

## [The United States Supreme Court Applies Equitable Principles in Favor of Insurers in Enforcing Settlement Trust Order by Bankruptcy Court of Questionable Jurisdiction](#)

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The Supreme Court in *Travelers Indemnity Company v. Bailey*, 57 U.S. \_\_\_\_ (2009) last week reversed a Second Circuit opinion that could have caused insurance companies concerns when contributing to a settlement fund to resolve mass tort claims in Bankruptcy Court.

More than 20 years ago, in 1986, a federal bankruptcy court issued an order that discharged one of the largest producers of products containing asbestos, Johns-Manville Corporation, and each of its insurers from all future tort liability arising under the company's indemnity policies. Johns-Manville's primary indemnity insurer, Travelers, deposited \$80 million (the full value of their policies) into a settlement trust for all potential claimants, which was intended to cut-off all of Travelers' future liability due to relationship with the company.

Over the ensuing decades, claimants attempted to impose liability on Travelers directly (beyond the amount deposited) by claiming that they were tortiously liable independently of Johns-Manville. These claims were premised on alleged misconduct in Travelers' investigation and settlement of asbestos claims against its insured. Travelers, and like situated insurers, sought the protection of the bankruptcy court's prior order discharging them of all liability. The bankruptcy court agreed and found that there could be no further liability for the insurers, even though the Plaintiffs claims did not specifically arise under the terms of the policies.

The Second Circuit reversed the bankruptcy court's findings on the independent claims because the appellate court found that those claims were governed by state tort law; making them claims that the Bankruptcy Court had no jurisdiction to decide because those claims were unrelated to the execution of Johns-Manville's estate. Thus, Travelers and the other insurers were going to yet again be embroiled in litigation due to its insuring Johns-Manville. Legal scholars surmised that the Second Circuit's opinion would make insurers less willing to contribute to a fund to resolve tort matters in bankruptcy proceedings. Travelers sought review by the Supreme Court, arguing that "the Second Circuit's decision undermines important principles of judicial finality."

In a 7-2 majority opinion by Justice David H. Souter (Justice Souter's next to last before retirement), the Supreme Court reversed the Second Circuit's ruling. While the Court chose to not broadly opine on the Bankruptcy Court's jurisdictional reach, it instead chose to couch its opinion on principles of equity and *res judicata* (a long-standing legal principle that bars future litigation over matters decided by previous litigation by the same, or related, parties). In so doing, the Court specifically noted that its opinion was narrow and it was not "resolv[ing] whether a bankruptcy court, in 1986 or today, could properly enjoin claims against nondebtor insurers that are not derivative of the debtor's wrongdoing." But rather, the Court found that once the 1986 order became final, it became *res judicata* to the "parties and those in privity with them." In other words, any person or entity that was either a party in the cases that gave rise to the 1986 order (or related to those parties) who were given a fair chance to challenge the court's jurisdiction in 1986, cannot subsequently resist the application of the order once the insurer seek

its protection years later. Most simply, the Court in essence is saying that if the claimants thought that the Bankruptcy Court did not have the jurisdictional power to issue the 1986 Order absolving the insurers of all future liability, they should have challenged that power at the time, not decades later.

The Supreme Court's opinion reminds plaintiffs, defendants or any person with a legal right that it is far better to make your best argument now, or it could later be deemed too late. As one author from history noted, "[p]utting off an easy thing makes it hard. Putting off a hard thing makes it impossible."

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