No. 12-300

In the Supreme Court of the United States

PFIZER INC., PETITIONER

v.

LAW OFFICES OF PETER G. ANGELOS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

DONALD B. VERRILLI, JR.
Solicitor General
Counsel of Record
STUART F. DELERY
Acting Assistant Attorney General
MALCOLM L. STEWART
Deputy Solicitor General
JEFFREY B. WALL
Assistant to the Solicitor General
MICHAEL S. RAAB
JEFFREY CLAIR
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Whether, for purposes of 11 U.S.C. 524(g)(4)(A)(ii), a corporate parent's potential liability in tort arises "by reason of" its relationship with a subsidiary-debtor when the actions of the corporate parent that resulted in potential liability were motivated in part by that relationship, but the relationship is not legally relevant to the determination whether liability exists.

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This brief is submitted in response to this Court's invitation to the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

STATEMENT

1. Chapter 11 of the Bankruptcy Code allows a debtor to reorganize its affairs or to engage in an orderly liquidation of its property. See 7 *Collier on Bankruptcy* ¶ 1100.01, at 1100-4 (Alan N. Resnick & Henry J. Sommer, eds., 16th ed. rev. 2009). As part of that process, subject to exceptions not relevant here, the confirmation of a plan in a Chapter 11 case discharges the debtor from any pre-confirmation debts. See 11 U.S.C. 1141(d)(1)(A). The discharge in turn "operates as an injunction against the commencement or continuation" of any action to collect on claims against the debtor or its property. See 11 U.S.C. 524(a)(2) and (3). As a general

rule, "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." 11 U.S.C. 524(e).

In the asbestos context, however, Section 524(g) of the Bankruptcy Code establishes an exception to the general rule that a discharge in bankruptcy does not affect the obligations of persons other than the debtor. Under Section 524(g), the debtor's plan of reorganization may provide for the establishment of a trust that is funded by the debtor's assets, assumes the debtor's asbestos-related liability, and pays asbestos claimants. See 11 U.S.C. 524(g)(1)(B) and (2)(B)(i). Once a bankruptcy court confirms such a reorganization plan, it may "supplement the injunctive effect of a discharge," 11 U.S.C. 524(g)(1)(A), by entering an injunction against legal actions that seek to collect claims payable from the trust, 11 U.S.C. 524(g)(1)(B). To issue such a channeling injunction, the court must determine that various conditions are satisfied, among them that the debtor is likely to be subject to substantial future asbestos liability in an uncertain amount, see 11 U.S.C. 524(g)(2)(B)(ii)(I)-(II); that the injunction's terms are clearly set out in the plan and are supported by at least 75% of affected claimants, see 11 U.S.C. 524(g)(2)(B)(ii)(IV)(aa)-(bb); and that the injunction's terms treat current and future claimants substantially the same, see 11 U.S.C. 524(g)(2)(B)(ii)(V).

Section 524(g) allows a bankruptcy court to enjoin (and channel to the trust) asbestos-related actions against certain third parties as well as those against the debtor. Specifically, a channeling injunction under Section 524(g)

> may bar any action directed against a third party who * * * is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on

> the debtor to the extent such alleged liability of such third party arises by reason of—
>
> (I) the third party's ownership of a financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor;
>
> (II) the third party's involvement in the management of the debtor or a predecessor in interest of the debtor, or service as an officer, director or employee of the debtor or a related party;
>
> (III) the third party's provision of insurance to the debtor or a related party; or
>
> (IV) the third party's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the debtor or a related party[.]

11 U.S.C. 524(g)(4)(A)(ii). Section 524(g) thus permits a court to enjoin an asbestos-related action against a third party whose alleged liability "arises by reason of" one of four listed relationships to the debtor.

2. From the 1930s through the early 1970s, the debtor in this case, Quigley Co., Inc., manufactured an insulating product called Insulag that contained asbestos. Insulag did not contain any warnings about the dangers of asbestos. As the health effects of asbestos became known, tens of thousands of individuals brought lawsuits against Quigley. By the time that Quigley filed for Chapter 11 bankruptcy in 2004, it was defending more than 160,000 asbestos-related suits and claims. Petitioner Pfizer Inc. was named as a co-defendant in many of those suits. Petitioner had acquired Quigley in 1968, and petitioner's name, logo, or trademark appeared on Insulag packaging and marketing materials following the acquisition. See Pet. App. 37a-38a.

When Quigley filed for bankruptcy, it requested an injunction that would bar the commencement or continuation of asbestos-related actions against both Quigley and petitioner. Quigley's main assets are its interests in joint insurance policies that it shares with petitioner. See Pet. App. 2a-3a, 38a. Those policies satisfy asbestos-related claims "on a first billed, first paid basis, irrespective of amounts previously billed by or paid to [petitioner] or Quigley." *Id.* at 90a. As a result, any insurance payment on asbestos claims made against petitioner diminishes the sum available to pay present and future claims against Quigley. See *ibid.* Quigley therefore proposed to place the insurance policies and associated funds in a trust, and it asked the bankruptcy court to enjoin all asbestos-related actions against petitioner as well as those against itself. See *id.* at 38a.

3. Based on that proposal, on the day that Quigley filed for bankruptcy, the bankruptcy court entered an order pursuant to Sections 105(a) and 362(a) of the Bankruptcy Code that enjoined the prosecution of asbestos-related claims against petitioner. See Pet. App. 87a-96a. In December 2007, the court narrowed its injunction to track the language of Section 524(g)(4)(A)(ii). See *id.* at 81a-82a. The amended injunction thus "provided [petitioner] with the same protection it would receive under 11 U.S.C. 524(g) if Quigley confirms its proposed plan." *Id.* at 62a. In the meantime, respondent Law Offices of Peter G. Angelos continued to prosecute claims that it had previously asserted against petitioner under the Restatement (Second) of Torts § 400 (1965), as incorporated into the common law of Pennsylvania, which imposes liability in certain circumstances on the "apparent manufacturer" of a defective product. See Pet. App. 62a, 64a, 70a. Petitioner filed a motion in the

bankruptcy court to enforce the amended injunction, arguing that the Pennsylvania claims fall within the terms of Section 524(g) as incorporated into the injunction. See *id.* at 66a.

4. The bankruptcy court agreed and enjoined respondent from pursuing its Section 400 claims in Pennsylvania courts. Pet. App. 61a-78a. The court held that petitioner's "Section 400 liability 'arises by reason of' its corporate connection to Quigley," because "[b]ut for [petitioner's] ownership and/or management of Quigley, its name and logo would never have been used." *Id.* at 72a. The court observed that Pennsylvania considers liability under Section 400 to be a form of derivative liability, see *id.* at 74-75a, and the court viewed it as anomalous to enjoin claims based on other types of derivative liability while not enjoining Section 400 claims, see *id.* at 73a-74a. The bankruptcy court therefore concluded that petitioner's alleged liability "'arises by reason of' [petitioner's] ownership or management of Quigley," and that "[c]onsequently, the Section 400 claim[s] may be channeled into the Quigley trust." *Id.* at 75a.

5. The district court reversed. Pet. App. 36a-60a. The court explained that "[f]or a third-party action to be enjoinable" under Section 524(g), "the action must allege that [petitioner] is 'directly or indirectly liable' for the conduct of Quigley," and "the action must 'arise by reason of' [petitioner's] ownership of Quigley." *Id.* at 48a-49a (quoting 11 U.S.C. 524(g)(4)(A)(ii)). The court found that respondent's suits seek to hold petitioner indirectly liable for Quigley's conduct, and that the first requirement for a Section 524(g) injunction was therefore satisfied, because "in the absence of a defective product, [petitioner] committed no tort by placing its name and logo on Insulag packaging." *Id.* at 49a. The

court further held, however, that petitioner's alleged liability does not arise "by reason of" its ownership of Quigley because "[petitioner's] affiliation with Quigley was legally irrelevant to its sponsor liability." *Id.* at 51a. Rather, the district court explained, respondent "seeks to bring separate direct actions against [petitioner] for the harm claimants suffered because [petitioner] breached an independent legal duty not to employ its name and logo in the marketing of a defective product." *Id.* at 56a-57a. For that reason, the court concluded, respondent's Section 400 claims "do not arise out of [petitioner's] ownership of Quigley and, therefore, do not fall within the scope of [Section] 524(g)." *Id.* at 60a.

6. The court of appeals affirmed. Pet. App. 1a-35a. The court held that for liability to arise "by reason of" one of the four enumerated relationships in Section 524(g),

> the liability sought to be imposed must arise as a *legal* consequence of one of the four enumerated relationships (or, stated differently, * * * the relationship, in light of the debtor's conduct or the claims asserted against it, must be a legal cause of or a legally relevant factor to the third party's alleged liability).

Id. at 30a. Applying that test here, the court observed that "[petitioner] does not argue that its ownership of Quigley is pertinent in any legal sense to the claims asserted in [respondent's] suits." *Id.* at 35a. The court therefore concluded that respondent's claims do not fall within the terms of Section 524(g) as incorporated into the injunction. See *ibid.* Because that analysis provided a sufficient ground for holding that the injunction does not encompass respondent's current claims, the court declined to "address whether [respondent's] suits seek to hold [petitioner] directly or indirectly liable for the

conduct of Quigley." *Id.* at 29a n.17; see 11 U.S.C. 524(g)(4)(A)(ii).

DISCUSSION

The court of appeals correctly held that, for purposes of 11 U.S.C. 524(g)(4)(A)(ii), a corporate parent's liability does not arise "by reason of" its relationship with a subsidiary-debtor unless that relationship is legally relevant to the plaintiff's allegation that the parent is liable. Neither this Court nor any other court of appeals has construed the phrase "by reason of" in Section 524(g)(4)(A)(ii). Other federal statutes use that phrase, but they do so in markedly different contexts, and this Court has recognized that the phrase's meaning depends on the statutory context in which it appears. And while Section 524(g) performs a critical role in assessing liability for asbestos-related claims, this case presents a narrow question that has arisen infrequently. Further review is not warranted.

A. The Decision Below Is Correct

1. a. Section 524(g)(4)(A)(ii) provides that, if certain conditions are satisfied, a bankruptcy court may enjoin "any action directed against a third party who * * * is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of" one of four listed relationships to the debtor. 11 U.S.C. 524(g)(4)(A)(ii). The question presented here concerns the meaning of the phrase "by reason of" in Section 524(g)(4)(A)(ii). The court of appeals correctly interpreted that phrase to mean that "the liability sought to be imposed must arise as a legal consequence of one of the four enumerated relationships." Pet. App. 30a (emphasis omitted). "[O]r, stated differently," the

court explained, "the relationship, in light of the debtor's conduct or the claims asserted against it, must be a legal cause of or a legally relevant factor to the third party's alleged liability." *Ibid.*

That is the most natural interpretation of the statutory language. The application of Section 524(g)(4)(A)(ii) depends not on whether some factual event (here, the placement of petitioner's name and logo on Quigley's products) occurred "by reason of" petitioner's ownership interest in Quigley, but on whether petitioner's "alleged *liability* * * * arises by reason of" that corporate relationship. 11 U.S.C. 524(g)(2)(A)(ii) (emphasis added). Because the inquiry concerns the factors that cause legal liability to arise, the court of appeals correctly focused on whether the parent-subsidiary relationship was "a legal cause of or a legally relevant factor to" the nondebtor's alleged liability. Pet. App. 30a. That approach permits a bankruptcy court to enjoin an asbestos-related claim against a corporate parent only when the parent's relationship to the debtor actually forms part of the basis for the claim.

By way of analogy, suppose a statute provided that "no person may be held liable for money damages by reason of his attendance at a religious ceremony." Such a law would not naturally be construed to shield from tort liability a parishioner who negligently rear-ended another vehicle while driving home from church. In that circumstance, the accident itself could perhaps be said to have occurred "by reason of" the negligent driver's attendance at church, since church attendance was the but-for cause of the driver's presence at the relevant location. But so long as the driver's attendance at church was not treated as legally relevant to the determination of fault or the computation of damages, the parishioner

would not naturally be said to "be held liable by reason of" that attendance.

Or to take another analogy proffered by the court of appeals, if the successor to a bankrupt's assets unlawfully discriminated in the "hir[ing] [of] new employees to administer these assets," the acquisition of the assets might be a but-for cause of the discriminatory acts (since without the acquisition there would be no need to hire new employees), but the company would not be "liable * * * by reason of its becoming * * * a transferee or successor." Pet. App. 33a (quoting 11 U.S.C. 524(g)(3)(A)(ii)). Indeed, petitioner appears to acknowledge (Pet. 24) that liability in that circumstance would not be "by reason of" the company's succession to the bankrupt's assets. Petitioner offers no coherent way, however, of reconciling that concession with its overarching position that the phrase "by reason of" mandates a but-for causation test. As these examples demonstrate, where (as here) the phrase "by reason of" is used to require a causal link between a particular event or relationship and a defendant's "liability," the inquiry appropriately centers on factors that are alleged to be legally relevant to the liability determination.

b. Petitioner focuses (Pet. 21) on the court of appeals' statement that "to fit within the parameters of [Section] 524(g), the liability sought to be imposed must arise as a *legal consequence* of one of the four enumerated relationships." Pet. App. 30a (partial emphasis added). As the court explained in the rest of that sentence, this test does not require that the relationship, standing alone, must give rise to liability. Rather, the relationship must be "a legal cause of or a legally relevant factor to" the third party's alleged liability: the relationship must form some part of the basis for the plaintiff's claim.

Ibid. The court of appeals' analysis allows for the possibility that the nondebtor's liability also has additional legal causes or legally relevant factors. Contrary to petitioner's contention (Pet. 21), the court of appeals did not thereby rewrite or add language to the statute. The court merely interpreted the phrase "by reason of," as it appears in a specific statutory context, to refer to legal rather than factual causation.

Petitioner argues (Pet. 21) that if Congress had intended to refer to legal causation, it would have used the phrase "legal effect and consequences." As petitioner correctly observes (*ibid.*), that phrase appears three times in other provisions of Section 524. But all three usages—which are the only occurrences of that phrase in the Bankruptcy Code—require the debtor's attorney or the bankruptcy court to advise the debtor of "the legal effect and consequences" of a reaffirmation agreement. See 11 U.S.C. 524(c)(3)(C), (d)(1)(B) and (k)(5)(A). Petitioner is thus correct that the phrase "legal effect and consequences" has a specialized meaning in the bankruptcy context, but it is not the meaning that petitioner ascribes to it. The phrase refers to instructing a debtor about the legal consequences of a certain agreement. It does not refer—as does the phrase "by reason of" in Section 524(g)(4)(A)(ii)—to whether a relationship with a debtor has resulted in legal liability for a nondebtor.

c. The court of appeals' interpretation is supported by the surrounding language of Section 524(g). See, *e.g.*, *Roberts* v. *Sea-Land Servs., Inc.*, 132 S. Ct. 1350, 1357 (2012) ("[T]he words of a statute must be read in their context and with a view to their place in the overall statutory scheme.") (quoting *Davis* v. *Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989)). Pursuant to its

opening clause, Section 524(g) applies "[n]otwithstanding the provisions of [S]ection 524(e)." Subsection (g) is thus an exception to the general rule in Subsection (e) that a Chapter 11 discharge does not affect the obligations of persons other than the debtor. See 11 U.S.C. 524(e). The exception allows a bankruptcy court to enjoin an asbestos-related action against a nondebtor if two requirements are satisfied: (i) the third party is "alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor"; and (ii) that alleged liability "arises by reason of" one of the four listed relationships. 11 U.S.C. 524(g)(4)(A)(ii).

Accordingly, Section 524(g) authorizes the bankruptcy court to enjoin a suit against a third party who is alleged to *share* asbestos-related liability with the debtor *for a particular reason*. The first of those requirements ensures that Section 524(g) does not apply to tort actions based solely on a third party's independent conduct. Rather, the action must allege that the third party is "directly or indirectly liable for the conduct of, claims against, or demands on the debtor." 11 U.S.C. 524(g)(4)(A)(ii). Moreover, Section 524(g) does not encompass all actions involving that type of shared liability, but only suits where the nondebtor's liability "arises by reason of" a particular relationship between the third party and the debtor. The fact that the statute picks out only certain types of shared liability reinforces the conclusion that the nondebtor-debtor relationship must be "a legally relevant factor to the third party's alleged liability." Pet. App. 30a.

That inference is strengthened by the nature of the four relationships listed in Section 524(g)(4)(A)(ii)(I)-(IV): the third party's ownership of a financial interest in the debtor; its involvement in the debtor's manage-

ment, including service as an officer or director; its provision of insurance to the debtor; or its involvement in a loan or financial transaction affecting the debtor. See 11 U.S.C. 524(g)(4)(A)(ii)(I)-(IV). As the court of appeals explained, outside of bankruptcy, each of those relationships commonly is legally relevant "to the liability of the one party for the conduct of or claims or demands against the other." Pet. App. 32a. If "by reason of" in this context required nothing more than but-for causation, it would be "surprising that each enumerated relationship * * * just happens to correspond to a previously-recognized relationship that may, in appropriate circumstances, give rise to * * * legal liability." *Id.* at 32a-33a. The more natural explanation is that Congress selected particular types of relationships precisely because those relationships are often "a legal cause of or a legally relevant factor to [a] third party's alleged liability." *Id.* at 30a.

d. Section 524(g)(4)(A)(ii) refers to suits in which a third party "is *alleged* to be directly or indirectly liable * * * to the extent such *alleged* liability * * * arises by reason of" one of four specified relationships. 11 U.S.C. 524(g)(4)(A)(ii) (emphasis added). Congress's use of the word "alleged" indicates that the plaintiff's theory of the case should be taken at face value, and that a channeling injunction should bar a particular suit against a third party only if the plaintiff himself has invoked one of the enumerated relationships as a factor supporting third-party liability. Under that approach, the decision whether to enjoin a particular suit can generally be based on the pleadings in that suit. Under petitioner's theory, by contrast, the bankruptcy court in this case was required to determine, as a factual matter, whether petitioner would have allowed its name and logo

to be placed on Quigley's products if the parent-subsidiary relationship did not exist. That approach departs from Congress's focus on the grounds of liability "alleged" in the relevant suit, and requires the bankruptcy court to decide questions that would be irrelevant to that suit's disposition.

2. Applying its test to the circumstances of this case, the court of appeals correctly held that respondent's tort claims do not arise "by reason of" petitioner's ownership of debtor Quigley. Under Pennsylvania law, a party may be held liable as the "apparent manufacturer" of a defective product if it authorizes its name or trademark to appear on that product. See *Forry* v. *Gulf Oil Corp.*, 237 A.2d 593, 599 (Pa. 1968) (adopting Restatement (Second) of Torts § 400 & cmt. d (1965)). According to the Pennsylvania Supreme Court, "[t]he reasons for the extension of liability in such situation are sound: (a) the name and the trademark of the sponsor, plus the reputation of the sponsor, constitute 'an assurance to the user of the quality of the product' and (b) 'reliance (by the user) upon a belief that (the sponsor) has required (the product) to be made properly for him.'" *Ibid.* (internal citations omitted) (quoting Restatement (Second) of Torts § 400 cmt. d (1965)).

Petitioner did not contend in the court of appeals that its ownership of Quigley was legally relevant to whether it was the "apparent manufacturer" of Insulag under Pennsylvania law. See Pet. App. 35a ("[Petitioner] does not argue that its ownership of Quigley is pertinent in any legal sense to the claims asserted in the Angelos suits."). Petitioner thus did not dispute that, as the district court explained, the relevant question under Pennsylvania law is whether petitioner allowed its name or trademark to appear on Insulag as a defective product—

not whether petitioner owned or had any other corporate affiliation with Quigley. See *id.* at 51a. Pennsylvania law appears to permit the imposition of liability on an apparent manufacturer that licenses the use of its name or trademark to an unaffiliated actual manufacturer. See, *e.g.*, *Carter* v. *Joseph Bancroft & Sons Co.*, 360 F. Supp. 1103, 1107 (E.D. Pa. 1973). The courts below therefore correctly concluded, based on the record before them, that petitioner's ownership of Quigley is legally irrelevant to respondent's claims.

B. This Court's Review Is Not Warranted At This Time

Apart from the merits of the court of appeals' decision, that decision does not warrant this Court's review for several reasons.

1. The court of appeals' decision does not conflict with any decision of this Court. This Court has never addressed the meaning of the phrase "by reason of" in Section 524(g)(4)(A)(ii).

a. Petitioner asserts both that the decision below "directly conflicts" with this Court's decision in *Travelers Indemnity Co.* v. *Bailey*, 557 U.S. 137 (2009) (*Travelers*), Pet. 14, and that the question presented was "left open" in *Travelers*, Pet. 16. Because the Court in *Travelers* expressly declined to address the scope of Section 524(g)(4)(A)(ii), the decision in that case has no bearing on the question presented here.

Travelers involved the reorganization in bankruptcy of the Johns-Manville Corporation (Manville). As part of that reorganization process, the bankruptcy court created a trust to pay asbestos claims against Manville. See *Travelers*, 557 U.S. at 141. In 1986, the court also enjoined and channeled to the trust all claims against Manville's insurer, Travelers Indemnity Company (Travelers), that were "based upon, arising out of or re-

lating to" Travelers' insurance coverage of Manville. *Id.* at 141-142, 148. The question before this Court in *Travelers* was whether the 1986 order barred subsequent state-law actions against Travelers. The Court held that it did. See *id.* at 148-149.

Petitioner contends that because Section 524(g) was modeled on the injunction at issue in *Travelers*, "[t]his Court's broad construction of the injunctive language in *Travelers* is directly applicable here." Pet. 14. The injunction in *Travelers*, however, was quite different from what Congress authorized in Section 524(g)(4)(A)(ii). The *Travelers* injunction governed claims "based upon, arising out of or relating to" Travelers' insurance coverage of Manville. See 557 U.S. at 148 ("In a statute, the phrase 'in relation to' is expansive.") (internal brackets and quotation marks omitted). The Court held that the injunction "contain[ed] nothing limiting it to derivative actions," but rather by its terms unambiguously encompassed suits "to recover against Travelers either for supposed wrongdoing in its capacity as Manville's insurer or for improper use of information that Travelers obtained from Manville as its insurer." *Id.* at 149. By contrast, Section 524(g)(4)(A)(ii) governs only actions in which the plaintiff seeks to hold a third party "directly or indirectly liable for the conduct of, claims against, or demands on the debtor," and only "to the extent such alleged liability * * * arises by reason of" a particular relationship that between the third party and the debtor. 11 U.S.C. 524(g)(4)(A)(ii). Since the injunction at issue in *Travelers* contained neither of those limitations, this Court's interpretation of that injunction sheds no meaningful light on the proper construction of Section 524(g)(4)(A)(ii).

The injunction in *Travelers* was issued in 1986, eight years before Section 524(g) was enacted. See *Travelers*, 557 U.S. at 155. The question before the Court was not whether the injunction was properly entered, or whether it would have been authorized by Section 524(g)(4)(A)(ii) if that provision had been in effect at the time of entry, but whether the injunction could be collaterally attacked in subsequent lawsuits after the time for direct appeal had expired. The Court held that it could not. See *id.* at 151-154. The Court further observed that, "owing to the posture of this litigation, we do not address the scope of an injunction authorized by [Section 524(g)(4)(A)(ii)]." *Id.* at 155. Neither in *Travelers* nor in any subsequent decision has this Court addressed the proper interpretation of Section 524(g)(4)(A)(ii).

b. Petitioner contends that this Court has repeatedly held that "Congress's use of the phrase 'by reason of' entails 'but for' causation." Pet. 19. To the contrary, the Court has said only that "the phrase, 'by reason of,' requires *at least* a showing of 'but for' causation." *Gross* v. *FBL Fin. Servs., Inc.*, 557 U.S. 167, 176 (2009) (emphasis added). In *Holmes* v. *Securities Investor Protection Corp.*, 503 U.S. 258 (1992), the Court interpreted the phrase "by reason of" in the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. 1964(c), to require not only but-for causation but also proximate causation. See *Holmes*, 503 U.S. at 268. The Court observed that the statutory language "hardly compelled" a but-for standard, and that "the very unlikelihood that Congress meant to allow all factually injured plaintiffs to recover persuades us that RICO should not get such an expansive reading." *Id.* at 266 (footnote omitted); see *Associated Gen. Contractors of Cal., Inc.* v. *California*

State Council of Carpenters, 459 U.S. 519, 534-538 (1983) (interpreting the phrase "by reason of" to require proximate causation).

Similarly here, the unlikelihood that Congress meant to bar "the prosecution of claims bearing only an accidental nexus to an asbestos bankruptcy" weighs against adoption of a but-for causation standard. Pet. App. 34a. In any event, this Court's decisions reject any suggestion that the phrase "by reason of" bears a single meaning regardless of context. Rather, the Court has made clear that the phrase's meaning depends on the statutory setting in which it appears.

2. Petitioner argues (Pet. 19-21) that the decision below conflicts with various decisions of other courts of appeals, which have construed the phrase "by reason of" in other statutes to mean but-for causation. Petitioner's argument again overlooks the importance of examining the particular context in which the phrase "by reason of" appears. Like the RICO provision at issue in *Holmes*, virtually all of the statutes, regulations, and contracts at issue in the circuit decisions on which petitioner relies refer to situations in which some factual event occurs "by reason of" another event.[1] In assessing whether a

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[1] See *Holmes*, 503 U.S. at 267 (whether an injury to business or property occurred by reason of a RICO violation); see also *Viacom Int'l, Inc.* v. *YouTube, Inc.*, 676 F.3d 19, 38-39 (2d Cir. 2012) (whether copyright infringement occurred by reason of storage of information on particular systems or networks); *UMG Recordings, Inc.* v. *Shelter Capital Partners LLC*, 667 F.3d 1022, 1031 (9th Cir. 2011) (same); *Robinson Knife Mfg. Co., Inc.* v. *CIR*, 600 F.3d 121, 131-132 (2d Cir. 2010) (whether certain costs were incurred by reason of the performance of production activities); *Spirtas Co.* v. *Insurance Co. of the State of Pa.*, 555 F.3d 647, 652 (8th Cir. 2009) (whether attorney and expert witness fees were incurred by reason of having executed a bond); *New Directions Treatment Servs.* v. *City of Reading*, 490 F.3d

factual effect has resulted "by reason of" some cause, the context will often (though not invariably) indicate that but-for factual causation is the appropriate standard.

By contrast, Section 524(g)(4)(A)(ii) applies when the alleged *legal liability* of the relevant third party "arises by reason of" specified relationships between the third party and the debtor. In that context, for the reasons given above, the appropriate standard is legal causation, *i.e.*, whether the relationship between the nondebtor and debtor was "a legal cause of or a legally relevant factor to" the nondebtor's alleged liability. Pet. App. 30a. In any event, petitioner does not identify any analogous federal statute that uses the phrase "by reason of" in connection with the imposition of legal liability. There simply is not any circuit conflict warranting this Court's review.

3. Far from presenting a question of exceptional importance, this case presents a narrow question about whether a particular cause of action under Pennsylvania law falls within Section 524(g)(4)(A)(ii)'s scope. That cause of action is itself unusual. Although most jurisdictions have adopted some version of the apparent manufacturer theory of liability described in Restatement (Second) of Torts § 400, most of those jurisdictions require that the apparent manufacturer have participated in the sale or distribution of the defective product. See Pet. App. 48a; *Reiss* v. *Korematsu Am. Corp.*, 735 F. Supp. 2d 1125, 1133 (D. N.D. 2010) (collecting

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293, 301 n.4 (3d Cir. 2007) (whether discrimination against an individual occurred by reason of a covered disability); but see *Pacific Ins. Co.* v. *Eaton Vance Mgmt.*, 369 F.3d 584, 587-589 (1st Cir. 2004) (whether, for purposes of an insurance policy, loss or liability was incurred by reason of a failure to discharge certain legal obligations).

cases). Pennsylvania appears to have adopted the minority view that an apparent manufacturer may be held liable solely for allowing its name or trademark to be affixed to another's product. See Pet. App. 48a. This case thus involves an unusual cause of action that exists only in a minority of jurisdictions.

The difference between those two approaches is potentially significant to the application of Section 524(g)(4)(A)(ii). Under that provision, actions against third parties may be enjoined only when the third party "is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor." 11 U.S.C. 524(g)(4)(A)(ii). In those jurisdictions that have adopted the majority view, under which an apparent manufacturer can be held liable only if it has participated in the sale or distribution of the defective product, a suit brought against a corporate parent alleged to be liable as an apparent manufacturer of a subsidiary's defective product would seek to hold the parent liable *for its own conduct*, *i.e.*, for its participation in the sale or distribution of the defective product. Such a suit therefore could not be enjoined under Section 524(g)(4)(A)(ii), even if petitioner's interpretation of the phrase "by reason of" were adopted. Accordingly, the question presented in this case will not arise in the majority of jurisdictions. And the practical effect of the decision below is that apparent-manufacturer claims will be treated the same for purposes of Section 524(g)(4)(A)(ii) regardless of the jurisdiction in which they are brought.

Although Section 524(g) has played an important role in the resolution of asbestos-related liability, see Pet. 12-13, the Executive Office of the United States Trustee Program has informed this Office that the number of asbestos-related bankruptcy filings appears to have

been decreasing. The number of asbestos cases filed in New Jersey, Delaware, and Pennsylvania—which have a high concentration of such cases—has decreased significantly during the past few years. From 2006 to the present, reorganization plans have been confirmed in 19 asbestos cases in that region.[2] There are currently four pending cases in that region without confirmation orders. There is no indication that the question presented here has arisen frequently or that any ambiguity in the phrase "by reason of" in Section 524(g)(4)(A)(ii) has impaired the effective operation of the statutory scheme.

4. Finally, it remains possible that petitioner could obtain relief at a later date from the bankruptcy court depending on how the litigation in Pennsylvania proceeds. The court of appeals decided this case on the assumption, which petitioner did not challenge, that liability as an apparent manufacturer under Pennsylvania law can be determined without reference to the parent-subsidiary relationship between petitioner and Quigley. See Pet. App. 35a ("[Petitioner] does not argue that its ownership of Quigley is pertinent in any legal sense to the claims asserted in [respondent's] suits."); pp. 13-14, *supra*. If respondent advances a theory of liability that renders that assumption inaccurate, the channeling injunction would allow petitioner to return to the bankruptcy court and seek to enjoin the claims. For instance, if petitioner denies that it authorized Quigley to place petitioner's name and logo on Quigley's products,

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[2] Two of those confirmation orders are pending on appeal in the court of appeals or the district court. See *In re W.R. Grace & Co.*, appeal pending, No. 12-1402 (3d Cir. filed Feb. 23, 2012) (oral argument scheduled for June 17, 2013); *In re Flintkote Co.*, No. 1:13-cv-00227-LPS (D. Del. filed Feb. 13, 2013) (oral argument scheduled for July 31, 2013).

and respondent argues that the requisite authorization can be inferred from the parent-subsidiary relationship alone, petitioner would have a new ground for contending that its alleged liability "arises by reason of" its ownership of Quigley.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DONALD B. VERRILLI, JR.
Solicitor General
STUART F. DELERY
Acting Assistant Attorney General
MALCOLM L. STEWART
Deputy Solicitor General
JEFFREY B. WALL
Assistant to the Solicitor General
MICHAEL S. RAAB
JEFFREY CLAIR
Attorneys

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