No. 23-1295

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

IN RE: CONGOLEUM CORPORATION, *ET AL.*,
Debtors.

OCCIDENTAL CHEMICAL CORPORATION,
Appellee,

v.

BATH IRON WORKS CORPORATION,
Appellant.

On Appeal from the United States District Court for the
District of New Jersey in Case No. 2:22-cv-00423-MCA
(The Honorable Madeline C. Arleo)

BRIEF OF SIX LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF APPELLANT'S PETITION FOR REHEARING OR REHEARING *EN BANC*

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INTEREST OF *AMICI CURIAE*[1]

The *amici curiae* are Anthony Casey of the University of Chicago Law School, Diane Lourdes Dick of the University of Iowa College of Law, Brook Gotberg of BYU Law School, Joshua Macey of Yale Law School, Robert Rasmussen of USC Gould School of Law, and David Skeel of the University of Pennsylvania Carey Law School. They are nationally recognized professors of law (collectively, the "Law Professors") who teach, write, and research in the areas of bankruptcy law, commercial law, civil procedure, and business law. The Law Professors have published numerous articles and treatises on these subjects. They have provided testimony to Congress on various bankruptcy matters, and they have authored several *amicus curiae* briefs submitted to this Court and the Supreme Court of the United States. The Professors maintain a professional commitment to assist in ensuring that courts are appropriately informed about how bankruptcy law is best used to address the interconnected rights of stakeholders in multilateral disputes. The Law Professors offer their vast experience and scholarship in this area of law to

[1] All parties have consented to the filing of this brief. Pursuant to Federal Rule of Appellate Procedure 29, *amici* state that no counsel for a party authored this brief in whole or in part. No person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

the court. The Law Professors submit this brief in support of the Appellant's petition for rehearing or rehearing *en banc*.

ARGUMENT

I. THE PANEL'S DECISION IMPROPERLY CONSTRAINS THE SCOPE OF SECTION 350.

This Court should grant rehearing to consider the proper test for reopening a chapter 11 bankruptcy case. The question of reopening a case, which is governed by 11 U.S.C. § 350, determines which tribunal will hear an action related to the enforcement of plans of reorganization and the orders confirming such plans. It is of central importance to the proper functioning of chapter 11 and should not be answered without full consideration of how the test interacts with the broad structure and purpose of chapter 11.

Section 350(b) of the Bankruptcy Code provides that "[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause."[2] Despite this plain language granting broad authority for reopening a case for "other cause," the Panel's Opinion narrowly focuses on two characteristics of a motion to reopen a case for enforcement purposes: 1) whether the motion to reopen presents a dispute directly impacting the interests of the debtor or administration of estate assets; and 2) whether the motion to reopen

[2] 11 U.S.C. § 350(b) (emphasis added).

involves an order "issued by the bankruptcy judge to whom the motion is directed."[3] The first characteristic is too narrowly framed, ignoring statutory language and purpose. The second characteristic focuses on a factor unrelated to a court's power to decide a case.

The focus on the debtor's interests or its assets is too narrow because it fails to appreciate the fundamental nature of a chapter 11 proceeding. The chapter 11 process is designed to resolve collective action problems in multilateral relationships.[4] Plans of reorganization are by nature resolutions among varied parties involving compromises among stakeholders beyond the debtor.[5] This does not mean that these disputes do not affect the debtor. The plan that reorganizes the debtor can often get approval only with the resolution of these disputes. Chapter 11's negotiating environment depends on the ability of parties with relationships with the debtor to resolve their differences. The enforcement (or non-enforcement)

[3] *In re Congoleum Corp.*, No. 23-1295, 2024 WL 3684376, at *4 (3d Cir. Aug. 1, 2024).

[4] *See Harrington v. Purdue Pharma L. P.*, 144 S. Ct. 2071, 2084 (2024); *Bartlette v. Kmart Corp.*, 312 F. App'x 441, 442 (3d Cir. 2008).

[5] *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) ("To minimize litigation and expedite the administration of a bankruptcy estate, '[c]ompromises are favored in bankruptcy.'").

of any one provision between two stakeholders will often have a ripple effect throughout the plan.[6]

Given the potential impact on various stakeholders, it is important for questions of the effect of the orders to come before the "bankruptcy tribunal"—the court which presided over the bankruptcy case under the jurisdiction of 28 U.S.C. § 1334. This is important because a bankruptcy tribunal in a chapter 11 case necessarily presides over and oversees the resolution of multilateral disputes among stakeholders and possesses the power to adjudicate their interconnected rights.[7] Only before that tribunal—as opposed to a court presiding over a bilateral civil lawsuit—do the various stakeholders all have a right to be heard about how enforcement rulings will impact their interests.[8]

For this reason, Section 350(b) does not limit the reopening power to administering assets or providing relief to the debtor. Instead, it provides the power to reopen a case for other cause. Consistent with that view, a guiding principle in

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[6] Anthony J. Casey & Joshua C. Macey, The Bankruptcy Tribunal, 96 AM. BANKR. L.J. 749, 752 (2022).

[7] *In re Amatex Corp.*, 755 F.2d 1034, 1039 (3d Cir. 1985) ("Bankruptcy cases frequently involve protracted proceedings with many parties participating.").

[8] *In re Philadelphia & Reading Coal & Iron Co.*, 105 F.2d 358, 360 (3d Cir. 1939) ("Congress has provided that all creditors and stockholders and their attorneys, agents and committees on their behalf have the right to be heard on all questions . . . .").

deciding whether cause exists to reopen a case might be that "the bankruptcy tribunal [is] the exclusive tribunal to resolve a dispute [when] sending that dispute elsewhere would thwart the Code's purpose of providing a collective forum where parties can coordinate to resolve multiparty disputes that involve distressed firms."[9] That principle requires a court deciding whether to reopen a case to look beyond the direct impact on a debtor's interests or its assets. Often an issue that arises after a final decree will affect the multilateral interests of the parties that were resolved in the reorganization case without directly implicating the debtor's interests or its assets. Because of the collective nature of chapter 11, those cases should be heard before the bankruptcy tribunal. In the very least, the interests of those parties should be considered when a court decides whether to reopen a case.

The Opinion's focus on the personal identity of the judge misconstrues the nature of our courts and elevates the identity of the judge above the jurisdictional power of the tribunal in a specific case. While this Court has considered the identity of the judge as a factor in reopening a prior case,[10] it was only one of many factors in that case. The Court should not now elevate that factor to a requirement for

[9] Anthony J. Casey & Joshua C. Macey, The Bankruptcy Tribunal, 96 AM. BANKR. L.J. 749, 750 (2022).

[10] *In re Zinchiak*, 406 F.3d 214, 224 (3d Cir. 2005).

reopening. If anything, the Court should stress that the personal identity of the judge should rarely be a major consideration in deciding where a case will be heard.

To see why, consider the arbitrary effect that judicial identity introduces to the subject matter jurisdiction of federal courts. One judge's personal decision to retire on a certain date could determine whether an enforcement question comes before the federal courts under 28 U.S.C. § 1334 or 28 U.S.C. § 1332 (or 28 U.S.C. § 1331). Indeed, in some situations the judge's personal retirement decision might even determine whether the issue may be heard in a federal court at all. Things become even more complicated (and personal) if the judge is deciding to reopen a case on the eve of a retirement announcement. Such personal factors do not normally carry any weight in allocating the jurisdictional power of federal courts.[11] Nor should they.

Of much greater importance and relevance to the purpose of chapter 11 is the scope of the tribunal power that a court wields over a case. A judge presiding over a bankruptcy case has different powers from the same judge presiding over a civil case. Here, for example, a court sitting in a civil case has before it Occidental Chemical Corporation and Bath Iron Works Corporation. The rulings and orders the

[11] As another extreme example, imagine a bankruptcy judge retired from one district is later appointed as a bankruptcy judge in a different district. We do not imagine that such a judge could ever reopen a case from the prior district.

court enters are binding on those parties. But, when a court in a civil case issues an order, that order is not issue preclusive on and does not affect the rights of non-parties. Thus, an order from a prior bankruptcy proceeding might be enforced in one civil dispute and ignored in another. This creates the risk of conflicting post-confirmation judgments that can unwind the structure of the original plan of reorganization.

In contrast, when the question is brought before the bankruptcy tribunal in a Section 1334 case, the other affected parties have the right to have their interests considered. For this reason, this court has previously found that "bankruptcy courts have broad discretion to reopen cases after an estate has been administered."[12] A new rule that could be read to categorically prohibit this discretion or limit it to cases involving the same judge or to cases that directly affect the debtor's assets can threaten the integrity of the entire plan process. If global settlements can be undone in bilateral civil cases, then chapter 11 reorganizations will become increasingly difficult.

And so, when an enforcement issue could impact the rights of multiple stakeholders, it should be possible for the bankruptcy tribunal to hear the issue. The Panel's Opinion appears to foreclose this possibility and could be read to

[12] *Id*. at 223 (citations omitted).

categorically prohibit the consideration of non-debtor interests in the decision to reopen a case. This ruling accordingly threatens the integrity of multilateral settlements contained in virtually all chapter 11 plans. Rehearing should be granted to consider the impact of the Court's ruling on cases in which the resolution of non-debtor interests in the bankruptcy case are substantially impacted.

CONCLUSION

For the reasons stated above, this Court should grant the Appellant's petition for rehearing or rehearing *en banc*.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, Daniel B. Butz, pursuant to this Court's local Rule 28.3(d), certify that I am a member in good standing of the Bar of this Court.

This brief has been prepared in proportionally-spaced typeface using Microsoft Word 2016 in 14-point Times New Roman font, pursuant to Fed. R. App. P. 32(a)(5). I further certify that this document complies with the type-volume limit of Fed. R. App. P. 29(b)(4). This document contains 1718 words, exclusive of the exempted portions of the brief, as provided in Fed. R. App. P. 32(f). As permitted by Fed. R. App. P. 32(g)(1), I have relied upon the word-count feature of this word-processing system in preparing this certificate.

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Pursuant to L.A.R. 46.1(e), the undersigned certifies that he is a member of the bar of the United States Court of Appeals for the Third Circuit.

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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2024, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Third Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users, and that service will be accomplished by the CM/ECF system.

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