No. 06-526

In The Supreme Court of the United States

WACHOVIA BANK, N.A.,
Petitioner,

v.

EASTMAN KODAK COMPANY, *et al.*,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

PETER BUSCEMI *
JAY TEITELBAUM
WENDY S. WALKER
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
(212) 309-6000

Counsel for Petitioner
Wachovia Bank, N.A.

* Counsel of Record

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

QUESTIONS PRESENTED

The decision of the court of appeals in this case furthers a split of circuit authority, which creates substantial confusion and uncertainty as to the application of res judicata in bankruptcy cases. The questions presented are:

1. Whether the Eleventh Circuit's decision, which limits the application of res judicata in a bankruptcy case to issues whose resolution "explicitly becomes an essential part of the bankruptcy plan" erroneously restricts the scope of the doctrine, in conflict with decisions of the Second, Third, Fifth, and Seventh Circuits, which apply res judicata to preclude all claims, defenses, and issues arising from a common nucleus of facts that *were or could have been* asserted in a bankruptcy case.

2. Whether the Eleventh Circuit's decision, which limits the application of res judicata in a bankruptcy case to matters within a bankruptcy court's core jurisdiction, erroneously circumscribes the application of the doctrine in bankruptcy, in conflict with the Second, Third, Sixth, Ninth, and Tenth Circuits, which apply res judicata to all claims, defenses, and issues arising from a common nucleus of facts that *were or could have been* decided in a bankruptcy case, regardless of whether those claims fall within the bankruptcy court's core or "related to" jurisdiction.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioner, Wachovia Bank, N.A., is a national bank and a wholly owned subsidiary of Wachovia Corporation, which is a publicly traded company.

Petitioner, Wachovia Bank, N.A., serves as agent for a group of lenders that participated in loans to the debtor in this case. The lenders, none of which was a party in the court of appeals, include AmSouth Bank (a wholly owned subsidiary of AmSouth Bancorporation, which is a publicly traded company), Fifth Third Bank (a wholly owned subsidiary of Fifth Third Bancorp, which is a publicly traded company), Washington Mutual Bank (a wholly owned subsidiary of Washington Mutual, Inc., which is a publicly traded company), Harris N.A. (a wholly owned subsidiary of Bank of Montreal, which is a publicly traded company), Bank of America, N.A. (a wholly owned subsidiary of Bank of America Corp., which is a publicly traded company), U.S. Bank National Association (a wholly owned subsidiary of U.S. Bancorp, which is a publicly traded company), SunTrust Bank (a wholly owned subsidiary of SunTrust Banks, Inc., which is a publicly traded company), and Stonehill Institutional Partners, L.P. (which is not a publicly traded company).

Other parties in the court of appeals were Eastman Kodak Company; Atlanta Retail, Inc. f/k/a Wolf Camera, Inc.; Atlanta Retail Subsidiary, LLC f/k/a WolfExpress.Com, LLC; Atlanta Retail, L.P. f/k/a Texas Photo Finish, L.P.; and Atlanta Retail Partner, Inc. f/k/a Fox Photo Partner, Inc.

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Petitioner, Wachovia Bank, N.A., respectfully petitions for a writ of certiorari to review the judgment of the court of appeals in this case.

OPINIONS BELOW

The opinion of the court of appeals (App. A, 1a-22a) is reported at 456 F.3d 1277. The opinion of the district court (App. B, 23a-41a) is not officially reported, but can be found at 2005 U.S. Dist. LEXIS 42970. The opinion of the bankruptcy court (App. C, 42a-55a) is reported at 297 B.R. 299. Earlier orders of the bankruptcy court (Apps. D-I, 56a-159a) are not reported.

JURISDICTION

The judgment of the court of appeals was entered on July 18, 2006. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The jurisdiction of bankruptcy courts is governed by 28 U.S.C. § 1334(a) and (b), and 28 U.S.C. § 157(b)(1) and (2) and (c)(1). The relevant statutory provisions are reproduced in the Appendix. (Apps. M-N, 200a-204a.)

STATEMENT OF THE CASE

A. Factual Background

This case raises important issues regarding the proper res judicata effect of bankruptcy court orders. The case arises from the bankruptcy of Wolf Camera, Inc., a specialty retailer of photographic products. Petitioner, Wachovia Bank, N.A., was Wolf's principal senior secured creditor.[1] Respondent Eastman Kodak Company was another major creditor of Wolf, both as a lender and as Wolf's principal supplier. A critical issue in the Wolf bankruptcy was the relative priority of Wachovia and Kodak, as secured creditors of Wolf. In particular, Kodak and Wachovia disagreed about the treatment of an admittedly junior $30 million loan that Kodak made to Wolf approximately one year before the Wolf bankruptcy.

The relevant sequence of events is as follows:

In September 1998, at a time when Kodak and Wachovia already were substantial secured creditors of Wolf, Kodak, Wachovia, and Wolf entered into a Subordination Agreement and an Intercreditor Agreement. In the Subordination Agreement, Kodak agreed that all of its loans to Wolf would be subordinate to the loans made by Wachovia. The Intercreditor Agreement provided, among other things, that Kodak and Wachovia would keep each other informed of occurrences that could significantly affect Wolf's ability to meet its obligations.

[1] Wachovia is the successor in interest to First Union National Bank, which was both a senior lender to Wolf and the administrative agent for itself and a group of other senior lenders to Wolf. The term "Wachovia" includes these other senior lenders as well as Wachovia itself.

Under its loan agreements with Wachovia, Wolf could not incur additional indebtedness or obtain financial accommodations from Kodak without Wachovia's prior written consent. In the Intercreditor Agreement, Kodak expressly consented to this limitation.

In March 2000, at a time when Wolf was showing signs of financial distress, Kodak negotiated a new $30 million secured loan to Wolf. Kodak has alleged that, in making the loan, it did not know Wolf's true financial condition and was relying on disclosure from Wachovia. Kodak also alleged that it intended for Wolf to use the proceeds of the loan to expand its operations and the volume of its purchases from Kodak. Having agreed that Wolf could not incur debt without Wachovia's prior consent, Kodak expressly conditioned the funding of the $30 million loan on Kodak's prior receipt of Wachovia's written consent in a form acceptable to Kodak. In addition, Kodak conditioned its loan upon its receipt from Wolf of current financial information and representations as to the status of its loan agreement with Wachovia.

Wolf obtained Wachovia's written consent to the loan from Kodak. In keeping with the Subordination and Intercreditor Agreements, Wachovia's consent provided that Kodak's loan would be junior and subordinate to Wachovia's loans in all respects. Wachovia, as a condition of its consent and waiver of the restriction on additional debt, required that the $30 million loan proceeds be used by Wolf to reduce Wolf's outstanding obligations to Wachovia, which then exceeded $100 million.

Although Kodak conditioned its loan to Wolf on prior receipt of Wachovia's consent, Kodak admittedly delivered the entire $30 million to Wolf before it received Wachovia's consent, which described how the loan proceeds would be

used. When Wolf received the $30 million in its account, the funds were applied, as required in Wachovia's consent, to reduce Wolf's revolving credit obligations to Wachovia.[2] At no time did Kodak demand that the funds be returned by Wolf.

More than a year later, in June 2001, Wolf filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the Northern District of Georgia. The proofs of claim filed by Kodak and Wachovia in the bankruptcy court showed that, as of the time Wolf filed its petition, Wolf owed Wachovia approximately $78 million (net of the $30 million loan) and Kodak approximately $98 million (including the $30 million loan). Thousands of other creditors, including landlords, trade vendors, utilities, tax authorities, and employees, also filed proofs of claim exceeding $45 million.

In addition, during the course of the bankruptcy case, Wolf incurred further obligations, in excess of $25 million, to landlords, employees, trade vendors, and professionals engaged by Wolf, the Creditors Committee, and Wachovia.[3] Under the Bankruptcy Code, such post-petition administrative priority expenses could be paid only from unencumbered assets. As Wachovia asserted a senior lien on substantially all of Wolf's assets, Wachovia's prior consent was required for the payment of these claims from its collateral.

Wolf's reorganization effort did not yield sufficient proceeds to pay all creditors in full. In fact, the proceeds were not sufficient even to pay Wachovia, the senior secured lender, in full. It was only as a result of Wachovia's consent to forgo $25 million of its potential recovery that administrative expense creditors were paid, so that the case could proceed in an orderly manner. Ultimately, Wachovia recovered approximately $40 million of its $78 million claim. The bankruptcy court found that, under the Subordination and Intercreditor Agreements, Kodak was not entitled to and would not receive any payment on its claim until Wachovia was paid in full. These were the financial realities that led Kodak, after participating actively throughout the bankruptcy proceedings, to attempt to circumvent the bankruptcy court's jurisdiction by initiating a separate action against Wachovia in Rochester, New York. Kodak sought to recover the same $30 million that the bankruptcy court found was subject to the Subordination Agreement.

[2] Under the loan documents, Wolf could re-borrow up to this amount from Wachovia under its revolving credit line.

[3] The "Creditors Committee" refers to Wolf's official committee of unsecured creditors. Kodak was an *ex officio* member of the Committee with access to all Committee information and deliberations.

B. Proceedings in the Bankruptcy Court

1. The Financing Order

Wolf required bankruptcy court authority to use its secured lenders' collateral and to borrow new money to fund the ongoing administrative expenses of operating its business during the bankruptcy. Wachovia, as Wolf's senior secured lender, was willing to consent to the use of its cash collateral and to provide new loans to Wolf. In July 2001, on motions duly served on Kodak, and following hearings at which Kodak was represented, the bankruptcy court, exercising its core jurisdiction, granted authority for Wolf to borrow up to $10 million from Wachovia and to use Wachovia's cash collateral (the "Financing Order"). (App. I, 134a.)[4]

In granting this motion, the bankruptcy court found that Wachovia's claims, in the amount of approximately $78 million, were valid and secured by unavoidable first priority liens in substantially all of Wolf's assets. The bankruptcy court also

[4] District courts have implemented 28 U.S.C. § 1334 by issuing standing orders referring bankruptcy cases directly to bankruptcy courts, which, under 28 U.S.C. § 157(b) and (c), have jurisdiction to enter final orders in core proceedings, and to render proposed findings of fact and conclusions of law in non-core related matters.

found that Kodak's claims were subordinate to Wachovia's. Kodak did not object to these findings, to the core jurisdiction of the bankruptcy court, or to the Financing Order.

Had Kodak timely objected to the bankruptcy court's findings on the ground that Wachovia allegedly had breached the Subordination or Intercreditor Agreement or had acted in a manner that rendered the Subordination Agreement unenforceable, the entire course of the bankruptcy case would have changed. For example: First, Wachovia, the only party willing to extend new loans to Wolf, and to forgo a portion of its secured recovery, may not have done so without the priorities afforded its existing claims and liens. Second, creditors who received millions of dollars upon Wachovia's consent would have received nothing. Third, if Kodak prevailed on its objection to Wachovia's priority, Kodak would have become the senior creditor, entitled to distributions ahead of Wachovia. Fourth, to the extent the objections were not resolved, any Chapter 11 plan or settlement with other creditors would have been materially different in order to preserve Kodak's claims against Wachovia or to subordinate Wachovia's claims to Kodak's.

2. The Sale Order

By July 2001, it became clear that Wolf would be required to engage in an orderly liquidation. Wolf filed a motion to sell substantially all of its assets for approximately $70 million to Ritz Camera Center, Inc. (the "Ritz Sale"). The assets to be sold were subject to the liens of Wachovia and Kodak in the order of priority set forth in the Subordination Agreement. The proposed sale was subject to higher and better offers—of which there were none.

Kodak objected to the Ritz Sale, on the ground that, as a secured creditor, its consent was required unless the proceeds were sufficient to satisfy *all* secured claims. In its objection, Kodak admitted that its claims and liens were subordinate to

Wachovia's and that the interests of Kodak and Wachovia in Wolf's assets were not in dispute. Kodak did not contest the effect of the Subordination Agreement or claim that Wachovia breached the Intercreditor Agreement.

The bankruptcy court, exercising its core jurisdiction, specifically found that, under the Subordination and Intercreditor Agreements, Kodak's claims and liens were subordinate to Wachovia's and that Kodak would not receive any distribution until Wachovia's claims were satisfied in full. Given that the net proceeds of the sale (approximately $58 million) were less than Wachovia's claims, the bankruptcy court found that Kodak's claims were unsecured and that Kodak, therefore, did not have standing as a secured creditor to object to the sale under Bankruptcy Code § 363(f). Thus, the bankruptcy court overruled Kodak's objection and approved the sale in an order dated September 21, 2001 (the "Sale Order"). (App. H, 106a.) Kodak did not appeal.

Implementing the Sale Order, on notice to Kodak, the bankruptcy court, exercising its core jurisdiction, on September 24, 2001, approved a distribution of the cash proceeds of the Ritz Sale as follows: first, to repay Wachovia's bankruptcy financing ($5.7 million); second, to repay Wachovia up to $20 million on account of its existing pre-bankruptcy loans; third, to pay administrative expenses in the bankruptcy case up to $25 million; and finally, to the extent of any excess proceeds, to repay Wachovia up to an additional $16 million on account of its existing pre-bankruptcy loans. Kodak did not object to this distribution. Thus, based on the findings of the bankruptcy court that Kodak was bound by the Subordination and Intercreditor Agreements, Wachovia consented to allow $25 million of the proceeds of its collateral to be used to satisfy the claims of unsecured administrative expense creditors, which facilitated the administration of the bankruptcy case.

3. The Settlement Order and the N.Y. Action

The Creditors Committee was the only party in interest to timely commence a proceeding in the bankruptcy court to challenge the validity, priority, and extent of Wachovia's liens and claims as determined in the Financing Order. The Committee filed its complaint in the bankruptcy court in January 2002. Thereafter, Wachovia, Wolf, and the Committee negotiated a global settlement, which the bankruptcy court recognized was the last obstacle to formulating a Chapter 11 plan in the bankruptcy case (the "Settlement"). The Settlement provided, in pertinent part, that Wachovia would: (a) have an allowed secured claim of not less than $40 million, subject only to the prior payment of up to $25 million for allowed administrative expenses; (b) have an allowed unsecured claim for approximately $37 million; and (c) share any distribution on account of its unsecured claim *pro rata* with general unsecured creditors, *other than Kodak*, which, pursuant to the Subordination Agreement, would receive no distribution until all of Wachovia's claims were paid in full. Under the Settlement, all challenges to the validity, extent, and priority of Wachovia's claims were withdrawn with prejudice.

On May 30, 2002, after the Settlement had been negotiated, but before it was presented to the bankruptcy court for approval, Kodak commenced an adversary proceeding against Wachovia in the Wolf bankruptcy case (the "N.Y. Adversary Proceeding"). (App. A, 6a.) Kodak did not file the N.Y. Adversary Proceeding in Georgia where the Wolf bankruptcy had been pending for nearly a year, but in the bankruptcy court in Rochester, New York, where Kodak has its head-quarters.

In the N.Y. Adversary Proceeding, Kodak alleged that, in or about March 2000, Wachovia failed to disclose Wolf's financial condition and the terms of its consent to the Kodak loan, thereby (i) breaching the Subordination and Intercreditor Agreements; (ii) fraudulently inducing Kodak to lend

Wolf $30 million; and (iii) tortiously interfering with Kodak's $30 million loan agreement. Relying on Wolf's pending bankruptcy case, Kodak alleged that the bankruptcy court in New York had core jurisdiction to: (i) equitably subordinate Wachovia's claims to Kodak's claims to the extent of $30 million; and (ii) award Kodak compensatory and punitive damages in an amount not less than $30 million.

On June 7, 2002, the Settlement was executed by Wachovia, Wolf, and the Committee. The bankruptcy court in Georgia held a hearing on July 16, 2002. Before that hearing, Wachovia (joined by Wolf) moved to dismiss the N.Y. Adversary Proceeding or, in the alternative, to transfer it to the bankruptcy court in Georgia on the ground that the court in which the Wolf bankruptcy case was pending had exclusive jurisdiction to determine all matters that were either core or "related to" the Wolf bankruptcy case. Kodak filed an objection to the Settlement in the bankruptcy court, seeking to preserve its right to assert its claims against Wachovia. With Wachovia's motion to dismiss the N.Y. Adversary Proceeding pending, Kodak, Wachovia, and Wolf appeared at the July 16 hearing in Georgia and addressed the bankruptcy court with respect to the Settlement (App. J, 160a-168a):

> [Wolf]: The only objection that has been filed to the application is the limited objection by Kodak regarding its attempt to preserve its claims against the bank group.
>
> One of the reasons for the bank group's willingness to settle, and this is clear from the language of the stipulation, one of the reasons for its willingness to settle with the committee on the $40 million basis was, as set forth in paragraph 10 of this stipulation, the condition that the Kodak subordination agreement be enforced.
>
> Paragraph 11 of the stipulation reserves Kodak's opportunity to be heard on that issue. That opportunity, we submit, is today, your Honor.

* * *

The settlement with the Committee is the linchpin of the plan of liquidation that we filed yesterday; and without the settlement, we don't have a plan.

* * *

Moreover, your Honor, the debtors do not believe that the issue of enforceability of the subordination or the relative priority of the bank's claims and the Kodak claims should be litigated in Rochester or any other court other than this court.

* * *

THE COURT [addressing counsel for Kodak]: Okay, anything else, Mr. Sklar? Because I just want to find out where there's disagreement, then the Court will rule. Any other matter?

[Kodak]: No. I believe that's it, your Honor.

[Kodak]: Dan, paragraph 11, we want to make clear that this does not constitute our notice and opportunity to be heard.

* * *

[Kodak]: Yes, just to reiterate that this isn't the hearing on the enforcement of the subordination agreement under paragraph 11.

* * *

THE COURT: All right. Well, okay, I just want to make sure I get everything that you have, and then we're going to resolve everything. So is that it?

[Kodak]: Yes, sir.

* * *

[Wachovia]: Kodak has filed its pleading. It's made its objection. We believe that this was their opportunity to be heard.

* * *

THE COURT: The Court also notes that prior to even the presentation made, the Court recalls several instances where the Kodak subordination agreement was brought up in hearings and the Court remembers that . . . it was in no question that in the Court's mind that the subordination agreement was enforceable. It mentioned that, in the consideration on the objection to the sale, it's noted in . . . Kodak's own pleadings and it had mentioned several times in the cash collateral order, it's highlighted in the 9019 motion, so I don't believe there's any real surprise, I don't think there's anything real new about it, and so the Court is of the view that this really is not striking any new ground. It's just merely tying up some ends based on prior rulings, prior orders, and prior positions of the parties in the case. So the Court finds that that agreement is enforceable and will approve the 9019 motion.

[Wolf]: Point of clarification. Your Honor ruled that that agreement is enforceable. Was your Honor referring to the subordination agreement?

THE COURT: Yes.

The bankruptcy court, in the exercise of its core jurisdiction, approved the Settlement. Kodak did not appeal. Kodak then voluntarily dismissed the N.Y. Adversary Proceeding and immediately began a new lawsuit against Wachovia in New York State Supreme Court in Rochester (the "N.Y. Action").[5] (App. A, 7a.) The complaint in the N.Y. Action was substantially identical to the complaint previously filed by Kodak in the N.Y. Adversary Proceeding in the Wolf bankruptcy case. It contained the same factual allegations and the same claim for $30 million in damages. The *only* material difference was

[5] The N.Y. Action was removed to and is pending in the United States District Court for the Western District of New York. The action has been stayed pending this Court's disposition of the case.

that the complaint in the N.Y. Action omitted Kodak's equitable subordination claim asserted in the N.Y. Adversary Proceeding. (App. L, 182a.)

4. The Chapter 11 Plan and the Injunction Entered by the Bankruptcy Court

Wolf filed a Chapter 11 plan (the "Plan") that detailed the treatment of claims and interests, including the validity and priority of the claims of Wachovia and Kodak. The Plan specifically incorporated and implemented the Settlement, the Sale Order, the Financing Order, and the bankruptcy court's prior findings with respect to the Subordination and Intercreditor Agreements. Under the Plan, Kodak would, in accordance with the Subordination Agreement and the bankruptcy court's prior orders, receive no distribution until Wachovia was paid in full.

In the N.Y. Action, however, Kodak was seeking to recover from Wachovia the same $30 million that Kodak could not recover in the bankruptcy case, given the bankruptcy court's rulings that Kodak was bound by the Subordination and Intercreditor Agreements. Faced with the possibility of an inconsistent judgment in the N.Y. Action with respect to the Subordination Agreement, Wachovia would not vote in favor of the Plan and Wolf could not confirm the Plan. In October 2002, in furtherance of Wolf's effort to obtain confirmation of the Plan, Wolf and Wachovia jointly filed a complaint in the bankruptcy court seeking to enjoin Kodak's prosecution of the N.Y. Action. The injunction complaint asserted that the prior orders of the bankruptcy court were res judicata with respect to all claims and causes of action pleaded in the N.Y. Action, that the N.Y. Action was inconsistent with such orders, and that the bankruptcy court therefore had core jurisdiction to enforce such orders by entering an injunction against Kodak. On October 16, 2002, the bankruptcy court granted a preliminary injunction. (App. B, 29a.) The bankruptcy court found (App. K, 174a):

> THE COURT: . . . [T]he first reaction that this Court would always have is . . . what does [the N.Y. Action] have to do with me? . . . But then we do a step by step back, and I look at . . . what's this in context of? And what all happened in the bankruptcy proceeding. And it seemed . . . that at various times Kodak through counsel, . . . seemingly came up to the edge of this several times in the proceeding, ... but held it back. . . .
>
> And from that point, it seemed almost tactical that the bank did change position that they did let their cash collateral be used, they did agree to have $25 million of administrative expenses funded, which they wouldn't have had to do. . . . . I don't think they would have done that and tried to wrap it up if they thought that this was just a preliminary matter and then they had to go to battle on their claim at some later date. And that's where I think that the importance comes in the concept of, you had a chance to raise it.

With the preliminary injunction in place, Wachovia voted in favor of the Plan, which was overwhelmingly approved by all creditors entitled to vote. On December 12, 2002, a confirmation hearing was held, and on January 7, 2003, the bankruptcy court, exercising its core jurisdiction, issued an order confirming the Plan (the "Confirmation Order"). (App. D, 56a.) Kodak did not object to the Plan or appeal the Confirmation Order.

Thereafter, in January 2003, Wachovia and Wolf moved for summary judgment on the injunction complaint. The bankruptcy court granted the motion, permanently enjoining Kodak's prosecution of the N.Y. Action. (App. C, 42a.) The bankruptcy court recognized that the facts, transactions, and issues underlying the orders entered in the bankruptcy case, and the facts, transactions, and claims alleged in the N.Y. Adversary Proceeding and in the N.Y. Action, were identical. The bankruptcy court rejected Kodak's assertion that the N.Y. Action was nothing more than an unrelated intercreditor

dispute. Recognizing that, in the N.Y. Action, Kodak decided to drop the equitable subordination claim previously asserted in the N.Y. Adversary Proceeding, the bankruptcy court observed (App. C, 50a):

> This change certainly raises the concern that Kodak may have removed the Section 510 equitable subordination claim to facially escape the inevitable conclusion that the claims should have been raised during the course of the bankruptcy proceeding.

The bankruptcy court determined that the elements of res judicata had been satisfied and that Kodak could have asserted its claims, but made a "tactical decision to forgo its one bite at the apple." (App. C, 55a.)

C. The Decisions of the District Court and the Court of Appeals

On appeal, the district court rejected Kodak's contention that the N.Y. Action is an unrelated intercreditor dispute that was not and could not have been resolved by the bankruptcy court. (App. B, 39a.) The district court ruled that the N.Y. Action is an impermissible collateral attack on the bankruptcy court's jurisdiction and prior orders, because it is based on the same claims and causes of action that *were* or *could have been* raised by Kodak in the bankruptcy case. The district court held (App. B, 40a):

> Kodak actually did bring those claims, in addition to a claim for equitable subordination, in the form of an adversary proceeding in . . . New York. Kodak could have just as easily pursued the New York Adversary Proceeding in the Georgia bankruptcy court or raised its claims as objections during the various hearings conducted during the Bankruptcy Proceeding.

The court of appeals reversed and vacated the injunction issued against Kodak. The court held that (App. A, 2a):

> [R]es judicata does not bar the New York Action because Kodak could not have received a full remedy in the contested Wolf bankruptcy proceedings and because the same nucleus of operative fact was not presented in the two actions. Moreover, res judicata does not require a creditor to raise an independent state law claim against a co-creditor in an adversary bankruptcy proceeding unless the resolution of that claim explicitly becomes an essential part of the bankruptcy plan.

The court of appeals' constricted view of res judicata conflicts with the decisions of several other circuits that have considered the subject in bankruptcy cases. Properly perceived, res judicata applies to all claims or causes of action that arise from a common nucleus of operative facts that *were or could have been* decided in the bankruptcy case. Whether a claim was or could have been brought is determined by examining whether the party *could have* obtained relief in the bankruptcy case in the exercise of a bankruptcy court's core *or* "related to" jurisdiction. Under this standard, the injunction entered by the bankruptcy court and upheld by the district court should have been sustained.

REASONS FOR GRANTING THE PETITION

There is a conflict among the circuits regarding the proper application of res judicata in the context of bankruptcy cases. This important issue directly affects the ability of bankruptcy courts to perform their appointed tasks. The court of appeals' decision here, by permitting a party to withhold claims related to a bankruptcy and then to raise those claims in separate litigation, threatens to undermine the ability of bankruptcy courts to efficiently effect a comprehensive resolution of issues arising from the relationships among a debtor and its creditors. Uncertainty about the proper application of a fundamental legal principle that is virtually always implicated in bankruptcy cases is likely to have a detrimental effect on the

efficient administration of bankruptcy cases throughout the country. The conflict should not be permitted to persist.

The court of appeals offered two rationales for its decision. Neither is persuasive, and both are inconsistent with the decisions of other federal courts of appeals.

First, the court said that Kodak could not have received a full remedy in the Wolf bankruptcy and that the "same nucleus of operative fact was not presented in the two actions." (App. A, 2a.) This is wrong in both respects. As to the "full remedy" point, the court of appeals disregarded the fact that, given the size of the Wolf estate and the amount of Wachovia's recovery, Kodak could have been made whole *in the bankruptcy case* if it had successfully prosecuted its equitable subordination or damage claims in the bankruptcy court. More fundamentally, the court of appeals' conclusion as to the availability of a "full remedy" ignores the "related to" jurisdiction of the bankruptcy courts, under which bankruptcy courts can make recommendations to their supervising district courts on matters relating to the bankruptcy case, and the parties thus can obtain a binding judgment for all the relief to which they may be entitled. The court of appeals' restrictive approach cannot be reconciled with that of the Second, Third, Sixth, Ninth, and Tenth Circuits, all of which have recognized that the res judicata effect of a bankruptcy proceeding is applicable to adversary proceedings and contested matters whether they are based on the bankruptcy court's core or "related to" juris-diction. *See CoreStates Bank, N.A. v. Huls Am., Inc.*, 176 F.3d 187, 197, 199 (3d Cir. 1999); *Sure-Snap Corp. v. State St. Bank & Trust Co.*, 948 F.2d 869, 873 (2d Cir. 1991); *Plotner v. AT&T Corp.*, 224 F.3d 1161, 1173 (10th Cir. 2000); *Robertson v. Isomedix, Inc. (In re Int'l Nutronics, Inc.)*, 28 F.3d 965 (9th Cir. 1994); *Sanders Confectionary Prods., Inc. v. Heller Fin. Inc.*, 973 F.2d 474, 482-83 (6th Cir. 1992).

As to the court's statement about the absence of a common nucleus of operative fact, the court simply disregarded the virtually complete overlap of the facts and issues that *were or could have been* considered by the bankruptcy court and that are now asserted in the N.Y. Action. The court came to this conclusion only by failing to consider what could have been raised by Kodak and by allowing Kodak to dictate, based on the allegations that it did or did not make in the bankruptcy, the bounds of res judicata. Res judicata is not limited, however, only to matters that a court actually considered or was required by statute to consider, and the party against whom res judicata should apply does not control its application by its tactical decisions to raise or not raise claims or evidence.

Second, the court of appeals said that Kodak was not obliged to raise its claim against Wachovia unless the resolution of that claim "becomes an essential part of the bankruptcy plan." The court then stated that Kodak's claim "in no way impacted on" confirmation of the Wolf Chapter 11 Plan. This rationale for refusing to apply res judicata is flawed, both factually and legally.

The course of the Wolf bankruptcy and the bankruptcy plan were directly affected by Kodak's decision not to challenge the Subordination Agreement or otherwise to assert its claim against Wachovia. The bankruptcy case was primarily concerned with sorting out the triangular relationship among Wolf, Wachovia, and Kodak, and it proceeded as it did only because the superior position of Wachovia's loans was recognized by the bankruptcy court and not contested by Kodak.

More fundamentally, as a legal matter, the scope of res judicata is measured not merely by issues actually litigated, but also by issues so logically connected to the issues being considered that they could or should have been litigated in the first proceeding. The Second, Third, Fifth, and Seventh Circuits have explicitly acknowledged and taken this approach in the bankruptcy context. *CoreStates*, 176 F.3d at

197, 199; *Bank of LaFayette v. Baudoin (In re Baudoin)*, 981 F.2d 736, 739 (5th Cir. 1993); *Sure-Snap*, 948 F.2d at 873; *Secon Serv. Sys., Inc. v. St. Joseph Bank & Trust Co.*, 855 F.2d 406, 410 (7th Cir. 1988).

Res judicata protects parties from inconsistent judgments, relieves parties of the cost and vexation of multiple lawsuits, and encourages reliance on adjudication of all issues that were or could have been raised as claims or defenses to claims. *Allen v. McCurry*, 449 U.S. 90, 94 (1980). Res judicata is applicable when (i) the prior decision has been rendered by a court of competent jurisdiction; (ii) the prior decision is a final judgment on the merits; (iii) both cases involve the same parties or their privies; and (iv) both cases involve the same causes of action. *Federated Dep't Stores, Inc. v. Moitie*, 452, U.S. 394, 398 (1981). This Court has held that "[r]es judicata prevents litigation of all grounds for, or defenses to, recovery that were previously available to the parties, regardless of whether they were asserted or determined in the prior proceeding." *Brown v. Felsen,* 442 U.S. 127, 131 (1979).

Res judicata is particularly critical in bankruptcy cases. The bankruptcy system is designed to bring all of the debtor's stakeholders into a single forum to *efficiently* resolve the validity, extent, and priority of all competing claims and interests so that estate assets can be equitably distributed.[6] *Katchen v. Landy,* 382 U.S. 323, 328 (1966). This can only be accomplished if all stakeholders who may participate in the bankruptcy case are bound by the decisions of the

[6] "Bankruptcy is a collective process in which all parties share in an inevitably inadequate estate. The bankruptcy court is the forum in which all parties resolve disputes regarding distribution of estate resources." *Official Comm. of Unsecured Creditors of Operation Open City, Inc. v. N.Y. Dep't of State (In re Operation Open City, Inc.)*, 148 B.R. 184, 185-86 (Bankr. S.D.N.Y. 1992). *See also Cent. Va. Cmty. Coll. v. Katz*, 126 S. Ct. 990, 996 (2006).

bankruptcy court.[7] As this Court has admonished, bankruptcy courts must have comprehensive jurisdiction so that they can deal efficiently and expeditiously with *all* matters that arise in or relate to the administration of the bankruptcy estate, including "the power to issue compulsory orders to facilitate the administration and distribution of the *res*." *Cent. Va. Cmty. Coll.*, 126 S. Ct. at 996; *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995).

The court of appeals' ruling is antithetical to the fundamental principles of res judicata and the bankruptcy process. The court focused incorrectly only on the relief sought in particular bankruptcy proceedings (*i.e.,* approving bankruptcy financing, asset sales, and settlements; determining claim priorities; distributing property of the estate; and confirming a plan), rather than on the facts and issues presented or not presented that the bankruptcy court either actually considered or necessarily was required to consider in granting or denying such relief. The bankruptcy court actually considered the absence of any challenge to the Subordination and Intercreditor Agreements and was required to consider the intercreditor priorities in administering the estate. Only by focusing on the claims, issues, and defenses that arise from a common nucleus of operative facts that were or could have been considered in the bankruptcy case, whether as part of the bankruptcy court's core or "related to" jurisdiction, can res

[7] Because bankruptcy strives to resolve numerous issues relating to stakeholders in a single forum, there is an "important interest in the finality of judgments in a bankruptcy case." *In re Baudoin*, 981 F.2d at 739-40. Res judicata, which fosters the establishment of certainty in legal relations (*Comm'r v. Sunnen*, 333 U.S. 591, 595 (1948)), is particularly important to effectuate a final resolution of all claims and liabilities among the various parties in bankruptcy cases. *Crop-Maker Soil Servs., Inc. v. Fairmount State Bank*, 881 F.2d 436, 439 (7th Cir. 1989); *see also In re Baudoin*, 981 F.2d at 740 (spiraling litigation costs and increasingly congested courts make it imperative that the doctrine of res judicata be applied with "unceasing vigilance").

judicata be applied to permit the bankruptcy court to resolve the myriad issues necessary to fully and equitably administer a debtor's estate for the benefit of all parties in interest. The decision of the court of appeals undermines the authority of bankruptcy courts to render, interpret, and enforce their orders in a manner that fosters reliance on the judicial process and the rehabilitation of debtors in bankruptcy.

The issues presented here are important to federal bankruptcy practice. The triangular relationship among Wolf, Kodak, and Wachovia, and the need to resolve disputes arising from such relationships, is commonplace in bankruptcy. Complex capital structures including senior and junior secured debt, unsecured debt, and layers of equity securities are state-of-the-art aspects of corporate finance.[8] Disputes among these various constituencies are inevitable as each tier fights for a larger piece of an inadequate pie. The ability of parties to rely on the finality of a bankruptcy court's resolution of liability theories arising from pre-petition agreements and conduct is the *sine qua non* of effective reorganization.

Here, the predicate for the bankruptcy court and district court decisions is simple. Both Kodak and Wachovia filed proofs of claim in the Wolf bankruptcy. Kodak's proof of claim included its $30 million loan to Wolf. Kodak and Wachovia, Wolf's two largest creditors, actively participated in the bankruptcy case. Kodak, however, made tactical choices that conflicted with the bankruptcy court's duty to effectuate an equitable distribution of Wolf's property in accordance with the priorities established under the Bankruptcy Code. Rather than timely challenge Wachovia's enforcement of the Subordination and Intercreditor Agreements in the bankruptcy court, Kodak played fast and loose with the bankruptcy court, participating up to a point that Kodak believed

[8] *See, e.g., In re Adelphia Commc'ns Corp.*, 336 B.R. 610, 675 n.181 (Bankr. S.D.N.Y. 2006) (231 debtors, 6 prepetition credit facilities, 30 public debt issuances and numerous complex intercreditor disputes).

kept its options open, but then choosing a forum that Kodak presumably believed would be more favorably disposed to its claims. Regardless of Kodak's tactics, how-ever, the bankruptcy court was required to administer the Wolf case based on the positions taken or not taken by the parties. Thus, the bankruptcy court approved:

- $10 million of new loans from Wachovia to Wolf as a debtor in possession based on a finding that Wachovia's pre-bankruptcy liens and claims were senior to Kodak's under the Subordination Agreement;
- the Ritz Sale, based on a finding that, under the Subordination Agreement, Kodak was sufficiently "out of the money" and, therefore, would be treated as an unsecured creditor without standing to object to a sale of substantially all of Wolf's property;
- asset distributions in accordance with the Subordination Agreement, such that Kodak would receive no payments until Wachovia was paid in full; and
- a Settlement and Chapter 11 Plan relying on the Subordination Agreement, under which Wachovia, as the senior secured creditor, received a distribution ahead of Kodak and agreed to forgo $25 million of the proceeds of its collateral for the benefit of administrative creditors.

I. RES JUDICATA APPLIES TO ALL MATTERS THAT ARISE FROM A COMMON NUCLEUS OF FACTS THAT WERE OR COULD HAVE BEEN RAISED.

The doctrine of res judicata "bars re-litigation not just of those claims which were brought in a prior proceeding, but of 'any other admissible matter' which could have been brought, but wasn't." *Sure-Snap*, 948 F.2d at 873 (quoting *Comm'r v. Sunnen*, 333 U.S. at 597). The preclusive effect of claims

that *could have* been brought in the initial proceeding, but were not, is a critical aspect of res judicata. This requirement discourages tactical silence and fosters the resolution of all claims in a single proceeding. *United States v. Tatum*, 943 F.2d 370, 381 (4th Cir. 1991) (res judicata promotes judicial efficiency and fosters reliance on adjudications by applying to issues that were or could have been raised).

Res judicata applies where the subsequent proceeding is "based on the same cause of action." *CoreStates*, 176 F.3d at 194. In determining whether claims involve "the same cause of action," most courts have adopted the "transactional test" under which the "'critical issue is . . . whether . . . the two actions [are based] on the same nucleus of operative facts.'" *In re Baudoin*, 981 F.2d at 743; *Sure-Snap*, 948 F.2d at 874 (the same transaction, evidence, and factual issues must be involved); *E. Minerals & Chems. Co. v. Mahan*, 225 F.3d 330, 337-38 (3d Cir. 2000); *Prochotsky v. Baker & McKenzie*, 966 F.2d 333, 335 (7th Cir. 1992). The court of appeals departed from this established precedent in at least two respects.

First, the court of appeals compared the *specific relief* sought in each of the bankruptcy proceedings, (*i.e.*, approving bankruptcy financing, asset sales, and a settlement; determining claim priorities; distributing property of the estate; and confirming a Chapter 11 plan) with the legal theories asserted in the N.Y. Action. This is not the correct approach. Rather, res judicata requires an analysis of the commonality of the facts that *were* or *could have been* raised in the bankruptcy (including the N.Y. Adversary Proceeding) and the facts alleged in the N.Y. Action. Had the court of appeals compared the facts alleged by Kodak in the N.Y. Action with the facts that Kodak could have alleged during the bankruptcy case (and that Kodak actually did allege in the N.Y. Adversary Proceeding), it would have found those facts to be *identical*. The Subordination Agreement, which is central to

the N.Y. Action and the N.Y. Adversary Proceeding, was repeatedly found by the bankruptcy court to be valid and enforceable and dispositive of the rights of Wachovia and Kodak with respect to their dealings with Wolf. The bankruptcy court made that finding on at least four separate occasions: (i) in the Financing Order; (ii) in the Sale Order; (iii) in the Settlement Order; and (iv) in the Confirmation Order.

Kodak initially challenged the enforcement of the Subordination Agreement in the bankruptcy case by seeking equitable subordination or damages against Wachovia. The same facts are alleged to support the N.Y. Action. It was Kodak's choice to drop its claim for equitable subordination as well as its objections to the enforceability of the Subordination and Intercreditor Agreements. The court of appeals' deference to Kodak's tactical decisions as a dispositive factor in determining the applicability of res judicata is not only at odds with what actually occurred during the bankruptcy case, but conflicts with other circuits that reject such tactics. These courts correctly focus on the logical nexus between the common factual circumstances underlying the claims, such that the facts *could have* or *should have* been raised. *CoreStates*, 176 F.3d at 194, 206; *Sure-Snap*, 948 F.2d at 875 ("[A] party may not avoid the preclusive affect of res judicata by asserting a new theory or a different remedy."); *Prochotsky*, 966 F.2d at 335 (facts, not claims for relief or theories of recovery, determine whether the cause of action is the same); *E. Minerals & Chems. Co.*, 225 F.3d at 337-38 (res judicata applies where "the factual underpinnings, theory of the case, and relief sought against the parties to the proceeding are so close to a claim actually litigated in the bankruptcy that it would be unreasonable not to have brought them both at the same time in the bankruptcy forum").

This point can be illustrated with some specific examples. In *Sure-Snap*, 948 F.2d at 876, during the bankruptcy case, the debtors challenged their lenders' liens on the ground that

the lenders were not legally authorized to lend money. The objections were overruled. Following confirmation of the plan, the reorganized debtors commenced a separate action against the lenders seeking damages arising from alleged breaches of the pre-petition loan agreements. The Second Circuit barred the sub-sequent action, even though, as the court explained, the debtors technically were not asking to change anything the bankruptcy court had done:

> Sure-Snap is not technically asking the district court to disturb the bankruptcy court's finding with respect to the validity of the liens. Thus, it would not necessarily be inconsistent with the bankruptcy court's finding that these liens were valid, for the district court now to find the banks liable in tort to Sure-Snap for their conduct in administering the loans. But appellants' failure to raise these claims (if valid) when they should have, almost certainly affected that prior judgment. Had the bankruptcy court found merit in appellants' lender liability claims, it probably would have structured a different disposition of Sure-Snap's assets or schedule of payments. The court might also conceivably have used its powers under 11 U.S.C. § 510 to "subordinate for purposes of distribution all or part of [the banks'] allowed claim[s]."

This is precisely what occurred here. Kodak had ample opportunity to seek equitable subordination of Wachovia's claims or otherwise to challenge Wachovia's conduct under the Subordination and Intercreditor Agreements. Kodak's decision to lie in the weeds while important and irreversible decisions were being made by the parties and the bankruptcy court is exactly the sort of tactic that res judicata is intended to prevent.

Similarly, in *CoreStates*, 176 F.3d at 200, 206-07, CoreStates Bank was barred by res judicata from pursuing direct claims against another creditor under a subordination agreement, after the bankruptcy court approved a payment to the

junior creditor and overruled CoreStates' objection to such payment based on a legal theory that did not refer to the subordination agreement. The court explained:

> CoreStates and Huls contested at length the fairness of the Reorganization Plan to the extent it provided for the payment of $600,000 to Huls. CoreStates's present claim concerns who is ultimately entitled to receive this same money. . . . UCT paid Huls the $600,000, and CoreStates was aware of and objected to this payment, before the bankruptcy confirmation proceeding ended in a final confirmation of the Plan over CoreStates's objection. Thus, CoreStates could have brought its claim as an ancillary to the confirmation proceeding.

The Fifth Circuit faced a similar issue in *In re Baudoin*, 981 F.2d at 736, holding that a determination of the amount of a secured lender's claim for purposes of bidding during a bankruptcy sale of the debtor's property precluded a separate action for damages against the lender based on the pre-petition conduct of the lender in connection with the same transaction that gave rise to the claim in the bankruptcy cases. The court reasoned that the facts underlying the damage action against the lender would have constituted a defense to the allowance of the lender's claim in the bankruptcy and therefore could and should have been raised in that proceeding. *See also Secon Serv. Sys., Inc.*, 855 F.2d at 410 (adjudication of a lender's secured claims in the bankruptcy case would preclude subsequent fraud claim, which could have been asserted as a defense).

By contrast, the court of appeals here disregarded the commonality of facts and circumstances between the bankruptcy case and the N.Y. Action. All of Kodak's allegations are based on the same triangular debtor-creditor relationship in existence before the bankruptcy. That relationship eventually led to Wolf's bankruptcy and required the bankruptcy court to sort out the claims of the parties. Wolf, Wachovia, and the

bankruptcy court took action based on the validity and enforceability of the Subordination Agreement. As part of the bankruptcy case, Kodak's claims could have been considered as claims, defenses, offsets, or counterclaims to the enforceability of the Subordination and Intercreditor Agreements, which (if Kodak's claims had any merit) would have directly affected the outcome of the bankruptcy case by altering Wachovia's and Kodak's priorities. Indeed, the absence of any such assertions by Kodak was an integral part of the bankruptcy court's determinations as to the relative priorities of Kodak and Wachovia under the Intercreditor and Subordination Agreements. The court of appeals' decision improperly encourages creditors to remain tactically silent while parties and the bankruptcy court finally resolve issues necessary to the administration of the bankruptcy case.

II. THE ELEVENTH CIRCUIT ERRED IN LIMITING ITS FOCUS TO THE RELIEF THAT THE BANKRUPTCY COURT COULD HAVE AWARDED IN THE EXERCISE OF ITS CORE JURISDICTION.

The application of res judicata presupposes the existence of a court of competent jurisdiction to adjudicate the claim of a party against whom it is asserted. *Marrese v. American Academy of Orthopedic Surgeons*, 470 U.S. 373, 382-83 (1985) (adopting § 26 of the Restatement (Second) of Judgments). In *Marrese*, plaintiffs filed an action in state court asserting common law claims. Following dismissal of the complaint for failure to state a cause of action, plaintiffs commenced an action in federal court, alleging violation of § 1 of the Sherman Act. This Court held that the state court action did not preclude plaintiffs' federal antitrust claim, because the state court had no jurisdiction to consider "a cause of action within the exclusive jurisdiction of federal courts." *Id.* at 382. Thus, if the plaintiff could not obtain full relief because the original court lacked subject matter jurisdiction over the plaintiff's claims, or if the procedural rules of the court made it impossible to raise the claims, the plaintiff would not be precluded from commencing another action.

The court of appeals in this case erroneously held that res judicata depends on whether the bankruptcy court alone could have awarded Kodak the monetary relief it was seeking. This was error in two respects. First, the court of appeals disregarded the fact that, if Kodak had prevailed on its equitable subordination claim, it could have been made whole through Wachovia's distributions in the bankruptcy case. Second, and more fundamentally, the court of appeals erred in assuming that the applicability of res judicata should be measured exclusively by the relief that the bankruptcy court alone could award, rather than the relief that could be obtained in the bankruptcy case from the bankruptcy court and its supervising district court acting together. In this respect, the court of appeals is directly at odds with at least two other circuits, which properly focus on the relief that the bankruptcy system, taken as a whole, could provide.

In *Crop-Maker Soil Servs.*, 881 F.2d at 440, for example, one of the debtor's suppliers commenced an action against the debtor for balances due and challenged the senior secured lending agreement. The district court required any nonparties that wished to assert claims "related to" the litigation to file a motion to intervene. A junior secured lender who chose not to participate in a settlement was precluded by res judicata from commencing a separate action directly against the senior lender. The court explained:

> Public policy supports res judicata generally, but in the bankruptcy context in particular. There obviously were practical reasons for Crop-Maker's choice of separate suit in federal district court, rather than using the bankruptcy proceeding, as its forum for challenging Fairmount Bank's moves. As a general creditor struggling for scarce bankruptcy assets, Crop-Maker had limited

> chance of recovery. On the other hand, a fraud action against Fairmount Bank appeared far more promising. But that promising fraud option was properly foreclosed by res judicata because the bankruptcy court was the proper forum . . . .

The Third Circuit reached a similar result in *CoreStates,* 176 F.3d at 198. It explicitly distinguished the situation in *Marrese* and the limitations on res judicata addressed in the Restatement of Judgments § 26 and the accompanying comments:

> We think the exceptions set forth in section 26(1)(c) of the Restatement are inapplicable to the case at bar. A bankruptcy judge's jurisdiction over a non-core "related" claim is not limited in the sense of that section. Section 26(1)(c) applies to limitations on the types of theories, remedies, or relief available if a claim is brought in a particular forum. But bringing a non-core "related" claim before a bankruptcy judge does not in any way limit the available theories, remedies or relief. *A bankruptcy judge is perfectly capable of recommending, and the district court of awarding, judgment based on any theory, remedy, or relief, just as if the claim had been brought originally before a district court, or even a state court of general jurisdiction, outside of a bankruptcy proceeding.* (citations omitted) (emphasis added).

Had Kodak litigated its claims during the bankruptcy case and prevailed, the result would have had a res judicata effect against Wachovia, and Kodak could have obtained whatever relief was appropriate against Wachovia, either in the district court having jurisdiction over the bankruptcy case, or in any other state or federal court having jurisdiction. Kodak's tactical choices cannot preclude the application of res judicata.

The Second, Third, Sixth, Ninth, and Tenth Circuits have held that the application of res judicata to bankruptcy court orders does not turn on whether the bankruptcy court was exercising its core or "related to" jurisdiction. Such orders

are to be given preclusive effect for theories of relief that *were or could have been* raised during the bankruptcy case. *Plotner,* 224 F.3d at 1173 (following the Second, Sixth and Ninth Circuits, holding that res judicata applies in non-core bankruptcy proceedings); *CoreStates*, 176 F.3d at 199 (Third Circuit joining the Second, Sixth, and Ninth Circuits); *In re Int'l Nutronics, Inc.*, 28 F.3d at 970 (non-core claim has res judicata effect since final decision will take place in district court); *Sanders Confectionary Prods., Inc.,* 973 F.2d at 482-83 (same); *Sure-Snap*, 948 F.2d at 873 (same).[9]

The common thread among the Second, Third, Sixth, Ninth, and Tenth Circuits, is the recognition that bankruptcy courts are an arm of the district courts and have been granted broad jurisdiction over core and "related to" matters to effectuate a global resolution of pre-petition claims and causes of action that arise in or under the Bankruptcy Code or that implicate the administration of the bankruptcy case. The artificial distinction created by the Eleventh Circuit—based on whether the bankruptcy court alone could afford "full relief"—threatens a resurrection of pre-*Marathon*[10] jurisdictional uncertainty that paralyzed bankruptcy courts.

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[9] By contrast, the Fifth and Seventh Circuits have held that a bankruptcy court's order in a core proceeding does not preclude the subsequent litigation of a non-core related matter. *Howell Hydrocarbons, Inc. v. Adams*, 897 F.2d 183, 185 (5th Cir. 1990); *Barnett v. Stearn,* 909 F.2d 973, 979 (7th Cir. 1990). The court of appeals here declared that it was not deciding this issue, but its focus on whether Kodak could have obtained "full relief" in the bankruptcy court was merely a surrogate for the same point. Kodak could have obtained whatever relief (if any) may have been appropriate against Wachovia from the bankruptcy court and the district court having jurisdiction over the bankruptcy.

[10] *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982).

CONCLUSION

This petition presents the Court with an opportunity to clarify the application of res judicata in bankruptcy cases and to provide uniformity among the circuits with respect to the jurisdiction of bankruptcy courts to bind all parties in interest in bankruptcy proceedings.

For all of the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

PETER BUSCEMI *
JAY TEITELBAUM
WENDY S. WALKER
MORGAN, LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
(212) 309-6000

Counsel for Petitioner
Wachovia Bank, N.A.

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* Counsel of Record

APPENDIX