176 F.4th 241
United States Court of Appeals, Third Circuit.

IN RE: WHITTAKER CLARK & DANIELS INC, Debtor
Peter Protopapas, Appellant in No. 24-2210
Official Committee of Talc Claimants Appellant in No. 24-2211
In re: Whittaker Clark & Daniels Inc., Debtor
Whittaker Clark & Daniels Inc; Brilliant National Services Inc; L.A. Terminals Inc.; Soco West Inc.
v.
Brenntag AG; Brenntag Canada Inc.; Brenntag Great Lakes LLC; Brenntag Mid-South Inc.; Brenntag North America Inc.; Brenntag Northeast Inc.; Brenntag Pacific Inc.; Brenntag Southeast Inc.; Brenntag Southwest Inc.; Brenntag Specialties LLC (f/k/a Brenntag Specialties, Inc., and as Mineral and Pigment Solutions, Inc.); Coastal Chemical Co. LLC; Mineral Pigment Solutions Inc.; Those Parties Listed on Appendix A to the Complaint; John and Jane Does 1-1000
Official Committee of Talc Claimants, Appellant

No. 24-2210, No. 24-2211, No. 25-1044
|
Argued on April 1, 2025
|
(Opinion filed: April 27, 2026)

Synopsis

Background: Corporate Chapter 11 debtor which, together with its debtor affiliates, had processed, manufactured, and distributed various industrial chemicals and minerals, including asbestos-contaminated talc, filed bankruptcy petition without first obtaining approval of the receiver appointed for it prepetition by a South Carolina state court. The United States Bankruptcy Court for the District of New Jersey, Michael B. Kaplan, Chief Judge, 2023 WL 4111338, denied receiver's motion to dismiss petition as unauthorized. Receiver appealed. The District Court, Zahid N. Quraishi, J., 2024 WL 2796449, affirmed, and receiver appealed. Separately, debtors filed adversary complaint against purchaser that had acquired substantially all of their operating assets, seeking declaratory judgment that certain successor liability claims against purchaser were property of debtors' bankruptcy estates. Committee of talc claimants intervened, and debtors moved for summary judgment. The Bankruptcy Court, Kaplan, Chief Judge, 663 B.R. 1, granted debtor's motion. Committee's motion for direct appeal was granted, and appeals were consolidated.

Holdings: On petition for panel rehearing, the Court of Appeals, Ambro, Circuit Judge, held that:

[1] a properly filed bankruptcy petition is not a jurisdictional prerequisite to a bankruptcy case;

[2] under New Jersey law, the South Carolina court's prepetition receivership order did not strip debtor's board of directors of the authority to file for bankruptcy; and

[3] committee's successor liability claims premised on a “product line” theory of liability were property of debtors' estates, not of individual creditors.

Affirmed.

Ambro, Circuit Judge, filed concurring opinion.

Krause, Circuit Judge, filed concurring opinion.

Opinion, 152 F.4th 432, amended and superseded.

Procedural Posture(s): On Appeal; Motion to Convert or Dismiss Case; Request for Declaratory Judgment; Motion for Summary Judgment.

West Headnotes (60)

[1] **Corporations and Business Organizations** 🔑 Exceptions to Successor Non-Liability

Under New Jersey law, successor liability claims form a list of exceptions to the general rule of corporate successor nonliability; in that sense, the term refers to a collection of different causes of action that can be asserted against a successor corporation at common law.

[2] **Corporations and Business Organizations** Exceptions to Successor Non-Liability

The roster of cognizable successor liability claims that can be asserted against a successor corporation varies from one jurisdiction to another.

[3] **Corporations and Business Organizations** Mere continuation

Under New Jersey law, to assert a successor liability claim against a corporation based on a mere continuation theory, a plaintiff must establish sufficient continuity in management, shareholders, personnel, physical location, assets, and general business operation between selling and purchasing corporations following an asset acquisition.

[4] **Corporations and Business Organizations** Product line exception

Under New Jersey law, the "product line" theory of liability imposes strict liability for injuries caused by defects of a product line on a corporation that acquires the manufacturing assets of another corporation and undertakes essentially the same manufacturing operation and practices.

[5] **Bankruptcy** Conclusions of law; de novo review

Bankruptcy Review

Court of Appeals reviews without deference both bankruptcy court's and district court's legal conclusions.

[6] **Bankruptcy** Clear error

Bankruptcy Review

Court of Appeals' review of bankruptcy court's and district court's factual findings is for clear error.

[7] **Bankruptcy** Bankruptcy Jurisdiction

Bankruptcy Petition

Bankruptcy Petition

A valid bankruptcy petition is a nonjurisdictional component of a bankruptcy case; neither of the statutes establishing the jurisdictional grant for district and bankruptcy courts over bankruptcy cases, nor any other statutory provision, conditions that grant on a properly filed petition. 28 U.S.C.A. §§ 157, 1334(a).

[8] **Bankruptcy** In General; Grounds in General

"Cause" to dismiss a Chapter 11 case includes gross mismanagement of the estate, failure to comply with an order of the court, and material default by the debtor with respect to a confirmed plan, as well as occasions when a debtor did not have the proper authority to commence the bankruptcy proceeding. 11 U.S.C.A. § 1112(b)(1).

[9] **Bankruptcy** Who May Institute Case

Bankruptcy Dismissal or suspension

In cases where Chapter 11 debtor did not have proper authority to commence bankruptcy proceeding, court has no alternative but to dismiss petition. 11 U.S.C.A. § 1112(b)(1).

[10] **Federal Courts** Power of Congress to reduce or withdraw jurisdiction; statutory restrictions in general

Standard for concluding that a statute limits federal courts' subject matter jurisdiction is an exacting one: while Congress need not employ any specific formulation or incant magic words, the traditional tools of statutory construction must plainly show that Congress imbued a procedural bar with jurisdictional consequences, and anything short of a clear indication will not do.

[11] **Bankruptcy** 🔑 Bankruptcy Jurisdiction

Bankruptcy 🔑 Petition

Section of Bankruptcy Code providing that voluntary bankruptcy is commenced by filing with bankruptcy court of petition by entity that may be debtor under such chapter focuses on commencement of bankruptcy case by debtor, not on power of court to decide, and does not speak in jurisdictional terms. 11 U.S.C.A. § 301(a).

[12] **Federal Courts** 🔑 Appellate Jurisdiction and Procedure in General

Court of Appeals will not lightly apply the jurisdictional label to a statutory provision absent a "clear statement" to the contrary.

[13] **Bankruptcy** 🔑 Dismissal or suspension

Bankruptcy 🔑 Effect; proceedings in converted case

An improperly filed bankruptcy petition constitutes "cause" to dismiss a Chapter 11 case, but it does not strip bankruptcy courts of subject matter jurisdiction. 11 U.S.C.A. § 1112(b)(1); 28 U.S.C.A. §§ 157, 1334(a).

[14] **Bankruptcy** 🔑 Representatives of corporations

With respect to the principle that, in the absence of federal incorporation, "local law" governs a corporate debtor's authority to petition for bankruptcy, because corporations act through agents, "local law" is the non-federal rule that gives a corporation's agents, typically in those circumstances its board of directors, the authority to act.

[15] **Federal Courts** 🔑 Corporations and other organizations

Because corporations are creatures of state law, it is state law which is the font of corporate directors' powers.

[16] **Bankruptcy** 🔑 Representatives of corporations

Court looks to governing state law to determine the propriety of a corporation's bankruptcy petition.

[17] **Bankruptcy** 🔑 Representatives of corporations

Where the parties did not dispute that the law of New Jersey, as opposed to the law of South Carolina, governed the authority of New Jersey corporation's board of directors to file a bankruptcy petition, even though a South Carolina court putatively exercised authority over the corporation's assets prepetition by appointing a receiver for it, the Court of Appeals would assess the board's authority with reference to New Jersey law.

More cases on this issue

[18] **Bankruptcy** 🔑 Representatives of corporations

Under New Jersey law and settled choice-of-law principles, South Carolina court's prepetition order appointing a receiver for corporate Chapter 11 debtor did not strip debtor's board of directors of the authority to file for bankruptcy; in order to displace board's control over, inter alia, the company's privileges, franchises, and assets, the South Carolina receiver needed to move for, and be granted, recognition in New Jersey and appointment of an ancillary receiver, but it did not do so, meaning that board retained authority over those corporate decisions reserved to it by New Jersey law, including the decision whether to reorganize by filing for bankruptcy, and rather than extending to displace board's authority over corporate affairs, South Carolina receivership order only purported to give receiver control of debtor's "assets" and power to "take any and all steps necessary to protect the interests of [debtor] whatever they may be." N.J. Stat. Ann. § 14A:14-2(3); Restatement (Second) of Conflict of Laws § 367.

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[19] **Corporations and Business Organizations** Appointment of Receiver

Although state courts retain the traditional equitable authority to appoint receivers for insolvent corporations, that authority is not without limits.

[20] **Receivers** Actions by or against foreign receivers

Under New Jersey law, comity requires that a foreign receiver should be acknowledged and aided to the extent that doing so is not to the disadvantage of creditors resident in that state.

[21] **Receivers** Actions by or against foreign receivers

When foreign court appoints receiver, New Jersey courts generally will appoint ancillary receiver, and assets will be so administered that creditors in New Jersey and in foreign jurisdiction shall fare alike. N.J. Stat. Ann. § 14A:14-2(3).

[22] **Corporations and Business Organizations** Appointment of Receiver

New Jersey law authorizes its Superior Court to appoint receivers for New Jersey corporations. N.J. Stat. Ann. § 14A:14-2(3).

[23] **Corporations and Business Organizations** Appointment of ancillary receiver

New Jersey law permits its courts to recognize foreign receivership orders and appoint an ancillary receiver to aid in the execution of foreign judgments, including by enjoining the corporation and its board from taking specific actions and exercising specific powers. N.J. Stat. Ann. § 14A:14-2(3).

1 Case that cites this headnote

[24] **Bankruptcy** Application of state or federal law in general

Although neither New Jersey law nor the Restatement (Second) of Conflict of Laws contemplates a state's authority over domestic corporations in instances of bankruptcy, as that power is an area of exclusive federal competence, the scenarios those authorities posit are sufficiently analogous in character to bankruptcy—in that they involve fundamental changes to a corporation's structure (or, in the instance of dissolution, existence)—that their precepts apply to the same extent when a board seeks to enter bankruptcy. N.J. Stat. Ann. § 14A:14-2(3); Restatement (Second) of Conflict of Laws § 367.

[25] **Courts** Federal-Court Review of State-Court Decisions; Rooker-Feldman Doctrine

The *Rooker*-*Feldman* doctrine essentially prohibits federal courts, save the Supreme Court, from reviewing final state-court judgments.

[26] **Courts** Federal-Court Review of State-Court Decisions; Rooker-Feldman Doctrine

If orders are interlocutory, the *Rooker*-*Feldman* doctrine applies only to those that are "effectively final" because, among other things, parties have abandoned further litigation.

[27] **Corporations and Business Organizations** Authority of directors

Under New Jersey law, it is the default rule that a corporation's board of directors controls the entity's corporate affairs, subject to lawful displacement.

[28] **Judgment** Adjudications operative in other states; full faith and credit

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While order rendered by foreign court may warrant recognition and enforcement under full faith and credit statute, enforcement measures do not travel with the sister-state judgment, and full faith and credit does not mean that states must adopt practices of other states regarding time, manner, and mechanisms for enforcing judgments. 28 U.S.C.A. § 1738.

[29] **Bankruptcy** Representatives of corporations

Under New Jersey law, in absence of an order lawfully preventing it from doing so, New Jersey corporate debtor's board of directors was free to exercise its authority to file for bankruptcy on behalf of debtor, notwithstanding South Carolina court's prepetition order appointing a receiver for debtor, even though debtor itself purportedly made seeking appointment of an ancillary receiver in New Jersey, as required to enforce receivership order, "impossible" by filing for bankruptcy; fact that South Carolina receiver lost the race to the courthouse did not render the results invalid. N.J. Stat. Ann. § 14A:14-2(3).

1 Case that cites this headnote
More cases on this issue

[30] **States** Relations Among States Under Constitution of United States

Nation's system of federalism embodies the fundamental principle of equal sovereignty among the states.

[31] **States** Relations Among States Under Constitution of United States

Implicit in the nation's foundational organization of co-equal sovereigns is the usual legislative power of a state to act upon persons and property within the limits of its own territory, permitting different communities to live with different local standards.

[32] **States** Relations Among States Under Constitution of United States

States' power to exercise control over actors within their respective borders is not without limits; the Constitution has a great deal to say about the relations between states, their authority to decide the rights of foreign parties, and the application of their laws in instances of conflict.

[33] **Constitutional Law** Non-residents in general

The Due Process Clause of the Fourteenth Amendment imposes limitations on state courts' jurisdictional authority to determine non-resident parties' rights. U.S. Const. Amend. 14.

[34] **Commerce** Regulation and conduct in general; particular businesses

Dormant Commerce Clause prohibits, among other things, the enforcement of state laws driven by economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors. U.S. Const. art. 1, § 8, cl. 3.

[35] **Corporations and Business Organizations** Power to exclude, restrict, or regulate

The Constitution limits the authority a state court can exercise over a corporation incorporated in a sister state.

[36] **Corporations and Business Organizations** Domicile or Place of Business

Corporation's state of incorporation or principal place of business determines its domicile.

[37] **Corporations and Business Organizations** Domicile or Place of Business

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Courts Exclusive or Concurrent Jurisdiction

Corporation's domicile has long carried with it great significance for states' authority; among the many powers over their domiciliaries, states may determine any and all claims brought against a resident defendant.

[38] **Corporations and Business Organizations** Power to exclude, restrict, or regulate

When it comes to control over corporate decision-making, a state has no interest in regulating the internal affairs of foreign corporations.

[39] **Bankruptcy** Representatives of corporations

Commerce Foreign corporations, suits by or against

Constitutional Law Corporations and limited liability companies

Constitutional Law Bankruptcy

Corporations and Business Organizations Internal affairs doctrine in general

Even if South Carolina court's prepetition order appointing a receiver for New Jersey corporate debtor, properly construed, divested debtor's board of directors of authority to conduct the internal affairs of the corporation, including the authority to file for bankruptcy, such order would have been unconstitutionally infirm under the Due Process Clause and the dormant Commerce Clause as an unprecedented exertion of power over a foreign corporation whose internal affairs were governed by the laws of a sister state, and a radical intrusion into the province of a co-equal sovereign. U.S. Const. art. 1, § 8, cl. 3; U.S. Const. Amend. 14.

More cases on this issue

[40] **Judgment** Matters concluded

Where the parties did not litigate the constitutionality of prepetition South Carolina state-court judgment appointing a receiver for New Jersey corporate Chapter 11 debtor, the full faith and credit statute did not require New Jersey to acquiesce in the enforcement of the receivership order without assessing its (doubtful) constitutionality under the Due Process Clause and the dormant Commerce Clause. U.S. Const. art. 1, § 8, cl. 3; U.S. Const. Amend. 14; 28 U.S.C.A. § 1738.

More cases on this issue

[41] **Judgment** Adjudications operative in other states; full faith and credit

Rendering full faith and credit to foreign judgments does not entail blind deference in face of constitutional limitations. 28 U.S.C.A. § 1738.

[42] **Judgment** Adjudications operative in other states; full faith and credit

Just as a state may not grant preclusive effect in its own courts to a constitutionally infirm judgment, other state and federal courts are not required to accord full faith and credit to such a judgment. 28 U.S.C.A. § 1738.

[43] **States** Relations Among States Under Constitution of United States

Constitution was framed upon the theory that the peoples of the several states must "sink or swim" together.

[44] **States** Relations Among States Under Constitution of United States

Although, under the Constitution, the several states are bound together in a federal union, certain powers remain the province of a particular state.

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[45] **Corporations and Business Organizations** Internal affairs doctrine in general

State of incorporation enjoys the exclusive authority to govern the internal affairs of its corporations.

[46] **Bankruptcy** Effect of state law in general

Although property interests are created and defined by state law, and federal law governs whether those interests are swept into a debtor's bankruptcy estate, federal law may also establish property interests, and this is particularly true with respect to causes of action; therefore, “applicable non-bankruptcy law” is a more apt term than “state law” for the creation of property interests. 11 U.S.C.A. § 541(a)(1).

[47] **Bankruptcy** Rights of Action; Contract Rights Generally

Causes of action may constitute property of a bankruptcy estate. 11 U.S.C.A. § 541(a)(1).

[48] **Bankruptcy** Rights of Action; Contract Rights Generally

“Derivative claims,” which belong to the bankruptcy estate, are those based on an injury to the debtor's estate that creates a secondary harm to all creditors regardless of the nature of their underlying claims against the debtor. 11 U.S.C.A. § 541.

[49] **Bankruptcy** Rights of Action; Contract Rights Generally

Claims held by a debtor corporation's creditors under applicable non-bankruptcy law must undergo substantive scrutiny to ensure they are not misappropriated from the debtor's bankruptcy estate. 11 U.S.C.A. § 541.

[50] **Bankruptcy** In general; standing

The Bankruptcy Code gives the bankruptcy trustee exclusive statutory authority to pursue claims that constitute property of the estate. 11 U.S.C.A. §§ 323, 541.

[51] **Bankruptcy** Debtor in possession, in general

A debtor in a Chapter 11 bankruptcy case, technically called a debtor in possession, has essentially the rights of a trustee appointed by the bankruptcy court, but since trustees are seldom appointed in Chapter 11 cases, a debtor's rights are, with certain exceptions, coextensive with those of a trustee. 11 U.S.C.A. § 1107(a).

[52] **Bankruptcy** In general; standing

Creditors lack the authority to prosecute, settle, and/or release any claim that constitutes property of the bankruptcy estate unless the bankruptcy trustee relinquishes his or her statutory authority over it. 11 U.S.C.A. §§ 323, 541.

[53] **Bankruptcy** Rights of Action; Contract Rights Generally

Claims are property of the bankruptcy estate where the theory of liability is based on facts generally available to any creditor, and for which recovery would serve to increase pool of assets available to all creditors. 11 U.S.C.A. § 541(a)(1).

[54] **Bankruptcy** Tort claims

Talc committee's successor liability claims against nondebtor entity that purchased substantially all of Chapter 11 debtors' operating assets, which claims were premised on a “product line” theory of liability under New Jersey law, were property of debtors' bankruptcy estates, not of individual creditors; asbestos injuries endured by tort claimants did not stem from facts underlying purchasing entity's status as successor to the debtors, but rather from claimants' exposure to asbestos-contaminated products manufactured by debtors before the

purchase, and claims were based on a prepetition injury to debtors, specifically, the purchasing entity's diversion of substantially all operating assets possessed by the debtors, that resulted in secondary harm to all creditors. 11 U.S.C.A. § 541(a)(1).

[55] **Bankruptcy** Rights of Action; Contract Rights Generally

A claim may constitute property of the bankruptcy estate notwithstanding whether debtor corporation was authorized to assert it outside of bankruptcy. 11 U.S.C.A. § 541.

1 Case that cites this headnote

[56] **Bankruptcy** Rights of Action; Contract Rights Generally

While a debtor corporation's ability to assert a claim on its own behalf under applicable non-bankruptcy law is sufficient for the claim to become property of the bankruptcy estate, it is not necessary. 11 U.S.C.A. § 541(a)(1).

[57] **Corporations and Business Organizations** Product line exception

The product-line theory of successor liability, which imposes liability for injuries caused by defects of a product line on a corporation that acquires the manufacturing assets of another corporation and undertakes essentially the same operations and practices, serves to prevent the destruction of creditor remedies based on complex commercial transactions involving the transfer of corporate assets that would otherwise be available to creditors of the transferor.

[58] **Bankruptcy** Rights of Action; Contract Rights Generally

Claims are personal to creditors and, therefore, not property of the bankruptcy estate, when the theory of liability is based on a particularized injury directly traceable to the conduct of the defendant. 11 U.S.C.A. § 541.

1 Case that cites this headnote

[59] **Bankruptcy** Rights of Action; Contract Rights Generally

Claims are property of debtor's bankruptcy estate if theory of liability is based on injury to debtor corporation that resulted in secondary harm to all creditors. 11 U.S.C.A. § 541.

1 Case that cites this headnote

[60] **Bankruptcy** Rights of Action; Contract Rights Generally

For purposes of determining whether a state-law claim against a debtor corporation is property of the bankruptcy estate, certain states might seek to authorize a subset of creditors to vindicate secondary harms derived from the depletion of estate assets through successor-liability claims vested exclusively with that subset; courts must therefore scrutinize the theory of liability to prevent nominal plaintiffs from commandeering the bankruptcy process. 11 U.S.C.A. § 541.

On Appeal from the United States District Court for the District of New Jersey, (D.C. Nos. 3:23-cv-04151; 3:23-cv-04156), District Judge: Honorable Zahid N. Quraishi, On Appeal from the United States Bankruptcy Court for the District of New Jersey, (Bankr. Ct. Adv. Pro. No. 23-01245), Bankruptcy Judge: Honorable Michael B. Kaplan

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Before: KRAUSE, MATEY, and AMBRO, Circuit Judges

OPINION OF THE COURT

AMBRO, Circuit Judge

***249** Plagued by tort claims related to their historical production, storage, and distribution of asbestos-laden talc, Whittaker, Clark & Daniels, Inc. ("Whittaker") and three of its affiliates—Brilliant National Services, Inc. ("Brilliant"), L.A. Terminals, Inc. ("L.A. Terminals"), and Soco West, Inc. ("Soco," and jointly and severally with Whittaker, Brilliant, and L.A. Terminals, the "Debtors")—filed for bankruptcy in 2023. However, as is often the case in mass-tort bankruptcies, their proceedings were contested from the start.

On appeal, Appellants—the receiver appointed for Whittaker by a South Carolina Court (the "South Carolina Receiver" or "Receiver") and the Official Committee of Talc Claimants (the "Committee")—contest whether we should be here at all because, in their view, Whittaker's Chapter 11 petition was improperly filed. If the Debtors rightly entered bankruptcy, the Committee further contends certain successor liability claims that have been or could be asserted against a thirdparty purchaser belong exclusively to its constituent talc creditors.[1] We conclude that Whittaker properly filed for bankruptcy, and the successor liability claims the talc creditors seek to assert against the purchaser are property of the Debtors' bankruptcy estates. Accordingly, we affirm.

I. BACKGROUND

A. The Debtors' Corporate History.

The Debtors were in the business of processing, manufacturing, storing, and distributing various industrial chemicals and minerals, including asbestos-laden talc. Over time, however, their talc products prompted a tsunami of personal injury claims by consumers who developed, among other things, mesothelioma—a form of cancer affecting the protective lining of the lungs. To make matters worse, federal, state, and private parties brought environmental claims alleging the Debtors produced and handled hazardous materials that contaminated property in at least fourteen separate states.

In the face of those liabilities, the Debtors took action. First, L.A. Terminals, which operated a chemical storage and ***250** distribution facility at the Los Angeles Harbor, ceased operations in 1994 and began to resolve its liabilities through ordinary-course claims management. Then, in 2004, Whittaker, Brilliant, and Soco sold substantially all of their operating assets to certain subsidiaries of Brenntag North America through a series of corporate transactions too tortured to recount in full (collectively, the "2004 Transactions").

Whittaker, Brilliant, and Soco collectively received approximately $200 million in cash consideration in exchange for their operating assets. However, in an effort to limit their exposure, Brenntag North America and its affiliates (collectively, "Brenntag") expressly contracted to exclude all pre-sale asbestos and environmental liabilities from the scope of the 2004 Transactions. For their part, Whittaker, Brilliant, and Soco took on the obligation to indemnify Brenntag for any liabilities it accrued from asbestos and environmental tort claims. Thus, in the aftermath of the 2004 Transactions, the Debtors continued to exist as shell companies holding limited assets to satisfy their pending and future tort claims.

Over the next few years, National Indemnity Company, a subsidiary of Berkshire Hathaway Inc., acquired Brilliant and L.A. Terminals. It thereby acquired both Whittaker and Soco indirectly, as subsidiaries of Brilliant. In the process, however, National Indemnity assigned its acquisition rights to another Berkshire affiliate, Ringwalt & Liesche Co., which remains the ultimate parent of the Debtors. And, through a chain of indemnity agreements and obligations, National Indemnity currently backstops certain asbestos-related successor liability claims against Brenntag.

B. Proceedings in South Carolina.

In advance of their bankruptcy cases, the Debtors were engulfed in litigation. Roughly 2,700 plaintiffs had asserted claims alleging asbestos-related injuries as a result of the Debtors' talc products. Plaintiff Sarah Plant brought one such claim against Whittaker in the South Carolina Court of Common Pleas after she was diagnosed with mesothelioma as a result of exposure to asbestos-contaminated talc manufactured by Whittaker. And in March 2023, a jury awarded Plant a $29 million verdict.

Days later, Plant moved the South Carolina Court to place Whittaker into receivership. The Court granted Plant's motion and entered an order (the "Receivership Order" or "Order") appointing Peter Protopapas as the South Carolina Receiver. Among other things, the Receivership Order vested him "with the power and authority [to] fully administer all assets of [Whittaker], accept service on behalf of [it], engage counsel on behalf of [it] and take any and all steps necessary to protect [its] interests." Appellants' Consolidated J.A. 217.

Whittaker promptly moved the South Carolina Court to reconsider. It held a hearing on Whittaker's motion, during which, in response to counsel's suggestion that Whittaker had the "authority to enter into voluntary bankruptcy," the Court stated:

> I'm well aware, that was the main factor in my signing the order so quickly is that I wanted to be sure that something other than [a] kind of amorphous organization I wasn't quite sure about in terms of asset picture, control[,] or anything else[,] would not simply declare bankruptcy and that entity would still be controlling things. I wanted a receiver that I knew would take it seriously, to look at the asset picture and see what was going on.

***251** *Id.* at 423. The Court denied Whittaker's motion and directed the parties to submit a proposed form of order to memorialize its ruling.

C. The Debtors Petition for Bankruptcy.

With more than 1,000 asbestos claims still pending, the Debtors promptly filed Chapter 11 petitions in the United States Bankruptcy Court for the District of New Jersey. Before they did so, Whittaker's board passed a resolution authorizing its filing without consulting or gaining approval from the South Carolina Receiver. He promptly moved in the Bankruptcy Court to dismiss Whittaker's bankruptcy as an unauthorized petition, arguing the Receivership Order "divested [its] board of the authority to approve a bankruptcy filing on [its] behalf and instead gave such authority to the Receiver alone." Appellants' Consolidated Opening Br. 13.

The Bankruptcy Court denied the Receiver's motion, concluding the Receivership Order did not divest Whittaker's board of the authority to file a petition for bankruptcy because the Order's terms did not demonstrate that the Receiver displaced the board. He appealed to the District Court, which affirmed the Bankruptcy Court's ruling for substantially the same reasons. The Receiver timely appealed to our Court while the Debtors' bankruptcy proceedings continued in parallel. And in light of the Debtors' substantial asbestos liabilities, the United States Trustee appointed the Committee

to represent the talc creditors' interests before the Bankruptcy Court.

[1] **[2]** With their proceedings well underway, the Debtors sought to shore up funding for an exit from bankruptcy. However, they possessed few meaningful assets in the aftermath of their 2004 Transactions. Further complicating matters, the Debtors lacked one of the most obvious tools to centralize and distribute assets because most fraudulent transfer claims they might have asserted under the Bankruptcy Code in connection with the 2004 Transactions were time-barred. [2] So, in lieu of any avoidance actions, the Debtors wielded other successor liability claims as leverage in their negotiations with Brenntag. [3]

***252** Their approach spurred a settlement (the "Settlement"), subject to Bankruptcy Court approval, under which Brenntag will pay approximately $535 million to the Debtors in exchange for, among other things, a release of all successor liability claims against it. The only problem was that certain of the talc plaintiffs represented by the Committee had already asserted successor liability claims against Brenntag before the Debtors filed for bankruptcy. As a result, the Debtors needed to resolve their competing claims to proceed with the Settlement.

To do so, the Debtors filed an adversary proceeding against, among others, Brenntag and hundreds of individual talc plaintiffs represented by the Committee. They sought an order enjoining the talc plaintiffs from pursuing successor liability claims against Brenntag, as well as a declaratory judgment determining that all of those claims are property of their respective bankruptcy estates under Section 541(a)(1) of the Bankruptcy Code. The Committee intervened in the adversary proceeding, and the Debtors moved for summary judgment over its objection.

[3] In support of their motion, the Debtors relied on our decision in *In re Emoral*, 740 F.3d 875 (3d Cir. 2014). According to the Committee, however, that decision narrowly concluded that successor liability claims asserted on a "mere continuation" theory under New Jersey law constitute property of the estate. [4] So, the Committee explained, other successor liability claims available to certain talc plaintiffs in a small minority of states belong to those plaintiffs individually, as opposed to the Debtors. More specifically, the Committee focused its objection on the subset of successor liability claims its constituents had or could have asserted on a "product-line" theory of liability (collectively, the "Product-Line Claims").

[4] That theory imposes strict liability for injuries caused by defects of a product line on a corporation that acquires the manufacturer's assets and undertakes essentially the same operation and production practices. *Ramirez*, 431 A.2d at 820. Only a handful of state courts have recognized this "controversial" theory of liability. David Hunt, *Tort Law—Towards a Legislative Solution to the Successor Products Liability Dilemma—Niccum v. Hydra Tool Corp.*, 438 N.W.2D 96 (Minn. 1989), 16 WM. MITCHELL L. REV. 581, 581–91 (1990). New Jersey and California courts are among the minority. *See, e.g., Ramirez v. Amsted Indus., Inc.*, 86 N.J. 332, 431 A.2d 811, 819–22 (1981) (recognizing the product-line theory); *Ray v. Alad Corp.*, 19 Cal.3d 22, 136 Cal.Rptr. 574, 560 P.2d 3, 7–11 (1977) (same). And although the parties briefed their choice-of-law positions before the Bankruptcy Court, it made no decision on the issue. *In re Whittaker, Clark, & Daniels*, 663 B.R. 1, 26 (Bankr. D.N.J. 2024). Thus, it is unclear precisely how many of the Committee's constituents have or could have asserted Product-Line Claims. *Id.* at 26 n.13.

After rounds of unsuccessful mediation, the Bankruptcy Court granted summary ***253** judgment to the Debtors. *Id.* at 7. Following *Emoral*, it agreed that the Product-Line Claims are property of the Debtors' estates under Section 541. *Id.* at 25. In the alternative, it held that Sections 541(a)(7) and 544(a)(1) drew those claims into the Debtors' respective estates. *Id.* at 14-21. [5] Recognizing the uncertainty of the law governing its rulings, the Bankruptcy Court certified its order for direct appeal to our Court under 28 U.S.C. § 158(d)(2). We granted the Committee's petition for direct appeal, ordered expedited briefing, and issued a consolidated opinion in September 2025. Following the Committee's petition for, *inter alia*, panel rehearing, we requested supplemental briefing and now issue a revised opinion reaching the same conclusions.

II. JURISDICTION AND STANDARD OF REVIEW

[5] **[6]** The Bankruptcy Court had jurisdiction under 28 U.S.C. §§ 1334 and 157(b), and in the South Carolina Receiver's appeal, the District Court had jurisdiction under 28 U.S.C. § 158(a). We have jurisdiction under 28 U.S.C. § 158(d). We review without deference both the Bankruptcy Court's and the District Court's legal conclusions, while our

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review of their factual findings is for clear error. *In re Trans World Airlines, Inc.*, 145 F.3d 124, 131 (3d Cir. 1998).

III. DISCUSSION

Before us are two issues, each with accompanying nuance. First, the South Carolina Receiver and the Committee contend that Whittaker's Chapter 11 petition must be dismissed because the South Carolina Court vested the Receiver with exclusive authority to file it. Second, the Committee argues that the Bankruptcy Court incorrectly concluded that the Product-Line Claims belong to the Debtors' bankruptcy estates. We review each in turn.

A. Is Whittaker Properly in Bankruptcy?

[7] In order to determine whether Whittaker's Chapter 11 petition must be dismissed, we consider whether the South Carolina Court divested its board of authority to file for bankruptcy. Before doing so, however, we address a predicate question: Does the validity of a Chapter 11 petition affect a court's subject matter jurisdiction? We conclude it does not and that Whittaker's petition was duly filed in any event.

1. A Chapter 11 Petition is Not Jurisdictional.

[8] **[9]** The Bankruptcy Code provides that, except in narrow circumstances, "on ***254** request of a party in interest, and after notice and a hearing, the court shall ... dismiss a case under [Chapter 11] ... for cause." 11 U.S.C. § 1112(b)(1). "Cause" typically includes things like "gross mismanagement of the estate," "failure to comply with an order of the court," and "material default by the debtor with respect to a confirmed plan." *Id.* § 1112(b)(4)(B), (E), (N). But it also includes occasions when a debtor "did not have the proper authority to commence the ... bankruptcy proceeding." *In re 3P Hightstown, LLC*, 631 B.R. 205, 209 (Bankr. D.N.J. 2021). In those cases, the court "has no alternative but to dismiss the petition." *Price v. Gurney*, 324 U.S. 100, 106, 65 S.Ct. 513, 89 L.Ed. 776 (1945).

The Supreme Court previously described this necessary component of the bankruptcy case as a limitation on courts' "jurisdiction," stating, in interpreting the predecessor statute to the Bankruptcy Code, "nowhere is there any indication that Congress bestowed on the bankruptcy court *jurisdiction* to determine that those who in fact do not have the authority to speak for the corporation ... should be empowered to file a petition on behalf of the corporation." *Id.* at 107, 65 S.Ct. 513 (emphasis added).

"Jurisdiction," however, "is a word of many, too many, meanings." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 90, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998) (quoting *United States v. Vanness*, 85 F.3d 661, 663 n.2 (D.C. Cir. 1996)). Some courts have taken *Price*'s mention of "jurisdiction" to mean a limitation on bankruptcy courts' subject matter jurisdiction. *See, e.g., In re Parks Diversified, L.P.*, 661 B.R. 401, 415–20 (C.D. Cal. 2024) (collecting cases); *In re Mach I Aviation, Inc.*, No. 10-01225, 2011 WL 5838520, at *4 n.11 (B.A.P. 9th Cir. Sep. 15, 2011). Following that understanding, the absence of a properly filed petition would extinguish "a court's power to hear a case," leaving it no choice but to dismiss it for lack of jurisdiction. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514, 126 S.Ct. 1235, 163 L.Ed.2d 1097 (2006) (quoting *United States v. Cotton*, 535 U.S. 625, 630, 122 S.Ct. 1781, 152 L.Ed.2d 860 (2002)).

[10] But in recognition of jurisdictional limitations' "unique potential to disrupt the orderly course of litigation," recent Supreme Court cases are more precise about hanging the "jurisdictional label" on a statutory provision. *Wilkins v. United States*, 598 U.S. 152, 157–58, 143 S.Ct. 870, 215 L.Ed.2d 116 (2023). Today the standard for concluding a statute limits federal courts' subject matter jurisdiction is an exacting one. While Congress need not employ any specific formulation or "incant magic words," "the 'traditional tools of statutory construction must plainly show that Congress imbued a procedural bar with jurisdictional consequences.' " *Boechler, P.C. v. Comm'r of Internal Revenue*, 596 U.S. 199, 203, 142 S.Ct. 1493, 212 L.Ed.2d 524 (2022) (first quoting *Sebelius v. Auburn Reg'l Med. Ctr.*, 568 U.S. 145, 153, 133 S.Ct. 817, 184 L.Ed.2d 627 (2013); then quoting *United States v. Kwai Fun Wong*, 575 U.S. 402, 410, 135 S.Ct. 1625, 191 L.Ed.2d 533 (2015)). Anything short of a clear indication will not do.

The statutes granting federal courts jurisdiction over bankruptcy cases do not attach jurisdictional significance to the propriety of a debtor's petition. The governing provision, 28 U.S.C. § 1334(a), provides only that, absent exceptions not relevant here, "the district courts shall have original and exclusive jurisdiction of all cases under title 11." In addition, "district court[s] may provide that any or all cases under title 11 ... shall be referred to the bankruptcy judges for the district" who "may hear and determine all cases under ***255** title 11 ... and may enter appropriate orders and judgments." *Id.* §

157(a), (b)(1). These statutes establish the jurisdictional grant for district and bankruptcy courts over bankruptcy cases, and neither they, nor any other provision, condition that grant on a properly filed petition.

[11] **[12]** Code Section 301(a), which does deal with bankruptcy petitions, provides only that a voluntary bankruptcy "is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter." 11 U.S.C. § 301(a). This provision focuses on the commencement of a bankruptcy case by a *debtor*, not on the power of the *court.* Simply put, Section 301(a) "does not speak in jurisdictional terms," *Zipes v. Trans World Airlines, Inc.*, 455 U.S. 385, 394, 102 S.Ct. 1127, 71 L.Ed.2d 234 (1982), and we "will not lightly apply" the jurisdictional label to a provision absent a "clear statement" to the contrary, *Wilkins*, 598 U.S. at 158, 143 S.Ct. 870.

[13] Accordingly, we hold that an improperly filed bankruptcy petition constitutes "cause" to dismiss a bankruptcy case, 11 U.S.C. § 1112(b)(1), but it does not strip bankruptcy courts of subject matter jurisdiction. In doing so, we note that our conclusion is consistent with the decisions of at least two other circuits. *See In re Parks Diversified, L.P.*, 168 F.4th 1188, 1193 (9th Cir. 2026) ("Corporate authority to file for bankruptcy—while important and mandatory—is not jurisdictional."); *In re Martin-Trigona*, 760 F.2d 1334, 1340 (2d Cir. 1985) (concluding that a debtor corporation's authority to file for bankruptcy does not implicate subject matter jurisdiction).

2. Whittaker Properly Filed Its Chapter 11 Petition.

[14] **[15]** **[16]** The Supreme Court has long held that, "[i]n [the] absence of federal incorporation," "local law" governs a corporate debtor's authority to petition for bankruptcy. *Price*, 324 U.S. at 106, 65 S.Ct. 513. As corporations act through agents, "local law" is the non-federal rule that gives a corporation's agents—typically its board of directors—the "authority ... to act." *Id.* And because "[c]orporations are creatures of state law," *Burks v. Lasker*, 441 U.S. 471, 478, 99 S.Ct. 1831, 60 L.Ed.2d 404 (1979) (quoting *Cort v. Ash*, 422 U.S. 66, 84, 95 S.Ct. 2080, 45 L.Ed.2d 26 (1975)), "it is state law which is the font of corporate directors' powers," *id.* So we look to governing state law to determine the propriety of a corporation's bankruptcy petition. *In re Franchise Servs. of N. Am., Inc.*, 891 F.3d 198, 206 (5th Cir. 2018).

[17] But which state's law governs? More precisely, in a situation such as this, where a South Carolina court has putatively exercised authority over the assets of a New Jersey corporation, do we assess the authority of Whittaker's board to file for bankruptcy with reference to New Jersey or South Carolina law?

[18] The parties make answering this question easy. They agree that New Jersey law governs the authority of Whittaker's board over its internal affairs, like petitioning for bankruptcy. Appellants' Second Supp. Br. 1; Appellees' Second Supp. Br. 2, 11; *Williams v. BASF Catalysts LLC*, 765 F.3d 306, 317 (3d Cir. 2014) (noting that where parties do not dispute governing law, we need not conduct a choice-of-law analysis). So the question becomes whether, under New Jersey law, the Receivership Order stripped Whittaker's board of the authority to file for bankruptcy. It did not.

[19] While we stand far removed in time from the zenith of equity receiverships ***256** in this country, *see* David A. Skeel, Jr., DEBT'S DOMINION: A HISTORY OF BANKRUPTCY LAW IN AMERICA 56–60 (2001) (describing the rise of equity receivership in the late nineteenth century as a device for resolving corporate insolvency), this case proves that state courts retain the traditional equitable authority to appoint receivers for insolvent corporations. But that authority is not without limits, as this case also proves.

[20] **[21]** New Jersey law recognizes that "comity requires that [a foreign receiver] should be acknowledged and aided" to the extent that doing so is not "to the disadvantage of creditors resident [in New Jersey]." *Stone v. N.J. & H. R. Ry. & Ferry Co.*, 75 N.J.L. 172, 66 A. 1072, 1073 (N.J. 1907). For that reason, where a foreign court appoints a receiver, New Jersey courts generally "will appoint an ancillary receiver, [and] the assets will be so administered that creditors in [New Jersey] and in the foreign jurisdiction shall fare alike." *Id.*; *accord Clark v. Painted Post Lumber Co.*, 89 N.J. Eq. 409, 104 A. 728, 729 (N.J. Ch. 1918) (recognizing that "after the appointment of the receiver in New York, [an ancillary receiver] was appointed" by a New Jersey court); *Ware v. Supreme Sitting of Order of Iron Hall*, 28 A. 1041, 1043 (N.J. Ch. 1894) (recognizing that an ancillary receiver was appointed in New Jersey and "should be regarded as auxiliary to the [foreign] receiver").

[22] **[23]** New Jersey law authorizes its Superior Court to appoint receivers for New Jersey corporations. *See*

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N.J. Stat. Ann. § 14A:14-2(3) ("The court ... shall have power to appoint and remove one or more receivers of the corporation ...."). That provision also permits the court to "enjoin the corporation, its officers and agents, from exercising any of its privileges and franchises, and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its property, except to a receiver, and except as the court may otherwise order." *Id.* This statute suggests that New Jersey has licensed its courts to exercise broad authority over domestic corporations consistent with its corporate law. Thus, on our reading, New Jersey law permits its courts to recognize foreign receivership orders and appoint an ancillary receiver to aid in the execution of foreign judgments, including by enjoining the corporation and its board from taking specific actions and exercising specific powers.

[24] The Restatement (Second) of Conflict of Laws supports as much. In recognizing that courts may appoint a receiver over a foreign corporation, the Restatement observes that "[w]hen a principal receiver of a corporation has been appointed by a court of a state other than the state of incorporation, and it is intended to dissolve the corporation ..., an ancillary receiver should be appointed for those purposes by a court of the state of incorporation." RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 367 cmt. d (A.L.I. 1971). This is so because "only a receiver appointed by a court in the state where the corporation was incorporated can institute action to dissolve a corporation." *Id.* [6]

***257** Accordingly, under New Jersey law and settled choice-of-law principles, the South Carolina Receiver needed to move for—and be granted—recognition in New Jersey and the appointment of an ancillary receiver to displace Whittaker's board's control over, *inter alia*, the company's privileges, franchises and assets. It did not do so. Whittaker's board thus retained authority over those corporate decisions reserved to it by New Jersey law, including the decision whether to reorganize by filing for bankruptcy.

Appellants respond by invoking one of our Nation's oldest laws—the Full Faith and Credit statute, 28 U.S.C. § 1738. They contend that, under obligations imposed by that provision, "New Jersey would not ignore the Receivership Order, just as the Bankruptcy Court could not ignore it." Appellants' Second Supp. Br. 6–7. This argument falters on three fronts.

[25] **[26]** **[27]** First, on its face, the Receivership Order does not reach as far as Appellants insist. Rather than extending to displace Whittaker's board's authority over corporate affairs, it purports only to give the South Carolina Receiver control of Whittaker's "assets" and the power and authority to "take any and all steps necessary to protect the interests of [Whittaker] whatever they may be." Appellants' Consolidated J.A. 217. Nowhere does the Order speak to Whittaker's corporate affairs, including the board's authority under New Jersey law to decide whether to file for bankruptcy. [7] And in the absence of anything to the contrary in the Order, the default rule discussed above governs —namely, Whittaker's board controls the entity's corporate affairs, subject to lawful displacement under New Jersey law. Thus, because the Receivership Order on its own terms does not dictate the result Appellants assert, affording it full faith and credit under Section 1738 does not lead to a different outcome.

[28] **[29]** Second, even if we assume the Receivership Order extends to corporate affairs, Appellants still did not attempt to enforce it against Whittaker. While an order rendered by a foreign court may warrant recognition and enforcement under Section 1738, "[e]nforcement measures do not travel with the sister state judgment," and full faith and credit "does not mean that States must adopt the practices of other States regarding the time, manner, and mechanisms for enforcing judgments." *Baker ex rel. Thomas v. Gen. Motors Corp.*, 522 U.S. 222, 235, 118 S.Ct. 657, 139 L.Ed.2d 580 (1998). Even spotting Appellants the enforceability of the Order, they needed to employ the enforcement mechanisms provided under New Jersey law outlined above. They did not do so. [8] Consequently, ***258** their Section 1738 argument fails on this basis too.

[30] **[31]** Third, and more fundamentally, even if the South Carolina Court issued an order purporting to place control of Whittaker's corporate affairs in the hands of the South Carolina Receiver, we doubt its ability to do so. Our system of federalism embodies "the fundamental principle of equal sovereignty" among the states. *Nw. Austin Mun. Util. Dist. No. One v. Holder*, 557 U.S. 193, 203, 129 S.Ct. 2504, 174 L.Ed.2d 140 (2009). Implicit in that foundational organization of co-equal sovereigns is "the usual legislative power of a State to act upon persons and property within the limits of its own territory," permitting "different communities to live with different local standards." *Nat'l Pork Producers Council v. Ross*, 598 U.S. 356, 375, 143 S.Ct. 1142, 215 L.Ed.2d 336 (2023) (citation modified).

[32] **[33]** **[34]** But states' power to exercise control over actors within their respective borders is not without limits. Indeed, the Constitution has a great deal to say about the relations between states, their authority to decide the rights of foreign parties, and the application of their laws in instances of conflict. For instance, courts have long construed the Due Process Clause of the Fourteenth Amendment to impose limitations on state courts' authority to determine non-resident parties' rights. *See, e.g., Pennoyer v. Neff*, 95 U.S. 714, 723–43, 24 L.Ed. 565 (1877); *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 323–24, 66 S.Ct. 154, 90 L.Ed. 95 (1945); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 291, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980); *Ford Motor Co. v. Mont. Eighth Jud. Dist. Ct.*, 592 U.S. 351, 358, 141 S.Ct. 1017, 209 L.Ed.2d 225 (2021). Likewise, the dormant Commerce Clause prohibits, among other things, "the enforcement of state laws 'driven by ... economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors.' " *Ross*, 598 U.S. at 369, 143 S.Ct. 1142 (omission in original) (quoting *Dep't of Revenue of Ky. v. Davis*, 553 U.S. 328, 337–38, 128 S.Ct. 1801, 170 L.Ed.2d 685 (2008)).

[35] **[36]** **[37]** **[38]** It is no surprise that the Constitution places limits on the authority a state court can exercise over companies that are incorporated in a sister state. Those limitations are as intuitive as they are sensible. A corporation's state of incorporation or principal place of business determines its domicile. *See Daimler AG v. Bauman*, 571 U.S. 117, 137, 134 S.Ct. 746, 187 L.Ed.2d 624 (2014).[9] And domicile has long carried with it great significance for states' authority. *See id.*; *Pennoyer*, 95 U.S. at 723. Among the many powers they exert over their domiciliaries, states may determine " 'any and all claims' brought against a [resident] defendant." *Ford Motor Co.*, 592 U.S. at 358, 141 S.Ct. 1017 (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 919, 131 S.Ct. 2846, 180 L.Ed.2d 796 (2011)). But "the very nature of the federal union of states, to which are reserved some of the attributes of sovereignty, precludes resort ***259** to the full faith and credit clause as the means for compelling a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate." *Pac. Emps. Ins. Co. v. Indus. Accident Comm'n*, 306 U.S. 493, 501, 59 S.Ct. 629, 83 L.Ed. 940 (1939). Thus, when it comes to control over corporate decision-making, a state "has no interest in regulating the internal affairs of foreign corporations." *Edgar v. MITE Corp.*, 457 U.S. 624, 645–46, 102 S.Ct. 2629, 73 L.Ed.2d 269 (1982).

[39] As Appellants would have it, that is precisely what the South Carolina Court did in this case. They contend that the Receivership Order, properly construed, "divest[ed]" Whittaker's board of authority to conduct the internal affairs of the corporation—including the authority to file for bankruptcy. Oral Arg. Tr. 15:17.[10] However, as we explained above, the Order, reasonably interpreted, does not extend so far. And if it did, it would be an unprecedented exertion of power over a foreign corporation whose internal affairs are governed by the laws of a sister state, as well as a radical intrusion into the province of a co-equal sovereign.

[40] **[41]** **[42]** These constitutional infirmities provide an independent basis to reject Appellants' appeal to Section 1738. Rendering full faith and credit to foreign judgments does not entail blind deference in the face of constitutional limitations. Just as "[a] State may not grant preclusive effect in its own courts to a constitutionally infirm judgment, ... other state and federal courts are not required to accord full faith and credit to such a judgment." *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 482, 102 S.Ct. 1883, 72 L.Ed.2d 262 (1982) (footnote omitted). Where, as here, the parties did not litigate the constitutionality of the state-court judgment, Section 1738 does not require New Jersey to acquiesce in the enforcement of the Receivership Order without assessing its (doubtful) constitutionality.

* * * * *

[43] **[44]** **[45]** "Our Constitution 'was framed upon the theory that the peoples of the several states must sink or swim together.' " *Am. Trucking Ass'ns, Inc. v. Mich. Pub. Serv. Comm'n*, 545 U.S. 429, 433, 125 S.Ct. 2419, 162 L.Ed.2d 407 (2005) (quoting *Baldwin v. G.A.F. Seelig, Inc.*, 294 U.S. 511, 523, 55 S.Ct. 497, 79 L.Ed. 1032 (1935)). While bound together in this federal union, certain powers remain the province of a particular state. The state of incorporation, for example, enjoys exclusive authority to govern the internal affairs of its corporations. Thus, consistent with relevant constitutional constraints, New Jersey law governs and sanctions the authority of Whittaker's board to petition for bankruptcy.

B. Are the Product-Line Claims Property of the Debtors' Estates?

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As Whittaker properly entered bankruptcy, we now turn to consider whether the Product-Line Claims are property of the Debtors' bankruptcy estates. We conclude that they are under both *Emoral* and *Armetale.* To that end, we begin with a summary of the doctrinal landscape. [11]

***260** **[46]** Under Section 541 of the Bankruptcy Code, the filing of a bankruptcy petition automatically creates an "estate" comprised of "all legal or equitable interests of the debtor in property." 11 U.S.C. § 541(a)(1). This provision captures such interests "wherever located and by whomever held." *Id.* At the same time, the Supreme Court has explained that "[p]roperty interests are created and defined by state law." *Butner v. United States*, 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979). The basic idea is that state law defines a debtor corporation's property interests, whereas federal law governs whether those interests are swept into its bankruptcy estate. H.R. Rep. No. 95-595, at 367–68 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6323; S. Rep. No. 95989, at 82–83 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5787, 5869. [12]

[47] **[48]** **[49]** There is no dispute that causes of action may constitute property of the estate. *See United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 n.9, 103 S.Ct. 2309, 76 L.Ed.2d 515 (1983). However, it is often difficult to apply Section 541 to causes of action because applicable non-bankruptcy law sends mixed signals. In particular, it establishes a variety of so-called derivative actions in which "the named plaintiff 'is only a nominal plaintiff' " and "[t]he substantive claim belongs to the corporation." *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 219, 144 S.Ct. 2071, 219 L.Ed.2d 721 (2024) (quoting 2 J. Macey, Corporation Laws § 13.20[D], p. 13–140 (2020–4 Supp.)). [13] As a result, claims held by a debtor corporation's creditors under applicable non-bankruptcy law must undergo substantive scrutiny to ensure they are not misappropriated from the debtor's bankruptcy estate. *See, e.g., Emoral*, 740 F.3d at 879 (instructing courts to consider the theory of liability); *cf. Young v. Higbee Co.*, 324 U.S. 204, 210, 65 S.Ct. 594, 89 L.Ed. 890 (1945) (noting that "the prime purposes" of bankruptcy include "bring[ing] about a ratable distribution among creditors of a bankrupt's assets" and "protect[ing] the creditors from one another").

[50] **[51]** **[52]** The stakes of this exercise are significant. That is because Section 323 of the Bankruptcy Code gives the trustee exclusive statutory authority to pursue claims that constitute property of the estate under Section 541. *In re Wilton Armetale, Inc.*, 968 F.3d 273, 280 (3d Cir. 2020). [14] And the corollary of this rule ***261** proves especially troubling for interested parties: creditors—like the Committee's constituents—lack the authority to prosecute, settle, and/or release any claim that constitutes property of the estate unless the trustee relinquishes his or her statutory authority over it. *Id.* at 284. [15]

Courts have attempted to fix straightforward rules for the classification of claims in light of these stakes. And in doing so, they looked to the Supreme Court's decision in *Caplin v. Marine Midland Grace Tr. Co. of N.Y.*, 406 U.S. 416, 92 S.Ct. 1678, 32 L.Ed.2d 195 (1972). Its facts are straightforward: A trustee appointed under Chapter X of the Bankruptcy Act [16] asserted misconduct claims against a non-debtor indenture trustee on behalf of estate bondholders after concluding the latter trustee had either willfully or negligently breached its obligations under the indenture. *Id.* at 418–20, 92 S.Ct. 1678. In response, the indenture trustee contended that the bankruptcy trustee lacked authority to assert those claims on behalf of the bondholders. *See id.* at 420–21, 92 S.Ct. 1678.

On appeal, the Supreme Court determined that a provision of the Bankruptcy Act analogous to Section 544 of the modern Code did not authorize the bankruptcy trustee to assert the misconduct claims on behalf of bondholders. *Id.* at 422–28, 92 S.Ct. 1678; *see also Koch Refin. v. Farmers Union Cent. Exch., Inc.*, 831 F.2d 1339, 1347 n.11 (7th Cir. 1987) (indicating that Section 544 supplanted the Bankruptcy Act provision considered by *Caplin*); *supra* note 5 and accompanying text (explaining that the Bankruptcy Court relied on Section 544 in connection with its alternate holding in this case). Instead, the bankruptcy trustee's statutory authority was limited to asserting causes of action that were property of the estate. *Caplin*, 406 U.S. at 428–29, 92 S.Ct. 1678. But the Supreme Court concluded that the misconduct claims did not belong to the estate because, *inter alia*, they sought recovery on account of a direct injury to certain bondholders, and the debtor corporation could not have asserted those claims before its bankruptcy case began. *Id.* at 428–30, 92 S.Ct. 1678.

Following *Caplin*, courts considered the same factors to determine whether causes of action were property of the estate under Section 541 of the Bankruptcy Code. *See, e.g., Koch*, 831 F.2d at 1347 n.11; *In re Educators Grp. Health Tr.*, 25 F.3d 1281, 1285 n.4 (5th Cir. 1994). And, as the law developed, many courts adopted the basic rule that a claim is property of the estate when applicable non-bankruptcy law authorized the debtor corporation to assert it prior to bankruptcy, and

the claim vindicates an injury to the debtor corporation that created a secondary injury to all creditors. *See, e.g., In re Icarus Holding, LLC*, 391 F.3d 1315, 1319–20 (11th Cir. 2004), ***262** *certified question answered sub nom. Baillie Lumber Co. v. Thompson*, 279 Ga. 288, 612 S.E.2d 296 (2005) ("[M]ost courts require that (1) the [disputed claim] be a general claim that applies equally to all creditors, and (2) state law allows the [debtor] entity to bring [the disputed claim].").

Over time, however, the basic rule proved unworkable with respect to successor liability claims that were nominally vested with creditors on account of secondary harms derived from prepetition injuries to the debtor corporation. *See, e.g., St. Paul Fire & Marine Ins. Co. v. PepsiCo, Inc.*, 884 F.2d 688, 700–02 (2d Cir. 1989) (explaining that "*Caplin* is not controlling" where claims vindicate derivative injuries to the full creditor constituency). Those claims presented a contradiction because the derivative-injury aspect favored concluding the claim at issue was property of the estate, whereas the debtor corporation's inability to assert the claim outside of bankruptcy supported the conclusion that it belonged to the individual creditors. *See id.* (discussing both factors).[17]

We have considered two such cases, and we held the claims at issue were property of the estate in both.[18] The first was *Emoral,* 740 F.3d 875. Before its bankruptcy, the debtor in that case manufactured diacetyl, a chemical used in the food flavoring industry that was found to cause various lung ailments. *Id.* at 877. Through a complicated procedural history, a group of plaintiffs eventually sued a third-party purchaser that acquired certain of the debtor's assets for diacetyl-related personal injuries caused by the debtor's products. *Id.* They proceeded against the purchaser on the theory that it was liable for their diacetyl-related tort claims as the "mere continuation" of the debtor. *Id.* at 876–77; *see also supra* note 4 (discussing the mere continuation theory of liability). But the purchaser contended the tort claimants could not assert the mere continuation claims because they were property of the debtor's bankruptcy estate. *See id.* at 878.

Notably, our approach resembled the basic rule. We explained at the outset that a claim is property of the estate if it (1) existed at the time the debtor corporation filed its bankruptcy petition, (2) could have been asserted by the debtor corporation outside of bankruptcy under applicable state law, and (3) is a general claim "with ***263** no particularized injury arising from it." *Id.* at 879 (quoting *Bd. of Trs. of Teamsters Loc. 863 Pension Fund v. Foodtown, Inc.*, 296 F.3d 164, 170 (3d Cir. 2002)). As in this case, the parties did not dispute the first prong, so we focused on the latter two.

The second prong was challenging to apply because it was "difficult to imagine" that the debtor corporation "would or could bring a claim for successor liability" outside of bankruptcy. *Id.* at 881. That is because debtor corporations are—as a practical matter—generally unable to assert certain successor liability claims even when state law authorizes them to do so. *Id.* (citing *In re Buildings by Jamie, Inc.*, 230 B.R. 36, 42 (Bankr. D.N.J. 1998)); *see also supra* note 17 and accompanying text (explaining that debtor corporations ordinarily refrain from asserting successor liability claims). At the same time, we noted that courts have classified successor liability claims as property of the estate notwithstanding the practical considerations that prevent their assertion by debtor corporations. *See Emoral*, 740 F.3d at 881 (discussing cases). So, with respect to the dispute before us, we expressed doubt that the debtor corporation's inability to assert the mere continuation claims outside of bankruptcy would be dispositive. *See id.*

The third prong was also challenging because the tort claimants emphasized their underlying tort injuries in an effort to demonstrate particularized harms. *See id.* at 879 (explaining that the tort claimants "focus[ed] on the individualized nature of their personal injury claims against [the debtor]" to obfuscate the derivative nature of the mere continuation theory of liability). Indeed, the tort claimants had asserted personal injury claims against the debtor to recover for the direct injuries they sustained from products manufactured by the debtor. *Id.* at 877. And according to the tort claimants, the mere continuation claims they asserted against the third-party purchaser were predicated on the same product-related injuries. *Id.* at 877–78.

We disagreed. As noted above, the mere continuation theory of liability turns on "continuity in management, shareholders, personnel, physical location, assets and general business operation between selling and purchasing corporations following [an] asset acquisition." *Id.* at 880 (quoting *Ramirez*, 431 A.2d at 816). So, although the tort creditors "focus[ed] on the individualized nature" of their underlying claims, *id.* at 879, they "fail[ed] to demonstrate how any of the factual allegations that would establish their cause of action based on successor liability [were] unique to them," *id.* at 880. Likewise, the tort creditors could not "demonstrate how recovery on their successor liability cause of action would not benefit all creditors." *Id.* From that perspective, their

theory of liability was "based on a general injury suffered by a corporate debtor prior to its bankruptcy filing," *id.* at 882 (quoting *Foodtown*, 296 F.3d at 171), as opposed to "any direct injury" inflicted by the purchaser they sought to hold liable, *id.* at 879. We thus concluded the mere continuation claims were property of the estate. *Id.* at 882. And in doing so, we cautioned courts to "examine the nature of the cause of action" to avoid misclassifying successor liability claims on the basis of tort injuries inflicted by the debtor. *Id.* at 879–80.

We decided *Armetale* next. 968 F.3d 273. In that case, the former owner of Wilton Armetale, Inc. engineered a series of transactions involving the sale of corporate assets for less than fair value in exchange for a kickback from the purchaser. *Id.* at 278. Eventually, however, one of Armetale's creditors discovered the scheme and asserted fraudulent transfer ***264** claims against the colluding parties. *Id.* Armetale subsequently filed for bankruptcy, which prompted a dispute as to whether those fraudulent transfer claims belonged to the bankruptcy estate or to the creditor that asserted them.

[53] We explained that claims are property of the estate where the theory of liability is "based on an injury to the debtor's estate that creates a secondary harm to all creditors regardless of the nature of their underlying claim[s] against the debtor." *Id.* at 283 (quoting *In re Tronox Inc.*, 855 F.3d 84, 104 (2d Cir. 2017)). Such is the case where the theory of liability is "based on facts generally available to any creditor, and recovery would serve to increase the pool of assets available to all creditors." *Id.* (quoting *Emoral*, 740 F.3d at 881). In contrast, we stated that claims are personal to creditors "[o]nly when a particular creditor suffers a direct, particularized injury that can be 'directly traced' to the defendant's conduct." *Id.* (quoting *Tronox*, 855 F.3d at 100). The disputed fraudulent transfer claims, however, vindicated the prepetition depletion of corporate assets, which "lower[ed] the odds that the [debtor corporation] w[ould] repay its creditors." *Id.* at 277. In that sense, the claims "rel[ied] on a general theory of recovery derivative of harm done to [the debtor corporation]." *Id.* at 283. We therefore determined they were property of the estate. *Id.*

[54] Against this backdrop, the Committee argues the Product-Line Claims are not property of the Debtors' estate for three reasons. [19] We address and reject them in turn.

1. Claims May Constitute Property of the Estate Notwithstanding Whether the Debtor Corporation Could Assert Them Outside of Bankruptcy.

The Committee contends that the Debtors cannot satisfy *Emoral* because state law does not establish "an independent right" for them to assert the Product-Line Claims outside of bankruptcy. Appellant Committee's Opening Br. 32. [20] For this assertion, it points to a line from *Emoral* explaining that a cause of action is property of the estate "if ... the debtor could have asserted the claim on [its] own behalf under state law." *Emoral*, 740 F.3d at 879 (quoting *Foodtown*, 296 F.3d at 169 n.5). In short, the Committee asks us to consider this aspect of the basic rule a necessary, rather than sufficient, condition.

***265** The problem is that this request is inconsistent with our precedents. For example, we concluded the mere continuation claims at issue in *Emoral* were property of the estate irrespective of whether the debtor could assert them outside of bankruptcy. *See id.* at 881. Similarly, *Armetale* held that fraudulent transfer claims are property of the estate, 968 F.3d at 283, yet state law vests those claims exclusively with the creditors of a debtor corporation outside of bankruptcy, *see, e.g., In re Cybergenics Corp.*, 226 F.3d 237, 242 (3d Cir. 2000) ("[O]utside of the context of bankruptcy, it is clear that a fraudulent transfer claim ... belongs to [the debtor corporation's] creditors ...."); *In re Global Grounds Greenery, LLC*, 405 B.R. 659, 662 (Bankr. D. Ariz. 2009) ("There is no dispute that the Uniform Fraudulent Transfer Act, as adopted in Arizona and elsewhere, only creates causes of action for creditors of the transferor."); *In re ShengdaTech, Inc.*, 519 B.R. 292, 303–04 (D. Nev. 2014) (holding that, under Nevada's Uniform Fraudulent Transfer Act, a creditor is the only party with standing to bring a claim).

[55] **[56]** Furthermore, the Committee's request would subvert the goals that Congress sought to advance through the Bankruptcy Code. As we have repeatedly explained, Section 541 safeguards property to enable orderly administration and equitable distribution to all creditors of the bankrupt entity's estate. *See, e.g., Emoral*, 740 F.3d at 879, 881. These aims are particularly germane where the Committee's approach would invite any number of states to endow certain creditors with a windfall recovery by vesting causes of action predicated on an injury to the debtor corporation exclusively with those creditors. Accordingly, consistent with our analysis in both *Emoral* and *Armetale*, we conclude that a claim may constitute property of the estate notwithstanding whether the

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debtor corporation was authorized to assert it outside of bankruptcy.[21]

2. The Product-Line Claims Are Not Based on Particularized Injuries Directly Traceable to the Conduct of Brenntag.

The Committee also argues that the Product-Line Claims cannot constitute property of the estate because they are "specific claims" that "arise from harms unique to [the tort claimants] ... based on [the] conduct of [Brenntag]." Appellant Committee's Opening Br. 33. However, we have already explained that successor liability claims are property of the estate because the facts on which successor liability depends—the successor's relationship with the manufacturer—do not implicate a claim that is "specific to the creditor." *Emoral*, 740 F.3d at 879 (quoting *Foodtown*, 296 F.3d at 170).

The same principle applies here. The product-line theory of liability pressed by the Committee turns on the successor's relationship with the manufacturer, for it is the successor's acquisition and continuation of the "same manufacturing operation and practices" that seeds its potential liability to individual claimants. Appellant Committee's Opening Br. 33 (citing *Ramirez*, 431 A.2d at 820). In contrast, the asbestos injuries endured by the tort claimants do not stem from the facts underlying Brenntag's status as a successor to the Debtors. They trace only to their exposure to asbestos-contaminated products manufactured by the Debtors before Brenntag came into the picture. This precludes ***266** them from being "directly traced" to Brenntag. *Armetale*, 968 F.3d at 283 (quoting *Tronox*, 855 F.3d at 100).

To be sure, the Committee correctly observes that its constituents have each suffered "harms unique to [them]." Appellant Committee's Opening Br. 33. But this argument simply echoes the dissent in *Emoral*, which would have held that the mere continuation claims at issue were based on a particularized injury "[b]ecause the [tort creditors'] underlying allegations are clearly individualized in nature." *Emoral*, 740 F.3d at 883 (Cowen, J., dissenting). The *Emoral* majority rejected that focus on "the nature of the [underlying tort] injury" in favor of analyzing the theory of liability and the facts on which it relies. *Armetale*, 968 F.3d at 282 (citing *Emoral*, 740 F.3d at 879). And that analysis controls even though the harm suffered by some creditors "might be worse in degree than that suffered by other creditors." *Id.* at 283.

3. The Product-Line Claims Are Based on A Prepetition Injury to the Debtors that Resulted in Secondary Harm to All Creditors.

Finally, the Committee notes that the Debtors "did not suffer the injuries endured by mesothelioma victims." Appellant Committee's Petition for Rehearing 13. So, unlike the fraudulent transfer claims we considered in *Armetale*, the Committee contends that the Product-Line Claims at issue do not involve a theory of recovery "derivative of harm that [the debtor] suffered directly." *Id.* at 8 (quoting 968 F.3d at 282). We disagree. In our view, they are akin to fraudulent transfer claims in two critical respects.

[57] First, the product-line theory of liability serves the same general purpose. As we explained above, the product-line theory imposes liability for injuries caused by defects of a product line on a corporation that acquires the manufacturing assets of another corporation and undertakes essentially the same operations and practices. *Ramirez*, 431 A.2d at 820. But it grew out of the traditional corporate view that successor liability claims apply in "the absence of adequate consideration for [a] sale or transfer." *Ramirez*, 431 A.2d at 815, 819 (citation omitted). Unsurprisingly, then, it serves to prevent the destruction of creditor remedies based on complex commercial transactions involving the transfer of corporate assets that would otherwise be available to creditors of the transferor. *Id.* at 820 (citing *Ray v. Alad Corp.*, 19 Cal.3d 22, 136 Cal.Rptr. 574, 560 P.2d 3, 9 (1977)); *see also Ray*, 136 Cal.Rptr. 574, 560 P.2d at 10 (justifying liability based on the depletion of corporate resources available to satisfy liabilities). Fraudulent transfer claims are no different. They apply in the absence of "reasonably equivalent value" for a transfer or sale. 5 *Collier on Bankruptcy* ¶ 548.05 (16th ed. 2025). They serve "to ensure that the debtor does not engage in transactions that diminish the pool of assets available to creditors." Douglas G. Baird, *Fraudulent Transfer Law's Forgotten Foundations*, 5 U. CHI. BUS. L. REV. 53, 56 (2026). And they do so to prevent debtor corporations from "evad[ing] ordinary creditor remedies." *Id.* at 75.

Second, fraudulent transfer claims turn on the same generally available facts as the product-line theory. A fraudulent transfer is voidable if, among other things, "the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer." N.J. Stat. Ann. § 25:2-27(a). On the other hand, the product-line theory requires proof that the non-debtor defendant's "purchase of the product line destroyed

the plaintiff's available remedies." Appellant Committee's PFR, at 11 (citing *Ramirez*, 431 A.2d at 824–25). But these ***267** elements overlap such that the generalized findings in support of one claim could be asserted to establish the other. Suppose, for example, that the Bankruptcy Court determined Brenntag's acquisition of the Debtors' manufacturing assets rendered them insolvent. The tort creditors could assert that finding in state court to establish that Brenntag's acquisition destroyed their available remedies. And "[i]f [that] generalized finding[ ] would benefit their [product-line] case[s], then their claims are no less generalized than the fraudulent-conveyance claims." *Tronox*, 855 F.3d at 107; *see also In re Bernard L. Madoff Inv. Sec. LLC*, 740 F.3d 81, 91 (2d Cir. 2014) (concluding conspiracy-based claims were property of the estate where the factual allegations made by tort claimants echoed fraudulent transfer allegations made by the trustee).

Our point is straightforward. The Committee readily concedes that fraudulent transfer claims are property of the estate. Appellant Committee's PFR, at 10 (citing *Armetale*, 968 F.3d at 283). But the Product-Line Claims it challenges on appeal are similar in object and purpose to the fraudulent transfer claims we considered in *Armetale.* Indeed, as we have explained, both theories of liability address derivative injuries to the full creditor constituency that resulted from the prepetition diversion of corporate assets. And "[b]ecause [those] claims depend on harm suffered directly by [the debtor corporation] and only indirectly by [creditors], [the] theory of recovery is not personal, but derivative of harm to the estate." *Armetale*, 968 F.3d at 283; *see also Emoral*, 740 F.3d at 879 (instructing courts to focus on the theory of liability to prevent creditors from obfuscating prepetition harm to the debtor corporation). Such claims belong squarely to the estate.

Contrary to the Committee's assertion, our conclusion is hardly anomalous. Other courts have adopted the same view when creditors asserted successor liability claims predicated on the prepetition diversion of corporate assets. For example, in *National American Ins. Co. v. Ruppert Landscaping Co., Inc.*, the Fourth Circuit held that creditors lacked standing to assert successor liability claims because they were "so similar in object and purpose to [fraudulent transfer] claims that the trustee could bring in bankruptcy court." 187 F.3d 439, 441 (4th Cir. 1999) (Wilkinson, J.). In that case, Ruppert Landscaping Company entered a series of contracts under which it agreed to purchase certain of Green Thumb Enterprise's notes and assets. *Id.* at 440. But Green Thumb was pushed into bankruptcy when it defaulted on various agreements bonded by sureties. *Id.* Thereafter, the sureties asserted, *inter alia*, successor liability claims against Ruppert. *Id.* at 440–41.

On appeal, the Fourth Circuit noted that "the [s]ureties rel[ied] heavily on exposing the Ruppert/Green Thumb transaction to be fraudulent." *Id.* at 441. And "[a]lthough the [s]ureties' claims and the trustee's fraudulent conveyance claim [did] not contain identical elements, they all share[d] this same underlying focus." *Id.* For that reason, "[a]ll creditors, not simply the [s]ureties, ha[d] a stake in exposing any impropriety in the Ruppert/Green Thumb transaction." *Id.* at 442. Moreover, "allow[ing] selected creditors to artfully plead their way out of bankruptcy court would unravel the bankruptcy process" and prompt "a multijurisdictional rush to judgment whose organizing principle could only be first-come-first-served." *Id.* (citations omitted). The Court thus concluded the successor liability claims were property of the estate in an effort to "maintain[ ] the integrity of the bankruptcy proceeding and ***268** ensure[ ] that individual creditors [did not] hijack the bankruptcy process." *Id.*

The Second Circuit likewise held in *Tronox* that successor liability claims predicated on the prepetition depletion of a debtor corporation's assets were property of its bankruptcy estate. *See* 855 F.3d at 106–07. Prior to the insolvency proceedings that prompted the dispute, Kerr-McGee Corporation underwent a series of transactions that split the company into two distinct entities: New Kerr-McGee and Tronox. *Id.* at 88. The former maintained control of Kerr-McGee Corporation's oil and gas assets, whereas Tronox was left a corporate shell saddled with Kerr-McGee Corporation's environmental and tort liabilities. *Id.* And in order to manage the claims of several thousand tort creditors, Tronox filed for bankruptcy in the Southern District of New York. *Id.* at 91.

Shortly after the petition date, Tronox asserted fraudulent transfer claims against New Kerr McGee to recover the assets that were transferred to the latter through the spinoff transactions. *Id.* at 88. Tronox ultimately prevailed on those claims, but New Kerr-McGee agreed to an approximately $5 billion settlement before the court entered a final judgment on damages. *Id.* at 92. And, as part of the settlement agreement, Tronox agreed to release New Kerr-McGee from various claims that belonged to its bankruptcy estate. *Id.* However, believing the scope of the estate did not extend to successor liability claims, the tort creditors sought to hold New KerrMcGee liable "as the alter ego and successor to the

liabilities of the former parent of the actual alleged tortfeasor." *Id.* at 106.

Consistent with our approach in *Emoral*, the Second Circuit explained that claims are property of the estate if they vindicate an injury to the full creditor constituency "based upon a secondary effect from harm done to the debtor." *Id.* at 100 (citation modified). On the other hand, they belong to individual creditors if they vindicate an injury that can be "directly traced to the third party's conduct." *Id.* (citation modified). And insofar as the Court was concerned, the successor liability claims constituted property of the estate because the tort creditors failed to "trace their harm to New Kerr-McGee." *Id.* at 106.

Crucially, the Court emphasized that "plaintiffs often try, but are not permitted, to plead around a bankruptcy." *Id.* at 100. And in its view, the tort creditors had attempted to do just that. *See id.* at 103–06. Indeed, they sought an opinion and order permitting them "to sue third-party successors of [Tronox] for claims that are truly aimed at recovering estate assets." *Id.* at 104 (discussing *Emoral* with approval). But "[e]very creditor ha[d] a similar claim for the diversion of assets." *Id.* at 103. And "[t]he exact same claim advanced by the trustee on behalf of the estate would be a win for all creditors of the estate." *Id.* at 104. Accordingly, the Court rejected the tort creditors' request.

So too here. As in both *Ruppert Landscaping* and *Tronox*, the tort claimants in our case have attempted to plead their way around the Debtors' bankruptcy proceedings by asserting the Product-Line Claims against Brenntag. They have pursued those claims to recover from, among other things, the operating assets that Brenntag acquired from the Debtors. And they seek this recovery in satisfaction of asbestos injuries they trace to talc products manufactured exclusively by the Debtors. In that context, the Product-Line Claims are predicated on a prepetition injury to the Debtors (from Brenntag's diversion of substantially all operating assets the Debtors possessed) that resulted in a secondary injury to all creditors (by rendering those assets unavailable for distribution on account ***269** of their claims against the Debtors). The Product-Line Claims thus constitute property of the estate.

[58] **[59]** In summary, claims are personal to creditors when the theory of liability is based on a particularized injury directly traceable to the conduct of the defendant. *Armetale*, 968 F.3d at 283; *Emoral*, 740 F.3d at 879. They are property of the debtor's bankruptcy estate if the theory of liability is instead based on an injury to the debtor corporation that resulted in secondary harm to all creditors. *See, e.g., Armetale*, 968 F.3d at 283. And in many cases, claims in the latter category are easy to identify because applicable non-bankruptcy law authorizes the debtor corporation to assert them outside of bankruptcy. *See, e.g., Emoral*, 740 F.3d at 879 (explaining that property of the estate "includes" claims "the debtor could have asserted ... on his own behalf under state law"); *In re S.I. Acquisition, Inc.*, 817 F.2d 1142, 1152 (5th Cir. 1987) (concluding alter-ego claims were property of the estate where the debtor corporation was authorized to assert them).

[60] Nonetheless, certain states might seek to authorize a subset of creditors to vindicate secondary harms derived from the depletion of estate assets through successor-liability claims vested exclusively with that subset. Courts must therefore scrutinize the theory of liability to prevent nominal plaintiffs from commandeering the bankruptcy process. *See, e.g., Emoral*, 740 F.3d at 879 (focusing on the theory of liability—as opposed to underlying tort injuries caused by the debtor—to prevent creditors from obfuscating a general injury to the estate); *Purdue Pharma*, 603 U.S. at 219, 144 S.Ct. 2071 (explaining that derivative claims are property of the estate because "[t]he substantive claim belongs to the corporation") (citation omitted).

To be sure, we "look to state law to determine if a property right exists and to stake out its dimensions." *In re Nejberger*, 934 F.2d 1300, 1302 (3d Cir. 1991) (citing *Butner*, 440 U.S. at 54–55, 99 S.Ct. 914). But "[t]he whole point of channeling claims through bankruptcy is to ... promote an equitable distribution of debtor assets." *Tronox*, 855 F.3d at 106 (citing *Koch*, 831 F.2d at 1343). And "[t]o allow selected creditors to artfully plead their way out of bankruptcy court would unravel the bankruptcy process and undermine an ordered distribution of the bankruptcy estate." *Ruppert Landscaping*, 187 F.3d at 442. We decline to permit that result. Indeed, the Supreme Court cautioned in *Butner* that property interests should be analyzed in accordance with state law "[u]nless some federal interest requires a different result." 440 U.S. at 55, 99 S.Ct. 914.

IV. CONCLUSION

Whittaker filed for bankruptcy after its board exercised its power to authorize the petition. The South Carolina Court could not unilaterally divest Whittaker's board of that authority, and, once appointed, the South Carolina

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Receiver had to convince a New Jersey court to displace the board. Because that did not occur, Whittaker properly entered bankruptcy. And, once there, Section 541(a)(1) of the Bankruptcy Code brought the Product-Line Claims into the Debtors' estates. For these reasons, we affirm the judgments of the District and Bankruptcy Courts.

AMBRO, Circuit Judge, concurring

The *Erie* doctrine—taken from *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), and its progeny—is the North Star for determining whether federal or state law should apply in federal court. The answer is state law unless the matter is governed by superseding ***270** federal law, such as the Constitution, a congressional enactment, or federal common law. *See* Charles A. Wright, Arthur R. Miller, & Edward H. Cooper, 19 *Federal Practice and Procedure* § 4501 (3d ed. 2025). *Erie* questions occur most often when federal courts sit in diversity-of-citizenship jurisdiction because those disputes usually involve only state substantive law. State law, however, includes more than just the underlying substantive law. The Supreme Court told us in *Klaxon Co. v. Stentor Electric Manufacturing Co.*, 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941), that it includes choice-of-law rules as well.

What force, if any, does *Klaxon* have in bankruptcy, where the parties' primary rights and interests are often governed by state law? We need not answer that question in a holding, as the parties agree on the law that governs: New Jersey's. *See* Wright, Miller & Cooper § 4506 (collecting cases for the proposition that courts need not determine which state's choice-of-law regime applies when the parties do not dispute that question).

Though "a pretty good reason for having 'skimmed over the conflicts problem as if none existed' was that none did exist," Henry Friendly, *In Praise of Erie – And the New Federal Common Law*, 39 N.Y.U. L. REV. 383, 401 (1964) (citation omitted), the question whether *Klaxon* applies in bankruptcy has spawned interesting academic debate. Answers span the spectrum. *Compare, e.g.*, Zachary D. Clopton, *Horizontal Choice of Law in Federal Court*, 169 PA. L. REV. 2193, 2203–06 (2021) (*Klaxon* applies without exception), *with* Tobias Barrington Wolff, *Choice of Law and Jurisdictional Policy in the Federal Courts*, 165 PA. L. REV. 1847 (2017) (*Klaxon* applies only in diversity actions). Our concurring colleague has staked out her position that *Klaxon* always applies in bankruptcy, no exceptions. Because I am uncomfortable with that view, I instead take the opportunity to make some nonbinding observations about *Erie* and choice of law.

I. *ERIE* AND *KLAXON*

A brief refresher on the *Erie* doctrine. Despite the almost mystical fascination that has long surrounded *Erie*, it stands for three basic propositions.

First, "[t]here is no federal *general* common law." *Erie*, 304 U.S. at 78, 58 S.Ct. 817 (emphasis added). "[N]either Congress nor the federal courts can, under the guise of formulating rules of decision for federal courts, fashion rules which are not supported by a grant of federal authority contained in Article I or some other section of the Constitution." *Hanna v. Plumer*, 380 U.S. 460, 471, 85 S.Ct. 1136, 14 L.Ed.2d 8 (1965). When the Constitution *does* authorize Congress or courts to do so, however, *Erie* has no application, and federal law displaces contrary state law through the Supremacy Clause.

Second, without a federal statute or constitutionally authorized federal common-law rule, the Rules of Decision Act, 28 U.S.C. § 1652, commands federal courts to apply the rules of decision of their forum states "in cases where they apply." The Supreme Court has developed a framework for determining when a state law falls within the scope of the Rules of Decision Act. *See Gasperini v. Ctr. For Humanities, Inc.*, 518 U.S. 415, 427–28, 116 S.Ct. 2211, 135 L.Ed.2d 659 (1996); *Hanna*, 380 U.S. at 468, 85 S.Ct. 1136. The specifics of that framework are irrelevant for our purposes.

Third, when a Federal Rule (*e.g.*, the Federal Rules of Civil Procedure) conflicts with state law, then the Rules Enabling Act, 28 U.S.C. § 2072, not the Rules of Decision Act as construed by *Erie* and ***271** other cases, determines which law applies. *See Hanna*, 380 U.S. at 463–64, 85 S.Ct. 1136; *Burlington N. R.R. Co. v. Woods*, 480 U.S. 1, 4–5, 107 S.Ct. 967, 94 L.Ed.2d 1 (1987). The Rules Enabling Act is also irrelevant for our purposes.

Klaxon followed *Erie* and held that a federal court sitting in general diversity-of-citizenship jurisdiction is required to use the choice-of-law rules of its forum state. *Klaxon*, 313 U.S. at 496–97, 61 S.Ct. 1020. The Court's reasoning was sparse, but its decision is best understood as falling into the *Erie* doctrine's second bucket—absent some constitutionally authorized federal law, the Rules of Decision Act kicks in. State choice-of-law rules are state rules of decision under

that statute. *See A.I. Trade Fin., Inc. v. Petra Int'l Banking Corp.*, 62 F.3d 1454, 1464 (D.C. Cir. 1995) ("A choice-of-law rule is no less a rule of state law than any other ...."). But if Congress or federal courts invoke some source of constitutional authority to promulgate federal choice-of-law rules, then federal courts would instead find themselves in the first bucket. The Rules of Decision Act, and thus *Klaxon*, would no longer apply.

II. FEDERAL COMMON LAW AFTER *ERIE*

Although *Erie* ended the *general* federal common law, the Supreme Court has been unequivocal in recognizing that the *Erie* doctrine does not entirely displace federal common law. As Justice Brandeis acknowledged in a decision released on the same day as *Erie*, federal courts may still formulate special federal common law on issues of uniquely federal interest. *See Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 110, 58 S.Ct. 803, 82 L.Ed. 1202 (1938) (concluding that interstate water apportionment "is a question of 'federal common law' upon which neither the statutes nor the decisions of either State can be conclusive"); *see also Boyle v. United Techs. Corp.*, 487 U.S. 500, 504, 108 S.Ct. 2510, 101 L.Ed.2d 442 (1988) (noting that federal courts may still formulate federal common law in certain areas implicating "uniquely federal interests").

For example, federal courts may still generate common-law rules when "the policy of the law is so dominated by the sweep of federal statutes and doctrines developed under them that the legal relations they affect must be deemed governed by federal law." Wright, Miller, & Cooper § 4514. Likewise, it can sometimes "be inferred from congressional or constitutional intent that the federal courts should supply the necessary rule of decision by pronouncing common law to fill the interstices of a pervasively federal substantive framework." *Id.*

To be sure, the "cases in which judicial creation of a special federal rule would be justified ... are ... 'few and restricted.' " *O'Melveny & Myers v. FDIC*, 512 U.S. 79, 87, 114 S.Ct. 2048, 129 L.Ed.2d 67 (1994) (quoting *Wheeldin v. Wheeler*, 373 U.S. 647, 651, 83 S.Ct. 1441, 10 L.Ed.2d 605 (1963)). Before federal courts develop common-law rules, "a significant conflict between some federal policy or interest and the use of state law must first be specifically shown." *Atherton v. FDIC*, 519 U.S. 213, 218, 117 S.Ct. 666, 136 L.Ed.2d 656 (1997) (quoting *Wallis v. Pan Am. Petrol.*, 384 U.S. 63, 68, 86 S.Ct. 1301, 16 L.Ed.2d 369 (1966)). But when that happens, federal courts no doubt have the power to create special federal common law, including choice-of-law rules.

To recap: When Congress or federal courts validly promulgate some federal rule of decision under a source of constitutional authority, then federal law displaces contrary state law. Absent that kind of federal law, then the Rules of Decision Act applies, which commands federal courts to ***272** apply state rules of decision. Even after *Erie*, federal courts retain the power to promulgate special federal common-law rules when a strong federal interest requires such rules. Those cases, however, are rare.

III. WHAT CHOICE-OF-LAW RULES GOVERN WHEN FEDERAL COURTS SIT IN BANKRUPTCY?

This leaves our main questions: (1) Does *Klaxon* apply in federal bankruptcy litigation, and if so, (2) may federal courts ever use special federal common-law choice-of-law rules instead?

The circuits are split. The Ninth Circuit limits *Klaxon* to diversity cases, and thus federal courts must apply federal choice-of-law principles in bankruptcy cases. *In re Lindsay*, 59 F.3d 942, 948 (9th Cir. 1995).[1] The Eighth Circuit has arguably held that *Klaxon* applies categorically in federal bankruptcy cases without exception. *In re Payless Cashways*, 203 F.3d 1081, 1084 (8th Cir. 2000). I say "arguably" because that decision passes on the issue in a single conclusory sentence with no further analysis. It is thus hard to conclude that the Eighth Circuit contemplated and rejected the possibility of exceptions. Finally, the Second and Fourth Circuits have held that *Klaxon* applies in federal bankruptcy proceedings unless a strong federal interest justifies creating federal choice-of-law rules as a matter of federal common law. *In re Merritt Dredging Co.*, 839 F.2d 203, 206 (4th Cir. 1988); *In re Gaston & Snow*, 243 F.3d 599, 605–06 (2d Cir. 2001).

I believe that the Second and Fourth Circuits have it right. The Ninth Circuit is wrong because *Erie*, and thus *Klaxon*, is not limited to federal diversity jurisdiction. Whenever federal courts encounter an issue whose resolution is not a matter of federal law, the Rules of Decision Act compels them to use state substantive law, which includes choice-of-law rules. If the Eighth Circuit held that *Klaxon* applies without exception in federal bankruptcy cases, it is wrong as well. Federal courts after *Erie* retain constitutional power to promulgate special federal common-law rules, including choice-of-law

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rules, when strong federal interests justify doing so. "*Erie* did not fence off a 'local law field' constitutionally immune to federal influence; it was quite clear that exclusive state power takes up only where federal power leaves off." John Hart Ely, *The Irrepressible Myth of Erie*, 87 HARVARD L. REV. 693, 705 (1974).

A. *Erie* and *Klaxon* Apply Outside General Diversity Jurisdiction.

I believe it is wrong to conclude that *Erie* applies only in federal diversity cases. It applies to any "questions which arise in federal court but whose determination is not a matter of federal law." *Merritt Dredging*, 839 F.2d at 206; *see also Fagin v. Gilmartin*, 432 F.3d 276, 285 n.2 (3d Cir. 2005) (Ambro, J.) (invoking *Erie* to apply New Jersey law in a federal securities-law case brought under federal-question jurisdiction). Given the three-bucket framework I described above, this makes sense. Without on-point federal law, the Rules of Decision Act governs. And that statute does not turn on the basis of federal jurisdiction. ***273** *Erie* applies just as much when a court is sitting in its federal-question or bankruptcy jurisdiction as it does in general diversity. *See, e.g., United Mine Workers v. Gibbs*, 383 U.S. 715, 726, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966) (applying *Erie* in pendent jurisdiction cases); *Griffin v. McCoach*, 313 U.S. 498, 503, 61 S.Ct. 1023, 85 L.Ed. 1481 (1941) (applying *Erie* in interpleader cases). [2]

If we accept that *Erie* applies whatever the basis of federal jurisdiction, then it does not take much more analysis to conclude that the same is true for *Klaxon.* Both *Erie* and *Klaxon* "make clear that federal law may not be applied to questions which arise in federal court but whose determination is not a matter of federal law." *Merritt Dredging*, 839 F.2d at 206. That includes in bankruptcy. As the Fourth Circuit explained, "[i]t would be anomalous to have the same property interest governed by the laws of one state in federal diversity proceedings and by the laws of another state where a federal court is sitting in bankruptcy." *Id.*

B. Federal Courts May Still Apply Federal Common-Law Choice-of-Law Rules in Bankruptcy Cases When Strong Federal Interests Warrant Doing So.

Klaxon applies in bankruptcy proceedings when addressing state-law questions; that much we agree on. The sole remaining wrinkle is whether federal courts sitting in bankruptcy must *always* apply the forum state's choice-of-law rules when the underlying issue is governed by state law. That is where I part with our concurring colleague. In Judge Krause's view, federal courts sitting in bankruptcy jurisdiction can *never* create federal common-law choice-of-law rules for some combination of five reasons. [3]

First, the Bankruptcy Code generally absorbs state laws to define the parties' property interests, and so it follows that state choice-of-law rules must also apply. Conc. Op. —— – ——. *Second*, the Bankruptcy Code is intended to facilitate the orderly resolution of competing creditors' claims without significantly affecting their underlying entitlements, and federal choice-of-law rules, if allowed, could change the outcome. *Id.* at —— – ——. *Third*, federal courts have limited power to make federal common law. *Id.* at —— – ——. *Fourth*, if there were some reason to create a federal rule of decision in bankruptcy, federal courts would be better off creating a rule of decision rather than a choice-of-law rule. *Id.* at —— – ——. And *fifth*, any federal interest strong enough to generate a federal choice-of-law rule would be explicit in the Bankruptcy Code itself; the absence of choice-of-law rules in the Code means ***274** there is never any such interest. *E.g., id.* at ——.

None of the first four arguments supports the claim that federal courts can never create choice-of-law rules in bankruptcy—they support only the lesser claim that state choice-of-law rules will almost always apply. As noted, I agree with that conclusion. My colleague's fifth argument, however, is where we part, as the Supreme Court has recognized that even when bankruptcy otherwise looks to state law, sufficiently strong federal interests may warrant creating special federal common law.

1. Bankruptcy typically absorbs state law.

Our concurring colleagues observes, rightly, that federal courts sitting in bankruptcy "regularly look to governing non-bankruptcy law—often 'state law'—to determine parties' 'rights and obligations when the Code does not supply a federal rule.' " Conc. Op. —— (citation omitted). If federal courts in bankruptcy used special federal choice-of-law rules that differed from those of the forum state, then the parties' choice of forum (or even the basis of federal jurisdiction) could change their primary rights.

This is true, but it does not establish more than we already know—*Klaxon* should ordinarily apply in bankruptcy. That federal courts confronted with state-law questions should use state choice-of-law rules to avoid jurisdiction-shopping is not an interest unique to bankruptcy. Yet even federal courts sitting in diversity jurisdiction may theoretically formulate special federal common law to protect important federal interests. *See, e.g., Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964) (applying act-of-state doctrine in diversity case). And when courts do so, neither *Erie* nor *Klaxon* prevents them from using those rules instead of state law.

At most, that bankruptcy ordinarily absorbs state substantive law supports a background presumption that federal courts in bankruptcy will rarely have a good reason to create federal choice-of-law rules. It does not support the broader argument that federal courts can never create special choice-of-law rules in bankruptcy.

2. Bankruptcy should rarely alter the parties' underlying entitlements.

Our concurring colleague next cites "renowned scholars" endorsing the " 'creditors'[-]bargain' theory," which "conceptualizes bankruptcy's primary role as a means to resolve the collective action problem posed by self-interested creditors who, absent a centralized insolvency resolution system, would engage in individual collection actions under applicable non-bankruptcy law." Conc. Op. ——. On this view, bankruptcy ordinarily should not alter the parties' underlying entitlements.

I take no position on whether the creditors'-bargain theory is the best interpretation of the Bankruptcy Code as a whole. But even if it were, it would not provide an argument in support of the claim that federal courts sitting in bankruptcy lack the power to create federal choice-of-law rules. As above, this argument at most suggests that the circumstances are rare under which federal courts could justifiably create federal common law that affects the parties' underlying rights and entitlements. Rare is not never. There may be times when the purpose of the Bankruptcy Code may be best served by special federal choice-of-law rules. It may be unlikely that such a circumstance would arise, but it strikes me as overconfident and unnecessary to disclaim the possibility once and for all.

***275 3. Federal common law is rare.**

Judge Krause next observes, again correctly, that "the creation of federal common law is appropriate only in 'situations where there is a significant conflict between some federal policy or interest and the use of state law.' " Conc. Op. —— (quoting *O'Melveny*, 512 U.S. at 87, 114 S.Ct. 2048). " '[S]uch a conflict [is] a precondition for' federal common law-making." *Id.*

Once again, the premise is true, but it does not support the conclusion. If anything, Judge Krause acknowledges that federal courts *can* create federal common-law rules when there is a sufficiently strong federal interest threatened by state law. As with her argument that bankruptcy should rarely change the parties' underlying rights and interests, this argument mistakes rareness for impossibility. For common lawmaking to be rare, rather than impossible, courts must be able to do it in at least some cases.

Judge Krause also appeals at times to separation-of-powers principles and cautions against leaving courts "to divine untold rules from some brooding cloud of federal interests." Conc. Op. ——. But this misses the point. No one has suggested that federal courts can or should exercise freewheeling lawmaking power or identify federal interests without congressional guidance. *See generally CoreCivic, Inc. v. Governor of N.J.*, 145 F.4th 315 (3d Cir. 2025) (Ambro, J., dissenting) (rejecting that view). But *Congress* may express federal interests through statute—for example, the Bankruptcy Code—and *courts* may, in rare circumstances, create federal common law to give effect to those congressionally endorsed interests, particularly when applying state law would undermine Congress's objectives.

4. Federal courts should create substantive rules of decision instead of choice-of-law rules.

Next, Judge Krause claims that it is hard to imagine a case involving a federal interest strong enough to justify federal common law, but not strong enough to justify a substantive rule of decision rather than a choice-of-law rule. In her view, "for the Second and Fourth Circuits' approach to be correct, ... a federal interest has to fall into the goldilocks zone." Conc. Op. —— – ——. Maybe so, but it will not surprise the reader to hear that this also is not an argument against the power of federal courts to create federal choice-

of-law rules in bankruptcy. It is an argument for the claim that the circumstances when courts would need to do so are "few and restricted." *O'Melveny*, 512 U.S. at 87, 114 S.Ct. 2048 (quoting *Wheeldin*, 373 U.S. at 651, 83 S.Ct. 1441). Judicial humility cautions against making the sweeping claim, in the absence of a case or controversy before us, that no such interest can exist just because one has not presented itself.

5. The Bankruptcy Code contains all relevant federal interests, and a choice-of-law rule is not among them.

The only argument my colleague makes that theoretically supports her claim that federal courts can never develop choice-of-law rules in bankruptcy is that the Bankruptcy Code is a comprehensive and reticulated statutory regime whose text exhausts all potential federal interests that could justify federal common-law rules. The lack of special choice-of-law rules in the Code means, in her view, that there is no such interest.

That premise is faulty because it would apply with equal strength to the power of federal courts to create substantive common-law rules in bankruptcy. Yet the Supreme ***276** Court has rejected that argument: "Property interests are created and defined by state law ... [*u*]*nless some federal interest requires a different result.*" *Butner v. United States*, 440 U.S. 48, 55, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979) (emphasis added). If the Supreme Court has recognized that strong federal interests can sometimes allow federal courts to devise special rules of decision governing the parties' underlying property interests, I do not know why those interests could not also justify special choice-of-law rules.

Judge Krause claims that *Butner* stands only for the limited proposition that a strong federal interest can justify a federal substantive rule, "not that this federal interest [could] favor[ ] one state law over others." Conc. Op. ——. But *Butner* does not turn on the difference between substantive law and choice-of-law rules. It supports the broader principle that the selection of state rules of decision in bankruptcy must yield to overriding federal interests. On Judge Krause's view, a sufficiently strong federal interest could warrant a federal substantive rule, but never a choice-of-law rule. The unstated assumption seems to be that there could not be a strong federal interest that would justify a federal choice-of-law rule that ultimately selects state substantive law instead of a federal substantive rule. But that assumption is also faulty. Federal courts can and do develop federal rules that select state substantive law. *See, e.g., Kamen v. Kemper Fin. Servs.*, 500 U.S. 90, 111 S.Ct. 1711, 114 L.Ed.2d 152 (1991) (formulating federal common-law rule for demand futility in federal derivative actions that incorporates the corporate law of the state of incorporation); *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508, 121 S.Ct. 1021, 149 L.Ed.2d 32 (2001) (formulating federal common-law rule for preclusion in general diversity actions and "adopting, as the federally prescribed rule of decision, the law that would be applied by state courts in the State in which the federal diversity court sits").

Judge Krause insists that cases like *Kamen* and *Semtek* are distinguishable because they involved "federal common law rules of decision—not choice-of-law rules—that incorporate the contents of state law." Conc. Op. —— n.10. But it is unclear how that distinction defends her central claim, which I understood to be that any federal interest strong enough to authorize federal common law can justify nothing less than a uniform substantive rule. If federal courts can sometimes formulate a rule of decision whose content absorbs the law of the defendant's state of incorporation, then I do not understand why, at least in theory, they could not also formulate a choice-of-law rule that selects the law of the defendant's state of incorporation.

* * *

It is worth stepping back to get a clear view of my concurring colleague's argument. As I understand her, she does not believe *Erie*'s constitutional rule prohibits federal courts from developing special federal common law when the Constitution or federal statute authorizes them to do so. Nor does she believe that federal courts properly exercising their limited common-lawmaking authority lack the power to create a rule of decision that always incorporates the contents of state substantive law. At its core, her argument is merely that she cannot imagine a case in which a federal court would need to create a federal choice-of-law rule in bankruptcy. As she rightly notes, I cannot think of such a case either. Conc. Op. —— n.11. But this is not an argument that federal courts lack the authority to make choice-of-law rules in bankruptcy.

IV. CONCLUSION

We should not succumb to the "beguiling tendency" to make "[c]onflict-of-law ***277** problems ... more complicated than they are." *Vanston*, 329 U.S. at 169, 67 S.Ct. 237 (Frankfurter, J., concurring). If *Klaxon*'s application in bankruptcy becomes

an issue, then I would endorse the sensible, never-say-never approach of the Second and Fourth Circuits: Absent an "overwhelming federal policy [that] requires us to formulate a choice of law rule as a matter of independent federal judgment, we adopt the choice of law rule of the forum state." *Merritt Dredging*, 839 F.2d at 206; *see also* *Gaston*, 243 F.3d at 607 ("We necessarily limit our holding to cases where no significant federal policy, calling for the imposition of a federal conflicts rule, exists.").

KRAUSE, Circuit Judge, concurring.

I join the majority opinion in full. As it persuasively explains, New Jersey law governs the authority of Whittaker's board to exercise corporate authority, and the South Carolina Court did not—and likely could not—unilaterally divest the board of that authority. Once in bankruptcy, moreover, our decisions in *In re Emoral*, 740 F.3d 875 (3d Cir. 2014), and *In re Wilton Armetale, Inc.*, 968 F.3d 273 (3d Cir. 2020), straightforwardly dictate that the Product-Line Claims are property of the estate under 11 U.S.C. § 541(a)(1). I write separately, however, to address which choice-of-law rules govern in bankruptcy—an issue that both looms in the background of this case and that has divided courts for decades.

Both parties ultimately agree that New Jersey law governs Whittaker's authority to petition for bankruptcy protection, but they also recognize that there are two distinct paths to that choice of law—the "forum state" rule of *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 61 S.Ct. 1020, 85 L.Ed. 1477 (1941), on the one hand, and a federal common law choice of law rule, incorporating the internal affairs doctrine, on the other. Here, because the forum state is New Jersey and because Whittaker is a New Jersey corporation, those paths converge. But, as highlighted in the parties' briefing and argument on this question, each rule involves a different analysis and is capable of producing a different outcome. And confusion about how to resolve this conflict-of-laws question in bankruptcy cases will persist in our Circuit absent guidance from our Court. I write here with an eye towards that eventual resolution. As it turns out, the answer lies in established doctrine. For the reasons explained more thoroughly below, the Bankruptcy Code; *Erie R.R. Co. v. Tompkins*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938), and the Rules of Decision Act; and the grant of bankruptcy jurisdiction to federal courts all support employing the choice-of-law rules of the state in which the bankruptcy court sits.

I. THE PUZZLE: CHOICE OF LAW IN BANKRUPTCY

Federal courts are most often called on to resolve choice-of-law questions while exercising diversity jurisdiction. In those cases, non-federal law (usually state law) provides the rule of decision, *Erie*, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188, and diverse parties might dispute which law governs their claims. When those candidate laws conflict, courts must decide which one controls. To answer that question, a federal court sitting in diversity uses the choice-of-law rules of the state in which it sits. *Klaxon*, 313 U.S. at 496, 61 S.Ct. 1020.

Our Court has not previously determined whether the same rule applies in bankruptcy proceedings.[1] But some of our ***278** sister circuits have entered this fray, coming to differing conclusions. The Eighth Circuit applies *Klaxon* in bankruptcy cases, directing that "bankruptcy court[s] appl[y] the choice of law rules of the state in which it sits," *In re Payless Cashways*, 203 F.3d 1081, 1084 (8th Cir. 2000), and that "when some federal interest requires a different result," the "appropriate question" is not choice-of-law but rather rule of decision, i.e., "whether the state [law] can trump the federal [law]," which it obviously cannot, *In re Schriock Constr., Inc.*, 104 F.3d 200, 201–02 (8th Cir. 1997) (quoting *Butner v. United States*, 440 U.S. 48, 54, 99 S.Ct. 914, 59 L.Ed.2d 136 (1979)).[2] The Ninth Circuit (and possibly the Fifth), on the other hand, have rejected *Klaxon* in bankruptcy cases and instead require a federal common law choice-of-law rule. *See* *In re Lindsay*, 59 F.3d 942, 948 (9th Cir. 1995); *Wallace Lincoln-Mercury Co. v. Gentry*, 469 F.2d 396, 400 n.1 (5th Cir. 1972). *But see* *Fishback Nursery, Inc. v. PNC Bank, N.A.*, 920 F.3d 932, 935 (5th Cir. 2019) (describing *Klaxon*'s application in bankruptcy as "an open question"). Finally, the Second and Fourth Circuits take a hybrid approach—applying *Klaxon* "in the absence of a compelling federal interest which dictates otherwise." *In re Merritt Dredging Co.*, 839 F.2d 203, 205–06 (4th Cir. 1988); *see also* *In re Gaston & Snow*, 243 F.3d 599, 607 (2d Cir. 2001) (applying *Klaxon* unless "significant federal policy, calling for the imposition of a federal conflicts rule, exists"). In other words, in contrast to the Eighth Circuit, which would accommodate any overriding federal interest by applying a federal rule of decision, these courts would reach the same result but under the auspices of a choice-of-law rule.

This tripartite circuit split has persisted for decades and created disparities in how bankruptcy courts determine which

law governs parties' rights and obligations. As I explain below, however, there is no basis to depart from the established rule from *Klaxon*, and, consistent with the Eighth Circuit's approach, any conflict-of-laws issue is properly resolved as a matter of rule of decision, not choice of law.

II. THE AFFIRMATIVE CASE FOR APPLYING KLAXON IN BANKRUPTCY

The reasons for extending *Klaxon* to bankruptcy are many and exceedingly strong. All relate to the structure of the Bankruptcy Code, the purposes the Code serves, and *Erie* and the Rules of Decision Act. I consider them in turn.

First, while bankruptcy provides an "orderly and centralized" process to restructure the debts of the honest but unfortunate debtor, 1 *Collier on Bankruptcy* ¶ 1.01[1] (16th ed. 2025), it does not create substantive property rights. Instead, consistent with the Rules of Decision Act, 28 U.S.C. § 1652, it is non-bankruptcy law that defines parties' property interests, [3] *Butner*, 440 U.S. at 55, 99 S.Ct. 914; *accord In re Boy Scouts of Am.*, 137 F.4th 126, 164 (3d Cir. 2025). Accordingly, courts exercising bankruptcy jurisdiction regularly look to governing non-bankruptcy law—often "state law"—to determine parties' "rights and obligations when the Code ***279** does not supply a federal rule." *In re Wright*, 492 F.3d 829, 832 (7th Cir. 2007) (Easterbrook, J.). And in doing so, those courts frequently encounter the same dilemma they do when sitting in diversity: conflicting laws that purport to govern parties' rights and interests.

As bankruptcy law takes parties' property rights as it finds them, *Butner*, 440 U.S. at 55, 99 S.Ct. 914; *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 381, 139 S.Ct. 1652, 203 L.Ed.2d 876 (2019), the fact that parties find themselves wound up in a bankruptcy case should not work to alter the law that would otherwise govern their rights, *cf. Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 820, 105 S.Ct. 2965, 86 L.Ed.2d 628 (1985) (rejecting notion that participation in a class action changes the substantive law governing individual plaintiffs' disputes). But adopting a choice-of-law rule unique to bankruptcy risks just that and would subject identically situated parties to different governing laws simply by virtue of one dispute occurring in bankruptcy court while the other unfolds in run-of-the-mill civil litigation. [4] Our bankruptcy system does not demand —and, indeed, militates against—such a disparity. *See BFP v. Resol. Tr. Corp.*, 511 U.S. 531, 544–45, 114 S.Ct. 1757, 128 L.Ed.2d 556 (1994) (absent a clear and manifest conflict, "the Bankruptcy Code will be construed to adopt, rather than to displace, pre-existing state law"). And nothing in the text of the Code or the statutes granting bankruptcy jurisdiction warrants a departure from the ordinary rule of *Klaxon. See* Zachary D. Clopton, *Horizontal Choice of Law in Federal Courts*, 169 U. Pa. L. Rev. 2193, 2212 (2021).

Second, influential bankruptcy scholarship buttresses this conclusion. As renowned scholars have advocated, the bankruptcy system in many ways "mirror[s] the agreement one would expect the creditors to form among themselves were they able to negotiate such an agreement from an *ex ante* position." Thomas H. Jackson, *Bankruptcy, Non-Bankruptcy Entitlements, and the Creditors' Bargain*, 91 Yale L.J. 857, 860 (1982). This view, coined the "creditors' bargain" theory, conceptualizes bankruptcy's primary role as a means to resolve the collective action problem posed by self-interested creditors who, absent a centralized insolvency resolution system, would engage in individual collection actions under applicable non-bankruptcy law, inefficiently picking the debtor apart and "destroying value for the collective body of ***280** creditors." Kenneth Ayotte & David A. Skeel Jr., *Bankruptcy Law as a Liquidity Provider*, 80 U. Chi. L. Rev. 1557, 1564 (2013). Without bankruptcy's centralization, "[a]n unsecured creditor who seizes the debtor's assets early enough in time, when the debtor has enough to pay, will receive full payment," while "[l]ate-arriving creditors are left out in the cold when the assets are not sufficient to pay the firm's debts." *Id.*

Viewed through this lens, among its other features, bankruptcy facilitates the orderly resolution of competing creditor entitlements that exist under governing non-bankruptcy law. Such a system takes as a given creditors' preexisting property interests and "does not ... justify the implementation of a different set of relative entitlements, unless doing so is necessary as a part of the move from the individual remedies system" that exists outside of bankruptcy. Thomas H. Jackson, *The Logic and Limits of Bankruptcy Law* 21 (1986).

True, the Bankruptcy Code does change parties' "relative entitlements" in some circumstances in aid of debtor rehabilitation. *See, e.g.*, 11 U.S.C. §§ 364(d); 365(e), (i); 502(b); *see also* Daniel J. Bussel et al., *Bankruptcy* 33 (11th ed. 2021). But among the Code's voluminous rules, these provisions fall in the minority. [5] And as the creditors' bargain theory advances, non-bankruptcy entitlements generally

should endure within bankruptcy, *see* Ayotte & Skeel, *supra*, at 1564–65 ("The second element of the Creditors' Bargain theory is the claim that resolution of common-pool problems may require altering the procedural rights of creditors, but that it typically does not require altering the substantive values of those rights as established by nonbankruptcy law."); *see also* 7 *Collier on Bankruptcy* ¶ 1100.01 (16th ed. 2025) (noting the importance of "preserv[ing] creditors' and stakeholders' existing legal rights to the greatest extent possible"), counseling in favor of adopting *Klaxon* to preserve parity with parties' pre-bankruptcy positions vis-à-vis one another.

Third, extending *Klaxon* to the bankruptcy context is fully consistent with—and supported by—*Erie* and the Rules of Decision Act. *Klaxon* is a product of *Erie*, which announced "[t]here is no federal general common law." 304 U.S. at 78, 58 S.Ct. 817. Instead, where federal law does not govern, "[t]he laws of the several states" are "regarded as rules of decision ... in cases where they apply." 28 U.S.C. § 1652. While *Erie* itself was a diversity case, it "reflects the principle now well ***281** established that federal courts should apply state law to legal issues, unless there is some definable federal interest sufficient to justify applying corresponding and possibly inconsistent federal rules of decision." 19 Wright & Miller's Federal Practice & Procedure § 4520 (3d ed. May 2025 update). *Klaxon* reflects the same principle, for "[a] choice-of-law rule is no less a rule of state law than any other." *A.I. Trade Fin., Inc. v. Petra Int'l Banking Corp.*, 62 F.3d 1454, 1464 (D.C. Cir. 1995); *see also* Russell J. Weintraub, *The* Erie *Doctrine and State Conflict of Laws Rules*, 39 Ind. L.J. 228, 242 (1964) ("[T]he choice-of-law rules of a state are important expressions of its domestic policy."). Thus, it would seem that wherever *Erie* travels, *Klaxon* ought to follow. *See* Clopton, *supra*, at 2198 ("In short, *Klaxon* all the way down.").

In the bankruptcy arena, the Bankruptcy Code supplies the federal rules of decision that Congress has deemed necessary to effectively govern the relationship between the debtor and its creditors. Even a cursory review of the Code's "hundreds of interlocking rules," *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 209, 144 S.Ct. 2071, 219 L.Ed.2d 721 (2024), reveals that Congress took care to include many provisions that aim "to protect [ ] national" interests, *In re Trib. Co. Fraudulent Conveyance Litig.*, 946 F.3d 66, 94 (2d Cir. 2019); *see, e.g.*, 11 U.S.C. §§ 362(a) (automatic stay of collection of prepetition debts, including state-court litigation); 365(e) (invalidating *ipso facto* clauses); 546(e) (safe harbor for certain pre-petition securities transactions); 555–56, 559–61 (protections for post-petition securities, commodities, repurchase, swap, and netting transactions); 1110 (providing preferred rights to aircraft and vessel lessors).

As these provisions illustrate, Congress identified and manifested in the Code the specific federal interests it wished to protect; it did not leave readers to divine untold rules from some brooding cloud of federal interests hanging over bankruptcy. As we invariably do when construing federal statutes, we look to its text to discern meaning, *In re Imerys Talc Am., Inc.*, 38 F.4th 361, 375 (3d Cir. 2022), and we "presume that [Congress] says in a statute what it means and means in a statute what it says," *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253–54, 112 S.Ct. 1146, 117 L.Ed.2d 391 (1992). So while "the Bankruptcy Clause confers broad authority on Congress," *Siegel v. Fitzgerald*, 596 U.S. 464, 476, 142 S.Ct. 1770, 213 L.Ed.2d 39 (2022), to establish "uniform Laws on the subject of Bankruptcies," U.S. Const. art. I, § 8, cl. 4, Congress has not dictated a particular choice-of-law rule to govern in bankruptcy cases.

This is a glaring omission in a sea of provisions relating to bankruptcies and not one we should presume Congress simply overlooked. To the contrary, we must respect the presumption that state law governs "until Congress strikes a different accommodation." *United States v. Kimbell Foods, Inc.*, 440 U.S. 715, 740, 99 S.Ct. 1448, 59 L.Ed.2d 711 (1979). It is not the role of federal courts to extend federal interests beyond those Congress has prescribed. *See Tex. Indus., Inc. v. Radcliff Materials, Inc.*, 451 U.S. 630, 641, 101 S.Ct. 2061, 68 L.Ed.2d 500 (1981); *In re One2One Commc'ns, LLC*, 805 F.3d 428, 444 (3d Cir. 2015) (Krause, J., concurring); *cf. Cassirer v. Thyssen-Bornemisza Collection Found.*, 596 U.S. 107, 116, 142 S.Ct. 1502, 212 L.Ed.2d 451 (2022) (concluding that, when an exception to foreign sovereign immunity applies under the Foreign Sovereign Immunities Act, federal courts must apply *Klaxon* because the statute already protects the unique federal interest ***282** of foreign relations). Instead, "the issue of whether to displace state law ... is primarily a decision for Congress," *Miree v. DeKalb Cnty.*, 433 U.S. 25, 32, 97 S.Ct. 2490, 53 L.Ed.2d 557 (1977), and "[w]e should not assume that Congress intended to set the courts completely adrift from state law with regard to questions for which it has not provided a specific and definite answer in an act ... so intimately related to state law," *Richards v. United States*, 369 U.S. 1, 11, 82 S.Ct. 585, 7 L.Ed.2d 492 (1962). In these circumstances, with a "federal statutory regulation [so] comprehensive and detailed," the usual rule applies that

"matters left unaddressed in such a scheme are presumably left subject to the disposition provided by state law," negating the need to "adopt a court-made rule to supplement" the Code. *O'Melveny & Myers v. FDIC*, 512 U.S. 79, 85, 114 S.Ct. 2048, 129 L.Ed.2d 67 (1994).

Accordingly, there is no need to craft a choice-of-law rule unique to bankruptcy to preserve some "undefined federal interests" that do not appear in the Code. [6] *CoreCivic, Inc. v. Governor of N.J.*, 145 F.4th 315, 330 (3d Cir. 2025) (Ambro, J., dissenting). Rather, when a provision of the Bankruptcy Code governs, the Supremacy Clause obviates any choice-of-law analysis, for federal law always trumps conflicting state law. U.S. Const. art. VI, cl. 2; *see also infra* Section IV. And when the Code or other federal law does not supply the rule of decision, the Rules of Decision Act commands that governing non-federal law fills the gap. 28 U.S.C. § 1652. Outside of bankruptcy, that means *Klaxon* controls, and nothing about the bankruptcy context warrants departing from that rule.

Of course, *Erie*, and consequently *Klaxon*, arose in the context of diversity jurisdiction, so the extension of the policies those cases embody to other contexts is not obvious. And that uncertainty has caused some of our sister circuits to either reject *Klaxon* in bankruptcy cases or hedge on its application. *See, e.g., In re Lindsay*, 59 F.3d at 948; *In re Gaston & Snow*, 243 F.3d at 601–02; *In re Merritt Dredging*, 839 F.2d at 206. To be sure, that hesitation is not unfounded. As scholars have noted, "[p]art of the explanation for the departures from *Klaxon* can be found in Supreme Court dicta" in *Vanston Bondholders Protective Committee v. Green*, 329 U.S. 156, 67 S.Ct. 237, 91 L.Ed. 162 (1946). Clopton, *supra*, at 2204; *see also* Tobias Barrington Wolff, *Choice of Law and Jurisdictional Policy in the Federal Courts*, 165 U. Pa. L. Rev. 1847, 1875–78 (2017). There, the Supreme Court considered whether, and to what extent, an insolvent debtor must pay interest on delinquent interest payments due under a prepetition bond indenture under Chapter X of the Bankruptcy Act. *Vanston*, 329 U.S. at 159, 67 S.Ct. 237. In doing so, the Supreme Court admonished:

> [O]bligations, such as the one here for interest, often have significant contacts in many states so that the question of which particular state's law should measure the obligation seldom lends itself to simple solution. In determining which contact is the most significant in a particular transaction, courts can seldom find a complete solution in the mechanical formulae of the conflicts of law.... ***283** In determining what claims are allowable and how a debtor's assets shall be distributed, a bankruptcy court does not apply the law of the state where it sits.

Id. at 161–62, 67 S.Ct. 237. And it is this language upon which some courts have seized to conclude *Klaxon* has no application in bankruptcy cases because it is inconsistent with some amorphous federal interest. *See, e.g., In re SMEC, Inc.*, 160 B.R. 86, 91 (M.D. Tenn. 1993); *In re McCorhill Publ'g, Inc.*, 86 B.R. 783, 792 (Bankr. S.D.N.Y. 1988).

But on closer inspection, *Vanston* says nothing about what choice-of-law rule a court should employ in bankruptcy cases when non-federal law provides the rule of decision. Rather than rejecting *Klaxon*'s application in favor of fashioning a bespoke federal choice-of-law rule for bankruptcy cases, the Supreme Court concluded that the bankruptcy courts "administer and enforce the Bankruptcy Act ... in accordance with authority granted by Congress to determine how and what claims shall be allowed under equitable principles," whereas "[w]hen and under what circumstances federal courts will allow interest on claims against debtors' estates being administered by them has long been decided by *federal law.*" *Vanston*, 329 U.S. at 162–63, 67 S.Ct. 237 (emphasis added). Thus, *Vanston* did not resolve the question of what choice-of-law rule courts employ when non-federal law governs a dispute in a bankruptcy case. Instead, it merely determined that when federal law provides a rule of decision that conflicts with state law, federal law controls—a proposition that flows directly from the Constitution. U.S. Const. art. VI, cl. 2; *see also In re Gaston & Snow*, 243 F.3d at 607 (interpreting *Vanston* in this way). *Vanston*, then, embodies nothing more than foundational and uncontroversial principle that federal law reigns supreme.

In sum, the structure of the Bankruptcy Code, the purposes of our bankruptcy system, and federal courts' obligation to respect the application of state law under *Erie* and the Rules of Decision Act all support *Klaxon*'s extension to bankruptcy cases.

III. NOTHING REQUIRES A FEDERAL CHOICE-OF-LAW RULE IN PLACE OF *KLAXON*

Aside from seemingly the Eighth Circuit, no other Court of Appeals has extended *Klaxon*—without reservation—to the bankruptcy context. The Ninth Circuit, as well as the Second and Fourth Circuits, have also addressed the question, taking different approaches but each evincing an unwarranted suspicion of *Klaxon*'s relevance beyond diversity cases. I address each approach in turn.

The Ninth Circuit has long eschewed *Klaxon*'s rule in favor of federal choice-of-law rules. *In re Lindsay*, 59 F.3d at 948. In doing so, it stated that "the risk of forum shopping which is avoided by applying state law has no application [in bankruptcy cases], because [they] can only be litigated in federal court," and instead "[t]he value of national uniformity of approach" on this question prevails over a patchwork of state choice-of-law regimes. *Id.* Thus, "[i]n federal question cases with exclusive jurisdiction in federal court, such as bankruptcy, the court should apply federal, not forum state, choice of law rules." *Id.*

There are two flaws in this reasoning. First, it confuses the basis for federal jurisdiction with the question of governing law. A "federal jurisdictional grant ... is not in itself a mandate for applying federal law in all circumstances." *United States v. Little Lake Misere Land Co.*, 412 U.S. 580, 591, 93 S.Ct. 2389, 37 L.Ed.2d 187 (1973). Instead, as is by now clear, "it is the source of the right sued upon, and not the ***284** ground on which federal jurisdiction over the case is founded, which determines the governing law." *Maternally Yours v. Your Maternity Shop*, 234 F.2d 538, 540 n.1 (2d Cir. 1956).[7] In other words, the observation that federal courts possess exclusive jurisdiction over bankruptcy cases is correct as far as it goes, but it merely identifies a potential choice-of-law question—it does nothing to resolve it. Instead, the existence of federal jurisdiction begets the downstream question of which law governs the dispute and how to decide that question in instances of conflict. That is a question of parties' *rights*, not federal courts' *jurisdiction. See Shutts*, 472 U.S. at 818, 105 S.Ct. 2965. But by reflexively employing a federal common law choice-of-law rule, the Ninth Circuit's approach risks altering parties' rights by selecting different law than would govern outside of bankruptcy.

That points up the second problem with the Ninth Circuit's approach. The *Lindsay* court touts a federal choice-of-law rule as carrying a great deal of "value" without greater explanation, seemingly elevating "national uniformity" for uniformity's sake. 59 F.3d at 948. But uniformity at what cost? Even accepting the premise that national uniformity has inherent value,[8] the value in uniformity does not outweigh the significant incongruities a bespoke bankruptcy choice-of-law rule portends. A federal choice-of-law rule in bankruptcy cases risks altering parties' substantive rights. State law governs many issues in bankruptcy cases, but none arises more frequently than property interests. *See, e.g., Butner*, 440 U.S. at 55, 99 S.Ct. 914. And the fact that a dispute turns up "in the context of a federal bankruptcy" proceeding "doesn't change much." *Rodriguez v. FDIC*, 589 U.S. 132, 137, 140 S.Ct. 713, 206 L.Ed.2d 62 (2020). So "[s]ince state, rather than federal, substantive law is at issue there is no need for a uniform federal rule." *Semtek Int'l Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 508, 121 S.Ct. 1021, 149 L.Ed.2d 32 (2001). Indeed, as the Fourth Circuit rightly noted, "[i]t would be anomalous to have the same property interest governed by the laws of one state in federal diversity proceedings and by the laws of another state where a federal court is sitting in bankruptcy." ***285** *In re Merritt Dredging*, 839 F.2d at 206. But that disparity is exactly what the Ninth Circuit's approach invites, and it does so with no basis in the Code or the statutes granting federal courts jurisdiction over bankruptcy cases. Parties' property rights do not depend on the basis for a court's jurisdiction.

The approaches of the Second and Fourth Circuits are flawed as a doctrinal matter, though difficult to distinguish from the Eighth Circuit's in practice. Those courts have rightly observed that, in the ordinary course, the fact that a choice-of-law question arises in bankruptcy does not provide sufficient reason to depart from *Klaxon* because state law generally provides the substantive law governing a dispute, so *Erie* and the Rules of Decision Act control. *See In re Gaston & Snow*, 243 F.3d at 607; *In re Merritt Dredging*, 839 F.2d at 206.

They also theorize, however, that there may be exceptional cases when a "compelling federal interest," *In re Merritt Dredging*, 839 F.2d at 206, would require the application of a federal common law choice-of-law rule. Thus, they purport to adopt a safety valve by applying *Klaxon* only "in the absence of a compelling federal interest which dictates otherwise." *Id.*; *see also In re Gaston & Snow*, 243 F.3d at 607 ("We necessarily limit our holding to cases where no significant federal policy, calling for the imposition of a federal conflicts rule, exists."). In positing that carveout, these courts hypothesize a scenario where some federal interest compels abandonment of *Klaxon.* Though this rule may

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appear on its face to conflict with the rule from *Klaxon*, in practice, it does not. Tellingly, neither court has actually identified—much less confronted—such a situation. And the prospect of them ever doing so seems fanciful because their hypothesis runs headlong into the presumption against, and stringent criteria for, the making of federal common law.

At the outset, it is not clear whether the federal interest the Fourth and Second Circuits hypothesize would need to conflict with a state's choice-of-law rule or the substantive law that choice-of-law rule selects. If the former, it is particularly difficult to imagine what federal interest would conflict with the use of a specific choice-of-law rule given the absence of a federal choice-of-law rule provision in the Bankruptcy Code and the Code's indifference to the law that determines parties' rights and interests. *See infra* pp. —— – ——. If it is the latter, then the real problem is not the use of a state's choice-of-law rule at all. Rather, as the Eighth Circuit has properly characterized it, the problem is the incompatibility between the non-bankruptcy law chosen to govern a dispute and the federal interest, because permitting a state law to "trump" the federal interest expressed in the Bankruptcy Code "would effectively convert the [ ] choice of law [question] to an 'anti-preemption' [question]." *In re Schriock Constr.*, 104 F.3d at 202. In short, the resolution to that conflict is application of a federal rule of decision and its priority over state law pursuant to the Supremacy Clause, not abandonment of *Klaxon.*

Even moving past this ambiguity, embracing the alternative to *Klaxon*—a federal choice-of-law rule—must "begin[ ] with the recognition that federal choice of law rules are a species of federal common law." *In re Gaston & Snow*, 243 F.3d at 605. But "those cases in which judicial creation of a special federal rule would be justified ... [are] 'few and restricted.' " *O'Melveny*, 512 U.S. at 87, 114 S.Ct. 2048 (quoting *Wheeldin v. Wheeler*, 373 U.S. 647, 651, 83 S.Ct. 1441, 10 L.Ed.2d 605 (1963)). Crucially, the creation of federal common law is appropriate only in "situations where there is a 'significant conflict ***286** between some federal policy or interest and the use of state law.' " *Id.* (quoting *Wallis v. Pan Am. Petroleum Corp.*, 384 U.S. 63, 68, 86 S.Ct. 1301, 16 L.Ed.2d 369 (1966)). Indeed, "such a conflict [is] a precondition for" federal common law-making. *Id.* But where none exists, federal law "supplies no rule of decision," leaving non-bankruptcy law to govern the controversy. *Rodriguez*, 589 U.S. at 138, 140 S.Ct. 713.

In order to justify the Second and Fourth Circuits' approach that departs from *Klaxon*, yet requires a choice-of-law analysis—i.e., employing a federal common law choice-of-law rule—two conditions must be true: (1) there must be a sufficiently weighty federal interest in conflict with otherwise governing non-federal law to warrant fashioning a federal rule of decision to resolve conflicts among non-bankruptcy law, but (2) that interest must not be sufficiently weighty to justify fashioning a federal common law rule of decision. The former must be true to justify the "[j]udicial lawmaking" involved in crafting federal common law rules—lawmaking that "plays a necessarily modest role under a Constitution that vests the federal government's 'legislative Powers' in Congress." *Id.* at 136, 140 S.Ct. 713 (quoting U.S. Const. art. I, § 1). The latter must be true in order to preserve any choice-of-law question at all, for if the federal interest is sufficiently important to justify creation of a federal rule of decision, then there is no "choice" among laws because the Constitution invariably resolves such conflicts in favor of federal law. U.S. Const. art. VI, cl. 2. In other words, for the Second and Fourth Circuits' approach to be correct—as opposed to the Eighth Circuit's, which accounts for an overriding federal interest as a matter of rule of decision, *see In re Schriock Constr.*, 104 F.3d at 202—a federal interest has to fall into the goldilocks zone: not too strong, yet not too weak.

Yet a review of the Bankruptcy Code and its policies establishes neither condition. The Code is agnostic about which body of non-bankruptcy law governs parties' rights—it simply "takes the [interest] as it finds it." *Bartenwerfer v. Buckley*, 598 U.S. 69, 82, 143 S.Ct. 665, 214 L.Ed.2d 434 (2023). That is to say, the Bankruptcy Code embodies no federal interest that favors the application of any particular non-bankruptcy law over another. And this makes good sense. It is "the basic federal rule" that "entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the ... obligation." *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 20, 120 S.Ct. 1951, 147 L.Ed.2d 13 (2000). Sometimes, federal non-bankruptcy law will control that issue. *See, e.g., Bd. of Trs. of Teamsters Loc. 863 Pension Fund v. Foodtown, Inc.*, 296 F.3d 164, 168 (3d Cir. 2002). Other times, it may be state or foreign law that does. Either way, the Bankruptcy Code directs courts to consider parties' interest under whichever law governs outside of bankruptcy, and it then establishes a collection of rules to deal with those interests.

The Supreme Court's decision in *Butner* is not to the contrary. There, the Court famously held that "[p]roperty interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such

interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." 440 U.S. at 55, 99 S.Ct. 914. At first glance, this passage might seem to support the Second and Fourth Circuits' approach—after all, the Supreme Court included the proviso "[u]nless some federal interest requires a different result." *Id.* But on closer inspection, this line from *Butner* cannot be read as suggesting the possibility of a different ***287** choice-of-law rule to apply in bankruptcy.

Butner addressed whether "the right to the rents collected during the period between [a] mortgagor's bankruptcy and the foreclosure sale of the mortgaged property ... is determined by a federal rule of equity or by the law of the State where the property is located." *Id.* at 49, 99 S.Ct. 914. In other words, the Supreme Court considered which body of law—state or federal—supplies the rule of decision for allocation of rents. It concluded, as a general matter, "[p]roperty interests are created and defined by state law." *Id.* at 55, 99 S.Ct. 914. But it also recognized that, while uncommon, federal law can sometimes define parties' property interests, especially where the United States is a party.[9] *See, e.g., Clearfield Tr. Co. v. United States*, 318 U.S. 363, 366, 63 S.Ct. 573, 87 L.Ed. 838 (1943). For this reason, the Court acknowledged that where federal law does govern property rights, that law controls. But *Butner* cannot reasonably be read to suggest that federal law provides the choice-of-law rule to decide among conflicting non-federal laws when it is those laws that provide the rule of decision. That is because *Butner* posits a scenario in which state property law is displaced due to "some federal interest [that] requires a different result," 440 U.S. at 55, 99 S.Ct. 914, not that this federal interest favors one state law over others. *See Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 451, 127 S.Ct. 1199, 167 L.Ed.2d 178 (2007) (juxtaposing *Butner* and *Vanston* to illustrate this point). Put another way, reading *Butner* to license creation of a federal common law choice-of-law rule renders the proviso meaningless because, read in such a way, state law still governs the substantive property interest while federal law simply chooses among conflicting state laws. That plainly is not the dichotomy *Butner* envisioned. Instead, *Butner* stands for the far more straightforward proposition that state law generally governs parties' property interests except in the unusual case where federal law provides the rule of decision. It offers no insight, however, into how to choose among conflicting laws when non-federal law governs.[10]

This result does not derogate those federal interests that do exist. To be sure, there are many areas of law in which Congress has legislated extensively. *See, e.g.*, Sherman Antitrust Act, 15 U.S.C. §§ 1–7; Securities Act of 1933, 15 U.S.C. § 77a *et seq.*; Securities Exchange Act of 1934, 15 U.S.C. § 78a *et seq.*; Investment Company Act of 1940, 15 U.S.C. §§ 80a-1 to 80a-64; Lanham Act, 15 U.S.C. § 1051 *et seq.*; Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.* Perhaps ***288** none is a greater expression of a federal interest than those statutory provisions that completely preempt state law, i.e., those where a federal interest "is so powerful," *Franchise Tax Bd. v. Constr. Laborers Vacation Tr. for S. Cal.*, 463 U.S. 1, 23, 103 S.Ct. 2841, 77 L.Ed.2d 420 (1983), that "federal law does not merely preempt a state law to some degree" but instead "substitutes a federal cause of action for the state cause of action," 14C Wright & Miller's Federal Practice & Procedure § 3722.2 (Rev. 4th ed. May 2025 update). Those instances are few, but important. *See Avco Corp. v. Aero Lodge No. 735, Int'l Ass'n of Machinists & Aerospace Workers*, 390 U.S. 557, 560, 88 S.Ct. 1235, 20 L.Ed.2d 126 (1968) (Section 301 of the Labor Management Relations Act); *Metro. Life. Ins. Co. v. Taylor*, 481 U.S. 58, 66, 107 S.Ct. 1542, 95 L.Ed.2d 55 (1987) (Section 502(a) of the Employee Retirement Income Security Act); *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 11, 123 S.Ct. 2058, 156 L.Ed.2d 1 (2003) (Sections 85 and 86 of the National Bank Act).

But again, in these instances—and all others where federal law supplies the rule of decision—there is no choice-of-law question, making *Klaxon* inapplicable. That is because the Constitution resolves vertical choice-of-law questions in absolute terms: "[I]f a state measure conflicts with a federal requirement, the state provision must give way." *Swift & Co. v. Wickham*, 382 U.S. 111, 120, 86 S.Ct. 258, 15 L.Ed.2d 194 (1965). In all other cases, non-federal law enjoys the usual presumption against "displacement." *Boyle v. United Techs. Corp.*, 487 U.S. 500, 507, 108 S.Ct. 2510, 101 L.Ed.2d 442 (1988). So it is only in the absence of a federal rule of decision—that is, in the absence of a federal interest warranting displacement of non-federal law—that a choice-of-law question arises. And at that juncture, the Bankruptcy Code is agnostic about which law governs, leaving "no reason [for] such interests [to] be analyzed differently" than if they had arisen outside of bankruptcy. *Butner*, 440 U.S. at 55, 99 S.Ct. 914.

* * *

The daylight between these positions—especially between those of the Eighth Circuit and the Second and Fourth Circuits—can be elusive, and the debate can easily be labeled esoteric. Relative to the number of questions governed by state law that arise in bankruptcies across the country, those that present genuine choice-of-law questions are admittedly few. And those whose outcome would change depending on the application of *Klaxon* versus a federal choice-of-law rule are likely fewer still. But apart from doctrinal clarity, which carries its own virtue, resolution of this question in the manner I have proposed serves two important purposes.

First, federal courts exercise limited powers. Perhaps nowhere is that power more at its nadir than in the area of fashioning federal common law. As the Supreme Court has admonished since *Erie*, those contexts that necessitate a federal common law rule are fleeting, and the criteria for recognizing such a rule are exacting. It is incumbent on us to candidly recognize the limits of our authority as a function of the Constitution's separation of powers. After all, "[t]he Framers 'built into the tripartite Federal Government ... a self-executing safeguard against the encroachment or aggrandizement of one branch at the expense of the other.' " *Clinton v. Jones*, 520 U.S. 681, 699, 117 S.Ct. 1636, 137 L.Ed.2d 945 (1997) (omission in original) (quoting *Buckley v. Valeo*, 424 U.S. 1, 122, 96 S.Ct. 612, 46 L.Ed.2d 659 (1976) (per curiam)). Acknowledging that the federal courts' role in crafting common law is necessarily "modest," *Rodriguez*, 589 U.S. at 136, 140 S.Ct. 713, does much ***289** to guard against encroachment upon Congress's authority to legislate on the subject of bankruptcies.

Second, with doctrinal clarity and the acknowledgment of federal courts' limited authority comes clearer notice to litigants as to what rule they can expect to govern their rights. As discussed, the Ninth Circuit's departure from *Klaxon* is misguided. As for the Second, Fourth, and Eighth Circuits, their approaches in practice always have, and always will, lead to the same result—*Klaxon* applies in bankruptcy, but federal law necessarily provides the rule of decision "when some federal interest requires a different result." *In re Schriock Constr.*, 104 F.3d at 202. But by framing the question as choice-of-law instead of rule-of-decision and leaving the door open for a different choice-of-law rule in theory, the Second and Fourth Circuits invite needless litigation over *Klaxon*'s applicability and leave lingering uncertainty about which law will govern parties' disputes. They hypothesize a category of cases that, in reality, is a null set. No federal interest exists that will displace a state's choice-of-law rule without simultaneously requiring displacement of state substantive law in favor of a federal rule of decision. Instead of perpetuating the uncertainty surrounding the choice-of-law rule that governs in bankruptcy, we should recognize what practice teaches and give courts and litigants alike notice of the governing framework: The rule from *Klaxon* extends to bankruptcy cases. [11]

IV. IDIOSYNCRATIC STATE CHOICE-OF-LAW RULES DO NOT LICENSE ABANDONING *KLAXON*

For their part, among the options in this three-way circuit split, the parties urge us to adopt the Second and Fourth Circuits' hybrid approach to *Klaxon*, cautioning that we "should not adopt a rule that would require bankruptcy courts to follow idiosyncratic state choice-of-law rules even when doing so would create conflicts, encourage forum-shopping, or undermine significant federal interests." Appellees' Second Supp. Br. 11; *see also* Appellants' Second Supp. Br. 4. And to illustrate their point, Appellees pose the example of "a hypothetical forum state ... reject[ing] the internal-affairs doctrine [to] allow its own idiosyncratic rules to dictate who speaks for a foreign corporation." Appellees' Second Supp. Br. 10. They insist that in such a scenario, "the federal interest in preserving the internal-affairs doctrine and orderly bankruptcy filings would warrant a federal choice-of-law rule vindicating the internal affairs doctrine." [12] *Id.* at 11.

But choice of law is not a panacea, nor need we make it one. Instead, among other constraints, the Constitution places limits on the extent to which states may exert regulatory authority over parties' disputes and that resolve many of the concerns the parties raise here. Four constitutional provisions in particular—the Supremacy ***290** Clause, the Full Faith and Credit Clause, the Privileges and Immunities Clause, and the Due Process Clause of the Fourteenth Amendment, each of which is discussed below—provide a federal backstop to permissible state choice-of-law regimes.

First, and most intuitively for choice-of-law purposes, is the Supremacy Clause. U.S. Const. art. VI, cl. 2. In "split[ting] the atom of sovereignty" for our federal union, *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779, 838, 115 S.Ct. 1842, 131 L.Ed.2d 881 (1995) (Kennedy, J., concurring), the Framers "provide[d] 'a rule of decision' for determining whether federal or state law applies in a particular situation," *Kansas v. Garcia*, 589 U.S. 191, 202, 140 S.Ct. 791, 206 L.Ed.2d 146 (2020) (quoting *Armstrong v. Exceptional Child Ctr., Inc.*,

575 U.S. 320, 324, 135 S.Ct. 1378, 191 L.Ed.2d 471 (2015)). The Supremacy Clause supplies a bright-line rule to resolve "vertical" choice-of-law questions, i.e., those that implicate a conflict between federal and state law. *Empire Healthchoice Assurance, Inc. v. McVeigh*, 547 U.S. 677, 691, 126 S.Ct. 2121, 165 L.Ed.2d 131 (2006). When federal and state law are "in conflict or at cross-purposes," the Supremacy Clause embodies the "clear rule" that federal law prevails. *Arizona v. United States*, 567 U.S. 387, 399, 132 S.Ct. 2492, 183 L.Ed.2d 351 (2012).

Thus, when state courts consider which law governs a dispute, the existence of a controlling federal rule resolves any choice-of-law question, "[f]or the policy of the federal [law] is the prevailing policy in every state." *Testa v. Katt*, 330 U.S. 386, 393, 67 S.Ct. 810, 91 L.Ed. 967 (1947). In this way, the Supremacy Clause protects the federal authority to enact federal rules of decision to control in circumstances "necessary to protect uniquely federal interests." *Rodriguez*, 589 U.S. at 136, 140 S.Ct. 713 (quoting *Radcliff Materials*, 451 U.S. at 640, 101 S.Ct. 2061).

Often, those federal interests will be embodied in a federal statute. But in few, yet important, contexts, federal courts have recognized the need to fashion "federal common law—substantive rules of decision not expressly authorized by either the Constitution or any Act of Congress—that supplant state law," 19 Wright & Miller's Federal Practice & Procedure § 4514 (3d ed. May 2025 update), often when the controversy's subject matter closely relates to the federal government or falls within an area of exclusive federal competence, *see, e.g., Norfolk S. Ry. Co. v. Kirby*, 543 U.S. 14, 23, 125 S.Ct. 385, 160 L.Ed.2d 283 (2004) (admiralty); *Boyle*, 487 U.S. at 505–06, 108 S.Ct. 2510 (civil liabilities of contractors under federal procurement contracts); *Clearfield Tr.*, 318 U.S. at 366, 318 U.S. at 366, 63 S.Ct. 573 (rights and duties of the United States under federally issued commercial paper); *Hinderlider v. La Plata River & Cherry Creek Ditch Co.*, 304 U.S. 92, 110, 58 S.Ct. 803, 82 L.Ed. 1202 (1938) (apportionment of water rights between states).

To be sure, federal courts' common law-making authority "plays a necessarily modest role," and the Supreme Court has "underscore[d] the care federal courts should exercise before taking up an invitation to try their hand at common lawmaking." *Rodriguez*, 589 U.S. at 136, 138, 140 S.Ct. 713. But in the narrow circumstances that command a federal rule of decision absent constitutional or statutory authority, the Supremacy Clause ensures that federal courts may still fashion such a rule and that contrary state law will yield. [13] *See* ***291** *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 427, 84 S.Ct. 923, 11 L.Ed.2d 804 (1964) (recognizing the preemptive force of federal common law), *superseded on other grounds by statute*, Pub. L. 88-633, 78 Stat. 1013, *as recognized in, Fed. Republic of Ger. v. Philipp*, 592 U.S. 169, 179, 141 S.Ct. 703, ––– L.Ed.2d –––– (2021). After all, "exclusive state power takes up only where federal power leaves off." John Hart Ely, *The Irrepressible Myth of* Erie, 87 Harv. L. Rev. 693, 705 (1974). So that vertical choice-of-law rule, enshrined in our Constitution, does much to ensure that state choice-of-law rules do not unduly "undermine significant federal interests." Appellees' Second Supp. Br. 11.

Second, the Full Faith and Credit Clause occupies a modest, but important, position among the constitutional provisions bearing on choice of law. In relevant part, it provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const. art. IV, § 1, cl. 1. As the Supreme Court has recognized, the Clause's purpose "was to alter the status of the several states as independent foreign sovereignties ... and to make them integral parts of a single nation throughout which a remedy upon a just obligation might be demanded as of right, irrespective of the state of its origin." *Milwaukee Cnty. v. M.E. White Co.*, 296 U.S. 268, 277, 56 S.Ct. 229, 80 L.Ed. 220 (1935); *see also Magnolia Petroleum Co. v. Hunt*, 320 U.S. 430, 439, 64 S.Ct. 208, 88 L.Ed. 149 (1943).

In modern jurisprudence, much of the Full Faith and Credit Clause's function—and that of the statute with which it shares a name, 28 U.S.C. § 1738—occurs in the recognition of judgments rendered by foreign states. *See, e.g., Baker v. Gen. Motors Corp.*, 522 U.S. 222, 233, 118 S.Ct. 657, 139 L.Ed.2d 580 (1998). But as the Supreme Court has recognized, the Full Faith and Credit Clause continues to have an enduring role in the regulation of "credit owed to [foreign] laws." *Id.* at 232, 118 S.Ct. 657. Indeed, "where the policy of one state statute comes into conflict with that of another, the necessity of some accommodation of the conflicting interests of the two states is ... apparent." *Alaska Packers Ass'n v. Indus. Accident Comm'n of Cal.*, 294 U.S. 532, 547, 55 S.Ct. 518, 79 L.Ed. 1044 (1935).

Apart from its other commands, the Full Faith and Credit Clause, at a minimum, requires that a forum state confronting a horizontal choice-of-law question have "some rational basis" for applying its law over that of a sister state. *Id.* at 547–48, 55 S.Ct. 518. That basis must be above and beyond

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mere favoritism toward forum law, for a state does not have a legitimate interest in discriminating against another state's law simply by virtue of its foreign origin. *See* *First Nat'l Bank of Chi. v. United Air Lines*, 342 U.S. 396, 398, 72 S.Ct. 421, 96 L.Ed. 441 (1952); *Hughes v. Fetter*, 341 U.S. 609, 613, 71 S.Ct. 980, 95 L.Ed. 1212 (1951); *cf.* *Metro. Life Ins. Co. v. Ward*, 470 U.S. 869, 878, 105 S.Ct. 1676, 84 L.Ed.2d 751 (1985) (holding that a state does not have a legitimate interest purely in favoring domestic economic interests over foreign ones).

Of course, the Full Faith and Credit Clause "does not require one state to substitute for its own statute, applicable to ***292** persons and events within it, the conflicting statute of another state, even though that statute is of controlling force in the courts of the state of its enactment with respect to the same persons and events." *Pac. Emps. Ins. Co. v. Indus. Accident Comm'n of Cal.*, 306 U.S. 493, 502, 59 S.Ct. 629, 83 L.Ed. 940 (1939). And no doubt, in many cases, forum states will have rational, nondiscriminatory reasons for applying their law over that of others. *See, e.g.,* *Cardillo v. Liberty Mut. Ins. Co.*, 330 U.S. 469, 476, 67 S.Ct. 801, 91 L.Ed. 1028 (1947). But the Full Faith and Credit Clause does "set[ ] certain minimum requirements which each state must observe when asked to apply the law of a sister state," *Wells v. Simonds Abrasive Co.*, 345 U.S. 514, 516, 73 S.Ct. 856, 97 L.Ed. 1211 (1953), and it "requires that a state base its assertion of legislative jurisdiction on a claim that its interests are superior," not simply that conflicting law is foreign, Kermit Roosevelt III, *The Myth of Choice of Law: Rethinking Conflicts*, 97 Mich. L. Rev. 2448, 2505 n.240 (1999). This constitutional floor provides yet another constraint on state choice-of-law regimes.

Third, the Privileges and Immunities Clause protects out-of-staters from discrimination on the basis of their foreign citizenship.[14] *See* *Supreme Ct. of N.H. v. Piper*, 470 U.S. 274, 285, 105 S.Ct. 1272, 84 L.Ed.2d 205 (1985); *see also* *Tyler Pipe Indus., Inc. v. Wash. State Dep't of Revenue*, 483 U.S. 232, 265, 107 S.Ct. 2810, 97 L.Ed.2d 199 (1987) (Scalia, J., concurring in part and dissenting in part) (grounding the protection "against rank discrimination against citizens of other States" in the Privileges and Immunities Clause). In full, it provides that "[t]he Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." U.S. Const. art. IV, § 2, cl. 1. Much like the Full Faith and Credit Clause, the Privileges and Immunities Clause was intended "to help fuse into one Nation a collection of independent, sovereign States." *Toomer v. Witsell*, 334 U.S. 385, 395, 68 S.Ct. 1156, 92 L.Ed. 1460 (1948).

The Clause does not guarantee that citizens of each state are entitled to all of the same rights and benefits of citizens in other states, *see* *Piper*, 470 U.S. at 284, 105 S.Ct. 1272, but only those that are "fundamental" to "the vitality of the Nation as a single entity," *Baldwin v. Fish & Game Comm'n of Mont.*, 436 U.S. 371, 382–83, 98 S.Ct. 1852, 56 L.Ed.2d 354 (1978) (quotation omitted). It does, however, "bar discrimination against citizens of other States where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other States." *Toomer*, 334 U.S. at 396, 68 S.Ct. 1156.

The Supreme Court has recognized that access to a state's courts is among the privileges and immunities protected by the Constitution. *McKnett v. St. Louis & S.F. Ry. Co.*, 292 U.S. 230, 233, 54 S.Ct. 690, 78 L.Ed. 1227 (1934); *Canadian N. Ry. Co. v. Eggen*, 252 U.S. 553, 562, 40 S.Ct. 402, 64 L.Ed. 713 (1920). And implicit in that guarantee ***293** is the constituent promise that a state may not withhold the application of its law to a citizen of another state in a situation in which it would extend that law to one of its own citizens solely by virtue of the out-of-stater's foreign citizenship. *Paul v. Virginia*, 75 U.S. (8 Wall.) 168, 180, 19 L.Ed. 357 (1868) (the Privileges and Immunities Clause "secures to [citizens of a foreign state] in other States the equal protection of their laws"); *see also* Douglas Laycock, *Equal Citizens of Equal and Territorial States: The Constitutional Foundations of Choice of Law*, 92 Colum. L. Rev. 249, 265–66 (1992). Thus, the Privileges and Immunities Clause "place[s] the citizens of each State upon the same footing with citizens of other States," thereby demanding citizens of foreign states derive the same benefit from a state's law that it would extend to its own citizens and prohibiting discrimination against out-of-staters because of their foreign citizenship. *Paul*, 75 U.S. at 180.

Fourth, and finally, the Due Process Clause of the Fourteenth Amendment substantively limits to which disputes states may extend their law.[15] In providing that "[n]o State shall ... deprive any person of life, liberty, or property, without due process of law," U.S. Const. amend. XIV, § 1, the Clause requires "that for a State's substantive law to be selected in a constitutionally permissible manner, that State must have a significant contact or significant aggregation of contacts, creating state interests, such that choice of its law is neither arbitrary nor fundamentally unfair," *Allstate Ins. Co. v.*

Hague, 449 U.S. 302, 312–13, 101 S.Ct. 633, 66 L.Ed.2d 521 (1981) (plurality). Thus, where a state does not have sufficient contacts with a dispute, it lacks legitimate interests warranting extension of its law to the dispute, rendering application of its law "sufficiently arbitrary and unfair as to exceed constitutional limits." *Shutts*, 472 U.S. at 822, 105 S.Ct. 2965; *accord John Hancock Mut. Life Ins. Co. v. Yates*, 299 U.S. 178, 182, 57 S.Ct. 129, 81 L.Ed. 106 (1936); *Home Ins. Co. v. Dick*, 281 U.S. 397, 407–08, 50 S.Ct. 338, 74 L.Ed. 926 (1930). And in doing so, the Due Process Clause protects litigants against "unfair surprise or frustration of legitimate expectations" of the law governing their dealings. [16] *Allstate*, 449 U.S. at 318 n.24, 101 S.Ct. 633.

***294** By recounting these well-trodden constitutional constraints, I do not seek to "embark upon the enterprise of constitutionalizing choice-of-law rules." *Sun Oil*, 486 U.S. at 727–28, 108 S.Ct. 2117. Rather, these constitutional safeguards demonstrate that by extending the rule of *Klaxon* to bankruptcy cases, federal courts are not bound to reflexively apply impermissibly parochial state choice-of-law rules as Appellees warn. *See* Appellees' Second Supp. Br. 9–11. But absent running afoul of the limitations imposed by the Constitution, I find no basis (or authority) in federal bankruptcy law to constrain a state's authority to prescribe the choice-of-law rules that shall govern in its courts. Indeed, it is a feature of our federal system that it "leaves to a state, within the limits permitted by the Constitution, the right to pursue local policies diverging from those of its neighbors," and "it is not for the federal courts to thwart such local policies by enforcing an independent 'general law' of conflict of laws." *Klaxon*, 313 U.S. at 496, 61 S.Ct. 1020.

Where states do not transcend constitutional barriers, *Klaxon*'s rule best serves the purposes of the Bankruptcy Code consistent with *Erie*, the Rules of Decision Act, and the presumption against federal common law-making. So just as *Klaxon* and *Erie* aim to preserve the substantive law governing a dispute notwithstanding the "accident of diversity," [17] *Klaxon*, 313 U.S. at 496, 61 S.Ct. 1020 (citing *Erie*, 304 U.S. at 74–77, 58 S.Ct. 817), extending *Klaxon* in this manner avoids altering the substantive law governing a dispute simply because of the "happenstance of bankruptcy," *Lewis v. Mfrs. Nat'l Bank of Detroit*, 364 U.S. 603, 609, 81 S.Ct. 347, 5 L.Ed.2d 323 (1961).

* * *

The question of *Klaxon*'s applicability to bankruptcy has persisted for nearly 80 years. This case, just as with others our Court has encountered, permits us to elide the question of which choice-of-law methodology to employ. But we have the responsibility not to perpetuate this uncertainty. I hope that, in the appropriate case, we will resolve this question and give guidance to bankruptcy and district courts in our Circuit in a way that is consistent with the Bankruptcy Code, *Erie* and the Rules of Decision Act, and the policies underlying the grant of bankruptcy jurisdiction to federal courts.

All Citations

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Footnotes

1 Throughout the discussion that follows, we refer to the Committee's constituents as talc plaintiffs, talc creditors, and tort creditors interchangeably.

2 Sections 548 and 544 of the Bankruptcy Code "allow[ ] a trustee to avoid a transaction if it lacked reasonably equivalent value" and left the debtor with "unreasonably small capital." 5 COLLIER ON BANKRUPTCY ¶ 548.05 (16th ed. 2025). So, for example, a trustee may seek to avoid a transfer when "the debtor is left solvent, but just barely so, and in a condition that bankruptcy or liquidation is substantially likely." *Id.* And—as our precedents demonstrate—fraudulent transfer claims are commonly asserted against third-party purchasers like Brenntag. *See, e.g., In re Wilton Armetale, Inc.*, 968 F.3d 273, 278 (3d Cir. 2020) (considering fraudulent transfer claims asserted by creditors against a third-party purchaser of the debtor's assets); *In re Emoral, Inc.*, 740 F.3d 875, 877 (3d Cir. 2014) (noting that the bankruptcy trustee asserted a fraudulent transfer

claim against a third-party purchaser that creditors sought to hold liable on a "mere continuation" theory of liability). The trouble is that Section 548 addresses transfers that occurred within two years of the petition date. 11 U.S.C. § 548(a). Likewise, state-law avoidance claims asserted on behalf of creditors under Section 544 typically expire four years from the date of the challenged transfer or obligation. *See* 5 COLLIER ON BANKRUPTCY ¶ 548.01A (considering statutes of limitation under the Uniform Fraudulent Transfer Act and Uniform Voidable Transfer Act).

3 Successor liability claims form a list of exceptions to the general rule of corporate successor nonliability. *Ramirez v. Amsted Indus., Inc.*, 86 N.J. 332, 431 A.2d 811, 815 (1981). In that sense, the term refers to a collection of different causes of action that can be asserted against a successor corporation at common law. *Id.* (discussing successor liability claims—including those based on alter-ego, mere continuation, productline, and actual or constructive fraudulent transfer theories—recognized under New Jersey law). The roster of cognizable claims varies from one jurisdiction to another. *See, e.g., id.* at 815–20.

4 As mentioned in footnote 3 above, the mere continuation theory of liability is part of the traditional list of successor liability claims recognized under New Jersey law. To assert a mere continuation claim thereunder, a plaintiff must establish sufficient "continuity in management, shareholders, personnel, physical location, assets and general business operation between selling and purchasing corporations following [an] asset acquisition." *Ramirez*, 431 A.2d at 816.

5 Under the former provision, property of the estate includes "[a]ny interest in property the estate acquires after the commencement of the case." 11 U.S.C. § 541(a)(7). The latter provision vests the trustee—or debtor in possession—with the rights and powers of a hypothetical lien creditor who extended credit at the time of the debtor's petition. 11 U.S.C. § 544(a)(1). In the Bankruptcy Court's view, Section 544(a)(1) authorized the Debtors—as debtors in possession bearing the rights of a trustee—to pursue the Product-Line Claims after their petitions were filed. *Whittaker*, 663 B.R. at 21–22. Thus, it concluded the Product-Line Claims constitute after-acquired property of the estate under Section 541(a)(7). *Id.* Several circuit courts, however, have cast doubt on this analysis. *See, e.g., In re Icarus Holding, LLC*, 391 F.3d 1315, 1319 n.5 (11th Cir. 2004); *Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114, 118 (2d Cir. 1991); *In re Ozark Rest. Equip. Co., Inc.*, 816 F.2d 1222, 1226 (8th Cir. 1987); *but see In re Kwok*, ––– F.4th ––––, –––– – ––––, 2026 WL 922975, at *4–5 (2d Cir. Apr. 6, 2026) (narrowing *Wagoner*'s limitations on trustee standing under Section 544). And while the parties devoted a portion of their briefs to addressing the Bankruptcy Court's alternate holding, we need not do so because our precedents require us to conclude the Product-Line Claims are property of the estate under Section 541(a)(1).

6 Of course, neither New Jersey law nor the Restatement contemplates a state's authority over domestic corporations in instances of bankruptcy, as that power is an area of exclusive federal competence. *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 187, 22 S.Ct. 857, 46 L.Ed. 1113 (1902) ("The framers of the Constitution ... granted plenary power to Congress over the whole subject of 'bankruptcies.' "). But the scenarios these authorities posit are sufficiently analogous in character to bankruptcy—as they involve fundamental changes to a corporation's structure (or, in the instance of dissolution, existence)—that their precepts apply to the same extent when a board seeks to enter bankruptcy.

7 Appellants have also argued that this type of interpretation is effectively an appeal of the Receivership Order and thus barred by the *Rooker-Feldman* doctrine, which essentially prohibits federal courts, save the Supreme Court, from reviewing final state court judgments. But if an order is interlocutory, the *Rooker-Feldman* doctrine applies only to those that are "effectively final" because, among other things, the parties have abandoned further litigation. *Cf. Malhan v. Sec'y U.S. Dep't of State*, 938 F.3d 453, 459 (3d Cir. 2019). And what we have here is not "effectively final" because state-court litigation over the Order is not abandoned—it is merely

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stayed. *See* 11 U.S.C. § 362(a). In fact, Appellants indicated they would continue to litigate the Order if the stay were to be lifted.

8 The Receiver contends that he should not have been required to seek appointment of an ancillary receiver in New Jersey because Whittaker "itself made [doing so] impossible" by "filing for bankruptcy before the South Carolina Court could even issue a written order memorializing its denial of [Whittaker]'s motion for reconsideration," and characterizing Whittaker's position as "Kafka-esque." Appellants' Consolidated Reply Br. 21. But without an order lawfully preventing it from doing so, Whittaker's board was free to exercise its authority under New Jersey law to enter bankruptcy. The fact that the Receiver lost the race to the courthouse does not render the results invalid.

9 Whittaker's principal place of business is in Connecticut. We take no position on the authority a state in which a corporation has a principal place of business may exert over that corporation when it is incorporated in a different state. Neither party has argued that Connecticut is the proper forum to enforce the Receivership Order or that its law governs. Accordingly, we limit our discussion to New Jersey and South Carolina laws.

10 Appellants seemingly take the position that the Receivership Order did far more than merely attempt to prevent Whittaker from filing for bankruptcy. At oral argument, when asked whether, in their view, the Receivership Order authorized the South Carolina Receiver "to amend the bylaws of the corporation, to enter into mergers," or to "[c]hange domicile," counsel for Appellants neither disavowed those actions nor offered a limiting principle for their interpretation of the Order. Oral Arg. Tr. 14:1–3.

11 For the sake of clarity, we refer to "claims" and "causes of action" interchangeably throughout the discussion that follows. Additionally, we generally use the term "debtor corporation" in reference to the applicable prepetition entity.

12 Courts frequently use the term "state law" because property interests are ordinarily defined by the states. But federal law may establish property interests, and this is particularly true with respect to causes of action. *See, e.g., Bd. of Trs. of Teamsters Loc. 863 Pension Fund v. Foodtown, Inc.*, 296 F.3d 164, 168–69 (3d Cir. 2002) (considering whether claims arising under federal law constitute property of the estate). Thus, applicable non-bankruptcy law is the more apt term.

13 We note that "the term 'derivative' has multiple meanings." *In re TPC Grp. Inc.*, No. 22-10493, 2023 WL 2168045, at *9 (Bankr. D. Del. Feb. 22, 2023). However, with respect to our inquiry under Section 541, derivative claims are those "based on an injury to the debtor's estate that creates a secondary harm to all creditors regardless of the nature of their underlying claims against the debtor." *Armetale*, 968 F.3d at 283 (citation modified); *see also Off. Comm. of Unsecured Creditors v. R.F. Lafferty & Co.*, 267 F.3d 340, 348–49 (3d Cir. 2001) (explaining that derivative claims are predicated on an injury to the debtor corporation).

14 Under 11 U.S.C. § 1107(a), a debtor in a Chapter 11 case—technically called a debtor in possession—has essentially the rights of a trustee appointed by the bankruptcy court. But trustees are seldom appointed in Chapter 11 cases. Thus, a debtor's rights are, with certain exceptions, coextensive with those of a trustee, and we use the terms interchangeably.

15 This consequence rests at the heart of the Committee's appeal. It contends the Product-Line Claims belong exclusively to the talc creditors in order to ensure the proceeds of those claims are not shared with the full creditor constituency under the ordinary rules of priority. In that sense, this case lays bare the conflicting interests of the tort plaintiffs' bar and the bankruptcy bar.

16 *Caplin* focused on provisions of the Bankruptcy Code's predecessor—the Bankruptcy Act of 1938. The Bankruptcy Act was replaced by the Bankruptcy Reform Act of 1978, which is commonly referred to as the

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Bankruptcy Code. Many Code provisions grew out of analogous sections under the Act. As a result, judicial decisions and scholarship concerning the Bankruptcy Act often inform our understanding of the Code.

17 This phenomenon makes sense in context. Successor liability claims frequently target an injury to the debtor corporation by a controlling entity. *See, e.g., Walensky v. Jonathan Royce Int'l, Inc.*, 264 N.J.Super. 276, 624 A.2d 613 (N.J. App. Div. 1993). However, as a practical matter, the debtor corporation is unlikely to assert those claims against a controlling entity. *See, e.g., In re Buildings by Jamie, Inc.*, 230 B.R. 36, 42 (Bankr. D.N.J. 1998) (noting that "principals of a solvent debtor will not be compelled to pierce the veil of the very entity they use as a conduit for their personal business" because doing so would "effectively extinguish their limited liability and expose them to the personal liability that the corporate form is employed to avoid"); *In re W. World Funding, Inc.*, 52 B.R. 743, 784 (Bankr. D. Nev. 1985), *aff'd in part and rev'd in part on other grounds sub nom., Buchanan v. Henderson*, 131 B.R. 859 (D. Nev. 1990), *rev'd*, 985 F.2d 1021 (9th Cir. 1993) (explaining that "defendants who so completely dominate [a] corporation as to constitute its alter egos are not likely to institute an action to determine their own liability for corporate debts"). Accordingly, state law nominally vests successor liability claims with creditors to ensure they can be asserted.

18 Counting our decision in *Foodtown*, we have applied Section 541 to causes of action in at least three cases. *See* 296 F.3d at 170–71. But that decision is not applicable because it concerned federal pension withdrawal liability claims that did not exist until the debtor filed for bankruptcy. *Id.* at 170. And in our case, there is no dispute that the Product-Line Claims existed prior to the Debtors' bankruptcy cases.

19 The Committee also claims that classifying the Product-Line Claims as property of the estate would violate the Supreme Court's decision in *Purdue Pharma.* That decision held that bankruptcy courts lack the power to extinguish creditor claims against third parties absent consent from the affected creditors. 603 U.S. at 227, 144 S.Ct. 2071. So, the Committee argues, treating the Product-Line Claims as property of the estate—and thus permitting the Debtors to settle them—would result in a non-consensual third-party release. But this contention places the cart before the horse. Our inquiry focuses on the antecedent question of whether the Product-Line Claims substantively belong to the tort creditors or to the estate under Section 541. *See id.* at 219, 144 S.Ct. 2071 ("[N]o one questions that [a debtor] may address in its own bankruptcy plan claims ... derivatively asserted by another on its behalf.").

20 In an effort to bolster its position, the Committee repeatedly emphasizes that the Product-Line Claims are vested with, and inure to the benefit of, tort creditors alone. In any event, that may not be the case. *See Mettinger v. Globe Slicing Mach. Co.*, 153 N.J. 371, 709 A.2d 779, 786 (1998) (holding that "distributors and retailers may use the product-line exception to seek indemnification from corporations that purchased all or substantially all of the original manufacturer's assets and undertook essentially the same manufacturing operation as that corporation").

21 For the sake of clarity, we agree that a debtor corporation's ability to assert a claim under applicable non-bankruptcy law is sufficient—but not necessary—for that claim to constitute property of the estate.

1 The Fifth Circuit at one time took a similar view but seems more recently to have second-guessed whether it conclusively settled the question. *Compare Wallace Lincoln-Mercury Co. v. Gentry*, 469 F.2d 396, 400 n.1 (5th Cir. 1972) ("In this federal bankruptcy case the District Court is not obliged to use the choice-of-law methodology of the forum state, Louisiana."), *with Fishback Nursery, Inc. v. PNC Bank, N.A.*, 920 F.3d 932, 935 (5th Cir. 2019) ("[I]t is an open question in this circuit as to whether courts exercising bankruptcy jurisdiction should apply forum or federal choice-of-law rules.").

2 *Vanston Bondholders Protective Comm. v. Green* suggests that federal courts have wide latitude to devise common-law choice-of-law rules in bankruptcy. 329 U.S. 156, 161–62, 67 S.Ct. 237, 91 L.Ed. 162 (1946). When the Court decided that case, however, the Rules of Decision Act covered only common-law claims,

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and so it would not have applied to claims created by federal bankruptcy law. Clopton, *supra*, at 2205 n.76 ("For those who believe that the Rules of Decision Act plays an important role in *Erie* cases, that statute exclusively referred to common[-]law claims until two years after *Vanston* ...."). The Court's mature *Erie* cases came only later. *See, e.g., Day & Zimmermann, Inc. v. Challoner*, 423 U.S. 3, 96 S.Ct. 167, 46 L.Ed.2d 3 (1975); *Hanna*, 380 U.S. 460, 85 S.Ct. 1136; *Byrd v. Blue Ridge Rural Elec., Inc.*, 356 U.S. 525, 537, 78 S.Ct. 893, 2 L.Ed.2d 953 (1958).

3 To avoid confusion on what follows, Judge Krause in part offers numbered reasons to extend *Klaxon* to the bankruptcy context. Those numbered reasons do not correspond to the numbered reasons I note below for why she believes federal courts in bankruptcy can never create special federal choice-of-law rules.

1 *See In re Abeinsa Holding Inc.*, No. 20-3333, 2021 WL 3909984, at *3 (3d Cir. Sept. 1, 2021) (noting that our Court has "not yet precedentially resolved the choice-of-law rules applicable in bankruptcy proceedings").

2 To be sure, the Eighth Circuit adopted *Klaxon*'s rule in bankruptcy without much reasoning. *See In re Payless Cashways*, 203 F.3d at 1084.

3 While "property" generally conjures images of real property or tangible items, in bankruptcy (and elsewhere), various intangibles, such as causes of action, similarly constitute property. *See, e.g., In re Kane*, 628 F.3d 631, 637 (3d Cir. 2010).

4 In addition to diversity cases, *Klaxon* governs choice-of-law questions where jurisdiction is anchored on other bases, including federal questions under 28 U.S.C. § 1331, *Shields v. Consol. Rail Corp.*, 810 F.2d 397, 399 (3d Cir. 1987) (ancillary (now supplemental) jurisdiction); *Sys. Operations, Inc. v. Sci. Games Dev. Corp.*, 555 F.2d 1131, 1136 (3d Cir. 1977) ("Although *Klaxon* was a diversity jurisdiction case, the same principle holds true with respect to pendent jurisdiction claims."); *accord Elliott v. Cartagena*, 84 F.4th 481, 496 n.14 (2d Cir. 2023); *Osborn v. Griffin*, 865 F.3d 417, 443 (6th Cir. 2017); *BancOklahoma Mortg. Corp. v. Cap. Title Co.*, 194 F.3d 1089, 1103 (10th Cir. 1999); *Ideal Elec. Sec. Co. v. Int'l Fidelity Ins. Co.*, 129 F.3d 143, 148 (D.C. Cir. 1997); *Paracor Fin., Inc. v. Gen. Elec. Cap. Corp.*, 96 F.3d 1151, 1164 (9th Cir. 1996); *Sommers Drug Stores Co. Emp. Profit Sharing Tr. v. Corrigan*, 883 F.2d 345, 353 (5th Cir. 1989); *Bi-Rite Enters., Inc. v. Bruce Miner Co.*, 757 F.2d 440, 442 (1st Cir. 1985); *ITCO Corp. v. Michelin Tire Corp., Com. Div.*, 722 F.2d 42, 49 n.11 (4th Cir. 1983), and interpleader under 28 U.S.C. § 1335, *Griffin v. McCoach*, 313 U.S. 498, 503, 61 S.Ct. 1023, 85 L.Ed. 1481 (1941). Moreover, outside of federal court, state courts employ the forum's choice-of-law rules, *see* Restatement (Second) of Conflict of L. § 5 cmt. b (A.L.I. 1971) ("A court applies the law of its own state, as it understands it, including its own conception of Conflict of Laws.")—the practice that *Klaxon* aims to mirror.

5 To be sure, bankruptcy does not have to work this way. The Constitution reserves to Congress the authority to legislate for "the entire 'subject of Bankruptcies,' " *Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 370, 126 S.Ct. 990, 163 L.Ed.2d 945 (2006) (quoting U.S. Const. art. I, § 8, cl. 4), which encompasses "nothing less than ... the relations between ... [a] debtor, and [its] creditors," *Wright v. Union Cent. Life Ins. Co.*, 304 U.S. 502, 513–14, 58 S.Ct. 1025, 82 L.Ed. 1490 (1938) (internal quotation marks omitted). Congress could enact legislation that impairs any number of entitlements created by non-bankruptcy law. In this way, *Butner* is merely descriptive of the bankruptcy system that Congress has chosen to enact: "Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law." 440 U.S. at 54, 99 S.Ct. 914. It does not stand for the proposition that our Nation's bankruptcy laws *cannot* determine parties' relative entitlements, as scholars have pointed out. *See, e.g.*, Anthony J. Casey, *Chapter 11's Renegotiation Framework and the Purpose of Corporate Bankruptcy*, 120 Colum. L. Rev. 1709, 1751 (2020) (advancing a theory of Chapter 11 that "support[s] a soft version of *Butner*" positing that, "[i]n the absence of any evidence

of hold up, nonbankruptcy provisions should remain intact ... simply because in the absence of hold up there is no role for bankruptcy law").

6 This is not to say that the Bankruptcy Code can never embody federal rules that do not appear in its specific provisions. Indeed, the Code can, and does, provide such rules of decision, such as where "pre-Code practice" has not been expressly abrogated by statute, *In re Hertz Corp.*, 120 F.4th 1181, 1198 (3d Cir. 2024), or where a rule "has long been considered fundamental to the Bankruptcy Code's operation," *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 465, 137 S.Ct. 973, 197 L.Ed.2d 398 (2017).

7 *See also DelCostello v. Int'l Bhd. of Teamsters*, 462 U.S. 151, 159 n.13, 103 S.Ct. 2281, 76 L.Ed.2d 476 (1983) ("[W]here Congress directly or impliedly directs the courts to look to state law to fill in details of federal law, *Erie* will ordinarily provide the framework for doing so."); 19 Wright & Miller's Federal Practice & Procedure § 4520 (3d ed. May 2025 update) ("[T]he law to be applied is not selected by reference to the basis of the court's subject matter jurisdiction.... In other words, the choice of applicable law turns upon the source or genesis of the right or issue being adjudicated.").

8 In *Gaston & Snow*, the Second Circuit gestured at the notion that "an interest in uniformity can justify the creation of federal common law," 243 F.3d at 606, and cited the Supreme Court's decision in *Kimbell Foods* for that proposition. But *Kimbell Foods* does not speak to whether a federal choice-of-law rule should govern in bankruptcy. There, the Supreme Court determined that "the priority of liens stemming from federal lending programs must be determined with reference to federal law," *Kimbell Foods*, 440 U.S. at 726, 99 S.Ct. 1448, which obviates the need of a choice-of-law inquiry because the Supremacy Clause requires application of federal rules of decision. Having concluded that federal law, rather than state law, provides the governing rule, the Court went on to define the content of that federal common law rule. And at that second step, the Court noted that "[c]ontroversies directly affecting the operations of federal programs, although governed by federal law, do not inevitably require resort to uniform federal rules" before "reject[ing] generalized pleas for uniformity" in favor of a federal common law rule that "adopt[s] the readymade body of state law as the federal rule of decision." *Id.* at 727–28, 730, 740, 99 S.Ct. 1448.

9 The scenario is far from hypothetical, as the federal government is "one of the Nation's largest lenders," *Dep't of Agric. Rural Dev. Rural Housing Serv. v. Kirtz*, 601 U.S. 42, 45, 144 S.Ct. 457, 217 L.Ed.2d 361 (2024), and is a frequent creditor in bankruptcies.

10 My concurring colleague disagrees, asserting that "[f]ederal courts can and do develop federal choice-of-law rules that select state substantive law." Concurring Op. ––––. But the cited cases do not support that proposition; they merely recognize that courts can create federal common law rules of decision—not choice-of-law rules—that incorporate the contents of state law. *See Kamen v. Kemper Fin. Servs., Inc.*, 500 U.S. 90, 107–09, 111 S.Ct. 1711, 114 L.Ed.2d 152 (1991) (creating a rule of decision for derivative actions that incorporates the contents of state law rather than "displac[ing] state law in this area"); *Semtek*, 531 U.S. at 508–09, 121 S.Ct. 1021 (describing the issue as "a classic case for adopting, as the federally prescribed *rule of decision*, the law that would be applied by state courts," rather than creating "a contrary federal rule" (emphasis added)); *see also infra* note 13.

11 My concurring colleague agrees that "state choice-of-law rules will almost always apply" in bankruptcy but insists that "[r]are is not never." Concurring Op. at –––– – ––––. It is telling, however, that the concurrence does not identify a single instance—even a hypothetical one—that would require the application of a federal common-law choice of law rule, but would not result, in any event, in the application of federal law as the rule of decision.

12 Apart from the reasons I describe below, I agree with the majority that such a scenario is fanciful because it would violate the Constitution. Maj. Op. –––– ("[W]hen it comes to control over corporate decision-making, a

state 'has no interest in regulating the internal affairs of foreign corporations.' " (quoting *Edgar v. MITE Corp.*, 457 U.S. 624, 645–46, 102 S.Ct. 2629, 73 L.Ed.2d 269 (1982))).

13 When adopting a federal common law rule, federal courts must assess both "(1) the competence of federal courts to formulate a federal rule of decision, and (2) the appropriateness of declaring a federal rule rather than borrowing, incorporating, or adopting state law in point." *McVeigh*, 547 U.S. at 692, 126 S.Ct. 2121. So in some circumstances, federal courts may "adopt the readymade body of state law as the federal rule of decision until Congress strikes a different accommodation," and state law yields only in the sense that it is supplanted by an identical federal rule. *Kimbell Foods*, 440 U.S. at 740, 99 S.Ct. 1448.

14 This rule may sound identical to the constraint provided by the Full Faith and Credit Clause discussed above. But the two clauses play distinct roles. The Full Faith and Credit Clause concerns the respect owed by one state to the laws and judgments of another, while the Privileges and Immunities Clause concerns states' treatment of citizens of foreign states. *Compare* U.S. Const. art. IV, § 1, cl. 1 ("Full Faith and Credit shall be given in *each State* to the public Acts, Records, and judicial Proceedings of *every other State.*" (emphasis added)), *with* U.S. Const. art. IV, § 2, cl. 1 ("The *Citizens* of each State shall be entitled to all Privileges and Immunities of Citizens in *the several States.*" (emphasis added)).

15 The Supreme Court's articulation of the Fourteenth Amendment Due Process Clause's limitations on state choice-of-law rules has been subject to nearly universal criticism. *See, e.g.*, Roosevelt, *supra*, at 2506–07; Louise Weinberg, *Choice of Law and Minimal Scrutiny*, 49 U. Chi. L. Rev. 440, 460–63 (1982). In comparing choice of law with the Court's personal jurisdiction jurisprudence, Professor Linda Silberman famously quipped, "[t]o believe that a defendant's contacts with the forum state should be stronger under the due process clause for jurisdictional purposes than for choice of law is to believe that an accused is more concerned with where he will be hanged than whether." Linda J. Silberman, Shaffer v. Heitner, *The End of an Era*, 53 N.Y.U. L. Rev. 32, 88 (1978). I do not take a side in this debate here. My point, rather, is that wherever the constitutional boundaries lie, so long a states' choice-of-law regimes fall within them, federal courts have no authority under the Bankruptcy Code, Rules of Decision Act, or statutes granting bankruptcy jurisdiction to supplant state choice-of-law rules in favor of federal ones.

16 The Supreme Court has somewhat collapsed the inquiries under the Full Faith and Credit Clause and the Due Process Clause for choice-of-law purposes. *See, e.g., Sun Oil Co. v. Wortman*, 486 U.S. 717, 729 n.3, 108 S.Ct. 2117, 100 L.Ed.2d 743 (1988); *see also* Herma Hill Kay et al., *Conflict of Laws* 381 (10th ed. 2018) (noting the convergence in the two analyses). Yet each imposes a different command: As explained above, the Full Faith and Credit Clause governs the respect owed to laws among states, while the Due Process Clause confers an individual right to be free from application of a state's law when that state has no meaningful connection to the dispute. *Compare* U.S. Const. art. IV, § 1, cl. 1 ("Full Faith and Credit shall be given in *each State* to the public Acts, Records, and judicial Proceedings of *every other State.*" (emphasis added)), *with* U.S. Const. amend. XIV, § 1 ("No *State* shall ... deprive any *person* of life, liberty, or property, without due process of law." (emphasis added)).

17 Of course, *Klaxon*'s interest in diminishing forum-shopping incentives between state and federal courts, *see* 313 U.S. at 496, 61 S.Ct. 1020, does not neatly map onto bankruptcy, as federal courts possess original and exclusive jurisdiction over bankruptcy cases, 28 U.S.C. § 1334(a). But just as plaintiffs may choose their favored forum in non-bankruptcy cases, consistent with proper venue, to gain a favorable choice-of-law rule, *see Ferens v. John Deere Co.*, 494 U.S. 516, 523, 110 S.Ct. 1274, 108 L.Ed.2d 443 (1990); *Van Dusen v. Barrack*, 376 U.S. 612, 639, 84 S.Ct. 805, 11 L.Ed.2d 945 (1964), debtors too may choose a forum for purposes of a specific choice-of-law regime in bankruptcy cases where venue properly lies. And that sort of horizontal forum shopping incentive is "attributable to," and an irreducible component of, "our federal system." *Klaxon*, 313 U.S. at 496, 61 S.Ct. 1020.

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