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In the Supreme Court of the United States

ERNST & YOUNG AND ERNST & YOUNG LLP,
Petitioners,

v.

BANKRUPTCY SERVICES, INC.,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This case presents two issues relating to the scope of the Seventh Amendment right to a jury trial in bankruptcy proceedings:

1. Whether, when overlapping jury-triable and bench-triable claims are asserted in a bankruptcy proceeding, the jury-triable claims must be tried first, as the Seventh Amendment requires in all other contexts, notwithstanding the Court's contrary but narrow ruling over 40 years ago under a very different bankruptcy regime.

2. Whether this Court's decisions in *Langenkamp* v. *Culp*, 498 U.S. 42, 44-45 (1990) (per curiam), *Granfinanciera, S.A.* v. *Nordberg*, 492 U.S. 33, 57-59 (1989), and *Katchen* v. *Landy*, 382 U.S. 323 (1966), all of which involved the special nature of bankruptcy-related preference and fraudulent-conveyance claims, are properly extended beyond that context so that a creditor filing a proof of claim in a bankruptcy proceeding loses its Seventh Amendment right to a jury trial on *all* elements of the estate's non-bankruptcy common-law counterclaims, which seek not simply disallowance of the claim but substantial damages.

RULE 14.1(b) STATEMENT

All parties are listed in the caption.

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PETITION FOR A WRIT OF CERTIORARI

Ernst & Young and Ernst & Young LLP ("E&Y") respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-69a) is reported at 529 F.3d 432. The opinions of the district court on appeal from the judgment of the bankruptcy court (App., *infra*, 70a-81a and 82a-130a) are reported at 318 B.R. 761 and 311 B.R. 350. The district court's decisions denying E&Y's motion to withdraw the reference to the bankruptcy court (App., *infra*, 131a-140a and 141a-151a) are unreported, as is the bankruptcy court's order striking E&Y's jury trial demand (App., *infra*, 152a-162a). The bankruptcy court's decision on liability is reported at 247 B.R. 341.

JURISDICTION

The Second Circuit's opinion was filed on June 16, 2008. E&Y's timely petition for rehearing was denied on October 15, 2008. On January 5, 2009, Justice Ginsburg extended the time to petition for a writ of certiorari to February 12, 2009. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Seventh Amendment of the United States Constitution provides, in relevant part:

> In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved * * *.

INTRODUCTION

This case presents important questions regarding the scope of Seventh Amendment jury trial rights in bankruptcy proceedings.

First, the court of appeals held that the rule announced in *Beacon Theatres, Inc.* v. *Westover*, 359 U.S. 500 (1959), which ordinarily requires legal claims to be tried before factually-related equitable claims, is inapplicable in bankruptcy proceedings. After it filed its claim, E&Y was met with two sets of overlapping counterclaims: one brought on behalf of the debtor; the other on behalf of a third-party creditor. It is now undisputed that it was error to have tried the third-party creditor's claims without a jury, and the judgment on those claims has been vacated. The court of appeals refused, however, to vacate the judgment on the debtor's claims, even though violations of the *Beacon Theatres* rule require vacatur of the *entire* judgment below, including issues that were otherwise properly tried without a jury. *Lytle* v. *Household Mfg., Inc.*, 494 U.S. 545, 555-56 & n.4 (1990).

This ruling was made with reluctance, under the perceived compulsion of *Katchen* v. *Landy*, 382 U.S. 323 (1966), which held the *Beacon Theatres* principle inapplicable in bankruptcy. But *Katchen* was a product of a now-superseded jurisdictional regime in which "courts of bankruptcy" were specialized equity courts that had no authority to try legal and equitable issues in a single proceeding. Subsequently, Congress fundamentally altered bankruptcy jurisdiction. As a consequence, application of *Katchen's* narrow exception no longer makes formal or functional sense. Under these circumstances, this Court's in-

tervention is urgently needed, and this case provides an ideal opportunity for the Court to recalibrate for the current bankruptcy regime the appropriate balance between the orderly functioning of the bankruptcy process and core Seventh Amendment interests.

Second, the court of appeals ruled that a creditor who files a proof of claim in the bankruptcy court loses its Seventh Amendment right to a jury trial on the debtor's state-law counterclaims, where those counterclaims implicate issues that are "either defenses to [the creditor's] fees claim or integrally related to those defenses." App., *infra*, 63a. Applying that rule, the court affirmed the bankruptcy court's decision to adjudicate the state-law counterclaims in a bench trial, even though they were otherwise jury-triable common-law claims and included issues, such as damages, that had no bearing on the allowance of E&Y's claim.

That holding is an unwarranted extension of three of this Court's precedents: *Langenkamp* v. *Culp*, 498 U.S. 42 (1990) (per curiam); *Granfinanciera, S.A.* v. *Nordberg*, 492 U.S. 33 (1989); and *Katchen* v. *Landy*, *supra*. Although those cases did find a loss of jury trial rights by a creditor that submitted a claim to the bankruptcy court, (1) they all involved the estate's avoiding-powers, and (2) none sanctioned bench trial of issues that were not necessary to determining whether to allow the creditor's claim. Whether the forfeiture of jury-trial rights is justified beyond that narrow context is an important question meriting this Court's attention.

STATEMENT

1. CBI was a wholesale distributor of pharmaceutical products. In the early 1990s, CBI began borrowing capital to finance a strategy of growth by acquisition. One of CBI's lenders was Trust Company of the West ("TCW"), an investment company. As part of its lending agreement, TCW became a 48% shareholder of CBI.

E&Y became CBI's auditor in 1990. E&Y audited CBI's financial statements for 1992 and 1993, issuing unqualified opinions that CBI's financial statements were fairly presented.

In fact, however, CBI's financial statements were fraudulent. Numerous members of CBI's top management had engaged in an elaborate scheme to overstate CBI's earnings through accounting chicanery involving misrepresentations about the company's inventory and accounts payable. E&Y conducted its audits in reliance on CBI's managers' written representations that there were no management irregularities, that all financial records and relevant data had been tendered to E&Y, and that the financial information provided to the auditors accurately represented the company's situation. All of this was false, but CBI's management was sufficiently adept at concealing its fraud that E&Y failed to discover the company's deception until it was disclosed by a CBI insider in February 1994.

E&Y thereupon took immediate steps to investigate and address the issue, withdrawing its opinion on the 1993 financial statements and commencing a reaudit. That work was never completed, being halted by CBI in July 1994. In August 1994, CBI filed for bankruptcy.

2. E&Y filed a claim in the bankruptcy case seeking $210,850 covering work on the 1994 reaudit and certain tax and consulting services. The creditors' committee objected to the amount of E&Y's claim but did not allege malpractice in the conduct of the reaudit (or in connection with any other work that E&Y had performed for CBI). App., *infra*, 86a-87a.

When the bankruptcy court later confirmed CBI's reorganization plan, it appointed respondent Bankruptcy Services, Inc. ("BSI") as the disbursing agent. As part of that plan, BSI acquired all of CBI's claims, and, pursuant to a settlement with TCW, "all rights to pursue and prosecute causes of action of any kind held by TCW against any third party, in its capacity as [CBI's] Creditor or equity security holder." App., *infra*, 87a-88a.

BSI's amended complaint sought tens of millions of dollars in damages and alleged seven claims. The first four related to E&Y's audits of CBI's financial statements for fiscal years 1992 and 1993: (1) breach of contract, (2) negligence, (3) negligent misrepresentation, and (4) fraud and/or recklessness. The remaining three alleged: (5) fraud and/or recklessness in inducing CBI to retain E&Y for the reaudit, (6) breach of fiduciary duty, and (7) expungement of E&Y's claim. BSI brought all these claims as successor to CBI, and also brought claims (2)-(5) as assignee of TCW.[1] The amended complaint included a jury demand.

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[1] We refer to the claims BSI brought as successor to CBI as the "CBI claims," and the claims brought as assignee of TCW as the "TCW claims."

E&Y then moved in the district court to withdraw the reference to the bankruptcy court for purposes of adjudicating the claims against it. The district court denied the motion, ruling that the dispute was a "core proceeding" within the meaning of 28 U.S.C. § 157(b) that could properly be tried in the bankruptcy court. App., *infra,* 141a-151a. BSI then withdrew its jury demand. The next day, E&Y answered BSI's amended complaint and asserted its own jury trial demand. E&Y also renewed its request for withdrawal of the reference on the ground that the bankruptcy court lacked authority to conduct a jury trial without E&Y's consent.

E&Y's efforts to assert its Seventh Amendment rights proved unsuccessful. The district court rejected E&Y's argument that the bankruptcy court lacked the authority to conduct a jury trial, and remanded to the bankruptcy court without deciding whether a jury trial was in fact required. App., *infra,* 131a-140a. The bankruptcy court then granted BSI's motion to strike E&Y's jury demand. App., *infra,* 152a-162a.

The ensuing bench trial was bifurcated into liability and damages phases. The liability phase was a complicated affair; the trial lasted 17 days, featured 19 witnesses and numerous exhibits, and generated 3,500 pages of transcript. 247 B.R. at 347. The parties disputed critical facts, and the bankruptcy judge made credibility determinations with respect to multiple witnesses, ultimately concluding that E&Y committed malpractice by failing to follow generally accepted auditing standards. *Id.* at 361-64.

After conducting a separate trial on damages, also without a jury, the bankruptcy court awarded approximately $70 million ($45 million on the CBI

claims and $25 million on the TCW claims), and it expunged E&Y's claim against the estate. App., *infra*, 15a-16a.

E&Y appealed to the district court. On the Seventh Amendment issue, the district court affirmed in part and reversed in part. As to the CBI claims, it held that E&Y had no right to a jury trial because CBI's claims are "integrally related to the claims allowance process because BSI's success on those claims would result in the disallowance of Ernst & Young's Proof of Claim." App., *infra*, 105a.

Applying similar principles, the district court found that E&Y *did* have a right to a jury trial on TCW's claims. The court explained that "[e]ven though success on TCW's claims may augment the size of the bankruptcy estate, it will not affect BSI's ability to defend against Ernst & Young's Proof of Claim." App., *infra*, 107a.

E&Y also appealed the bankruptcy court's decision that BSI had standing to raise CBI's and TCW's claims. Ultimately, the district court ruled in E&Y's favor, finding that the TCW claims could not be asserted by BSI and that the CBI claims were barred by *in pari delicto* principles due to CBI's officers' extensive participation in the falsification of the financial statements. It accordingly vacated the entire bankruptcy judgment. App., *infra*, 70a-81a.

3. BSI appealed, and E&Y took a conditional cross-appeal arguing that the bankruptcy court lacked the statutory authority to try the proceedings and that E&Y enjoyed a Seventh Amendment right to a jury trial on the CBI claims.

The Second Circuit reversed the district court on the merits, ruling that BSI had standing to assert

both the CBI and TCW claims. App., *infra*, 23a-48a. In so holding, the court of appeals faulted the district court for failing to accord sufficient deference to the bankruptcy judge's factual findings. App., *infra*, 19a, 26a-35a. The court did not suggest, however, that those findings were the only reasonable view of the evidence. App., *infra*, 28a.

The Second Circuit rejected E&Y's cross-appeal. After holding that both the CBI and TCW claims were "core proceedings" over which the bankruptcy court had jurisdiction (see 28 U.S.C. § 157(b)), the court addressed E&Y's two Seventh Amendment arguments.

First, the court considered whether, by filing a claim in CBI's bankruptcy case, E&Y lost its right to a jury trial on the CBI claims. It was undisputed that E&Y would have been entitled to a jury trial on those claims had it not filed its own claim. App., *infra*, 61a. But the Second Circuit ruled that by filing a claim, a creditor subjects itself to the equitable process in which the bankruptcy court determines whether to allow or disallow the creditor's claim. The creditor loses its jury trial right as to any counterclaim "whose resolution affects the allowance or disallowance of the creditor's proof of claim or is otherwise so integral to restructuring the debtor-creditor relationship." App., *infra*, 62a-63a. This is true, according to the court, regardless of the fact that the counterclaim seeks damages far in excess of the amount at stake in the creditor's claim.

Applying this rule, the court held that E&Y "waived" its right to a jury trial on the entirety of the CBI claims by filing a proof of claim. App., *infra*, 63a. CBI's claims were filed in response to E&Y's claim, and all of CBI's claims were also "either de-

fenses to [E&Y's] fees claim or integrally related to those defenses" such that the resolution of CBI's claims "clearly affects the structuring of the debtor-creditor relationship between CBI and [E&Y]." App., *infra*, 63a.

E&Y had also argued that, because it concededly retained its jury trial right as to the TCW claims, and because those claims presented overlapping factual issues with the CBI claims, this Court's decision in *Beacon Theaters*, and due regard for E&Y's constitutional jury trial right, required the bankruptcy court to have tried the TCW claims before a jury first. E&Y invoked this Court's decision in *Lytle* v. *Household Manufacturing, Inc.*, 494 U.S. 545 (1990), for the proposition that the failure to do so required a retrial on both sets of claims; *Lytle* held as much in the context of an employment discrimination action involving overlapping jury-triable and bench-triable issues.

The Second Circuit acknowledged the general principle, observing that "[a] federal court * * * cannot ordinarily preempt a defendant's Seventh Amendment rights by deciding factual issues on equitable claims that are common to legal claims while reserving those legal claims for a later jury trial." App., *infra*, 66a n.22. It nevertheless held that principle inapplicable here, relying on this Court's decision in *Katchen* v. *Landy*, which it deemed to create a blanket bankruptcy exception to the *Beacon-Lytle* rule, such that bankruptcy courts can conduct the bench trial first even if the resulting judgment would have preclusive effect on factual issues common to the jury-triable claim.

In response to the argument that *Katchen*'s holding had been superseded by substantial changes to

the system for administering bankruptcy cases, the Second Circuit observed that E&Y's

> reasoning may very well be sound, but to no avail. This Court does not have the discretion to ignore Supreme Court precedent simply because the reasoning on which it is premised may seem no longer viable. * * * [A]t least until the Supreme Court holds otherwise, *Katchen* is still good law and Appellees are not entitled to relief under *Lytle*.

App., *infra*, 67a-68a. Thus, the court refused to vacate the bankruptcy court's judgment on the CBI claims, despite that court's acknowledged error in trying the TCW claims without a jury. The court added that "to the degree that the court's judgment on those claims is dispositive of factual issues underlying the TCW claims, [E&Y] may also be collaterally estopped from relitigating those issues at its jury trial on the TCW claims." App., *infra*, 67a.

REASONS FOR GRANTING THE PETITION

This Court should "grant[] certiorari because '[m]aintenance of the jury as a fact-finding body is of such importance and occupies so firm a place in our history and jurisprudence that any seeming curtailment of the right to a jury trial should be scrutinized with the utmost care.'" *Beacon Theatres*, 359 U.S. at 501 (citation omitted) (quoting *Dimick* v. *Schiedt*, 293 U.S. 474, 486 (1935)).

This Court has never held that bankruptcy creditors are without Seventh Amendment rights. Yet the Second Circuit, purporting to rely on this Court's decisions, held that creditors substantially sacrifice their right to a jury trial by filing a claim in a bankruptcy proceeding—a sacrifice going well beyond dis-

allowance of the debt they claim to be owed. This is the product of the court of appeals' two holdings: that creditors waive their right to a jury trial on any issue that somehow relates to their filed claims, and that courts are under no obligation to structure bankruptcy proceedings in a way that protects those Seventh Amendment rights that manage to survive the act of filing a proof of claim.

As to this latter issue, review is needed because only this Court can hold that one of its key decisions in the bankruptcy field has become anachronistic and requires reexamination. The Second Circuit recognized as much, indicating that it may well have decided the *Beacon Theatres* question differently had it possessed the discretion to depart from what it understood to be the binding holding of *Katchen*. Ordinarily, when judicially-created doctrine rests on dynamic factual premises, it is the lower courts' task to ensure that the doctrine keeps pace with real-world developments. Because the *Katchen* Court announced a clear rule, however, the lower courts are powerless. As a result, until this Court reconsiders its prior decision, bankruptcy courts in the 21st century will continue to apply a Seventh Amendment rule predicated on a repealed bankruptcy statute enacted in 1898.

As for the Seventh Amendment consequences of filing a proof of claim, the court of appeals based its holding on this Court's decisions in *Katchen*, *Granfinanciera*, and *Langenkamp*. Although the Second Circuit misunderstood this trilogy, it is not alone in its confusion. Since *Langenkamp* was decided in 1991, lower courts have struggled to understand how filing a proof of claim affects a creditor's right to a

jury trial, and they have split on various applications of this broader question.

The time has come for the Court to give the guidance that the lower courts need. The number of bankruptcy filings is exploding. All filings rose by over 30% from fiscal year 2007 to fiscal year 2008, and business and Chapter 11 filings both rose by 49%.[2] Because creditors can be expected to file proofs of claim in virtually all of these cases, and because a concomitant proliferation of counterclaims can be expected, the threat to Seventh Amendment rights is substantial. By acting now, this Court can ensure that the lower courts resolve the growing number of bankruptcy cases with due regard for jury-trial rights.

The present case is an ideal vehicle for revisiting this issue. Although the inequity in this case is extraordinary—a $210,850 claim was held to have forfeited jury trial rights on counterclaims seeking tens of millions of dollars—the nature of the dispute is not. A decision in this case would apply to a significant percentage of the cases in this nation's bankruptcy courts. Under these circumstances, review is in order.

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[2] See News Release, Admin. Office of the U.S. Courts, *Bankruptcy Filings Over One Million for Fiscal Year 2008* (Dec. 15, 2008), available at http://www.uscourts.gov/Press_Releases/2008/BankruptcyFilingsDec2008.cfm (last visited Feb. 10, 2009).

I. THE CONTINUING VALIDITY OF THE *KATCHEN* EXCEPTION TO *BEACON THEATRES* IS A CRITICAL ISSUE THAT ONLY THIS COURT CAN RESOLVE.

Relying on *Katchen*, the Second Circuit ruled that the holding of *Beacon Theatres*—the ordinary rule that legal claims must be resolved by a jury before factually-related equitable claims are tried to the court—does not apply in bankruptcy. The narrow exception *Katchen* carved out from *Beacon Theatres* was, however, a product of the archaic bankruptcy regime in place at the time, under which law and equity were divided and overlapping factual and legal claims could not be addressed in a single forum. That regime is now gone, and the fundamental changes in bankruptcy procedure that have been made since *Katchen* was decided render its exception unnecessary and improper.

The Second Circuit agreed that this "reasoning might very well be sound" but concluded that it "does not have the discretion to ignore Supreme Court precedent simply because the reasoning on which it is premised may seem no longer viable." App., *infra*, 67a-68a. Thus, the court concluded that it was bound by *Katchen* "at least until the Supreme Court holds otherwise." *Ibid.* Under those circumstances, and because abiding by *Katchen* is not only senseless, but also invites—as it did in this case—a significant constriction of meaningful jury-trial rights, this Court's review is needed.

1. In *Beacon Theatres*, and in *Dairy Queen, Inc.* v. *Wood*, 369 U.S. 469 (1962), this Court announced a bedrock procedural rule meant to give substance to the Seventh Amendment's core guarantee:

> [W]here both legal and equitable issues are presented in a single case, "only under the most imperative circumstances, circumstances which in view of the flexible procedures of the Federal Rules we cannot now anticipate, can the right to a jury trial of legal issues be lost through prior determination of equitable claims."

Dairy Queen, 369 U.S. 469, 472-73 (1962) (quoting *Beacon Theatres*, 359 U.S. at 510-11).

More recently, in *Lytle* v. *Household Manufacturing, Inc.*, *supra*, this Court applied *Beacon Theatres* to a situation involving overlapping equitable and legal claims, where the trial court erroneously dismissed the legal claim and conducted a bench trial on the equitable claim, finding for the defendant. The court of appeals held that the legal claim had been erroneously dismissed but nevertheless upheld the judgment based on the preclusive effect of the findings in the bench trial. See *Lytle*, 494 U.S. at 549-50.

This Court reversed. Reaffirming its "longstanding commitment to preserving a litigant's right to a jury trial" (*Lytle*, 494 U.S. at 554), it found it necessary in the circumstances to vacate the equitable judgment in order to afford "complete and consistent relief." *Id.* at 556 n.4. In particular, the Court was concerned about giving collateral-estoppel effect to the determinations made in the equitable proceeding, which would effectively vitiate the jury trial right. *Id.* at 555.

This case squarely implicates these decisions. As in *Dairy Queen* (see *Lytle*, 494 U.S. at 553), the trial court here erroneously concluded that the entire case

against E&Y could be tried by the court. And, as in *Lytle*, that error threatens to sabotage any meaningful right to a jury trial on TCW's yet-to-be-tried legal claims. App., *infra*, 67a. Thus, application of the *Lytle* rule would result in vacating the CBI judgment and directing that the jury-triable TCW claims be tried first. "To hold otherwise," as this Court recognized in *Lytle*, "would seriously undermine" the "jury trial right under the Seventh Amendment." 494 U.S. at 555.

2. But the Second Circuit refused to apply *Lytle*, holding that "under the Supreme Court's decision in *Katchen*," the rule of *Beacon Theaters* and *Lytle* "does not apply in the context of bankruptcy proceedings." App., *infra*, 66a.

The *Beacon Theatres* rule was indeed at issue in *Katchen*. Invoking that rule, the *Katchen* creditor argued that the trustee's preference *objection*, conceived as a request for equitable relief, could be resolved only after a jury trial on the trustee's preference *claim,* which requested legal relief.[3] The Court rejected this argument on account of the intractable logistical problems it would have created under the bankruptcy scheme then in place. The creditor's position would have required the "bankruptcy court [to] stay its own proceedings and direct the bankruptcy trustee to commence a plenary suit" in another forum. *Katchen*, 382 U.S. at 338. This might have caused years of delay in settling the debtor's estate. The Court held that applying *Beacon Theatres* under those circumstances would create unacceptable "de-

[3] The distinction between preference objections and preference claims is explained in Part II.A.I, *infra*.

lay and expense" and "dismember a scheme which Congress has prescribed." *Id.* at 339.

Katchen's reasoning thus was premised on the archaic jurisdictional scheme that governed bankruptcy proceedings at that time. Under the Bankruptcy Act of 1898, "courts of bankruptcy" exercising "summary jurisdiction" (the equitable jurisdiction under which they allowed and disallowed claims) could not simultaneously exercise "plenary jurisdiction" (the jurisdiction at law under which a state or federal district court could hold a jury trial). See S. Elizabeth Gibson, *Jury Trials in Bankruptcy: Obeying the Commands of Article III and the Seventh Amendment*, 72 Minn. L. Rev. 967, 971-72 (1988). As a result, had this Court held that creditors were entitled to a jury trial on preference claims, it would have "require[d] that in every case where a [preference] objection is interposed and a jury trial is demanded the proceedings on allowance of claims must be suspended and a plenary suit initiated." *Katchen*, 382 U.S. at 339. Such a scheme, with the potential for multiple trials in different courts, was unworkable and inequitable. *Ibid.*

3. The statutory scheme at issue in *Katchen* put the bankruptcy courts in a position akin to that of the federal district courts prior to the advent of the Federal Rules of Civil Procedure. For the first century and a half of their existence, district courts could not try legal and equitable issues in the same proceeding, even though the district courts were clothed with both legal and equitable jurisdiction. "[W]hen sitting in equity, the [district] judge was technically a different court than when sitting at law." G. Ray Warner, *Katchen Up in Bankruptcy:*

The New Jury Trial Right, 63 Am. Bankr. L.J. 1, 7 (1989) [hereinafter Warner, *Katchen*].

During that time, a district court presiding over a case in equity would occasionally confront a legal action involving the same parties and the same issues. In cases where the legal remedy was inadequate or the equity plaintiff might suffer irreparable harm, the court could enjoin the legal action pending the outcome of the equity trial in order to ensure that the equity plaintiff enjoyed "a fair and orderly adjudication of the controversy." *Beacon Theatres*, 359 U.S. at 506-07. The consequence of such a system, however, was that the parties suffered diminished jury trial rights, for the common issues decided in the antecedent equitable trial were binding in the later action at law. Warner, *Katchen*, *supra*, at 12.

In 1938, the Federal Rules merged district courts' law and equity jurisdictions. See *Warner*, *Katchen*, *supra*, at 9. The merger empowered district courts to hold a jury trial on all legal issues and then award whatever equitable relief may be appropriate for overlapping or separate equitable issues. See 9 Charles Alan Wright & Arthur R. Miller, FEDERAL PRACTICE AND PROCEDURE § 2305 (3d ed. 2008). The merger therefore eliminated the need for multiple trials, and with it the threat to the equity plaintiff's fair and orderly adjudication of the controversy.

It was this landmark procedural reform that produced the holding in *Beacon Theatres*. As the Court explained, "equity has always acted only when legal remedies were inadequate," so the pre-merger rule had to be "re-evaluated in the light of the liberal joinder provisions of the Federal Rules which allow legal and equitable causes to be brought and resolved in one civil action." 359 U.S. at 509. After merger,

there was no longer any functional justification for impairing the jury trial right "because the unified court easily could provide a jury trial without affecting the equity plaintiff's rights" to a fair and orderly adjudication. Warner, *Katchen*, *supra*, at 12-14; see also *Dairy Queen*, 369 U.S. at 469-73; John C. McCoid, II, *Procedural Reform and the Right to Jury Trial: A Study of Beacon Theatres, Inc.* v. *Westover*, 116 U. Pa. L. Rev. 1, 6 (1967) (explaining that *Beacon Theatres* rule was the consequence "of a procedural reform, the merger of law and equity").

But the bankruptcy courts had undergone no comparable procedural reform when *Katchen* was decided in 1966. This Court thus could not apply *Beacon Theatres* to the bankruptcy regime because the premise of that holding—the merger in a single court of legal and equitable jurisdiction—did not yet exist. Accordingly, to insist that equitable determinations await the resolution of overlapping legal claims would have been—just as it was in the pre-merger regime in the district courts—to deny debtors and creditors their right to a fair and orderly adjudication. This significant limitation on bankruptcy jurisdiction provided the central premise for the result reached in *Katchen*. See Warner, *Katchen*, *supra*, at 17-42. Indeed, against this backdrop, *Katchen*'s concern with "delay and expense" was no mere cavil; it was an accurate recognition that Congress' desire for a swift and orderly resolution of the estate would have been defeated by a multitude of jury trials in various courts.

4. The statutory premises underlying *Katchen*'s refusal to apply *Beacon Theatres* have now been eliminated. After this Court's decision in *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458

U.S. 50 (1982), Congress passed the Bankruptcy Amendments and Federal Judgeship Act of 1984. Pub. L. No. 98-353, 98 Stat. 333. The Act vested bankruptcy jurisdiction not in specialized bankruptcy courts, but instead in the federal district courts, which were given original jurisdiction over all cases under title 11, all proceedings arising under title 11, and all proceedings arising in or related to cases under title 11. *Id.* § 101, 98 Stat. at 333 (codified at 28 U.S.C. § 1334(a), (b)). District courts were empowered to "refer[]" such matters to the bankruptcy courts, which were reconstituted as "unit[s] of the district court[s]." *Id.* § 104(a), 98 Stat. at 336, 340 (codified at 28 U.S.C. §§ 151, 157(a)). But the district court retained the power to reassert control of the case by withdrawing the reference. *Id.* § 104(a), 98 Stat. at 340 (codified at 28 U.S.C. § 157(d)). These provisions remain in force today.

In light of these profound statutory changes, which brought about the merger of law and equity in bankruptcy proceedings, there is no longer any formal or functional reason for maintaining the *Katchen* exception to the *Beacon Theatres* rule.

Formally, the 1984 amendments made bankruptcy courts units of the district courts, which can try legal and equitable issues in a single case. As a result, it is now "possible for the court to grant legal relief and provide jury trials, while at the same time according complete and prompt relief to the equity plaintiff." Warner, *Katchen, supra,* at 48.

In short, the bankruptcy courts are no longer the "specialized court[s] of equity" that they were when *Katchen* was decided. And that makes all the difference; cases decided after *Katchen* made clear that the so-called "*Katchen* corollary" is applicable only on a

pre-merger conception of the distinction between law and equity. See, *e.g.*, *Atlas Roofing Co.* v. *Occupational Safety & Health Review Comm'n*, 430 U.S. 442, 454 n.11 (1977); *Curtis* v. *Loether*, 415 U.S. 189, 195 (1974); Warner, *Katchen*, *supra*, at 35-42; cf. Charles W. Wolfram, *The Constitutional History of the Seventh Amendment*, 57 Minn. L. Rev. 639, 644 (1973) (explaining that the *Beacon Theatres* test requires "that before the court determines that it must deprive a party of the right to jury trial by prior adjudication of any 'equitable' matter, it should determine whether there is any device available, including any procedural innovations of the Federal Rules, that will permit prior trial by jury").

There can also be no functional objection to jury trials in bankruptcy proceedings. That does not mean that jury trials might not sometimes entail some degree of marginal delay and expense over a bench trial of the same issues, but that is worlds apart from what confronted the Court in *Katchen*. And those ordinary costs cannot provide the basis for rejecting the application of the *Beacon Theatres* rule and the Seventh Amendment interests it protects. *Granfinanciera* made that clear, holding that even if jury trials "would impede swift resolution of bankruptcy proceedings and increase the expense of Chapter 11 reorganizations," such "'considerations are insufficient to overcome the clear command of the Seventh Amendment.'" 492 U.S. at 63 (quoting *Curtis*, 415 U.S. at 198); see also *Lytle*, 494 U.S. at 553-54 ("concern about judicial economy" "remains an insufficient basis for departing from our long-standing commitment to preserving a litigant's right to a jury trial"). Indeed, an "exception of that breadth would override the seventh amendment in all cases." Warner, *Katchen*, *supra*, at 48.

5. Applying *Beacon Theatres* and *Lytle* would require the judgment on the CBI claims to be vacated in order to ensure that E&Y's undisputed right to a jury trial of the factually-overlapping TCW claims is preserved. See *Lytle*, 494 U.S. at 555 & 556 n.4.[4] The court of appeals did not grant such relief because of the vestiges of *Katchen* and the rule that the lower courts must leave to this Court "'the prerogative of overruling its own decisions.'" App., *infra*, 68a (quoting *Rodriguez de Quijas* v. *Shearson/Am. Express Inc.*, 490 U.S. 477, 484 (1989)).[5] In order to protect the right to trial by jury, the Court should exercise that prerogative here.

II. THIS COURT'S PRECEDENTS DO NOT COMPEL DENIAL OF A JURY TRIAL ON THE CBI CLAIMS.

Beacon Theatres aside, the court of appeals erred in ruling that the CBI claims could be tried without a jury, on account of a misreading of this Court's precedents. This misreading too presents an important

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[4] The same would be true even viewing the CBI claims on a standalone basis. They involve legal causes of action triable to a jury (the counterclaims) and overlapping issues constituting defenses to E&Y's claim (triable to the court). Under *Beacon Theaters*, preservation of jury trial rights would require the jury trial to go first.

[5] The Second Circuit cited *Parklane Hosiery Co.* v. *Shore*, 439 U.S. 322, 334-35 (1979), in stating that "*Katchen's* relevant holding has been repeatedly reaffirmed after the Bankruptcy Code of 1978." App., *infra*, 68a. But *Parklane* predated the 1984 amendments, and it cited *Katchen* merely for the uncontroversial proposition "that an equitable determination can have collateral-estoppel effect in a subsequent legal action and that this estoppel does not violate the Seventh Amendment," *Parklane Hosiery*, 439 U.S. at 335, a proposition E&Y does not contest.

question regarding the intersection of bankruptcy and jury-trial rights.

This Court has addressed the scope of Seventh Amendment rights in the bankruptcy process three times. Taken together, *Katchen*,[6] *Granfinanciera*, and *Langenkamp* establish a narrow rule: creditors who file a proof of claim have no right to a jury trial on trustees' avoiding-power claims of fraudulent transfer or preference payments. That rule derives from the unique role of recoverable transfers in bankruptcy law and the operation of the equitable "unclean hands" doctrine.

This case, however, does not involve those avoiding powers but instead a routine common-law malpractice claim brought for the benefit of CBI's estate against its former auditor. There is no dispute that E&Y would have been entitled to a jury trial had it not filed its own claim. See App., *infra*, 61a. Yet the Second Circuit held that right waived because some of the factual issues to be resolved in adjudicating the CBI claims also bear on whether E&Y's claim should be allowed. Because that holding is a significant extension of this Court's precedents and a significant contraction of Seventh Amendment rights, review is warranted.

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[6] In the preceding section, Part I, we address the portion of *Katchen* that considered the *Beacon Theatres* rule. See 382 U.S. at 338-40. Here, we focus on *Katchen's* holding that the creditor lost its jury trial right on the debtor's preference claim by filing a proof of claim in the bankruptcy court. See *id.* at 336-38.

A. Outside The Limited Context Of Avoiding-Power Claims, This Court Has Never Suggested That A Bankruptcy Creditor Loses Its Jury Trial Rights Merely By Filing A Proof Of Claim.

1. This Court first addressed the Seventh Amendment issue in *Katchen.* There, after the creditor filed a claim in the bankruptcy court, the trustee alleged that the creditor had benefited from certain voidable preferential transfers. Then, as now, creditors who received a preference were vulnerable to two types of attacks. First, the estate's representative could assert a *claim* to recover the property transferred or the value thereof. 11 U.S.C. § 96(b) (1964) (revised and recodified at *id.* § 550). Second, the representative could "object" to consideration of the creditor's claim on the estate. By statute, bankruptcy courts could not "allow" the claims of a creditor who had received a preference or fraudulent transfer—*i.e.*, could not let such creditors participate in the bankruptcy distribution—until they returned such transfers to the estate. *Id.* § 93(g) (revised and recodified at *id.* § 502(d)). The trustee in *Katchen* asserted both types of attacks.

It was in that context that this Court held that bankruptcy courts could award relief on the preference claim under their "summary jurisdiction"[7] with-

[7] Under the Bankruptcy Act of 1898 (the applicable bankruptcy statute at the time *Katchen* was decided), bankruptcy matters either fell within bankruptcy courts' "summary jurisdiction," or had to be tried in "plenary suits." Summary proceedings were typically tried by bankruptcy referees without a jury. See Gibson, *supra*, 72 Minn. L. Rev. at 971-72. Matters that fell outside bankruptcy courts' summary jurisdiction were tried in ple-

out running afoul of the Seventh Amendment. That was so even though the creditor would have been entitled to a jury trial on the preference claim had he not submitted a proof of claim. *Katchen*, 382 U.S. at 336.

The Court's analysis rested on three premises. First, the claims-allowance process—the process in which a bankruptcy court allows or disallows a creditor's claim—is equitable. Because the preference *objection* was part of that equitable claims-allowance process, the bankruptcy court could properly resolve the objection without the aid of a jury. *Katchen*, 382 U.S. at 330-33, 336-37. Second, the bankruptcy court was statutorily required to determine the trustee's *entire* preference claim in the course of resolving the trustee's preference objection. *Id.* at 332 n.9, 334. Third, issues decided in the claims-allowance process had preclusive effect in subsequent proceedings between the parties. As a result, once a bankruptcy court resolved the equitable preference *objection*, "nothing remain[ed] for adjudication" on the trustee's *claim*. *Id.* at 334. Under these circumstances,

> it makes no difference, so far as [the creditor's] Seventh Amendment claim is concerned, whether the bankruptcy trustee urges only a[n] * * * objection or also seeks affirmative relief. In practical effect, the denial of a jury trial would be no less were the bankruptcy court merely to determine the existence and amount of the preference [objection], since that determination would be entitled to res judicata effect in any subsequent [jury] action.

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nary suits in state court or, if jurisdiction existed, in federal district court. *Id.* at 972.

Id. at 337-38.

In *Granfinanciera*, the trustee asserted a fraudulent-conveyance claim against a creditor that had not filed a claim in the bankruptcy proceeding. The Court held that the creditor was constitutionally entitled to a jury trial, even though Congress apparently intended to have such claims tried without a jury. 492 U.S. at 36, 60-64. Congress, the Court explained, can deny a litigant a jury trial on a legal claim only if the dispute involves a matter of "public rights." *Id.* at 51-55. Fraudulent conveyance claims were legal: they would have been tried in 18th century courts of law, and a successful plaintiff can recover money damages. *Id.* at 43-49. Turning to the public rights question, the Court held that even if the bankruptcy process could be described as a public right—a proposition that the Court refused to endorse— fraudulent conveyance claims remained matters of private right. *Id.* at 56.

Langenkamp, like *Katchen*, involved a preference claim. The trustee asserted such a claim against two groups of creditors—some who had filed proofs of claim, and some who had not. Although, as we discuss below, the Court's terse opinion was opaque, it confirmed that creditors who file a proof of claim have no right to a jury trial on a trustee's preference action, whereas creditors who do not file any claim retain that right. *Langenkamp*, 498 U.S. at 44.

2. These three cases share one especially salient feature: they all involved "avoiding-power" claims for return of preference or fraudulently conveyed payments. Avoiding powers are "the powers given a trustee in bankruptcy to avoid property interests held by entities other than the debtor both in property that belonged to the debtor prior to bankruptcy

but was transferred away and in property of the estate." Thomas H. Jackson, *Avoiding Powers in Bankruptcy*, 36 Stan. L. Rev. 725, 725 n.1 (1984) (citation omitted). Thus, although *Katchen*, *Granfinanciera*, and *Langenkamp* establish that the filing of a claim can limit a creditor's right to a jury trial on avoiding-power counterclaims, this Court has *never* held that the same consequence extends to *non*-avoiding-power counterclaims, let alone traditional common law counterclaims seeking money damages.

The Second Circuit's decision in this case ignores that significant distinction. The court held that E&Y lost its right to a jury trial not on an avoiding-power claim (as in *Katchen* and *Langenkamp*), but on a set of routine common-law damages claims. In so holding, the court overlooked important differences between avoiding-power claims and other claims asserted on the debtor's behalf. Those differences explain why this Court's decisions limiting creditors' jury-trial rights have reached only as far as the avoiding-power situation.

Put simply, a bankruptcy trustee's avoiding-power objections are equitable in a way that a debtors' other claims are not. The preference and fraudulent conveyance claims featured in this Court's precedents target behavior that presents an especially serious threat to the bankruptcy scheme. One of the primary purposes of bankruptcy is to distribute the debtor's assets fairly among creditors; and as to unsecured, general creditors, "the cardinal bankruptcy principle is equal and ratable distribution." 3 William L. Norton, Jr., BANKRUPTCY LAW AND PRACTICE § 49:1 (3d. ed. 2008).

A fraudulent conveyance is "essentially * * * an act which has the effect of improperly placing assets

beyond the reach of creditors." 5 COLLIER ON BANKRUPTCY ¶ 548.01 (15th rev. ed. 2008). Preferences are "transfers that favor one existing creditor over another," Jackson, *Avoiding Powers in Bankruptcy*, *supra*, 36 Stan. L. Rev. at 757; see also 11 U.S.C. § 547(b). Both fraudulent conveyances and preferences frustrate the distributional purpose of bankruptcy law by reducing the size of the estate to be divided up among the creditors in bankruptcy court. And preferences offend the equality principle as well, by providing one creditor with a larger share of the debtor's property than it is entitled to.

Accordingly, the trustee's ability to target both fraudulent conveyances and preferences through its avoiding powers has a common purpose: "to prevent a debtor from diminishing, to the detriment of some or all creditors, funds that are generally available for distribution to creditors." *In re Chase & Sanborn Corp.*, 813 F.2d 1177, 1181 (11th Cir. 1987). These powers are essential to a well-functioning bankruptcy system. Without them, debtors and complicit creditors could flout Congress' bankruptcy policies and leave the bankruptcy court to dispose of only those assets that the debtor chose to retain in its estate.

For nearly 150 years, therefore, Congress has singled out preference recipients for a unique disability. In the Bankruptcy Act of 1867, Congress expressly prohibited courts from allowing preference creditors' claims against the debtor's estate until they surrendered "all property, money, benefit, or advantage received * * * under such preference." Ch. 176, § 23, 14 Stat. 517, 528. Although the language varied, that provision carried through to the Bankruptcy Act of 1898, ch. 541, § 57(g), 30 Stat. 544, 560,

and remains in the current bankruptcy code, 11 U.S.C. § 502(d).

When, at the time of *Katchen*, an estate's representative invoked the disallowance provision—when it raised an avoiding-power objection to a creditor's claim—it was requesting that the court resolve an *equitable* issue. That is because the provision is a bankruptcy-tailored application of a familiar equity maxim: those who seek equitable relief must enter courts of equity with "clean hands"; they must not have acted in a manner that offends equity. See, *e.g.*, *Precision Instrument Mfg. Co.* v. *Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945); John Norton Pomeroy, 1 POMEROY'S EQUITY JURISPRUDENCE § 397 (3d ed. 1905).

Katchen's holding makes perfect sense in light of the unclean-hands doctrine. The Court made clear that the bankruptcy statute is "concerned with *creditors* rather than *claims* and thus contemplates that allowance of a claim may be conditioned on surrender of preferences received with respect to transactions unrelated to the claims." 382 U.S. at 330 n.5 (construing 11 U.S.C. § 93(g)). *Katchen* thus recognized a standing-like requirement for creditors who submit claims against a bankruptcy estate. Because Congress generally does not condition judicial relief on a plaintiff's willingness and ability to atone for past behavior, there is a strong inference that the disallowance provision was intended to simulate the unclean hands maxim. Cf. *Young* v. *United States*, 535 U.S. 43, 50 (2000) (stating that bankruptcy courts "'apply the principles and rules of equity jurisprudence'") (quoting *Pepper* v. *Litton*, 308 U.S. 295, 304 (1939)).

Viewing avoiding-power objections as invocations of the unclean hands doctrine reveals why the filing of a proof of claim carries so much weight in this Court's Seventh Amendment analysis of avoiding-power claims. Creditors who received preferences or fraudulent conveyances transgressed in a way that particularly offends the equitable process of restructuring debtor-creditor relations. Such creditors should not be able to recover from the estate if they have participated in a distortion of the bankruptcy process by receiving a preference or a fraudulent conveyance. And, in that context, the effort by the estate's representative to protect the integrity of the bankruptcy process by invoking the avoiding powers is an assertion of an equitable principle appropriately tried in equity without a jury.

In contrast, where the creditor files no claim, and thus does not request any equitable relief, the unclean-hands doctrine is never triggered. When such a creditor is sued in a fraudulent conveyance action, it retains its right to a jury trial because the inquiry is a *legal* one concerning the trustee's efforts "to augment the bankruptcy estate," *Granfinanciera*, 492 U.S. at 56, rather than an *equitable* one concerning the creditor's fitness for a judgment in equity.

3. Under a proper Seventh Amendment analysis, therefore, a creditor, like E&Y, that files a claim in the bankruptcy court that does not trigger the disallowance provisions (and thus does not face avoiding-power claims that must be adjudicated as part and parcel of the claims-allowance process) should not lose its right to a jury trial on the debtor's legal claims against it. The Second Circuit mistakenly believed that the Seventh Amendment analysis turned entirely on the creditor's filing of a claim against the

estate. Although a necessary factor, that is not a sufficient one, for there must also be an assertion of a statutory avoiding-power objection in order to render the dispute equitable. That mistake led the court of appeals to venture beyond this Court's precedents and foreclose a jury trial in a case involving traditional state-law damages claims. That result is theoretically unsound and represents a dramatic abridgment of the Seventh Amendment. This Court's review is warranted to restore the jury trial to its proper place within the bankruptcy system.

B. *Langenkamp's* Apparent Application Of The Public Rights Theory Has Created Doctrinal Confusion.

The Second Circuit's restrictive reading of the Seventh Amendment is partially ascribable to doctrinal confusion caused by *Langenkamp*'s oblique reference to the public rights doctrine. Although *Langenkamp* affirmed the outcomes of *Katchen* and *Granfinanciera*, its short per curiam opinion is far from clear. The Court first appeared to adopt *Katchen's* and *Granfinanciera's* reasoning, explaining that a preference objection is "part of the claims-allowance process, which is triable only in equity." *Langenkamp*, 498 U.S. at 44. However, the Court then pulled language from the *Granfinanciera* Court's articulation of the public rights doctrine, holding that "the creditor's claim and the ensuing preference action by the trustee become integral to the restructuring of the debtor-creditor relationship through the bankruptcy court's *equity jurisdiction*." *Ibid.*

It is unclear what to make of that sentence. See G. Ray Warner, *Rotten to the "Core": Essay on Juries, Jurisdiction and Granfinanciera*, 59 UMKC L.

Rev. 991, 1003 n.77, 1026-29 (1991). One could read it to mean that the restructuring of debtor-creditor relations is a public right, and further that there is no right to a jury trial on any issue that Congress assigns to the bankruptcy court's "equity jurisdiction"—whatever that may be. Yet in *Granfinanciera*, decided only 17 months before *Langenkamp*, a majority of the Court expressed doubt that the restructuring of the debtor-creditor relationship is a public right, 492 U.S. at 56 n.11, and Justice Scalia expressly disagreed with the public-rights portion of the majority's opinion because he believed that that doctrine applies only when the United States is a party. *Id.* at 65-71 (concurring opinion). There is fair reason to conclude, then, that the public rights language in the summary reversal in *Langenkamp* was intended to do no more than reaffirm *Katchen*.

The Second Circuit certainly seemed puzzled. The court did not follow *Granfinanciera's* two step analysis, which inquires (1) whether the issue is legal or equitable, and (2) if legal, whether it involves a matter of public right. Instead, the court of appeals blended the analysis, holding that if a matter affects the equitable claims allowance process it *is* a matter of public right, which defeats the jury-trial right on *all* elements of the dispute. As the court explained in the course of finding that E&Y had no right to a jury trial, because "the CBI claims are either defenses to E & Y's fees claim or integrally related to those defenses, the resolution of the CBI claims clearly affects the structuring of the debtor-creditor relationship between CBI and E & Y." App., *infra*, 63a.

Other lower courts share the Second Circuit's confusion and have likewise relied on this Court's decisions as support for the bankruptcy court's au-

thority to conduct a bench trial on an estate's non-avoiding-power claims and on issues, such as damages, that have no bearing on the claims-allowance process.[8] On other applications of the Seventh Amendment problem, the lower courts are split. For example, courts diverge as to whether creditors who seek a setoff against a recovery sought by a trustee lose their jury trial rights,[9] and they disagree about whether a creditor who has not filed a claim and who is sued by the estate can lose its jury trial rights by filing a counterclaim against the estate.[10]

These errors and conflicts would be resolved by a more consistent and clearly-articulated Seventh Amendment theory. This Court should grant review and clarify the proper analysis in cases where a debtor asserts a legal claim in the bankruptcy court against a creditor.

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[8] See, *e.g.*, *In re Enron Creditors Recovery Corp.*, 07 Civ. 10612, 2008 WL 718284, at *4-*7 (S.D.N.Y. Mar. 17, 2008); *In re Worldcom, Inc.*, 378 B.R. 745 (Bankr. S.D.N.Y. 2007); *In re McClelland*, 332 B.R. 90 (Bankr. S.D.N.Y. 2005); *In re Applied Thermal Sys., Inc.*, 294 B.R. 784, 790-91 (Bankr. N.D. Okla. 2003).

[9] Compare *In re Concept Clubs, Inc.*, 154 B.R. 581, 587-89 (D. Utah 1993), with *In re Hedstron Corp.*, No. 05 C 6888, 2006 WL 1120572 (N.D. Ill. Apr. 24, 2006); *In re Commercial Fin. Servs., Inc.*, 251 B.R. 397 (Bankr. N.D. Okla. 2000).

[10] See *Container Recycling Alliance* v. *Lassman*, 359 B.R. 358, 361-62 (D. Mass. 2007) (noting split and citing cases); see also *In re Peachtree Lane Assocs., Ltd.*, 150 F.3d 788, 797-99 (7th Cir. 1998).

C. Even If Issues Bearing On The Claims-Allowance Process May Generally Be Tried To The Court There Is No Basis For Stripping A Creditor Of Its Jury-Trial Rights As To Issues That Lack Such Effect.

Even were the Court to agree with the Second Circuit that the forfeiture of jury trial rights extends beyond avoiding-power issues to any aspect of a counterclaim that bears on allowance of the creditor's claim, the decision below nevertheless outruns its rationale. The court held that the bankruptcy court could try *all* aspects of the CBI claims without a jury, even though the trial encompassed fact issues that had nothing to do with whether the E&Y claim should be allowed: (1) whether the company officers perpetrating the fraud were acting exclusively for their personal interests and adversely to the company's interests, thereby making inapplicable the *in pari delicto* doctrine that would ordinarily bar the CBI claims; and (2) the amount of damages suffered by CBI as a result of any alleged malpractice by E&Y. That overbroad forfeiture needlessly abridges Seventh Amendment rights and rests on a profound misunderstanding of this Court's cases. The question whether E&Y could properly be deprived of its jury-trial right as to issues not germane to resolution of its bankruptcy claim is an important aspect of the general issue of jury trial rights in bankruptcy proceedings that also warrants this Court's consideration.

Assuming a bench trial was permissible at all (despite the objections raised in the preceding sections), it should have been limited to trying the issues that bore directly on allowance or disallowance

of E&Y's claim. That theoretical basis for forfeiture of jury-trial rights cannot support their extinction with respect to issues that do not affect the creditor's claim and objections thereto. And, indeed, *Katchen* did not hold that bankruptcy courts can award relief on entire claims simply because some aspect of those claims *affects* the allowance of the creditor's claim. Compare App., *infra*, 62a-63a (Second Circuit's holding that creditor loses its jury-trial right "with respect to *claims* whose resolution *affects* the allowance or disallowance of the creditor's proof of claim") (emphasis added). Rather, the Court held, far more narrowly, that a bankruptcy court can award an estate legal relief if the trustee's objection to the creditor's claim also fully establishes the trustee's claim for affirmative relief. The Court explicitly noted the limits of its holding: "we obviously intimate no opinion concerning whether the referee has summary jurisdiction to adjudicate a demand by the trustee for affirmative relief, *all of the substantial factual and legal bases for which have not been disposed of in passing on objections to the claim.*" *Katchen*, 382 U.S. at 332 n.9 (emphasis added).

In sum, even assuming that *Katchen* applies beyond the context of avoiding-power claims, there is an important related question, also worthy of this Court's consideration, as to whether it is consistent with the Seventh Amendment to have a bench trial of *all* issues presented by a partially overlapping claim or only on the overlapping issues.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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