implications of the decision below, this Court should deny the petition.

COUNTERSTATEMENT OF THE CASE

A. Background

This dispute arises out of the bankruptcy of Emoral, Inc., a company that manufactured and sold natural and synthetic flavors and fragrances, including diacetyl, a food additive with a buttery flavor. Pet. App. 2, 28. Exposure to diacetyl has been claimed to cause personal injuries. It is undisputed that Emoral ceased manufacturing and selling diacetyl no later than 2006. *Id*. at 28.

In August 2010, after an extensive and independent sale process, respondent agreed to purchase certain assets and assume certain liabilities of Emoral. Among the liabilities excluded from the agreement were "any and all liabilities associated with the Diacetyl litigation or matters arising under the same set of operative facts." C.A. App. A1350; Pet. App. 2. Similarly, among the assets excluded from the agreement were assets related to insurance policies covering claims relating to diacetyl. Pet. App. 2. It is undisputed that respondent never manufactured or distributed products containing diacetyl, either before or after the agreement. *Id*. at 5, 28.

In June 2011, nine months after the agreement, Emoral filed a voluntary petition for liquidation under Chapter 7 of the Bankruptcy Code. *Id*. at 2, 28. Soon thereafter, the bankruptcy trustee began investigating potential claims by the estate against respondent. *Id*. at 2-3, 29. After extensive negotiations, the trustee decided to settle any and all such claims for cash and other consideration. *Id*. As part of that settlement, the trustee released respondent from any "causes of action … that are

property of the Debtor's Estate" as of the date of the agreement. *Id.* At a hearing before the bankruptcy court regarding approval of the settlement, petitioners objected to that release insofar as it might bar them from pursuing their own state-law successor-liability claims against respondent. *See id.* at 3-4. The bankruptcy court approved the settlement without resolving whether the release covered a freestanding successor-liability claim against respondent. *See id.*

Several months later, petitioners filed fifteen mirror-image lawsuits against respondent and more than thirty other defendants (plus additional John Doe defendants) in New Jersey state court. *See id.* at 4, 30. As relevant here, the complaints did not allege that respondent had ever manufactured or distributed diacetyl, or otherwise directly harmed petitioners in any way. Rather, the complaints sought to impose successor liability based *solely* on the theory that respondent was the debtor's "mere continuation" because it had "purchased all, or substantially all" of the debtor's assets. C.A. App. A1233; Pet. App. 4, 30.

B. Proceedings Below

Shortly after being served with the New Jersey lawsuits, respondent moved the bankruptcy court to enforce the settlement agreement by enjoining petitioners from pursuing their state-court "mere continuation" claims against respondent. *See* Pet App. 4, 30. The court (Gambardella, J.) denied the motion, holding that "the basis and premise of the state court actions is personal harm … to the individual plaintiffs." *Id.* at 5, 30.

Respondent appealed that decision, and the district court (Chesler, J.) reversed. *See id.* at 5, 38. As the district court explained, the bankruptcy court had "conflate[d]" petitioners' successor-liability claim against *respondent* with their underlying personal-injury claims against the *debtor*. Pet. App. 36. "[T]he potential liability of [respondent] to [petitioners] does not arise out of the alleged misfeasance of [respondent] as to these creditors individually but rather out of its alleged continuation of the general business operation of the actual alleged wrongdoer." *Id.* Because "there is nothing about [petitioners'] successor-liability claims against [respondent] that is specific to them, as opposed to any other creditor of the Estate," those claims could be brought by "any creditor … seeking to hold [respondent] liable" for the debtor's debts. *Id.* at 35-36. And because "bankruptcy law is clear that such generalized claims belong to the Estate and may only be pursued by the trustee," the court held that the "settlement agreement bars [petitioners] from pursuing their claims against [respondent]." *Id.* at 36-37.

Petitioners appealed, and the Third Circuit affirmed. "While [petitioners] focus on the individualized nature of their personal injury claims against [the debtor], we cannot ignore the fact, and fact it be, that their only theory of liability as against [respondent], a third party that is not alleged to have caused any direct injury to [petitioners], is that, as a matter of state law, [respondent] constitutes a 'mere continuation' of [the debtor] such that it has also succeeded to all of [the debtor's] liabilities." *Id.* at 8-9. As the court explained, "other courts applying New York and New Jersey law have held that state

law causes of action for successor liability … are properly characterized as property of the bankruptcy estate." *Id.* at 10. Because petitioners' generalized "mere continuation" claim is indistinguishable from a "mere continuation" claim brought by the estate, the panel concluded that the trustee alone could bring that claim for the benefit of all creditors. *Id.* Judge Cowen dissented, asserting that "[t]he successor liability theory alleged by [petitioners] is inextricably tied to—and cannot be considered separate or apart from—their underlying personal injury and product liability allegations." *Id.* at 18.

The Third Circuit subsequently denied a petition for rehearing. *Id.* at 84. Petitioners now seek this Court's review.

REASONS FOR DENYING THE PETITION

I. The Decision Below Is Correct.

The Third Circuit correctly held that petitioners' state-law successor-liability claim, which alleges that respondent is the debtor's "mere continuation," belonged to the bankruptcy estate, not to any individual creditor. As the Third Circuit explained, "[t]he basic legal framework applicable in this case is not in dispute." Pet. App. 7. Under settled law, "[a] cause of action is considered property of the estate if the claim existed at the commencement of the filing and the debtor could have asserted the claim on his own behalf under state law." *Board of Trs. of Teamsters Local 863 Pension Fund v. Foodtown, Inc.*, 296 F.3d 164, 169 n.5 (3d Cir. 2002); *see generally Butner v. United States*, 440 U.S. 48, 55 (1979) ("Property interests are created and defined by state law."); 11 U.S.C. § 541(a)(1) (bankruptcy estate comprised of "all legal or equitable interests of the

debtor in property as of the commencement of the case"). The resulting analysis is thus a hybrid of federal and state law: federal law assigns the estate whatever underlying property interests existed under state law at the time of the bankruptcy filing.

The key question here, thus, is whether the debtor was entitled to bring a freestanding successor-liability claim against respondent under state law at the time it filed for bankruptcy. As the Third Circuit recognized, the answer to that question under both New York and New Jersey law is "yes." *See* Pet. App. 10-11 (citing *Keene Corp.*, 164 B.R. at 848-49, 853, and *Buildings by Jamie*, 230 B.R. at 43-44).[1] Whereas each individual creditor's underlying claim against the debtor is necessarily individualized, the same is not invariably true of a successor-liability claim. Rather, a successor-liability claim may seek to hold the alleged successor liable for *all* of the debtor's liabilities to *all* of its creditors on grounds that are not unique to any individual creditor. Both New York and New Jersey allow corporations to pursue such generalized successor-liability claims for the benefit of all creditors to forestall a race to the courthouse among individual creditors seeking to pursue the same claim. *See, e.g.*, *Keene Corp.*, 164 B.R. at 848-49, 853; *Buildings by Jamie*, 230 B.R. at 43-44. While "it 'may seem strange'" to allow a corporation to pursue a freestanding successor-liability claim, Pet. App. 12 (quoting *Phar-Mor, Inc.*

[1] "There is no dispute that either New Jersey or New York law applies and that the two states' relevant applicable legal standards are identical, rendering a choice-of-law analysis unnecessary." Pet. App. 9 n.2.

v. Coopers & Lybrand, 22 F.3d 1228, 1240 n.20 (3d Cir. 1994)), "the purpose of successor liability is to promote equity and avoid unfairness, and it is not incompatible with that purpose for a trustee, on behalf of a debtor corporation, to pursue that claim," Pet. App. 13.

As the Third Circuit recognized, the state-law "mere continuation" claim at issue here is precisely such a generalized successor-liability claim. Indeed, all fifteen petitioners here pleaded such a claim in *identical* terms in their individual state-court lawsuits, generically alleging that respondent is the debtor's "mere continuation" because it "purchased all, or substantially all" of the debtor's assets. C.A. App. A1233. Thus, as the Third Circuit explained, "[a]s in *Keene Corp.* and *Buildings by Jamie*, [petitioners'] cause of action against [respondent] would be based on facts generally available to any creditor, and recovery would serve to increase the pool of assets available to all creditors." Pet. App. 13.

New York and New Jersey are hardly alone in allowing corporations to pursue generalized successor-liability claims for the benefit of all their creditors. To the contrary, most States allow corporations to pursue such claims. *See*, *e.g.*, *Baillie Lumber Co. v. Thompson*, 413 F.3d 1293, 1295 (11th Cir. 2005) (Georgia law); *St. Paul Fire & Marine Ins. Co. v. PepsiCo, Inc.*, 884 F.2d 688, 703-04 (2d Cir. 1989) (Ohio law); *Steyr-Daimler-Puch of Am. Corp. v. Pappas*, 852 F.2d 132, 135-36 (4th Cir. 1988) (Virginia law); *Koch Refining v. Farmers Union Cent. Exch., Inc.*, 831 F.2d 1339, 1344-46 (7th Cir. 1987) (Indiana and Illinois law); *In re S.I. Acquisition, Inc.*,

817 F.2d 1142, 1152-53 (5th Cir. 1987) (Texas law); *In re Kaiser*, 791 F.2d 73, 75-76 (7th Cir. 1986) (Wisconsin law); *Murray v. Miner*, 876 F. Supp. 512, 516-17 (S.D.N.Y. 1995) (Delaware law), *aff'd*, 74 F.3d 402 (2d Cir. 1996). There is thus no basis in law or logic for petitioners' assertion that successor-liability claims are, by their very nature, "'inextricably tied to—and cannot be considered separate or apart from—[an individual creditor's] underlying personal injury and product liability allegations.'" Pet. 14 (quoting Pet. App. 18 (Cowen, J., dissenting)).

To be sure, state law on this score is not unanimous. In particular, California, Arkansas, and Michigan do not allow corporations to pursue freestanding successor-liability claims. *See Ahcom, Ltd. v. Smeding*, 623 F.3d 1248, 1251-52 (9th Cir. 2010) (California law); *In re Ozark Rest. Equip. Co.*, 816 F.2d 1222, 1225-26 & n.7 (8th Cir. 1987) (Arkansas law); *RDM Holdings, Ltd. v. Continental Plastics Co.*, 762 N.W.2d 529, 545 (Mich. Ct. App. 2008) (Michigan law). In our federal system, however, there is nothing unusual or untoward about different States adopting different rules of law. No one suggests that California, Arkansas, or Michigan law applies here, so those cases are inapposite.

The petition nonetheless criticizes the Third Circuit's analysis of applicable state law as "unconvincing." Pet. 22. According to the petition, "the Third Circuit's analysis did not address the overwhelming weight of New Jersey state law, which reveals that successor liability is intended to benefit injured parties, not sellers." *Id.* Petitioners' *amici* are equally adamant on this score, asserting that "[t]he Third Circuit failed to properly examine

[petitioners'] and the trustee's property rights with respect to [petitioners'] successor liability claims under New Jersey law." *Amici* Br. 15; *see also id.* at 16 ("New Jersey law does not recognize any tortfeasor/seller right of successor liability recovery against its acquirer.").

The problem with this line of argument is that "this Court does not sit to review" questions of state law. *Volt Info. Sciences, Inc. v. Board of Trs. of Leland Stanford Jr. Univ.*, 489 U.S. 468, 474 (1989); *see generally* Sup. Ct. R. 10. To the contrary, this Court has long since *removed* the interpretation of state law from the list of factors motivating the exercise of its certiorari jurisdiction. *See* Stephen M. Shapiro *et al.*, *Supreme Court Practice* § 4.2, at 239 (10th ed. 2013). And the argument that the Third Circuit misapplied New Jersey law is particularly perplexing, because the Third Circuit expressly declined to decide whether New Jersey (as opposed to New York) law applies here in the first place. *See* Pet. App. 9 n.2.

Once it is understood that, under applicable state law, the bankruptcy trustee here had the right to pursue and settle a "mere continuation" successor-liability claim for the benefit of all creditors, this is an easy case. The only remaining question is whether an individual creditor's successor-liability claim is the same as the trustee's successor-liability claim. If so, then only the trustee may pursue that claim: no one disputes that, as a matter of federal bankruptcy law, an individual creditor may not pursue a claim that the trustee is entitled to pursue for the benefit of all creditors. *See*, *e.g.*, *Baillie Lumber*, 413 F.3d at 1295; *St. Paul*, 884 F.2d at 696-

705; *Steyr-Daimler-Puch*, 852 F.2d at 135-36; *Koch Refining*, 831 F.2d at 1343-53; *S.I. Acquisition*, 817 F.2d at 1152-53; *Kaiser*, 791 F.2d at 75-76.[2]

II. The Circuit Splits Alleged By Petitioners Are Illusory.

The petition alleges three distinct circuit splits on questions of federal law. *See* Pet. ii, 7-25. All are illusory.

First, the petition argues that "the Third Circuit's holding directly contradicts the rule articulated by this Court, and followed by all other circuits, that specific claims may be brought only by injured creditors." Pet. 7 (capitalization modified). But that argument assumes that the debtor "possessed no 'mere continuation' claim at the commencement of the bankruptcy." *Id.* at 8. That assumption is simply incorrect: as noted above, under applicable state law, the debtor had a freestanding "mere continuation" against an alleged successor. And

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[2] This point holds true regardless of whether the trustee recognizes that the estate is entitled to pursue a particular claim—the property of the estate is not determined by reference to the trustee's beliefs. Thus, petitioners miss the point by noting that the trustee here did not believe that the estate owned a successor-liability claim against respondent. *See* Pet. 14; *see generally* C.A. App. A1277-78. In approving the settlement between respondent and the trustee, the bankruptcy court "made no definitive ruling or finding" with respect to the ownership of such a claim, but rather "reserved" the issue "for a future date when that issue would arise." C.A. App. A1383. If petitioners believe that the trustee violated his fiduciary duty to maximize the value of the estate for the benefit of the debtor's creditors, they are free to pursue appropriate relief against him. *See, e.g.*, 7 *Collier on Bankruptcy* ¶ 704.04 (16th ed. 2014). They have not done so.

where, as here, the debtor may pursue such a successor-liability claim for the benefit of all creditors, an individual creditor by definition may not pursue that same claim for its own benefit. *See, e.g.*, *Baillie Lumber*, 413 F.3d at 1295; *St. Paul*, 884 F.2d at 696-705; *Steyr-Daimler-Puch*, 852 F.2d at 135-36; *Koch Refining*, 831 F.2d at 1343-53; *S.I. Acquisition*, 817 F.2d at 1152-53; *Kaiser*, 791 F.2d at 75-76. Neither this Court nor any court of appeals has held otherwise.

Thus, the decision below is entirely consistent with the principle that "a bankruptcy trustee has no power to assert claims owned by creditors." Pet. 8 (citing *Caplin v. Marine Midland Grace Trust Co. of N.Y.*, 406 U.S. 416, 428-29 (1972)). That principle has no bearing here, because individual creditors do not own a "mere continuation" claim that can be pursued by the bankruptcy estate for the benefit of all creditors. Petitioners never identify how the "mere continuation" claim that they wish to pursue differs in any way from the "mere continuation" claim that belonged to, and was settled by, the estate; rather, they simply insist that the estate here was not injured, and thus had no such claim under state law in the first place. They are obviously free to rail against the Third Circuit's interpretation of state law on this score, but such differences of opinion on state law provide no basis for this Court's review. Certainly, nothing in federal bankruptcy law purports to define the "injury" necessary for a corporation to pursue a state-law successor-liability claim; to the contrary, that is entirely a matter of state law. *See, e.g.*, *Butner*, 440 U.S. at 55.

Petitioners' assertion that the decision below conflicts with "the law in the Second, Fifth, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits," Pet. ii, cannot survive even casual scrutiny. None of the cases cited by petitioners holds that a creditor may pursue a claim for its own benefit where, as here, the trustee could pursue the same claim for the benefit of all creditors. Indeed, two of the cases cited by petitioners (the Second Circuit's decision in *St. Paul* and the Seventh Circuit's decision in *Koch Refining*) stand for precisely the opposite proposition—that individual creditors may *not* pursue successor-liability claims that the debtor itself may pursue under state law. *See*, *e.g.*, *St. Paul*, 884 F.2d at 696-705; *Koch Refining*, 831 F.2d at 1343-53. Similarly, other cases cited by petitioners prohibited individual creditors from pursuing particular claims where, as here, the trustee was entitled to pursue those claims for the benefit of all creditors. *See, e.g.*, *Smith v. Arthur Andersen LLP*, 421 F.3d 989, 1002-03 (9th Cir. 2005); *In re Van Dresser Corp.*, 128 F.3d 945, 947-49 (6th Cir. 1997); *In re Educators Group Health Trust*, 25 F.3d 1281, 1283-86 (5th Cir. 1994).

Other cases cited by petitioners are readily distinguishable because the trustee in those cases was *not* entitled to pursue particular claims for various reasons. Thus, in *In re Bernard L. Madoff Inv. Sec. LLC*, 721 F.3d 54 (2d Cir. 2013), the trustee had no right "to assert claims on behalf of thousands of customers against third-party financial institutions for their handling of individual investments made on various dates in varying amounts," both because such claims are inherently individualized (in sharp contrast to the generic "mere continuation" successor-liability claim at issue here),

and because the trustee there was barred by the doctrine of *in pari delicto*. *Id.* at 63, 70-71. Similarly, in *Ozark*, the trustee had no right under Arkansas law to pursue an alter-ego claim to pierce its own corporate veil for the benefit of all creditors. *See* 816 F.2d at 1225-26 & n7.[3] And in *In re Teknek, LLC*, 563 F.3d 639, 644-49 (7th Cir. 2009), *Steinberg v. Buczynski*, 40 F.3d 890, 892-93 (7th Cir. 1994), and *Williams v. California 1st Bank*, 859 F.2d 664, 666-67 (9th Cir. 1988), the trustee was not entitled to pursue the individualized claims of particular creditors.

Petitioners' argument that the decision below conflicts with the Third Circuit's previous decision in *Foodtown*, *see* Pet. 11; *see also Amici* Br. 17-19, only underscores the illusory nature of the alleged circuit split. The *Foodtown* court allowed an individual creditor to pursue a particular successor-liability claim precisely because the trustee in that case was *not* entitled to pursue that claim. The claim at issue there involved pension withdrawal liability under the Employee Retirement Income Security Act of 1974 (ERISA), 29 U.S.C. § 1001 *et seq*. *See Foodtown*, 296 F.3d at 168. Under ERISA, that

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[3] Petitioners' reliance on *In re Icarus Holding, LLC*, 391 F.3d 1315 (11th Cir. 2004), is similarly misplaced. In that case, the Eleventh Circuit certified to the Georgia Supreme Court the question whether, under state law, a corporation could bring an alter ego action to pierce its own corporate veil. *See id.* at 1321-22. The state court answered that question in the affirmative, and the Eleventh Circuit thereafter held—consistent with the Third Circuit in this case—that such a claim could be pursued only by the bankruptcy trustee for the benefit of all creditors. *See Baillie Lumber*, 413 F.3d at 1295.

claim belonged exclusively to the pension fund, one of the individual creditors. *See id.* at 170. Because the trustee thus had no right to pursue that claim on behalf of all creditors, *Foodtown* is readily distinguishable from this case (as the Third Circuit explained below, *see* Pet. App. 14-15). In addition, the claim at issue in *Foodtown* did not arise until *after* the bankruptcy filing, and thus did not belong to the bankruptcy estate for that separate and independent reason. *See Foodtown*, 296 F.3d at 170; Pet. App. 15. Petitioners' discussion of *Foodtown* simply highlights that their scattershot allegations of circuit splits fail to account for any relevant factual and legal distinctions among cases.

Second, the petition argues that the decision below creates a circuit split "as to whether the presence of a procedural claim in a creditor's complaint may render the entire cause of action exclusive property of the bankruptcy estate." Pet. 16 (capitalization modified). But that is just a restatement of their argument that, under applicable state law, the trustee here was not entitled to pursue a freestanding "mere continuation" claim. Simply recharacterizing such a freestanding state-law claim as a mere "procedural device" inextricable from their underlying claims against the debtor, *id.*, does not change the result. The alleged split with "the law in the First, Ninth, and Federal Circuits," *id.* at ii, is thus illusory.

Each of the three cases that petitioners cite as evidence of the alleged "circuit split"—*Futurewei Techs. Inc. v. Acacia Research Corp.*, 737 F.3d 704, 710 (Fed. Cir. 2013), *Ahcom*, 623 F.3d at 1251-52, and *In re Savage Indus., Inc.*, 43 F.3d 714, 717 n.4

(1st Cir. 1994)—simply held or suggested that, as a matter of applicable state law, there was no freestanding successor-liability or alter-ego claim. None of those cases creates a "circuit split" on any issue of federal law; as noted above, the existence *vel non* of a freestanding successor-liability or alter-ego claim is entirely a matter of state law.

Third, the petition argues that the decision below creates "a circuit split regarding the authority of a bankruptcy trustee to sue third parties in tort." Pet. 7; *see generally id.* at 20-25. But that is yet another way of restating the (illusory) circuit splits discussed above. Indeed, both of the cases that petitioners cite as evidence of this third alleged split—*Ozark* and *Van Dresser*—are cited by petitioners as evidence of the first alleged split, and petitioners' own articulation of the "Questions Presented" by the petition purports to identify only two splits, *see* Pet. ii.

In any event, as described above, both *Ozark* and *Van Dresser* are entirely consistent with the decision below. In *Ozark*, the Eighth Circuit concluded that Arkansas law did not create a freestanding alter-ego claim for a corporation to pierce its own corporate veil, and thus held that such a claim could not belong to the bankruptcy estate. *See* 816 F.2d at 1225-26. The court acknowledged that "[i]t is possible that some states permit the corporation ... to assert an alter ego cause of action to pierce the corporate veil, and thus, that a bankruptcy trustee would be able to enforce the claim on behalf of the debtor corporation." *Id.* at 1226 n.7. "Arkansas, however, is not one of those states." *Id.* Needless to say, there is no "split" between that conclusion and the Third

Circuit's conclusion in this case that both New York and New Jersey *would* permit a corporation to pursue a freestanding "mere continuation" claim. *See* Pet. App. 10-12 (discussing *Keene Corp.*, 164 B.R. at 851-53 (New York law), and *Buildings by Jamie*, 230 B.R. at 41-44 (New Jersey law)).

Petitioners' reliance on *Van Dresser* is equally misplaced. There, the Sixth Circuit reaffirmed the fundamental point that both the trustee and an individual creditor cannot simultaneously pursue the same claim. *See* 128 F.3d at 947 ("[I]f the debtor could have raised a state claim at the commencement of the bankruptcy case, then that claim is the exclusive property of the bankruptcy estate and cannot be asserted by a creditor."). Because the trustee in that case was entitled to pursue the claim at issue for the benefit of all creditors, the Sixth Circuit held, it followed that an individual creditor was not. *See id.* at 948-49. That result is entirely consistent with the decision below, which held that petitioners were not entitled to pursue a state-law "mere continuation" claim against respondent precisely because the trustee was entitled to pursue that claim for the benefit of all creditors. *See* Pet. App. 10-16.

III. The Policy Arguments Advanced By Petitioners Are Unavailing.

Finally, petitioners and their *amici* advance three policy arguments that, in their view, warrant this Court's review of the decision below. Again, these arguments are unavailing.

First, petitioners assert that the decision below "has left nearly three hundred people without means to redress the serious injuries inflicted on them."

Pet. 26; *see also Amici* Br. 6 ("The Third Circuit's decision deprived [petitioners] of further access to the courts to prosecute their wrongful injury claims."). That assertion is false. As noted above, the decision below in no way affects petitioners' right to seek redress for their injuries from the alleged tortfeasor—the debtor—and roughly *thirty* other entities that petitioners have sued in their underlying state-court actions. *See* C.A. App. A1227-34.

Contrary to petitioners' assertion that respondent "purchase[d] demonstrably all of [the debtor's] assets and liabilities except the diacetyl claims," Pet. 4, it is undisputed that the debtor retained the insurance coverage relating to the diacetyl claims, *see* C.A. App. A326. Indeed, petitioners sought and were granted relief from the bankruptcy court's automatic stay to pursue their claims against the debtor in state court. *See* Order Granting Certain Unsecured Diacetyl Creditors Relief (Bankr. D.N.J. No. 11-27667, Dkt. 290) (12/11/12). Pursuant to that order, petitioners continue to litigate their personal-injury claims against the debtor and other defendants in New Jersey state court to this day.[4]

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[4] As a condition for obtaining relief from the stay, petitioners agreed "to stipulate that they will only execute on judgments obtained against Debtor against applicable insurance proceeds, and not against any assets of Debtor or Debtor's estate that would be available to satisfy the Debtor's other general unsecured claims." *See* Pls.' Br. in Support of Mot. for Relief from Stay (Bankr. D.N.J. No. 11-27667, Dkt. 268-2, at 12) (10/10/12). Needless to say, that stipulation was petitioners' prerogative; nothing in federal bankruptcy law or the Third Circuit's subsequent decision in this case prevented them from pursuing their claims against all assets of the estate.

The *only* claim that petitioners cannot pursue as a result of the decision below is a "mere continuation" successor-liability claim against respondent, and that is because the trustee settled any such claim for consideration for the benefit not only of petitioners but of all the debtor's other creditors. As noted above, if petitioners believe that the estate received inadequate consideration for settling that claim, they may seek relief from the trustee. A challenge to the adequacy of the settlement negotiated by the trustee, however, is not a ground for pursuing a claim settled by the trustee.

Second, petitioners assert that the decision below "pave[s] a broad path for defendants to circumvent tort liability." Pet. 27. According to petitioners, "[t]he precedent encourages defendants to sell their assets prior to filing for bankruptcy," and then release the buyers from successor liability. *Id.*; *see also Amici* Br. 11-15. But federal bankruptcy law provides creditors with ample substantive and procedural protection against a collusive or fraudulent distribution of the property of the estate. Contrary to petitioners' suggestion, the bankruptcy trustee does not have *carte blanche* to settle the estate's claims; rather, the trustee has a fiduciary duty to maximize creditors' recovery and may settle such claims only with the court's approval (and subject to liability to creditors).

Petitioners' assertion that the decision below furnishes defendants "with a how-to guide on escaping tort liability," Pet. 28, is inexplicable. The decision below does not allow anyone to "escape" any tort liability to petitioners; to the contrary, the decision below "has no bearing on any remedy

[petitioners] may be seeking directly against [the debtor] in the bankruptcy proceeding or against any of the numerous other defendants [petitioners] have named in the actions pending in the Superior Court of New Jersey." Pet. App. 16. Rather, the decision below simply ensures that the fruits of any generalized successor-liability claim against respondent will flow to *all* creditors, not simply the first in line to sue. Thus, the decision below promotes the "fundamental bankruptcy policy of equitable distribution to all creditors." *Koch Refining*, 831 F.2d at 1344; *see also St. Paul*, 884 F.2d at 697; *see generally Young v. Higbee Co.*, 324 U.S. 204, 210 (1945) ("[H]istorically one of the prime purposes of the bankruptcy law has been to bring about a ratable distribution among creditors of a bankrupt's assets; to protect the creditors from one another.").

And *third*, petitioners contend that the decision below "grant[ed] the Trustee authority to release [petitioners'] claims without due process." Pet. 28. But petitioners never raised any objection to the process by which the trustee settled the estate's claims against respondent, and hence the Third Circuit never addressed any such alleged due process violation. Petitioners' failure to advance such a claim below is not surprising, because petitioners themselves not only had notice of the settlement but actually *objected* to the settlement on the ground (among others) that the trustee could not release successor-liability claims against respondent that allegedly did not belong to the estate. *See* C.A. App. A1099, A1199. Again, if petitioners are unhappy with the settlement, they may pursue relief against

the trustee, but they cannot complain that they were not afforded due process in the proceedings below.

In the final analysis, this is merely the latest in a long line of cases recognizing that "granting the bankruptcy trustee exclusive standing to assert [successor-liability] claims furthers the bankruptcy policy of ensuring that all similarly situated creditors are treated fairly: the [successor-liability] action is based upon allegations that if proven would benefit all the debtor's creditors, *i.e.*, making more assets available to satisfy the debtor's debts." *Kalb, Voorhis & Co. v. American Fin. Corp.*, 8 F.3d 130, 133 (2d Cir. 1993) (internal quotation and brackets omitted); *see also Baillie Lumber*, 413 F.3d at 1295; *St. Paul*, 884 F.2d at 696-705; *Steyr-Daimler-Puch*, 852 F.2d at 135-36; *Koch Refining*, 831 F.2d at 1343-53; *S.I. Acquisition*, 817 F.2d at 1152-53; *Kaiser*, 791 F.2d at 75-76. Petitioners may disagree with the state-law foundations of these cases, but that disagreement over state law provides no basis for this Court's review.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for writ of certiorari.

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