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Celotex Corp. v. Edwards: The Supreme Court Expands the Jurisdiction of Bankruptcy Courts by Barring Collateral Attacks Against Their Injunctions, but Some Questions Remain Unanswered

I. INTRODUCTION

When a court enters a valid judgment against an asbestos manufacturer for personal injury, the plaintiffs in the lawsuit understandably desire to collect their judgment right then and there.[1] Instead, the asbestos manufacturer appeals the decision and has a surety post a bond to protect the plaintiffs' right to the judgment should the asbestos manufacturer be financially unable to pay it.[2] On appeal, the higher court affirms and the plaintiffs seek to collect the money from the defendant only to find that the defendant has filed a Chapter 11 bankruptcy[3] petition in another state.[4] Unable to collect the judgment from the defendant, the plaintiffs turn to the surety that posted the bond, only to find that the foreign bankruptcy court has issued an injunction preventing the plaintiffs from collecting their judgment from the non-bankrupt surety as well.[5] The frustrated plaintiffs then seek an order from the trial court in which the judgment was entered allowing them to proceed against the surety.[6] Disregarding the foreign bankruptcy court's injunction, the court grants the plaintiffs' request[7] so that the plaintiffs may finally proceed against the surety to collect their money, right? Wrong. The trial court's order constitutes an impermissible collateral attack on the bankruptcy court injunction.[8] Even though the plaintiffs may have had a reasonable basis with which to attack the injunction, they must

1. *See* Celotex Corp. v. Edwards, 115 S. Ct. 1493, 1496 (1995).
2. *See id.*
3. Bankruptcy Code of 1978, 11 U.S.C. §§ 101-1330 (1994).
4. *See Celotex*, 115 S. Ct. at 1496-97.
5. *See id.* at 1497.
6. *See id.*
7. *See id.*
8. *See id.* at 1501.

pursue their remedy in the bankruptcy court.[9] This is the holding of the Supreme Court's recent decision in *Celotex Corp. v. Edwards*.[10]

In *Celotex*, the Court confronted facts similar to those summarized above.[11] Chief Justice Rehnquist, writing for the seven-to-two majority, held that the issue of whether the plaintiffs could proceed against the surety was a question "related to" Celotex's bankruptcy, and the bankruptcy court therefore had jurisdiction to enter the injunction.[12] The Court reasoned that allowing the plaintiffs and other similarly situated judgment creditors to proceed on the bonds would have a negative impact on Celotex's ability to undertake its Chapter 11 reorganization.[13] The Court noted that the bankruptcy jurisdictional grant envisioned by Congress was broad and that under these circumstances the bankruptcy court's exercise of jurisdiction was not improper.[14] Additionally, the Court held that where a court has jurisdiction to enter an injunction, parties subject to the injunction are required to abide by the injunction until it is lifted.[15] This principle applies even where a party subject to the injunction has a proper basis to object to the injunction.[16] Chief Justice Rehnquist was careful to emphasize that the Court was not deciding the merits of the injunction issued by the bankruptcy court; the ruling merely required that the aggrieved parties challenge the injunction where it was entered—in the bankruptcy court.[17]

This Note acknowledges that the Court reached the correct result in disallowing a collateral attack on a bankruptcy court order. Nonetheless, the Court's decision leaves several important questions unanswered. First, when analyzing the jurisdictional scope of the bankruptcy court, the majority failed to resolve the conflict among the circuits with respect to which test of bankruptcy jurisdiction is controlling.[18] The Court utilized the broad *Pacor* test[19] to examine the propriety of the

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9. *See id.*
10. *Id.*
11. *Id.* at 1496-98.
12. *Id.* at 1499.
13. *Id.*
14. *Id.*
15. *Id.* at 1498 (citing GTE Sylvania, Inc. v. Consumers Union, Inc., 445 U.S. 375, 386 (1980)).
16. *Id.*
17. *Id.* at 1501.
18. *Id.* at 1499 n.6; *id.* at 1504 n.5 (Stevens, J., dissenting); *see infra* notes 291-93 and accompanying text.
19. *Celotex*, 115 S. Ct. at 1499. Under the *Pacor* test, a dispute is related to a debtor's bankruptcy if "*the outcome of that proceeding could conceivably have any effect on the estate* . . . . An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action . . . and which in any way impacts upon the handling and administration of the bankrupt estate." Pacor,

bankruptcy court's exercise of jurisdiction, but did not adopt it nor expressly reject the more narrow test applied in other circuits.[20] This lack of resolution may lead to inconsistent results.[21] In addition to this failure to resolve the conflict among the circuits, the majority opinion does not adequately address the constitutional issues raised in Justice Stevens's dissent.[22] Because the bankruptcy court jurisdictional scheme as it was originally devised failed to pass constitutional muster,[23] Justice Stevens's dissent has special significance. Finally, *Celotex* likely will impact the issuance of supersedeas bonds, i.e., bonds that are posted when a party petitions a court to set aside a judgment.[24] An argument can be made that because supersedeas bonds put the "integrity of the Court . . . on the line," any questions regarding their enforceability should be answered by the issuing court only.[25] Reducing the availability of these bonds and the probable extension of the *Celotex* reasoning to letter of credit transactions may have negative consequences for commercial transactions.[26]

Part II of this Note discusses the historical background of the issues involved in this case, including the evolution of bankruptcy jurisdiction, the development of the collateral attack rule, and the concept of supersedeas bonds.[27] Part III contains a detailed explanation of the factual development of the *Celotex* litigation.[28] Part IV analyzes the majority

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Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984) (emphasis in original) (citations omitted).

20. The Second, Sixth, and Seventh Circuits have adopted a more narrow test for whether a matter falls within a bankruptcy court's "related to" jurisdiction. Fietz v. Great W. Savs., 852 F.2d 455, 457 (9th Cir. 1988). The more narrow formulation would deny bankruptcy jurisdiction when a matter is "'conceivably' related to the bankruptcy estate, but that relationship is remote." *Id.*; *see* Elscint, Inc. v. First Wis. Fin. Corp. (*In re* Xonics, Inc.), 813 F.2d 127 (7th Cir. 1987); Kelley v. Nodine (*In re* Salem Mortgage Co.), 783 F.2d 626, 634 (6th Cir. 1986); Turner v. Ermiger (*In re* Turner), 724 F.2d 338, 341 (2d Cir. 1983).

21. *See infra* notes 291-93 and accompanying text.

22. *Celotex*, 115 S. Ct. at 1501-11 (Stevens, J., dissenting).

23. Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 71 (1982) (holding that the original bankruptcy jurisdictional grant violated the separation of powers by allowing non-Article III courts to adjudicate issues too distant from the "core" of the bankruptcy).

24. *See* FED. R. CIV. P. 62.

25. *Celotex*, 115 S. Ct. at 1510 (Stevens, J., dissenting).

26. *See infra* notes 296-308 and accompanying text.

27. *See infra* notes 32-108 and accompanying text.

28. *See infra* notes 109-48 and accompanying text.

and the dissenting opinion.[29] Part V explores *Celotex*'s probable impact.[30] Finally, this Note concludes with a brief summary in Part VI.[31]

II. HISTORICAL BACKGROUND

A. *The Collateral Attack Rule*

As a general rule, when a court issues an injunction, parties subject to the order may not collaterally attack that judgment in a separate proceeding.[32] The objecting party may, of course, seek to overturn the order via appeal to a higher court, but the party cannot ignore the judgment and then attack its merits in another forum.[33] The rationale for this rule is that "respect for judicial process" requires that parties obey court orders, regardless of their merits, until the order has been properly reversed.[34] The general prohibition against collateral attack is, however, subject to three exceptions.[35] When a court lacks jurisdiction over the parties, lacks subject matter jurisdiction, or when the injunction has only a "frivolous pretense to validity," a party may collaterally attack the order.[36] The first two exceptions stem from the traditional rule that an order entered by a court without jurisdiction is void.[37] These exceptions serve as a check on courts that attempt to exercise power in excess of the power granted to them.[38]

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29. *See infra* notes 149-278 and accompanying text.

30. *See infra* notes 279-308 and accompanying text.

31. *See infra* notes 309-14 and accompanying text.

32. Howat v. Kansas, 258 U.S. 181, 189-90 (1922). The rule is often stated as follows:

> It is for the court of first instance to determine the question of the validity of the law, and until its decision is reversed for error by orderly review, either by itself or by a higher court, its orders based on its decision are to be respected, and disobedience of them is contempt of its lawful authority, to be punished.

Id. at 190.

33. *Id.*

34. Walker v. City of Birmingham, 388 U.S. 307, 321 (1967).

35. *Id.* at 315.

36. *Id.*

37. Edward P. Krugman, Note, *Killing the Void: Judicial Power and Jurisdictional Attacks on Judgments*, 87 YALE L.J. 164, 164 (1977). Where a court exceeds its grant of power, "[e]very exertion of authority beyond this limit is a mere nullity, and incapable of binding such persons or property in any other tribunals." Picquet v. Swan, 19 F. Cas. 609, 612 (C.C.D. Mass. 1828) (No. 11,134).

38. Krugman, *supra* note 37, at 164. One observer has argued that the "voidness" doctrine should be abolished because the identity of the issuing court is unimportant and is nonetheless outweighed by the interest in favor of finality of judgments. *Id.* at 164-65.

The collateral attack rule has been applied in the bankruptcy context.[39] The Supreme Court has held that a bankruptcy court order sustained on appeal, even if erroneous, is entitled to res judicata effect and is not subject to collateral attack.[40] Additionally, the bankruptcy court has the power to determine whether it has jurisdiction over an issue; therefore, if not reversed on appeal, an order entered by a bankruptcy court that lacked subject matter jurisdiction will also be final.[41] The Court has stated its reasoning as follows:

> After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined. There is no reason to expect that the second decision will be more satisfactory than the first.[42]

B. Bankruptcy Jurisdiction

The jurisdiction of the bankruptcy court has changed dramatically since the passage of the original bankruptcy laws in 1898.[43] These changes stem from persistent practical and constitutional flaws in the jurisdictional framework devised and amended by Congress.[44] Under the old Bankruptcy Act, the jurisdiction of the bankruptcy court was limited in that jurisdiction depended on possession of the debtor's property.[45]

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39. *See, e.g.*, Chicot County Drainage Dist. v. Baxter State Bank, 308 U.S. 371, 377 (1940) (holding that a bankruptcy court order sustaining its own jurisdiction may not be collaterally attacked); Oriel v. Russell, 278 U.S. 358, 365-66 (1929) (holding that a bankruptcy court order requiring turnover must be appealed directly rather than via collateral attack).

40. *See* Stoll v. Gottlieb, 305 U.S. 165, 171 (1938); Republic Supply Co. v. Shoaf, 815 F.2d 1046, 1052-53 (5th Cir. 1987). *See generally* MARK S. SCARBERRY ET AL., BUSINESS REORGANIZATION IN BANKRUPTCY 973 (1996) (discussing the res judicata effect given to bankruptcy court judgments despite the lack of subject matter jurisdiction).

41. *Stoll*, 305 U.S. at 171 (holding that a bankruptcy court has the power to "interpret the language of the jurisdictional instrument and its application to an issue"); *see Republic Supply Co.*, 815 F.2d at 1052-53 (holding that as long as a party had an opportunity to raise a jurisdictional question, the judgment is res judicata and not subject to collateral attack).

42. *Stoll*, 305 U.S. at 172.

43. Bankruptcy Act of 1898, ch. 541, 30 Stat. 544 (repealed 1978).

44. *See* Robert J. Shapiro, *Bankruptcy Jurisdiction Under the 1984 Amendments: One Step Backward, One Step Forward*, 3 BANKR. DEV. J. 127, 127 (1986) (discussing congressional attempts to resolve the consistent problems with the bankruptcy court's jurisdictional grant).

45. *See* Howard C. Buschman III & Sean P. Madden, *The Power and Propriety of Bankruptcy Court Intervention in Actions Between Nondebtors*, 47 BUS. LAW. 913,

This limited jurisdictional grant was the source of inefficiency in resolving matters that were related to the debtor's bankruptcy.[46] Indeed, the problems associated with the old jurisdictional scheme were a primary motivation for reform and the enactment of the Bankruptcy Code in 1978.[47]

The new Bankruptcy Code (Code) substantially enlarged the bankruptcy court's power.[48] Under the Code, the district court exercised original jurisdiction over all bankruptcy cases arising in its district;[49] however, the bankruptcy court for the district would "exercise all of the jurisdiction conferred . . . on the district courts."[50] Accordingly, the bankruptcy court was indirectly given the power to adjudicate all proceedings "arising under," "arising in," or "related to" a debtor's bankruptcy.[51] Under this scheme, the bankruptcy court essentially exercised exclusive jurisdiction over bankruptcy cases arising in its district.[52] By this expansive grant of jurisdiction, Congress intended to eliminate the confusion and conflict that accompanied the former scheme.[53]

Although Congress greatly increased the scope of the bankruptcy courts' power, Congress did not upgrade their status from Article I to Article III courts.[54] This decision proved problematic a few years later

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916 (1992) (discussing the evolution of bankruptcy court jurisdiction from the narrow *in rem* theory of the Act to the broad grant of the Code).

46. *Id.*

47. 11 U.S.C. §§ 101-1330 (1994); 1 COLLIER ON BANKRUPTCY ¶ 3.01[1][a] (Lawrence P. King et al. eds., 15th ed. 1996).

48. Buschman & Madden, *supra* note 45, at 916.

49. 28 U.S.C. § 1471(b) (1982), *repealed by* Pub. L. No. 98-353, 98 Stat. 333 (1984).

50. *Id.* § 1471(c), *repealed by* Pub. L. No. 98-353, 98 Stat. 333 (1984).

51. *Id.* § 1471(b), *repealed by* Pub. L. No. 98-353, 98 Stat. 333 (1984). "Arising under title 11" jurisdiction permitted the bankruptcy court to hear all claims based explicitly on the rights and duties created under the Code. H.R. REP. NO. 95-595, at 445-46 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6400-01. The "arising under or related to" language granted jurisdiction over disputes that have some connection to the case under title 11. *Id.*

52. Buschman & Madden, *supra* note 45, at 917.

53. Shapiro, *supra* note 44, at 127. Congress hoped that this regime would eliminate all uncertainty regarding the range of the bankruptcy court's power. H.R. REP. NO. 95-595, at 42-52 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6003-13.

54. Shapiro, *supra* note 44, at 127. An Article III court is characterized by judges who are appointed for life and whose salaries are protected from diminution. U.S. CONST. art. III, § 1. The power to create bankruptcy courts, by contrast, is derived from Article I. U.S. CONST. art. I, § 8, cl. 4. Clause 4 states that Congress can pass "uniform Laws on the subject of Bankruptcies." *Id.* The House of Representatives argued that, for constitutional and practical reasons, the expanded jurisdictional grant required that the bankruptcy courts be given Article III status. Walter J. Taggart, *The New Bankruptcy Court System*, 59 AM. BANKR. L.J. 231, 233 (1985). The Senate desired a system of non-Article III judges appointed for 12-year terms. *Id.* The Senate proposal ultimately became the law, with the minor compromise that the judges be

when a plurality of the Supreme Court declared this jurisdictional scheme unconstitutional because it improperly transferred Article III powers to a non-Article III court.[55] The precise meaning of the Supreme Court's decision in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* was not initially apparent.[56] Nevertheless, the Court clearly objected to the bankruptcy court's exercise of jurisdiction over proceedings that were distant from the "core" of traditional bankruptcy powers.[57] For example, in *Northern Pipeline* the jurisdictional grant permitted the bankruptcy court to adjudicate a state law breach of contract action raised by the debtor.[58] In rejecting the bankruptcy court's authority to determine the contract action, the Court drew a distinction between the "restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power," and "the adjudication of state-created private rights," such as a contract action, which is outside the

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appointed for 14-year terms. *Id.* at 234. For a discussion of the merits of the protections afforded by Article III, see David P. Currie, *Bankruptcy Judges and the Independent Judiciary*, 16 CREIGHTON L. REV. 441, 442 (1983).

55. *See* Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 74 (1982). In *Northern Pipeline*, debtor Northern Pipeline sought relief under Chapter 11 and subsequently filed an adversary proceeding against Marathon asserting state law contract causes of action. *Id.* at 56. These claims were to be heard in the bankruptcy court because they were "related to" Northern Pipeline's bankruptcy. *Id.* Marathon objected on the ground that a non-Article III judge could not constitutionally hear the case. *Id.* at 56-57. As one observer noted, the reason for the objection was that "Congress had entrusted the trial and decision of all civil controversies affecting a bankrupt to a set of judges enjoying neither life tenure nor irreducible salary." Currie, *supra* note 54, at 442.

56. Buschman & Madden, *supra* note 45, at 918; *see* Shapiro, *supra* note 44, at 140 (discussing the uncertainty created by *Northern Pipeline*). After *Northern Pipeline*, courts disagreed over whether the decision invalidated only the bankruptcy court's exercise of jurisdiction or the entire jurisdictional scheme established by the Code, including the district court's jurisdiction over bankruptcy cases. *See, e.g., In re* Conley, 26 B.R. 885, 893 (Bankr. M.D. Tenn. 1983) (holding that the entire jurisdictional scheme under § 1471 was unconstitutional after *Northern Pipeline*). *But see, e.g., In re* Kaiser, 722 F.2d 1574, 1577 (2d Cir. 1983) (holding that *Northern Pipeline* invalidated the jurisdictional grant as to the bankruptcy court but not as to the district court). One observer has commented that the former view was the "vast minority" and the latter view was the majority consensus regarding the meaning of *Northern Pipeline*. Shapiro, *supra* note 44, at 141.

57. *Northern Pipeline*, 458 U.S. at 71. The Court stated that the constitutional problem stemmed from the fact that the scheme "impermissibly removed most, if not all, of 'the essential attributes of the judicial power' from the Art. III district court, and has vested those attributes in a non-Art. III adjunct." *Id.* at 87.

58. *Id.* at 56.

core of this power.[59] The Court reasoned that the range of issues a bankruptcy court could decide under its "related to" jurisdiction was so broad that the grant impermissibly circumvented the constitutional protections provided by independent Article III courts.[60] The Court stayed the effect of its decision for four months to afford Congress the opportunity to remedy the defects in the jurisdictional grant.[61]

In *Northern Pipeline*'s wake, and before Congress amended the Code, the bankruptcy system needed an interim solution to continue functioning.[62] The Judicial Conference of the United States responded by preparing emergency rules that addressed the constitutional concerns raised in *Northern Pipeline*.[63] Every circuit adopted these rules.[64] The emergency rules assumed that *Northern Pipeline* had invalidated only the jurisdictional grant to the bankruptcy court and that, consequently, the district court's grant of jurisdiction remained valid.[65] From that perspective, the rules established a system that granted the bankruptcy court jurisdiction derived from the district court's grant.[66] The rules permitted the bankruptcy court to exercise binding judgments in traditional bankruptcy matters subject to de novo review by the district court.[67] In matters outside the traditional realm of bankruptcy matters, yet still "related to" the bankruptcy, the bankruptcy court was given limited power to issue recommendations regarding a final disposition that the district court was required to review de novo.[68]

The emergency rules governed bankruptcy proceedings for eighteen months before Congress responded to *Northern Pipeline* via the Bankruptcy Amendments and Federal Judgeship Act of 1984 (BAFJA).[69] To address the concerns raised by *Northern Pipeline*, Congress had to choose between either conferring Article III status on bankruptcy court judges or devising a scheme that preserved the independence of the Article III courts while decreasing the authority of the bankruptcy

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59. *Id.* at 71.

60. *Id.* at 74. Specifically, the Court worried that the creation of "specialized" courts under Article I would serve as a vehicle to encroach on the judicial power of Article III courts. *Id.* This development would violate the separation of powers and dilute the independence of the judiciary sought by Article III. *Id.*

61. *Id.* at 88.

62. Shapiro, *supra* note 44, at 147.

63. 1 COLLIER ON BANKRUPTCY, *supra* note 47, ¶ 3.01[1][b][vi].

64. *See* Taggart, *supra* note 54, at 236; *see also* White Motor Corp. v. Citibank, N.A., 704 F.2d 254, 256 (6th Cir. 1983) (noting that each circuit accepted the rules with only insignificant changes).

65. *White Motor*, 704 F.2d at 257.

66. Shapiro, *supra* note 44, at 149.

67. *White Motor*, 704 F.2d at 256-57.

68. *Id.*

69. Pub. L. No. 98-353, 98 Stat. 333 (1984).

court.[70] Congress chose the latter route and essentially adopted the approach utilized by the emergency rules.[71] Under BAFJA, the district courts were granted original jurisdiction over all matters "arising in," "arising under," and "related to" a bankruptcy.[72] The district court then has the power to delegate all or part of these matters to the bankruptcy judge for the district.[73] The bankruptcy court's power to act on the matter is determined by whether the matter is "core"[74] or "non-core"[75] according to the dichotomy established by Congress. Generally, core proceedings, do not exist outside of bankruptcy.[76] Core proceedings encompass both "arising under" and "arising in" jurisdiction.[77] When a proceeding "'invokes a substantive right provided by title 11,'" it falls within the "arising under" grant and is a core proceeding.[78] When a proceeding "'by its nature, could arise only in the context of a bankruptcy case,'" it is within the "arising in" grant and is also a core proceeding.[79] In such

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70. *See* Taggart, *supra* note 54, at 238 (summarizing the legislative history of BAFJA).

71. Buschman & Madden, *supra* note 45, at 918-19.

72. 28 U.S.C. § 1334(b) (1994). The provision states in relevant part: "[T]he district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." *Id.*

73. *Id.* § 157(a). The provision states in relevant part: "[E]ach district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 . . . shall be referred to the bankruptcy judges for the district." *Id.*

74. *Id.* § 157(b)(1). The provision states:

> Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

Id.

75. *Id.* § 157(c)(1). The provision states:

> A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

Id.

76. Buschman & Madden, *supra* note 45, at 919. For a nonexhaustive list of core proceedings, see 28 U.S.C. § 157(b)(2)(A)-(O).

77. Buschman & Madden, *supra* note 45, at 919.

78. *Id.* (quoting Wood v. Wood (*In re* Wood), 825 F.2d 90, 97 (5th Cir. 1987)).

79. *Id.* (quoting *Wood*, 825 F.2d at 97).

core proceedings the bankruptcy court has the power to issue final judgments, subject to review by appeal to the district court.[80] Proceedings that are "related to" a bankruptcy case are non-core proceedings.[81] Upon hearing these non-core matters, the bankruptcy court has power only to make recommendations regarding findings of fact and conclusions of law.[82] These recommendations are subject to mandatory review by the district court, which will enter the final judgment in the matter.[83]

The Code does not specifically define the scope of "related to" jurisdiction,[84] and the courts are divided over the proper reach of the grant.[85] The majority of the circuits have adopted the standard articulated in *Pacor, Inc. v. Higgins*.[86] In *Pacor*, the Third Circuit stated that a proceeding is within the "related to" jurisdiction when

> the outcome of that proceeding could conceivably have any effect on the estate .... An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate.[87]

By authorizing jurisdiction over any proceeding that could "conceivably have any effect" on the bankruptcy, this test takes a broad view of the bankruptcy court's jurisdiction.[88] The *Pacor* court qualified this inclusive language by stating that "there must be some nexus" between the proceeding and the debtor's bankruptcy.[89] Nonetheless, courts that have adopted the *Pacor* test have applied the standard very broadly.[90]

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80. 28 U.S.C. § 157(b)(1).

81. *Id.* § 157(c)(1).

82. *Id.*

83. *Id.*

84. Buschman & Madden, *supra* note 45, at 919.

85. Michael L. Cook, *Overview of Bankruptcy Court Procedure: Jurisdiction, Venue and Appeals, in* PRACTISING L. INST., *Commercial Law and Practice Course Handbook Series*, 714 P.L.I. Comm. L. at 2 (1995).

86. 743 F.2d 984 (3d Cir. 1984). The Fourth, Fifth, Sixth, Eighth, Ninth, and Eleventh Circuits have adopted the *Pacor* standard for determining relatedness. *See* Cook, *supra* note 85, at 2.

87. *Pacor*, 743 F.2d at 994 (emphasis omitted) (citations omitted).

88. Buschman & Madden, *supra* note 45, at 926-27.

89. *Pacor*, 743 F.2d at 994.

90. *See, e.g.*, American Hardwoods, Inc. v. Deutsche Credit Corp. (*In re* American Hardwoods, Inc.), 885 F.2d 621, 624 (9th Cir. 1989) (holding that the bankruptcy court had jurisdiction to permanently stay a creditor from enforcing a judgment against a nondebtor); Wood v. Wood (*In re* Wood), 825 F.2d 90, 94 (5th Cir. 1987) (allowing jurisdiction over an arguably post-petition claim while acknowledging the possibility that the proceeding could have no effect on the bankruptcy). For an argument that some courts have misconstrued *Pacor*, see Buschman & Madden, *supra* note 45, at 926-27 & n.96.

Five circuits have formulated a different standard for evaluating whether a proceeding is within the "related to" grant.[91] This standard is more narrow than the *Pacor* test.[92] The test requires that the proceeding have a "significant connection" to the debtor's bankruptcy case.[93] Accordingly, under the "significant connection" test, jurisdiction may be denied when "the dispute's probable effect on the debtor's estate is conceivable, but remote."[94] The rationale underlying this test is the fear that the *Pacor* standard, with its broad language, places no meaningful limitations on the exercise of jurisdiction over matters "related to" the bankruptcy.[95]

"Related to" jurisdiction is generally invoked in two scenarios.[96] Jurisdiction is invoked either where the debtor's pre-bankruptcy causes of action become property of the bankruptcy estate, or second, where lawsuits between third parties are asserted to have a relationship to the debtor's bankruptcy.[97] The latter scenario has been a primary source of debate concerning the extent of the "related to" jurisdictional grant.[98] These disputes can involve actions by a debtor's creditors against nondebtor guarantors.[99] In these circumstances, the debtor argues that the

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91. *See* Cook, *supra* note 85, at 7. The First, Second, Third, Seventh, and Tenth Circuits apply the more narrow view of "related to" jurisdiction. *Id.*

92. Buschman & Madden, *supra* note 45, at 928.

93. Turner v. Ermiger (*In re* Turner), 724 F.2d 338, 341 (2d Cir. 1983).

94. Cook, *supra* note 85, at 2.

95. Holland Indus. v. United States (*In re* Holland Indus.), 103 B.R. 461, 468 (Bankr. S.D.N.Y. 1989). This concern has prompted some courts to take an even narrower view of the bankruptcy court's jurisdictional reach, allowing jurisdiction only when property of the estate was clearly involved in the action or when the resolution of the dispute was "required for the proper administration or reorganization of the estate." Crown Cent. Petroleum Corp. v. Wechter (*In re* General Oil Distrib., Inc.), 21 B.R. 888, 892 n.13 (Bankr. E.D.N.Y. 1982).

96. 1 COLLIER ON BANKRUPTCY, *supra* note 47, ¶ 3.01[1][c][iv].

97. Buschman & Madden, *supra* note 45, at 920.

98. *See supra* notes 84-95 and accompanying text.

99. Although courts are reluctant to enjoin actions against nondebtors, some cases have resulted in the nondebtor receiving a permanent discharge. *See, e.g.*, MacArthur Co. v. Johns-Manville Corp. (*In re* Johns-Manville Corp.), 837 F.2d 89, 93 (2d Cir. 1988) (holding that an injunction barring all suits against a debtor's insurers was proper); A.H. Robins Co. v. Piccinin (*In re* A.H. Robins Co.), 788 F.2d 994, 1007-08 (4th Cir. 1986) (holding that the bankruptcy court had jurisdiction to prevent a suit against a debtor's directors, attorneys, and insurers); Otero Mills, Inc. v. Security Bank & Trust (*In re* Otero Mills, Inc.), 21 B.R. 777, 779 (Bankr. D.N.M.) (allowing a permanent injunction against a creditor seeking to collect from the nondebtor guarantor), *aff'd*, 25 B.R. 1018 (D.N.M. 1982).

automatic stay protects the non-debtor, or in the alternative, the debtor will request that the bankruptcy court use its equitable powers to bar collection activity against the non-debtor.[100] Bankruptcy courts exercising jurisdiction over these matters have justified the action on the ground that resolution of the action against the non-debtor will impact the debtor's ability to reorganize successfully.[101] In these cases, two issues arise that overlap to a certain degree: first, whether the third party action is sufficiently "related to" the debtor's bankruptcy to justify an exercise of jurisdiction by the bankruptcy court,[102] and second, if jurisdiction in fact exists, whether the bankruptcy court's use of its equitable powers is proper.[103]

C. Supersedeas Bonds

Supersedeas bonds are posted to protect a judgment creditor's right to a judgment while the case is on appeal.[104] The supersedeas bond is designed to shift the risk of the judgment debtor's insolvency from the judgment creditor to a third party.[105] A similar device often used in the business world is the letter of credit arrangement.[106] Under the letter of credit transaction, a customer contracts with a bank that promises to pay a third party if the conditions identified in the agreement occur.[107] The arrangement facilitates commerce by allowing the customer to substitute the issuer's credit for its own.[108]

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100. Kenneth M. Lewis, *When Are Nondebtors Really Entitled to a Discharge: Setting the Record Straight on* Johns-Manville *and* A.H. Robins, 3 J. BANKR. L. & PRAC. 163, 166 (1994).

101. *See, e.g., In re* A.H. Robins Co., 880 F.2d 694, 701 (4th Cir. 1989) (justifying a stay against a third party to prevent an adverse impact on a debtor's reorganization); American Hardwoods, Inc. v. Deutsche Credit Corp. (*In re* American Hardwoods, Inc.), 885 F.2d 621, 623 (9th Cir. 1989) (staying the enforcement of a state court judgment in order to facilitate a debtor's reorganization plan).

102. *See* Buschman & Madden, *supra* note 45, at 920-21.

103. *See* Manuel D. Leal, *The Power of the Bankruptcy Court: Section 105*, 29 S. TEX. L. REV. 487, 496-504 (1988) (identifying both an expansive and restrictive approach to whether an action under § 105 is proper).

104. *See* Michael R. Smith, *Obtaining a Supersedeas Bond*, 23 COLO. LAW. 607, 607-08 (1994).

105. *Id.*

106. Howard N. Gorney, *Enjoining Payment of Letters of Credit Under the Bankruptcy Code: New Concerns for Issuers and Beneficiaries*, 66 AM. BANKR. L.J. 333, 334 (1992).

107. *Id.*

108. *Id.*

III. FACTUAL HISTORY OF *CELOTEX*

During his years as an insulation installer, Bennie Edwards was exposed to asbestos and ultimately contracted asbestosis.[109] In April 1989, after a five-day jury trial, Bennie and Joann Edwards recovered a judgment against the Celotex Corporation in the amount of $281,025.80 for asbestos-related injuries.[110] This amount included $35,253.80 in compensatory damages; however, the bulk of the damages resulted from the jury's award of $245,500 in punitive damages.[111] Celotex appealed the judgment[112] and posted a supersedeas bond with the court in which the judgment was entered, the United States District Court for the Northern District of Texas.[113] Northbrook Property and Casualty Insurance Company (Northbrook) acted as surety on the bond.[114] Celotex secured the bond by resolving an insurance coverage dispute with Northbrook.[115] At this time, Celotex was facing more than 141,000 lawsuits for asbestos injuries and had stayed judgments totaling $70 million with supersedeas bonds.[116] Ironically, Celotex had not itself been an actual producer of asbestos, but rather Celotex was held liable as a successor corporation.[117]

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109. Edwards v. Armstrong World Indus., 911 F.2d 1151, 1152 (5th Cir. 1990) (*Edwards I*).

110. Celotex Corp. v. Edwards, 115 S. Ct. 1493, 1496 (1995).

111. Brief for Petitioner at 5, *Celotex* (No. 93-1504).

112. On appeal, Celotex argued that either only compensatory damages should be awarded, or that the punitive damages award should be reduced. *Edwards I*, 911 F.2d at 1152.

113. *Celotex*, 115 S. Ct. at 1496. Celotex posted the supersedeas bond pursuant to the procedure established by the federal rules. *Id.* "When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay . . . . The stay is effective when the supersedeas bond is approved by the court." FED. R. CIV. P. 62(d).

114. *Celotex*, 115 S. Ct. at 1496.

115. *Id.* Northbrook was also Celotex's insurer; the security arrangement allowed Northbrook to withhold funds that it owed Celotex as a result of the resolution of insurance coverage disputes between the two companies. *Id.*

116. *Id.* at 1496 n.2.

117. *See Edwards I*, 911 F.2d at 1153.

On appeal, the Fifth Circuit affirmed the judgment against Celotex.[118] Celotex did not seek a rehearing, and, consequently, on October 12, 1990, a mandate issued for Celotex to pay the judgment.[119] That same day, in a Florida bankruptcy court, Celotex filed a voluntary petition under Chapter 11 of the Bankruptcy Code.[120] Pursuant to the automatic stay, the filing of the petition halted all collection activity against Celotex.[121] Five days later, under the authority of the bankruptcy court's equitable powers,[122] the court issued an injunction to supplement the protection provided by the automatic stay.[123] The order enjoined all proceedings involving Celotex "regardless of . . . whether the matter is on appeal and a supersedeas bond has been posted."[124] The order also stated that a creditor could seek relief from the injunction by petitioning the bankruptcy court for a hearing.[125]

Subsequently, judgment creditors in essentially the same position as the Edwardses sought relief from the injunction in the bankruptcy court.[126] These creditors argued that because the supersedeas bonds were not property of the bankruptcy estate, the bankruptcy court lacked the power to prevent creditors from seeking to execute against the surety on the bonds.[127] The bankruptcy court disagreed and reasoned that

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118. *Id.* The Fifth Circuit rejected Celotex's contentions that the punitive damages were excessive. *Id.* at 1153-54. Although the court concluded that "multiple punitive damage awards for a single course of conduct" do not violate the Due Process Clause, the court did express "misgivings" about Celotex's seemingly limitless liability. *Id.* at 1154-55. The court stated:

> If no change occurs in our tort or constitutional law, the time will arrive when Celotex's liability for punitive damages imperils its ability to pay compensatory claims and its corporate existence. Neither the company's innocent shareholders, employees and creditors, nor future asbestos claimants will benefit from this death by attrition.

Id. at 1155.

119. Edwards v. Armstrong World Indus., Inc., 6 F.3d 312, 314 (5th Cir. 1993) (*Edwards II*), *rev'd sub nom.* Celotex Corp. v. Edwards, 115 S. Ct. 1493 (1995).

120. *In re* Celotex Corp., 128 B.R. 478, 479 (Bankr. M.D. Fla. 1991) (*Celotex I*).

121. *See* 11 U.S.C. § 362 (1994). The automatic stay serves as an injunction against "the commencement or continuation . . . of a . . . proceeding . . . to recover a claim against the debtor that arose before the commencement of the case under this title." *Id.* § 362(a)(1). The stay applies to any action "to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." *Id.* § 362(a)(3).

122. *See id.* § 105(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.").

123. Celotex Corp. v. Edwards, 115 S. Ct. 1493, 1496 (1995).

124. *Id.* at 1496.

125. *Id.*

126. *Id.* The lawyers for the Edwardses represented the other judgment creditors in their attempt to lift the injunction. Brief for Petitioner at 8-9, *Celotex* (No. 93-1504).

127. *In re* Celotex Corp., 128 B.R. 478, 479 (Bankr. M.D. Fla. 1991) (*Celotex I*).

the collateral securing the surety's obligation under the bond was property of the bankruptcy estate.[128] In addition, the court noted that the bonds might also be important for Celotex's reorganization plan.[129] The court also emphasized the complexity and large volume of the tort litigation in which Celotex had been involved.[130] For these reasons, the court deemed it essential to bring "stability" to Celotex in the initial stages of its bankruptcy.[131] Toward that end, the court reasoned that its equitable powers must be "absolute" in the initial stages of bankruptcy proceedings.[132] Accordingly, the court expressly stated that judgment creditors could not seek execution on any supersedeas bonds posted by Celotex without first seeking relief from the injunction in the bankruptcy court.[133]

Shortly before the bankruptcy court issued its ruling clarifying the injunction order, the Edwardses sought to execute on the supersedeas bond posted by Celotex in the Texas district court.[134] Celotex and Northbrook both appeared in the district court in opposition to the motion to execute on the bond.[135] When the bankruptcy court issued its order several weeks later, Celotex advised the district court of the bankruptcy court's mandate that judgment creditors seek relief from the order in the bankruptcy court only.[136] One year later, in spite of the

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128. *Id.* at 481.

129. *Id.* at 481 n.7.

130. *Id.* at 482.

131. *Id.* at 483.

132. *Id.* at 484.

133. *Id.* The court decreed that "[w]here at the time of filing of petition, the appellate process between Debtor and the judgment creditor had been concluded, the judgment creditor is precluded from proceeding against any supersedeas bond posted by Debtor without first seeking to vacate the Section 105 stay entered by this Court." *Id.* at 485.

134. Celotex Corp. v. Edwards, 115 S. Ct. 1493, 1497 (1995). The Edwardses filed a motion under the federal rules that provides an expedited procedure for executing on supersedeas bonds. *Id.* at 1496. The rule states: "Whenever these rules . . . permit the giving of a security by a party . . . each surety submits to the jurisdiction of the court . . . . The surety's liability may be enforced on motion without the necessity of an independent action." FED. R. CIV. P. 65.1.

135. Brief for Petitioner at 11, *Celotex* (No. 93-1504). Attorneys for the Edwardses again argued that Celotex had no property interest in the bonds, and therefore, the bankruptcy court lacked the power to prevent judgment creditors from executing on the bonds. *Id.*

136. *Id.* at 14. Celotex also informed the court that the Edwardses' counsel had participated in arguments in the bankruptcy court, had knowledge of the order, and were bound by it. *Id.*

bankruptcy court's ruling and without an opinion, the district court granted the Edwardses' motion to execute on the supersedeas bond.[137] Celotex appealed the order.[138] Two days later, the bankruptcy court in Florida issued another ruling affirming the supplemental injunction against judgment creditors seeking relief to execute on supersedeas bonds posted by Celotex in other cases.[139] The bankruptcy court denied relief from the injunction on the ground that Celotex's reorganization effort would be fatally compromised if judgment creditors were permitted to execute on the bonds.[140] The court predicted that if judgment creditors were permitted to enforce the bonds against the sureties, the sureties would then seek relief from the injunction to obtain the collateral securing Celotex's reimbursement obligation.[141] To alleviate the judgment creditors' concerns, the court directed Celotex and the sureties involved to take additional steps to preserve the judgment creditors' rights to their judgments.[142] The court also instructed Celotex to file within sixty days of the order any adversary proceedings attempting to avoid or subordinate judgment creditors' claims as preferences[143] or fraudulent transfers.[144] As a result, Celotex subsequently filed adversary

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137. *Celotex*, 115 S. Ct. at 1497.

138. *Id.*

139. *In re* Celotex, 140 B.R. 912, 914 (Bankr. M.D. Fla. 1992) (*Celotex II*).

140. *Id.* at 914-15.

141. *Id.* at 915. Specifically, the court argued that granting the judgment creditors relief from stay to enforce the bonds against the sureties would "destroy any chance of resolving the prolonged insurance coverage disputes currently being adjudicated . . . . The settlement of the insurance coverage disputes with all of Debtor's insurers may well be the linchpin of Debtor's formulation of a feasible plan." *Id.*

142. *Id.* at 917. The court required the sureties to institute escrow accounts large enough to cover the bonds. *Id.* Additionally, Celotex was to initiate a reserve account to cover the amount of the bonds and also to provide for full payment of all bonded judgment creditors in its reorganization plan. *Id.*

143. Section 547(b) defines a preference in these terms:

> [T]he trustee may avoid any transfer of an interest of the debtor in property
> (1) to or for the benefit of a creditor;
> (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
> (3) made while the debtor was insolvent;
> (4) made—
> (A) on or within 90 days before the date of the filing of the petition;
> . . .
> (5) that enables such creditor to receive more than such creditor would receive if—
> (A) the case were a case under chapter 7 of this title;
> (B) the transfer had not been made . . . .

11 U.S.C. § 547(b) (1994).

144. *Celotex II*, 140 B.R. at 917. Section 548 states:

> (a) The trustee may avoid any transfer of an interest of the debtor in proper-

actions against the Edwardses and over 200 other bonded judgment creditors.[145]

The Court of Appeals for the Fifth Circuit affirmed the district court's ruling allowing the Edwardses to execute on the bonds without the bankruptcy court's approval.[146] Celotex argued that the Fifth Circuit's decision constituted a collateral attack on an Eleventh Circuit bankruptcy court and, accordingly, sought a rehearing by the Fifth Circuit sitting en banc, but the court denied this request.[147] On May 23, 1994, the United States Supreme Court granted Celotex's petition for certiorari in order to resolve the conflict between the circuits.[148]

IV. ANALYSIS OF THE OPINIONS

A. *Chief Justice Rehnquist's Majority Opinion*

Chief Justice Rehnquist began the majority opinion by reviewing the Fifth Circuit decision that affirmed the district court's ruling to allow the Edwardses to execute on the bonds.[149] The Fifth Circuit determined that the district court had jurisdiction to decide whether the bankruptcy court stay applied to the Edwardses.[150] The court reasoned that Celotex lost all property interest in the bonds when the appeal became final and therefore the bankruptcy court lacked exclusive jurisdiction over the matter.[151] Next, the court concluded that the automatic stay did not

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ty . . . made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily

. . .

(2)(A) received less than a reasonably equivalent value in exchange for such transfer . . . and
(B)(i) was insolvent on the date that such transfer was made . . .

. . .

(B)(iii) [or] intended to incur . . . debts that would be beyond the debtor's ability to pay as such debts matured.

11 U.S.C. § 548(a)(2) (1994).

145. Celotex Corp. v. Edwards, 115 S. Ct. 1493, 1497 n.4 (1995). Celotex argued that due to the collateral securing of the bonds, the judgment creditors were indirect recipients of preferences and fraudulent transfers. *Id.* Additionally, Celotex asserted that the punitive damage awards could be "voided or subordinated." *Id.*

146. Edwards v. Armstrong World Indus., Inc., 6 F.3d 312, 320 (5th Cir. 1993) (*Edwards II*), *rev'd sub nom.* Celotex Corp. v. Edwards, 115 S. Ct. 1493 (1995).

147. *Celotex*, 115 S. Ct. at 1498.

148. *Id.*

149. *Id.* at 1496-98; *see Edwards II*, 6 F.3d at 313-20.

150. *Celotex*, 115 S. Ct. at 1497; *see Edwards II*, 6 F.3d at 316.

151. *Celotex*, 115 S. Ct. at 1497; *see Edwards II*, 6 F.3d at 317. According to the

prevent the Edwardses from executing against Northbrook, a third party.[152] Finally, the court disapproved of the § 105 injunction issued under the bankruptcy court's equitable powers.[153] The court asserted that the bankruptcy court had no power to block the execution of the bonds because the bonds were not assets of the estate.[154] Further, the court feared that allowing the bankruptcy court that power would "globalize the bankruptcy court's authority."[155] Moreover, the court stated that the injunction was "'unfair'" because it prevented the judgment creditor from receiving the judgment it deserved even though the judgment creditor had been promised the judgment through the supersedeas bond.[156] The court conceded that its decision directly conflicted with a recent Fourth Circuit decision that upheld the same bankruptcy injunction against execution by Celotex's bonded judgment creditors.[157] While noting the disparity, the court reiterated its contention that the assets at issue were not property of the bankruptcy estate and further asserted that Celotex's bankruptcy could not be permitted to "shut down the dispensation of justice."[158] The court contended that there was no collateral attack because the court's order merely protected the integrity of the supersedeas bonds issued within the Fifth Circuit.[159] Finally, the Fifth Circuit declared that it did not hold that "'the bankruptcy court in Flori-

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court, the proper inquiry was "whether the district court's order implicates property of the estate and therefore falls under the exclusive jurisdiction of the bankruptcy court or instead is considered a [sic] merely a related matter over which the district court could properly exercise jurisdiction." *Edwards II*, 6 F.3d at 317.

152. *Celotex*, 115 S. Ct. at 1497 (citing *Edwards II*, 6 F.3d at 315-17). The court conceded that the automatic stay could, under limited circumstances, preclude actions against third parties but nevertheless reasoned that Northbrook lacked the "identity of interest" with Celotex necessary to afford the protection of the automatic stay. *Edwards II*, 6 F.3d at 316. The court asserted that the definition of property of the estate could not be so vast as to include the bonds in this case. *Id.* The court also noted that other decisions clearly established the "separateness" of the obligations of a nonbankrupt guarantor and the debtor. *Id.* at 318; *see* Kellogg v. Blue Quail Energy, Inc. (*In re* Compton Corp.), 831 F.2d 586, 589 (5th Cir. 1987) (holding that the issuer of a letter of credit satisfies its obligation with "its own assets and not from the assets of its customer who caused the letter of credit to be issued"), *modified on other grounds*, 835 F.2d 584 (5th Cir. 1988).

153. *Celotex*, 115 S. Ct. at 1497 (citing *Edwards II*, 6 F.3d at 318).

154. *Id.* (citing *Edwards II*, 6 F.3d at 318).

155. *Edwards II*, 6 F.3d at 319.

156. *Celotex*, 115 S. Ct. at 1494 (quoting *Edwards II*, 6 F.3d at 319).

157. *Id.* (citing *Edwards II*, 6 F.3d at 320); *see* Willis v. Celotex Corp., 978 F.2d 146, 149 (4th Cir. 1992) (holding that, in accordance with an equitable injunction, bonded judgment creditors were required to seek bankruptcy court approval to execute on supersedeas bonds posted by Celotex).

158. *Edwards II*, 6 F.3d at 319.

159. *Id.* at 320.

da was necessarily wrong; we have only concluded that the district court, over which we do have appellate jurisdiction, was right.'"[160]

After reviewing the Fifth Circuit's decision, the Court noted that both Celotex and the respondents agreed that the § 105 injunction was intended to stay the enforcement of bonds like the bond at issue.[161] The majority then reiterated the "'well established rule'" that a party who has an injunction entered against it must obey the order until it is overturned even when that party has an adequate basis to object.[162] The Court reasoned that this rule was necessary to accord proper "'respect for judicial process.'"[163] The majority added that the rule barring collateral attacks has been applied to protect valid bankruptcy injunctions.[164] In addition, the majority pointed out that the Edwardses, while ostensibly arguing that the bankruptcy court lacked jurisdiction to enter the injunction, were actually arguing against the merits of the injunction.[165]

In addressing the respondents' argument that the bankruptcy court lacked jurisdiction to enter the injunction preventing enforcement of the bonds, the Court briefly discussed the bankruptcy court's jurisdictional scheme.[166] The Court stated that the bankruptcy court's jurisdiction to enter an injunction barring execution on the bonds must fall under the court's "arising in," "arising under," or "related to" grant.[167] The majority noted that both parties agreed that if, in fact, the bankruptcy court did have the power to enter the injunction, such power must stem from the "related to" jurisdictional grant.[168] Although Congress had not precisely defined the scope of the "related to" grant, the Court held that Congress intended a broad jurisdictional reach for the bankruptcy court.[169] In

160. *Celotex*, 115 S. Ct. at 1498 (quoting *Edwards II*, 6 F.3d at 321).

161. *Id.* For a discussion of the purpose and history of the supersedeas bond device, see Smith, *supra* note 104, at 607-08.

162. *Celotex*, 115 S. Ct. at 1498 (quoting GTE Sylvania, Inc. v. Consumers Union, Inc., 445 U.S. 375, 386 (1980)). Chief Justice Rehnquist also pointed out that the rule is subject to exceptions when the issuing court lacks personal or subject matter jurisdiction and when the injunction has only a "frivolous pretense to validity." *Id.*; *see supra* notes 32-42 and accompanying text (discussing development of the collateral attack rule and exceptions).

163. *Celotex*, 115 S. Ct. at 1498 (quoting *GTE Sylvania*, 445 U.S. at 387).

164. *Id.* (citing Oriel v. Russell, 278 U.S. 358 (1929)).

165. *Id.*; *see* Brief for Respondent at 19-48, *Celotex* (No. 93-1504).

166. *Celotex*, 115 S. Ct. at 1498; *see supra* notes 43-103 and accompanying text (discussing the development of the jurisdiction and power of the bankruptcy courts).

167. *Celotex*, 115 S. Ct. at 1498; *see* 28 U.S.C. §§ 157(a), 1334(b) (1994) (discussing the jurisdiction of district courts under title 11 proceedings).

168. *Celotex*, 115 S. Ct. at 1498-99.

169. *Id.* Some courts have reasoned that Congress did not intend to extend jurisdic-

support of this ruling, the Chief Justice pointed out that the current jurisdictional scheme was expressly devised to expand the bankruptcy court's jurisdiction beyond the previously more restricted scheme.[170] Specifically, the Court explained that previous schemes limited jurisdiction to instances of consent or where the debtor had possession of property.[171] The Court reasoned that the expanded view of jurisdiction, which serves the policy interests of efficient resolution of bankruptcy related matters,[172] was properly applied in the Third Circuit decision *Pacor, Inc. v. Higgins*.[173] The *Pacor* court determined that a proceeding is within the "related to" jurisdictional grant when "the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy."[174] The Court cited this case approvingly and asserted that the Court also understood that in spite of the broad grant, the bankruptcy court's jurisdiction could not be "limitless."[175] Although the Court acknowledged that the circuits were split between the *Pacor* test and a more narrow approach to jurisdiction, the Court declined to adopt the *Pacor* test as the controlling standard.[176]

Applying the *Pacor* test to the facts in issue, the Court concluded that the status of the bonds was an issue "related to" Celotex's bankruptcy.[177] The majority conceded that the execution on the bonds did not "directly" involve Celotex; nonetheless, the arrangement between Celotex and the surety, Northbrook, which involved the resolution of insurance coverage disputes in exchange for Northbrook's posting of the bond, provided a sufficient basis for jurisdiction.[178] Because immediate execution on the bonds would have, according to the bankruptcy court, "a direct and substantial adverse effect on Celotex'[s] ability to undergo a successful reorganization," the Court concluded that the issue was suffi-

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tion to cover guarantors and other third parties on the ground that Congress expressly allowed for co-debtor stays in Chapter 13 but omitted such a provision from Chapter 11. Credit Alliance Corp. v. Williams, 851 F.2d 119, 121 (4th Cir. 1988); *In re* Arrow Huss, Inc., 51 B.R. 853, 856 (Bankr. D. Utah 1985).

170. *Celotex*, 115 S. Ct. at 1498-99.

171. *Id.* The Court cited to legislative history for support. *See* S. REP. No. 95-989 at 153-54 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5939-40.

172. *Celotex*, 115 S. Ct. at 1499 (citing Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984)).

173. *Pacor*, 743 F.2d at 994.

174. *Id.* (emphasis omitted) (citations omitted); *see supra* note 87 and accompanying text (discussing further the *Pacor* "related to" definition).

175. *Celotex*, 115 S. Ct. at 1499. The only specific limit on the scope of bankruptcy jurisdiction that the Court identified was that "bankruptcy courts have no jurisdiction over proceedings that have no effect on the debtor." *Id.* at 1499 n.6.

176. *Id.* at 1499.

177. *Id.*

178. *Id.* at 1499-500.

ciently "related to" Celotex's bankruptcy.[179] Moreover, the majority noted that Celotex's filing for Chapter 11 reorganization, rather than Chapter 7 liquidation, made jurisdiction more likely because "jurisdiction of bankruptcy courts may extend more broadly in [a Chapter 11 case] than in [a Chapter 7 case]."[180] Finally, the majority contended that its reasoning with respect to the extent of the "related to" jurisdiction was in harmony with recent cases from the appellate courts.[181]

After ruling that the issue of the immediate execution on the bonds was "related to" Celotex's bankruptcy, the Chief Justice addressed, in a footnote, one of the dissent's arguments.[182] The majority explained that although the dissent agreed that the issue was "related to" Celotex's bankruptcy, the dissent argued that because the bankruptcy court lacked the power to enter a "final order or judgment" in "non-core" matters, the court lacked power to enter the § 105 injunction.[183] According to the majority, this argument failed because (1) the injunction is not a "final order" but rather is interlocutory in nature[184] and (2) the respondents

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179. *Id.* at 1500. A "substantial adverse effect" would result because allowing the bonded judgment creditors to execute on the bonds would induce the sureties to seek relief from the injunction to reach Celotex's collateral, i.e., the insurance coverage disputes would be re-opened. *Id.* The bankruptcy court feared that preventing the resolution of the insurance coverage disputes would diminish Celotex's chance for a successful reorganization because the settlement of those disputes "'may well be the linchpin . . . of a feasible plan'" for reorganization. *Id.* (quoting *In re* Celotex Corp., 140 B.R. 912, 915 (Bankr. M.D. Fla 1992)).

180. *Id. See, e.g.*, Continental Ill. Nat'l Bank & Trust Co. v. Chicago, Rock Island & Pacific Ry. Co., 294 U.S. 648, 676 (1935) (allowing an injunction against lien enforcement in order to promote reorganization, but noting that jurisdiction to enjoin enforcement of the lien would not be appropriate if the debtor was not attempting to reorganize).

181. *Celotex*, 115 S. Ct. at 1500. *See, e.g.*, American Hardwoods, Inc. v. Deutsche Credit Corp. (*In re* American Hardwoods, Inc.), 885 F.2d 621, 623 (9th Cir. 1989) (allowing "related to" jurisdiction where action against debtor's guarantor would affect the reorganization process); MacArthur Co. v. Johns-Manville Corp. (*In re* Johns-Manville Corp.), 837 F.2d 89, 93 (2d Cir. 1988) (holding that equitable powers can be used to stay actions that will negatively affect the debtor's reorganization); *In re* A.H. Robins Co., 828 F.2d 1023, 1024-26 (4th Cir. 1987) (allowing a bankruptcy injunction barring suits against a debtor's insurers to stand).

182. *Celotex*, 115 S. Ct. at 1499 n.7.

183. *Id.*; *see infra* notes 230-48 and accompanying text.

184. *Celotex*, 115 S. Ct. at 1499 n.7. Arguably, this reading of the statute is consistent with the Court's "plain meaning" approach to statutory interpretation. *See* Walter A. Effross, *Grammarians at the Gate: The Rehnquist Court's Evolving "Plain Meaning" Approach to Bankruptcy Jurisprudence*, 23 SETON HALL L. REV. 1636, 1639 (1993). The inherent conflict between the majority and Justice Stevens's dissent stems

waived any claim to this argument by conceding in their brief that "the 'bankruptcy court had subject matter jurisdiction to issue orders affecting the bond . . . if the proceedings on the bond were "related" to the Celotex bankruptcy.'"[185]

In another footnote, the majority stated that the Court was aware that a "technical" argument could be made that the proceeding granting the injunction against execution on the bonds fell not under the "related to" grant, but actually within the "arising under" or "arising in" jurisdiction.[186] Chief Justice Rehnquist made it clear, however, that the Court was not deciding that issue in the instant case.[187]

Next the Court turned to the argument that the injunction could not be permitted to interfere with the accelerated procedure provided for in the Federal Rules[188] which the Edwardses utilized to execute on the bonds.[189] In support of this argument, the Edwardses cited a recent Supreme Court decision in which the Court disallowed a bankruptcy injunction against a regulatory proceeding.[190] The Court, however, distinguished *Board of Governors v. MCorp Financial* from the instant case.[191] The controlling factor in *MCorp Financial* was that a specific federal statute prohibited any court from entering injunctions affecting regulatory proceedings.[192] In the instant case, the Court explained, there was no similar statutory prohibition against injunctions affecting the

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from the fact that Justice Stevens's analysis also relies on the "plain meaning" of the statute. *See Celotex*, 115 S. Ct. at 1505-07 (Stevens, J., dissenting).

185. *Celotex*, 115 S. Ct. at 1499 n.7 (quoting Brief for Respondents at 22, *Celotex* (No. 93-1504)).

186. *Id.* at 1500 n.8; *see In re* Monroe Well Serv., Inc., 67 B.R. 746, 753 & n.9 (Bankr. E.D. Pa. 1986) (holding that an action seeking a § 105 injunction is itself a "core" proceeding either within the arising under or arising in grant). As one scholar has noted, this question has confounded courts and observers alike. Buschman & Madden, *supra* note 45, at 923 n.70.

187. *Celotex*, 115 S. Ct. at 1500 n.8. If the Court held that the action to seek the § 105 stay was itself the jurisdictional issue, this might alter the analysis because the bankruptcy court's powers in "core" proceedings are plenary. *See* 28 U.S.C. § 157 (b)(1), (c)(1) (1994); *see also infra notes* 230-36 and accompanying text.

188. FED. R. CIV. P. 65.1; *see supra* note 134 and accompanying text.

189. *Celotex*, 115 S. Ct. at 1500-01.

190. *Id.* at 1500 (citing Board of Governors v. MCorp Fin., 502 U.S. 32 (1991)). In *MCorp Financial*, the Chapter 11 debtor, a bank, moved to bar the Board of Governors of the Federal Reserve from going forward with administrative actions against the bank. *MCorp Fin.*, 502 U.S. at 34. The Court held that the bankruptcy court lacked power to enjoin the Board of Governors due to a federal statute giving the Board plenary power over its administrative proceedings and barring action by any court to affect the Board's administrative proceedings. *Id.* at 38-39; *see* 12 U.S.C. § 1818(i)(1) (1994).

191. *Celotex*, 115 S. Ct. at 1500.

192. *MCorp Fin.*, 502 U.S. at 39.

expedited execution on supersedeas bonds.[193] Although the Federal Rules provided an accelerated means for executing on supersedeas bonds, it did not follow, the Court asserted, that the procedure could not be enjoined by a "lawfully entered injunction."[194]

The Court then addressed whether the bankruptcy injunction had "only a frivolous pretense to validity," and concluded that the injunction indeed had merit.[195] The majority made clear, however, that the Court was not deciding whether the bankruptcy court was correct in issuing the injunction; the Court had merely determined that the injunction was not "frivolous."[196] In support of this determination, the Court noted that the Fourth Circuit had upheld the same injunction on the merits in another case involving Celotex.[197] The Court further noted that the Fifth Circuit, which allowed the collateral attack, had stated that the bankruptcy court was not "necessarily wrong."[198] The Court then confronted the dissent's claim that the injunction was "frivolous" because Celotex's motions to set aside the bonds as fraudulent transfers or preferences were "patently meritless."[199] According to the dissent, these claims were "meritless" because the outcome of the motions could not affect the surety's duty to the respondents.[200] The majority dismissed this assertion, stating that the argument was not "clear" enough to make the injunction "frivolous."[201] To demonstrate the ambiguity, the majority pointed to authority (without explicitly vouching for the authority's validity or applicability) "suggesting" that some debtor transfers that benefitted third parties could be recovered from the third party.[202] Accordingly, the Court concluded that the injunction was not "frivolous."[203]

In conclusion, the Court reiterated that valid injunctions must be "respected" until overturned on direct review, rather than attacked collater-

193. *Celotex*, 115 S. Ct. at 1500.
194. *Id.* at 1501.
195. *Id.* at 1501 & n.9.
196. *Id.* at 1501.
197. *Id.* (citing Willis v. Celotex Corp., 978 F.2d 146, 149-50 (4th Cir. 1992)).
198. *Id.* (quoting Edwards v. Armstrong World Indus., Inc., 6 F.3d 312, 321 (5th Cir. 1993) (*Edwards II*) (internal quotation marks omitted), *rev'd sub nom.* Celotex Corp. v. Edwards, 115 S. Ct. 1493 (1995)).
199. *Id.* at 1501 n.9; *id.* at 1507 (Stevens, J., dissenting).
200. *Id.* at 1507 (Stevens, J., dissenting).
201. *Id.* at 1501 n.9.
202. *Id.*
203. *Id.*

ally.[204] The majority emphasized that the Edwardses were wrong to attack the Florida bankruptcy court's injunction in the Texas district court; instead, they should have assailed the order in the bankruptcy court and sought review from that court for any adverse decision.[205] To allow this type of collateral attack, the Court concluded, would "seriously undercut[] the orderly process of the law."[206]

B. Justice Stevens's Dissenting Opinion

Justice Stevens, joined by Justice Ginsburg, dissented.[207] For Justice Stevens, the constitutional and statutory differences between bankruptcy courts and United States district courts were critical.[208] The majority erred, according to the dissent, by allowing a non-Article III bankruptcy judge to enjoin the action of a constitutionally superior Article III federal court.[209]

The dissent began its analysis with a brief review of the history of the case.[210] Justice Stevens emphasized two points in this discussion: first, the fact that Celotex lost any property interest it once had in the supersedeas bonds when the appellate court affirmed the judgment against Celotex, and second, the fact that the payment of the supersedeas bond was Northbrook's "independent obligation" to the respondents.[211] Because Celotex's property interest in the bonds was extinguished by the completion of the appellate process in favor of the respondents, the bankruptcy judge had used his powers under § 105 to prevent execution on the bonds.[212] The bankruptcy court had justified this exercise of

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204. *Id.* at 1501.

205. *Id.*

206. *Id.*

207. *Id.* at 1501-11 (Stevens, J., dissenting).

208. *Id.* at 1503 (Stevens, J., dissenting). United States district courts are created under Article III. U.S. CONST. art. III, § 1. Article III courts are characterized by judges who are appointed for life and whose salaries are protected from diminution. *Id.* The power to create bankruptcy courts, however, is derived from Article I, not Article III. U.S. CONST. art. I, § 8, cl. 4. Bankruptcy judges are not afforded the protections provided to Article III judges; bankruptcy judges sit for 14-year terms and their salaries are not protected. *Id.* The provisions in the Constitution regarding the salary and life terms of Article III judges were meant to bolster the independence of the judiciary. *See* Currie, *supra* note 54, at 442. For a discussion of the history of the conflicts between Article III courts and bankruptcy courts, see *supra* notes 43-103 and accompanying text.

209. *Celotex*, 115 S. Ct. at 1503 (Stevens, J., dissenting).

210. *Id.* at 1502-03 (Stevens, J., dissenting); *see supra* notes 109-48 and accompanying text.

211. *Celotex*, 115 S. Ct. at 1502 (Stevens, J., dissenting). For a discussion of the "independence principle" as it relates to similar secured transactions such as the letter of credit transaction, see Gorney, *supra* note 106, at 335.

212. *Celotex*, 115 S. Ct. at 1502-03 (Stevens, J., dissenting) (citing *In re* Celotex

power on the ground that these other proceedings would imperil Celotex's reorganization and that, consequently, the bankruptcy court's power in these large cases must be "absolute."[213] Justice Stevens criticized the bankruptcy court's actions, especially its characterization of the power of the bankruptcy court as "absolute" in the initial stages of a complex bankruptcy, acting as if its power was "virtually limitless."[214] Justice Stevens maintained that a non-Article III bankruptcy court's power cannot be "absolute" because it is limited by both constitutional and statutory restrictions.[215] Justice Stevens noted, however, that even if the constitutional and statutory restrictions were inapplicable, he would still dissent on the grounds that the court lacked jurisdiction to enter the injunction and, in any event, the injunction had only a "frivolous pretense to validity."[216]

After reiterating its position that the bankruptcy court lacked the power to enjoin an Article III court from executing on supersedeas bonds, the dissent turned to its analysis of the majority opinion.[217] Justice Stevens agreed that the district court has broad jurisdiction over matters "related to" a debtor's bankruptcy and that the district court can refer "any or all" bankruptcy cases to the bankruptcy court for that district.[218] Justice Stevens further agreed with the majority that the proceeding to execute on the bonds fell within the district court's broad grant of "related to" jurisdiction because executing on the bonds would impede Celotex's reorganization.[219] Indeed, Justice Stevens conceded that enforcing all of the bonds that Celotex had posted would likely lead to the failure of Celotex's reorganization efforts and would ultimately

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Corp., 128 B.R. 478, 483 (Bankr. M.D. Fla. 1991) (*Celotex I*)). Although the resolution of the appellate process arguably "extinguished" Celotex's interest in the supersedeas bond, the statutory expansion of bankruptcy jurisdiction was designed to allow bankruptcy jurisdiction beyond a property or consent basis. *See* S. Rep. No. 95-989, at 153-54 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5939-40.

213. *Celotex*, 115 S. Ct. at 1503 (Stevens, J., dissenting) (citing *Celotex I*, 128 B.R. at 484).

214. *Id.* (Stevens, J., dissenting).

215. *Id.* (Stevens, J., dissenting). For an argument that an expansive approach to bankruptcy jurisdiction and power under § 105 is necessary in the mass tort litigation area, see Leal, *supra* note 103, at 497-98.

216. *Celotex*, 115 S. Ct. at 1503 (Stevens, J., dissenting).

217. *Id.* (Stevens, J., dissenting); *see id.* at 1493-1501.

218. *Id.* at 1503-04 (Stevens, J., dissenting) (citing 28 U.S.C. §§ 157(a), 1334(b) (1994)).

219. *Celotex*, 115 S. Ct. at 1503-04 & n.5 (Stevens, J., dissenting).

require that Celotex be liquidated.[220] Nonetheless, Justice Stevens argued that the "specter of liquidation" was insufficient to allow a bankruptcy judge to prevent a third party from carrying out its duty to a creditor.[221] Justice Stevens did, however, express his agreement with the majority that the *Celotex* case did not mandate that the Court adopt or reject the *Pacor* test for "related to" jurisdiction.[222]

In order to explain its contrary position, the dissent cited the statute that outlined the jurisdictional structure of the bankruptcy courts and proceeded to argue that the majority had failed to give the statute its full meaning.[223] Accordingly, Justice Stevens discussed the historical development of the jurisdictional scheme.[224] First, Justice Stevens noted that the statute in its original form had been found unconstitutional by a plurality of the Court in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*[225] The original statute, although it did not elevate bankruptcy judges to Article III status, had given the bankruptcy courts broad power to decide a wide range of cases related to a debtor's bankruptcy, including claims based solely on state law.[226] Justice Stevens noted that the scheme had been found unconstitutional to the extent that it allowed a non-Article III judge to "entertain and decide" state law issues.[227] Congress passed the Bankruptcy Amendments and Federal Judgeship Act of 1984[228] to remedy the problem.[229]

For Justice Stevens, the dichotomy established by BAFJA between "core" and "non-core" proceedings mandated his dissenting opinion.[230] Justice Stevens explained that under BAFJA the powers of the bankruptcy court varied, depending on whether the issue before it was core or non-core.[231] A bankruptcy judge is entitled to "hear and determine" a

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220. *Id.* at 1504 n.5 (Stevens, J., dissenting).

221. *Id.* (Stevens, J., dissenting).

222. *Id.* (Stevens, J., dissenting).

223. *Id.* at 1504 (Stevens, J., dissenting). Justice Stevens referred to the bankruptcy jurisdictional statutes, i.e., 28 U.S.C. § 1334(b), and 28 U.S.C. § 157(a), (b)(1), (c)(1). *Id.*; *see supra* notes 72-75 and accompanying text.

224. *Celotex*, 115 S. Ct. at 1504-05 (Stevens, J., dissenting); *see supra* notes 43-103 and accompanying text.

225. *Celotex*, 115 S. Ct. at 1504-05 (Stevens, J., dissenting) (citing Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982)).

226. *Id.* at 1505 (Stevens, J., dissenting) (citing *Northern Pipeline*, 458 U.S. at 54).

227. *Id.* (Stevens, J., dissenting) (citing *Northern Pipeline*, 458 U.S. at 91 (Rehnquist, J., concurring in judgment)).

228. Pub. L. No. 98-353, 98 Stat. 333 (1984).

229. *Celotex*, 115 S. Ct. at 1505 (Stevens, J., dissenting).

230. *Id.* (Stevens, J., dissenting) (citing 28 U.S.C. § 157(b)(1), (c)(1) (1994)). For a discussion of the core/non-core design and its constitutional ramifications, see Alec P. Ostrow, *Constitutionality of Core Jurisdiction*, 68 AM. BANKR. L.J. 91 (1994).

231. *Celotex*, 115 S. Ct. at 1505 (Stevens, J., dissenting).

core proceeding, i.e., one "arising under" or "arising in" the bankruptcy.[232] In contrast, although a bankruptcy judge is empowered to hear a non-core proceeding, i.e., a proceeding that is merely "related to" the bankruptcy, only the district court may enter a "final order or judgment" in the matter.[233]

Applying the "unambiguous" statute to the instant case, Justice Stevens argued that the bankruptcy court's injunction in a non-core proceeding was clearly impermissible because the statute permitted the court to play only an "advisory" rather than an "adjudicative" role in non-core matters.[234] The extreme nature of an injunction, Justice Stevens asserted, made it equally as "onerous as a final determination," and therefore, subject to the constraints of the statute.[235] According to Justice Stevens, the limits on the bankruptcy court's power were even more appropriate when, as in this case, the bankruptcy court action was directed against an Article III court.[236]

In a footnote, Justice Stevens countered the argument that the bankruptcy court's injunction did not constrain the Article III court, but rather constrained only the Edwardses' actions.[237] Justice Stevens pointed out that the bankruptcy injunction applied to all "entities," which included other courts.[238] Additionally, Justice Stevens argued that even if the injunction had not been expressly directed at other courts, the "practical effect" of the injunction against creditors was to restrict the actions of the Article III court.[239] For Justice Stevens, the critical point was that the bankruptcy court, which lacked the power to decide the issue, had attempted to prevent an Article III court with jurisdiction from acting.[240]

To bolster his argument that the bankruptcy court lacked jurisdiction to issue the injunction, Justice Stevens directed his attention to a provision in the jurisdictional statute providing for mandatory abstention in matters "related to" a debtor's estate that are based on state law claims.[241] Justice Stevens noted that the bankruptcy court's injunction

232. *Id.* (Stevens, J., dissenting) (citing 28 U.S.C. § 157(b)(1)).
233. *Id.* (Stevens, J., dissenting) (citing 28 U.S.C. § 157(c)(1)).
234. *Id.* at 1505-06 (Stevens, J., dissenting).
235. *Id.* at 1506 (Stevens, J., dissenting).
236. *Id.* (Stevens, J., dissenting).
237. *Id.* at 1506 n.9 (Stevens, J., dissenting).
238. *Id.* (Stevens, J., dissenting).
239. *Id.* (Stevens, J., dissenting).
240. *Id.* (Stevens, J., dissenting).
241. *Id.* at 1506 n.10 (Stevens, J., dissenting) (citing 28 U.S.C. § 1334(c)(2) (1994)).

had not taken into account the abstention provision.[242] The deference that the abstention provision requires bankruptcy courts to accord state courts also applies, Justice Stevens asserted, when, as in the instant case, a federal court sitting in diversity hears a state law claim.[243]

Justice Stevens emphasized that constitutional concerns were the basis of his position that the bankruptcy court, which lacks power to "determine" an issue, must also necessarily lack power to grant injunctions that bar actions by Article III courts with jurisdiction over that issue.[244] Justice Stevens conceded that the injunction was only temporary, and therefore not a "final order or judgment," but he claimed that the distinction was "irrelevant."[245] The cases that the bankruptcy court relied on to support the injunction, Justice Stevens argued, actually supported his position.[246] Justice Stevens also pointed out that the key differences between *Celotex* and cases where a bankruptcy judge had issued valid injunctions was that, in the latter, the funds at issue were property of the bankruptcy estate whereas in *Celotex*, the supersedeas bonds were not property of the estate.[247] Moreover, Justice Stevens noted that the circuit court that upheld the injunction against Celotex's judgment creditors had not addressed the constitutional and statutory concerns that he raised.[248]

The abstention provision states:

> Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

28 U.S.C. § 1334(c)(2).

242. *Celotex*, 115 S. Ct. at 1506 n.10 (Stevens, J., dissenting); *see* Cook, *supra* note 85, at 17 (discussing mandatory abstention by district courts per 28 U.S.C. § 1334 (c)(2)).

243. *Celotex*, 115 S. Ct. at 1506 n.10 (Stevens, J., dissenting).

244. *Id.* at 1506 & n.11 (Stevens, J., dissenting).

245. *Id.* at 1506 n.11 (Stevens, J., dissenting).

246. *Id.* at 1506 n.12 (Stevens, J., dissenting); *see* MacArthur Co. v. Johns-Manville Corp. (*In re* Johns-Manville Corp.), 837 F.2d 89, 91-92 (2d Cir. 1988) (holding that the bankruptcy court in a core proceeding had the power to issue an injunction because the property at issue belonged to the bankruptcy estate); A.H. Robins Co. v. Piccinin (*In re* A.H. Robins Co.), 788 F.2d 994, 997 (4th Cir. 1986) (noting that the injunction at issue was granted by a district court and not the bankruptcy court).

247. *Celotex*, 115 S. Ct. at 1506-07 n.12 (Stevens, J., dissenting).

248. *Id.* (Stevens, J., dissenting) (citing Willis v. Celotex Corp., 978 F.2d 146 (4th Cir. 1992)).

Next, Justice Stevens addressed the majority's allusion to a possible alternate basis for jurisdiction.[249] The majority had referred to Celotex's motions to set aside the posting of the bonds as fraudulent transfers or preferences and also to Celotex's claim that the punitive damages element of the award could, according to the Code, be subordinated to other claims.[250] Justice Stevens admitted that these claims fell within the "arising under" jurisdictional grant because Chapter 11 of the Code created such claims.[251] Justice Stevens pointed out, however, that Celotex filed these complaints after the injunction had issued, and therefore, they could not be used to "retroactively provide a jurisdictional basis" for the injunction.[252] Additionally, Justice Stevens argued that Celotex's claims were "patently meritless."[253] Indeed, Justice Stevens declared that Celotex's attempt to set aside the bonds "strains credulity."[254] Justice Stevens conceded that part of the arrangement for the bonds between Celotex and Northbrook might be avoidable, but he claimed that issue was irrelevant to Northbrook's obligation to the Edwardses.[255] Justice Stevens further criticized the idea that Celotex's attempt to subordinate the claims for punitive damages might provide a basis for jurisdiction.[256] The dissent characterized this possible justification for jurisdiction as not even a "colorable" contention.[257] Finally, Justice Stevens accused Celotex of pursuing these "frivolous" claims in or-

249. *Id.* at 1507 (Stevens, J., dissenting); *see id.* at 1497 n.4.

250. *Id.* at 1507 (Stevens, J., dissenting); *see id.* at 1497 n.4. The Code states that the bankruptcy court "under principles of equitable subordination, [may] subordinate for purposes of distribution all or part of an allowed claim to all or part of another allowed claim." 11 U.S.C. § 510(c)(1) (1994).

251. *Celotex*, 115 S. Ct. at 1507 & n.13 (Stevens, J., dissenting) (citing 28 U.S.C. § 1334(b) (1994)).

252. *Id.* at 1507 (Stevens, J., dissenting). The bankruptcy court entered its order on October 17, 1990, and Celotex did not file motions seeking to set aside or subordinate claims until 1992, when ordered to do so by the bankruptcy court. *In re* Celotex Corp., 140 B.R. 912, 914, 917 (Bankr. M.D. Fla. 1992) (*Celotex II*).

253. *Celotex*, 115 S. Ct. at 1507 (Stevens, J., dissenting).

254. *Id.* (Stevens, J., dissenting).

255. *Id.* (Stevens, J., dissenting).

256. *Id.* (Stevens, J., dissenting).

257. *Id.* (Stevens, J., dissenting) (citing Siler v. Louisville & Nashville R.R. Co., 213 U.S. 175, 191 (1909)). Justice Stevens's strident objections stemmed from his view that the outcome of Celotex's reorganization should not have had any bearing on the surety's independent obligation to pay the respondents via the supersedeas bond. *Id.* at 1507 (Stevens, J., dissenting). The timing of Celotex's motions to set aside the bonds fueled Justice Stevens's fire. *See id.* (Stevens, J., dissenting).

der to "manufacture" jurisdiction retroactively for the bankruptcy court.[258]

Justice Stevens then addressed the majority's contention that the injunction itself may have provided a basis for jurisdiction because the power to issue the injunction was created by Chapter 11.[259] Justice Stevens dismissed this argument as "bootstrapping."[260] The bankruptcy court's equitable powers under § 105 do not, Justice Stevens contended, constitute an independent source of jurisdiction.[261]

According to Justice Stevens, the bankruptcy court's injunction, even if the court did have jurisdiction, had only a "frivolous pretense to validity."[262] To explain, Justice Stevens again discussed the development of the bankruptcy court's powers.[263] Justice Stevens emphasized that Congress, in the original bankruptcy act and again in 1978, had expressly denied bankruptcy courts the power to enjoin other courts.[264] The 1984 amendments, in order to satisfy the constitutional objections embodied in the *Northern Pipeline* decision,[265] eliminated the provision containing the express restriction on the bankruptcy court's power to enjoin other courts.[266] Justice Stevens argued that because the amendments were necessitated by the fact that the bankruptcy court had been given too much power, it would be "frivolous" to argue that Congress had intended to expand the bankruptcy court's power by removing the restriction against enjoining other courts.[267]

Justice Stevens conceded that, because the same injunction had been upheld in another circuit[268] and because the Court was divided on the issue, a reasonable jury could conclude that the injunction was not "frivolous."[269] Nonetheless, Justice Stevens distinguished the cases upon which the majority relied in supporting the bankruptcy court's actions because the central issue in those cases was not a third party's obligation to a creditor, as in the *Celotex* case.[270] As a result, Justice Stevens

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258. *Id.* at 1507 (Stevens, J., dissenting).

259. *Id.* at 1508 (Stevens, J., dissenting); *see id.* at 1500 n.8.

260. *Id.* (Stevens, J., dissenting).

261. *Id.* (Stevens, J., dissenting). As one observer put it, § 105 does not create "jurisdiction to enter injunctions; rather it has been applied to define the scope of the bankruptcy court's authority in that area." Leal, *supra* note 103, at 491.

262. *Celotex*, 115 S. Ct. at 1508 (Stevens, J., dissenting).

263. *Id.* at 1508-09 (Stevens, J., dissenting).

264. *Id.* (Stevens, J., dissenting) (citing 28 U.S.C. § 1481 (1994)). The statute states that bankruptcy courts "may not enjoin another court." 28 U.S.C. § 1481.

265. Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982).

266. *Celotex*, 115 S. Ct. at 1509 (Stevens, J., dissenting).

267. *Id.* (Stevens, J., dissenting).

268. *Id.* (Stevens, J., dissenting); *see* Willis v. Celotex Corp., 978 F.2d 146 (4th Cir. 1992).

269. *Celotex*, 115 S. Ct. at 1509 (Stevens, J., dissenting).

270. *Id.* at 1509 & n.21 (Stevens, J., dissenting); *see id.* at 1501 n.9; American Bank

surmised that the bankruptcy judge's mistake in issuing the injunction was "sufficiently plain" to require affirmation of the circuit court's decision.[271]

In the final portion of its opinion, the dissent offered two more reasons why the bankruptcy court's injunction was "especially troubling" and should have been overturned.[272] First, the dissent attacked as inadequate the bankruptcy judge's reasoning that the "emergency" conditions threatening Celotex's reorganization necessitated the issuing of an injunction.[273] Justice Stevens argued that the judge had engaged in an ends-justify-the-means analysis that the Court should have viewed more skeptically.[274] Second, because supersedeas bonds put "the integrity of the Court in which it is lodged on the line," attempts to enjoin their enforcement in other courts are "suspect."[275] Consequently, enforceability questions should be answered in the issuing court prior to posting of the bonds.[276] Justice Stevens emphasized that the bonds were directed as a protection for the creditor against the insolvency of the debtor; therefore, staying their enforcement as a result of the debtor's insolvency was not only "inequitable," but also "bad law and worse logic."[277] Finally, Justice Stevens intimated that the Court had allowed the bankruptcy court to "trespass" on the district court's "domain" and questioned whether the Court would allow a bankruptcy court to enjoin enforcement of a bond posted in the Supreme Court itself.[278]

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v. Leasing Serv. Corp. (*In re* Air Conditioning, Inc.), 845 F.2d 293, 295-96 (11th Cir. 1988); Kellogg v. Blue Quail Energy, Inc. (*In re* Compton Corp.), 831 F.2d 586, 590 (5th Cir. 1987), *modified on other grounds*, 835 F.2d 584 (5th Cir. 1988).

271. *Celotex*, 115 S. Ct. at 1509 (Stevens, J., dissenting).

272. *Id.* at 1510-11 (Stevens, J., dissenting).

273. *Id.* at 1510 (Stevens, J., dissenting).

274. *Id.* (Stevens, J., dissenting).

275. *Id.* (Stevens, J., dissenting); *see infra* notes 296-308 and accompanying text (discussing the impact of the decision on issuance of supersedeas bonds and other risk-shifting devices).

276. *Celotex*, 115 S. Ct. at 1510 (Stevens, J., dissenting).

277. *Id.* at 1510-11 (Stevens, J., dissenting) (quoting Southmark Corp. v. Riddle (*In re* Southmark), 138 B.R. 820, 827-28 (Bankr. N.D. Tex. 1992) (internal quotation marks omitted)).

278. *Id.* at 1511 & n.22 (Stevens, J., dissenting).

V. IMPACT

The Supreme Court's decision in *Celotex* may have a significant impact on several bankruptcy-related issues.[279] *Celotex*'s impact will be felt principally in the areas of bankruptcy jurisdiction, but the decision will also have an effect on the issuance of supersedeas bonds and other security arrangements involving potential debtors.[280]

A. *An Expansion of Bankruptcy Court Jurisdiction?*

Celotex is generally viewed as an expansion of the bankruptcy court's power.[281] The decision is an expansion because the Court clarified that bankruptcy injunctions are entitled to be respected and not collaterally attacked.[282] As Justice Stevens pointed out, this expansion is significant in light of the bankruptcy court's status as a non-Article III court.[283]

Additionally, the decision expands the bankruptcy court's power, asserting that a proceeding against a non-debtor insurance company is sufficiently "related to" the debtor's bankruptcy to come within the court's limited jurisdictional grant.[284] The Court upheld the injunction in *Celotex* even though the party opposing the injunction argued that the surety's funds to pay the judgment were not property of the bankruptcy estate.[285] The evolution of bankruptcy jurisdiction can be viewed on a

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279. John P. Hennigan, Jr., *The Battle Between Winners and Losers Goes On: Can a Bankruptcy Court Block Collection on a Bankrupt Debtor's Appeal Bond?*, A.B.A. PREVIEW U.S. SUP. CT. CAS., Nov. 14, 1994, at 108.

280. Marvin Krasny & Kevin J. Carey, *Bankruptcy Court Power Upheld by Justices; Section 105(a) Decision Will Have Far-Reaching Effect*, LEGAL INTELLIGENCER, Apr. 28, 1995, at 9. *But see Conferences: Bankruptcy in a Changing World Is Focus of Judges' Meeting in New Orleans*, BNA BANKR. L. DAILY, Nov. 13, 1995, at 23 [hereinafter *Conferences*] (arguing that "panic" regarding *Celotex* is "overblown" and that the decision will be read narrowly).

281. Stephen Karotkin & Beth J. Rosen, *Judicial Decisions Broaden the Bankruptcy Court's Jurisdiction to Enjoin Conduct in Violation of an Automatic Stay, and Limit the Availability of Non-Debtor, Third Party Releases Absent Notice to Affected Parties. The Authors Analyze Recent Supreme Court and Circuit Court Authority*, REV. BANKING & FIN. SERVICES, June 28, 1995, at 12.

282. Krasny & Carey, *supra* note 280, at 9.

283. *Celotex*, 115 S. Ct. at 1503 (Stevens, J., dissenting).

284. *Id.* at 1499. It is important to remember that the Court did not decide that the bankruptcy court had acted properly in issuing the injunction; rather, the Court held only that it had the jurisdiction to do so. *Id.* at 1501.

285. *Id.* at 1498-99. Similarly, other courts have recently declined to base jurisdiction over "related to" matters on a "property of the estate" rationale. Leif Clark, *Bankruptcy*, 26 TEX. TECH L. REV. 357, 366 (1995). As in *Celotex*, the basis for jurisdiction instead rests on the existence of threats to the reorganization process and the need to deal efficiently with issues surrounding the debtor in a single forum. *See, e.g.*, Coar v. National Union Fire Ins. Co., 19 F.3d 247, 248 (5th Cir. 1994) (holding

continuum from the early days of bankruptcy law, where possession or consent of the property was a prerequisite for jurisdiction, to *Celotex*, where possession and consent are not required as long as the debtor can articulate a threat to the administration of the bankruptcy estate.[286] This trend in favor of broadening jurisdiction was responsible for the constitutional defects in the jurisdictional provision that the Court identified in *Northern Pipeline*.[287] Today, more than ten years after *Northern Pipeline* and the 1984 attempt to remedy the constitutional problems,[288] *Celotex* indicates that the extent of bankruptcy jurisdiction is still controversial.[289] In *Celotex*, however, the Court endorsed an approach to bankruptcy jurisdiction that "places no conceptual limit" on the scope of the bankruptcy court's power.[290] Nonetheless, the decision may lead to inconsistent results due to the Court's failure to resolve the conflict among the circuits with respect to the proper test for "related to" jurisdiction.[291] In a circuit applying the broad *Pacor* test, which finds juris-

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that an action against debtor's insurer was "related to" the bankruptcy because claims asserted could exhaust the policy, thereby exposing debtor's other assets "unless the claims against the policy were marshalled in accord with the bankruptcy proceeding").

286. *See* Buschman & Madden, *supra* note 45, at 916; *see also* Clark, *supra* note 285, at 366-70. One observer has noted that the amount of evidence required to show a "cognizable threat" to the bankruptcy estate is unclear and that courts at times exercise jurisdiction with only a "thin" showing. *Id.* at 366 n.56.

287. Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982); *see supra* notes 55-68 and accompanying text.

288. Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 (1984).

289. Krasny & Carey, *supra* note 280, at 9. The Court implied that the scope of the jurisdictional grant is unclear, referring to the legislative history rather than relying only on the "plain meaning" of the statute. *See Celotex*, 115 S. Ct. at 1498-99. For a discussion of the Court's "plain meaning" approach to bankruptcy issues, see Effross, *supra* note 184, at 1747-58.

290. Holland Indus. v. United States (*In re* Holland Indus.), 103 B.R. 461, 468 (Bankr. S.D.N.Y. 1989).

291. *Celotex*, 115 S. Ct. at 1499 n.6, 1504 n.5 (Stevens, J., dissenting). Immediate post-*Celotex* decisions by lower courts grappling with bankruptcy jurisdiction issues have read the decision narrowly or distinguished it. *See, e.g.*, Feld v. Zale Corp. (*In re* Zale Corp.), 62 F.3d 746, 755 (5th Cir. 1995) (holding that the bankruptcy court lacked power to issue an injunction barring claims against a third party insurance company because the claims "are not property of the estate and . . . have no effect on the estate"); *In re* Dow Corning Corp., 187 B.R. 934, 937 (E.D. Mich. 1995) (holding that claims against nondebtors were not "related to" the bankruptcy estate and that the interest in judicial economy alone was insufficient to support bankruptcy jurisdiction), *rev'd*, 86 F.3d 482 (6th Cir. 1996); Duplitronics, Inc. v. Concept Design

diction whenever the outcome of a "proceeding could conceivably have any effect on the estate being administered in bankruptcy,"[292] collateral attacks against bankruptcy injunctions will rarely be permissible. On the other hand, in courts that apply a more restrictive standard,[293] collateral attacks against injunctions may be more frequent because a party in a non-*Pacor* jurisdiction will have a greater likelihood of convincing a court that the bankruptcy judge lacked jurisdiction, and consequently, that a collateral attack is permissible under the exception for lack of jurisdiction.

It may also be the case that, as the Court hinted, an expansive grant of "related to" jurisdiction is a practical necessity for Chapter 11 cases, and more specifically, for complex Chapter 11 cases involving mass tort litigation.[294] Nonetheless, any increase in the scope of the bankruptcy court's jurisdiction must be consistent with the constitutional limitations articulated in *Northern Pipeline*, as emphasized in Justice Stevens's dissent.[295]

B. Possible Impact on Supersedeas Bonds and Letters of Credit

Celotex may have a negative impact on the issuance of supersedeas bonds in the future[296] because giving debtors power, even temporarily, to halt payment on supersedeas bonds weakens the effectiveness of the security device.[297] Indeed, some members of the bankruptcy legal community greeted the decision with fear that the *Celotex* reasoning might be applied to letters of credit.[298] These fears may be unfounded because

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Elecs. & Mfg., Inc. (*In re* Duplitronics, Inc.), 183 B.R. 1010, 1016, 1019 (Bankr. N.D. Ill. 1995) (refusing to block payment on a letter of credit and supersedeas bond posted by a debtor and referring to *Celotex* negatively as making bankruptcy powers "limitless").

292. Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984).

293. *See, e.g.*, Turner v. Erminger (*In re* Turner), 724 F.2d 338, 341 (2d Cir. 1983) (requiring a "significant connection" to the debtor's bankruptcy for "related to" jurisdiction to attach).

294. *Celotex*, 115 S. Ct. at 1500; *see* Leal, *supra* note 103, at 497 (advocating an "expansive approach" to bankruptcy jurisdiction and § 105 powers in mass tort cases).

295. *See Celotex*, 115 S. Ct. at 1503 (Stevens, J., dissenting); *see also* Currie, *supra* note 54, at 441 (extolling the virtues of the constitutional framework for Article III and warning against encroachments by lesser courts, specifically bankruptcy courts).

296. *See Duplitronics*, 183 B.R. at 1017-18 (noting that the bankruptcy court clearly had the power to enjoin payment on a supersedeas bond or letter of credit but refusedg to exercise that power).

297. *See, e.g.*, Gorney, *supra* note 106, at 333-34 (arguing that depriving creditors of the certainty of payment by the issuer would "weaken" an essential element of commercial transactions).

298. *Conferences*, *supra* note 280, at 23; *see* Gorney, *supra* note 106, at 333-34 (dis-

the Court only held that the bankruptcy court had jurisdiction over the issue and explicitly did not rule on whether the bankruptcy court was correct to issue the injunction under the facts.[299] Nonetheless, there is no conceptual difference between a supersedeas bond and a letter of credit transaction.[300] Some courts, even before *Celotex*, used the bankruptcy court's equitable powers to block payment on letters of credit.[301] Extending the reasoning of *Celotex* to include letter of credit transactions concerns business persons who worry that diminishing the usefulness of letters of credit will have a negative impact on national and international commerce.[302]

Regardless of whether the *Celotex* reasoning is extended to letter of credit transactions, diminishing the usefulness of the supersedeas bond as a security device will have far-reaching consequences.[303] By allowing payment on supersedeas bonds to be stayed due to a debtor's bankruptcy, a long-established and efficient procedure for post-judgment stays will be weakened.[304] The weakening of the bonds as a security device might lead courts to require other forms of protection for judgment creditors, such as requiring debtors to post a cash deposit with the court in the amount of the judgment.[305] Requiring a full cash deposit may hasten a judgment debtor's descent into bankruptcy, a fate that might have been avoided if the supersedeas bond device was available and effective.[306]

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cussing the trend in favor of debtors seeking to enjoin payment on letters of credit via a bankruptcy court's § 105 powers).

299. *Celotex*, 115 S. Ct. at 1501.

300. *Conferences*, *supra* note 280, at 23.

301. *See, e.g.*, Wysko Inv. Co. v. Great Am. Bank, 131 B.R. 146, 146-47 (Bankr. D. Ariz. 1991) (holding that payment on a standby letter of credit posted by a Chapter 11 debtor could be enjoined by the bankruptcy court).

302. Robert Jay Gavigan, Note, Wysko Investment Company v. Great American Bank: *A New Attack on the Usefulness of Letters Of Credit*, 14 NW. J. INT'L L. & BUS. 184, 204 (1993); *see* Joseph H. Levie & Alan M. Christenfeld, *Recent Cases Undermining the Standby Letter of Credit*, N.Y. L. J., Feb. 1, 1996, at 4-5 (noting that *Celotex* "comes close" to being a rejection of the "independence principle" and will likely be used by debtors to stay actions against other guarantors).

303. *See* Brief of Amicus Curiae in Support of Respondents, Associations of Trial Lawyers of America, at *3, *Celotex* (No. 93-1504).

304. *Id.* at *3-4.

305. *Id.* at *4. *See, e.g.*, Owens Corning Fiberglas Corp. v. Carter, 630 A.2d 647 (Del. 1993) (requiring cash deposit in amount of judgment in lieu of supersedeas bond); Cardenas v. Owens Corning Fiberglas Corp., No. 94CA606 (Colo. App. 1994) (same).

306. Brief of Amicus Curiae in Support of Respondents, Associations of Trial Lawyers of America, at *7-8, *Celotex* (No. 93-1504).

Additionally, *Celotex* may affect settlement terms between plaintiffs and defendants.[307] In any event, *Celotex* places the future of the supersedeas bond and other similar risk-shifting devices in jeopardy.[308]

VI. CONCLUSION

The holding in *Celotex* seems straightforward. First, the Court held that injunctions issued by bankruptcy courts must be accorded respect in all other forums and may not be collaterally attacked.[309] Second, the Court held that the issue of whether a judgment creditor could execute on a supersedeas bond posted by a surety for the debtor was a question at least "related to" the debtor's bankruptcy.[310] The holding seems simple enough, but what does it mean in the context of all that has come before it? *Celotex* appears to mean that bankruptcy courts, even though they are not Article III courts, have power very near the level of an Article III court. In spite of the turmoil associated with bankruptcy jurisdiction since 1978, *Celotex* places bankruptcy courts in essentially the same position they occupied before *Northern Pipeline*.[311] The bankruptcy court has broad jurisdiction to hear any proceeding that "could conceivably have any effect" on the debtor or the debtor's reorganization.[312] The only limit on the bankruptcy court's jurisdictional reach is where a proceeding has no effect on the debtor. Although the bankruptcy court is ostensibly restricted from making "final judgments,"[313] the ability to issue injunctions that have such a far-reaching effect is not insignificant.[314] When a debtor can articulate a legitimate threat to reorganization or administration of the bankruptcy estate, it appears that jurisdiction will lie. In *Celotex*, Celotex's judgment creditors lost because they

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307. *Id.* at *5. For example, a defendant might use the threat of bankruptcy coupled with the lack of protection for any potential judgment as leverage in obtaining a favorable settlement.

308. *Id.* at *3-6; *see* Celotex Corp. v. Edwards, 115 S. Ct. 1493, 1510-11 (1995) (Stevens, J., dissenting).

309. *Celotex*, 115 S. Ct. at 1498.

310. *Id.* at 1499-500.

311. Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 76 (1982) (holding that a bankruptcy court's assertion of jurisdiction over civil proceedings arising under title 11 violates Article III of the Constitution).

312. Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d. Cir. 1984). Although the majority in *Celotex* declined to adopt the *Pacor* test as the controlling standard for "related to" jurisdiction, it cited the case approvingly, and the *Pacor* test is clearly the modern trend of the lower courts. *See supra* notes 43-103 and accompanying text.

313. 28 U.S.C. § 157(c)(1) (1994); *see Celotex*, 115 S. Ct. at 1505-06 (Stevens, J., dissenting).

314. *Celotex*, 115 S. Ct. at 1506 n.11 (Stevens, J., dissenting).

failed to respect the order of a bankruptcy court and because they stood in the way of the further aggrandizement of bankruptcy court jurisdiction.

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