SUPREME COURT OF LOUISIANA

NO. 2024-C-01492

DARLENE WARD PELLECER, individually and as the administrator of the estate of CARLOS F. PELLECER, CYNTHIA PELLECER KELLPLER, LINDA PELLECER SEWARD, and BONNIE PELLECER PEREZ

Plaintiffs-Respondents

VERSUS

WERNER CO., a corporation of Delaware, Werner Co. (DE), NEW WERNER HOLDING CO., NEW WERNER HOLDING, LLC, NEW WERNER HOLDING CO. (DE), LLC, SUE ANN SILVERNMAND SINGER, HAROLD SINGER, AND 2011 GENERAL PERSHING, LLC

Defendants-Relators

On Application for Writ of Certiorari or Review to the Louisiana Court of Appeal, Fourth Circuit, Docket No. 2023-CA-0694, and from Civil District Court, Parish of Orleans, No. 2020-04963, Honorable D. Nicole Sheppard, presiding.

A CIVIL PROCEEDING

ORIGINAL BRIEF OF AMICI CURIAE IN SUPPORT OF DEFENDANTS-RELATORS, WERNER CO. AND NEW WERNER HOLDING CO., BY CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE LOUISIANA ASSOCIATION OF BUSINESS AND INDUSTRY

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

MAY IT PLEASE THE COURT:

The Chamber of Commerce of the United States of America (the "Chamber") and the Louisiana Association of Business and Industry ("LABI") submits their original brief as *Amici Curiae* in support of the defendants and relators, Werner Co. and New Werner Holding Co. (the "Werner Defendants").

In the 1996 Extraordinary Session, the Louisiana Legislature made the affirmative policy decision to virtually eliminate strict liability with few limited exceptions. In an opinion representing a marked departure from established principles of Louisiana products-liability law, the Fourth Circuit ignored this policy.

At bottom, the Fourth Circuit's ruling disregards the Legislature's intent in enacting the Louisiana Products Liability Act (LPLA) by improperly expanding the statutory definition of "manufacturer" to include a third-party purchaser of a bankrupt company's intangible assets—namely its trademark, goodwill, and related brand elements—acquired through bankruptcy. The Fourth Circuit's interpretation strains the LPLA's statutory language and contradicts the Legislature's goal to cabin strict products liability within reasonable and predictable boundaries, grounded in a business's role in the design, production, or marketing of a product. The decision also undermines one of the core objectives of Federal Bankruptcy Law by potentially saddling third-party purchasers with legacy liabilities of defunct companies—liabilities they expressly did not assume and were protected against under bankruptcy court orders. Such precedent threatens to chill future asset sales in bankruptcy, devaluing distressed estates and frustrating the rehabilitative aims of the Federal Bankruptcy Code. And the ruling will undermine recent progress made by this Court and policymakers to counteract Louisiana's reputation as an outlier jurisdiction with a hostile business climate. By creating unpredictable and expansive theories of liability, the decision threatens to deter investment, increase costs for small businesses, and ultimately limit consumer choice and innovation in the marketplace.

ARGUMENT

I. The Fourth Circuit's Holding Ignores the LPLA's Text And Purpose.

In the past decades, the Louisiana Legislature passed several key pieces of legislation that largely eliminated strict liability in Louisiana. In 1996, the Legislature extensively revised Louisiana's tort regime in its extraordinary session, which "radically reduced if not eliminated Louisiana strict liability." *Graves v. Page*, 96-2201, p. 10 (La. 11/7/97), 703 So. 2d 566, 570 n.1.

In enacting the 1996 revisions to Louisiana's tort regime, the Legislature effectively "moved from a tort regime with significant pockets of 'no blame' liability to one in which liability generally requires blameworthiness." Frank L. Maraist & Thomas C. Galligan, Jr., BURYING CAESAR: CIVIL JUSTICE REFORM AND THE CHANGING FACE OF LOUISIANA TORT LAW, 71 Tul. L. Rev. 339, 342 (1996). "The post-1996 liability regime in Louisiana … is a true 'fault-based' system, and 'fault' in Article 2315 generally no longer has its former technical connotation, but returns to its colloquial meaning—blameworthiness." *Id.*

The LPLA establishes "the exclusive theories of liability for manufacturers for damages caused by their products." John Kennedy, A PRIMER ON THE LOUISIANA PRODUCTS LIABILITY ACT, 49 La. L. Rev. 565, 568 (1989). In crafting the LPLA's definition of "manufacturer," the Legislature intended to impose strict products liability only upon a limited class of parties, *i.e.* "manufacturers," reinforcing its intent that recovery in tort actions should generally require proof of fault. Thus, while the Legislature maintained a narrow strict products liability cause of action, the LPLA's reach is limited to statutorily defined "manufacturers."

The Fourth Circuit's decision undermines the Legislature's intent by improperly expanding the LPLA's definition of "manufacturer" to include third-party purchasers that merely acquire a bankrupt company's trademark and goodwill—based solely on the similarity of their names. If left to stand, the Fourth Circuit's decision will undermine the Legislature's policy decision that Louisiana's tort regime generally should be grounded in proof of "fault" and will expand the ability to hold businesses "strictly liable" beyond what the Legislature ever intended.

This interpretation also plainly contradicts the LPLA's statutory text. The LPLA defines "manufacturer" as "a person or entity who is in the business of manufacturing a product for placement into trade or commerce. La. Rev. Stat. Stat. § 9:2800.53(1). "Manufacturing a product" means producing, making, fabricating, constructing, designing, remanufacturing, reconditioning, or refurbishing a product. *Id.* "Manufacturer" also means (a) a person or entity who labels a product as his own or who otherwise holds himself out to be the manufacturer of the product; (b) a seller of a product who exercises control over or influences a characteristic of the design, construction, or quality of the product that causes damage; (c) a manufacturer of a product who incorporates into the product a component or part manufactured by another manufacturer; or (d) a seller of a product of an alien manufacturer if the seller is in the business of importing or distributing the product for resale and the seller is the alter ego of the alien manufacturer. *Id.*

The Werner Defendants do not meet the LPLA's definition of "manufacturer." They did not fabricate, construct, design, remanufacture, recondition, or refurbish the ladder at issue. They did not incorporate a component part into the ladder. They were not an alien manufacturer who imported or distributed the ladder for resale. And they did not hold themselves out as the manufacturer of the ladder. The Werner Defendants' sole connections to this ladder is that (1) they operated under a similar business name as the bankrupt company, Old Ladder, and (2) they purchased Old Ladder's trademark and goodwill out of Old Ladder's bankruptcy. Despite these undisputed facts, the Fourth Circuit held that merely because the Werner Defendants use the trademark "Werner" to market ladders they currently sell, they were "manufacturers" under the LPLA of a ladder manufactured sixteen years prior by Old Ladder, an unrelated and now-bankrupt company which bore a similar name.

Viewed through this lens, the Fourth Circuit's decision should be reversed. Not only does it ignore the plain language, policy, and purpose of the LPLA, it will reduce commercial certainty in arms-length transactions if adopted. By holding that a third-party purchaser of goodwill, trademarks, and other intangible assets from a bankrupt company is a "manufacturer" under the LPLA—despite not having designed, produced, or distributed the allegedly defective product—the Fourth Circuit has opened the door to liability for companies with no causal connection to the harm alleged. *Cf. Veazey v. Elmwood Plantation Assocs., Ltd.*, 93-2818 (La. 11/30/94), 650 So. 2d 712, 717 ("Fault, historically, has been the basis for tort liability in Louisiana, being the key word used in La. C.C. art. 2315, the 'fountainhead' of tort responsibility in Louisiana."). The Fourth Circuit's interpretation, if upheld, will erode the Legislature's limitations on strict products liability and will blur the lines between asset and liability in ways that conflict with commercial common sense.

II. Expanding the definition of "manufacturer" to include a third party-purchaser of a bankrupt company's goodwill, trademark, and other intangible assets undermines Federal Bankruptcy Law.

The Fourth Circuit's expansion of the definition of "manufacturer" beyond what the Legislature intended results in a legal ruling that undermines the essential policy goals of the United States Bankruptcy Code. By attaching strict liability to a purchaser of intangible assets through a bankruptcy sale, the opinion invites economic inefficiency, undermines the finality of bankruptcy proceedings, and risks creating a patchwork of inconsistent legal standards across states.

One of the purposes of bankruptcy is to facilitate the orderly reorganization or liquidation of distressed businesses through the sale of assets that can be sold free and clear of all liens, claims, encumbrances, and other interests. *See* 11 U.S.C.A. § 363(f). Section 363(f)'s "free and clear" provision serves two primary policies: "First, it preserves the priority scheme of the Bankruptcy Code and the principle of equality of distribution by preventing a plaintiff from asserting *in personam* successor liability against the buyer while leaving other creditors to satisfy their claims from the proceeds of the asset sale." *In re NE Opco, Inc.*, 513 B.R. 871, 876 (Bankr. D. Del. 2014). Second, it maximizes the value of the assets that are sold by allowing a purchaser to assume only the liabilities that promote its commercial interests. *In re Chrysler LLC*, 405 B.R. 84, 111 (Bankr. S.D.N.Y.), aff'd, 576 F.3d 108 (2d Cir. 2009), *judgment vacated on other grounds sub nom. Indiana State Police Pension Tr. v. Chrysler LLC*, 558 U.S. 1087, 130 S. Ct. 1015, 175 L. Ed. 2d 614 (2009).

The Fourth Circuit's decision erodes these policy goals. Indeed, in holding that the Werner Defendants became a "manufacturer" under the LPLA because they currently use the acquired trademark from Old Ladder, the Fourth Circuit has essentially imposed successor liability at the expense of the other creditors (including secured creditors) in a manner that the Bankruptcy Code and prevailing federal law seek to avoid. *See Young v. Higbee Co.*, 324 U.S. 204, 210, 65 S.Ct. 594, 89 L.Ed. 890 (1945) ("[H]istorically, one of the prime purposes of the bankruptcy law has been to bring about a ratable distribution among creditors of a bankrupt's assets; to protect the creditors from one another."); Thomas H. Jackson, THE LOGIC AND LIMITS OF BANKRUPTCY LAW, 3 (Harvard University Press, 1986), ("Bankruptcy law, at its core, is debt-collection law.").

Moreover, the decision, if upheld, could reduce the value of bankrupt estates thereby reducing the return to its creditors. "Judicial enforcement of a negotiated 'free and clear' asset sale furthers the policies of the bankruptcy laws which encourage sales that maximize the value of the estate for all creditors. *Doktor v. Werner Co.*, 762 F. Supp. 2d 494, 498 (E.D.N.Y. 2011). In keeping with this statutory mandate, a bankruptcy trustee has the statutory duty to protect and preserve property of the estate for the purpose of maximizing a distribution to creditors. *See* 11 U.S.C. § 1106(a); Daniel B. Bogart, LIABILITY OF DIRECTORS OF CHAPTER 11 DEBTORS IN POSSESSION, 68 Am. Bankr. L.J. 155, 186-187 (Spring 1994); *see, e.g., In re S.N.A. Nut Co.*, 186 B.R. 98, 104 (Bankr. N.D. Ill.1995) ("When a debtor or trustee conducts a sale under § 363(b), it has an obligation to maximize revenues for the estate."); *In re Mondie Forge, Inc.*, 148 B.R. 499,

502 (Bankr. N.D. Ohio 1992) ("[T]he trustee has a duty to realize the maximum return for the estate for further distribution to the Debtor's creditors."); *DiMarco v. Flannery* (*In re Flannery*), 11 B.R. 974, 977 (Bankr. E.D. Pa. 1981) ("In a liquidation case, the sale to the highest bidder is legally essential....").

It should come as no surprise that attaching strict liability to intangible assets such as a bankrupt company's goodwill and trademarks, as the Fourth Circuit did here, renders these assets radioactive — discouraging buyers, reducing the value of the bankruptcy estate, and frustrating the equitable distribution of assets that bankruptcy is designed to achieve. If adopted, such a rule would distort commercial behavior, prompting risk-averse purchasers to avoid these transactions altogether or drastically reduce the value of their bids to account for potential hidden liability, to the detriment of the bankrupt company's creditors, employees, and consumers alike. This has been recognized by courts who have noted that allowing a free and clear sale in bankruptcy proceedings increases the purchase price of assets, "because without this assurance of finality, purchasers could demand a large discount for investing in a property that is laden with the risk of endless litigation as to who has rights to estate property." *In re Gucci*, 126 F.3d 380, 387 (2d Cir.1997); *Cargo Partner AG v. Albatrans Inc.*, 207 F. Supp. 2d 86, 112 (S.D.N.Y. 2002) (recognizing that imposition of successor liability would discourage asset sales and thereby decrease the overall amount of money available to creditors). The Fourth Circuit's decision erodes this assurance by retroactively attaching strict product liability to a third-party purchaser who merely acquired intellectual property pursuant to a "free and clear" provision approved by a bankruptcy court.

These same policy goals formed the basis for the Eastern District of New York's decision in *Doktor v. Werner Co.*, a case with remarkably similar facts involving the same bankrupt entity, Old Ladder, and same purchasers, the Werner Defendants. 762 F. Supp. 2d 494 (E.D.N.Y. 2011). There, the court examined the same Asset Purchase Agreement ("APA") and Bankruptcy Court Order at issue here and held that the Werner Defendants could not be held liable for a ladder manufactured by Old Ladder simply because it purchased Old Ladder's trademark and goodwill out of bankruptcy. *Id.* at 498. The plaintiff in *Doktor* suffered an injury when he fell from a ladder which he alleged was manufactured by the Werner Defendants. *Id.* at 469. The Werner Defendants moved to dismiss the plaintiff's complaint arguing, among other things, that the allegedly defective ladder was manufactured by the now-bankrupt Old Ladder and that the Werner Defendants' sole connection to the ladder was its purchase of Old Ladder's intangible assets free and clear of any

successor liability out of Old Ladder's bankruptcy proceedings. *Id.* at 497. In ruling on the motion to dismiss, the court held that the Werner Defendants could not be held liable under a theory of "successor liability" relying largely on language in the APA and the Bankruptcy Court's order.

Specifically, the court reasoned that because the asset sale took place pursuant to a bankruptcy court proceeding, this raised "a policy matter that strengthen[ed] the court's conclusion regarding successor liability" because of "the importance of free and clear sales, and their ability to increase the value of the estate and benefit all creditors." *Id.* at 498 (citing *Douglas v. Stamco*, 363 F. App'x 100, 101-02 (2d Cir. 2010)). Imposing liability on the Werner Defendants simply because they purchased the assets of Old Ladder "would not only discourage such sales but also allow [the] Plaintiff's low-priority unsecured claim to rise above claims of other creditors." *Id.* at 499.

The Fourth Circuit's holding ignores these important policy considerations in a decision which directly conflicts with a holding from another court involving the same bankruptcy order. The United States Constitution mandates that the Bankruptcy Code must be applied uniformly and that state-law doctrines which threaten to introduce inconsistency or unpredictability must yield. U.S. Const. art. I, § 8, cl. 4 ("The Congress shall have Power . . . To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States."); *Butner v. United States*, 440 U.S. 48, 54, n.9, 99 S. Ct. 914, 918, 59 L. Ed. 2d 136 (1979). The Fourth Circuit's decision threatens this constitutionally required predictability and, in fact, already has resulted in an inconsistent application of the Bankruptcy Code.[1]

Businesses depend on the enforceability of freely negotiated asset purchase agreements to allocate risk, determine price, and structure transactions. They negotiate terms and price based on these agreements. Because the "free and clear" nature of the sale, as provided for in the APA and § 363(f), "was a crucial inducement in the sale's successful transaction, it is evident that the potential chilling effect of allowing a tort claim subsequent to the sale would run counter to a core aim of the Bankruptcy Code, which is to maximize the value of the assets and thereby maximize potential recovery to the creditors." *Douglas v. Stamco*, 363 F. App'x 100, 102–03 (2d Cir. 2010) (citing *Toibb v. Radloff*, 501 U.S. 157, 163, 111 S.Ct. 2197, 115 L.Ed.2d 145 (1991) (recognizing that the Bankruptcy Code's general policy is "maximizing the value of the bankruptcy estate"));

[1] In fact, it also has resulted in an inconsistent application of the Bankruptcy Code within the same district court. *See Stewart v. Indus. Prods. Ltd. LLC*, No. 2012-2912 (La. Civ. Dist. Ct. Nov. 6, 2015) 6 R. 1213-15

see also Licensing by Paolo, Inc. v. Sinatra (In re Gucci), 126 F.3d 380, 387 (2d Cir.1997) (stating that a sale pursuant to § 363 of the Bankruptcy Code "maximizes the purchase price of assets because without this assurance of finality, purchasers could demand a large discount for investing in a property that is laden with the risk of endless litigation as to who has rights to estate property"). That is exactly what happened here: the purchaser, New Werner, acquired Old Ladder's intangible assets, including its trademark, "free and clear of … any claim, whether arising prior to or subsequent to the commencement of these bankruptcy cases, arising under doctrines of successor liability" and without this provision the bankruptcy court found that the purchaser "would not have entered into the [APA]."[2] The Fourth Circuit's opinion effectively nullifies this ruling and could have far-reaching consequences.

To be sure, if courts may disregard key contractual disclaimers regarding assumed liabilities—particularly in the bankruptcy context where such disclaimers are essential to the structure and legality of the sale—it threatens the stability of commercial markets and increases the cost and risk of doing business in Louisiana. This judicial override of the parties' agreed-upon allocation of risk also undermines the sanctity of private contracts and risks violating the constitutional protection afforded to them. *Cf. Martinez v. Am. Transp. Grp. Risk Retention Grp., Inc.*, 2023-01716 (La. 10/25/24), 395 So. 3d 731, 735 (holding that where there is a dispute among statutory language and contractual language, the contractual language controls because "[w]hen two interpretations of a statute are possible, that which maintains the statute's constitutionality should be followed"). These concerns could easily be avoided if the Fourth Circuit had merely interpreted the term "manufacturer" as the Legislature intended.

III. Expansion of the definition of "manufacturer" in the LPLA will harm Louisiana's small businesses, consumers, and will erode important steps taken recently to improve Louisiana's business climate.

Louisiana lawmakers and this Court have recently taken important steps toward addressing some of the underlying issues that have historically made Louisiana a challenging environment for businesses. *See, e.g., Barber Bros. Contracting Co., LLC v. Capitol City Produce Co., LLC*, 2023-00788 (La. 12/19/24), 397 So. 3d 404, 409, *reh'g denied*, 2023-00788 (La. 2/14/25), 400 So. 3d 918; *Pete v. Boland Marine & Mfg. Co., LLC*, 2023-00170 (La. 10/20/23), 379 So. 3d 636, 650, *reh'g denied*, 2023-00170 (La. 12/7/23), 374 So. 3d 135 (holding that the jury abused its discretion in awarding general damages in an asbestos exposure case because the award was "greatly

[2] Def. Ex. 39 ¶¶ 7, 12.

disproportionate to the mass of past awards for truly similar injuries"). These recent legal reforms and increased attention to the state's judicial climate reflect a growing recognition of the need in Louisiana for a more predictable and balanced legal system. *See* U.S. Chamber Institute for Legal Reform, LOUISIANA'S LIABILITY ENVIRONMENT: PROGRESS AND OPPORTUNITIES FOR LEGAL REFORM (Apr. 2025), https://instituteforlegalreform.com/wp-content/uploads/2025/04/Louisiana-Briefly-FINAL.pdf ("2025 ILR Report"). But much work remains to be done, and the Fourth Circuit's decision, if upheld, will directly undermine this progress.

Expansion of strict products liability introduces real-world risks for small businesses, consumers, and the broader public interest. It disrupts settled commercial expectations and may weaken legal frameworks essential to entrepreneurship, economic recovery, and consumer welfare. Particularly troubling is the potential imposition of successor liability in situations where no such responsibility was contemplated, which could deter companies from reviving legacy products or brands. *See, e.g.*, Peter W. Huber & Robert E. Litan, THE LIABILITY MAZE: THE IMPACT OF LIABILITY LAW ON SAFETY AND INNOVATION 16 (1991). As a result, consumers may face fewer choices, less competition, and higher prices. Well-meaning buyers seeking to enhance product quality or address historical safety concerns may hesitate to enter the market, fearing retroactive liability for defects they did not create. This would further suppress innovation and improvements in product safety.

While Louisiana has made recent progress in improving its legal environment, decisions like the one here reinforce lingering concerns about Louisiana's judicial unpredictability and its effects on business confidence. National watchdog and legal-reform organizations have historically rated Louisiana among the most difficult states for doing business, citing concerns with the legal system. *See* 2025 ILR Report at p. 5 (noting that U.S. News places Louisiana 50th overall in its 2024 "Best States" rankings, including 45th for its business environment; CNBC's "Top States for Business" study ranks Louisiana 47th overall and gave it a C- for its "business friendliness," and that Louisiana is consistently named in American Tort Reform Foundation's annual report, which identifies places viewed as especially unfair to businesses and other civil defendants.). And a 2025 report shows that Louisiana still ranks last in economic mobility—citing, in part, the perceived low quality of its legal system. Archbridge Institute, BUILDING ON MOMENTUM: LOUISIANA'S PATH TO MOBILITY 1-2, https://www.archbridgeinstitute.org/louisiana-path-to-mobility/.

Court decisions, like the Fourth Circuit's here, which diverge sharply from statutory text and impose unforeseen liabilities reinforce a perception that Louisiana courts are unreliable and indifferent to legal boundaries, a perception that policymakers and this Court have been working to change. But this perception carries tangible consequences, including higher insurance premiums, increased business costs, and reduced investment. According to a 2024 study, Louisiana bears the third-highest tort costs in the nation, amounting to 2.65% of its GDP and costing each household an estimated $4,389 annually. *See* Institute for Legal Reform, TORT COSTS IN AMERICA, AN EMPIRICAL ANALYSIS OF COSTS AND COMPENSATION OF THE U.S. TORT SYSTEM at p. 21 (Nov. 2024), https://instituteforlegalreform.com/wp-content/uploads/2024/11/2024_ILR_USTorts-CostStudy-FINAL.pdf ("2024 ILR Report"). The output lost to excessive tort litigation in Louisiana is approximately $5.17 billion annually, which computes to a "tort tax" of $965 per Louisianan and translates to 40,562 jobs lost. 2024 CITIZENS AGAINST LAWSUIT ABUSE REPORT 1, https://cala.com/wp-content/uploads/2024/01/2023-perryman-tort-reform-New-Orleans_LA.pdf. Extension of strict products liability will exacerbate these harms.

By radically redefining the meaning of "manufacturer" under the LPLA, the Fourth Circuit's decision signals to businesses and investors that Louisiana courts still cannot be relied upon to apply the law predictably or fairly. This perception has real-world effects. It discourages companies from locating operations in Louisiana, increases insurance premiums, raises the cost of doing business, and leads investors to favor jurisdictions with more stable and predictable legal environments. *See* 2024 ILR Report at p. 11. When courts render decisions that ignore statutory text and impose liability on parties far removed from the underlying conduct, they simply confirm and reinforce the perception that Louisiana is hostile to business and indifferent to legal boundaries, a perception that policymakers and this Court has recently been working to change.

Small businesses, in particular, lack the legal resources and financial cushion to absorb such open-ended liability. The result is a chilling effect on asset sales, discouraging small-business participation in bankruptcy sales and impeding economic revitalization. *See, e.g.*, Institute for Legal Reform, TORT COSTS FOR SMALL BUSINESSES 3 (Dec. 5, 2023), https://instituteforlegalreform.com/wp-content/uploads/2023/12/Tort-Costs-for-Small-Businesses-12.5.23.pdf ("2023 ILR Report") ("[T]he most recent data available shows that while small businesses accounted for just 20 percent of the business revenues earned in 2021, they bore 48 percent of the costs of the commercial tort system.") This impact will especially be felt in

Louisiana where small businesses comprise 99.5% of Louisiana businesses. U.S. Small Business Administration Office of Advocacy, 2022 SMALL BUSINESS PROFILE: LOUISIANA, https://advocacy.sba.gov/wp-content/uploads/2022/08/Small-Business-Economic-Profile-LA.pdf ("2022 SBA Report").

Unless corrected, the Fourth Circuit's decision will only further increase tort costs borne by Louisiana's small businesses, which harms not only these businesses but Louisiana's entire economy and population. It is no surprise that small businesses are powerful engines for job creation and economic growth and are essential to the character and health of American communities. 2023 ILR Report at 18. Policymakers recognize the importance of empowering small businesses, and they have a stake in protecting them from excessive tort costs that fall disproportionately on their shoulders. *Id.* The Fourth Circuit's decision undermines these policy goals rather than advancing them. With small businesses accounting for the vast majority of Louisiana's companies and employing 52.7% of the state's workforce, any policy change will directly impact the livelihoods of thousands of hardworking Louisianans. *See* 2022 SBA Report.

Louisiana's policymakers and courts have an opportunity—and responsibility—to build on the progress made to date. Ensuring that liability rules are applied fairly and predictably is critical to supporting small businesses, attracting investment, and fostering economic growth. Correcting or clarifying the implications of the Fourth Circuit's decision is a necessary step toward achieving a more stable legal climate and securing a more competitive future for Louisiana.

CONCLUSION

The Fourth Circuit's ruling risks stigmatizing a bankrupt entity's intangible assets, diminishing their value and discouraging equitable and efficient asset sales, thereby adversely affecting creditors, employees, and consumers. Rather than promoting consumer safety or economic justice, the Fourth Circuit's decision undermines the very goals that tort law is intended to serve. The real-world consequences of such legal overreach are especially acute in Louisiana, a state already burdened by one of the nation's most costly and unstable tort systems. Small businesses—the backbone of Louisiana's economy—stand to bear the brunt of this decision. The decision risks harming the citizens it purports to protect by increasing costs, reducing competition, and deterring entrepreneurial risk-taking. To preserve a fair, predictable, and pro-growth business environment, courts should adhere to the clear boundaries of statutory language and resist the temptation to impose liability where none was intended.

RESPECTFULLY SUBMITTED:

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CERTIFICATE OF SERVICE

I certify that a copy of the above and foregoing Brief of *Amici Curiae,* the Chamber of Commerce of the United States of America and the Louisiana Association of Business and Industry, has been served upon all counsel of record by electronic mail this 8th day of May, 2025.

/s/ Claire E. Juneau
Claire E. Juneau