No. 14-1278

In the Supreme Court of the United States

PEABODY COAL COMPANY, PETITIONER

v.

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, DEPARTMENT OF LABOR, ET AL.

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

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

The Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, provides disability benefits for coal miners suffering from pneumoconiosis, as well as survivors' benefits for the miners' eligible dependents. Before 1982, the qualifying dependents of a miner who had been awarded disability benefits were automatically entitled to survivors' benefits after the miner's death. In 1981, Congress amended the BLBA to eliminate those derivative benefits for claims filed after January 1, 1982. Under the amended statute, a miner's dependents were generally entitled to survivors' benefits only if pneumoconiosis caused the miner's death. In 2010, in Section 1556(b) of the Patient Protection and Affordable Care Act (ACA), Pub. L. No. 111-148, 124 Stat. 260, Congress restored the pre-1982 entitlement to derivative benefits. Under the current statute, the eligible dependents of any miner who received disability benefits during his or her lifetime are once again automatically entitled to survivors' benefits, without regard to the cause of the miner's death. The question presented is:

Whether an award of derivative benefits to a miner's widow under the BLBA as amended by Section 1556(b) violates the separation of powers, where the widow unsuccessfully sought benefits under the pre-ACA statute and an Article III court upheld the denial of her pre-ACA claim.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-3) is not published in the *Federal Reporter* but is reprinted at 577 Fed. Appx. 469. The decision and order of the Benefits Review Board of the Department of Labor (Pet. App. 4-11) and the decision and order of the administrative law judge (Pet. App. 12-20) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 18, 2014. A petition for rehearing was denied on December 23, 2014 (Pet. App. 58). On March 12, 2015, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including April 22, 2015, and the petition was filed on

that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Pneumoconiosis, colloquially known as black lung disease, is "a chronic respiratory and pulmonary disease arising from coal mine employment." *Pittston Coal Grp.* v. *Sebben*, 488 U.S. 105, 108 (1988). In 1969, Congress created a black lung benefits program "to provide benefits for miners totally disabled due at least in part to pneumoconiosis arising out of coal mine employment, and to the dependents and survivors of such miners." *Pauley* v. *BethEnergy Mines, Inc.*, 501 U.S. 680, 683-684 (1991). Claims for benefits are adjudicated by the Department of Labor and paid by the relevant mine operator. *Pittston Coal Grp.*, 488 U.S. at 109-110.

The governing statute, now known as the Black Lung Benefits Act (BLBA), 30 U.S.C. 901 *et seq.*, has always provided for two types of benefits: disability benefits for miners, and survivors' benefits for miners' eligible dependents. But the elements of entitlement for those benefits have shifted repeatedly as the statute has been amended over the years. See *B&G Constr. Co.* v. *Director, OWCP*, 662 F.3d 233, 238-245 (3d Cir. 2011) (describing significant amendments in 1972, 1977, 1981, and 2010).

This case concerns the standards for survivors' benefits. Since the beginning of the black lung benefits program, the statute has provided that a deceased miner's qualifying dependents are entitled to survivors' benefits if they can establish that the miner died due to pneumoconiosis. 30 U.S.C. 901, 921 (1970). Before 1982, however, that showing of causation was unnecessary if the miner had been awarded total disa-

bility benefits under the BLBA during his or her lifetime. The qualifying dependents of such a miner had an automatic, derivative entitlement to survivors' benefits even if pneumoconiosis played no role in the miner's death. 30 U.S.C. 901(a), 922(a), 932(*l*) (1976 & Supp. III 1979).[1]

In 1981, Congress prospectively eliminated derivative survivors' benefits by appending a limiting clause to, among other provisions, 30 U.S.C. 932(*l*). After the amendment, Section 932(*l*) provided:

> In no case shall the eligible survivors of a miner who was determined to be eligible to receive benefits under [the BLBA] at the time of his or her death be required to file a new claim for benefits, or refile or otherwise revalidate the claim of such miner, *except with respect to a claim filed * * * on or after [December 31, 1981].*

30 U.S.C. 932(*l*) (1982) (new clause emphasized).[2] As a result of the amendment, a miner's dependents seeking survivors' benefits after 1981 were generally entitled to benefits only if they could show that pneumoconiosis caused the miner's death.

In 2010, Congress again adjusted the BLBA's eligibility requirements by restoring derivative survivors' benefits. The amendment was made by Section 1556(b) of the Patient Protection and Affordable Care

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[1] From 1972 to 1981, survivors could also establish entitlement to benefits by proving that the miner had been totally disabled by pneumoconiosis at the time of his or her death, even if the miner had died from an unrelated cause and had not been awarded lifetime disability benefits. See 30 U.S.C. 901, 921(a) (1976).

[2] Similar limiting clauses were appended to several other sections of the BLBA. See 30 U.S.C. 921(a), (c)(2), and (c)(4)-(5), 922(a)(2)-(5) (1982).

Act (ACA), Pub. L. No. 111-148, 124 Stat. 260, which struck the limiting clause added to Section 932(*l*) in 1981. The effect of that change was "to reinstate the right to automatic survivor benefits once found in [Section] 932(*l*) and now found there again with the deletion of the 'except' clause." *Vision Processing, LLC* v. *Groves*, 705 F.3d 551, 555 (6th Cir. 2013).[3] Section 1556(b)'s amendment applies "with respect to claims filed * * * after January 1, 2005 that are pending on or after" March 23, 2010, the date of the ACA's enactment. ACA § 1556(c), 124 Stat. 260.

2. This case arises out of private respondent Eve Hill's effort to obtain survivors' benefits under the BLBA.

a. Mrs. Hill's husband, Arthur Hill, worked as a coal miner in Kentucky for 41 years. Pet. App. 2. In 1983, Mr. Hill filed a claim for disability benefits under the BLBA. *Id.* at 37. An administrative law judge (ALJ) ultimately awarded benefits, finding that Mr. Hill was totally disabled by pneumoconiosis arising out of his coal mine employment and that petitioner, as Mr. Hill's former employer, was responsible for paying his benefits. *Id.* at 37-38. Petitioner appealed to the Department of Labor's Benefits Review Board (Board), which affirmed the award. *Ibid.* Petitioner then sought review in the court of appeals, which upheld the Board's decision. *Peabody Coal Co.* v. *Hill*, 123 F.3d 412 (6th Cir. 1997). Petitioner thereafter paid disability benefits to Mr. Hill until his death in May 2000. Pet. App. 21-26.

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[3] Accord *U.S. Steel Mining Co.* v. *Director, OWCP*, 719 F.3d 1275, 1283 (11th Cir. 2013); *West Va. CWP Fund* v. *Stacy*, 671 F.3d 378, 381-382 (4th Cir. 2011), cert. denied, 133 S. Ct. 127 (2012); *B&G Constr. Co.*, 662 F.3d at 247-253.

b. In June 2000, Mrs. Hill filed a claim for survivors' benefits. Pet. App. 2. Under the law in effect at the time, Mrs. Hill was entitled to benefits only if Mr. Hill's death was caused by pneumoconiosis. *Id.* at 2, 23-24. An ALJ denied Mrs. Hill's claim, finding that although Mr. Hill had suffered from pneumoconiosis, the evidence failed to establish that the disease caused his death. *Id.* at 35-57. The Board affirmed the ALJ's denial. *Id.* at 27-34. Mrs. Hill filed a petition for review in the Sixth Circuit, which upheld the Board's decision. *Id.* at 21-26.

c. In January 2011, after enactment of the ACA, Mrs. Hill filed a second claim for survivors' benefits. Pet. App. 2. An ALJ granted the claim, concluding that because Mr. Hill had been awarded disability benefits during his lifetime, Mrs. Hill was automatically entitled to benefits under the BLBA as amended by Section 1556(b) of the ACA. *Id.* at 12-20. The ALJ's award provided that Mrs. Hill's entitlement to benefits commenced as of March 23, 2010, the date the ACA was enacted. *Id.* at 19.

The Board affirmed the award but modified the date on which benefits commenced. Pet. App. 4-11. In general, survivors' benefits begin to accrue in the month of the miner's death, even if eligibility for benefits is not determined until later. 20 C.F.R. 725.503(c). But the Board explained that, under the applicable regulations, an award on a second or subsequent claim begins to accrue on "the first day of the month after the month in which the prior denial of benefits became final." Pet. App. 9-10 (citing 20 C.F.R. 725.309(d)(5), 725.479(a) (2012)). Here, the denial of Mrs. Hill's first claim became final in June 2004, when the Sixth Circuit issued its mandate. *Id.* at 9. The Board therefore

provided that Mrs. Hill's entitlement to benefits commenced as of the first day of the following month, July 1, 2004. *Id.* at 9-10.

3. The court of appeals upheld the Board's decision in an unpublished opinion. Pet. App. 1-3.

a. Petitioner contended that Section 1556(b) should not be construed to permit an award of benefits where, as here, a survivor files a new claim after an earlier claim had been denied under the pre-ACA version of the BLBA. Pet. App. 2. Petitioner further asserted that construing Section 1556(b) to apply in those circumstances would violate principles of res judicata and the separation of powers by reopening prior administrative and judicial decisions. *Ibid.* The court of appeals rejected those contentions, explaining that they were foreclosed by the court's recent decision in *Consolidation Coal Co.* v. *Maynes*, 739 F.3d 323 (6th Cir. 2014). Pet. App. 2-3.

b. In *Consolidation Coal*, the court of appeals upheld an award of benefits to a widow who, like Mrs. Hill, filed a claim under the BLBA, as amended by Section 1556(b) of the ACA, after the court of appeals had upheld the denial of her pre-ACA claim. 739 F.3d at 325-327. The court rejected the mine operator's contention that the award violated principles of res judicata by failing to give effect to the earlier denial. *Id.* at 327-328. The court explained that the widow's claim under the BLBA as amended by Section 1556(b) "could not have been brought or litigated in her original filing because the applicable statutory provision did not exist at the time." *Id.* at 327. The court further explained that the widow's subsequent claim "did not challenge the denial of her prior claim" or "require the Board to make any findings that would undermine

the disposition of her [prior] claim." *Id.* at 328. Instead, the court continued, the widow's subsequent claim was based on a new cause of action resting on different legal and factual elements. *Ibid.* Accordingly, the court concluded that "the doctrine of res judicata [wa]s simply not implicated" by the widow's subsequent claim. *Ibid.*

For similar reasons, the court of appeals in *Consolidation Coal* rejected the mine operator's contention that the award of benefits violated the separation-of-powers principles set forth in *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995). In *Plaut*, this Court held that a statute violated Article III because it "retroactively command[ed] the federal courts to reopen final judgments." *Id.* at 219. *Consolidation Coal* explained that unlike the statute at issue in *Plaut*, Section 1556(b) did not require the reopening of any prior judicial decision. To the contrary, because it was based on a new and distinct cause of action, "the Board's decision to award benefits in response to [the widow's] subsequent claim did nothing to alter, undermine, disturb or overturn the Board's prior denial of her * * * claim, nor d[id] it challenge [the court's] affirmance of that decision." *Consolidation Coal*, 739 F.3d at 328.

4. The court of appeals denied rehearing and rehearing en banc with no judge requesting a vote on the suggestion of rehearing en banc. Pet. App. 58.

a. Judge Sutton, joined by Judge Kethledge, concurred in the denial of rehearing en banc. Pet. App. 58-68. He explained that he did not favor en banc review because the panel's interpretation of Section 1556(b) was consistent with the interpretation adopted by every other court of appeals to consider the issue.

Id. at 59 (citing *Jim Walter Res., Inc.* v. *Director, OWCP*, 766 F.3d 1333 (11th Cir. 2014); *Marmon Coal Co.* v. *Director, OWCP*, 726 F.3d 387 (3d Cir. 2013); and *Union Carbide Corp.* v. *Richards*, 721 F.3d 307 (4th Cir. 2013)). But Judge Sutton believed that all of those courts had misinterpreted the statute, and that Section 1556(b) should not be construed to apply to a subsequent claim filed by a survivor whose pre-ACA claim for benefits had been denied. *Id.* at 64.

In addition, Judge Sutton concluded that, as applied to this case, the court of appeals' interpretation of Section 1556(b) violates the separation-of-powers principles articulated in *Plaut* by denying effect to the court's prior decision upholding the denial of Mrs. Hill's pre-ACA claim. Pet. App. 64-68. He acknowledged that, unlike the statute held invalid in *Plaut*, Section 1556(b) did not require the reopening of a final judgment—instead, it simply allowed Mrs. Hill to bring a new claim. *Id.* at 65. But Judge Sutton was of the view that Congress violates Article III not only when it requires the reopening of a final judgment, but also when it creates a new cause of action that allows a judgment loser to recover on a new claim arising out of the same "nucleus of operative fact" as the earlier unsuccessful claim. *Ibid.* (citation omitted).

b. Judge Donald, the author of *Consolidation Coal*, issued a statement responding to Judge Sutton's opinion. Pet. App. 68-78. She first observed that, by its terms, Section 1556's amendment to the BLBA applies to any claim "filed after January 1, 2005" that is "pending on or after the enactment of [the ACA]." *Id.* at 72 (quoting ACA § 1556(c), 124 Stat. 260). Mrs. Hill's subsequent claim for benefits satisfies those

requirements, and Judge Donald explained that there is "nothing in the plain language of [Section 1556] supporting the argument that persons whose claims for survivors' benefits were rejected prior to the amendments in the ACA cannot assert subsequent claims." *Id.* at 72-73. Judge Donald also explained that Section 1556(b) is consistent with *Plaut* because it does not require the reopening of final judgments, but rather creates a new cause of action with different substantive requirements. *Id.* at 75-78.

ARGUMENT

Petitioner does not seek review of the court of appeals' interpretation of Section 1556(b) of the ACA or of its holding that the award of benefits to Mrs. Hill was consistent with principles of res judicata. Petitioner contends, however, that Section 1556(b) violates the separation-of-powers principles set forth in *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211 (1995), by denying effect to the court of appeals' previous decision upholding the denial of Mrs. Hill's pre-ACA claim for benefits. The court of appeals correctly rejected that argument, and its decision does not conflict with *Plaut* or with any other decision of this Court or another court of appeals. The question presented also lacks the broad importance required to justify this Court's review—indeed, it appears that the resolution of that question may have little or no effect beyond this case. No further review is warranted.

1. The court of appeals correctly held that Section 1556(b) is consistent with *Plaut* and with the separation-of-powers principles on which *Plaut* relied.

a. *Plaut* addressed an amendment to the Securities Exchange Act of 1934 (Exchange Act), 15 U.S.C. 78a *et seq.*, enacted in response to this Court's decision in

Lampf, Pleva, Lipkind, Prupis & Petigrow v. *Gilbertson*, 501 U.S. 350 (1991) (*Lampf*). *Lampf* held that private civil actions brought under Section 10(b) of the Exchange Act "must be commenced within one year after the discovery of the facts constituting the violation and within three years after such violation"—time periods shorter than those that had previously been applied by some courts of appeals. *Id.* at 364; see *id.* at 354 & n.1. Six months after this Court's decision, Congress enacted a statute providing that certain suits dismissed as untimely under *Lampf* "shall be reinstated on motion by the plaintiff" and then treated as having been timely filed. 15 U.S.C. 78aa-1(b)(2); see *Plaut*, 514 U.S. at 213-215.

Plaut's analysis of the constitutionality of that provision began with the recognition that Article III grants "the Federal Judiciary the power, not merely to rule on cases, but to *decide* them, subject to review only by superior courts in the Article III hierarchy." 514 U.S. at 218-219. The Court explained that when a judicial decision "achieve[s] finality," it "becomes the last word of the judicial department with regard to a particular case or controversy, and Congress may not declare by retroactive legislation that the law applicable *to that very case* was something other than what the courts said it was." *Id.* at 227. The Court held that the post-*Lampf* amendment to the Exchange Act "violated [that] fundamental principle" because it "retroactively command[ed] the federal courts to reopen final judgments." *Id.* at 219.

b. Petitioner contends (Pet. 12-26) that Section 1556(b) suffers from the same constitutional flaw identified in *Plaut*. In fact, petitioner asserts (Pet. 25-26) that the purported violation is so clear

that this Court should summarily reverse the decision below. Petitioner is mistaken. For several reasons, Section 1556(b) is entirely consistent with Article III as interpreted in *Plaut*.

Most obviously, Section 1556(b) does not require the reopening of final judgments. The statute at issue in *Plaut* required district courts to "reinstate[]" actions that had been dismissed with prejudice, thereby effectively setting aside the judgments in those cases. 15 U.S.C. 78aa-1(b). This Court repeatedly emphasized that the constitutional defect in that statute was that it "retroactively command[ed] the federal courts to reopen final judgments." 514 U.S. at 219; see, *e.g.*, *id.* at 227-228, 234, 238, 240. And the Court has subsequently confirmed that the rule announced in *Plaut* is that "Congress cannot retroactively command Article III courts to reopen final judgments." *Miller* v. *French*, 530 U.S. 327, 344 (2000); accord *Salazar* v. *Buono*, 559 U.S. 700, 717 (2010) (opinion of Kennedy, J.).[4]

Unlike the statute held unconstitutional in *Plaut*, Section 1556(b) does not require courts to reinstate previously dismissed suits or otherwise to reopen final judgments. In this case, for example, the court of appeals' 2004 decision upholding the denial of Mrs.

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[4] That rule follows from the history on which *Plaut* relied. The Court explained that "[t]he Framers of our Constitution lived among the ruins of a system of intermingled legislative and judicial powers" in which legislatures "functioned as courts of equity of last resort" by "providing appellate review of judicial judgments" or by enacting "special bills or other enacted legislation" that "set aside the judgment" in a particular case "and order[ed] a new trial or appeal." 514 U.S. at 219. *Plaut* concluded that Article III's vesting of the judicial power in the federal courts was meant to put an end to those practices. *Id.* at 219-223.

Hill's pre-ACA claim for benefits remains undisturbed. Section 1556(b) merely created a new entitlement to benefits and permitted Mrs. Hill to assert her right to those benefits by filing a new claim. That new claim, moreover, was not filed as a cause of action in an Article III court, as in *Plaut*. Instead, like her pre-ACA claim, Mrs. Hill's new claim was filed with the Department of Labor, which is charged with adjudicating such claims in the first instance, subject to deferential judicial review in the courts of appeals. As the court of appeals explained, the Board's award of benefits on that new claim "did nothing to alter, undermine, disturb, or overturn the Board's prior denial of [Mrs. Hill's pre-ACA] claim; nor d[id] it challenge [the court of appeals'] affirmance of that decision." *Consolidation Coal Co.* v. *Maynes*, 739 F.3d 323, 328 (6th Cir. 2014).[5]

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[5] The rule announced in *Plaut* applies only to judgments rendered by Article III courts, not to orders entered by administrative agencies. *Plaut* emphasized that "nothing in [its] holding" was meant to call into question previous decisions upholding "legislation that altered rights fixed by the final judgments of * * * administrative agencies." 514 U.S. at 232; see *Paramino Lumber Co.* v. *Marshall*, 309 U.S. 370, 381 & n.25 (1940). Accordingly, even if petitioner could establish that the award of benefits on Mrs. Hill's present claim effectively reopened the administrative order denying her prior claim, that would not establish a violation of Article III. Instead, petitioner must demonstrate that the present award impermissibly reopened the court of appeals' decision denying Mrs. Hill's petition for review of that prior administrative order. *Plaut* did not involve an amendment to a statute administered by an agency or the distinct relationship between an administrative agency and an Article III court reviewing a decision of the agency. See *FCC* v. *Pottsville Broad. Co.*, 309 U.S. 134, 144-145 (1940).

The scope of the Board's award in this case makes it particularly clear that Section 1556(b) did not reopen or disturb the court of appeals' decision on Mrs. Hill's pre-ACA claim. Ordinarily, survivors' benefits under the BLBA begin to accrue in the month of the miner's death. 20 C.F.R. 725.503(c). But the Department of Labor's regulations provide that where benefits are awarded on a second or subsequent claim, "no benefits may be paid for any period prior to the date upon which the order denying the prior claim became final." 20 C.F.R. 725.309(d)(5) (2012). The Board applied that rule in this case, specifying that Mrs. Hill's benefits began to accrue on July 1, 2004—the first day of the month after the court of appeals' decision upholding the denial of her pre-ACA claim became final. Pet. App. 9. The award thus continued to accord legal effect to the denial of Mrs. Hill's prior claim. See *Union Carbide Corp.* v. *Richards*, 721 F.3d 307, 317 & n.5 (4th Cir. 2013).

Section 1556(b) is consistent with *Plaut* for the additional reason that it creates a new entitlement based on different factual and legal elements than those at issue in Mrs. Hill's unsuccessful pre-ACA claim. The pre-ACA statute required a miner's survivors to prove that pneumoconiosis caused the miner's death. Pet. App. 2, 23-24. Mrs. Hill's pre-ACA claim was denied because she failed to introduce sufficient evidence to "establish that [Mr. Hill's] death was due to pneumoconiosis." *Id.* at 33-34; see *id.* at 26. In Mrs. Hill's present claim, in contrast, "[t]he cause of [Mr. Hill's] death [i]s not at issue" and her eligibility for benefits "simply hinge[s] upon whether [Mr. Hill] had received benefits during his lifetime, an administrative fact." *Consolidation Coal*, 739 F.3d at 328. The award of

benefits on Mrs. Hill's current claim thus "does not undermine either the factual or legal conclusions resulting in the denial of her [pre-ACA] claim." *Ibid.*

Petitioner does not contend that Section 1556(b) required the court of appeals to reopen its prior judgment or to reject any of the legal or factual conclusions on which that judgment relied. Instead, quoting Judge Sutton's opinion concurring in the denial of rehearing en banc, petitioner asserts that *Plaut* not only prohibits Congress from reopening particular judgments, but also constitutionalizes the res judicata principle providing that a valid final judgment ordinarily "extinguishes * * * all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose." 1 Restatement (Second) of Judgments § 24(1), at 196 (1982) (Restatement); see Pet. 17-18 (contending that Congress cannot allow a judgment loser to bring a new claim arising from the same "nucleus of operative fact") (citation omitted).

Neither petitioner nor Judge Sutton cited any precedent interpreting *Plaut* to constitutionalize the law of res judicata in this manner.[6] But even if *Plaut*

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[6] *Plaut* suggested in dicta that Congress may violate Article III if it requires courts to deny all res judicata effect to an earlier judgment. See 514 U.S. at 230-232 & n.6. But the relevant passage in *Plaut* addressed a statute requiring a court to ignore the res judicata effect of an earlier judgment in considering *exactly the same claim*. *Id.* at 232 n.6 (citing *United States* v. *Sioux Nation of Indians*, 448 U.S. 371 (1980)). Here, Section 1556(b) does not impair any res judicata effect of the court of appeals' decision upholding the Board's denial of Mrs. Hill's claim for benefits under the BLBA as in effect prior to the enactment of the ACA. And nothing in *Plaut* suggested that Article III bars Congress from providing a

could be extended that far, it still would not support petitioner's position because the award of benefits on a subsequent claim under Section 1556(b) is consistent with principles of res judicata—as every court of appeals to consider the issue has held. That is true for two independent reasons. First, the legal and factual differences between pre- and post-ACA claims for survivors' benefits mean that those claims involve different causes of action for purposes of res judicata. See *Consolidation Coal*, 739 F.3d at 327-328; *Marmon Coal Co.* v. *Director, OWCP*, 726 F.3d 387, 394-395 (3d Cir. 2013). Second, even when a subsequent claim arises out of the same transaction or nucleus of operative facts as a prior suit, there is an exception to the rule of res judicata where—as in Section 1556(b)—"a new statute provides an independent basis for relief which did not exist at the time of the prior action." *Union Carbide*, 721 F.3d at 315 (quoting 18 James Wm. Moore et al., *Moore's Federal Practice* § 131.22[3], at 131-58 (3d ed. 2013)); see *Consolidation Coal*, 739 F.3d at 327-328.

Relying on its decision in *Consolidation Coal*, the court of appeals rejected petitioner's contention that the award of benefits on Mrs. Hill's present claim violated principles of res judicata. Pet. App. 2-3. Petitioner has not sought review of that holding in this Court. Accordingly, petitioner could not prevail even if it were correct that *Plaut* should be extended to

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judgment loser with a new cause of action involving the same general subject matter, but based on different legal and factual elements.

incorporate some aspects of the law of res judicata into Article III.[7]

2. The decision below does not conflict with any decision by another court of appeals. Indeed, petitioner correctly acknowledges (Pet. 10 n.5) that no other court of appeals has considered the constitutional question it raises here. This case also lacks the broader importance required to justify this Court's review. Cf. Sup. Ct. R. 10(c). Indeed, the resolution of the question presented may have little or no practical impact beyond the parties to this case.

The Department of Labor has informed this Office that, in the five years since the ACA was enacted, only 196 survivors have filed subsequent claims seeking derivative benefits under Section 1556(b). Only 16 of those claims were filed in 2014, and only one claim has been filed in 2015. There is no reason to expect that any significant number of such claims will be filed in the future.[8] As of the date of this filing, moreover,

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[7] Petitioner errs in asserting (Pet. 22) that *United States* v. *California & Oregon Land Co.*, 192 U.S. 355 (1904), stands for the proposition that a new cause of action cannot be based on "a change in legal criteria." Unlike this case, *California & Oregon Land* did not involve separate suits under successive statutes. Rather, the Court held that the government was barred from seeking to invalidate land patents in a second action based on a cause of action that had been available (but not advanced) in the prior action. *Id.* at 357-359. The Court's holding thus does not undermine the court of appeals' conclusion that a cause of action can be asserted in a subsequent action where, as here, it "could not have been brought or litigated in [the] original filing because the applicable statutory provision did not exist at the time." *Consolidation Coal*, 739 F.3d at 327.

[8] Many of the dependents who could have claimed the derivative benefits made available by Section 1556(b) died before the ACA was enacted, and those survivors who could take advantage of the

only 4 of the 196 subsequent survivors' claims remain pending at any level. And of those pending claims, only Mrs. Hill's implicates the constitutional question petitioner raises here: In the other three cases, the survivor did not seek judicial review of the denial of his or her pre-ACA claim, and the award of benefits on the subsequent claim thus does not even arguably violate the rule articulated in *Plaut*. Cf. Pet. 11 n.5 (acknowledging that the question presented here is not implicated when the survivor's prior claim "involved a final administrative decision only" and not "a prior, final decision by an Article III court").[9] Accordingly, the resolution of the question presented would not affect any other pending case, and there is no reason to expect a significant number of cases implicating that question to arise in the future.

Petitioner is thus quite wrong to assert (Pet. 24) that "several hundred cases previously and finally denied by an Article III court could be revived by Section 1556 of [the] ACA." The basis for that assertion is not entirely clear, but petitioner appears to be relying not only on Section 1556*(b)*'s amendment to the rules governing claims for survivors' benefits, but

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reinstatement of derivative benefits understandably filed their subsequent claims soon after the ACA's 2010 enactment, which explains the dearth of recent filings.

[9] The overwhelming majority of BLBA claims are resolved administratively, without a decision by a court of appeals. For example, in Fiscal Year 2009 (the most recent year for which published comparative statistics are available), the Department of Labor's Office of Workers' Compensation Programs (OWCP) issued initial decisions in 3109 black lung claims. U.S. Dep't of Labor, OWCP, *OWCP Annual Report to Congress FY 2009*, at 66 (2011), www.dol.gov/owcp/09owcpmx.pdf. In contrast, only 38 petitions involving such claims were filed with the circuit courts. *Id*. at 25.

also on a separate amendment to the standards for disability claims by miners made in Section 1556*(a)*. See ACA § 1556(a), 124 Stat. 260 (amending 30 U.S.C. 921(c)(4)). [10] But subsequent disability claims by miners—including claims relying on the amendment made in Section 1556(a)—do not implicate the question presented here.

Miners' subsequent claims must be denied "unless the claimant demonstrates," at the outset, "that one of the applicable conditions of entitlement"—that is, one of the "conditions upon which the prior denial was based"—"has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. 725.309(c) and (3) (2014). The miner can establish a change in a condition of entitlement either by direct proof or by presumption, including by relying on Section 1556(a)'s amendment to 30 U.S.C. 921(c)(4), which provides a rebuttable presumption of total disability due to pneumoconiosis. See *Consolidation Coal Co.* v. *Director, OWCP*, 721 F.3d 789, 794 (7th Cir. 2013). But even a miner relying on that rebuttable presumption must offer "new evidence" about his physical condition to invoke the presumption. 20 C.F.R. 725.309(c)(4) (2014). And because "a miner's physical condition changes over time," the courts of appeals have uniformly held that awards of disability benefits based on "new evidence developed subsequent to the denial" of an earlier claim are consistent with principles of res judicata. *Buck Creek Coal Co.* v. *Sexton*, 706 F.3d 756, 759-760 (6th Cir. 2013), cert.

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[10] For example, petitioner identifies *Eastern Associated Coal Corp.* v. *Director, OWCP*, petition for review pending, No. 14-1923 (4th Cir. docketed Sept. 25, 2014), which involves a miner's subsequent claim, as a potentially affected case. Pet. 23.

denied, 134 S. Ct. 898 (2014).[11] Those holdings follow from the well-settled rule that "[m]aterial operative facts occurring after the decision of an action with respect to the same subject matter * * * may be made the basis of a second action not precluded by the first." Restatement § 24 cmt. f, at 203.

Subsequent claims by miners thus do not raise the same issues as claims by survivors like Mrs. Hill, whose subsequent claim is based solely on Section 1556(b)'s change in the law. Accordingly, this Court's resolution of the question presented in this case would not govern subsequent claims brought by miners—and there is consequently no reason to believe that the resolution of that question will have any broader effect, let alone the degree of importance required to justify an exercise of this Court's certiorari jurisdiction.

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[11] Accord *Consolidation Coal*, 721 F.3d at 794; *U.S. Steel Mining Co.* v. *Director, OWCP,* 386 F.3d 977, 990 (11th Cir. 2004); *Peabody Coal Co.* v. *Spese,* 117 F.3d 1001, 1008-1009 (7th Cir. 1997) (en banc); *Lovilia Coal Co.* v. *Harvey*, 109 F.3d 445, 450 (8th Cir. 1997), cert. denied, 523 U.S. 1059 (1998); *Wyoming Fuel Co.* v. *Director, OWCP*, 90 F.3d 1502, 1510 (10th Cir. 1996); *Lisa Lee Mines* v. *Director, OWCP*, 86 F.3d 1358, 1362 (4th Cir. 1996) (en banc), cert. denied, 519 U.S. 1090 (1997); *Labelle Processing Co.* v. *Swarrow*, 72 F.3d 308, 313-314 (3d Cir. 1995).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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