Nos. 08-307 and 08-295

In The
Supreme Court of the United States

COMMON LAW SETTLEMENT COUNSEL,

Petitioner,

v.

PEARLIE BAILEY, et al.,

Respondents.

THE TRAVELERS INDEMNITY COMPANY, et al.,

Petitioners,

v.

PEARLIE BAILEY, et al.,

Respondents.

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

BRIEF IN OPPOSITION

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INTRODUCTION

The Petitioners present no "compelling reasons" to justify the exercise of this Court's jurisdiction. See Supreme Court Rule ("Sup. Ct. R.") 10. The Second Circuit correctly interpreted and applied the existing legal precedent, statutory and judicial, as it applies to jurisdictional limitations for bankruptcy courts. As Congress has determined, bankruptcy courts are courts of limited jurisdiction that is conferred by statute. See 28 U.S.C. § 1334 (West 2008); 28 U.S.C. § 157 (West 2008). This Court has consistently recognized these limitations. *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995). The Second Circuit did not redefine the limits of statutorily conferred bankruptcy court jurisdiction, nor did it disregard this Court's well settled precedent. See *In re Johns-Manville Corp.*, 517 F.3d 52 (2nd Cir. 2008), petitions for cert. filed, 77 U.S.L.W. 3121 (Sep. 04, 2008) (No. 08-295), and 77 U.S.L.W. 3122 (Sep. 04, 2008) (No. 08-307). Rather, by refusing to abrogate the well established limits to the jurisdiction of bankruptcy courts, the Second Circuit prevented Petitioners' attempt to expand the jurisdiction of bankruptcy courts for their own convenience.

Petitioners, Common Law Settlement Counsel ("CLSC" or "Petitioners"), argue that a bankruptcy court may confirm a plan of reorganization whether or not jurisdiction exists over third parties potentially affected by the plan's provisions. See CLSC's *Petition for Writ of Certiorari*, Pg. 7. Jurisdiction may not be conferred over unrelated third parties, even by

agreement. *In re Combustion Engineering, Inc.*, 391 F.3d 190, 228 (3rd Cir. 2004). CLSC's argument is based on the assumption that a bankruptcy court may issue any remedy it chooses as part of a chapter 11 plan of reorganization without regard for the reach of the chosen remedy or its relationship to the Debtor and its estate. They reason that because the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") possessed jurisdiction to confirm the chapter 11 plan of reorganization proposed by Johns-Manville, that it must also surely have jurisdiction to enjoin disputes brought against non-debtor third parties under state law for their independent wrongdoing which seek no recovery from any part of the debtor's estate or *res*. Petitioners' assumption is in clear contravention of well established legal precedent, and completely disregards the reasoning and background of this Court's decision in *Central Virginia Community College v. Katz. Central Virginia Community College v. Katz*, 546 U.S. 356 (2006). Adoption of CLSC's flawed logic would expand the jurisdiction of bankruptcy courts far beyond its current limits and convert it into the broadest of any court. A "Bankruptcy Court's jurisdiction cannot be limitless." *Celotex,* 514 U.S. at 308. However strident the machinations of Petitioners, the Second Circuit avoided such a troubling result by recognizing the limits of bankruptcy jurisdiction previously established by statute and by this Court.

Petitioners, Travelers Indemnity Company, Travelers Casualty and Surety Company and Travelers

Property Casualty Corp. (collectively "Travelers" or "Petitioners"), make a three-pronged plea to the Court. See Travelers' *Petition for Writ of Certiorari*, Pgs. 5-6. First, Travelers proposes that this Court extended the jurisdiction of the bankruptcy courts in its *Katz* decision. This proposition is founded on the use of selected quotes taken out of context and by ignoring the parts of that decision that are clearly contrary to Travelers' arguments. The issue before the Court in *Katz* was the extent of bankruptcy jurisdiction in the context of a preference action and its interplay with sovereign immunity, not the enjoining of disputes brought by non-debtor third parties against non-debtor third parties over non-debtor assets and liabilities. *Katz,* 546 U.S. at 359. In its second plea, Travelers' argues that because a federal statute exists, § 524(g) of the United States Bankruptcy Code, and that because § 524 authorizes a channeling injunction in appropriate actions, then state laws defining the actions to be channeled should be disregarded by the Bankruptcy Court. See Travelers' *Petition for Writ of Certiorari*, Pgs. 5-6. At no time prior to Travelers' Petition has any party to this matter asserted that state law in some way preempts federal bankruptcy laws. This argument raised by Travelers disregards the Second Circuit's basis for its ruling: that a lack of jurisdiction precludes the application of the federal channeling statute. *In re Johns-Manville Corp.*, 517 F.3d 52, 68 (2nd Cir. 2008), petitions for cert. filed, 77 U.S.L.W. 3121 (Sep. 04, 2008) (No. 08-295), and 77 U.S.L.W. 3122 (Sep. 04, 2008) (No. 08-307). Nowhere in its opinion does the

Second Circuit find that state law may preclude the application of § 524(g). *Id.* Travelers' final argument to this Court is also without merit. Travelers asserts that due to the age of the Johns-Manville bankruptcy proceeding, and specifically to the age of the order entered by the Bankruptcy Court confirming Johns-Manville's chapter 11 plan of reorganization (the "Confirmation Order"),[1] the Second Circuit's ruling somehow attacks and undermines the finality of the Confirmation Order. See Travelers' *Petition for Writ of Certiorari*, Pgs. 5-6. At no point has the *finality* of the Confirmation Order been questioned, either by Respondents or by the Second Circuit. Travelers' attempt to mis-characterize this dispute as one concerning the finality of the Confirmation Order obfuscates the true nature of this controversy. The issue involved in this case is the *extent of the scope* of the Confirmation Order, and the requirement, sought to be avoided by Travelers, that in determining the scope of the Confirmation Order the Bankruptcy Court not exceed its jurisdictional limits. Petitioners also fail to take into account that it was they who sought to extend the scope of the Confirmation Order by improperly seeking to broaden its plain language beyond the jurisdictional limits of the Bankruptcy Court. It is disingenuous for Petitioners to now claim that the Second Circuit's ruling somehow undermines the finality of the Confirmation Order. Petitioners were obviously not concerned with the finality of the

[1] Travelers' App. 261a.

Confirmation Order when they sought to expand its scope twenty years after its entry to protect themselves from their own potential liability for misconduct completely unrelated to the Debtor. The Second's Circuit's refusal to do so is inconvenient for Petitioners but provides no support to their baseless claim that the finality of the Confirmation Order is threatened by the Second Circuit's decision. Travelers third argument is, effectively, that bankruptcy court jurisdiction is irrelevant if it is inconvenient to their cause and an old order is implicated. Clearly such a legal analysis is inappropriate.

Petitioners seek a determination from this court that the jurisdiction of the Bankruptcy Court is unlimited and extends to matters which have no effect on or relation to a bankruptcy debtor or its estate. Reaching the result sought by Petitioners requires ignoring the clear language and intent of Congress when it created the laws governing bankruptcy courts as well as decades of clear and well settled rulings from this Court. There is no compelling federal question raised by Petitioners which would warrant an exercise of this Court's jurisdiction, nor are any of the other considerations enunciated in Supreme Court Rule 10 which govern review on a writ of certiorari raised by Petitioners which could possibly warrant an exercise of this Court's jurisdiction.

COUNTER-STATEMENT OF THE CASE

This case involves nothing new, unique, or of vital importance to the bankruptcy judicial system. The Second Circuit Court analyzed, followed, and applied long-standing, well-founded, preexisting legal guidelines in reaching its decision. Its ruling is not based on an improper application of law, nor does it adversely impact any other case. Its ruling merely applies what has long been the jurisdictional rule for bankruptcy courts. Petitioners, by contrast, seek to create unlimited jurisdiction for the Bankruptcy Court. They did this by reopening the Confirmation Order before the Bankruptcy Court in order to torture its interpretation beyond its clear and plain language, and by seeking to enjoin legitimate state court actions that have no relation to nor conceivable effect on the Debtor or its estate. None of the issues presented by Petitioners are novel, with perhaps the sole exception of the size and age of the Johns-Manville bankruptcy case itself. Also, none of the issues framed by Petitioners' disguise the fact that they seek unlimited jurisdiction for the Bankruptcy Court as a method of avoiding their independent liability for their own conduct and failures made actionable by state law and not included in the scope of the Confirmation Order's injunction.

The Confirmation Order was entered on December 22, 1986, by the Bankruptcy Court. *In re Johns-Manville Corp.,* 2004 WL 1876046, 2 (Bankr. S.D.N.Y. 2004). A week earlier, on December 18, 1986, the Bankruptcy Court entered an order approving

settlement agreements with certain Johns-Manville insurers (herein the "Insurance Settlement Order").[2] *Id.* The Insurance Settlement Order enjoined the commencement of certain proceedings against a group of insurance companies which had provided coverage to Johns-Manville, including Travelers, and channeled these actions to a settlement trust. The Confirmation Order incorporated by reference the Insurance Settlement Order.

Subsequently, lawsuits were filed in Louisiana, Massachusetts, Texas, and West Virginia by plaintiffs seeking recovery from Travelers (the "Common Law Suits"). The Common Law Suits were founded on state common law allowing for direct actions against insurers, as opposed to being based on state statutes allowing direct actions. The Common Law Suits sought damages from Traveler's because of its independent misconduct in its investigation, defense and settlement of asbestos claims against its insureds. None sought recovery from the insurance policies issued by Travelers to Johns-Manville.

On June 19, 2002, Travelers filed a Motion for Temporary Restraining Order and Preliminary Injunction in the Bankruptcy Court to enjoin these suits. *In re Johns-Manville Corp.,* 2004 WL 1876046 at 1. Travelers did not file to remove the Common Law Suits to the Bankruptcy Court, though now Petitioners assert that the Bankruptcy Court has

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[2] Travelers' App. 210a.

jurisdiction over those actions. Rather, Travelers asserted that the Common Law Suits were barred by the injunctive relief in the Bankruptcy Court's Confirmation Order. *Id.* At the same time, Travelers entered into settlement negotiations with the holders of some of the claims asserted in the Common Law Suits, those represented before this Court by the CLSC. *Id.* These negotiations resulted in the Common Law Settlement Approval Order entered by the Bankruptcy Court approving the settlement terms reached. *Id.* The settlement terms included an injunction barring all of the Common Law Suits. *Id.* It is this order which is being appealed and is at issue before the Court, not the Confirmation Order.

Respondents, the Cascino Asbestos Claimants, non-settling holders of Common Law Suits, timely objected to the proposed settlement approved by the Bankruptcy Court. On appeal to the United States District Court for the Southern District of New York (the "District Court"), the decision of the Bankruptcy Court approving the settlement and enjoining the Common Law Suits was affirmed. *In re Johns-Manville Corp.,* 340 B.R. 49 (S.D.N.Y. 2006), order vacated by, *In re Johns-Manville Corp.*, 517 F.3d 52 (2nd Cir. 2008). On further appeal to the Second Circuit, the decision of the Bankruptcy Court was reversed. *In re Johns-Manville Corp.*, 517 F.3d 52 (2nd Cir. 2008), petitions for cert. filed, 77 U.S.L.W. 3121 (Sep. 04, 2008) (No. 08-295), and 77 U.S.L.W. 3122 (Sep. 04, 2008) (No. 08-307). The basis for the decision of the Second Circuit was that the

Bankruptcy Court lacked jurisdiction to enjoin the Common Law Suits. *Id.* at 68.

Therefore, at its core what this case involves is a simple and fundamental axiom of bankruptcy law, that "Bankruptcy jurisdiction, as understood today and at the time of the framing, is principally *in rem* jurisdiction." *Central Virginia Community College v. Katz*, 546 U.S. 356, 370 (2006), citing, *Tennessee Student Assistance Corporation v. Hood*, 541 U.S. 440, 447 (2004). There is nothing novel in the Second Circuit's decision as urged by Petitioners because "The whole process of proof, allowance, and distribution is, shortly speaking, an adjudication of interests claimed in a *res*." *Gardner v. New Jersey*, 329 U.S. 565, 574 (1947). The reasoning underlying the decision of the Second Circuit has no bearing on the finality of confirmation orders, as the Confirmation Order's *finality* was at no point questioned by the Second Circuit. In addition the Confirmation Order is not the order of the Bankruptcy Court on appeal. Nor does the Second Circuit's reasoning have any relationship to the supremacy clause. Because jurisdiction extends to the interest of the Debtor in its *res*, the Second Circuit correctly looked to state law to determine the nature of the interests comprising the *res*. That Petitioners do not like the applicable state law is hardly a compelling reason for granting a writ of certiorari.

REASONS FOR DENYING THE WRIT

Petitioners' grounds for seeking a writ of certiorari are woefully short of those set out in Supreme Court Rule 10. The Second Circuit Court's decision does not conflict with another United States Court of Appeals. No important federal question was decided in a way that conflicts with a decision of a state court of last resort. The ruling for which review is sought does not depart from the accepted and usual course of judicial proceedings and is, in fact, consistent with every other ruling on these issues.

I. COMMON LAW SETTLEMENT COUNSEL RAISE NO COMPELLING REASON FOR AN EXERCISE OF THIS COURT'S JURISDICTION.

The lower court's decision announced no new law, did not overrule prior precedent, and did not improperly narrow the limits of bankruptcy jurisdiction. Rather, the Second Circuit prudently considered and applied existing precedent, much of it from the Johns-Manville case, in reaching its conclusion.

The conclusion of the Second Circuit was that "the bankruptcy court erred insofar as it enjoined suits that, as a matter of state law, are predicated upon an independent duty owed by Travelers to the Appellants, that do not claim against the *res* of the Manville estate, and that seek damages in excess of and unrelated to Manville's insurance policy proceeds." *In re Johns-Manville Corp.*, 517 F.3d 52 at 55.

The Second Circuit noted the history of the Johns-Manville case, but found that "the current controversy is primarily a question of jurisdiction." *Id.* at 60. It is primarily a question of jurisdiction because, as the Second Circuit stated, "while there is no doubt that the bankruptcy court had jurisdiction to clarify its prior orders . . . clarification cannot be used as a predicate to enjoin claims over which it had no jurisdiction." *Id.* at 60-61. That bankruptcy court jurisdiction is limited is not a new concept, since "the ancillary jurisdiction courts possess to enforce their own orders 'is itself limited by the jurisdictional limits of the order sought to be enforced.'" *In re Fairchild Aircraft Corp.,* 184 B.R. 910, 916 (Bankr. W.D. Tex. 1995). Thus, all the Second Circuit's decision does is recognize the jurisdictional limits of the Confirmation Order.

These limits are the same limits which were previously applied in the Johns-Manville case. See *MacArthur v. Johns-Manville Corp.*, 837 F.2d 89 (2nd Cir. 1988) and *In re Davis*, 730 F.2d 176 (5th Cir. 1984). The Second Circuit's decision is in full accordance with its previous decision in *MacArthur,* which has been relied on extensively by Petitioners. Petitioners reliance on *MacArthur* is misplaced. In *MacArthur*, a distributor of Johns-Manville asbestos objected to the 1986 injunction and argued that the Bankruptcy Court lacked jurisdiction to enjoin suits against Johns-Manville's insurers to collect from the proceeds of the Johns-Manville insurance policies. *Id.* at 91. This is a clear factual difference, as the

Common Law Suits do not seek recovery from the proceeds of the Johns-Manville insurance policies. The *MacArthur* Court found that the Bankruptcy Court had jurisdiction to enjoin the suits seeking recovery from insurance policy proceeds. This holding was based upon the Bankruptcy Court's jurisdiction over Johns-Manville insurance policies. The Common Law Suits are related to knowledge gained from an insurance relationship, not to the proceeds of insurance policies, and thus have no effect on the property of the estate. Thus the circumstances at issue for jurisdictional purposes here are qualitatively different. In *Davis*, two hundred and seventy-nine asbestos workers filed suits against Travelers under the Louisiana direct action statute, La.R.S. § 22:655, shortly before Johns-Manville filed its bankruptcy petition. *In re Davis*, 730 F.2d at 178. The asbestos workers moved to vacate the stay arguing that no nexus existed between their suits against Travelers and the Johns-Manville bankruptcy. *Id.* at 183. The *Davis* court refused to vacate the stay citing the Bankruptcy Court's power to protect the property of the estate and the fact that the insurance policies targeted by the statutory direct action plaintiffs were property of the estate. *Id.* at 184. In this case also the decision was based on the fact that recovery was sought from the insurance policies as property of the estate, and so it is again qualitatively different. The Second Circuit recognized this fundamental distinction in *MacArthur* and *Davis*, and quoted *MacArthur* as support, "'[I]n both instances, third parties seek to collect out of the *proceeds* of Manville's insurance

policies on the basis of Manville's conduct. . . . [P]laintiffs' claims are inseparable from Manville's own insurance coverage and are consequently well within the Bankruptcy Court's jurisdiction over Manville's assets.'" *In re Johns-Manville Corp.*, 517 F.3d 52, 66 (2nd Cir. 2008), quoting *MacArthur,* 837 F.2d at 92-93.

The jurisdictional limits upon which the decision of the Second Circuit is based are also the same limits outlined by this Court in its recent *Katz* decision, to the extent that decision is applicable in the context of this case. *Central Virginia Community College v. Katz*, 546 U.S. 356 (2006). In *Katz*, a chapter 11 trustee brought an adversary proceeding against certain state funded colleges seeking to avoid alleged preferential transfers by the debtor. *Id.* at 359. The state-funded colleges filed a motion to dismiss the adversary proceeding claiming sovereign immunity. *Id.* The issue raised was whether Congress' attempt to abrogate sovereign immunity in 11 U.S.C. § 106(a), thereby conferring jurisdiction over sovereign entities in certain circumstances, was valid. *Id.* at 361. This is distinct, both factually and with respect to the jurisdictional question raised, from the issues before the Court in this case. Nevertheless, the Second Circuit's decision is clearly congruous with this Court's decision in *Katz*. This Court noted that "Critical features of *every* bankruptcy proceeding are the exercise of exclusive jurisdiction over *all of the debtor's property*, the equitable distribution of that property among the debtor's creditors, and the ultimate

discharge that gives the debtor a 'fresh start' by releasing him, her, or it from further liability for old debts" [emphasis added]. *Id.* at 364-365. Additionally, this Court affirmed that "In bankruptcy, 'the court's jurisdiction is premised on the debtor and his estate, and not on the creditors.'" *Id.* at 370, quoting *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440, 447 (2004). It is true, as raised by Petitioners, that "generally, courts adjudicating disputes concerning bankrupts' estates historically have had the power to issue ancillary orders enforcing their *in rem* adjudications." *Id.* at 370. However, nothing raised by Petitioners is sufficient to show that the Bankruptcy Court's order enjoining the Common Law Suits was in any way "ancillary" to its enforcement of its *in rem* jurisdiction over the *res*. Rather, the fact that the Common Law Suits seek no recovery from the *res* shows that the Bankruptcy Court's order cannot be ancillary to an *in rem* adjudication because they have no conceivable effect, ancillary or otherwise, on the *res* over which the Bankruptcy Court has jurisdiction. Therefore the decision of the Second Circuit is clearly within the confines of *Katz*, and does not re-define the limits of bankruptcy jurisdiction. Rather it simply applies the limits of that jurisdiction as they were recognized by this Court in *Katz*.

CLSC also urges that the Second Circuit fails to grasp the difference between subject matter jurisdiction and statutory authority. They posit that it was not relevant to the determination of this cause whether the bankruptcy court had jurisdiction over

the subject of its purported injunction so long as it has jurisdiction to confirm a plan of reorganization. This argument is inapposite, as any court's power is limited by its jurisdiction. A determination of whether jurisdiction is present must be made before any statutory relief is available. No party to this case disputes that the Bankruptcy Court had jurisdiction to confirm a plan of reorganization for Johns-Manville. The issue is whether it had jurisdiction over the claimants asserting the Common Law Suits it sought to enjoin. The Second Circuit Court correctly considered the jurisdictional issues, stating that "The fact that our case involves a clarification of the bankruptcy court's prior order does not alter the jurisdictional predicate necessary to enjoin third party non-debtor claims. Here, as in *Zale*, Plaintiffs seek to recover directly from a debtor's insurer for the insurer's own independent wrongdoing. Plaintiffs aim to pursue the assets of Travelers. They raise no claim against Manville's insurance coverage. They make no claim against an asset of the bankruptcy estate, nor do their actions affect the estate. The bankruptcy court had no jurisdiction to enjoin the Direct Action claims against Travelers." *In re Johns-Manville*, 517 F.3d 52, 65 (2nd Cir. 2008), citing, *Matter of Zale Corp.,* 62 F.3d 746 (5th Cir. 1995). It is clear then that the Second Circuit clearly understood the difference between subject matter jurisdiction and statutory authority. The Bankruptcy Court clearly had statutory authority to enter the Confirmation Order, and had subject matter jurisdiction over the *res* of the Johns-Manville estate. The Second Circuit never

questioned the statutory authority of the Bankruptcy Court to enter the Confirmation Order, only its subject matter jurisdiction over the claimants who assert the Common Law Suits.

Finally, CLSC argues that the ruling of the Second Circuit somehow brings into question the principle of finality. Their argument is that because the Confirmation Order was entered over 20 years previously, it cannot now be questioned. This argument misstates the circumstances of this proceeding. As previously set out herein, the order subject to this appeal is not the Confirmation Order which was entered over 20 years ago. It is an order seeking to modify and extend the effect of the Confirmation Order which was sought and obtained by Petitioners. This new order is sought by Petitioners in order that the Confirmation Order would apply to claims and third parties over which the Bankruptcy Court clearly lacks jurisdiction. As the Second Circuit stated, "global finality is only as 'global' as the bankruptcy court's jurisdiction. A court's ability to provide finality to a third-party is defined by its jurisdiction, not its good intentions." *In re Johns-Manville*, 517 F.3d at 66.

II. TRAVELERS RAISES NO COMPELLING REASON FOR AN EXERCISE OF THIS COURT'S JURISDICTION.

Petitioners, Travelers Indemnity Company, Travelers Casualty and Surety Company and Travelers

Property Casualty Corp., raise three grounds which they assert support this Court's exercise of jurisdiction over this proceeding. One is essentially the same argument regarding "finality" as urged by the CLSC, and the Court is referred to Respondent's comments above as to that issue. See Travelers' *Petition for Writ of Certiorari*, Pg. 6.

Travelers also argues, as did CLSC, that the Second Circuit was incorrect when it held that jurisdiction was lacking because the enjoined actions had no effect on the *res* of the debtor or its estate. See Travelers' *Petition for Writ of Certiorari*, Pg. 13. They cite this Court's ruling in *Katz* in support of their position. *Katz,* 546 U.S. at 356. However, as already stated, the Second Circuit's ruling is fully consistent with this Court's decision in *Katz.* For example, and in addition to the discussion of *Katz* above, this Court stated that "Bankruptcy jurisdiction, at its core, is *in rem*." *Katz*, 546 U.S. at 362, citing, *Gardner v. New Jersey,* 329 U.S. 565, 574 (1947). This Court also stated that "Then as now, the jurisdiction of courts adjudicating rights in the bankruptcy estate included the power to issue compulsory orders to facilitate the administration and distribution *of the res*" [emphasis added]. *Id.* at 362. Clearly this Court held that ancillary actions by a bankruptcy court necessary to enforce its *in rem* adjudications are appropriate. However, the *Katz* decision falls woefully short of what is urged by Petitioners, i.e., that jurisdiction is present when the actions enjoined have no effect of any kind on the *res* and do not involve the Debtor.

Finally, Petitioners urge a strained interpretation of the Second Circuit Court's ruling to argue that it finds state law preempts a bankruptcy court's ruling. See Travelers' *Petition for Writ of Certiorari*, Pg. 16. A closer analysis of the ruling finds that this was not the rationale behind the Second Circuit's decision. The Second Circuit pointed out that before jurisdiction over the actions can be determined, the nature of the actions must be reviewed (which the lower courts did not do) and that their potential affect on the Debtor and its estate analyzed. *In re Johns-Manville Corp.*, 517 F.3d 52 at 62. The nature of the actions is determined by state law and is not changed by any ruling of the bankruptcy court. The Second Circuit compared injunctions sought in other cases of state law claims with those sought to be enjoined in this action. In every case where an injunction was valid, the underlying actions would have reduced or interfered with the Debtor's estate. See *In re Davis*, 730 F.2d 176 (5th Cir. 1984); *MacArthur v. Johns-Manville Corp.*, 837 F.2d 89 (2nd Cir. 1988); see also *In re Johns-Manville Corp.*, 97 B.R. 174 (Bankr. S.D.N.Y. 1989); *In re Johns-Manville Corp. v. Colorado Ins. Guar. Assoc.*, 91 B.R. 225 (Bankr. S.D.N.Y. 1988). In the actions involved here, there is no such impact. Petitioners misstate the Second Circuit Court's ruling in this regard.

CONCLUSION

For all of the reasons discussed herein, Petitioners have failed to show that the Second Circuit's decision is worthy of review by this Court. The Petition should be denied.

Respectfully submitted,

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