

11-2635 (L)
In Re Quigley Company, Inc.

**United States Court of Appeals
FOR THE SECOND CIRCUIT**

August Term 2011

Argued: September 27, 2011

Decided: April 10, 2012

Nos. 11-2635, 11-2767

IN RE QUIGLEY COMPANY, INC.

PFIZER INC.,
Appellant,

QUIGLEY COMPANY, INC.,
Debtor-Appellant,

-v-

LAW OFFICES OF PETER G. ANGELOS,
Appellee.

Before: WALKER, STRAUB, and LIVINGSTON, *Circuit Judges.*

1 Appellant Pfizer Inc. and Debtor-Appellant Quigley Co., Inc. appeal from a May
2 23, 2011 judgment of the United States District Court for the Southern District of New
3 York (Holwell, *J.*), reversing an order of the United States Bankruptcy Court for the
4 Southern District of New York (Bernstein, *C.J.*). The bankruptcy court held that an
5 injunction issued in the bankruptcy proceedings of Quigley Co., Inc. applied to stay
6 certain suits against Pfizer Inc., Quigley's parent company. The district court
7 reversed, holding that the injunction did not bar the suits from proceeding. The Court
8 of Appeals, Livingston, Circuit Judge, held that: (1) court of appeals had jurisdiction
9 to hear the appeal; (2) bankruptcy court had jurisdiction to issue injunction; and (3)
10 injunction does not bar suits in question against Pfizer Inc.

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1 LIVINGSTON, CIRCUIT JUDGE:
2

3 This case requires us to address the scope of federal bankruptcy jurisdiction over
4 suits against non-debtor third parties, as well as the scope of a stay issued pursuant
5 to 11 U.S.C. § 524(g)(4). In reaching these questions, we are also called upon to clarify
6 our own jurisdiction to hear appeals from decisions of district courts reviewing
7 bankruptcy court orders.

8 Appellant Pfizer Inc. (“Pfizer”) and Debtor-Appellant Quigley Co., Inc.
9 (“Quigley”) (collectively “Appellants”) appeal from a judgment entered May 23, 2011
10 in the United States District Court for the Southern District of New York (Holwell, *J.*)
11 reversing the Clarifying Order of the bankruptcy court (Bernstein, *C.J.*) and holding
12 that Appellee Law Offices of Peter G. Angelos (“Angelos”) may bring suit against Pfizer
13 for claims based on “apparent manufacturer” liability under Pennsylvania law. We
14 determine that we have jurisdiction to hear the appeal; that the bankruptcy court had
15 jurisdiction to issue the Clarifying Order; and that the Clarifying Order does not bar
16 Angelos from bringing the suits in question against Pfizer. Accordingly, we affirm the
17 district court.

18 BACKGROUND

19 Quigley was involved in the manufacture of “refractories,” which are “materials
20 that retain their strength at high temperatures.” *In re Quigley Co., Inc.*, 449 B.R. 196,
21 198 (S.D.N.Y. 2011) (“District Court Opinion”). In the decades from the 1930's through
22 the 1970's, some Quigley products, including a product known as “Insulag,” which was
23 primarily used as an insulator in high heat environments, contained asbestos. *Id.*

1 Pfizer acquired Quigley in 1968, the latter becoming Pfizer’s wholly-owned subsidiary.
2 *Id.* Post-acquisition, various marketing materials for Quigley products, including
3 Insulag, “began to include the Pfizer name, logo, and trademark.” *Id.* After the
4 hazardous effects of asbestos became widely known, more than 160,000 plaintiffs filed
5 asbestos-related suits against Quigley. *Id.* at 199. Many of these suits also named
6 Pfizer as a defendant. *Id.* Quigley filed for Chapter 11 bankruptcy in 2004. *Id.*

7 Important to the instant litigation are a number of insurance policies that
8 Quigley and Pfizer share (“Insurance Policies”) as well as “the funds contained in a
9 certain insurance trust under which Quigley and Pfizer are joint beneficiaries”
10 (“Insurance Trust”). Original Preliminary Injunction (“OPI”) at 3. As found by the
11 bankruptcy court, Pfizer and Quigley have used and may continue to use the policies
12 and the trust “to satisfy settlements, judgments and defense costs related to . . .
13 Asbestos Related Claims.” *Id.* The Insurance Policies and Insurance Trust cover
14 claims against Pfizer or Quigley “on a first billed, first paid basis, irrespective of
15 amounts previously billed by or paid to Pfizer or Quigley.” *Id.* Quigley contemplates
16 that “the remaining limits under the Shared Insurance Policies and the amounts
17 contained in the Insurance Trust . . . will be used to fund [its] pre-negotiated plan of
18 reorganization.” *Id.*

19 In 2004, the bankruptcy court granted Quigley’s motion for a preliminary
20 injunction (the OPI), pursuant to 11 U.S.C. §§ 105(a) and 362(a), enjoining “all parties
21 . . . from taking any action in any and all pending or future Asbestos Related Claims
22 against Pfizer during the pendency of Quigley’s chapter 11 case.” *Id.* at 5-6. The goal

1 of the OPI was to prevent “depletion of the Shared Insurance Policies and the
2 Insurance Trust assets,” which would “cause immediate and irreparable injury to
3 Quigley’s estate and impair Quigley’s ability to implement its pre-negotiated chapter
4 11 plan and successfully reorganize under chapter 11.” *Id.* at 4. The OPI allowed a
5 party asserting that “it holds an Asbestos Related Claim solely against Pfizer based on
6 a product having no relation to Quigley” to obtain relief from the injunction by
7 demonstrating to the bankruptcy court’s satisfaction that such claim truly arose from
8 a product having no relation to Quigley and also that the Insurance Policies and
9 Insurance Trust “could not be utilized to satisfy any portion of the defense costs,
10 settlements or judgments” related to the claim and would not be “diminished or
11 impaired by [its] prosecution.” *Id.* at 6.

12 In 2007, the bankruptcy court modified the preliminary injunction “to parallel
13 the more limited . . . injunction” contemplated by Quigley’s proposed reorganization
14 plan. *In re Quigley Co., Inc.*, Bankruptcy No. 04-15739 (SMB), 2008 WL 2097016, at
15 *2 (Bankr. S.D.N.Y. May 15, 2008) (“Clarifying Order” or “CO”). As set out in the
16 bankruptcy court’s order, the Amended Preliminary Injunction (“API”) tracked the
17 language of § 524(g)(4)(A)(ii) of the Bankruptcy Code. Section 524(g) authorizes
18 bankruptcy courts in asbestos-related bankruptcies to enter, in connection with
19 confirmation of a reorganization plan, an injunction channeling certain classes of
20 claims to a trust set up in accordance with the plan. The trust makes payments to both
21 present and future claimants, thereby helping to ensure that legitimate claimants
22 against the bankruptcy estate who develop symptoms of asbestos-related disease years

1 after the estate's assets would otherwise have been depleted are able to recover. The
2 API here, employing § 524(g)(4)(A)(ii)'s language, provided as follows:

3 [P]ursuant to sections 105(a) and 362(a) of the Bankruptcy Code, during
4 the pendency of Quigley's chapter 11 case, all parties . . . are hereby
5 stayed, restrained and enjoined from commencing or continuing any legal
6 action against Pfizer alleging that Pfizer is directly or indirectly liable for
7 the conduct of, claims against, or demands on Quigley to the extent such
8 alleged liability of Pfizer arises by reason of—

9
10 (I) Pfizer's ownership of a financial interest in Quigley, a past or
11 present affiliate of Quigley, or a predecessor in interest of
12 Quigley;

13
14 (II) Pfizer's involvement in the management of Quigley or a
15 predecessor in interest of Quigley; or service as an officer, director
16 or employee of Quigley or a related party;

17
18 (III) Pfizer's provision of insurance to Quigley or a related party;

19
20 (IV) Pfizer's involvement in a transaction changing the corporate
21 structure, or in a loan or other financial transaction affecting the
22 financial condition, of Quigley or a related party, including but not
23 limited to—

24
25 (aa) involvement in providing financing (debt or equity), or
26 advice to an entity involved in such a transaction; or

27
28 (bb) acquiring or selling a financial interest in an entity as
29 part of such a transaction.

30 API at 2-3. The order further provided that "nothing contained in this order shall
31 prohibit any party in interest from seeking relief from the automatic stay of section
32 362(a) of the Bankruptcy Code or the terms of this order by filing an appropriate
33 motion with the Court." *Id.* at 6.

34 Beginning in 1999, Angelos brought multiple suits (the "Angelos suits") in
35 Pennsylvania against Pfizer on behalf of plaintiffs alleging they were injured by

1 exposure to asbestos. CO at *2. At least some of these suits sought to hold Pfizer
2 liable in connection with products containing asbestos and manufactured by Quigley
3 under an “apparent manufacturer” theory of liability as set out in Restatement
4 (Second) of Torts § 400. *Id.* The Angelos suits alleged that Pfizer’s logo appeared on
5 Quigley’s advertising and the packages of Quigley’s asbestos-containing products. *Id.*
6 at *5. Under § 400, “[o]ne who puts out as his own product a chattel manufactured by
7 another is subject to the same liability as though he were its manufacturer.” *Forry v.*
8 *Gulf Oil Corp.*, 237 A.2d 593, 599 (Pa. 1968) (quoting Restatement (Second) of Torts
9 § 400 (1965)) (internal quotation marks omitted). Angelos moved for partial summary
10 judgment against Pfizer on the issue of liability in many of these suits, and in response
11 Pfizer moved in the bankruptcy court to enforce the API against Angelos. CO at *2-3.
12 Angelos argued that the liability it sought to impose on Pfizer was based on Pfizer’s
13 own conduct in permitting its label to be affixed to Quigley products containing
14 asbestos and to Quigley advertising, and therefore its suits were not barred by the API.
15 *Id.* at *3.

16 In its Clarifying Order, the bankruptcy court began by noting that all the actions
17 upon which Pfizer’s liability is predicated in the Angelos suits were actually
18 undertaken by Quigley, and that consequently the relevant inquiry for determining
19 whether the API enjoins continuance of these suits is whether “Pfizer’s liability ‘arises
20 by reason of’ its ownership or management of Quigley,” as the API, mirroring
21 § 524(g)(4)(A)(ii), provides. *Id.* at *5. It then observed that the phrase “arises by
22 reason of” is ambiguous. On the one hand, the liability Angelos seeks to impose on

1 Pfizer “arises by reason of the use of its name and logo by Quigley,” not its ownership
2 or management of Quigley. *Id.* (internal quotation marks omitted). On the other hand,
3 “[b]ut for Pfizer’s ownership and/or management of Quigley, its name and logo would
4 never have been used” on Quigley products. *Id.*

5 The bankruptcy court concluded that the API does cover § 400 liability. It
6 reasoned that the API plainly enjoins claims premised on successor and alter ego
7 liability, and that both of these types of liability will often involve conduct by the third-
8 party defendant that is more wrongful than “[t]he use of the Pfizer name and logo.”
9 *Id.* at *6. The bankruptcy court also noted the similarity between *respondeat superior*
10 liability and liability imposed under § 400, since it concluded that both forms of
11 liability are considered “derivative” under Pennsylvania law. *Id.* Suits alleging
12 *respondeat superior* liability are clearly covered by the API so, the bankruptcy court
13 reasoned, § 400 suits should be as well. *Id.*¹ The bankruptcy court determined that
14 the API reaches the Angelos suits, and therefore it directed Angelos and the plaintiffs
15 in these suits to cease prosecution of them. *Id.* at *8.

16 Angelos appealed the CO to the United States District Court for the Southern
17 District of New York. The district court did not quarrel with the bankruptcy court’s
18 determination that the conduct for which Angelos seeks to impose liability on Pfizer

¹Additionally, the bankruptcy court discussed our then-recent decision in *In re Johns-Manville Corp.*, 517 F.3d 52 (2d Cir. 2008) (hereinafter “*Manville III*,” to adhere to the numbering scheme employed by previous decisions discussing the long *Manville* line of cases), *rev’d sub nom. Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 129 S. Ct. 2195 (2009), which it read to require that, to be enjoined under 11 U.S.C. § 524(g), a claim against a third party must be derivative. CO at *7.

1 was Quigley's. District Court Opinion at 203-04. However, the district court disagreed
2 with the bankruptcy court that the fact that Quigley would not have marked its
3 products with Pfizer's name and logo but for Pfizer's ownership of Quigley leads to the
4 conclusion that the API covers the Angelos suits. Instead, the district court viewed the
5 relevant inquiry as whether the liability Angelos seeks to impose on Pfizer arises, *as*
6 *a legal matter*, from its ownership of Quigley. *Id.* at 204-05. The district court found
7 support for this position in our decision in *Manville III*, which it read as requiring, in
8 cases interpreting the scope of an 11 U.S.C. § 524(g) injunction, "a legal analysis . . .
9 under state law to determine whether [a defendant] had 'an independent legal duty in
10 dealing with the plaintiffs, notwithstanding the factual background in which [that]
11 duty arose.'" *Id.* at 205 (quoting *Manville III*, 517 F.3d at 63). The district court
12 explained that § 400 imposes an independent duty on those putting themselves out as
13 the apparent manufacturer of a product made by another not to hold themselves out
14 as sponsors of defective products. *See id.* at 207. Because Angelos "seeks to bring
15 separate direct actions against Pfizer . . . because Pfizer breached an independent legal
16 duty not to employ its name and logo in the marketing of a defective product," the
17 Angelos suits, in the district court's view, fell outside the scope of the API. *Id.*
18 Accordingly, the district court reversed the bankruptcy court, permitting the Angelos
19 suits to go forward in Pennsylvania state courts. *Id.* at 209.

1 The district court entered judgment for Angelos on May 23, 2011. Quigley
2 moved for reconsideration, and the district court denied the motion.² This appeal
3 followed.

4 DISCUSSION

5 *This Court's Jurisdiction*

6 The parties do not dispute our jurisdiction to hear this appeal. Nevertheless,
7 “[w]e have an independent obligation to consider the presence or absence of subject
8 matter jurisdiction *sua sponte*.” *Coll. Standard Magazine v. Student Ass’n of State*
9 *Univ. of N.Y. at Albany*, 610 F.3d 33, 35 (2d Cir. 2010) (per curiam) (internal quotation
10 marks omitted). We have made clear in the past that 28 U.S.C. § 158(d) “is the
11 exclusive source of court of appeals jurisdiction over orders of district courts reviewing
12 bankruptcy court rulings.” *In re Lomas Fin. Corp.*, 932 F.2d 147, 150 (2d Cir. 1991).
13 Section 158(d)(1) provides that “[t]he courts of appeals shall have jurisdiction of
14 appeals from all final decisions, judgments, orders, and decrees” of United States
15 district courts and bankruptcy appellate panels reviewing decisions of bankruptcy

²After entry of final judgment but before the decision on the motion to reconsider, Hissey Kientz L.L.P. and Hissey, Kientz & Herron P.L.L.C. (collectively “Hissey”) gave notice of their intention to intervene, and moved to intervene on June 24, the same day the district court issued its decision denying Quigley’s motion to reconsider. The district court granted the motion to intervene on June 27. On appeal, Appellants challenge the district court’s grant of the motion to intervene, arguing that Hissey does not have standing. Because Hissey conceded at oral argument that its purposes in seeking to intervene would be vindicated if we were to treat it as an *amicus curiae*, we do so, and do not reach the standing question. The Clerk of Court is directed to amend the caption accordingly.

1 courts. *See* 28 U.S.C. § 158(a)-(b), (d).³ But a district court’s order can be final for
2 purposes of appealability only if the order of the bankruptcy court below was also final.
3 *See In re Fugazy Express, Inc.*, 982 F.2d 769, 775 (2d Cir. 1992) (“The district court’s
4 own decision of an appeal from the bankruptcy court is not a final decision for purposes
5 of appeal to the court of appeals unless the order of the bankruptcy court was final.”).
6 Therefore, we may exercise jurisdiction over this appeal only if the order of the
7 bankruptcy court was final.

8 “The standards for determining finality in bankruptcy differ from those
9 applicable to ordinary civil litigation.” *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1283
10 (2d Cir. 1990). This difference is due to the “fact that a bankruptcy proceeding is
11 umbrella litigation often covering numerous actions that are related only by the
12 debtor’s status as a litigant and that often involve decisions that will be unreviewable
13 if appellate jurisdiction exists only at the conclusion of the bankruptcy proceeding.”
14 *Id.* Accordingly, we regard as final “orders that finally dispose of discrete disputes
15 within the larger case.” *Id.* (emphasis omitted) (internal quotation marks omitted).
16 Bankruptcy court orders lifting an automatic stay are final for purposes of
17 appealability. *See, e.g., In re Chateaugay Corp.*, 880 F.2d 1509, 1511 (2d Cir. 1989).
18 So are orders denying relief from an automatic stay, *see, e.g., In re Pegasus Agency,*
19 *Inc.*, 101 F.3d 882, 885 (2d Cir. 1996), so long as the bankruptcy court has not indicated

³Section 158(d) also provides for jurisdiction for courts of appeals to hear appeals on the basis of certification. *See* U.S.C. § 158(d)(2). Because the instant appeal has not been certified, this provision is not relevant here.

1 that it contemplates further proceedings on the question of relief from the stay, *see*
2 *Lomas*, 932 F.2d at 151; *In re Enron Corp.*, 316 B.R. 767, 770 (S.D.N.Y. 2004).

3 Here, the Clarifying Order that is the subject of this appeal did not grant or
4 deny relief from a stay; rather, it clarified that a stay applied to a particular party. But
5 in *Lomas*, we stated that whether a bankruptcy court order “involve[s] an appeal from
6 a denial of a motion to lift the automatic stay . . . [or] involves an appeal from an order
7 holding . . . that the automatic stay applies to the action” is not “a distinction of
8 consequence to the finality issue.” *Lomas*, 932 F.2d at 151 n.2. Furthermore, we have
9 no reason to believe that the bankruptcy court contemplates additional proceedings as
10 to the applicability of the stay to the Angelos suits. The bankruptcy court’s resolution
11 of the dispute between Angelos and the Appellants as to whether the stay applies to
12 the Angelos suits is the equivalent of a decision from that court on a motion seeking
13 relief from a stay. Accordingly, we agree with the district court’s well-reasoned
14 conclusion that the bankruptcy court’s CO was final, *see In re Quigley*, No. M-47 (RJH),
15 2010 WL 356653 (S.D.N.Y. Jan. 27, 2010), and we thus have jurisdiction to hear this
16 appeal.

17 *The Bankruptcy Court’s Jurisdiction to Issue the Clarifying Order*

18 While the parties do not dispute our jurisdiction to hear this appeal, they do
19 dispute the bankruptcy court’s jurisdiction to enjoin the Angelos suits from going
20 forward. *Amicus* Hissey suggests that the Supreme Court’s recent opinion in *Stern v.*
21 *Marshall*, 131 S. Ct. 2594 (2011), supports the view that the bankruptcy court’s
22 exercise of jurisdiction contravened Article III of the Constitution. Angelos argues that
23 jurisdiction is lacking under the Bankruptcy Code. We disagree with both positions.

1 a. Article III and the Bankruptcy Court’s Jurisdiction

2 *Stern* involved a dispute between the estates of Vickie Lynn Marshall (popularly
3 known as Anna Nicole Smith and herein referred to as “Vickie”), the wife of the late J.
4 Howard Marshall, and Pierce Marshall (“Pierce”), J. Howard Marshall’s son. *Id.* at
5 2601. After the death of her husband, Vickie filed for bankruptcy in federal court.
6 Pierce filed a proof of claim in that proceeding, charging that Vickie had defamed him
7 in connection with a suit she had previously filed alleging that her husband intended
8 to provide for her through a trust, and that Pierce had tortiously interfered with that
9 gift. Upon Pierce’s filing of a proof of claim in the bankruptcy proceeding, Vickie
10 responded with a counterclaim for the alleged tortious interference. The bankruptcy
11 court issued a final judgment in favor of Vickie on her counterclaim, *see id.* at 2601,
12 and Pierce then challenged the bankruptcy court’s jurisdiction to do so.

13 The Supreme Court held that the bankruptcy court’s entry of final judgment on
14 Vickie’s counterclaim violated Article III of the Constitution.⁴ *Id.* at 2608. “Article III,”
15 the Court reasoned, “could neither serve its purpose in the system of checks and
16 balances nor preserve the integrity of judicial decisionmaking if the other branches of
17 the Federal Government could confer the Government’s ‘judicial Power’ on entities
18 outside Article III.” *Id.* at 2609. The Court concluded that the entry of final judgment

⁴Article III commands that “[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.” Art. III, § 1. The Article further provides for the judges of these courts to hold their offices during good behavior, without diminution of salary. *Id.*

1 on Vickie’s counterclaim “involve[d] the most prototypical exercise of judicial power:
2 the entry of a final, binding judgment by a court with broad substantive jurisdiction,
3 on a common law cause of action, when the action neither derive[d] from nor
4 depend[ed] upon any agency regulatory regime.” *Id.* at 2615 (emphasis omitted).
5 Accordingly, the counterclaim had to be decided by an Article III court.

6 Whatever *Stern*’s precise contours (a matter we need not reach) we conclude that
7 *Stern* has no application to the present case. The Supreme Court in *Stern* indicated
8 that its holding was a narrow one. *See id.* at 2620 (“We conclude today that Congress,
9 in one isolated respect, exceeded [Article III’s] limitation in the Bankruptcy Act of
10 1984.”); *see also In re Salander O’Reilly Galleries*, 453 B.R. 106, 115 (Bankr. S.D.N.Y.
11 2011) (“*Stern* is replete with language emphasizing that the ruling should be limited
12 to the unique circumstances of that case.”). Its facts, moreover, are far removed from
13 the instant situation. The CO and the API at issue here concern the stay of litigation
14 during the pendency of Quigley’s bankruptcy, rather than the entry of final judgment
15 on a common law claim. Enjoining litigation to protect bankruptcy estates during the
16 pendency of bankruptcy proceedings, unlike the entry of the final tort judgment at
17 issue in *Stern*, has historically been the province of the bankruptcy courts. *See*
18 *generally, e.g., In re Prudence Bonds Corp.*, 122 F.2d 258 (2d Cir. 1941) (discussing
19 stays of litigation imposed by a bankruptcy court). Accordingly, the bankruptcy court
20 was well within constitutional bounds when it exercised jurisdiction to enjoin the
21 Angelos suits.

1 b. Statutory Jurisdiction

2 Statutory jurisdiction is a separate matter. 28 U.S.C. § 1334 provides for
3 original jurisdiction in the district courts for “all cases under title 11” and “all civil
4 proceedings arising under title 11, or arising in or related to cases under title 11.” 28
5 U.S.C. § 157(a), in turn, provides that district courts may refer all cases or proceedings
6 over which they have jurisdiction under 28 U.S.C. § 1334(a) or (b) to the bankruptcy
7 courts. The parties do not dispute that, if the district court had bankruptcy jurisdiction
8 because the Angelos suits “aris[e] under title 11, or aris[e] in or [are] related to” the
9 Quigley bankruptcy, the bankruptcy court’s exercise of jurisdiction was proper.⁵

10 Bankruptcy jurisdiction is appropriate over “third-party non-debtor claims that
11 directly affect the *res* of the bankruptcy estate.” *Manville III*, 517 F.3d at 66; *see also*
12 *In re Cuyahoga Equip. Corp.*, 980 F.2d 110, 114 (2d Cir. 1992) (“The test for
13 determining whether litigation has a significant connection with a pending bankruptcy
14 [sufficient to confer bankruptcy jurisdiction] is whether its outcome might have any

⁵In the OPI, the bankruptcy court found that the proceeding before it was a “core proceeding” within the terms of 28 U.S.C. § 157(b)(2), thus enabling it to issue orders rather than merely to make proposed findings of fact and conclusions of law, *see* 28 U.S.C. § 157(b)(1), (c)(1). Angelos does not question this conclusion before us, or even cite 28 U.S.C. § 157 in its brief, and has thereby waived any objection to the bankruptcy court’s determination. *See, e.g., Norton v. Sam’s Club*, 145 F.3d 114, 117 (2d Cir. 1998) (“Issues not sufficiently argued in the briefs are considered waived and normally will not be addressed on appeal.”). Although Hissey’s brief alludes to 28 U.S.C. § 157, “an issue raised only by an *amicus curiae* is normally not considered on appeal”; we see no reason to depart from this general rule here. *Olmsted v. Pruco Life Ins. Co. of N.J.*, 283 F.3d 429, 436 n.5 (2d Cir. 2002).

1 conceivable effect on the bankrupt estate.” (internal quotation marks omitted)).⁶ The
2 application of this test to the claims at issue would at first glance appear
3 straightforward. The Insurance Policies and Insurance Trust are the joint property of
4 Pfizer and Quigley’s estate. *See In re Johns-Manville Corp.*, 600 F.3d 135, 152 (2d Cir.
5 2010) (per curiam) (“*Manville IV*”) (“[T]he insurance policies that Travelers issued to
6 Manville are the estate’s most valuable asset.”); *MacArthur Co. v. Johns-Manville*
7 *Corp.*, 837 F.2d 89, 92 (2d Cir. 1988) (agreeing with the “[n]umerous courts [that] have
8 determined that a debtor’s insurance policies are property of the estate”). If the
9 Angelos suits succeed – or even if they merely require Pfizer to incur defense costs in
10 litigating against them – the record is uncontradicted that Pfizer may submit a claim
11 to be paid out of insurance that is this joint property. Therefore, these suits could
12 directly affect Quigley’s bankruptcy estate, and bankruptcy jurisdiction under 28
13 U.S.C. § 1334 is appropriate. *See Parmalat Capital Fin. Ltd. v. Bank of Am. Corp.*, 639
14 F.3d 572, 579 (2d Cir. 2011) (“If [the plaintiffs are] successful in their claims against
15 [the defendant], the funds they recover will benefit the . . . bankruptcy estates. It is
16 not difficult to conclude that the ‘conceivable effect’ test is satisfied.” (citation omitted)).

17 Angelos objects that the impact of the Angelos suits on Quigley’s bankruptcy
18 estate is too attenuated to confer bankruptcy jurisdiction. We disagree. The

⁶We have also expressed the test for bankruptcy jurisdiction as an inquiry whether the third-party action has “a significant connection” with the bankruptcy case in question. *In re Turner*, 724 F.2d 338, 341 (2d Cir. 1983) (Friendly, J.) (internal quotation marks omitted). Any possible difference between these two standards is immaterial for our purposes, as the exercise of bankruptcy jurisdiction was proper if the Angelos suits satisfy either test. *See Cuyahoga*, 980 F.2d at 114.

1 bankruptcy court found in 2004, and Angelos does not contest, that the Insurance
2 Policies and Insurance Trust “may be utilized by Pfizer and Quigley to satisfy
3 settlements, judgments or defense costs related to Asbestos Related Claims against
4 either of them, on a first billed, first paid basis, irrespective of amounts previously
5 billed by or paid to Pfizer or Quigley.”⁷ OPI at 10. The potential impact of the Angelos
6 suits on the bankruptcy estate is thus nothing but direct: at Pfizer’s election, any
7 judgments, settlements, or litigation expenses arising out of the Angelos suits will be
8 paid by Quigley’s estate. This case is thus different from *Pacor, Inc. v. Higgins*, 743
9 F.2d 984 (3d Cir. 1984), *overruled on other grounds by Things Remembered, Inc. v.*
10 *Petrarca*, 516 U.S. 124 (1994), on which Angelos relies. In *Pacor*, where the third party
11 had only a *potential* common law right of indemnification against the debtor, “any
12 judgment received by the plaintiff . . . could not itself [have] result[ed] in even a
13 contingent claim against [the debtor], since Pacor would still be obligated to bring an
14 entirely separate proceeding to receive indemnification.” *Id.* at 995.⁸ Here, Pfizer need
15 not rely on a separate action for indemnification; rather, it has a now-existent legal

⁷This case thus differs from *In re Combustion Engineering, Inc.*, 391 F.3d 190 (3d Cir. 2004). There, the bankruptcy court made insufficient findings of fact as to whether two third parties and the debtor were insured under the same program (and also as to the program’s terms and operations) for the Third Circuit to conclude that claims against the third parties would in fact have an adverse effect on the debtor’s estate. *See id.* at 232-33 & nn.42-43.

⁸*See also In re W.R. Grace & Co.*, 591 F.3d 164, 173 (3d Cir. 2009) (“[I]n order for a bankruptcy court to have related-to jurisdiction to enjoin a lawsuit, that lawsuit must ‘affect the bankruptcy [] without the intervention of yet another lawsuit.’” (alteration in original) (quoting *In re Federal-Mogul Global, Inc.*, 300 F.3d 368, 382 (3d Cir. 2002))).

1 right to utilize the assets of the Insurance Policies and Insurance Trust to satisfy
2 judgments or settlements or pay defense costs. *See A.H. Robins Co. v. Piccinin*, 788
3 F.2d 994, 1001-02 (4th Cir. 1986) (indicating that proceedings against third parties
4 “who may be entitled to indemnification under [an insurance] policy [owned by the
5 debtor] or who qualify as additional insureds under the policy” are covered by the
6 automatic stay); *see also In re Brentano’s*, 27 B.R. 90, 92 (Bankr. S.D.N.Y. 1983)
7 (exercising jurisdiction where an indemnification agreement between the debtor and
8 a third party arranged that any judgment against the third party would automatically
9 result in liability for the debtor), *cited in Pacor*, 743 F.2d at 995.⁹

10 Angelos also objects that, under this Court’s decision in *Manville III*, the
11 bankruptcy court did not have jurisdiction to enjoin the Angelos suits because they
12 allege violations of an independent legal duty owed by Pfizer to the plaintiffs, rather
13 than claims that are “derivative” under Pennsylvania state law. Again, we disagree.
14 Because Angelos’s mistake as to the nature of the jurisdictional inquiry under 28
15 U.S.C. § 1334(a) and (b) stems from a misunderstanding of our case law’s treatment
16 of derivative liability in the context of bankruptcy jurisdiction, however, we discuss our
17 previous cases addressing this subject in some detail.

⁹We are unconvinced by Angelos’s argument that the Angelos suits would not impact Quigley’s estate because Pfizer would have to make a claim against the Insurance Policies or the Insurance Trust before any effect on Quigley’s estate would occur. The parties entitled to contractual indemnity in *A.H. Robins* and *In re Brentano’s* could presumably also have declined to insist on their contractual rights.

1 Our first case to address the role of derivative liability in the context of
2 bankruptcy jurisdiction was *MacArthur Co. v. Johns-Manville Corp.*, 837 F.2d 89, part
3 of the long saga of litigation arising from the bankruptcy of the Johns-Manville
4 Corporation (“Manville”), a major national asbestos concern. In *MacArthur*, we
5 addressed the question whether the bankruptcy court had jurisdiction to enjoin claims
6 against Manville’s insurers by an asbestos distributor (MacArthur) when the
7 distributor claimed to be coinsured with Manville under “vendor endorsements”
8 contained in the Manville policies. *Id.* at 91-93. We concluded that it did. *Id.* at 93.
9 After determining that the insurance policies in question constituted property of the
10 estate, we turned to MacArthur’s argument that “because its own rights are separate
11 from Manville’s, its claims under the vendor endorsements are too remote from the
12 Chapter 22 proceeding to permit the Bankruptcy Court to exercise jurisdiction.” *Id.*
13 at 92. We noted that “[t]he vendor endorsements cover only those liabilities resulting
14 from the vendor’s status as a distributor of Manville’s products,” that “[t]he
15 endorsements are limited by the product liability limits of the underlying Manville
16 policies and are otherwise subject to all of the terms of the underlying policies,” and
17 that “MacArthur’s rights as an insured vendor are completely derivative of Manville’s
18 rights as the primary insured.” *Id.* at 92. We reasoned that “[s]uch derivative rights
19 are no different . . . from those of the asbestos victims who have already been barred
20 from asserting direct actions against the insurers,” *id.* (citing *In re Davis*, 730 F.2d 176

1 (5th Cir. 1984) (per curiam)),¹⁰ and consequently found the bankruptcy court’s exercise
2 of jurisdiction proper.

3 *MacArthur* does not hold that third-party suits that affect the *res* of the
4 bankrupt estate but that are nonetheless not derivative, in some sense, of the debtor’s
5 rights and liabilities fall outside federal bankruptcy jurisdiction. (Indeed, language to
6 this effect would have been dicta, as *MacArthur* found jurisdiction proper. *Id.* at 93.)
7 The primary thrust of the opinion in *MacArthur* focuses on the fact that the suits in
8 question would impact the *res* of the bankruptcy estate. *See id.* at 91-92. We viewed
9 the similarity of MacArthur’s claims to direct actions against an insurer (over which
10 the Fifth Circuit in *Davis* had already approved bankruptcy jurisdiction) as relevant
11 to whether MacArthur’s claims affected the bankruptcy estate, not as an independent
12 requirement for the exercise of jurisdiction. *See id.* at 92-93 (“[MacArthur] seek[s] to
13 collect out of the proceeds of Manville’s insurance policies on the basis of Manville’s
14 conduct. [MacArthur’s] claims are inseparable from Manville’s own insurance coverage
15 and are consequently well within the Bankruptcy Court’s jurisdiction over Manville’s
16 assets.”). The fact that MacArthur’s rights under the vendor endorsements were
17 derivative of Manville’s – as opposed to non-derivative rights under separate insurance
18 policies – indicated in that case that any proceeds Manville’s insurers might owe
19 MacArthur would come from Manville’s insurance policies.

¹⁰A “direct action” in the insurance context is a suit, statutorily authorized in some states, in which “[t]he injured party steps into the shoes of the tortfeasor and can assert any right of the tortfeasor-insured against the insurance company.” *Continental Ins. Co. v. Atlantic Cas. Ins. Co.*, 603 F.3d 169, 179 (2d Cir. 2010) (quoting *Lang v. Hanover Ins. Co.*, 820 N.E. 2d 855, 858 (N.Y. 2004)) (internal quotation mark omitted).

1 Our next case to consider the role of derivative liability in the context of
2 bankruptcy jurisdiction was *Manville III*. In that case, plaintiffs sought to bring suits
3 against Travelers, Manville’s primary insurer for a period of years. *Manville III*, 517
4 F.3d at 57. The plaintiffs in many of these suits did not claim against Manville’s
5 insurance policies,¹¹ but rather sought to hold Travelers liable for what they saw as its
6 independent tortious conduct. *See id.* at 57-58. For instance, some of these plaintiffs
7 alleged that they “declined to file personal injury suits against Manville because
8 Travelers . . . suppressed information about asbestos hazards and intentionally
9 propagated an allegedly-fraudulent ‘state of the art’ defense to frustrate claimants’
10 rights.” *Id.* at 57. Travelers argued that the suits were enjoined pursuant to two
11 orders issued by the bankruptcy court in 1986.¹² *Id.* at 58.

12 We held that bankruptcy jurisdiction did not exist to enjoin the suits in question.
13 We began by distinguishing *MacArthur* and the Fifth Circuit’s decision in *Davis*, noting
14 that the plaintiffs’ “claims seek damages from Travelers that are *unrelated* to the
15 policy proceeds, quite unlike the claims in *MacArthur* and *Davis* where plaintiffs
16 sought indemnification or compensation for the tortious wrongs of Manville to be paid

¹¹The suits were thus not traditional “direct actions.” *See Manville III*, 517 F.3d at 55 n.4.

¹²The Supreme Court reversed this Court’s decision in *Manville III* on the ground that given “the finality of the Bankruptcy Court’s [1986] orders following the conclusion of direct review,” *res judicata* barred the plaintiffs’ challenge, two decades later, to the bankruptcy court’s jurisdiction to enter the orders in 1986. *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 129 S. Ct. 2195, 2198 (2009). In *Manville IV*, we clarified that the Supreme Court “did not contradict the conclusion of [*Manville III*] jurisdictional inquiry,” 600 F.3d at 152, and we reaffirmed the jurisdictional analysis, *id.* at 148.

1 out of the proceeds of Manville’s insurance policies.” *Id.* at 63. We also noted that,
2 unlike the claims in *MacArthur*, the claims at issue were not premised on Manville’s
3 conduct. *Id.* We faulted the courts below for failing to examine whether the suits in
4 question sought to impose liability on Travelers on the basis of its “independent legal
5 duty in its dealing with [the] plaintiffs,” *id.*, noting that such an examination would
6 have revealed that, while some of the claims were “premised on a statute that provides
7 a direct action against an insurer when the insured is insolvent,” the “vast majority”
8 were claims which sought “to recover directly from [the] debtor’s insurer for the
9 insurer’s own independent wrongdoing,” “ma[d]e no claim against an asset of the
10 estate,” and whose litigation “[did not] affect the estate.” *Id.* at 64-65. Accordingly, we
11 concluded that the bankruptcy court had no jurisdiction “to enjoin claims against
12 Travelers that were predicated, as a matter of state law, on Travelers’ own alleged
13 misconduct and were unrelated to Manville’s insurance policy proceeds and the *res* of
14 the Manville estate.” *Id.* at 68.

15 *Manville III* did not work a change in our jurisprudence. After *Manville III*, as
16 before it, “a bankruptcy court . . . has jurisdiction to enjoin third-party non-debtor
17 claims that directly affect the *res* of the bankruptcy estate.” *Manville III*, 517 F.3d at
18 66; accord *Cuyahoga*, 980 F.2d at 114. As in *MacArthur*, the salience of *Manville III*’s
19 inquiry as to whether Travelers’ liability was derivative of the debtor’s rights and
20 liabilities was that, in the facts and circumstances of *Manville III*, cases alleging
21 derivative liability would affect the *res* of the bankruptcy estate, whereas cases alleging
22 non-derivative liability would not. Compare *Manville III*, 517 F.3d at 64 (“[T]he claims

1 involving Louisiana law are premised on a statute that provides a direct action against
2 an insurer when the insured is insolvent. The recovery is against the policy . . .”),
3 *with id.* at 65 (“Here . . . Plaintiffs seek to recover directly from a debtor’s insurer for
4 the insurer’s own independent wrongdoing. . . . They raise no claim against Manville’s
5 insurance coverage.”). The *Manville III* panel thus quite properly used the
6 derivative/non-derivative inquiry as a means to assess whether the suits at issue would
7 affect the bankruptcy estate. It did not impose a requirement that an action must both
8 directly affect the estate *and* be derivative of the debtor’s rights and liabilities for
9 bankruptcy jurisdiction over the action to exist.

10 Our more recent decision in *Manville IV* made more explicit the fact that in
11 *Manville III* derivative liability was discussed not as an independent jurisdictional
12 requirement but as a factor demonstrating, in the circumstances of that litigation, that
13 the suits in question would have an effect on the bankruptcy *res*. We described our
14 holding in *Manville III* as indicating “that the bankruptcy court’s *in rem* jurisdiction
15 was insufficient to allow it to enjoin . . .[a]ctions based on state-law theories that
16 [sought] to impose liability on Travelers as a separate entity rather than on the policies
17 that it issued to Manville.” *Manville IV*, 600 F.3d at 152. That is to say, *Manville III*
18 drew a distinction between suits alleging non-derivative liability on the one hand, and
19 suits affecting the *res* on the other. By identifying the suits in question as non-
20 derivative, the *Manville III* panel determined that they would not affect the
21 bankruptcy estate.

1 It thus appears from our case law that, while we have treated whether a suit
2 seeks to impose derivative liability as a helpful way to assess whether it has the
3 potential to affect the bankruptcy *res*, the touchstone for bankruptcy jurisdiction
4 remains “whether its outcome might have any ‘conceivable effect’ on the bankruptcy
5 estate.” *Cuyahoga*, 980 F.2d at 114. This test has been almost universally adopted by
6 our sister circuits, *see Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6 (1995) (collecting
7 cases),¹³ which in some instances have found bankruptcy jurisdiction to exist over non-
8 derivative claims against third parties.¹⁴ *See In re Stonebridge Techs., Inc.*, 430 F.3d
9 260, 263-64, 267 (5th Cir. 2005) (per curiam) (finding bankruptcy jurisdiction over a
10 negligent misrepresentation suit against a third party where the alleged
11 misrepresentation was undertaken by defendant, not debtor); *In re Dogpatch U.S.A.,*
12 *Inc.*, 810 F.2d 782, 786 (8th Cir. 1987) (finding bankruptcy jurisdiction over
13 counterclaim for breach of contract where liability sought to be imposed arose from
14 contracting party’s alleged breach, not debtor’s). We see no reason to question these
15 decisions. One of the central purposes – perhaps *the* central purpose – of extending
16 bankruptcy jurisdiction to actions against certain third parties, as well as suits against
17 debtors themselves, is to “protect[] the assets of the estate” so as to ensure a fair

¹³The Supreme Court, while noting the widespread approval of the “conceivable effect” test among the circuits, has not reached the question of whether to adopt this formulation as its own. *See Celotex*, 514 U.S. at 308 n.6.

¹⁴By contrast, we are aware of no sister circuit cases finding a *lack* of bankruptcy subject matter jurisdiction where the third-party action in question could affect the bankrupt estate but was not derivative of the rights and obligations of the debtor.

1 distribution of those assets at a later point in time. *In re Zarnel*, 619 F.3d 156, 171 (2d
2 Cir. 2010). But whether the direct result of a suit against a third party will be the
3 removal of assets from the bankruptcy estate is separate from the question whether
4 the third party's alleged liability is derivative of the debtor's (although in certain suits,
5 as our case law indicates, the two questions may become intertwined). A suit against
6 a third party alleging liability not derivative of the debtor's conduct but that
7 nevertheless poses the specter of direct impact on the *res* of the bankrupt estate may
8 just as surely impair the bankruptcy court's ability to make a fair distribution of the
9 bankrupt's assets as a third-party suit alleging derivative liability.¹⁴ Accordingly, we
10 conclude that, where litigation of the Angelos suits against Pfizer would almost
11 certainly result in the drawing down of insurance policies that are part of the
12 bankruptcy estate of Quigley, the exercise of bankruptcy jurisdiction to enjoin these
13 suits was appropriate.

14 *The Scope of the API*

15 Having concluded both that we have jurisdiction to hear this appeal and that the
16 bankruptcy court had jurisdiction to enjoin the Angelos suits, we next address whether
17 the Angelos suits fall within the scope of the API and were, for that reason, actually
18 enjoined. As both parties acknowledge, we typically accord a bankruptcy court's
19 interpretation of its own order "customary appellate deference." *In re Casse*, 198 F.3d

¹⁴In neither circumstance, of course, is it necessarily the case that an injunction staying litigation during the course of bankruptcy proceedings is appropriate. A bankruptcy court's *jurisdiction* to enjoin an action does not *require* it to exercise that jurisdiction to enjoin a suit in a particular instance.

1 327, 333 (2d Cir. 1999). Angelos urges, however, and the district court agreed, that
2 such deference does not apply here since the language of the API tracks the statutory
3 language of 11 U.S.C. § 524(g)(4)(A)(ii). We recognize that, in the agency context, the
4 Supreme Court has held that judicial deference to an agency’s interpretation of its own
5 regulations is inappropriate when those regulations “do[] little more than restate the
6 terms of [a] statute,” because “the existence of a parroting regulation does not change
7 the fact that the question here is not the meaning of the regulation but the meaning
8 of the statute.” *Gonzales v. Oregon*, 546 U.S. 243, 257 (2006). However, we need not
9 decide whether to apply this principle here, as the bankruptcy court clearly stated in
10 its CO that “[t]he Amended Injunction provides the same protection as a channeling
11 injunction under § 524(g).” CO at *3. Thus, the bankruptcy court itself believed that
12 it was interpreting the statute when it interpreted the API, and the meaning of the
13 statute is dispositive as to the meaning of the API. We review the bankruptcy court’s
14 statutory interpretation, like all legal conclusions, *de novo*. See *In re Casse*, 198 F.3d
15 at 332.¹⁵

16 As already noted, § 524(g) was enacted to address the unique problem posed by
17 asbestos-related bankruptcies. Because symptoms of asbestos-related illness may not
18 manifest until decades after exposure, potential claimants against an asbestos

¹⁵We recognize that the API was not entered under the bankruptcy court’s authority conferred in 11 U.S.C. § 524(g), but rather pursuant to 11 U.S.C. §§ 105(a) and 362(a). API at 2. However, Angelos does not contest the bankruptcy court’s authority under these provisions to issue the API. Accordingly, we examine only whether the API’s terms encompass the Angelos suits.

1 manufacturer's bankruptcy estate may not know of their claims until years after the
2 estate has been depleted by other claimants whose symptoms became apparent earlier.
3 Section 524(g) addresses this difficulty by authorizing a bankruptcy court to enter,
4 along with confirmation of a reorganization plan, an injunction "channeling" certain
5 classes of claims to a trust set up in accordance with the reorganization plan, which
6 trust will then make payments to both present and future claimants. *See* 11 U.S.C. §
7 524(g)(1)-(2).¹⁶

8 To give bankruptcy courts power to channel all appropriate claims to the trust
9 – and to provide an incentive for parent or affiliated companies of an entity undergoing
10 asbestos-related bankruptcy to contribute to the trust – § 524(g) contains a provision
11 allowing the bankruptcy court to enter an injunction barring certain actions brought
12 against non-debtor third parties. Section § 524(g)(4)(A)(ii) provides as follows:

13 [A]n injunction [under 11 U.S.C. § 524(g)] may bar any action directed
14 against a third party who is identifiable from the terms of such injunction
15 (by name or as part of an identifiable group) and is alleged to be directly
16 or indirectly liable for the conduct of, claims against, or demands on the
17 debtor to the extent such alleged liability of such third party arises by
18 reason of–

19
20 (I) the third party's ownership of a financial interest in the debtor,
21 a past or present affiliate of the debtor, or a predecessor in interest
22 of the debtor;

23
24 (II) the third party's involvement in the management of the debtor
25 or a predecessor in interest of the debtor, or service as an officer,
26 director or employee of the debtor or a related party;

27
28 (III) the third party's provision of insurance to the debtor or a
29 related party; or

¹⁶The requirements for a § 524(g) plan and trust are extensive but are relevant here only as described below.

1 (IV) the third party’s involvement in a transaction changing the
2 corporate structure, or in a loan or other financial transaction
3 affecting the financial condition, of the debtor or a related party,
4 including but not limited to—

5
6 (aa) involvement in providing financing (debt or equity), or
7 advice to an entity involved in such a transaction; or

8
9 (bb) acquiring or selling a financial interest in an entity as
10 part of such a transaction.

11 An injunction under the statute may thus properly bar an action against a third party
12 only when that party is alleged to be liable “for the conduct of, claims against, or
13 demands on” the debtor and to the extent that such liability arises “by reason of” one
14 of the four relationships between the third party and the debtor enumerated in
15 subsections (I) through (IV).¹⁷

16 The parties’ principal disagreement focuses on the meaning of the phrase “by
17 reason of.” Stated simply, Pfizer argues that liability arises “by reason of” any of the
18 four enumerated relationships when that relationship is a “but for,” factual cause of
19 the liability in question. Here, because Quigley, as a factual matter, would not have
20 applied the Pfizer name and logo to its asbestos-containing products absent Pfizer’s
21 ownership interest in Quigley, Pfizer contends that its liability arises “by reason of”
22 that ownership interest and that the Angelos suits were properly enjoined. Angelos,
23 on the other hand, argues that, to fit within the parameters of 11 U.S.C. § 524(g), the
24 liability sought to be imposed must arise as a *legal* consequence of one of the four
25 enumerated relationships (or, stated differently, that the relationship, in light of the

¹⁷Given our conclusion that the Angelos suits do not “arise by reason of” the enumerated grounds, we need not address whether the suits seek to hold Pfizer directly or indirectly liable for the conduct of Quigley.

1 debtor's conduct or the claims asserted against it, must be a legal cause of or a legally
2 relevant factor to the third party's alleged liability). The API is inapplicable to the
3 Angelos suits, according to Angelos, because Pfizer's liability as an "apparent
4 manufacturer" under § 400 hinges on the presence of Pfizer's name and logo on
5 Quigley's products, while the fact of Pfizer's ownership of Quigley is legally irrelevant.

6 We agree with Angelos. Section 524(g) does not explicitly indicate whether the
7 phrase "by reason of" refers to legal or factual causation, or some combination of the
8 two. We conclude, however, that several factors favor the interpretation proffered by
9 the appellee.

10 In the first place, the statute lists four relationships between a third party and
11 a debtor that, when resulting in alleged liability on the third party's part for the
12 conduct of or claims against the debtor, may render an injunction appropriate. As a
13 matter of background legal principle, we deem it significant that each of these four
14 relationships is of a sort that could, *legally*, have given rise to *actual* liability in
15 appropriate circumstances prior to § 524(g)'s enactment. For instance, 11 U.S.C. §
16 524(g)(4)(A)(ii)(I) provides a bankruptcy court with the power to enjoin an action that
17 arises "by reason of" the third party's "ownership of a financial interest in the debtor,
18 a past or present affiliate of the debtor, or a predecessor in interest of the debtor." This
19 subsection thus authorizes a bankruptcy court to bar actions seeking to impose liability
20 on a third party in circumstances in which a plaintiff might have alleged that the third
21 party was responsible for claims against the debtor on a "piercing the corporate veil"

1 theory.¹⁸ See, e.g., *Freeman v. Complex Computing Co.*, 119 F.3d 1044, 1052 (2d Cir.
2 1997) (noting that, under New York law, a plaintiff seeking to pierce the corporate veil
3 “must prove [among other things] that . . . the owner has exercised such control that
4 the corporation has become a mere instrumentality of the owner”) (brackets omitted).
5 Similarly, § 524(g)(4)(A)(ii)(III) permits a bankruptcy court to enjoin a suit alleging
6 liability “by reason of . . . the third party’s provision of insurance to the debtor or a
7 related party,” thus referring to statutory “direct action” liability, as discussed above.
8 Section 524(g)(4)(A)(ii)(IV) provides that litigation may be enjoined where plaintiffs
9 contend that a third party is liable for claims against the debtor “by reason of” the
10 third party’s “involvement in a transaction changing the corporate structure, or in a
11 loan or other financial transaction affecting the financial condition, of the debtor or a
12 related party.” Here, too, such liability could arise, *inter alia* and given particular
13 facts, on an aiding and abetting theory, as when one party induces another to commit
14 a tort, see, e.g., Restatement (Second) of Torts § 876(b) (1979), or on a successor liability
15 theory, when a transaction results in the merger or consolidation of the two firms but
16 “the purchaser is a mere continuation of the seller,” or where “the transaction was
17 entered into fraudulently for the purpose of escaping liability,” *Call Ctr. Techs., Inc.*
18 *v. Grand Adventures Tour & Travel Publ’g Corp.*, 635 F.3d 48, 52 (2d Cir. 2011) (per
19 curiam) (internal quotation marks omitted).

¹⁸A 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,” as provided in § 524(g)(4)(A)(ii)(II), could also give rise to liability on this basis.

1 Each of the four relationships enumerated in subsections (I) through (IV), then,
2 is a relationship between one party and another that, in appropriate circumstances,
3 has commonly given rise to the liability of the one party for the conduct of or claims or
4 demands against the other, long before § 524(g) came into being. This circumstance
5 does not conclusively establish that § 524(g)(4)(A)(ii)'s channeling authority is limited
6 to situations in which the third party's relationship with the debtor is legally relevant
7 to its purported liability, so that a bankruptcy court is not authorized to bar litigation
8 when the relationship is merely a "but for" cause of the alleged liability. The
9 background legal context against which § 524(g)(4)(A)(ii) was enacted, however,
10 suggests strongly that it was this sort of liability that Congress had in mind in
11 enacting the provision. Were Pfizer's view of the matter correct, we would find it
12 surprising that each enumerated relationship in § 524(g)(4)(A)(ii) just happens to
13 correspond to a previously-recognized relationship that may, in appropriate
14 circumstances, give rise to the legal liability of one party for the conduct of or claims
15 against another.

16 Even brief consideration of another part of § 524(g) in which the "by reason of"
17 language is employed renders definite our conclusion in favor of Angelos's construction.
18 *See United States v. Cunningham*, 292 F.3d 115, 118 (2d Cir. 2002) ("[S]imilar
19 language contained within the same section of a statute must be accorded a consistent
20 meaning."). Section 524(g)(3)(A)(ii) provides as follows:

21 No entity that pursuant to [a] plan [under § 524(g)] or thereafter becomes
22 a direct or indirect transferee of, or successor to any assets of, a debtor or
23 trust that is the subject of the injunction shall be liable with respect to

1 any claim or demand made against such entity by reason of its becoming
2 such a transferee or successor.

3
4 Consider this provision's application to a case in which a company first succeeds to
5 significant assets of a bankrupt asbestos concern pursuant to, and after confirmation
6 of, a § 524(g) reorganization plan and thereafter hires new employees to administer
7 these assets, engaging in age discrimination in the hiring process. On Pfizer's reading
8 of the phrase "by reason of," such a company could plead 11 U.S.C. § 524(g) as a barrier
9 to liability, since its discrimination would not have occurred, as a factual matter, but
10 for the company's succession to the assets of the bankrupt estate. Angelos's
11 construction of "by reason of," in contrast, would not foreclose liability on a
12 discrimination suit, because even if the discrimination would not have taken place but
13 for the company's acquisition of the bankrupt's assets, any subsequent age
14 discrimination claim would not be levied "by reason of" the company's acquisition of
15 these assets, but "by reason of" the alleged discrimination itself.

16 We are confident that the Angelos reading of the statutory language at issue
17 here is the correct one. Section 524(g) is designed to "facilitat[e] the reorganization and
18 rehabilitation of the debtor as an economically viable entity," as well as "make[] it
19 possible for future asbestos claimants to obtain substantially similar recoveries as
20 current claimants." *In re Combustion Eng'g, Inc.*, 391 F.3d 190, 234 (3d Cir. 2004).
21 Needless to say, barring the prosecution of claims bearing only an accidental nexus to
22 an asbestos bankruptcy is less than tangentially related to that objective. Indeed
23 (although the question is not before us), we strongly suspect that the bankruptcy courts

1 would not even have jurisdiction to enjoin the discrimination suit hypothesized above,
2 since it would not have any effect whatsoever on the *res* of the bankruptcy estate. *See*
3 *Cuyahoga*, 980 F.2d at 114 (“The test for determining whether litigation has a
4 significant connection with a pending bankruptcy [sufficient to confer bankruptcy
5 jurisdiction] is whether its outcome might have any conceivable effect on the bankrupt
6 estate.” (internal quotation marks omitted)). We are unpersuaded that Congress
7 intended with its use of the phrase “by reason of” to produce the peculiar results and
8 jurisdictional difficulties that Pfizer’s construction of this phrase would bring about.

9 We conclude that the phrase “by reason of,” as employed in 11 U.S.C.
10 § 524(g)(4)(A)(ii), requires that the alleged liability of a third party for the conduct of
11 or claims against the debtor arises, in the circumstances, as a legal consequence of one
12 of the four relationships between the debtor and the third party enumerated in
13 subsections (I) through (IV). Pfizer does not argue that its ownership of Quigley is
14 pertinent in any legal sense to the claims asserted in the Angelos suits. Indeed, as the
15 District Court very aptly noted, Pfizer’s ownership interest in Quigley is “legally
16 irrelevant” to the Angelos suits’ § 400 claims. District Court Opinion at 204.
17 Consequently, the API, modeled as it is on 11 U.S.C. § 524(g)(4)(A)(ii), does not enjoin
18 the suits at issue.

19 Finally, although not necessary to its holding, *Manville III* briefly addressed 11
20 U.S.C. § 524(g)(4)(A)(ii)’s requirement that any injunctions imposed under § 524(g) may
21 only bar actions against third parties “alleged to be directly or indirectly liable for the
22 conduct of, claims against, or demands on the debtor,” suggesting that an injunction

1 is available only in “situations where . . . a third party has derivative liability for the
2 claims against the debtor.” 517 F.3d at 67-68 (quoting *Combustion Eng’g*, 391 F.3d at
3 234) (internal quotation marks omitted). Angelos argues that the suits at issue may
4 not be enjoined pursuant to the API because § 400 liability is not derivative in nature
5 as a matter of Pennsylvania law. As explained *supra* note 17, because we conclude
6 that the Angelos suits do not attempt to fix on Pfizer liability “arising by reason of”
7 Pfizer’s “ownership of a financial interest in” Quigley, 11 U.S.C. § 524(g)(4)(A)(ii)(I), we
8 do not reach this question.

9 **CONCLUSION**

10 For the foregoing reasons, the judgment of the District Court is **AFFIRMED**.