No. 05-

IN THE

Supreme Court of the United States

ROBERT SASSON,

Petitioner,

v.

NORMAN F. SOKOLOFF, M.D., individually and as Trustee for CAMELOT MEDICAL GROUP, INC., PROFIT SHARING PLAN,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The bankruptcy jurisdiction statute, 28 U.S.C. § 1334(b), grants district courts jurisdiction over "civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 157(a) in turn provides that district courts may refer such proceedings to "the bankruptcy judges for the district."

The general federal supplemental jurisdiction statute, 28 U.S.C. § 1367(a), grants district courts jurisdiction, "in any civil action of which the district courts have original jurisdiction," over "claims that are so related to claims in the action . . . that they form part of the same case or controversy under Article III of the United States Constitution."

The question presented, which has divided the courts of appeals, is whether bankruptcy courts may exercise the general supplemental jurisdiction provided in section 1367(a) to hear claims that fall outside section 1334(b)'s more restrictive grant of jurisdiction over matters "related to" the bankruptcy case.

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

PETITION FOR A WRIT OF CERTIORARI

Petitioner Robert Sasson respectfully petitions this Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS AND JUDGMENT BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, affirming the judgment of the Bankruptcy Appellate Panel, is reported at 424 F.3d 864 (9th Cir. 2005) and is reproduced at App. 1a–18a. The order of the Court of Appeals denying rehearing and rehearing *en banc* is not reported and is reproduced at App. 19a. The opinion of the Ninth Circuit Bankruptcy Appellate Panel, affirming the judgment of the bankruptcy court, is unreported and is reproduced at App. 21a–42a. The order of the United States Bankruptcy Court for the Northern District of California is

unreported and is reproduced at App. 53a-54a. The hearing in which the bankruptcy court indicated it would deny petitioner's motion to vacate is reproduced at App. 43a–51a.

JURISDICTION

The opinion of the court of appeals was issued on August 25, 2005, and subsequently amended on September 13, 2005. Petitioner filed a timely petition for rehearing or rehearing *en banc* on September 8, 2005, which the court of appeals denied on November 10, 2005. By order dated January 27, 2006, Justice O'Connor granted petitioner's application (05-A-686) to extend the time to file this petition for certiorari through and including March 10, 2006. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 523(a)(6) of title 11, United States Code (the "Bankruptcy Code") provides: "A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt— . . . . (6) for willful and malicious injury by the debtor to another entity or to the property of another entity."

Section 157(a) of title 28, United States Code provides: "Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district."

Section 1334(b) of title 28, United States Code provides: "Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to a case under title 11."

Section 1367(a) of title 28, United States Code provides: "Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over

all other claims that are so related to the claims in the action within such original jurisdiction that they form a part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties."

INTRODUCTION

This case presents a basic question of bankruptcy jurisdiction that has long divided the courts of appeals: whether the bankruptcy jurisdiction statute's specific grant of jurisdiction over matters "related to" a bankruptcy case precludes bankruptcy courts from invoking the broader grant of supplemental jurisdiction provided by the general federal supplemental jurisdiction statute.

Section 1334(b) of title 28, which governs bankruptcy jurisdiction, grants district courts jurisdiction over "civil proceedings arising under title 11, or arising in or related to cases under title 11." This Court has made clear that a case is within the "related to" jurisdiction of section 1334 only if the outcome of the proceeding might have an effect on the bankruptcy estate. *See Celotex Corp.* v. *Edwards*, 514 U.S. 300, 308 & n.6 (1995) (citing *Pacor, Inc.* v. *Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). Section 157(a), in turn, provides that district courts may refer all proceedings that fall within the district court's section 1334(b) jurisdictional grant to "the bankruptcy judges for the district." 28 U.S.C. § 157(a).

Section 1367(a) of title 28 grants the district courts "supplemental jurisdiction," previously described as "pendent" or "ancillary" jurisdiction. "[I]n any civil action of which the district courts have original jurisdiction," section 1367 grants the district courts jurisdiction over "claims that are so related to claims in the action within [the] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution." This Court has explained that this "supplemental jurisdiction" extends to the limit of the Article III power, permitting district courts to hear any claim that "arise[s] out of the same common nucleus of operative facts" as a claim over

which there is another source of federal jurisdiction. *See Jinks* v. *Richland County, S.C.*, 538 U.S. 456, 463 (2003); *Raygor* v. *Regents of the Univ. of Minn.*, 534 U.S. 533, 539 (2002); *Finley* v. *United States*, 490 U.S. 545, 549 (1989); *United Mine Workers of Am.* v. *Gibbs*, 383 U.S. 715, 725 (1966).

The intersection of these two statutes has given rise to the question whether a bankruptcy court may exercise jurisdiction over a claim that cannot have any effect on the bankruptcy estate (such that it is excluded from section 1334(b)'s grant of jurisdiction over matters "related to" the bankruptcy case), but that arises out of the same common nucleus of operative facts as another claim that is within section 1334(b)'s bankruptcy jurisdiction (such that it is "related to" a bankruptcy claim within the meaning of section 1367(a)). Put another way, does the specific grant of "related to" jurisdiction in section 1334(b) preclude the invocation of the general section 1367(a) supplemental jurisdiction over "related" claims where "original" federal jurisdiction is grounded in bankruptcy? This question has sharply divided the federal courts of appeals.

The Ninth Circuit below, following circuit precedent, took the broad view of bankruptcy jurisdiction and held that bankruptcy courts may exercise supplemental jurisdiction under section 1367. The bankruptcy courts, the Ninth Circuit reasoned, have jurisdiction over all state-law claims that are "so related to claims in the [bankruptcy proceeding] . . . that they form part of the same case or controversy." Pet. App. 6a (quoting *Montana* v. *Goldin* (*In re Pegasus Gold Corp.*), 394 F.3d 1189, 1195 (9th Cir. 2005)). More specifically, the Ninth Circuit held in the decision below that "the bankruptcy court's 'related to' jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367." *Id.*

The Second Circuit follows the same rule. *See Klein* v. *Civale & Trovato, Inc.* (*In re Lionel Corp.)*, 29 F.3d 88, 92 (2d Cir. 1994) ("The bankruptcy court had jurisdiction over the Owners' claims against CTI under principles of supplemental jurisdiction. *See* 28 U.S.C. § 1367.").

By contrast, the Third, Fifth, Seventh and Eleventh Circuits have held that bankruptcy courts may not exercise supplemental jurisdiction. As the Fifth Circuit has explained: "Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts, and the exercise of ancillary and pendent jurisdiction could subsume the more restrictive 'relate[d] to' and 'arising in' jurisdiction, such that the latter would be rendered substantially, if not entirely, superfluous." *Walker* v. *Cadle Co.* (*In re Walker*), 51 F.3d 562, 573 (5th Cir. 1995) (internal quotation omitted).[1]

Leading commentators have, for more than a decade, pointed to this division of authority in the lower federal courts. *See* E. Scott Fruehwald, *The Related To Subject Matter Jurisdiction of Bankruptcy Courts*, 44 Drake L. Rev. 1, 27-28 (1995) ("courts are split over whether statutory supplemental jurisdiction applies to bankruptcy courts"); Susan Block-Lieb, *The Case Against Supplemental Jurisdiction:*

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[1] *See also Bass* v. *Denney (In re Bass)*, 171 F.3d 1016, 1024 (5th Cir. 1999) (relying on *Walker* for the proposition that "bankruptcy courts may not exercise supplemental jurisdiction")*; Bobroff* v. *Continental Bank (In re Bobroff)*, 766 F.2d 797, 802 (3d Cir. 1985) ("[T]he mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of [the present section 1334(b)]. Judicial economy itself does not justify federal jurisdiction." (quotations omitted)); *Torkelsen* v. *Maggio* (*In re Guild & Gallery Plus, Inc.*), 72 F.3d 1171, 1181 (3d Cir. 1996) (citing *Bobroff* as "rejecting argument that 'related to' jurisdiction is intended to mirror the principle of pendent jurisdiction"); *Wisconsin Dep't of Indus., Labor & Human Relations* v. *Marine Bank Monroe* (*In re Kubly*), 818 F.2d 643, 645 (7th Cir. 1987) (rejecting the proposition that it is sufficient for there to be "a logical relationship or 'nexus' between a proceeding and a bankruptcy case" because "the 'related to' jurisdiction encompasses only disputes that affect the payments to the bankrupt's other creditors or the administration of the bankrupt's estate"); *Miller* v. *Kemira* (*In re Lemco Gypsum, Inc.*), 910 F.2d 784, 789 (11th Cir. 1990) ("Overlap between the bankrupt's affairs and another dispute is insufficient unless its resolution also affects the bankrupt's estate or the allocation of assets among creditors. The mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate does not bring the matter within the scope of § 1334(b). Judicial economy itself does not justify federal jurisdiction." (footnotes omitted)).

A Constitutional, Statutory and Policy Analysis, 62 Fordham L. Rev. 721, 756 (1994) ("the majority of courts that have addressed the issue have concluded that . . . bankruptcy courts are empowered to exercise supplemental bankruptcy jurisdiction"); Ralph Brubaker, *On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory*, 41 Wm. & Mary L. Rev. 743, 928 (2000) ("many courts have concluded more recently that bankruptcy courts have no 'supplemental' bankruptcy jurisdiction whatsoever"); *see also* William L. Norton, Jr., 1 *Norton Bankr. Law & Practice* 2d § 4:70 (2005) (noting both that "it has been held that § 1367(a) may be invoked as a basis for the exercise of jurisdiction by the bankruptcy court" and that "[u]nder developing case law, it appears that a bankruptcy court cannot exercise supplemental jurisdiction").

This case is a particularly appropriate vehicle to address the question whether bankruptcy courts may exercise supplemental jurisdiction, because it presents that question in the context of a recurring procedural dilemma for bankruptcy courts. Section 523(a) of the Bankruptcy Code sets out a number of exceptions to the general rule that preexisting debts are dischargeable in bankruptcy and permits a creditor to obtain a declaration that such a debt is nondischargeable. *See* 11 U.S.C. § 523(a), (c). Such an action by a creditor "arises under" the Bankruptcy Code, 28 U.S.C. § 1334(b), and thus is plainly within the bankruptcy court's jurisdiction.

In the course of adjudicating a proceeding seeking a declaration of nondischargeability, however, bankruptcy courts are often faced with the question whether they may also enter judgment on the underlying nondischargeable debt—generally, as here, an action arising solely under state law. That underlying state-law action neither "arises under" the Bankruptcy Code nor "arises in" a bankruptcy case. Nor is a claim seeking a judgment on a nondischargeable state-law debt "related to" the bankruptcy case within the meaning of section 1334(b). A proceeding seeking a judgment on a nondischargeable debt is a suit against the debtor personally, not against the estate, and a judgment on such a debt is

enforceable only against the debtor himself and those of his assets that fall outside the bankruptcy estate. By definition, therefore, the resolution of a dispute regarding a nondischargeable debt can have no effect on the bankruptcy estate—the touchstone of the "related to" jurisdiction under section 1334(b).

Instead, as the decision below reflects, the only possible rationale for permitting bankruptcy courts to exercise jurisdiction over such nondischargeable debts is that the claim falls within the supplemental jurisdiction because the underlying state-law action arises out of the same set of facts as the nondischargeability proceeding. Accordingly, this recurring procedural scenario starkly poses the question presented here—whether bankruptcy courts may exercise supplemental jurisdiction.

The specific question whether bankruptcy courts have jurisdiction to enter judgment on a nondischargeable debt has itself divided the lower federal courts. Although the courts of appeals to address the issue have held that bankruptcy courts do have such jurisdiction, numerous bankruptcy and district courts—along with every scholarly commentator to address the issue—have concluded that an action on a nondischargeable debt is not within section 1334(b)'s grant of jurisdiction. Because granting certiorari in this case would resolve this recurring procedural problem of substantial practical importance, this would be a particularly appropriate case in which to grant certiorari to resolve the entrenched and longstanding circuit split on the question whether bankruptcy courts may exercise section 1367's supplemental jurisdiction.

STATEMENT OF THE CASE

1. In March 1989, respondent Norman Sokoloff obtained a judgment in the Superior Court of California against petitioner Robert Sasson for $120,000, including prejudgment interest, for failure to pay on a promissory note.

Sasson obtained from the California state court a stay of that judgment pending appeal, on the condition that Sasson not dissipate any assets outside the ordinary course of business. Sasson, however, purchased property and paid debts that he owed to other creditors.

2. In May 1989, Sasson filed a voluntary bankruptcy petition under Chapter 7 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Northern District of California. In connection with that bankruptcy, Sokoloff brought an adversary proceeding against Sasson, seeking a declaration that the debt Sasson owed to Sokoloff was nondischargeable. Specifically, Sokoloff alleged that Sasson engaged in wrongful conduct designed to defraud him, both before and after the debt was reduced to judgment. Accordingly, Sokoloff sought a declaration that the debt on the promissory note was nondischargeable in bankruptcy because, *inter alia*, it was a debt for "willful and malicious injury." 11 U.S.C. § 523(a)(6). By order dated June 13, 1991, the bankruptcy court found in favor of Sokoloff and entered judgment declaring that Sokoloff's claim against Sasson was nondischargeable.

In addition to the declaration that the debt was nondischargeable, Sokoloff also asked the bankruptcy court to enter judgment against Sasson on the underlying state-law claim. The bankruptcy court did so, entering judgment in Sokoloff's favor in the amount of $148,142.46, which included post-judgment interest. The bankruptcy case was thereafter closed. Sokoloff then sought to collect on the bankruptcy court judgment, but was unable to do so.

3. In April 2002, the bankruptcy court granted a motion by Sasson to reopen his bankruptcy case. Sasson thereupon filed a motion, pursuant to Fed. R. Civ. P. 60(b), to vacate the 1991 judgment. He argued that the 1991 judgment was void *ab initio* because the bankruptcy court never had subject-matter jurisdiction over the underlying state-law claim against him. The bankruptcy court denied the motion. On appeal, the Bankruptcy Appellate Panel of the Ninth Circuit ("BAP") affirmed.

4. The Ninth Circuit affirmed the BAP's ruling. In finding that the bankruptcy court had subject-matter jurisdiction over the state-law claim for damages, the Ninth Circuit did not suggest that the resolution of that dispute might have any effect on the bankruptcy estate, which is the standard test for determining the existence of "related to" jurisdiction. *See Celotex Corp.* v. *Edwards*, 514 U.S. 300, 308 & n.6 (1995). Instead, the court of appeals rested its determination on its conclusion that section 1334(b)'s grant of "related to" jurisdiction also includes section 1367's grant of supplemental jurisdiction. "[A]t present, the bankruptcy court's 'related to' jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367 'over all other claims that are so related to claims in the action within [the court's] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.'" Pet. App. 6a (citation omitted; second brackets in original).

As further support for its holding, the Ninth Circuit noted that it had previously held, in *Cowen* v. *Kennedy (In re Kennedy)*, 108 F.3d 1015, 1016 (9th Cir. 1997), that bankruptcy courts have "'jurisdiction to enter a monetary judgment on a disputed state law claim in the course of making a determination that a debt is nondischargeable.'" Pet. App. 4a. The court also stated that Congress had expressly provided the bankruptcy courts with that power under the Bankruptcy Act of 1898 (*id.* at 4a) pointed to the broad equitable powers enjoyed by bankruptcy courts (*id.* at 5a) and cited the decisions of various other courts of appeals that have allowed bankruptcy courts to enter money judgments on an underlying claim as ancillary to their power to resolve a complaint of nondischargeability (*id.* at 7a (citing cases)).[2]

[2] The court of appeals also rejected Sasson's argument that principles of *res judicata* should have prevented the bankruptcy court from entering judgment on a claim that was previously litigated to judgment in state court, concluding that on the facts of this case the bankruptcy court did not abuse its discretion in its exercise of its "inherent equitable power to fashion relief." Pet. App. 13a.

REASONS FOR GRANTING THE WRIT

The courts of appeals are divided on the question whether Congress's grant of "related to" jurisdiction in section 1334(b)—which extends only to actions that may have an effect on the bankruptcy estate—precludes bankruptcy courts from exercising the broader supplemental jurisdiction over "related" claims that section 1367(a) grants to district courts in civil actions. This case presents that issue in a context that involves a recurring procedural dilemma for the bankruptcy courts. In considering whether a particular debt is nondischargeable, bankruptcy courts are commonly asked to enter judgment in favor of the creditor on that underlying debt—typically a state-law claim. As the decision below reflects, the exercise of jurisdiction over such a claim—which is outside section 1334's bankruptcy jurisdiction—raises the question whether bankruptcy courts may exercise supplemental jurisdiction under section 1367. Accordingly, this case is a particularly appropriate vehicle in which to resolve the circuit split on the issue whether bankruptcy courts may exercise section 1367's supplemental jurisdiction.

I. THE COURTS OF APPEALS HAVE DIVIDED ON WHETHER BANKRUPTCY COURTS MAY EXERCISE SUPPLEMENTAL JURISDICTION UNDER SECTION 1367

The current grant of jurisdiction to the federal district courts over bankruptcy matters was enacted as part of the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, and is codified at section 1334 of title 28. As relevant here, section 1334(b) grants the district courts "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b).[3]

[3] Proceedings "arising under title 11" are those in which the cause of action is created by the Bankruptcy Code, such as a proceeding seeking a declaration that a particular debt is nondischargeable under section 523(a) of the Bankruptcy Code. *See*, 1 *Collier on Bankruptcy* ¶ 3.01[4][c][i] (Lawrence P. King ed., 15th rev. ed. 2005). Proceedings "arising in . . . cases under title 11" are matters that do not originate in an express right or cause of action under the Bankruptcy Code, but can arise only in a bankruptcy case. *See id.* ¶ 3.01[4][c][iv]. Finally, the grant of jurisdiction

There is a deep and longstanding circuit split on the question whether the grant of "related to" jurisdiction in section 1334 precludes the bankruptcy courts from exercising supplemental jurisdiction under section 1367. The Third, Fifth, Seventh, and Eleventh Circuits have held that bankruptcy courts cannot exercise section 1367's supplemental jurisdiction. *See supra* p. 5 n.1. As the Fifth Circuit reasoned: "Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts, and the exercise of ancillary and pendent jurisdiction could subsume the more restrictive 'relate[d] to' and 'arising in' jurisdiction, such that the latter would be rendered substantially, if not entirely, superfluous." *Walker* v. *Cadle Co.* (*In re Walker*), 51 F.3d 562, 573 (5th Cir. 1995) (internal quotation omitted); s*ee also Bass* v. *Denney (In re Bass)*, 171 F.3d 1016, 1024 (5th Cir. 1999) (same). The Third, Seventh, and Eleventh Circuits have reached the same conclusion. *See Bobroff* v. *Continental Bank* (*In re Bobroff*), 766 F.2d 797, 802 (3d Cir. 1985); *Wisconsin Dep't of Indus., Labor & Human Relations* v. *Marine Bank Monroe* (*In re Kubly*), 818 F.2d 643, 645 (7th Cir. 1987); *Miller* v. *Kemira* (*In re Lemco Gypsum, Inc.*), 910 F.2d 784, 789 (11th Cir. 1990).

By contrast, the Second and Ninth Circuits have permitted bankruptcy courts to exercise the broader form of supplemental jurisdiction granted to the district courts by

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over proceedings "related to cases under title 11" empowers district courts to adjudicate disputes that exist independently of the bankruptcy case. The touchstone of "related to" jurisdiction is whether the resolution of the dispute could affect the bankruptcy estate. *See Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50, 54 (1982) (plurality) (explaining that the "related to" provision "empowers bankruptcy courts to entertain a wide variety of cases involving claims that may affect the property of the estate"); *Celotex, Corp.* v. *Edwards*, 514 U.S. 300, 308 & n.6 (1995) (noting that nine courts of appeals had adopted the Third Circuit's standard for "related-to" jurisdiction, articulated in *Pacor, Inc.* v. *Higgins*, 743 F.2d 984 (3d Cir. 1984), under which the test is "whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy," while two other courts of appeals had adopted "slightly different" formulations that nevertheless focus on the "effect on the bankruptcy estate").

section 1367. As the Ninth Circuit explained in the decision below: "at present, the bankruptcy court's 'related to' jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367." Pet. App. 5a; s*ee also Klein* v. *Civale & Trovato, Inc.* (*In re Lionel Corp.)*, 29 F.3d 88, 92 (2d Cir. 1994) ("The bankruptcy court had jurisdiction over the Owners' claims against CTI under principles of supplemental jurisdiction. *See* 28 U.S.C. § 1367.").[4]

The division in the district courts and bankruptcy courts is equally pronounced, with more than a dozen cases on each side of the issue.[5] In addition, the disagreement among the

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[4] *See also Montana* v. *Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1195 (9th Cir. 2005); *Security Farms* v. *International Bhd. of Teamsters*, 124 F.3d 999, 1008 & n.5 (9th Cir. 1997) (permitting district court to exercise 1367 jurisdiction as supplemental to section 1334 jurisdiction).

[5] Permitting or speaking favorably of the exercise of section 1367 jurisdiction as supplemental to jurisdiction under section 1334(b): *McCarthy* v. *Radcliffe (In re Radcliffe)*, 317 B.R. 581, 590 (Bankr. D. Conn. 2004); *Pierce* v. *Conseco Fin. Serv. Corp. (In re Lockridge)*, 303 B.R. 449, 454-456 (Bankr. D. Ariz. 2003); *Masterwear Corp.* v. *Rubin, Baum, Levin, Constant & Friedman (In re Masterwear Corp.)*, 241 B.R. 511, 517 n.6 (Bankr. S.D.N.Y. 1999); *Official Comm. of Unsecured Creditors* v. *Riviera Med. Dev. Corp. (In re South Bay Med. Assoc.)*, 184 B.R. 963, 970 (Bankr. C.D. Cal. 1995); *Official Committee of Unsecured Creditors* v. *Ganz (In re Summit Airlines, Inc.)*, 160 B.R. 911, 923 (Bankr. E.D. Pa. 1993); *Jones* v. *Woody (In re W.J. Servs., Inc.)*, 139 B.R. 824, 826 (Bankr. S.D. Tex. 1992); *Goger* v. *Merchants Bank of Atlanta (In re Feifer Indus.)*, 141 B.R. 450, 452 (Bankr. N.D. Ga. 1991); *Hawkins* v. *Eads (In re Eads)*, 135 B.R. 387, 393-397 (Bankr. E.D. Cal. 1991); *Kinney* v. *Higher Educ. Assistance Found. (In re Kinney)*, 114 B.R. 670, 672 (Bankr. D. Neb. 1990); *Dechert Price & Rhoads* v. *Direct Satellite Commc'ns, Inc. (In re Direct Satellite Commc'ns, Inc.)*, 91 B.R. 5, 6 (Bankr. E.D. Pa. 1988); *Aerni* v. *Columbus Fed. Sav. (In re Aerni)*, 86 B.R. 203, 207 (Bankr. D. Neb. 1988); *Petrolia Corp.* v. *Elam (In re Petrolia Corp.)*, 79 B.R. 686, 690-695 (Bankr. E.D. Mich. 1987); *Neill* v. *Borreson (In re John Peterson Motors Inc.)*, 56 B.R. 588, 596 (Bankr. D. Minn. 1986); *Providers Fid. Life Ins. Co.* v. *Tidewater Group, Inc. (In re Tidewater Group, Inc.)*, 63 B.R. 670, 673 (Bankr. N.D. Ga. 1986); *Total Petroleum, Inc.* v. *Coral Petroleum, Inc. (In re Coral Petroleum, Inc.)*, 62 B.R. 699, 708 (Bankr. S.D. Tex. 1986); *In re Wood*, 52 B.R. 513, 522-524 (Bankr. N.D. Ala. 1985)*; Cook* v. *Commodity Credit Corp. (In re Earl Roggenbuck Farms, Inc.)*, 51 B.R. 913, 925-926 (Bankr. E.D. Mich. 1985).

courts on this issue has received a great deal of scholarly attention. *See* Susan Block-Lieb, *The Case Against Supplemental Jurisdiction: A Constitutional, Statutory and Policy Analysis*, 62 Fordham L. Rev. 721, 756 (1994) ("the majority of courts that have addressed the issue have concluded that . . . bankruptcy courts are empowered to exercise supplemental bankruptcy jurisdiction"); Ralph Brubaker, *On the Nature of Federal Bankruptcy Jurisdiction: A General Statutory and Constitutional Theory*, 41

Rejecting or criticizing the exercise of such jurisdiction: *Henneghan* v. *Columbia Gas of Va., Inc. (In re Henneghan)*, 2005 WL 2267185, at *4-5 (Bankr. E.D. Va. June 22, 2005); *Securities Investor Prot. Corp.* v. *Murphy (In re Selheimer & Co.)*, 319 B.R. 384, 390 (Bankr. E.D. Va. 2005); *Singer* v. *Adamson (In re Adamson)*, 334 B.R. 1, 12 (Bankr. D. Mass. 2005); *Liquidating Trust* v. *Carramore Ltd. (In re Ha-Lo Indus., Inc.)*, 330 B.R. 663, 672-673 (Bankr. N.D. Ill. 2005); *Banc of Am. Inv. Servs., Inc.* v. *Fraiberg (In re Conseco)*, 305 B.R. 281, 285-287 (Bankr. N.D. Ill. 2004); *Doctors Hosp. of Hyde Park, Inc.* v. *Desnick (In re Doctors Hosp. of Hyde Park, Inc.)*, 308 B.R. 311, 318 (Bankr. N.D. Ill. 2004); *Porter* v. *NationsCredit Consumer Disc. Co. (In re Porter)*, 295 B.R. 529, 541-542 (Bankr. E.D. Pa. 2003); *Steele* v. *Ocwen Fed. Bank (In re Steele)*, 258 B.R. 319, 322 (Bankr. D.N.H. 2001); *McGlynn* v. *Credit Store, Inc.*, 234 B.R. 576, 584 (D.R.I. 1999); *Simmons* v. *Ford Motor Credit Co. (In re Simmons)*, 224 B.R. 879, 886 (N.D. Ill. 1998); *Davis* v. *Warren (In re Davis)*, 216 B.R. 898, 902 (Bankr. N.D. Ga. 1997); *Simmons* v. *Johnson, Curney & Fields, P.C. (In re Simmons)*, 205 B.R. 834, 845 (Bankr. W.D. Tex. 1997); *First Omni Bank* v. *Thrall* (*In re Thrall*), 196 B.R. 959, 968-971 & n.8 (Bankr. D. Colo. 1996); *Romar Int'l Ga., Inc.* v. *SouthTrust Bank of Ala. (In re Romar Int'l Ga., Inc.)*, 198 B.R. 401, 407 (Bankr. M.D. Ga. 1996); *Adams* v. *Prudential Secs., Inc. (In re Found. for New Era Philanthropy)*, 201 B.R. 382, 397-398 & n.16 (Bankr. E.D. Pa. 1996); *Goldstein* v. *Marine Midland Bank (In re Goldstein)*, 201 B.R. 1, 6-7 (Bankr. D. Me. 1996); *Boyajian* v. *DeLuca (In re Remington Dev. Group, Inc.)*, 180 B.R. 365, 375 (Bankr. D.R.I. 1995); *Halvajian* v. *Bank of New York*, 191 B.R. 56, 58-59 (D.N.J. 1995); *Wilcox* v. *Houghton (In re Houghton)*, 164 B.R. 146, 148 (Bankr. W.D. Wash. 1994); *Fisher* v. *Federal Nat'l Mortgage Ass'n (In re Fisher)*, 151 B.R. 895, 898-899 (Bankr. N.D. Ill. 1993); *DaSilva* v. *American Sav.*, 145 B.R. 9, 12 (S.D. Tex. 1992); *SouthTrust Bank* v. *Alpha Steel Co., Inc. (In re Alpha Steel Co., Inc.)*, 142 B.R. 465, 470-471 (M.D. Ala. 1992); *Official Creditors' Comm. of Prods. Liability & Pers. Injury Claimants* v. *International Ins. Co. (In re Pettibone Corp.)*, 135 B.R. 847, 851-852 (Bankr. N.D. Ill. 1992); *Maislin Indus., U.S., Inc.* v. *Certified Brokerage Sys., Inc. (In re Maislin Ind.)*, 75 B.R. 170, 172 (Bankr. E.D. Mich. 1987).

Wm. & Mary L. Rev. 743, 928 (2000) ("many courts have concluded more recently that bankruptcy courts have no 'supplemental' bankruptcy jurisdiction whatsoever"); *see also* William L. Norton, Jr., 1 *Norton Bankr. Law & Practice* 2d, § 4:70 (2005) (noting both that "it has been held that § 1367(a) may be invoked as a basis for the exercise of jurisdiction by the bankruptcy court" and that "[u]nder developing case law, it appears that a bankruptcy court cannot exercise supplemental jurisdiction"). This Court should grant certiorari to resolve this entrenched division of authority among the courts of appeals.

II. This Case Is A Particularly Appropriate Vehicle To Resolve The Circuit Split Because It Involves A Recurring Practical Issue

The supplemental jurisdiction question arises here in the context of a nondischargeability action. The Bankruptcy Code makes certain types of debts nondischargeable, meaning that the creditor can continue to sue the debtor to recover the debt after the bankruptcy, notwithstanding the debtor's discharge. As relevant here, a debt for "willful and malicious injury" is nondischargeable. 11 U.S.C. § 523(a)(6). Determinations as to the dischargeability of a particular debt are commonly made by way of a proceeding for a declaratory judgment brought in the bankruptcy court, *see id.* § 523(c), a proceeding that "arises under" Title 11 and thus falls within the jurisdiction granted by section 1334(b).

In connection with such a declaratory judgment proceeding, creditors routinely seek to use the bankruptcy court forum also to obtain a judgment against the debtor on the underlying claim—typically a claim sounding in tort or contract and arising under state law. *See* Alan M. Ahart, *Enforcing Nondischargeable Money Judgments: The Bankruptcy Courts' Dubious Jurisdiction*, 74 Am. Bankr. L.J. 115, 116 (2000) (noting that "[m]ost" nondischargeability actions "not only ask the court to except particular debt(s) from discharge, but also to enter a money judgment against the debtor for the amount of the debts").

This dispute over the underlying nondischargeable debt does not fall within the "arising under" or "arising in" juris-

diction conferred by section 1334. Nor is it included within the "related to" jurisdiction, because such an action runs against the debtor personally, not against the estate. A judgment on such a debt can be enforced only against the debtor himself and those of his assets (such as post-bankruptcy earnings) that fall outside the bankruptcy estate. *See* 11 U.S.C. § 541. The resolution of a dispute regarding a nondischargeable debt can thus have no effect on the bankruptcy estate—the touchstone of the "related to" jurisdiction under section 1334(b). Indeed, many bankruptcy courts that have considered the question whether an action on a nondischargeable debt can come within the "related to" jurisdiction have held that it cannot, for precisely this reason.[6]

Like the Ninth Circuit, the Fourth, Sixth, and Eighth Circuits have nevertheless held that bankruptcy courts may enter judgment on a nondischargeable debt. In support of that conclusion, those courts have not held that such a debt could have any effect on the bankruptcy estate, but have instead relied on the factual nexus between the nondischargeability proceeding itself and the underlying state-law claim, and the supposed judicial economy arising from deciding both matters together—the classic rationale for the exercise of supplemental jurisdiction.[7] That is, those courts' holdings

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[6] *See, e.g., ATS Cases, Inc.* v. *Belli (In re Belli)*, 2005 WL 3263925, at *1 & n.3 (Bankr. D. Mass. June 29, 2005); *Cotten* v. *Cotten (In re Cotten)*, 318 B.R. 583, 587 & n.2 (Bankr. W.D. Okla. 2004); *American Express Centurion Bank* v. *Losanno (In re Losanno)*, 291 B.R. 1, 1 (Bankr. D. Mass. 2003); *Porter Capital Corp.* v. *Hamilton (In re Hamilton)*, 282 B.R. 22, 23-26 (Bankr. W.D. Okla. 2002); *Thrall* v. *First Omni Bank (In re Thrall)*, 196 B.R. 959, 969 (Bankr. D. Colo. 1996); *Barrows* v. *Illinois Student Assistance Comm'n (In re Barrows)*, 182 B.R. 640, 653 (Bankr. D.N.H. 1994). Scholarly commentators have agreed. *See* Brubaker, 41 Wm. & Mary L. Rev. at 916-918; Ahart, 74 Am. Bankr. L. J. at 116.

[7] *See Longo* v. *McLaren (In re McLaren)*, 3 F.3d 958, 966 (6th Cir. 1993) ("allowing the bankruptcy judge to settle both the dischargeability of the debt and the amount of the money judgment accords with the rule generally followed by courts of equity that having jurisdiction of the parties to controversies brought before them, they will decide all matters in dispute and decree complete relief") (internal quotations and citation omitted); *Abramowitz* v. *Palmer*, 999 F.2d 1274, 1279 (8th Cir. 1993)

necessarily rest on the conclusion that bankruptcy courts may exercise supplemental jurisdiction—a conclusion made explicit in the Ninth Circuit's decision below, which opined that "the bankruptcy court's 'related to' jurisdiction also includes the district court's supplemental jurisdiction pursuant to 28 U.S.C. § 1367." Pet. App. 6a.[8]

("[t]he small step the bankruptcy court took between determining Toni Palmer's liability for fraud and entering a money judgment against Toni Palmer as a result of that fraud was a logical exercise of related to jurisdiction"); *Hall* v. *Davenport*, 1996 WL 34674, 76 F.3d 372 (4th Cir. 1996) (unpublished) ("Nor is there reason to doubt that bankruptcy courts have the authority to enter money judgments. . . . Surely to be nondischargeable, the court must have found a debt to be due and owing."); *accord Lang* v. *Lang (In re Lang)*, 293 B.R. 501, 516-517 & nn.17-19 (BAP 10th Cir. 2003); *Valencia* v. *Lucero (In re Valencia)*, 213 B.R. 594, 596 (D. Colo. 1997); *Snyder* v. *Devitt (In re Devitt)*, 126 B.R. 212, 215-216 (Bankr. D. Md. 1991); *Builders Steel Co.* v. *Heidenreich (In re Heidenreich)*, 216 B.R. 61, 63 (Bankr. N.D. Okla. 1998); *Baker* v. *Friedman (In re Friedman)*, 300 B.R. 149, 150-151 (Bankr. D. Mass. 2003); *Harris* v. *United States Fire Ins. Co.*, 162 B.R. 466, 468 (E.D. Va. 1994); *Hi-Qual Roofing & Siding Materials, Inc.* v. *Ridsdale (In re Ridsdale)*, 286 B.R. 238, 239 (Bankr. W.D.N.Y. 2002) (all exercising jurisdiction over underlying claims).

The Seventh Circuit, which held in *Wisconsin Department of Industry, Labor & Human Relations* v. *Marine Bank Monroe (In re Kubly)*, 818 F.2d 643, 645-646 (7th Cir. 1987), that bankruptcy courts may not exercise supplemental jurisdiction, reached a contrary result in *N.I.S. Corp.* v. *Hallahan* (*In re Hallahan*), 936 F.2d 1496, 1508 (7th Cir. 1991) ("allowing the bankruptcy judge to settle both the dischargeability of the debt and the amount of the money judgment accords with the rule generally followed by courts of equity that having jurisdiction of the parties to controversies brought before them, they will decide all matters in dispute and decree complete relief"). The *Hallahan* decision, however, neither cites to nor mentions the prior inconsistent decision in *Kubly*.

[8] Commentators have similarly recognized that bankruptcy courts that exercise jurisdiction over nondischargeable debts are exercising supplemental jurisdiction. *See* Brubaker, 41 Wm. & Mary L. Rev. at 918-919 (the analysis of the cases that have found jurisdiction over nondischargeable debts is "quite conspicuously a . . . supplemental approach to the federal bankruptcy jurisdiction"); Block-Lieb, 62 Fordham L. Rev. at 816-817 (stating that a proceeding objecting to discharge arises under title 11 and further stating that such a proceeding will involve "a common nucleus of operative fact" between the nondischargeability claim and a claim seeking a judgment on the underlying debt).

The Ninth Circuit's judgment necessarily rests on the conclusion that the bankruptcy court may exercise supplemental jurisdiction. As the Ninth Circuit observed, the 1970 amendments to the Bankruptcy Act of 1898 permitted bankruptcy courts to enter judgments on nondischargeable debts. Pet. App. 4a. But that prior statutory scheme was replaced entirely by the 1978 Bankruptcy Code, which included a wholesale revision of the provisions governing the jurisdiction of the bankruptcy courts. Thus, Congress carefully considered and completely overhauled the entire bankruptcy jurisdictional scheme and in doing so chose to eliminate the prior grant of jurisdiction to enter judgment on nondischargeable debts.

Nor does section 105 of the Bankruptcy Code, which provides that the court may "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," provide an independent basis for the exercise of subject-matter jurisdiction. *See* Pet. App. 5a. To the contrary, the law is clear that section 105 cannot expand the bankruptcy court's authority beyond the jurisdiction expressly granted by section 1334. *See, e.g.*, *In re Combustion Eng'g*, 391 F.3d 190, 225 (3d Cir. 2004) ("§ 105 does not provide an independent source of federal subject matter jurisdiction."); *In re Johns-Manville Corp.*, 801 F.2d 60, 63 (2d Cir. 1986) ("Section 105(a) does not, however, broaden the bankruptcy court's jurisdiction, which must be established separately."); 2 *Collier on Bankruptcy* ¶ 105.01[2] (Lawrence P. King ed., 15th rev. ed. 2005) (stating that "if the court ha[s] jurisdiction" then section 105 orders can be "used to protect and further that jurisdiction"); *see also Celotex*, 514 U.S. at 327 (Stevens, J., dissenting) (section 105 "is not an independent source of jurisdiction").

Accordingly, the Ninth Circuit's holding that the bankruptcy court had jurisdiction to enter judgment in Sokoloff's favor on his claim against Sasson rests firmly on its conclusion that the bankruptcy court had supplemental jurisdiction over that claim. Because the circuits are sharply divided on whether the bankruptcy courts may exercise that jurisdiction, this Court should grant certiorari to resolve that issue.

III. THE DECISION BELOW IS INCORRECT

A. The Specific Grant Of "Related To" Bankruptcy Jurisdiction Should Control Over The General Grant Of Supplemental Jurisdiction In Section 1367

Contrary to the reasoning of the Ninth Circuit, section 1334(b)'s specific grant of jurisdiction over proceedings "related to" the bankruptcy case does not "include" section 1367's broader grant of supplemental jurisdiction.

The Ninth Circuit failed to realize that the "related to" jurisdiction conferred by section 1334(b) is itself a form of supplemental jurisdiction. *See*, *e.g.*, *In re Bass*, 171 F.3d at 1024; *see also* Block-Lieb, 62 Fordham L. Rev. at 779. Its function is to permit courts sitting in bankruptcy to adjudicate claims that would otherwise be outside bankruptcy jurisdiction—including claims that, absent a bankruptcy, could be heard only in state court—when those claims can affect the assets of the bankruptcy estate. "Related to" jurisdiction thus augments the basic grant of power over core bankruptcy matters by permitting the adjudication of claims that fall outside that core, but that impinge on the central concerns of the bankruptcy by affecting the assets available for distribution to creditors.

But "related to" jurisdiction under section 1334(b) is a different—and narrower—kind of supplemental jurisdiction than that granted in section 1367. Because the core concern of bankruptcy is the administration of the bankruptcy estate and the distribution of the estate's assets to creditors, "related to" jurisdiction is limited to claims that affect that function. In other words, "related to" jurisdiction is the form of supplemental jurisdiction that is appropriate to bankruptcy proceedings, which are in essence *in rem* proceedings regarding the bankruptcy estate. *See Central Va. Cmty. College* v. *Katz*, 126 S. Ct. 990, 995 (2006) ("Bankruptcy jurisdiction, at its core, is *in rem*."). "Related to" jurisdiction is jurisdiction over matters "related to" the *res*.

By contrast, section 1367 provides a broader grant of supplemental jurisdiction to district courts adjudicating "civil actions" over all matters that form part of the same

case or controversy as the civil action in question. Translating that grant of jurisdiction into bankruptcy is conceptually problematic, since a bankruptcy case is not analogous to a unitary "civil action." Rather, it is composed of numerous discrete "civil proceedings," which together comprise the "bankruptcy case."

Indeed, Congress made that distinction clear, using different statutory language in the grant of bankruptcy jurisdiction from that used in creating other sources of federal jurisdiction. *Compare* 28 U.S.C. § 1334(b) (granting jurisdiction of "all *civil proceedings* arising under title 11, or arising in or related to cases under title 11") *with id.* § 1331 (granting jurisdiction over "*civil actions* arising under the Constitution, laws or treaties of the United States") *and id.* § 1332 (granting jurisdiction over "all *civil actions* where the matter in controversy exceeds the sum of $75,000" and the diversity requirements are satisfied (all emphases added)).

As interpreted by the Ninth Circuit below, however, section 1367 would grant bankruptcy courts the authority to resolve any matter with a factual nexus to any of the many "proceedings" that make up the bankruptcy case. Such a sweeping grant of supplemental jurisdiction would be far afield from the central purpose of bankruptcy and at odds with the statutory text.

As the Fifth Circuit concluded, Congress's considered choice to make a specific grant of one type of supplemental jurisdiction in bankruptcy—the type that is appropriate given the *in rem* nature of a bankruptcy case—is powerful evidence that Congress did not intend to confer upon bankruptcy courts the far more expansive supplemental jurisdiction that the Ninth Circuit below held was "included" in 1334's grant of "related to" jurisdiction. "Congress has gone to great lengths to determine what proceedings may be tried by bankruptcy courts," and permitting those courts to exercise the more general supplemental jurisdiction found in section 1367 would render the "more restrictive" grant in section 1334(b) "substantially, if not entirely superfluous." *In re Bass*, 171 F.3d at 1024 (citing *In re Walker*, 51 F.3d at 570-573).

B. Congress Has Provided For Referral To The Bankruptcy Court Only Of The District Court's Section 1334 Jurisdiction—Not Supplemental Jurisdiction Exercised Under Section 1367

Section 157 of title 28—which establishes the relationship between the district court and the bankruptcy courts—confirms that Congress did not intend bankruptcy courts to exercise supplemental jurisdiction.

Section 1367 grants supplemental jurisdiction only to "district courts." Section 1334 likewise grants jurisdiction over bankruptcy cases and proceedings only to the district courts. Section 157, in turn, permits the district courts to refer "any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11"—that is to say, those cases and proceedings that are within the section 1334 bankruptcy jurisdiction—"to the bankruptcy judges for the district." 28 U.S.C. § 157(a). Those judges are described by statute as "a unit of the district court to be known as the bankruptcy court for that district." *Id.* § 151.[9]

There is no provision for referring matters within the section 1367 supplemental jurisdiction to the bankruptcy courts. Rather, the only proceedings that may be referred to bankruptcy judges are those enumerated in section 1334(b). 28 U.S.C. § 157(a). That Congress provided no

[9] Under the Bankruptcy Reform Act of 1978, all of the jurisdiction granted to the district courts was to be exercised by bankruptcy judges. In *Northern Pipeline*, 458 U.S. 50, this Court invalidated that grant of judicial power to the non-Article III bankruptcy courts. In response, Congress adopted the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, which amended the allocation of authority between the district courts and the bankruptcy courts to ensure that bankruptcy courts could not enter final judgments in matters constitutionally required to be adjudicated by an Article III tribunal, absent parties' consent. Accordingly, when district courts refer matters to the bankruptcy judges that are not "core" bankruptcy matters—those as to which *Northern Pipeline* ensures a right to an Article III tribunal—the bankruptcy judges act essentially as federal magistrates, issuing proposed findings and conclusions that are subject to *de novo* review in the district court. *See* 28 U.S.C. § 157.

mechanism for referring proceedings within the "supplemental jurisdiction" to the bankruptcy judges is strong evidence that it did not intend bankruptcy courts to exercise such jurisdiction.

The Ninth Circuit accordingly erred in holding that the bankruptcy court's "related to" jurisdiction "includes" the supplemental jurisdiction provided in section 1367. This Court should grant the petition for certiorari.

CONCLUSION

The petition for a writ of certiorari should be granted.

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