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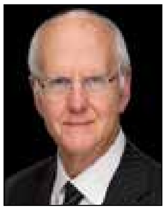
Feature

By David R. Kuney[1]

The Aftermath of *Purdue Pharma*: The Myth of the Full-Pay Plan



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The U.S. Supreme Court ruled on June 27, 2024, that nonconsensual third-party releases in a bankruptcy reorganization plan are not permitted under the Bankruptcy Code other than in 11 U.S.C. § 524.[2] "[A] bankruptcy court's powers are not limitless, and do not endow it with the power to extinguish without their consent claims held by nondebtors ... against other nondebtors."[3] Further, the Bankruptcy Code "does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants."[4] The scope of the ruling has already generated debate as to the meaning of the final paragraph in the majority decision, authored by Justice Neil Gorsuch, which reads as follows:

> Nor do we have occasion today to express a view on what qualifies as a consensual release or pass upon a plan that provides for the full satisfaction of claims against a third-party non-debtor ... [and] we do not address whether our reading of the [B]ankruptcy [C]ode would justify unwinding reorganization plans that have already become effective and have been substantially consummated.[5]

The Boy Scouts of America have a pending appeal before the Third Circuit Court of Appeals that likewise involves the validity of a nonconsensual third-party release.[6] The Boy Scouts have already pounced on this last paragraph in the hopes of convincing the Third Circuit that the nonconsensual releases in its plan are valid, notwithstanding the ruling in *Purdue*. In the Boy Scout's post-*Purdue* letter to the Third Circuit dated June 28, 2024 (just one day after *Purdue* was decided), it argued that their chapter 11 plan is "materially different from the plan at issue in *Purdue* in multiple respects," including that their plan supposedly "provide[s] for payment in full."[7] In the Boy Scouts' *amicus* brief in *Purdue*, it expressly asks the Court to reserve on the issue of "full satisfaction."[8]

Justice Brett Kavanaugh's dissent is fairly read as closing the door on the "full pay" argument as a matter of law.[9] "The Court decides today to reject the plan by holding that nondebtor releases are *categorically impermissible* as a matter of law."[10] Again, "the Court categorically decides that nondebtor releases are *never* allowed as a matter of law."[11] However, "the Court today says that a plan can *never* release victims' and creditors' claims *against nondebtor officers and directors of the company*."[12] "Categorical" and "never" are not words lacking in force.

Justice Kavanaugh said that he believed "full satisfaction" releases should be permitted.[13] However, he acknowledged that under the majority's opinion, "full satisfaction releases *might* be permissible," but only if one "eviscerated" the majority's analysis under the rule of construction of *ejusdem generis*.[14] If the majority's decision is to be regarded now as the legally correct and binding view, then third-party releases are not permitted — even if the plan provides for the "full satisfaction" of claims. He also stated that it was possible that "full satisfaction releases are actually impermissible" under the majority's view of § 1123(b)(6) — a view that he held was "extreme."[15] In short, permitting full-pay plans as a justification for nonconsensual third-party releases eviscerates the majority's holding in *Purdue*.

If the Supreme Court truly did not "express" a view on the legitimacy of full-pay plans, it was mostly because the issue was not before it. *Purdue* was not a full-pay plan, so the Court had no need to address the issue. Nevertheless, the underlying logic and rationale of the majority decision is entirely consistent with the view that even full-pay plans would fall outside of what Congress intended to permit.

The appellants in the *Boy Scouts* case, the D&V claimants, argued that there were serious deficiencies with the expert testimony and

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1 Mr. Kuney has authored two *amicus* briefs in the *Boy Scouts of America* case in support of a group of sexual abuse claimants (herein referred to as the "D&V claimants"). This article represents solely the author's own views and not those of Georgetown University Law Center.
2 *Harrington, United States Trustee, Region 2 v. Purdue Pharma LP, et al., slip op.* 23-124 (June 27, 2024).
3 *Id.* at 13.
4 *Id.* at 19.
5 *Id.*
6 *Dumas & Vaughn, Claimants v. Boy Scouts of Am., et al. (In re Boy Scouts of Am. and Delaware BSA LLC)*, App. Case No. 23-1666 (3d Cir.) (hereinafter, *In re Boy Scouts of Am.*).
7 *Id.* at ECF Dkt. 191-1.
8 Brief for the Boy Scouts of America as *Amicus Curiae* in Support of Respondent, at 18, n.2.
9 Justice Kavanagh's dissent was joined by Chief Justice John Roberts and Justices Sonia Sotomayor and Elena Kagan.
10 *Purdue Pharma, slip op.* at 31 (Kavanaugh, J., dissenting) (emphasis added).
11 *Id.* at 32.
12 *Id.* at 2.
13 *Id.* at 39.
14 *Id.* at 39-40 (emphasis added).
15 *Id.* at 40.

the determination of the aggregate value of the tort claims (which effectively caps liability) this being an issue that leading scholars have identified as one of the core defects with assertions of "full pay." This is further explained in the discussion below concerning Profs. **Ralph Brubaker** of the University of Illinois College of Law and **Melissa B. Jacoby** of the University of North Carolina School of Law. In short, the aftermath of *Purdue* is that the use of full-pay releases should not be seen as a legitimate road map for future cases to impose nonconsensual third-party releases, nor should it prevail in the existing appeal in the *Boy Scouts* case now pending before the Third Circuit.

The Structural and Legal Defects with the Full-Pay Argument

At its core, the majority's decision is a legal determination that Congress did not intend to permit nonconsensual releases, other than in one narrow area under § 524(g). No Bankruptcy Code provision permits them, various Code provisions are inconsistent with such releases, and there is neither a public policy nor historical precedent to justify them. This is likely why Justice Kavanaugh stated that the majority opinion categorically held releases to be impermissible.

"Full pay" is nothing more than one of the many factors sometimes used to justify permitting nonconsensual third-party releases. The notion that a list of "factors" can be developed and deployed by the bankruptcy court to sanction the use of nonconsensual third-party releases has been sharply criticized by Prof. Brubaker.

The legal defect, which is broad, is that the power to determine the scope of the bankruptcy discharge is constitutionally vested solely within Congress's bankruptcy power. Under basic principles of separation of powers, bankruptcy courts are not constitutionally free to infringe on this legislative power by judicially adding "factors" that create substantive discharge rights. Prof. Brubaker noted that "federal courts are illicitly creating substantive federal common law through their jurisprudence authorizing nondebtor releases. Indeed, this is apparent from the list of criteria — exclusively the product of judicial imagination — that supposedly trigger bankruptcy courts' power to grant discharge relief for nondebtors."[16]

What makes the use of such factors as "full pay" illicit is that it allows the courts to usurp the congressional power to determine the scope of the discharge. However, "nondebtor release practice — including the requirement that a discharged nondebtor 'has contributed substantial assets to the reorganization — presumes to lodge plenary authority for such determination in the courts,'" thus violating basic principles of separation of powers of Congress and the courts.[17]

The further legal defect with engrafting "full pay" onto the discharge/release power is its "pernicious" unfairness and the almost certain likelihood that the promise of full pay will prove illusive. Prof. Brubaker points out that the structural defect with full-pay plans is that the actual aggregate liability to all mass tort claimants is not yet fully determined; instead, the court uses an estimate to put a "hard cap" on the liability, which is then used to fund a settlement trust. As such, the "prejudice to mass tort claimants from such a cap is obvious, given that [the] estimated amount ultimately may prove incorrect."[18] Prof. Brubaker emphasized how characterizing mass tort plans as "full payment" is perniciously disingenuous when the plan caps the debtor's aggregate liability and discharges its liability for anything more (which the plan invariably does):[19]

> It is, of course, impossible to know, at the time of confirmation of the plan of reorganization, what amount is ultimately going to be necessary to pay all of the mass tort claimants in full. That amount cannot be known until all the claims are fully liquidated, which can take years or even decades.... All references to "full payment" mass tort bankruptcy plans, therefore, describe plans that do *not actually promise to pay all claimants in full*.
>
> The most pernicious (and vastly misunderstood, underappreciated, or strategically de-emphasized) aspect of so-called "full payment" plans is that the inevitable errors in estimating the debtor/defendants, aggregate mass tort liability systematically go in only one direction. *Estimate errors systematically prejudice the tort claimants* by underestimating the debtor/defendant's aggregate tort liability.[20]

Another serious problem with the notion of "full pay" is that historically, many such promises of full pay turned out to be wrong. As Prof. Jacoby outlined in her new book, *Unjust Debts*, "a promise is a promise and money is money, but a promise to pay is not money."[21] Prof. Brubaker likewise noted the high failure rate in plans that promise full pay.[22] What is meant, of course, is that "history has shown that other mass tort cases have failed dramatically to live up to the bold expectations of [their] sponsors."[23]

When looking at cases from *Manville* to *Mallinckrodt*, what one sees is overly optimistic assertions of full pay that resulted instead in plan failure and disappointment.[24] Further, even if the plan fails to pay the claims, the releases remain in place: "[T]he company's admission that it cannot honor its promises to fund the trust to compensate opioid claim-

16 Ralph Brubaker, "Mandatory Aggregation of Mass Tort Litigation in Bankruptcy," 131 *Yale L.J.*, 976 (Feb. 28, 2022).

17 *Id.* at 978 (internal citation omitted).

18 Ralph Brubaker, "Assessing the Legitimacy of the 'Texas Two-Step' Mass-Tort Bankruptcy," 42 *Bankr. L. Letter* No. 4, at 13 (August 2022).

19 Ralph Brubaker, "Mass Torts, the Bankruptcy Power, and Constitutional Limits on Mandatory No-Opt-Outs Settlements," 23 *FSU Bus. Rev.* __ (forthcoming 2024), at 10-11.

20 *Id.* at p. 10.

21 Melissa B. Jacoby, *Unjust Debts: How Our Bankruptcy System Makes America More Unequal*, 203 (2024).

22 Ralph Brubaker, "Non-Debtor Releases in Bankruptcy," 1997 *Univ. Ill. L.R.* __, 987-88, n.102 (stating that promises of full pay "tend to ring hollow" and pointing out an "empirical study of large Chapter 11 cases, finding that in 32 percent of cases where the entity survived confirmation of a plan, the emerging entity subsequently filed another Chapter 11 case").

23 Lloyd Dixon, Geoffrey McGovern & Amy Coombe, "Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts," RAND Inst. for Civil Justice, *available at* rand.org/content/dam/rand/pubs/technical_reports/2010/RAND_TR872.sum.pdf ("Unfortunately, bankruptcy has a rocky track record in delivering its hoped-for financial benefits. While *Manville* lived on, the trust created by its bankruptcy swiftly ran out of money and slashed recoveries to even the most severely ill claimants. And asbestos cases continue to generate underfunding and inconsistent payouts. People have received vastly different recoveries depending on when they got sick. Concerns that asbestos trusts shortchanged people with severe injuries while potentially overcompensating others fueled several (ultimately unsuccessful) congressional efforts to move asbestos claims out of court systems altogether.") (unless otherwise specified, all links in this article were last visited on July 8, 2024).

24 Jacoby, *supra* n.21 at 201-02 (describing Mallinckrodt's inability to fund claims under its first bankruptcy case and requiring second bankruptcy case).

continued on page 58

The Aftermath of Purdue Pharma*: The Myth of the Full-Pay Plan*

from page 13

ants does not make claimants' legal rights spring back to life unless a plan expressly provides such a remedy."[25]

Promises of Full Pay in *Boy Scouts* Case

The pernicious effects of systematic underestimation of aggregate liability is at the very heart of the defect with the assertion of full pay in the *Boy Scouts* case. The related problem with the use of "full pay" as a factor in future cases is illustrated by the dispute in the *Boy Scouts* case — a dispute that highlights the problem with using estimates and speculation to determine when and if victims will be paid.

The D&V claimants, who have appealed from the confirmation of the Boy Scouts' reorganization plan, have challenged the notion that their claims for sexual abuse will be paid in full.[26] The Boy Scouts' expert, Dr. Charles Bates, estimated that the direct-abuse claims had an aggregate value of $2.4 billion to $7.1 billion, although he later claimed that the likely range was $2.4 billion to $3.6 billion.[27] The D&V claimants have argued that "[T]he only findings about actual, existing funds provided for payment [of claims] is the finding that the plan calls for $2,484,200 in 'noncontingent funding.'"[28]

Further, the D&V claimants state that with estimated administrative expenses of 10 percent, there will be only $2,235,780 in the settlement trust.[29] The D&V claimants contend that even at Bates' lowest estimate of aggregate tort liability, the claimants would receive approximately 93 percent payment; at the higher end of his expected range, $3.6 billion, claims would only receive 62 percent, and at the upper end of Bates' possible range, only 31.5 percent.[30]

A key part of the bankruptcy court's ruling confirming the plan was that there was an additional $4 billion in "unallocated" excess insurance coverage, which referred to policy proceeds that were not triggered by the filed abuse claims.[31] The D&V claimants' briefing argued that the plan only gives the settlement trustee the ability to negotiate with the nonsettling insurers to contribute such funds: "For now, these funds do not exist. Their availability is speculative and without evidence or findings concerning the merits of the coverage litigation, defenses or claims."[32]

The D&V claimants' arguments find support in statements made by the settlement trust trustee.[33] In addition, Prof. Jacoby's book shows that the assertions of full pay are often highly unreliable and of doubtful validity.[34] As she observed, "The Boy Scouts of America predicted full compensation for survivors of child sex abuse when it sought approval of its Chapter 11 plan. *Yet it was later made clear that survivors almost certainly will not recover at that level*."[35] Prof. Jacoby outlined the negotiation history and the key change in the expert's testimony:

> Lengthy negotiations and financial contributions from third parties notwithstanding, the Boy Scouts of America initially were unable to attract sufficient numbers of survivors to support its plan. The official committee of survivors ... had recommended that claimants reject the plan. The committee warned that survivors might recover less than 10 percent of their claims.[36]

Conclusion

Prof. Brubaker's analysis of why assertions of "full pay" are inadequate to cure the legal infirmities with nonconsensual third-party releases is set forth in his *amicus* brief filed in the *Purdue* case.[37] If courts do view the final paragraph of the *Purdue* opinion as an opportunity to revisit the issue of engrafting factors onto the law of discharge, then Prof. Brubaker's articles and *amicus* brief — along with Prof. Jacoby's empirical study — should be a strong cautionary note that such engrafting raises serious constitutional issues of federalism and separation of powers. In the final analysis, the question of who is entitled to a discharge is a matter solely for Congress, and tinkering with the entitlement should not be a matter of judicial imagination. In short, the use of full pay as a factor is regressive and would turn back the clock to the state of the law before the Supreme Court announced its decision in *Purdue*. abi

Editor's Note: *ABI held a webinar shortly after the Supreme Court issued its decision, of which the author was a participant. To listen to the abiLIVE recording, please visit abi.org/newsroom/videos. The author also is the editor of ABI's digital book* The Purdue Papers*, a compilation of 3,300+ pages of* amicus *briefs, petitions and other related background material that includes the Supreme Court's decision, an analysis, and a transcript of the abiLIVE webinar. To order your downloadable copy, visit store.abi.org.*

25 *Id.* at 205.
26 Opening Brief of the *Dumas & Vaughn Claimants (In re Boy Scouts of Am.)*, *supra* n.6, ECF Dkt. 61, at 13 (also noting that the releases bar claims for fraud and punitive damages).
27 *Id.* at 60.
28 *Id.* at 62.
29 *Id.* at 9.
30 *Id.* at 65.
31 *In re Boy Scouts of Am. and Delaware BSA LLC*, 642 B.R. 504, 560-561 & n.277 (Bankr. D. Del. 2022).
32 *D&V* Opening Brief at 64.
33 *See* Dumas & Vaughn Claimants Response to Appellees' Motions to Dismiss, *In re Boy Scouts of Am.*, *supra* n.6, ECF Dkt. 153 (quoting settlement trustee: "[Y]ou may not receive payment of the full value that the Trustee assigns to your Abuse Claim.... [T]he percentage of each Allowed Abuse Claim that will be paid depends on the amount of the available funds in the Trust and the aggregate amount of all Allowed Abuse Claims") (internal citation omitted); *see also* Jacoby, *supra* n.21 at p. 209 ("In virtual town hall meetings, the retired judge overseeing the Boy Scouts of America trust as its trustee was candid with survivors: there was no guarantee they would receive full payment.").
34 *See* Jacoby, *supra* n.21.
35 Melissa Jacoby, "The Moral Limits of Bankruptcy Law," *New York Times* (June 4, 2024) (emphasis added), *available at* nytimes.com/2024/06/04/opinion/purdue-sackler-supreme-court.html (subscription required to view article).
36 Jacoby at 195. The article also noted that to get to an agreement with the claimants, "its expert witness revised downward his estimate of the value of the abuse claims." *Id.* at 197-98.
37 Brief for *Amici Curiae* Bankruptcy Law Profs. Ralph Brubaker, Bruce A. Markell and Jonathan M. Seymour in Support of Petitioner (Sept. 27, 2023).

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

HARRINGTON, UNITED STATES TRUSTEE, REGION 2 *v.* PURDUE PHARMA L. P. ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

No. 23–124. Argued December 4, 2023—Decided June 27, 2024

Between 1999 and 2019, approximately 247,000 people in the United States died from prescription-opioid overdoses. Respondent Purdue Pharma sits at the center of that crisis. Owned and controlled by the Sackler family, Purdue began marketing OxyContin, an opioid prescription pain reliever, in the mid-1990s. After Purdue earned billions of dollars in sales on the drug, in 2007 one of its affiliates pleaded guilty to a federal felony for misbranding OxyContin as a less-addictive, less-abusable alternative to other pain medications. Thousands of lawsuits followed. Fearful that the litigation would eventually impact them directly, the Sacklers initiated a "milking program," withdrawing from Purdue approximately $11 billion—roughly 75% of the firm's total assets—over the next decade.

Those withdrawals left Purdue in a significantly weakened financial state. And in 2019, Purdue filed for Chapter 11 bankruptcy. During that process, the Sacklers proposed to return approximately $4.3 billion to Purdue's bankruptcy estate. In exchange, the Sackers sought a judicial order releasing the family from all opioid-related claims and enjoining victims from bringing such claims against them in the future. The bankruptcy court approved Purdue's proposed reorganization plan, including its provisions concerning the Sackler discharge. But the district court vacated that decision, holding that nothing in the law authorizes bankruptcy courts to extinguish claims against third parties like the Sacklers, without the claimants' consent. A divided panel of the Second Circuit reversed the district court and revived the bankruptcy court's order approving a modified reorganization plan.

Held: The bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seek to discharge claims against a nondebtor without the consent of affected claimants. Pp. 7–19.

(a) When a debtor files for bankruptcy, it "creates an estate" that includes virtually all the debtor's assets. 11 U. S. C. §541(a). Under Chapter 11, the debtor must develop a reorganization plan governing the distribution of the estate's assets and present it to the bankruptcy court for approval. §§1121, 1123, 1129, 1141. A bankruptcy court's order confirming a reorganization plan "discharges the debtor" of certain pre-petition debts. §1141(d)(1)(A). In this case, the Sacklers have not filed for bankruptcy or placed all their assets on the table for distribution to creditors, yet they seek what essentially amounts to a discharge. No provision of the code authorizes that kind of relief. Pp. 7–17.

(1) Section 1123(b) addresses the kinds of provisions that may be included in a Chapter 11 plan. That section contains five specific paragraphs, followed by a catchall provision. The first five paragraphs all concern the debtor's rights and responsibilities, as well as its relationship with its creditors. The catchall provides that a plan "may" also "include any other appropriate provision not inconsistent with the applicable provisions of this title." All agree that the first five paragraphs do not authorize the Sackler discharge. But, according to the plan proponents and the Second Circuit, paragraph (6) broadly permits any term not expressly forbidden by the code so long as a judge deems it "appropriate." Because provisions like the Sackler discharge are not expressly prohibited, they reason, paragraph (6) necessarily permits them. That is not correct. When faced with a catchall phrase like paragraph (6), courts do not necessarily afford it the broadest possible construction it can bear. *Epic Systems Corp.* v. *Lewis*, 584 U. S. 497, 512. Instead, we generally appreciate that the catchall must be interpreted in light of its surrounding context and read to "embrace only objects similar in nature" to the specific examples preceding it. *Ibid.* Here, each of the preceding paragraphs concerns the rights and responsibilities of the debtor; and they authorize a bankruptcy court to adjust claims without consent only to the extent such claims concern the debtor. While paragraph (6) doubtlessly confers additional authorities on a bankruptcy court, it cannot be read under the canon of *ejusdem generis* to endow a bankruptcy court with the "radically different" power to discharge the debts of a nondebtor without the consent of affected claimants. *Epic Systems Corp.*, 584 U. S., at 513. And while the dissent reaches a contrary conclusion, it does so only by elevating its view of the bankruptcy code's purported purpose over the text's clear focus on the debtor. Pp. 7–13.

(2) The code's statutory scheme further forecloses the Sackler discharge. The code generally reserves discharge for a debtor who places substantially all of their assets on the table. §1141(d)(1)(A); see also §541(a). And, ordinarily, it does not include claims based on "fraud" or those alleging "willful and malicious injury." §§523(a)(2), (4), (6). The Sackler discharge defies these limitations. The Sacklers have not filed for bankruptcy, nor have they placed virtually all their assets on the table for distribution to creditors. Yet, they seek an order discharging a broad sweep of present and future claims against them, including ones for fraud and willful injury. In all of these ways, the Sacklers seek to pay less than the code ordinarily requires and receive more than it normally permits. Contrary to the dissent's suggestion, plan proponents cannot evade these limitations simply by rebranding their discharge a "release." Pp. 13–16.

(3) History offers a final strike against the plan proponents' construction of §1123(b)(6). Pre-code practice, we have said, may sometimes inform the meaning of the code's more "ambiguous" provisions. *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U. S. 639, 649. And every bankruptcy law cited by the parties and their *amici*—from 1800 until the enactment of the present bankruptcy code in 1978—generally reserved the benefits of discharge to the debtor who offered a "fair and full surrender of [its] property." *Sturges* v. *Crowninshield*, 4 Wheat. 122, 176. Had Congress meant to reshape traditional practice so profoundly in the present bankruptcy code, extending to courts the capacious new power the plan proponents claim, one might have expected it to say so expressly "somewhere in the [c]ode itself." *Dewsnup* v. *Timm*, 502 U. S. 410, 420. Pp. 16–17.

(b) In the end, the plan proponents default to policy. The Sacklers, they say, will not return any funds to Purdue's estate unless the bankruptcy court grants them the sweeping nonconsensual release and injunction they seek. Without the Sackler discharge, they predict, victims will be left without any means of recovery. But the U. S. Trustee disagrees. As he tells it, the potentially massive liability the Sacklers face may induce them to negotiate for *consensual* releases on terms more favorable to all the claimants. In addition, the Trustee warns, a ruling for the Sacklers would provide a roadmap for tortfeasors to misuse the bankruptcy system in future cases. While both sides may have their points, this Court is the wrong audience for such policy disputes. Our only proper task is to interpret and apply the law; and nothing in present law authorizes the Sackler discharge. Pp. 17–19.

(c) Today's decision is a narrow one. Nothing in the opinion should be construed to call into question consensual third-party releases offered in connection with a bankruptcy reorganization plan. Nor does the Court express a view on what qualifies as a consensual release or pass upon a plan that provides for the full satisfaction of claims against a third-party nondebtor. Additionally, because this case involves only a stayed reorganization plan, the Court does not address whether its reading of the bankruptcy code would justify unwinding reorganization plans that have already become effective and been substantially consummated. Confining ourselves to the question presented, the Court holds only that the bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants. Because the Second Circuit held otherwise, its judgment is reversed and the case is remanded for further proceedings consistent with this opinion. P. 19.

69 F. 4th 45, reversed and remanded.

GORSUCH, J., delivered the opinion of the Court, in which THOMAS, ALITO, BARRETT, and JACKSON, JJ., joined. KAVANAUGH, J., filed a dissenting opinion, in which ROBERTS, C. J., and SOTOMAYOR and KAGAN, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 23–124

WILLIAM K. HARRINGTON, UNITED STATES TRUSTEE, REGION 2, PETITIONER *v.* PURDUE PHARMA L. P., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 27, 2024]

JUSTICE GORSUCH delivered the opinion of the Court.

The bankruptcy code contains hundreds of interlocking rules about "'the relations between'" a "'debtor and [its] creditors.'" *Wright* v. *Union Central Life Ins. Co.*, 304 U. S. 502, 513–514 (1938). But beneath that complexity lies a simple bargain: A debtor can win a discharge of its debts if it proceeds with honesty and places virtually all its assets on the table for its creditors. The debtor in this case, Purdue Pharma L. P., filed for bankruptcy after facing a wave of litigation for its role in the opioid epidemic. Purdue's long-time owners, members of the Sackler family, confronted a growing number of suits too. But instead of declaring bankruptcy, they chose a different path. From the court overseeing Purdue's bankruptcy, they sought and won an order extinguishing vast numbers of existing and potential claims against them. They obtained all this without securing the consent of those affected or placing anything approaching their total assets on the table for their creditors. The question we face is whether the bankruptcy code authorizes a court to issue an order like that.

I

A

The opioid epidemic represents "one of the largest public health crises in this nation's history." *In re Purdue Pharma L. P.*, 69 F. 4th 45, 56 (CA2 2023). Between 1999 and 2019, approximately 247,000 people in the United States died from prescription-opioid overdoses. *In re Purdue Pharma L. P.*, 635 B. R. 26, 44 (SDNY 2021). The U. S. Department of Health and Human Services estimates that the opioid epidemic has cost the country between $53 and $72 billion annually. *Ibid.*

Purdue sits at the center of these events. In the mid-1990s, it began marketing OxyContin, an opioid prescription pain reliever. 69 F. 4th, at 56. Because of the addictive quality of opioids, doctors had traditionally reserved their use for cancer patients and those "with chronic diseases." 635 B. R., at 42. But OxyContin, Purdue claimed, had a novel "time-release" formula that greatly diminished the threat of addiction. *Ibid.* On that basis, Purdue marketed OxyContin for use in "'a much broader range'" of applications, including as a "'first-line therapy for the treatment of arthritis.'" *Ibid.*

Purdue was a "'family company,'" owned and controlled by the Sacklers. *Id.*, at 40. Members of the Sackler family served as president and chief executive officer; they dominated the board of directors; and they "were heavily involved" in the firm's marketing strategies. 69 F. 4th, at 86 (Wesley, J., concurring in judgment). They "pushed sales targets," too, and "accompanied sales representatives on 'ride along' visits to health care providers" in an effort to maximize OxyContin sales. 635 B. R., at 50.

Quickly, OxyContin became "'the most prescribed brand-name narcotic medication'" in the United States. *Id.*, at 43. Between 1996 and 2019, "Purdue generated approximately $34 billion in revenue . . . , most of which came from OxyContin sales." *Id.*, at 39. The company's success propelled the Sacklers onto lists "of the top twenty wealthiest families in America," with an estimated net worth of $14 billion. *Id.*, at 40.

Eventually, however, the firm came under scrutiny. In 2007, a Purdue affiliate pleaded guilty to a federal felony for misbranding OxyContin as "'less addictive'" and "'less subject to abuse . . . than other pain medications.'" *Id.*, at 48. Thousands of civil lawsuits followed as individuals, families, and governments within and outside the United States sought damages from Purdue and the Sacklers for injuries allegedly caused by their deceptive marketing practices. 69 F. 4th, at 60.

Appreciating this litigation "would eventually impact them directly," *id.*, at 59, the Sacklers began what one family member described as a "'milking' program," 635 B. R., at 57. In the years before the 2007 plea agreement, Purdue's distributions to the Sacklers represented less than 15% of its annual revenue. *Ibid.* After the plea agreement, the Sacklers began taking as much as 70% of the company's revenue each year. *Ibid.* Between 2008 and 2016, the family's distributions totaled approximately $11 billion, draining Purdue's total assets by 75% and leaving it in "a significantly weakened financial" state. 69 F. 4th, at 59. The Sacklers diverted much of that money to overseas trusts and family-owned companies. 635 B. R., at 71.

B

In 2019, Purdue filed for Chapter 11 bankruptcy. Members of the Sackler family saw in that development an opportunity "to get [their own] goals accomplished." *In re Purdue Pharma L. P.*, No. 19–23649 (Bkrtcy. Ct. SDNY, Aug. 18, 2021), ECF Doc. 3599, p. 35 (testimony of David Sackler). They proposed to return to Purdue's bankruptcy estate $4.325 billion of the $11 billion they had withdrawn from the company in recent years. 69 F. 4th, at 61. But they offered to do so only through payments spread out over a decade. *Id.*, at 60. And, in return, they sought the estate's agreement on, and a judicial order addressing, two matters. First, the Sacklers wanted to extinguish any claims the estate might have against family members, including for fraudulently transferring funds from Purdue in the years preceding its bankruptcy. *In re Purdue Pharma L. P.*, 633 B. R. 53, 83–84 (Bkrtcy. Ct. SDNY 2021). Second, the Sacklers wanted to end the growing number of lawsuits against them brought by opioid victims (the Sackler discharge). *Ibid.*

The Sackler discharge they proposed comprised a release and an injunction. The release sought to void not just current opioid-related claims against the family, but future ones as well. It sought to ban not just claims by creditors participating in the bankruptcy proceeding, but claims by anyone who might otherwise sue Purdue. It sought to extinguish not only claims for negligence, but also claims for fraud and willful misconduct. 1 App. 193. And it proposed to end all these lawsuits without the consent of the opioid victims who brought them. To enforce this release, the Sacklers sought an injunction "forever stay[ing], restrain[ing,] and enjoin[ing]" claims against them. *Id.*, at 279. That injunction would not just prevent suits against the company's officers and directors but would run in favor of hundreds, if not thousands, of Sackler family members and entities under their control. *Id.*, at 117–190.

Purdue agreed to these terms and included them in the reorganization plan it presented to the bankruptcy court for approval. In that plan, Purdue further proposed to reorganize as a "public benefit" company dedicated primarily to opioid education and abatement efforts. 633 B. R., at 74. As for individual victims harmed by the company's products, Purdue offered, with help from the Sacklers' anticipated contribution, to provide payments from a base amount of $3,500 up to a ceiling of $48,000 (for the most dire cases, and all before deductions for attorney's fees and other expenses). See 1 App. 557–559, 573–585; 6 App. in No. 22–110 etc. (CA2), p. 1697. For those receiving more than the base amount, payments would come in installments spread over as many as 10 years. 7 *id.*, at 1805, 1812.

Creditors were polled on the proposed plan. Though most who returned ballots supported it, fewer than 20% of eligible creditors participated. 21 *id.*, at 6253, 6258. Thousands of opioid victims voted against the plan too, and many pleaded with the bankruptcy court not to wipe out their claims against the Sacklers without their consent. 635 B. R., at 35. "Our system of justice," they wrote, "demands that the allegations against the Sackler family be fully and fairly litigated in a public and open trial, that they be judged by an impartial jury, and that they be held accountable to those they have harmed." *In re Purdue Pharma L. P.*, No. 7:21–cv–07532 (SDNY, Oct. 25, 2021), ECF Doc. 94, p. 21 (internal quotation marks omitted). The U. S. Trustee, charged with promoting the integrity of the bankruptcy system for all stakeholders, joined in these objections. So did eight States, the District of Columbia, the city of Seattle, and various Canadian municipalities and Tribes, each of which sought to pursue its own claims against the Sacklers. 635 B. R., at 35.

C

The bankruptcy court rejected the objectors' arguments and entered an order confirming the plan, including its provisions related to the Sackler discharge. 633 B. R., at 95–115. Soon, however, the district court vacated that decision. Nothing in the law, that court held, authorized the bankruptcy court to extinguish claims against the Sacklers without the consent of the opioid victims who brought them. 635 B. R., at 115.

After that setback, plan proponents, including Purdue, members of the Sackler family, and various creditors, appealed to the Second Circuit. While their appeal was pending, they also floated a new proposal. Now, they said, the Sacklers were willing to contribute an additional $1.175 to $1.675 billion to Purdue's estate if the eight objecting States and the District of Columbia would withdraw their objections to the firm's reorganization plan. 69 F. 4th, at 67. The Sacklers' proposed contribution still fell well short of the $11 billion they received from the company between 2008 and 2016. Nor did it begin to reflect the earnings the Sacklers have enjoyed from that sum over time. And the proposed contribution would still come in installments spread over many years. But the new proposal was enough to persuade the States and the District of Columbia to drop their objections to the plan, even as a number of individual victims, the Canadian creditors, and the U. S. Trustee persisted in theirs.

Ultimately, a divided panel of the Second Circuit reversed the district court and revived the bankruptcy court's order approving the estate's (now-modified) reorganization plan. Writing separately, Judge Wesley acknowledged that a bankruptcy court enjoys broad authority to modify debtor-creditor relations. But, he argued, nothing in the bankruptcy code grants a bankruptcy court the "extraordinary" power to release and enjoin claims against a third party without the consent of the affected claimants. *Id.*, at 89 (opinion concurring in judgment). The majority's contrary view, he added, "pin[ned the Second] Circuit firmly on one side of a weighty issue that, for too long, has split the courts of appeals." *Id.*, at 90.

After the Second Circuit ruled, the U. S. Trustee filed an application with this Court to stay its decision. We granted the application and, treating it as a petition for a writ of certiorari, agreed to take this case to resolve the circuit split Judge Wesley highlighted. 600 U. S. ___ (2023).[1]

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[1] For examples of decisions on both sides of the split, compare *In re*

II

The plan proponents and U. S. Trustee agree on certain foundational points. When a debtor files for bankruptcy, it "creates an estate" that includes virtually all the debtor's assets. 11 U. S. C. §541(a). Under Chapter 11, the debtor can work with its creditors to develop a reorganization plan governing the distribution of the estate's assets; it must then present that plan to the bankruptcy court and win its approval. §§1121, 1123, 1129, 1141. Once the bankruptcy court issues an order confirming the plan, that document binds the debtor and its creditors going forward—even those who did not assent to the plan. §1141(a).

Most relevant here, a bankruptcy court's order confirming a plan "discharges the debtor from any debt that arose before the date of such confirmation," except as provided in the plan, the confirmation order, or the code. §1141(d)(1)(A). That discharge not only releases or "void[s] any past or future judgments on the" discharged debt; it also "operat[es] as an injunction . . . prohibit[ing] creditors from attempting to collect or to recover the debt." *Tennessee Student Assistance Corporation* v. *Hood*, 541 U. S. 440, 447 (2004) (citing §§524(a)(1), (2)). Generally, however, a discharge operates only for the benefit of the debtor against its creditors and "does not affect the liability of any other entity." §524(e).

The Sacklers have not filed for bankruptcy and have not placed virtually all their assets on the table for distribution to creditors, yet they seek what essentially amounts to a

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Pacific Lumber Co., 584 F. 3d 229 (CA5 2009); *In re Lowenschuss*, 67 F. 3d 1394 (CA9 1995); *In re Western Real Estate Fund, Inc.*, 922 F. 2d 592 (CA10 1990), with *In re Millennium Lab Holdings II, LLC*, 945 F. 3d 126 (CA3 2019); *In re Seaside Engineering & Surveying, Inc.*, 780 F. 3d 1070 (CA11 2015); *In re Airadigm Communications, Inc.*, 519 F. 3d 640 (CA7 2008); *In re Dow Corning Corp.*, 280 F. 3d 648 (CA6 2002); *In re A. H. Robins Co.*, 880 F. 2d 694 (CA4 1989).

discharge. They hope to win a judicial order releasing pending claims against them brought by opioid victims. They seek an injunction "permanently and forever" foreclosing similar suits in the future. 1 App. 279. And they seek all this without the consent of those affected. The question we face thus boils down to whether a court in bankruptcy may effectively extend to *nondebtors* the benefits of a Chapter 11 discharge usually reserved for *debtors*.

A

For an answer, we turn to §1123. It addresses the "[c]ontents"—or terms—of the bankruptcy reorganization plan a debtor presents and a court approves in Chapter 11 proceedings. Some plan terms are mandatory, §1123(a); others are optional, §1123(b). No one suggests that anything like the Sackler discharge *must* be included in a debtor's reorganization plan. Instead, plan proponents contend, it is a provision a debtor *may* include and a court *may* approve in a reorganization plan.

Section 1123(b) governs that question. It directs that a plan "may":

> "(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;
>
> "(2) . . . provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under [§365];
>
> "(3) provide for—
>
> "(A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or
>
> "(B) the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest;
>
> "(4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;

> "(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and
>
> "(6) include any other appropriate provision not inconsistent with the applicable provisions of this title."

We can easily rule out the first five of these paragraphs as potential sources of legal authority for the Sackler discharge. They permit a plan to address claims and property belonging to a debtor or its estate. §§1123(b)(2), (3), (4). They permit a plan to modify the rights of creditors who hold claims against the debtor or its estate. §§1123(b)(1), (5). But nothing in those paragraphs authorizes a plan to extinguish claims against third parties, like the Sacklers, without the consent of the affected claimants, like the opioid victims. If authority for the Sackler discharge can be found anywhere, it must be found in paragraph (6). That is the paragraph on which the Second Circuit primarily rested its decision below, and it is the one on which plan proponents pin their case here.[2]

As the plan proponents see it, paragraph (6) allows a

[2] The Sacklers suggest that, if 11 U. S. C. §1123(b) does not permit a bankruptcy court to release and enjoin claims against a nondebtor without the affected claimants' consent, §105(a) does. See Brief for Mortimer-Side Initial Covered Respondents 19 (Brief for Sackler Family). That provision allows a bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the bankruptcy code. §105(a). As the Second Circuit recognized, however, "§105(a) alone cannot justify" the imposition of nonconsensual third-party releases because it serves only to "'carry out'" authorities expressly conferred elsewhere in the code. 69 F. 4th 45, 73 (2023) (quoting §105(a)); see also 2 R. Levin & H. Sommer, Collier on Bankruptcy ¶105.01[1], p. 105–6 (16th ed. 2023). Purdue concedes this point, Brief for Debtor Respondents 19, n. 5 (Brief for Purdue), as do several other plan proponents, see, *e.g.*, Brief for Respondent Ad Hoc Committee 29. Necessarily, then, our focus trains on §1123(b)(6).

debtor to include in its plan, and a court to order, *any* term not "expressly forbid[den]" by the bankruptcy code as long as a bankruptcy judge deems it "appropriate" and consistent with the broad "purpose[s]" of bankruptcy. 69 F. 4th, at 73–74; *post*, at 41–42 (KAVANAUGH, J., dissenting). And because the code does not expressly forbid a nonconsensual nondebtor discharge, the reasoning goes, the bankruptcy court was free to authorize one here after finding it an "appropriate" provision. See Brief for Sackler Family 19–21; Brief for Purdue 20; *post*, at 13–15.

This understanding of the statute faces an immediate obstacle. Paragraph (6) is a catchall phrase tacked on at the end of a long and detailed list of specific directions. When faced with a catchall phrase like that, courts do not necessarily afford it the broadest possible construction it can bear. *Epic Systems Corp.* v. *Lewis*, 584 U. S. 497, 512 (2018). Instead, we generally appreciate that the catchall must be interpreted in light of its surrounding context and read to "embrace only objects similar in nature" to the specific examples preceding it. *Ibid.* (internal quotation marks omitted). So, for example, when a statute sets out a list discussing "cars, trucks, motorcycles, or any other vehicles," we appreciate that the catchall phrase may reach similar landbound vehicles (perhaps including buses and camper vans), but it does not reach dissimilar "vehicles" (such as airplanes and submarines). See *McBoyle* v. *United States*, 283 U. S. 25, 26–27 (1931). This ancient interpretive principle, sometimes called the *ejusdem generis* canon, seeks to afford a statute the scope a reasonable reader would attribute to it.

Viewed with that much in mind, we do not think paragraph (6) affords a bankruptcy court the authority the plan proponents suppose. In some circumstances, it may be difficult to discern what a statute's specific listed items share in common. See A. Scalia & B. Garner, Reading Law 207–

208 (2012). But here an obvious link exists: When Congress authorized "appropriate" plan provisions in paragraph (6), it did so only after enumerating five specific sorts of provisions, all of which concern *the debtor*—its rights and responsibilities, and its relationship with its creditors. Doubtless, paragraph (6) operates to confer additional authorities on a bankruptcy court. See *United States* v. *Energy Resources Co.*, 495 U. S. 545, 549 (1990). But the catchall cannot be fairly read to endow a bankruptcy court with the "radically different" power to discharge the debts of a nondebtor without the consent of affected nondebtor claimants. *Epic Systems Corp.*, 584 U. S., at 513; see also *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U. S. 639, 645–647 (2012).

The catchall's text underscores the point. Congress could have said in paragraph (6) that "everything not expressly prohibited is permitted." But it didn't. Instead, Congress set out a detailed list of powers, followed by a catchall that it qualified with the term "appropriate." That quintessentially "context dependent" term often draws its meaning from surrounding provisions. *Sossamon* v. *Texas*, 563 U. S. 277, 286 (2011). And we know to look to the statute's preceding specific paragraphs as the relevant "context" here because paragraph (6) tells us so. It permits "any *other* appropriate provision"—that is, "other" than the provisions already discussed in paragraphs (1) through (5). (Emphasis added.) Each of those "other" paragraphs authorizes a bankruptcy court to adjust claims without consent only to the extent such claims concern the debtor. From this, it follows naturally that an "appropriate provision" adopted pursuant to the catchall that purports to extinguish claims without consent should be similarly constrained. See, *e.g.*, *Epic Systems Corp.*, 584 U. S., at 512–513.

For its part, the dissent does not dispute that the *ejusdem generis* canon applies to §1123(b)(6). *Post*, at 33–34; see also Brief for Sackler Family 44; Brief for Purdue 23. But it disagrees with our application of the canon for two reasons. First, the dissent claims, it "is factually incorrect" to suggest that all the provisions of §1123(b) concern the debtor's rights and responsibilities. *Post*, at 35. The dissent points out that a bankruptcy estate may settle creditors' "derivative claims" against nondebtors under paragraph (3). *Post*, at 36. And this "indisputable point," the dissent declares, "defeats the Court's conclusion that §1123(b)'s provisions relate only to the debtor and do not allow releases of claims that victims and creditors hold against nondebtors." *Post*, at 37; see Brief for Purdue 24–25.

But that argument contains a glaring flaw. The dissent neglects *why* a bankruptcy court may resolve derivate claims under paragraph (3): It may because those claims belong to the debtor's estate. See, *e.g.*, *In re Ontos, Inc.*, 478 F. 3d 427, 433 (CA1 2007). In a derivative action, the named plaintiff "is only a nominal plaintiff. The substantive claim belongs to the corporation." 2 J. Macey, Corporation Laws §13.20[D], p. 13–140 (2020–4 Supp.). And no one questions that Purdue may address in its own bankruptcy plan claims "wherever located and by whomever held," §541(a)—including those claims derivatively asserted by another on its behalf, see §1123(b)(3). The problem is, the Sackler discharge is nothing like that. Rather than seek to resolve claims that substantively belong to Purdue, it seeks to extinguish claims against the Sacklers that belong to their victims. And precisely nothing in §1123(b) suggests those claims can be bargained away without the consent of those affected, as if the claims were somehow Purdue's own property.[3]

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[3] In an effort to blur this distinction, the dissent points out that the Sackler discharge covers claims for which Purdue's conduct is a "legally relevant factor." *Post*, at 34–35 (quoting 69 F. 4th, at 80). But that does not alter the fact that the Sackler discharge would extinguish *the victims*' claims against *the Sacklers*. Those claims neither belong to Purdue nor are they asserted against Purdue or its estate. The dissent disregards

Having come up short on the text of §1123(b), the dissent pivots to the statute's purpose. *Post*, at 35. As the dissent sees it, our application of the *ejusdem generis* canon should focus less on the provisions preceding the catchall and more on the overall "purpose of bankruptcy law" in solving "collective-action problem[s]." *Post*, at 5, 35–36; see also Brief for Purdue 21. But there is an obvious difficulty with this approach, too. As this Court has long recognized, "[n]o statute pursues a single policy at all costs." *Bartenwerfer* v. *Buckley*, 598 U. S. 69, 81 (2023). Always, the question we face is *how far* Congress has gone in pursuing one policy or another. See *ibid.* So, yes, bankruptcy law may serve to address some collective-action problems, but no one (save perhaps the dissent) thinks it provides a bankruptcy court with a roving commission to resolve all such problems that happen its way, blind to the role other mechanisms (legislation, class actions, multi-district litigation, consensual settlements, among others) play in addressing them. And here, the five paragraphs that precede the catchall tell us that bankruptcy courts may have many powers, including the power to address certain collective-action problems when they implicate the debtor's rights and responsibilities. But those directions also indicate that a bankruptcy court's powers are not limitless and do not endow it with the power to extinguish without their consent claims held by nondebtors (here, the opioid victims) against other nondebtors (here, the Sacklers).[4]

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these elemental distinctions. See, *e.g.*, *post*, at 49 (conflating the estate's power to settle its own fraudulent transfer claims against the Sacklers with the power to extinguish those of the victims against the Sacklers).

[4] The dissent characterizes our analysis of paragraph (6) as "breez[y]," as if the analysis would be correct if only it were belabored. *Post*, at 34. And yet it is the dissent that relegates the text of the relevant statute, §1123(b), to a pair of footnotes bookending a 25-page exposition on collective-action problems and public policy, one that precedes any effort to engage with our statutory analysis. See *post*, at 7, n. 1, 32, n. 5.

B

When resolving a dispute about a statute's meaning, we sometimes look for guidance not just in its immediate terms but in related provisions as well. See, *e.g.*, *Turkiye Halk Bankasi A. S.* v. *United States*, 598 U. S. 264, 275 (2023). Paragraph (6) itself alludes to this fact by instructing that any plan term adopted under its auspices must not be "inconsistent with the applicable provisions of" the bankruptcy code. Following that direction and looking to Chapter 11 more broadly, we find at least three further reasons why §1123(b)(6) cannot bear the interpretation the plan proponents and the dissent would have us give it.

First, consider what is and who can earn a discharge. As we have seen, a discharge releases the debtor from its debts and enjoins future efforts to collect them—even by those who do not assent to the debtor's reorganization plan. §§524(a)(1)–(2), 1129(b)(1), 1141(a). Generally, too, the bankruptcy code reserves this benefit to "the debtor"—the entity that files for bankruptcy. §1141(d)(1)(A); accord, §524(e); see also §§727(a)–(b). The plan proponents and the dissent's reading of §1123(b)(6) would defy these rules by effectively affording to a nondebtor a discharge usually reserved for the debtor alone.

Second, notice how the code constrains the debtor. To win a discharge, again as we have seen, the code generally requires the debtor to come forward with virtually all its assets. §§541(a)(1), 548. Nor is the discharge a debtor receives unbounded. It does not reach claims based on "fraud" or those alleging "willful and malicious injury." §§523(a)(2), (4), (6). And it cannot "affect any right to trial by jury" a creditor may have "with regard to a personal injury or wrongful death tort claim." 28 U. S. C. §1411(a). The plan proponents and the dissent's reading of §1123(b)(6) transgresses all these limits too. The Sacklers have not agreed to place anything approaching their full assets on the table for opioid victims. Yet they seek a judicial order that would extinguish virtually all claims against them for fraud, willful injury, and even wrongful death, all without the consent of those who have brought and seek to bring such claims. In each of these ways, the Sacklers seek to pay less than the code ordinarily requires and receive more than it normally permits.

Finally, there is a notable exception to the code's general rules. For asbestos-related bankruptcies—and only for such bankruptcies—Congress has provided that, "[n]otwithstanding" the usual rule that a debtor's discharge does not affect the liabilities of others on that same debt, §524(e), courts may issue "an injunction . . . bar[ring] any action directed against a third party" under certain statutorily specified circumstances. §524(g)(4)(A)(ii). That the code *does* authorize courts to enjoin claims against third parties without their consent, but does so in only *one* context, makes it all the more unlikely that §1123(b)(6) is best read to afford courts that same authority in *every* context. See, *e.g.*, *Bittner* v. *United States*, 598 U. S. 85, 94 (2023); *AMG Capital Management, LLC* v. *FTC*, 593 U. S. 67, 77 (2021).[5]

How do the plan proponents and the dissent reply to all this? Essentially, they ask us to look the other way. Whatever limits the code imposes on debtors and discharges mean nothing, they say, because the Sacklers seek a "release," not a "discharge." See, *e.g.*, *post*, at 46–48. But word

[5] The dissent claims that, in making this observation, we defy §524(g)'s directive that "[n]othing in [it], or in the amendments made by [its addition to the bankruptcy code], shall be construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization." 108 Stat. 4117, note following 11 U. S. C. §524; see *post*, at 44–45. That charge misunderstands the point. We do not read §524(g) to "impair" or "modify" authority previously available to courts in bankruptcy. To the contrary, we simply understand §524(g) to illustrate how Congress might proceed if it intended to confer upon bankruptcy courts a novel and extraordinary power to extinguish claims against third parties without claimants' consent. See *Czyzewski* v. *Jevic Holding Corp.*, 580 U. S. 451, 465 (2017).

games cannot obscure the underlying reality. Once more, the Sacklers seek greater relief than a bankruptcy discharge normally affords, for they hope to extinguish even claims for wrongful death and fraud, and they seek to do so without putting anything close to all their assets on the table. Nor is what the Sacklers seek a traditional release, for they hope to have a court extinguish claims of opioid victims without their consent. See, *e.g.*, J. Macey, Corporate Governance: Promises Kept, Promises Broken 152 (2008) ("settlements are, by definition, consensual"); accord, *Firefighters* v. *Cleveland*, 478 U. S. 501, 529 (1986). Describe the relief the Sacklers seek how you will, nothing in the bankruptcy code contemplates (much less authorizes) it.

C

If text and context supply two strikes against the plan proponents and the dissent's construction of §1123(b)(6), history offers a third. When Congress enacted the present bankruptcy code in 1978, it did "not write 'on a clean slate.'" *Hall* v. *United States*, 566 U. S. 506, 523 (2012) (quoting *Dewsnup* v. *Timm*, 502 U. S. 410, 419 (1992)). Recognizing as much, this Court has said that pre-code practice may sometimes inform our interpretation of the code's more "ambiguous" provisions. *RadLAX Gateway Hotel*, 566 U. S., at 649.

While we discern no ambiguity in §1123(b)(6) for the reasons explored above, historical practice confirms the lesson we take from it. Every bankruptcy law the parties and their *amici* have pointed us to, from 1800 until 1978, generally reserved the benefits of discharge to the debtor who offered a "fair and full surrender of [its] property." *Sturges* v. *Crowninshield*, 4 Wheat. 122, 176 (1819); accord, *Central Va. Community College* v. *Katz*, 546 U. S. 356, 363–364 (2006); see, *e.g.*, Bankruptcy Act of 1800, §5, 2 Stat. 23 (repealed 1803); Act of Aug. 19, 1841, §3, 5 Stat. 442–443 (repealed 1843); Act of Mar. 2, 1867, §§11, 29, 14 Stat. 521, 531–532 (repealed 1878); Bankruptcy Act of 1898, §§7, 14, 30 Stat. 548, 550 (repealed 1978). No one has directed us to a statute or case suggesting American courts in the past enjoyed the power in bankruptcy to discharge claims brought by nondebtors against other nondebtors, all without the consent of those affected. Surely, if Congress had meant to reshape traditional practice so profoundly in the present bankruptcy code, extending to courts the capacious new power the plan proponents claim, one might have expected it to say so expressly "somewhere in the [c]ode itself." *Dewsnup*, 502 U. S., at 420.[6]

III

Faced with so many marks against its interpretation of the law, plan proponents and the dissent resort to a policy argument. The Sacklers, they remind us, have signaled that they will not return any funds to Purdue's estate unless the bankruptcy court grants them the sweeping nonconsensual release and injunction they seek. Absent these concessions, plan proponents and the dissent emphatically predict, "there will be no viable path" for victims to recover even $3,500 each. Tr. of Oral Arg. 100; Brief for Sackler Family 27; see Brief for Respondent Official Committee of Unsecured Creditors of Purdue Pharma L. P. et al. 45–46; *post*, at 4, 21–28, 52–54.

The U. S. Trustee disputes that assessment. Yes, he says, reversing the Second Circuit may cause Purdue's current reorganization plan to unravel. But that would also

[6] The dissent declares pre-code practice irrelevant to the task at hand and insists the power to order nonconsensual releases has been settled by "decades" of bankruptcy court practice. *Post*, at 3, 5, 8, 11, 50–51. But in resisting the notion that pre-code practice may inform our work, the dissent defies our precedents. And in appealing to "decades" of lower court practice, the dissent seems to forget why we took this case in the first place: to resolve a longstanding and deeply entrenched disagreement between lower courts over the legality of nonconsensual third-party releases. See n. 1, *supra*.

mean the Sacklers would face lawsuits by individual victims, States, other governmental entities, and perhaps even fraudulent-transfer claims from the bankruptcy estate. So much legal exposure, the Trustee asserts, may induce the Sacklers to negotiate *consensual* releases on terms more favorable to opioid victims. Brief for Petitioner 47–48. The Sacklers may "want global peace," the Trustee acknowledges, but that doesn't "mea[n] that they wouldn't pay a lot for 97.5 percent peace." Tr. of Oral Arg. 26. After all, the Trustee reminds us, during the appeal in this very case, the Sacklers agreed to increase their contribution by more than $1 billion in order to secure the consent of the eight objecting States. If past is prologue, the Trustee says, there may be a better deal on the horizon.[7]

Even putting that aside, the Trustee urges us to consider the ramifications of this case for others. Nonconsensual third-party releases, he observes, allow tortfeasors to win immunity from the claims of their victims, including for claims (like wrongful death and fraud) they could not discharge in bankruptcy, and do so without placing anything approaching all of their assets on the table. Endorsing that maneuver, the Trustee says, would provide a "roadmap for corporations and wealthy individuals to misuse the bankruptcy system" in future cases "to avoid mass-tort liability." Brief for Petitioner 44–45.

Both sides of this policy debate may have their points.

[7] The parties likewise spar over whether, absent the Sacklers' discharge, the family could deplete the estate by asserting indemnification claims against the company. Plan proponents and the dissent point to a 2004 agreement that commits Purdue to cover certain liability and legal expenses the Sacklers incur. Brief for Purdue 10; *post*, at 21–24. But here again, the Trustee sees things differently. He underscores the plan proponents' concession that the 2004 agreement "does not apply if a court determines the Sacklers 'did not act in good faith.'" Reply Brief 16. And, he adds, bankruptcy courts have a variety of statutory tools at their disposal to disallow or equitably subordinate any potential indemnification claims the Sacklers might pursue. *Ibid.* (citing §§502(e)(1)(B), 510(c)(1)).

But, in the end, we are the wrong audience for them. As the people's elected representatives, Members of Congress enjoy the power, consistent with the Constitution, to make policy judgments about the proper scope of a bankruptcy discharge. Someday, Congress may choose to add to the bankruptcy code special rules for opioid-related bankruptcies as it has for asbestos-related cases. Or it may choose not to do so. Either way, if a policy decision like that is to be made, it is for Congress to make. Despite the misimpression left by today's dissent, our only proper task is to interpret and apply the law as we find it; and nothing in present law authorizes the Sackler discharge.

IV

As important as the question we decide today are ones we do not. Nothing in what we have said should be construed to call into question *consensual* third-party releases offered in connection with a bankruptcy reorganization plan; those sorts of releases pose different questions and may rest on different legal grounds than the nonconsensual release at issue here. See, *e.g.*, *In re Specialty Equipment Cos.*, 3 F. 3d 1043, 1047 (CA7 1993). Nor do we have occasion today to express a view on what qualifies as a consensual release or pass upon a plan that provides for the full satisfaction of claims against a third-party nondebtor. Additionally, because this case involves only a stayed reorganization plan, we do not address whether our reading of the bankruptcy code would justify unwinding reorganization plans that have already become effective and been substantially consummated. Confining ourselves to the question presented, we hold only that the bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants. Because the Second Circuit ruled otherwise, its judgment is reversed and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 23–124

WILLIAM K. HARRINGTON, UNITED STATES TRUSTEE, REGION 2, PETITIONER *v.* PURDUE PHARMA L.P., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

[June 27, 2024]

JUSTICE KAVANAUGH, with whom THE CHIEF JUSTICE, JUSTICE SOTOMAYOR, and JUSTICE KAGAN join, dissenting.

Today's decision is wrong on the law and devastating for more than 100,000 opioid victims and their families. The Court's decision rewrites the text of the U. S. Bankruptcy Code and restricts the long-established authority of bankruptcy courts to fashion fair and equitable relief for mass-tort victims. As a result, opioid victims are now deprived of the substantial monetary recovery that they long fought for and finally secured after years of litigation.

Bankruptcy seeks to solve a collective-action problem and prevent a race to the courthouse by individual creditors who, if successful, could obtain all of a company's assets, leaving nothing for all the other creditors. The bankruptcy system works to preserve a bankrupt company's limited assets and to then fairly and equitably distribute those assets among the creditors—and in mass-tort bankruptcies, among the victims. To do so, the Bankruptcy Code vests bankruptcy courts with broad discretion to approve "appropriate" plan provisions. 11 U. S. C. §1123(b)(6).

In this mass-tort bankruptcy case, the Bankruptcy Court exercised that discretion appropriately—indeed, admirably. It approved a bankruptcy reorganization plan for Purdue Pharma that built up the estate to approximately $7 billion by securing a $5.5 to $6 billion settlement payment from the Sacklers, who were officers and directors of Purdue. The plan then guaranteed substantial and equitable compensation to Purdue's many victims and creditors, including more than 100,000 individual opioid victims. The plan also provided significant funding for thousands of state and local governments to prevent and treat opioid addiction.

The plan was a shining example of the bankruptcy system at work. Not surprisingly, therefore, virtually all of the opioid victims and creditors in this case fervently support approval of Purdue's bankruptcy reorganization plan. And all 50 state Attorneys General have signed on to the plan—a rare consensus. The only relevant exceptions to the nearly universal desire for plan approval are a small group of Canadian creditors and one lone individual.

But the Court now throws out the plan—and in doing so, categorically prohibits non-debtor releases, which have long been a critical tool for bankruptcy courts to manage mass-tort bankruptcies like this one. The Court's decision finds no mooring in the Bankruptcy Code. Under the Code, all agree that a bankruptcy plan can nonconsensually release victims' and creditors' claims *against a bankrupt company*—here, against Purdue. Yet the Court today says that a plan can *never* release victims' and creditors' claims *against non-debtor officers and directors of the company*—here, against the Sacklers.

That is true, the Court says, even when (as here) those non-debtor releases are necessary to facilitate a fair settlement with the officers and directors and produce a significantly larger bankruptcy estate that can be fairly and equitably distributed among the victims and creditors. And that is true, the Court also says, even when (as here) those officers and directors are indemnified by the company. When officers and directors are indemnified by the company, a victim's or creditor's claim against the non-debtors "is, in essence, a suit against the debtor" that could "deplete the assets of the estate" for the benefit of only a few, just like a claim against the company itself. *In re Purdue Pharma L. P.*, 69 F. 4th 45, 78 (CA2 2023) (quotation marks omitted).

It therefore makes little legal, practical, or economic sense to say, as the Court does, that the victims' and creditors' claims against the debtor can be released, but that it would be categorically "inappropriate" to release their identical claims against non-debtors even when they are indemnified or when the release generates a significant settlement payment by the non-debtor to the estate.

For decades, bankruptcy courts and courts of appeals have determined that non-debtor releases can be appropriate and essential in mass-tort cases like this one. Non-debtor releases have enabled substantial and equitable relief to victims in cases ranging from asbestos, Dalkon Shield, and Dow Corning silicone breast implants to the Catholic Church and the Boy Scouts. As leading scholars on bankruptcy explain, "the bankruptcy community has recognized the resolution of mass tort claims as a widely accepted core function of bankruptcy courts for decades"—and they emphasize that a "key feature in every mass tort bankruptcy" has been the non-debtor release. A. Casey & J. Macey, In Defense of Chapter 11 for Mass Torts, 90 U. Chi. L. Rev. 973, 974, 977 (2023).

No longer.

Given the broad statutory text—"appropriate"—and the history of bankruptcy practice approving non-debtor releases in mass-tort bankruptcies, there is no good reason for the debilitating effects that the decision today imposes on the opioid victims in this case and on the bankruptcy system at large. To be sure, many Americans have deep hostility toward the Sacklers. But allowing that animosity to infect this bankruptcy case is entirely misdirected and counterproductive, and just piles even more injury onto the opioid victims. And no one can have more hostility toward the Sacklers and a greater desire to go after the Sacklers' assets than the opioid victims themselves. Yet the victims unequivocally seek approval *of this plan*.

With the current plan now gone and non-debtor releases categorically prohibited, the consequences will be severe, as the victims and creditors forcefully explained. Without releases, there will be no $5.5 to $6 billion settlement payment to the estate, and "there will be no viable path to any victim recovery." Tr. of Oral Arg. 100. And without the plan's substantial funding to prevent and treat opioid addiction, the victims and creditors bluntly described further repercussions: "more people will die without this Plan." Brief for Respondent Official Committee of Unsecured Creditors of Purdue Pharma L. P. et al. 55.

In short: Despite the broad term "appropriate" in the statutory text, despite the longstanding precedents approving mass-tort bankruptcy plans with non-debtor releases like these, despite 50 state Attorneys General signing on, and despite the pleas of the opioid victims, today's decision creates a new atextual restriction on the authority of bankruptcy courts to approve appropriate plan provisions. The opioid victims and their families are deprived of their hard-won relief. And the communities devastated by the opioid crisis are deprived of the funding needed to help prevent and treat opioid addiction. As a result of the Court's decision, each victim and creditor receives the essential equivalent of a lottery ticket for a possible future recovery for (at most) a few of them. And as the Bankruptcy Court explained, without the non-debtor releases, there is no good reason to believe that any of the victims or state or local governments will ever recover anything. I respectfully but emphatically dissent.

I

To map out this dissent for the reader: Part I (pages 5 to 18) discusses why non-debtor releases are often appropriate and essential, particularly in mass-tort bankruptcies. Part II (pages 18 to 31) explains why non-debtor releases were appropriate and essential in the Purdue bankruptcy. Part III (pages 31 to 52) engages the Court's contrary arguments and why I respectfully disagree with those arguments. Part IV (pages 52 to 54) sums up.

Throughout this opinion, keep in mind the goal of bankruptcy. The bankruptcy system is designed to preserve the debtor's estate so as to ensure fair and equitable recovery for creditors. Bankruptcy courts achieve that overarching objective by, among other things, releasing claims that otherwise could deplete the estate for the benefit of only a few and leave all the other creditors with nothing. And as courts have recognized for decades, especially in mass-tort cases, non-debtor releases are not merely "appropriate," but can be absolutely critical to achieving the goal of bankruptcy—fair and equitable recovery for victims and creditors.

A

Article I, §8, of the Constitution affords Congress power to establish "uniform Laws on the subject of Bankruptcies throughout the United States" and to "make all Laws which shall be necessary and proper for carrying into Execution" that power.

Early in the Nation's history, Congress established the bankruptcy system. In 1978, Congress significantly revamped and reenacted the Bankruptcy Code in its current form. Bankruptcy Code of 1978, 92 Stat. 2549.

The purpose of bankruptcy law is to address the collective-action problem that a bankruptcy poses. T. Jackson, The Logic and Limits of Bankruptcy Law 12–13 (1986). When a company's liabilities exceed its ability to pay creditors, every creditor has an incentive to maximize its own recovery before other creditors deplete the pot. Without a mandatory collective system, the creditors would race to the courthouse to recover first. One or a few successful creditors could then recover substantial funds, deplete the assets, and drive the company under—leaving other creditors with nothing. See *id*., at 7–19; D. Baird, A World Without Bankruptcy, 50 Law & Contemp. Prob. 173, 183–184 (1987); T. Jackson, Bankruptcy, Non-Bankruptcy Entitlements, and the Creditors' Bargain, 91 Yale L. J. 857, 860–868 (1982).

Bankruptcy creates a way for creditors to "act as one, by imposing a *collective* and *compulsory* proceeding on them." Jackson, Logic and Limits of Bankruptcy Law, at 13. One of the goals of Chapter 11 of the Bankruptcy Code in particular is to fairly distribute estate assets among creditors "in order to prevent a race to the courthouse to dismember the debtor." 7 Collier on Bankruptcy ¶1100.01, p. 1100–3 (R. Levin & H. Sommer eds., 16th ed. 2023). Chapter 11 is aimed at preserving an estate's value for distribution to creditors in the face of that collective-action problem.

The basic Chapter 11 case runs as follows. After the debtor files for bankruptcy under Chapter 11, the debtor's property becomes property of the bankruptcy estate. 11 U. S. C. §541. Any litigation that might interfere with the property of the estate is subject to an automatic stay, thus preventing creditors from skipping the line by litigating in a separate forum against the debtor while the bankruptcy is ongoing. §362.

With litigation paused, the parties craft a plan of reorganization for the debtor. The Code grants the bankruptcy court sweeping powers to reorganize the debtor company and ensure fair and equitable recovery for the creditors. For example, the plan may authorize selling or retaining the company's property; merging or consolidating the company; or amending the company's charter. §1123(a)(5). The subsection at issue here, §1123(b), also authorizes many other kinds of provisions that bankruptcy plans may include.[1] Most relevant for this case, as I will explain, the reorganization plan may impair and release "any class of claims" that creditors hold against the debtor. §1123(b)(1). The plan may also settle and release "any claim or interest" that the debtor company holds against non-debtors. §1123(b)(3). And the plan may include "any other appropriate provision not inconsistent with the applicable provisions" of the Bankruptcy Code. §1123(b)(6).

To address any collective-action or holdout problem, the bankruptcy court has the power to approve a reorganization plan even without the consent of every creditor. If creditors holding more than one-half in number (and at least two-thirds in amount) of the claims in every class accept the plan, the court can confirm the plan. §§1126(c), 1129(a)(8)(A). A plan is "said to be confirmed consensually

[1] The full text of §1123(b) provides that "a plan may—

"(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;

"(2) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

"(3) provide for—

"(A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or

"(B) the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest;

"(4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;

"(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and

"(6) include any other appropriate provision not inconsistent with the applicable provisions of this title."

if all classes of creditors vote in favor, even if some classes have dissenting creditors." 7 Collier, Bankruptcy ¶1129.01, at 1129–13. That the bankruptcy system considers a plan with majority (even if not unanimous) support to be "consensual" underscores that the bankruptcy system is designed to benefit creditors collectively and prevent holdout problems.

Confirmation of the plan "generally discharges the debtor from all debts that arose before confirmation." *Id.*, ¶1100.09[2][f], at 1100–42 (citing §1141(d)). And all creditors are bound by the plan's distribution, even if some creditors are not happy and oppose the plan. *Ibid.*

B

This is a mass-tort bankruptcy case. Mass-tort cases present the same collective-action problem that bankruptcy was designed to address. "Without a mandatory rule that consolidates claims in a single tribunal, tort claimants would rationally enter a race to the courthouse." A. Casey & J. Macey, In Defense of Chapter 11 for Mass Torts, 90 U. Chi. L. Rev. 973, 997 (2023). And the "plaintiffs who bring successful suits earlier are likely to drain the firm's resources, while inconsistent judgments could result in inequitable payouts even among plaintiffs who ultimately do collect." *Id.*, at 994.

For many decades now, bankruptcy law has stepped in as a coordinating tribunal in significant mass-tort cases. When a company that is liable for mass torts files for bankruptcy, the bankruptcy system enables (and requires) the mass-tort victims who are seeking relief from the bankrupt company to work together to reach a fair and equitable distribution of the company's assets.

In many cases, there is no workable alternative other than bankruptcy for achieving fair and equitable recovery for mass-tort victims. "Outside of bankruptcy," victims face "significant administrative costs" of multi-district litigation, "which has limited coordination mechanisms and no tools for binding future claimants." *Id.*, at 1005. And multi-district litigation cannot "solve the collective action problem because dissenting claimants can opt out of settlements even when super majorities favor them." *Ibid.*

Bankruptcy, on the other hand, reduces administrative costs and allows all of the affected parties to come together, pause litigation elsewhere, invoke procedural safeguards including discovery, and reach a collective resolution that considers both current and future victims. Cf. Federal Judicial Center, E. Gibson, Case Studies of Mass Tort Limited Fund Class Action Settlements & Bankruptcy Reorganizations 6 (2000) ("bankruptcy reorganizations provide an inherently fairer method of resolving mass tort claims" than alternative of class-action settlements).

In some cases—including mass-tort cases—it is not only the debtor company, but rather another closely related person or entity such as officers and directors (non-debtors), who may hold valuable assets and also be potentially liable for the company's wrongdoing.

But it may be uncertain whether the victims can recover in tort suits against the non-debtors due to legal hurdles or difficulty reaching the non-debtors' assets. In those cases, a settlement may be reached: In exchange for being released from potential liability for any wrongdoing, the non-debtor must make substantial payments to the company's bankruptcy estate in order to compensate victims. As long as the settlement is fair, the non-debtor's settlement payment will benefit victims "by enlarging the pie of recoverable funds" in the bankruptcy estate. Casey & Macey, 90 U. Chi. L. Rev., at 1001. And it will reduce administrative costs, because the victims' claims against both the debtor and the non-debtor may be resolved "at the same time and in the same tribunal." *Id.*, at 1002.

The non-debtor's settlement payment into the estate can also solve a collective-action problem. Bringing the non-debtor's assets into the bankruptcy estate enables those assets to be distributed fairly and equitably among victims, rather than swallowed up by the first victim to successfully sue the non-debtor. *Id.*, at 1002–1003.

A separate collective-action problem can arise when the insolvent company's officers and directors are indemnified by the company for liability arising out of their job duties. In such cases, "a suit against the non-debtor is, in essence, a suit against the debtor." *In re Purdue Pharma L. P.*, 69 F. 4th 45, 78 (CA2 2023) (quotation marks omitted). If not barred from doing so, the creditors could race to the courthouse against the indemnified officers and directors for basically the same claims that they hold against the debtor company. If successful, such suits would deplete the company's assets because a judgment against the indemnified officers and directors would likely come out of the debtor company's assets.

Another similar collective-action problem can involve liability insurance, a kind of indemnification relationship where the insurer is on the hook for tort victims' claims against the debtor company. See B. Zaretsky, Insurance Proceeds in Bankruptcy, 55 Brooklyn L. Rev. 373, 375–376 (1989). The insurance assets—meaning assets to the limits of the debtor's insurance coverage—are usually a key asset for the bankruptcy estate to compensate victims. But tort victims also "may have direct action rights against the insurance carrier, even, in some cases, bypassing the debtor-insured." 5 Collier, Bankruptcy ¶541.10[3], at 541–60. If victims brought their claims directly against the insurer for the same claims that they hold against the estate, one group of victims could obtain from the insurer the full amount of the debtor's coverage. That would obviously prevent the insurance money from being used as part of the bankruptcy estate. See Zaretsky, 55 Brooklyn L. Rev., at 376–377, 394–395.

To address those various collective-action problems, bankruptcy courts have long found non-debtor releases to be appropriate in certain complex bankruptcy cases, especially in mass-tort bankruptcies. Indeed, that is precisely why non-debtor releases emerged in asbestos mass-tort bankruptcies in the 1980s. See *id.*, at 405–414; Casey & Macey, 90 U. Chi. L. Rev., at 998–999; see, *e.g.*, *MacArthur Co.* v. *Johns-Manville Corp.*, 837 F. 2d 89 (CA2 1988). And that is precisely why non-debtor releases have become such a well-established tool in mass-tort bankruptcies in the decades since.

For example, after A. H. Robins declared bankruptcy in 1985 in the face of massive tort liability for injuries from its defective intrauterine device, the Dalkon Shield, nearly 200,000 victims filed proof of claims. *In re A. H. Robins Co.*, 88 B. R. 742, 743–744, 747 (ED Va. 1988), aff'd, 880 F. 2d 694 (CA4 1989). A plan provision releasing the company's directors and insurance company ensured that the estate would not be depleted through indemnity or contribution claims, or claims brought directly against the directors or insurer. 88 B. R., at 751; 880 F. 2d, at 700–702. Preventing the victims from engaging in "piecemeal litigation" against the non-debtor directors and insurance company was the only way to ensure "equality of treatment of similarly situated creditors." 88 B. R., at 751. Therefore, the Bankruptcy Court found (and the Fourth Circuit agreed) that the release was "necessary and essential" to the bankruptcy's success. *Ibid.*; see 880 F. 2d, at 701–702. The plan ultimately provided for the victims to recover in full, and they overwhelmingly approved the plan. *Id.*, at 700–701.

A non-debtor release provision was similarly essential to resolve hundreds of thousands of victims' tort claims against Dow Corning Corporation, which declared bankruptcy in 1995 in the face of liability for its defective silicone breast implants. See *In re Dow Corning Corp.*, 287

B. R. 396, 397 (ED Mich. 2002). The non-debtor release provision prevented the victims from suing Dow Corning's insurers and shareholders for their tort claims—which would have depleted Dow Corning's shared insurance assets and other estate assets. *Id.*, at 402–403, 406–408. The non-debtor release provision was "essential" to the bankruptcy reorganization because the reorganization hinged "on the debtor being free from indirect suits against parties who would have indemnity or contribution claims against the debtor." *In re Dow Corning Corp.*, 280 F. 3d 648, 658 (CA6 2002); 287 B. R., at 410–413.

The need for such a tool to deal with complex bankruptcy cases has not gone away. Far from it. Indeed, without the option of bankruptcy with non-debtor releases, "tort victims in several recent high-profile cases would have received less compensation; the compensation would have been unfairly distributed; and the administrative costs of resolving their claims would have been higher." Casey & Macey, 90 U. Chi. L. Rev., at 979; see also Brief for Law Professors in Support of Respondents as *Amici Curiae* 21–25; Brief for Certain Former Commissioners of the American Bankruptcy Institute's Commission To Study the Reform of Chapter 11 as *Amici Curiae* 9–11; Brief for Association of the Bar of the City of New York as *Amicus Curiae* 9, 11–15.

Consider two recent examples that ensured recovery for the victims of torts committed by the Boy Scouts of America and by several dioceses of the Catholic Church. In both cases, a national or regional organization was the debtor in the bankruptcy. But that organization shared its liability and its insurance policy with numerous other legally separate and autonomous local entities. Without a coordinating mechanism, a victim's (or group of victims') recovery against one local entity could have eaten up all of the shared insurance assets, leaving all of the other victims with nothing. Brief for Boy Scouts of America as *Amicus*

Curiae 9–14, 17–19; Brief for U. S. Conference of Catholic Bishops as *Amicus Curiae* 9–22.

Bankruptcy provided a forum to coordinate liability and insurance assets. A non-debtor release provision prevented victims from litigating outside of the bankruptcy plan's procedures. And the provision therefore prevented one victim or group of victims from obtaining all of the insurance funds before other victims recovered. As a result, in each case, the local entities were able to pool their resources to create a substantial fund in a single bankruptcy estate to compensate victims substantially and fairly. Brief for Boy Scouts of America as *Amicus Curiae* 11–12, 20–21; Brief for Ad Hoc Group of Local Councils of the Boy Scouts of America as *Amicus Curiae* 5–6; Brief for U. S. Conference of Catholic Bishops as *Amicus Curiae* 15–16.

As those examples show, in some cases where various closely related but distinct parties share liability or share assets (or both), bankruptcy "provides the *only* forum in the U. S. legal system where a unified and complete resolution of mass-tort cases can reliably occur in a manner that results in a fair recovery and distribution for all claimants." Brief for Association of the Bar of the City of New York as *Amicus Curiae* 15. And the bankruptcy system could not do so without non-debtor releases.

C

The Bankruptcy Code gives bankruptcy courts authority to approve non-debtor releases to solve the complex collective-action problems that such cases present. As noted above, a Chapter 11 reorganization plan may release creditor claims against debtors. §1123(b)(1). And a plan may settle and release debtor claims against non-debtors. §1123(b)(3).

In addition, the plan may also include "any other appropriate provision not inconsistent with the applicable provisions of" the Code. §1123(b)(6). Section 1123(b)(6) provides ample flexibility for the reorganization plan to settle and release creditor claims against non-debtors who are closely related to the debtor. For example, officers and directors may be indemnified by the debtor company; in those cases, creditor claims against indemnified non-debtors are essentially the same as creditor claims against the debtor business itself. Or the non-debtors may reach a settlement with the victims and creditors where the non-debtors pay a settlement amount to the estate, which in some cases may be the only way to ensure fair and equitable recovery for the victims and creditors. The non-debtor releases—just like debtor releases under §1123(b)(1) and non-debtor releases under §1123(b)(3)—can be essential to preserve and increase the estate's assets and can be essential to ensure fair and equitable victim and creditor recovery.

The key statutory term in §1123(b)(6) is "appropriate." As this Court has often said, "appropriate" is a "broad and all-encompassing term that naturally and traditionally includes consideration of all the relevant factors." *Michigan* v. *EPA*, 576 U. S. 743, 752 (2015) (quotation marks omitted). Because determining propriety requires exercising judgment, the inquiry must include a degree of "flexibility." *Ibid*. The Court has explained on numerous occasions that the "ordinary meaning" of a statute authorizing appropriate relief "confers broad discretion" on a court. *School Comm. of Burlington* v. *Department of Ed. of Mass.*, 471 U. S. 359, 369 (1985); see also, *e.g.*, *Sheet Metal Workers* v. *EEOC*, 478 U. S. 421, 446 (1986) (plurality opinion) (Title VII "vest[s] district courts with broad discretion to award 'appropriate' equitable relief"); *Cooter & Gell* v. *Hartmarx Corp.*, 496 U. S. 384, 400 (1990) ("In directing the district court to impose an 'appropriate' sanction, Rule 11 itself indicates that the district court is empowered to exercise its discretion"). Because the "language is open-ended on its face," whether a provision is "appropriate is inherently context dependent." *Tanzin* v. *Tanvir*, 592 U. S. 43, 49 (2020) (quotation marks omitted).

By allowing "any other appropriate provision," §1123(b)(6) empowers a bankruptcy court to exercise reasonable discretion. That §1123 confers broad discretion makes eminent sense, given "the policies of flexibility and equity built into Chapter 11 of the Bankruptcy Code." *NLRB* v. *Bildisco & Bildisco*, 465 U. S. 513, 525 (1984). Such flexibility is important to achieve Chapter 11's ever-elusive goal of ensuring fair and equitable recovery to creditors. See §§1129(a)(7), (b)(1).

The catchall authority in Chapter 11 therefore empowers a bankruptcy court to exercise its discretion to deal with complex scenarios, like the collective-action problems that plague mass-tort bankruptcies. Non-debtor releases are often appropriate—indeed are essential—in such circumstances.

And courts have therefore long found non-debtor releases to be appropriate in certain narrow circumstances under §1123(b)(6). Indeed, courts have been approving such non-debtor releases almost as long as the current Bankruptcy Code has existed since its enactment in 1978. See, *e.g.*, *In re Johns-Manville Corp.*, 68 B. R. 618, 624–626 (Bkrtcy. Ct. SDNY 1986), aff'd, 837 F. 2d, at 90; *A. H. Robins Co.*, 88 B. R., at 751, aff'd, 880 F. 2d, at 696. Historical and contemporary practice demonstrate that non-debtor releases are especially appropriate when (as here) non-debtor releases and corresponding settlement payments preserve and increase the debtor's estate and thereby ensure fair and equitable recovery for creditors.

Over those decades of practice, courts have developed and applied numerous factors for determining whether a non-debtor release is "appropriate" in a given case. §1123(b)(6); see H. Friendly, Indiscretion About Discretion, 31 Emory L. J. 747, 771–773 (1982) (noting the common-law-like process by which factors important to a discretionary decision develop over time). Those factors reflect the fact that determining whether a non-debtor release is "appropriate" is a holistic inquiry that depends on the precise facts and circumstances of each case. And the factors have served to confine the use of non-debtor releases to well-defined and narrow circumstances—precisely those circumstances where the collective-action problems arise.

For instance, since the 1980s, the Second Circuit has been a leader on the non-debtor release issue. See, *e.g.*, *Johns-Manville Corp.*, 837 F. 2d 89 (1988); *In re Drexel Burnham Lambert Group, Inc.*, 960 F. 2d 285 (1992); *In re Metromedia Fiber Network, Inc.*, 416 F. 3d 136 (2005). Over time, the Second Circuit has developed a non-exhaustive list of factors for determining whether a non-debtor release is appropriately employed and appropriately tailored in a given case.

First, and critically, the court must determine whether the released party is closely related to the debtor—for example, through an indemnification agreement—where "a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate." 69 F. 4th, at 78 (quotation marks omitted). Second, the court must determine if the claims against the non-debtor are "factually and legally intertwined" with claims against the debtor. *Ibid.* Third, the court must ensure that the "scope of the releases" is tailored to only the claims that must be released to protect the plan. *Ibid.* Fourth, even then, the court should approve the release only if it is truly "essential" to the plan's success and the reorganization would fail without it. *Ibid.* Fifth, the court must consider whether, as part of the settlement, the non-debtor party has paid "substantial assets" to the estate. *Ibid.* Sixth, the court should determine if the plan provides "fair payment" to creditors for their released claims. *Id.*, at 79. Seventh, the court must ensure that the creditors "overwhelmingly" approve of the release, which the Second Circuit defined as a 75 percent "bare minimum." *Id.*, at 78–79 (quotation marks omitted).[2]

Factors one through four ensure that the releases are necessary to solve collective-action problems that threaten the bankruptcy and prevent fair and equitable recovery for the victims and creditors. Factor five makes sure that the releases are not a free ride for the non-debtor. Factor six ensures that the victims and creditors receive fair compensation. Together, factors five and six assess whether there has been a fair settlement given the probability of victims' and creditors' recovery from the non-debtor and the likely amount of any such recovery. And factor seven ensures that the vast majority of victims and creditors approve, meaning that the release is solving a holdout problem.

As the Courts of Appeals' comprehensive factors illustrate, §1123(b)(6) limits a bankruptcy court's authority in important respects. A non-debtor release must be "appropriate" given all of the facts and circumstances of the case. And as the history of non-debtor releases illustrates, the appropriateness requirement confines the use of non-debtor releases to narrow and relatively rare circumstances where the releases are necessary to help victims and creditors achieve fair and equitable recovery.

As long as every class of victims and creditors supports the plan by a majority vote in number and at least a two-thirds vote in amount, the plan is "said to be confirmed consensually," "even if some classes have dissenting creditors." 7 Collier, Bankruptcy ¶1129.01, at 1129–13. And the Courts of Appeals have allowed non-debtor

[2] Other Courts of Appeals have used similar factors for evaluating non-debtor releases. See, *e.g.*, *In re Seaside Engineering & Surveying, Inc.*, 780 F. 3d 1070, 1079–1081 (CA11 2015); *National Heritage Foundation, Inc.* v. *Highbourne Foundation*, 760 F. 3d 344, 347–351 (CA4 2014); *In re Dow Corning Corp.*, 280 F. 3d 648, 658–661 (CA6 2002).

releases only when there is an even higher level of supermajority victim and creditor approval. In the mass-tort bankruptcy cases, most plans have easily cleared that bar and received close to 100 percent approval. *E.g.*, *Johns-Manville Corp.*, 68 B. R., at 631 (95 percent approval); *A. H. Robins Co.*, 880 F. 2d, at 700 (over 94 percent approval); *Dow Corning*, 287 B. R., at 413 (over 94 percent approval); 69 F. 4th, at 82 (over 95 percent approval here). So in reality, as opposed to rhetoric, the non-debtor releases in mass-tort bankruptcy plans, including this one, have been approved by all but a comparatively small group of victims and creditors.

In every bankruptcy of this kind, moreover, the plan nonconsensually releases victims' and creditors' claims *against the debtor*. The only difference with non-debtor releases is that they release victims' and creditors' claims not against the debtor but rather against non-debtors who are closely related to the debtor, such as indemnified officers and directors.

II

In this case, as in many past mass-tort bankruptcies, the non-debtor releases were appropriate and therefore authorized by 11 U. S. C. §1123(b)(6) of the Code. The non-debtor releases were needed to ensure meaningful victim and creditor recovery in the face of multiple collective-action problems.

A

Purdue Pharma was a pharmaceutical company owned and directed by the extended Sackler family. Brothers Arthur, Mortimer, and Raymond Sackler purchased the company in 1952. Since then, Purdue has been wholly owned by entities and trusts established for the benefit of Mortimer Sackler's and Raymond Sackler's families and descendants, and those families also closely controlled Purdue's operations.

In the 1990s, Purdue developed the drug OxyContin, a powerful and addictive opioid painkiller. Purdue aggressively marketed that drug and downplayed or hid its addictive qualities. OxyContin helped people to manage pain. But the drug's addictive qualities led to its widespread abuse. OxyContin played a central role in the opioid-abuse crisis from which millions of Americans and their families continue to suffer.

Starting in the early 2000s, governments and individual plaintiffs began to sue Purdue for the harm caused by OxyContin. In 2007, Purdue settled large swaths of those claims and pled guilty to felony misbranding of OxyContin.

But within the next decade, victims of the opioid crisis and their families, along with state and local governments fighting the crisis, began filing a new wave of lawsuits, this time also naming members of the Sackler family as defendants. Today, those claims amount to more than $40 *trillion* worth of alleged damages against Purdue and the Sacklers. (For perspective, $40 trillion is about seven times the total annual spending of the U. S. Government.)

As the litigation by victims and state and local governments mounted, the U. S. Government then brought federal criminal and civil charges against Purdue. The U. S. Government has not brought criminal charges against any of the Sacklers individually. Nor have any States brought criminal charges against any of the Sacklers individually.

As to the criminal charges against Purdue, the company pled guilty to conspiracy to defraud the United States, to violate the Food, Drug, and Cosmetic Act, and to violate the federal anti-kickback statute. As part of the global resolution of the charges, Purdue agreed to a $2 billion judgment to the U. S. Government that would be "deemed to have the status of an allowed superpriority" claim in bankruptcy. 17 App. in No. 22–110 etc. (CA2), p. 4804. The U. S. Government agreed not to "initiate any further criminal charges against Purdue." 16 *id.,* at 4798.

Unable to pay its colossal potential liabilities, Purdue filed for bankruptcy under Chapter 11 of the Bankruptcy Code. The ensuing case exemplified the flexibility and common sense of the bankruptcy system at work.

The proceedings were extraordinarily complex. The case involved "likely the largest creditor body ever," and the number of claims filed—totaling more than 600,000—was likely "a record." *In re Purdue Pharma L. P.*, 633 B. R. 53, 58 (Bkrtcy. Ct. SDNY 2021). Further complicating matters was the need to allocate funds between, on the one hand, individual victims and the hospitals that urgently needed relief and, on the other hand, government entities at all levels that urgently needed funds for opioid crisis prevention and treatment efforts. *Id*., at 83.

Aided by perhaps "the most extensive discovery process" that "any court in bankruptcy has ever seen," the parties engaged in prolonged arms-length negotiations. *Id*., at 85–86. They ultimately agreed on a multi-faceted compensation plan for the victims and creditors and reorganization plan for Purdue. Under that plan, Purdue would cease to exist and would be replaced with a new company that would manufacture opioid-abatement medications. And approximately $7 billion would be distributed among nine trusts to compensate victims and creditors and to fund efforts to abate the opioid crisis by preventing and treating addiction.

To determine how to allocate the $7 billion, the victims and creditors then engaged in a series of "heavily negotiated and intricately woven compromises" and devised a "complex allocation" of the funds to different classes of victims and creditors. *Id*., at 83, 90. In the end, more than 95 percent of voting victims and creditors approved of the distribution scheme.

That plan would distribute billions of dollars to communities to use exclusively for prevention and treatment programs. And $700 to $750 million was set aside to compensate individual tort victims and their families. 1 App. 561. Opioid victims and their families would each receive somewhere between $3,500 and $48,000 depending on the category of claim and level of harm. *Id*., at 573–584; 6 App. in No. 22–110 etc. (CA2), at 1695.

B

Under the reorganization plan, victims' and creditors' claims *against Purdue Pharma* were released (even if some victims and creditors did not consent). As in other mass-tort bankruptcies described above, a related and equally essential facet of the Purdue plan was the non-debtor release provision. Under that provision, the victims' and creditors' claims *against the Sacklers* were also released. As a result, Purdue's victims and creditors could not later sue either Purdue Pharma or members of the Sackler family (the officers and directors of Purdue Pharma) for Purdue's and the Sacklers' opioid-related activities.

The non-debtor release provision prevented a race to the courthouse against the Sacklers. As a result, the non-debtor release provision solved two separate collective-action problems that dogged Purdue's mass-tort bankruptcy: (i) It protected Purdue's estate from the risk of being depleted by indemnification claims, and (ii) it operated as a settlement of potential claims against the Sacklers and thus enabled the Sacklers' large settlement payment to the estate. That settlement payment in turn quadrupled the amount in the Purdue estate and enabled substantially greater recovery for the victims.

I will now explain both of those important points in some detail.

First, and critical to a proper understanding of this case, the non-debtor release provision was essential to *preserve*

Purdue's existing assets. By preserving the estate, the non-debtor release provision ensured that the assets could be fairly and equitably apportioned among all victims and creditors rather than devoured by one group of potential plaintiffs.

How? Pursuant to a 2004 indemnification agreement, Purdue had agreed to pay for liability and legal expenses that officers and directors of Purdue faced for decisions related to Purdue, including opioid-related decisions. See *In re Purdue Pharma L. P.*, 69 F. 4th 45, 58–59 (CA2 2023). That indemnification agreement covered judgments against the Sacklers and related legal expenses.

As explained above, the Sacklers wholly owned and controlled Purdue, a closely held corporation. The Sacklers "took a major role" in running Purdue, including making decisions about "Purdue's practices regarding its opioid products." 633 B. R., at 93. In short, the Sacklers potentially shared much of the liability that Purdue faced for Purdue's opioid practices. See *In re Purdue Pharma, L. P.*, 635 B. R. 26, 87 (SDNY 2021) (claims against the Sacklers are "deeply connected with, if not entirely identical to," claims against Purdue (quotation marks omitted)); see also 633 B. R., at 108.

But due to the indemnification agreement, if victims and creditors were to sue the Sacklers directly for claims related to Purdue or opioids, the Sacklers would have a reasonable basis to seek reimbursement from Purdue for liability and litigation costs. So Purdue could potentially be on the hook for a substantial amount of the Sacklers' liability and litigation costs. In such indemnification relationships, "a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate." 69 F. 4th, at 78 (quotation marks omitted).

As a real-world matter, therefore, opioid-related claims *against the Sacklers* could come out of the same pot of Purdue money as opioid-related claims *against Purdue*. So releasing claims against the Sacklers is not meaningfully different from releasing claims against Purdue itself, which the bankruptcy plan here of course also mandated. Both sets of releases were necessary to preserve Purdue's estate so that it was available for all victims and creditors to recover fairly and equitably. Otherwise, the estate could be zeroed out: A few victims or creditors could race to the courthouse and obtain recovery from Purdue or the Sacklers (ultimately the same pot of money) and thereby deplete the assets of the company and leave nothing for everyone else.

To fully understand why both sets of releases were necessary—against Purdue and against the Sacklers—suppose that the plan did *not* release the Sacklers from opioid- and Purdue-related liability. Victims' and creditors' opioid-related claims *against Purdue* would be discharged in Purdue's bankruptcy (even without their consent). But any victims or creditors could still sue *the Sacklers* for essentially the same claims.

Suppose that a State or a group of victims sued the Sacklers and received a large reward. The Sacklers "would have a reasonable basis to seek indemnification" from Purdue for judgments and legal expenses. *Id.*, at 72. Therefore, any liability judgments and litigation costs for certain plaintiffs in their suits *against the Sacklers* could "deplete the *res*" of *Purdue's* bankruptcy—meaning that there might well be nothing left for all of the other victims and creditors. *Id.*, at 80. Even if the Sacklers' indemnification claims against Purdue were unsuccessful, Purdue would "be required to litigate" those claims, which would likely diminish the *res*, "no matter the ultimate outcome of those claims." *Ibid.*

Every victim and creditor knows that a single judgment by someone else against the Sacklers could deplete the Purdue estate and leave nothing for anyone else. So every victim and creditor would have an incentive to race to the courthouse to sue the Sacklers. A classic collective-action problem.

The non-debtor releases of claims against the Sacklers prevented that collective-action problem in the same way that the releases of claims against Purdue itself prevented the identical collective-action problem. Both protected Purdue's assets from being consumed by the first to sue successfully. And the non-debtor releases were narrowly tailored to the problem. The non-debtor releases enjoined victims and creditors from bringing claims against the Sacklers only in cases where Purdue's conduct, or the victims' or creditors' claims asserted against Purdue, was a legal cause or a legally relevant factor to the cause of action against the Sacklers. 633 B. R., at 97–98 (defining the release to encompass only claims that "directly affect the *res* of the Debtors' estates," such as claims that would trigger the Sacklers' "rights to indemnification and contribution"); see also *id.*, at 105. In other words, the releases applied only to claims for which the Sacklers had a reasonable basis to seek coverage or reimbursement from Purdue.

The non-debtor release provision therefore released claims against the Sacklers that are essentially the same as claims against Purdue. Doing so preserved Purdue's bankruptcy estate so that it could be fairly apportioned among the victims and creditors.

Second, the non-debtor releases not only *preserved* the existing Purdue estate; those non-debtor releases also greatly *increased* the funds in the Purdue estate so that the victims and creditors could receive greater compensation.

Standing alone, Purdue's estate is estimated to be worth approximately $1.8 billion—a small fraction of the sizable claims against Purdue. *Id.*, at 90; 22 App. in No. 22–110 etc. (CA2), at 6507. If that were all the money on the table, the Bankruptcy Court found, the victims and creditors "would probably recover nothing" from Purdue's estate. 633

B. R., at 109. That is because the United States holds a $2 billion "superpriority" claim, meaning that the United States would be first in line to recover ahead of all of the victims and other creditors. The United States' claim would wipe out Purdue's entire $1.8 billion value. "As a result, many victims of the opioid crisis would go without any assistance." 69 F. 4th, at 80.

So for the victims and other creditors to have any hope of meaningful recovery, Purdue's bankruptcy estate needed more funds.

Where to find those funds? The Sacklers' assets were the answer. After vigorous negotiations, a settlement was reached: In exchange for the releases, the Sacklers ultimately agreed to make significant payments to Purdue's estate—between $5.5 and $6 billion. Adding that substantial amount to Purdue's comparatively smaller bankruptcy estate enabled Purdue's reorganization plan to distribute an estimated $7 billion or more to the victims and creditors—thereby quadrupling the size of the estate available for distribution. With that enhanced estate, the plan garnered 95 percent support from the voting victims and creditors. That high level of support tends to show that this was a very good plan for the victims and creditors. Because it led to that high level of support, the Sacklers' multi-billion-dollar payment was critical to creating a successful reorganization plan.

That payment was made possible by heavily negotiated settlements among Purdue, the victims and creditors, and the Sacklers. Most relevant here, in exchange for the Sacklers agreeing to pay billions of dollars to the bankruptcy estate, the victims and creditors agreed to release their claims against the Sacklers. The settlement—exchanging releases for the Sacklers' $5.5 to $6 billion payment—enabled the victims and creditors to avoid "the significant risk, cost and delay (potentially years) that would result from pursuing the Sacklers and related parties through litigation." 1 App. 31.

Indeed, after a 6-day trial involving 41 witnesses, the Bankruptcy Court found that the settlement provided the best chance for the victims and creditors to ever see any money from the Sacklers. See 633 B. R., at 85, 90. (That is a critical point that the Court today whiffs on.) Indeed, the Bankruptcy Court found that the victims and creditors would be unlikely to recover from the Sacklers by suing the Sacklers directly due to numerous potential weaknesses in and defenses to the victims' and creditors' legal theories. See *id.*, at 90–93, 108. Even if the suits were successful, the Bankruptcy Court expressed "significant concern" about the ability to collect any judgments from the Sacklers due to the difficulty of reaching their assets in foreign countries and in spendthrift trusts. *Id.*, at 89; see also *id.*, at 108–109.

For those reasons, the Bankruptcy Court concluded that the $5.5 to $6 billion settlement payment and the releases were fair and equitable and in the victims' and creditors' best interest. *Id.*, at 107–109, 112. The settlement amount of $5.5 to $6 billion was "properly negotiated" and "reflects the underlying strengths and weaknesses of the opposing parties' legal positions and issues of collection." *Id.*, at 93.[3]

From the victims' and creditors' perspective, "suing the Sacklers would have been a costly endeavor with a small chance of success. From the Sacklers' perspective, defending those suits would have been a costly endeavor

[3] The Court implies that some victims could recover from the Sacklers in tort litigation up to the total of their combined assets, and that the Sacklers are somehow getting off easy by paying only $5.5 to $6 billion. But the Court's belief is not rooted in reality given the Bankruptcy Court's undisputed factual findings to the contrary: Large tort recoveries against any of the Sacklers were (and remain) far from certain—and in any event would produce recoveries for only a few and leave other victims with nothing.

with a very small chance of a large liability." A. Casey & J. Macey, In Defense of Chapter 11 for Mass Torts, 90 U. Chi. L. Rev. 973, 1004 (2023). So as in many litigation settlements, the parties agreed to the $5.5 to $6 billion settlement in light of that "very small chance of a large liability." *Ibid.*

Importantly, the victims and creditors—who obviously have no love for the Sacklers—insisted on the releases of their claims against the Sacklers. Tr. of Oral Arg. 61, 93; Brief for Respondent Official Committee of Unsecured Creditors of Purdue Pharma L. P. et al. 10. Why did the releases make sense for the victims and creditors?

For starters, the releases were part of the settlement and enabled the Sacklers' $5.5 to $6 billion settlement payment. Moreover, without the releases, some of Purdue's victims and creditors—maybe a State, maybe some opioid victims—would sue the Sacklers directly for claims "deeply connected with, if not entirely identical to," claims that the victims and creditors held against Purdue. 635 B. R., at 87 (quotation marks omitted). To be sure, the Bankruptcy Court found that those suits would face significant challenges. But the victims and creditors were understandably worried, as they explained during the Bankruptcy Court proceedings, that the Sacklers would "exhaust their collectible assets fighting and/or paying ONLY the claims of certain creditors with the best ability to pursue the Sacklers in court." 1 App. 76. And if even a *single* direct suit against the Sacklers succeeded, the suit could potentially wipe out much if not all of the Sacklers' assets in one fell swoop—making those assets unavailable for the Purdue estate and therefore unavailable for all of the other the victims and creditors.

In sum, if there were no releases, and victims and creditors were therefore free to sue the Sacklers directly, one of three things would likely happen. One possibility is that no lawsuits against the Sacklers would succeed, and no victim or creditor would recover any money from them. And without the $5.5 to $6 billion settlement payment, there would be no recovery from Purdue either. Another possibility is that a large claim or claims would succeed, and the Sacklers would be indemnified by Purdue—thereby wiping out Purdue's estate for all of the other victims and creditors. Last, suppose that a large claim succeeded and that the Sacklers were not indemnified for that liability. Even in that case, only a few victims or creditors would be able to recover from the Sacklers at the expense of fair and equitable distribution to the rest of the victims and creditors.

As the Second Circuit stated, without the releases, the victims and creditors "would go without any assistance and face an uphill battle of litigation (in which a single claimant might disproportionately recover) without fair distribution." 69 F. 4th, at 80. Another classic collective-action problem.

In short, without the releases and the significant settlement payment, two separate collective-action problems stood in the way of fair and equitable recovery for the victims and creditors: (1) the Purdue estate would not be preserved for the victims and creditors to obtain recovery, and (2) the Purdue estate would be much smaller than it would be with the Sacklers' settlement payment. The releases and settlement payment solved those problems and ensured fair and equitable recovery for the opioid victims.

C

For those reasons, the Bankruptcy Court found that without the releases and settlement payment, the reorganization plan would "unravel." 633 B. R., at 107, 109. All of the "heavily negotiated and intricately woven compromises in the plan" that won the victims' and creditors' approval, *id.*, at 90, would "fall apart for lack of funding and the inevitable fighting over a far smaller and less certain recovery with its renewed focus on pursuing individual claims and races to collection." *Id.*, at 84. There simply would not be enough money to support a reorganization plan that the victims and creditors would approve.

Absent the releases and settlement payment, the Bankruptcy Court found, the "most likely result" would be liquidation of a much smaller $1.8 billion estate. *Id.*, at 90. In a liquidation, the United States would recover first with its $2 billion superpriority claim, taking for itself the whole pie. And the victims and other creditors "would probably recover nothing." *Id.*, at 109.

Given that alternative, it is hardly surprising that the opioid victims and creditors almost universally support Purdue's Chapter 11 reorganization plan and the non-debtor releases. That plan promised to obtain significant assets from the Sacklers, to preserve those assets from being depleted by litigation for a few, and to distribute those much-needed funds fairly and equitably.

As a result, the opioid victims' and creditors' support for the reorganization plan was *overwhelming*. Every victim and creditor had a chance to vote on the plan during the bankruptcy proceedings. And of those who voted, more than 95 percent approved of the plan. *Id.*, at 107.

Since then, even more victims and creditors have gotten on board. Now, all 50 States have signed on to the plan. The lineup before this Court is telling. On one side of the case: the tens of thousands of opioid victims and their families; more than 4,000 state, city, county, tribal, and local government entities; and more than 40,000 hospitals and healthcare organizations. They all urge the Court to uphold the plan.

At this point, on the other side of this case stand only a sole individual and a small group of Canadian creditors.[4]

Given all of the extraordinary circumstances, the Bankruptcy Court and Second Circuit concluded that the non-debtor releases here not only were appropriate, but were essential to the success of the plan. The Bankruptcy Court and Second Circuit thoroughly analyzed each of the relevant factors before reaching that conclusion: First, the released non-debtors (the Sacklers) closely controlled and were indemnified by the company. 69 F. 4th, at 79. Second, the claims against the Sacklers were based on essentially the same facts and legal theories as the claims against Purdue. *Id.*, at 80. Third, the releases were essential for the reorganization to succeed, because the releases protected the Purdue estate from indemnification claims and expanded the Purdue estate to enable victim and creditor recovery. *Id.*, at 80–81. Fourth, the releases were narrowly tailored to protect the estate from indemnification claims. *Ibid.* Fifth, the releases secured a substantial settlement payment to significantly increase the funds in the estate. *Id.*, at 81. Sixth, that enhanced estate allowed the plan to distribute "fair and equitable" payments to the victims and creditors. *Id.*, at 82 (quotation marks omitted). And seventh, for all those reasons, the victims and creditors do not just urgently and overwhelmingly approve of the releases, they all but demanded the releases. *Ibid.*

Congress invited bankruptcy courts to consider exactly those kinds of extraordinary circumstances when it

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[4] The regional United States Trustee for three States, a Government bankruptcy watchdog appointed to oversee bankruptcy cases in those States, also opposes the plan for reasons that remain mystifying. The U. S. Trustee purports to look out for victims and creditors, but here the victims and creditors made emphatically clear that the "U. S. Trustee does not speak for the victims of the opioid crisis" and is indeed thwarting the opioid victims' efforts at fair and equitable recovery. Tr. of Oral Arg. 93.

authorized bankruptcy plans to include "any other appropriate provision" that is "not inconsistent" with the Code. §1123(b)(6).

III

The Court decides today to reject the plan by holding that non-debtor releases are categorically impermissible as a matter of law. That decision contravenes the Bankruptcy Code. It is regrettable for the opioid victims and creditors, and for the heavily negotiated equitable distribution of assets that they overwhelmingly support. And it will harm victims in pending and future mass-tort bankruptcies. The Court's decision deprives the bankruptcy system of a longstanding and critical tool that has been used repeatedly to ensure fair and sizable recovery for victims—to repeat, recovery for *victims*—in mass torts ranging from Dalkon Shield to the Boy Scouts.

On the law, the Court's decision to reject the plan flatly contradicts the Bankruptcy Code. The Code explicitly grants broad discretion and flexibility for bankruptcy courts to handle bankruptcies of extraordinary complexity like this one. For several decades, bankruptcy courts have been employing non-debtor releases to facilitate fair and equitable recovery for victims in mass-tort bankruptcies. In this case, too, the Bankruptcy Court prudently and appropriately employed its discretion to fairly resolve a mass-tort bankruptcy.

At times, the Court seems to view the Sacklers' settlement payment into Purdue's bankruptcy estate as insufficient and the plan as therefore unfair to victims and creditors. If that were true, one might expect the fight in this case to be over whether the non-debtor releases and settlement amount were "appropriate" given the facts and circumstances of this case. 11 U. S. C. §1123(b)(6).

Yet that is not the path the Court takes. The Court does not contest the Bankruptcy Court's and Second Circuit's conclusion that a non-debtor release was necessary and appropriate for the settlement and the success of Purdue's reorganization—the best, and perhaps the only, chance for victims and creditors to receive fair and equitable compensation. Indeed, no party has challenged the Bankruptcy Court's factual findings or made an argument that non-debtor releases were used inappropriately in this specific case.

Instead, the Court categorically decides that non-debtor releases are *never* allowed as a matter of law. The text of the Bankruptcy Code does not remotely support that categorical prohibition.[5]

As explained, §1123(b)(6)'s catchall authority affords bankruptcy courts broad discretion to approve "any other appropriate provision not inconsistent with the applicable provisions" of the Bankruptcy Code. Recall that §1123(b)(1) expressly authorizes releases of victims' and creditors' claims against the debtor company—here, against Purdue.

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[5] To remind the reader of §1123(b)'s lengthy text: A "plan may—

"(1) impair or leave unimpaired any class of claims, secured or unsecured, or of interests;

"(2) subject to section 365 of this title, provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under such section;

"(3) provide for—

"(A) the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or

"(B) the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest;

"(4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;

"(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and

"(6) include any other appropriate provision not inconsistent with the applicable provisions of this title."

And recall that §1123(b)(3) expressly authorizes settlements and releases of the debtor company's claims against non-debtors—here, against the Sacklers. Section 1123(b)(6)'s catchall authority is easily broad enough to allow settlements and releases of the same victims' and creditors' claims against the same non-debtors (the Sacklers), who are indemnified by the debtor and who made a large settlement payment to the debtor's estate. After all, the Second Circuit stated that in indemnification relationships "a suit against the non-debtor is, in essence, a suit against the debtor." *In re Purdue Pharma L. P.*, 69 F. 4th 45, 78 (2023) (quotation marks omitted). And even when the officers and directors are not indemnified, the releases may enable a settlement where the non-debtor makes a sizable payment to the estate that can be fairly and equitably distributed to the victims and creditors, rather than being zeroed out by the first successful suit.

A

So how does the Court reach its atextual and ahistorical conclusion? The Court primarily seizes on the canon of *ejusdem generis*, an interpretive principle that "limits general terms that follow specific ones to matters similar to those specified." *CSX Transp., Inc.* v. *Alabama Dept. of Revenue*, 562 U. S. 277, 294 (2011) (quotation marks and alteration omitted). But the Court's use of that canon here is entirely misguided.

The *ejusdem generis* canon "applies when a drafter has tacked on a catchall phrase at the end of an enumeration of specifics, as in *dogs, cats, horses, cattle, and other animals*." A. Scalia & B. Garner, Reading Law 199 (2012); see also *id.*, at 200–208 ("trays, glasses, dishes, or other tableware"; "gravel, sand, earth or other material"; and numerous other similar lists (quotation marks omitted)); W. Eskridge, Interpreting Law 77 (2016) ("automobiles, motorcycles, and other mechanisms for conveying persons or things" (quotation marks omitted)).

As a general matter, as Justice Scalia explained for the Court, a catchall at the end of the list should be construed to cover "matters not specifically contemplated—known unknowns." *Republic of Iraq* v. *Beaty*, 556 U. S. 848, 860 (2009). That is the "whole value of a generally phrased residual clause." *Ibid.* Or stated otherwise, the fact that "a statute can be applied in situations not expressly anticipated by Congress does not demonstrate ambiguity. It demonstrates breadth." *Pennsylvania Dept. of Corrections* v. *Yeskey*, 524 U. S. 206, 212 (1998) (quotation marks omitted).

The *ejusdem generis* canon can operate to narrow a broad catchall term in certain circumstances. The canon "parallels common usage," reflecting the assumption that when "the initial terms all belong to an obvious and readily identifiable genus, one presumes that the speaker or writer has that category in mind for the entire passage." Scalia & Garner, Reading Law, at 199. The canon in essence "implies the addition" of the term "similar" in the catchall so that the catchall does not extend so broadly as to defy common sense. *Ibid.* Rather, the catchall extends to similar things or actions that serve the same statutory "purpose." *Id.*, at 208.

Here, the Court applies the canon to breezily conclude that there is an "obvious link" through §§1123(b)(1)–(5) that precludes a non-debtor release provision being approved under §1123(b)(6). *Ante,* at 11. The obvious link, according to the Court, is that plan provisions must "concern *the debtor*—its rights and responsibilities, and its relationship with its creditors." *Ibid.*

As an initial matter, the Court does not explain why its supposed common thread excludes the non-debtor releases at issue here. Those releases obviously "concern" the debtor in multiple overlapping respects. *Ibid.* As explained, Purdue's bankruptcy plan released the Sacklers only for claims based on *the debtor's* (Purdue's) misconduct. See 69 F. 4th, at 80 (releasing only claims to which Purdue's conduct was "a legal cause or a legally relevant factor to the cause of action" (quotation marks omitted)). The releases therefore applied only to claims held by *the debtor's* victims and creditors. And the releases protected *the debtor* from indemnification claims. So the non-debtor releases here did not just "concern" the debtor, they were critical to the debtor's reorganization.

So the Court's purported "link" manages the rare feat of being so vague ("concerns the debtor"?) as to be almost meaningless—and if not meaningless, so broad as to plainly cover non-debtor releases. It is hard to conjure up a weaker *ejusdem generis* argument than the one put forth by the Court today.

In any event, even on its own terms, the Court's *ejusdem generis* argument is dead wrong for two independent reasons. First, the Court's purported common thread is factually incorrect as a description of (b)(1) to (b)(5). Second, and independent of the first point, black-letter law says that the *ejusdem generis* canon requires looking at the "evident purpose" of the statute in order to discern a common thread. Scalia & Garner, Reading Law, at 208; see Eskridge, Interpreting Law, at 78. And here, the Court's purported common thread ignores (and indeed guts) the evident purpose of §1123(b).

First, the Court's purported common thread is factually incorrect. The Court says that the "obvious link" through paragraphs (b)(1) to (b)(5) is that all are limited to "*the debtor*—its rights and responsibilities, and its relationship with its creditors." *Ante,* at 11. But in multiple respects, that assertion is not accurate.

For one thing, paragraph (b)(3) allows a bankruptcy court to modify the rights of debtors with respect to *non-debtors*. Under (b)(3), a bankruptcy court may approve a reorganization plan that settles, adjusts, or enforces "any claim" that the debtor holds against non-debtor third parties. That provision allows the debtor's estate to enter into a settlement agreement with a third party, where the estate agrees to release its claims against the third party in exchange for a settlement payment to the bankruptcy estate. And the bankruptcy court has the power to approve such a settlement if it finds the settlement fair and in the best interests of the estate. The bankruptcy court may later enforce that settlement. See generally 7 Collier on Bankruptcy ¶1123.02[3] (R. Levin & H. Sommer eds., 16th ed. 2023).

Importantly, in some cases, including this one, the debtor's creditors may hold derivative claims against that same non-debtor third party for the same "harm done to the estate." 69 F. 4th, at 70 (quotation marks omitted). So when the debtor settles with the non-debtor third party, that settlement also extinguishes the creditors' derivative claims against the non-debtor. And the creditors' consent is not necessary to do so.

To connect the dots: A plan provision settling the debtor's claims against non-debtors under (b)(3) therefore *nonconsensually extinguishes creditors' derivative claims against those non-debtors*. That fact alone defeats the Court's conclusion that §§1123(b)(1)–(5) deal only with relations between the debtor and creditors. If a plan provision under (b)(3) can nonconsensually release some of the creditors' derivative claims against a non-debtor, a plan provision under the catchall in (b)(6) that nonconsensually releases some of the creditors' direct claims against those same non-debtors is easily of a piece—basically the same thing.

This case illustrates the point. Some of the more substantial assets of Purdue's estate are fraudulent transfer claims worth $11 billion that Purdue holds against the non-debtor Sacklers. *In re Purdue Pharma L. P.*, 633

B. R. 53, 87 (Bkrtcy. Ct. SDNY 2021). Under (b)(3), as part of its reorganization plan, Purdue settled the fraudulent transfer claims with the non-debtor Sacklers. The Bankruptcy Court approved that settlement as fair and equitable. *Id.*, at 83–95. That settlement resolved the claims that likely would have had "the best chance of material success among all of the claims against" the Sacklers. *Id.*, at 109; see also *id.*, at 83.

Notably, the result of that settlement was to also *nonconsensually* extinguish the victims' and creditors' derivative fraudulent transfer claims against the Sacklers. In the absence of the bankruptcy proceeding, victims and creditors could have litigated the fraudulent transfer claims themselves as derivative claims. But because Purdue settled the claims under §1123(b)(3), the victims and creditors could no longer do so.

Moreover, not all victims and creditors consented to the release of those derivative claims. But no one disputes that the Bankruptcy Code authorized that nonconsensual non-debtor release of derivative claims. See 69 F. 4th, at 70 (that conclusion is "well-settled").

The plan therefore released both the estate's claims against the Sacklers *and* highly valuable derivative claims that the victims and creditors held against the Sacklers. Paragraph (b)(3) therefore demonstrates that §1123(b) reaches beyond just creditor-debtor relationships, particularly when the relationship between creditors and other non-debtors can affect the estate. That indisputable point alone defeats the Court's conclusion that §1123(b)'s provisions relate only to the debtor and do not allow releases of claims that victims and creditors hold against non-debtors.

The Court tries to sidestep that conclusion by distinguishing derivative claims from direct claims. Releases of derivative claims, the Court says, are authorized by paragraph (b)(3) "because those claims belong to the debtor's estate." *Ante,* at 12. No doubt. But the question then becomes whether releases of direct claims under (b)(6)'s catchall are relevantly similar to releases of derivative claims that all agree are authorized under (b)(3). The answer in this case is yes. Here, both the derivative and direct claims against the Sacklers are held by the same victims and creditors, and both the derivative and direct claims against the Sacklers could deplete Purdue's estate.

The Court's purported common thread is further contradicted by several other kinds of non-debtor releases that "are commonplace, important to the bankruptcy system, and broadly accepted by the courts and practitioners as necessary and proper" plan provisions under §1123(b)(6). Brief for American College of Bankruptcy as *Amicus Curiae* 3.

Three examples illustrate the point: consensual non-debtor releases, full-satisfaction non-debtor releases, and exculpation clauses.

Consensual non-debtor releases are routinely included in bankruptcy plans even though those releases apply to claims by victims or creditors against non-debtors—just like the claims here. And it is "well-settled that a bankruptcy court may approve" such consensual releases. 69 F. 4th, at 70; see also Brief for American College of Bankruptcy as *Amicus Curiae* 5–7.

Consensual releases are uncontroversial, but they are not expressly authorized by the Bankruptcy Code. So the only provision that could possibly supply authority to include those releases in the bankruptcy plan is the catchall in §1123(b)(6).

The Court today does not deny that consensual releases are routine in the bankruptcy context and that courts have long approved them. See *ante*, at 18–19. But where, on the Court's reading of the Bankruptcy Code, would the bankruptcy court obtain the authority to enter and later enforce that consensual release?

One suggestion is that the authority comes from the parties' consent and is akin to a "contractual agreement." Tr. of Oral Arg. 33. But that theory does not explain what provision of the Bankruptcy Code authorizes consensual releases *in bankruptcy plans*. After all, contracts are enforceable under state law, ordinarily in state courts. But in bankruptcy, consensual releases are routinely part of a reorganization plan with voting overseen by the bankruptcy court and conditions enforceable by the bankruptcy court. See Brief for American College of Bankruptcy as *Amicus Curiae* 4–7.

To reiterate, the only provision that could provide such authority is §1123(b)(6). So if the Court thinks that a consensual release can be part of the plan, even the Court must acknowledge that §1123(b)(6) can reach creditors' claims against non-debtors.

The Court's purported common thread is still further contradicted by yet another regular bankruptcy practice: full-satisfaction releases. Full-satisfaction releases provide full payment for creditors' claims against non-debtors and then release those claims. When a full-satisfaction release is included in a reorganization plan, the bankruptcy court exercises control over creditors' claims against non-debtors.

Again, the only provision that could possibly supply authority to include those full-satisfaction releases in a bankruptcy plan is the catchall in §1123(b)(6). Any contract-law theory would not work for full-satisfaction releases, given that holdout creditors often refuse to consent to full-satisfaction releases. See, *e.g.*, *In re A. H. Robins Co.*, 880 F. 2d 694, 696, 700, 702 (CA4 1989); *In re Boy Scouts of Am. and Del. BSA, LLC*, 650 B. R. 87, 115–116, 141 (Del. 2023). So if full-satisfaction releases are to be allowed, §1123(b)(6) must be read to reach creditor claims against non-debtors, even without consent.

The Court does not deny that consensual non-debtor releases and full-satisfaction releases might be permissible under §1123(b)(6). *Ante*, at 19. If they are permissible, then the Court's purported *ejusdem generis* common thread is thoroughly eviscerated because those releases involve claims by victims or creditors against non-debtors, just like here. (And if the Court instead means to hold open the possibility that consensual and full-satisfaction releases are actually impermissible, then its holding today is even more extreme than it appears.)

Exculpation clauses are yet another example. Exculpation clauses shield the estate's fiduciaries and other professionals (non-debtors) from liability for their work on the reorganization plan. See Brief for American College of Bankruptcy as *Amicus Curiae* 9. Without such exculpation clauses, "competent professionals would be deterred from engaging in the bankruptcy process, which would undermine the main purpose of chapter 11—achieving a successful restructuring." *Id.*, at 11; see also Brief for Highland Capital Management, L. P. as *Amicus Curiae* 3–5. For that reason, bankruptcy courts routinely approve exculpation clauses under §1123(b)(6). For exculpation clauses to be allowed, however, §1123(b)(6) must be read to reach creditor claims against non-debtors. So exculpation clauses further refute the Court's purported common thread.

The fact that plan provisions under §1123(b)(6) can reach non-debtors finds still more support in this Court's only case to analyze the catchall authority in §1123(b)(6), *United States* v. *Energy Resources Co.* The plan provision in *Energy Resources* ordered the IRS, a creditor, to apply the debtor's tax payments to trust-fund tax liability before other kinds of tax liability. *United States* v. *Energy Resources Co.*, 495 U. S. 545, 547 (1990). Importantly, if the debtor did not pay the trust-fund tax liability, then non-debtor officers of the company would be on the hook. *Ibid.* So the plan provision served to protect the company's non-debtor officers from "personal liability" for those taxes.

In re Energy Resources Co., 59 B. R. 702, 704 (Bkrtcy. Ct. Mass. 1986). In exchange for that protection, a non-debtor officer contributed funds to the bankruptcy plan. *Ibid.*

Echoing the Court today, the IRS objected to that plan, arguing that the bankruptcy court exceeded its authority under (b)(6) in part because there was no provision in the Code that expressly supported the plan provision. *Energy Resources*, 495 U. S., at 549–550. But this Court disagreed with the IRS and approved the plan based on the "residual authority" in (b)(6). *Id.*, at 549.

The plan provision in *Energy Resources* operated akin to a non-debtor release: It reduced the potential liability of a non-debtor (the non-debtor's officers) to another non-debtor (the IRS). *Energy Resources* therefore further demonstrates that plan provisions under §1123(b)(6) can affect creditor–non-debtor relationships.

In sum, the Court's statement that §1123(b) reaches only "*the debtor*—its rights and responsibilities, and its relationship with its creditors," *ante,* at 11, is factually incorrect several times over. Paragraphs 1123(b)(3) and (b)(6) already allow plans to affect creditor claims against non-debtors, such as through releases of creditors' derivative claims, consensual releases, full-satisfaction releases, and exculpation clauses. And this Court's precedent in *Energy Resources* confirms the point. The Court's *ejusdem generis* argument rests on quicksand.

Second, independent of those many flaws, the Court's entire approach to *ejusdem generis* is wrong from the get-go. When courts face a statute with a catchall, it is black-letter law that courts must try to discern the common thread by examining the "evident purpose" of the statute. Scalia & Garner, Reading Law, at 208; see also *Begay* v. *United States*, 553 U. S. 137, 146 (2008) (defining common thread "in terms of the Act's basic purposes"); Eskridge, Interpreting Law, at 78 ("statutory purpose" helps identify the common thread in *ejusdem generis* cases).[6]

Importantly, this Court has already explained that the purpose of §1123(b) is to grant bankruptcy courts "broad power" to approve plan provisions "necessary for a reorganization's success." *Energy Resources*, 495 U. S., at 551. *Energy Resources* demonstrates that the common thread of §1123(b) is bankruptcy court action to preserve the estate and ensure fair and equitable recovery for creditors. See, *e.g.*, *Pioneer Investment Services Co.* v. *Brunswick Associates L. P.*, 507 U. S. 380, 389 (1993); *NLRB* v. *Bildisco & Bildisco*, 465 U. S. 513, 528 (1984); J. Feeney & M. Stepan, 2 Bankruptcy Law Manual §11:1 (5th ed. 2023).

As explained at length above, to maximize recovery, the Court must solve complex collective-action problems. And for a bankruptcy court to solve all of the relevant collective-action problems, §§1123(b)(1)–(5) give the bankruptcy court broad power to modify parties' rights without their consent—most notably, to release creditors' claims against the debtor. §1123(b)(1). Under that provision, the Purdue plan released the victims' and creditors' claims *against Purdue* in order to prevent a collective-action problem in distributing Purdue's assets—and thereby to preserve the estate and ensure fair and equitable recovery for victims and creditors.

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[6] The Court protests that we are looking to the "purpose" of the statute. But in *ejusdem generis* cases, courts are *required* to look at "purpose" in order to determine the common link, as Scalia and Garner and Eskridge all say, and as *Begay* indicated. That is longstanding black-letter law. And even outside the *ejusdem generis* context, the Court's allergy to the word "purpose" is strange. After all, "words are given meaning by their context, and context includes the purpose of the text. The difference between textualist interpretation" and "purposive interpretation is not that the former never considers purpose. It almost always does," but "the purpose must be derived from the text." A. Scalia & B. Garner, Reading Law 56 (2012).

The non-debtor release provision approved under §1123(b)(6) does the same thing and serves that same statutory purpose. As discussed above, the victims' and creditors' claims against the non-debtor Purdue officers and directors (the Sacklers) are essentially the same as their claims against Purdue. The claims against the Sacklers rest on the same legal theories and facts as the claims against Purdue, largely the Sacklers' opioid-related decisions in running Purdue. And the Sacklers are indemnified by Purdue's estate for their liability. So any liability could potentially come out of the Purdue estate just like the claims against Purdue itself.

Therefore, the nonconsensual releases against the Sacklers are not only of a similar genus, but in effect *the same thing* as the nonconsensual releases against Purdue that everyone agrees §1123(b)(1) already authorizes. Both were necessary to preserve the estate and prevent collective-action problems that could drain Purdue's estate, and thus both were necessary to enable Purdue's reorganization plan to succeed and to equitably distribute assets. And without the releases, there would be no settlement, meaning no $5.5 to $6 billion payment by the Sacklers to Purdue's estate. That would mean either that no victim or creditor could recover anything from the Sacklers (or indeed from Purdue), or that only a few victims or creditors could recover from the Sacklers at the expense of fair and equitable distribution to everyone else.

The statute's evident purpose therefore easily answers the *ejusdem generis* inquiry here. Absent other limitations and restrictions in the Code, §1123(b)(6) authorizes a bankruptcy court to modify parties' claims that could otherwise threaten to deplete the bankruptcy estate when doing so is necessary to preserve the estate and provide fair and equitable recovery for creditors.

In light of the "evident purpose" of §1123(b) to preserve the estate and ensure fair and equitable recovery for creditors in the face of collective-action problems, Scalia & Garner, Reading Law, at 208; see Eskridge, Interpreting Law, at 78, the Court's *ejusdem generis* theory simply falls apart.

In sum, for each of two independent reasons, the Court's *ejusdem generis* argument fails. First, its common thread is factually wrong. And second, its purported common thread disregards the evident purpose of §1123(b).

B

Despite the fact that non-debtor releases address the very collective-action problem that the bankruptcy system was designed to solve, the Court next trots out a few minimally explained arguments that non-debtor release provisions are "inconsistent with" various provisions of the Bankruptcy Code, including: (i) §524(g)'s authorization of non-debtor releases in asbestos cases; (ii) §524(e)'s statement that debtors' discharges do not automatically affect others' liabilities; and (iii) the Code's various restrictions on bankruptcy discharges. None of those arguments is persuasive.

First, the Court cites §524(g), which was enacted in 1994 to expressly authorize non-debtor releases in a specific context: cases involving mass harm "caused by the presence of, or exposure to, asbestos or asbestos-containing products." §524(g)(2)(B)(i)(I). From the fact that §524(g) allows non-debtor releases in the asbestos context, the Court infers that non-debtor releases are prohibited in other contexts. *Ante,* at 15.

But the very text of §524(g) *expressly precludes* the Court's inference. The statute says: "Nothing in [§524(g)] shall be construed to modify, impair, or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan of reorganization." 108 Stat. 4117, note following 11 U. S. C. §524. Congress expressly authorized non-debtor releases in one specific context that was critically urgent in 1994 when it was enacted. But Congress also enacted the corresponding rule of construction into binding statutory text to "make clear" that §524(g) did not "alter" the bankruptcy courts' ability to use non-debtor release mechanisms as appropriate in other cases. 140 Cong. Rec. 27692 (1994).

Keep in mind that Congress enacted §524(g) in the early days of non-debtor releases, soon after bankruptcy courts began approving non-debtor releases in asbestos cases. See, *e.g.*, *In re Johns-Manville Corp.*, 68 B. R. 618, 621–622 (Bkrtcy. Ct. SDNY 1986), aff'd, 837 F. 2d 89, 90 (CA2 1988); *UNARCO Bloomington Factory Workers* v. *UNR Industries, Inc.*, 124 B. R. 268, 272, 278–279 (ND Ill. 1990). Section 524(g) set forth a detailed scheme sensitive to the specific needs of asbestos mass-tort litigation that was then engulfing and overwhelming American courts. For example, because asbestos injuries often have a long latency period, asbestos mass-tort bankruptcies needed to account for unknown claimants who could come out of the woodwork in the future. See Bankruptcy Reform Act of 1994, 108 Stat. 4114–4116; *In re Johns-Manville Corp.*, 68 B. R., at 627–629.

But as explained above, throughout the history of the Code and at the time §524(g) was enacted, bankruptcy courts were also issuing non-debtor releases in other contexts as well, such as in the Dalkon Shield mass-tort bankruptcy case. *A. H. Robins Co.*, 880 F. 2d, at 700–702; see also, *e.g.*, *In re Drexel Burnham Lambert Group, Inc.*, 960 F. 2d 285, 293 (CA2 1992) (securities litigation context). Congress therefore made clear that enacting §524(g) for the urgent asbestos cases did not disturb bankruptcy courts' preexisting authority to issue such releases in other cases.

Bottom line: The Court's reliance on §524(g) directly contravenes the actual statutory text.

Second, the Court cites §524(e), which states that a plan's discharge of the debtor "does not affect the liability of any other entity on . . . such debt." By its terms, §524(e) does not purport to preclude releases of creditors' claims against non-debtors. (And were the rule otherwise, even consensual releases would be prohibited as well.)

Notably, Congress changed §524(e) to its current wording in 1979. Before 1979, the statute arguably did preclude releases of claims against non-debtors who were co-debtors with a bankrupt company. See 11 U. S. C. §34 (1976 ed.) (repealed Oct. 1, 1979) ("The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt *shall not* be altered by the discharge of such bankrupt" (emphasis added)). But Congress then changed the law. And the text now means only that the discharge of the debtor does not *itself* automatically wipe away the liability of a non-debtor. Section 524(e) does not speak to the issue of non-debtor releases or other steps that a plan may take regarding the liability of a non-debtor for the same debt. As the American College of Bankruptcy says, "Section 524(e) is agnostic as to third-party releases." Brief for American College of Bankruptcy as *Amicus Curiae* 6, n. 3; see also *In re Airadigm Communications, Inc.*, 519 F. 3d 640, 656 (CA7 2008).

Third, citing §§523(a), 524(a), and 541(a), the Court says that the plan improperly grants a "discharge" to the Sacklers. *Ante,* at 4, 14–15. And the Court suggests that giving the Sacklers a "discharge" in Purdue's bankruptcy plan in exchange for $5.5 to $6 billion allows the Sacklers to get away too easy—without filing for bankruptcy themselves, without having to comply with the Code's various restrictions, and without paying enough. See *ante,* at 14–15. That point also fails.

To begin, the premise is incorrect. The Sacklers did not receive a bankruptcy discharge in this case. Discharge is a term of art in the Bankruptcy Code. *Wainer* v. *A. J. Equities, Ltd.*, 984 F. 2d 679, 684 (CA5 1993); J. Silverstein, Hiding in Plain View: A Neglected Supreme Court Decision

Resolves the Debate Over Non-Debtor Releases in Chapter 11 Reorganizations, 23 Emory Bkrtcy. Developments J. 13, 130 (2006). When a debtor in bankruptcy receives a discharge, most (if not all) of their pre-petition debts are released, giving the debtor a fresh start. See §1141(d)(1) (Chapter 11 discharge relieves the debtor "from any debt that arose before the date of" plan confirmation, with narrow exceptions); *Taggart* v. *Lorenzen*, 587 U. S. 554, 556, 558 (2019). The Sacklers did not receive such a discharge.

As courts have always recognized, non-debtor releases are different. Non-debtor releases "do not offer the umbrella protection of a discharge in bankruptcy." *Johns-Manville Corp.*, 837 F. 2d, at 91. Rather, non-debtor releases are accompanied by settlement payments to the estate by the non-debtor. So non-debtor releases are simply one part of a settlement of pending or potential claims against the non-debtor that arise out of some torts committed by the debtor. They are in essence a traditional litigation settlement. They are not a blanket discharge for the non-debtor.

Here, therefore, the releases apply only to certain claims against the Sacklers—namely, those "that arise out of or relate to" Purdue's bankruptcy. *Ibid.*; see 69 F. 4th, at 80 (releasing the Sacklers only for claims to which Purdue's conduct was "a legal cause or a legally relevant factor to the cause of action" (quotation marks omitted)). And the non-debtor releases were negotiated in exchange for a significant settlement payment that enabled *Purdue's* bankruptcy reorganization to succeed.

In short, the releases do not grant discharges to non-debtors and cannot be disallowed on that basis.

Next, the Court suggests that the Sacklers must file for bankruptcy themselves in order to be released from liability. That, too, is incorrect. Nowhere does the Code say that a non-debtor may be released from liability only by filing for bankruptcy. On the contrary, §1123(b)(3) of the Code already expressly allows a bankruptcy plan to release a non-debtor from liability to the debtor.

The Court's suggestion that a non-debtor must file for bankruptcy in order to be released from liability not only is directly at odds with the text of the Code, but also is at odds with reality. Non-debtor releases are often used in situations where it is not possible or practicable for the non-debtors to simply file for individual bankruptcies. This case is just one example. The "Sacklers are not a simple group of a few defendants" that could simply have declared one bankruptcy. 633 B. R., at 88. They are "a large family divided into two sides, Side A and Side B, with eight pods or groups of family members within those divisions," many of whom live abroad (beyond bankruptcy jurisdiction). *Ibid.* And their assets are spread across trusts that are likely beyond the jurisdiction of U. S. courts as well. *Ibid.*; see also *id.*, at 109.

Likewise, in many other mass-tort bankruptcy cases, released non-parties could not simply declare their own bankruptcies either. Insurers, for example, cannot declare bankruptcy just because a policy limit is reached. B. Zaretsky, Insurance Proceeds in Bankruptcy, 55 Brooklyn L. Rev. 373, 394–395, and n. 60 (1989). And in cases involving hundreds of affiliated entities who share liability and share insurance, such as the Boy Scouts and the Catholic Church, it would be almost impossible to coordinate assets and ensure equitable victim recovery across hundreds of distinct bankruptcies. Section §1123(b)(6) provides bankruptcy courts with flexibility to deal with such situations by approving appropriate non-debtor releases. See Brief for Boy Scouts of America as *Amicus Curiae* 18–20; Brief for Ad Hoc Group of Local Councils of the Boy Scouts of America as *Amicus Curiae* 6; Brief for U. S. Conference of Catholic Bishops as *Amicus Curiae* 3–4, 17–22.

The Court next says that the non-debtor release allowed the Sacklers to bypass certain restrictions on discharges—for example, that individual debtors are generally not discharged for fraud claims, §523(a). That argument fails for the same reason. Non-debtor releases are part of a negotiated settlement of potential tort claims. They are not a discharge. And nothing in §523(a) prohibits a debtor's reorganization plan from *releasing* non-debtors for fraud claims. Indeed, it is undisputed that Purdue's bankruptcy could release the Sacklers from at least some fraud claims—namely, the fraudulent transfer claims—under §1123(b)(3). No provision in the Code forbids releasing other fraud claims against the Sacklers, too. The Court's concern that the releases apply to claims for "fraud," *ante,* at 15, therefore falls flat.

In all of those scattershot arguments, the Court seems concerned that the Sacklers' $5.5 to $6 billion settlement payment was not enough. To begin with, even if that were true, it would not be a reason to *categorically* disallow non-debtor releases as a matter of law, as the Court does today. In any event, that concern is unsupported by the record and contradicted by the Bankruptcy Court's undisputed findings of fact. The Bankruptcy Court found that the creditors' and victims' ability to recover directly from any of the Sacklers in tort litigation was far from certain. So as in other tort settlements, the settlement amount here reflected the parties' assessments of their probabilities of success and the likely amount of possible recovery. The Court today has no good basis for its subtle second-guessing of the settlement amount.

And lest we miss the forest for the trees, keep in mind that the victims and creditors have no incentive to short their own recoveries or to let the Sacklers off easy. They despise the Sacklers. Yet they strongly support the plan. They call the settlement a "remarkable achievement." Brief for Respondent Ad Hoc Group of Individual Victims of

Purdue Pharma, L. P. et al. 2. And given the high level of victim and creditor support, the Bankruptcy Court emphasized: "[T]his is *not* the Sacklers' plan," and "anyone who contends to the contrary" is "simply misleading the public." 633 B. R., at 82.

The Court today unfortunately falls into that trap. And it is rather paternalistic for the Court to tell the victims that they should have done better—and then to turn around and leave them with potentially nothing.

C

Finally, the Court suggests that non-debtor releases are not "appropriate" because they are inconsistent with history and practice. That, too, is seriously mistaken.

Importantly, Congress did not enact the current Bankruptcy Code—and with it, §1123(b)(6)—until 1978. Bankruptcy Code of 1978, 92 Stat. 2549. For nearly the entire life of the Code, courts have approved non-debtor release provisions like this one. So for decades, Chapter 11 of the Code has been understood to grant authority for such releases when appropriate and necessary to the success of the reorganization.[7]

The Court's citations to pre-Bankruptcy Code cases are an off-point deflection and do not account for important and relevant changes made in the current Bankruptcy Code.

[7] See, *e.g.*, *In re Johns-Manville Corp.*, 68 B. R. 618, 624–626 (Bkrtcy. Ct. SDNY 1986), aff'd, 837 F. 2d 89, 90, 93–94 (CA2 1988); *In re A. H. Robins Co.*, 88 B. R. 742, 751 (ED Va. 1988), aff'd, 880 F. 2d 694, 700–702 (CA4 1989); *UNARCO Bloomington Factory Workers* v. *UNR Industries, Inc.*, 124 B. R. 268, 272, 278–279 (ND Ill. 1990); *In re Drexel Burnham Lambert Group, Inc.*, 960 F. 2d 285, 293 (CA2 1992); *In re Master Mortgage Inv. Fund, Inc.*, 168 B. R. 930, 938 (Bkrtcy. Ct. WD Mo. 1994); *In re Dow Corning Corp.*, 280 F. 3d 648, 653 (CA6); *In re Airadigm Communications, Inc.*, 519 F. 3d 640, 655–658 (CA7 2008); *In re Seaside Engineering & Surveying, Inc.*, 780 F. 3d 1070, 1081 (CA11 2015); *In re Boy Scouts of Am. and Del. BSA, LLC*, 650 B. R. 87, 112, 135–143 (Del. 2023). I could add dozens more citations to this footnote. But the point is clear.

For example, unlike the former Bankruptcy Act of 1898, the modern Bankruptcy Code grants courts jurisdiction over "suits between third parties which have an effect on the bankruptcy estate." *Celotex Corp.* v. *Edwards*, 514 U. S. 300, 307, n. 5 (1995); see 28 U. S. C. §§157(a), 1334(b) (giving bankruptcy courts jurisdiction over any litigation "related to" the bankruptcy).

Under the current Bankruptcy Code, it is well settled that Chapter 11 bankruptcies can and do affect relationships between creditors and non-debtors who are intimately related to the bankruptcy. For example, under the modern Bankruptcy Code, bankruptcy courts routinely use their broad jurisdiction and equitable powers to stay any litigation—even litigation entirely between third parties—that would affect the bankruptcy estate. *Celotex*, 514 U. S., at 308–310.

The longstanding practice of staying litigation that could affect the bankruptcy estate is similar in important respects to non-debtor releases. In each situation, a provision of the Code provides an explicit authority: to stay litigation involving the debtor, §362, and to release claims involving the debtor, §§1123(b)(1), (3). And in each, the bankruptcy court invokes its broad jurisdiction and equitable power to "augment" that authority, extending it to litigation and claims against non-debtors that might have a "direct and substantial adverse effect" on the bankruptcy estate. *Celotex*, 514 U. S., at 303, 310.

In short, the common and long-accepted practice of staying litigation that could affect the bankruptcy estate shows that under the modern Code, bankruptcy courts can and do exercise control over relationships between creditors and non-debtors. The Court's reliance on pre-Code practice is misplaced.[8]

IV

As I see it, today's decision makes little sense legally, practically, or economically. It upends the carefully negotiated Purdue bankruptcy plan and the prompt and substantial recovery guaranteed to opioid victims and creditors. Now the opioid victims and creditors are left holding the bag, with no clear path forward. To reiterate the words of the victims: "Without the release, the plan will unravel," and "there will be no viable path to any victim recovery." Tr. of Oral Arg. 100.

The Court does not say what should happen next. The Court seems to hope that a new deal is possible, with the Sacklers buying off the last holdouts.

But even if it were true that the parties could eventually reach a new deal, that outcome would likely come at a cost. Future negotiations and litigation would mean additional litigation expense that eats away at the recovery that the opioid victims and creditors have already negotiated, as well as years of additional delay even though victims and family members want and need relief *now*.

And more to the point, without non-debtor releases, a new deal will be very difficult to achieve. By eliminating nonconsensual non-debtor releases, today's decision gives every victim and every creditor an absolute right to sue the Sacklers. Some may hold out from any potential future settlement and instead sue because they want to have their day in court to hold the defendants accountable, or because they want to try to hit the jackpot of a large recovery that they can keep all to themselves. Moreover, because every

[8] The Court insists that pre-Code practice "may inform our work." *Ante*, at 17, n. 6. But pre-Code practice certainly does not play a role when that practice has been superseded by an express provision of the modern Bankruptcy Code.

victim and creditor knows that the Sacklers' resources are limited, they will now have an incentive to promptly sue the Sacklers before others sue. To be sure, the victims and creditors would face an uphill climb in any such litigation, the Bankruptcy Court found, so it may be that no one will succeed in tort litigation against the Sacklers, meaning that no one will get anything. But even if just one of the victims or creditors—say, a State or a group of victims—is successful in a suit against the Sacklers, its judgment "could wipe out all of the collectible Sackler assets," which in turn could also deplete Purdue's estate and leave nothing for any other victim or creditor. *Id.*, at 103. That reality means that everyone has an incentive to race to the courthouse to sue the Sacklers pronto—the classic collective-action problem.

Because some victims or creditors may hold out from any potential future settlement for any one of those reasons and instead still sue, the Sacklers are less likely to settle with anyone in the first place. Maybe the clouds will part. But in a world where nonconsensual non-debtor releases are categorically impermissible, any hope for a new deal seems questionable—indeed, the parties to the bankruptcy label it "pure fantasy." Brief for Debtor Respondents 4.

The bankruptcy system was designed to prevent that exact sort of collective-action problem. Non-debtor releases have been indispensable to solving that problem and ensuring fair and equitable *victim recovery* in multiple bankruptcy proceedings of extraordinary scale—not only opioids, but also many other mass-tort cases involving asbestos, the Boy Scouts, the Catholic Church, silicone breast implants, the Dalkon Shield, and others.

The Court's apparent concern that the Sacklers' settlement payment of $5.5 to $6 billion was not enough should have led at most to a remand on whether the releases were "appropriate" under 11 U. S. C. §1123(b)(6) (if anyone had raised that argument here, which they have not). But instead the Court responds with the dramatic step of repudiating the plan and eliminating non-debtor releases altogether.

The Court's decision today jettisons a carefully circumscribed and critically important tool that bankruptcy courts have long used and continue to need to handle mass-tort bankruptcies going forward. The text of the Bankruptcy Code does not come close to requiring such a ruinous result. Nor does its structure, context, or history. Nor does hostility to the Sacklers—no matter how deep: "Nothing is more antithetical to the purpose of bankruptcy than destroying estate value to punish someone." A. Casey & J. Macey, In Defense of Chapter 11 for Mass Torts, 90 U. Chi. L. Rev. 973, 1017 (2023). Gutting this longstanding bankruptcy court practice is entirely counterproductive, and simply inflicts still more injury on the opioid victims.

Opioid victims and other future victims of mass torts will suffer greatly in the wake of today's unfortunate and destabilizing decision. Only Congress can fix the chaos that will now ensue. The Court's decision will lead to too much harm for too many people for Congress to sit by idly without at least carefully studying the issue. I respectfully dissent.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

TRUCK INSURANCE EXCHANGE *v.* KAISER GYPSUM CO., INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 22–1079. Argued March 19, 2024—Decided June 6, 2024

Petitioner Truck Insurance Exchange is the primary insurer for companies that manufactured and sold products containing asbestos. Two of those companies, Kaiser Gypsum Co. and Hanson Permanente Cement (Debtors), filed for Chapter 11 bankruptcy after facing thousands of asbestos-related lawsuits. As part of the bankruptcy process, the Debtors filed a proposed reorganization plan (Plan). That Plan creates an Asbestos Personal Injury Trust (Trust) under 11 U. S. C. §524(g), a provision that allows Chapter 11 debtors with substantial asbestos-related liability to fund a trust and channel all present and future asbestos-related claims into that trust. Truck is contractually obligated to defend each covered asbestos personal injury claim and to indemnify the Debtors for up to $500,000 per claim. For their part, the Debtors must pay a $5,000 deductible per claim, and assist and cooperate with Truck in defending the claims. The Plan treats insured and uninsured claims differently, requiring insured claims to be filed in the tort system for the benefit of the insurance coverage, while uninsured claims are submitted directly to the Trust for resolution.

Truck sought to oppose the Plan under §1109(b) of the Bankruptcy Code, which permits any "party in interest" to "raise" and "be heard on any issue" in a Chapter 11 bankruptcy. Among other things, Truck argues that the Plan exposes it to millions of dollars in fraudulent claims because the Plan does not require the same disclosures and authorizations for insured and uninsured claims. Truck also asserts that the Plan impermissibly alters its rights under its insurance policies. The District Court confirmed the Plan. It concluded, among other things, that Truck had limited standing to object to the Plan because the Plan was "insurance neutral," *i.e.,* it did not increase Truck's prepetition obligations or impair its contractual rights under its insurance policies. The Fourth Circuit affirmed, agreeing that Truck was not a "party in interest" under §1109(b) because the plan was "insurance neutral."

Held: An insurer with financial responsibility for bankruptcy claims is a "party in interest" under §1109(b) that "may raise and may appear and be heard on any issue" in a Chapter 11 case. Pp. 7–15.

(a) Section 1109(b)'s text, context, and history confirm that an insurer such as Truck with financial responsibility for a bankruptcy claim is a "party in interest" because it may be directly and adversely affected by the reorganization plan. Pp. 7–13.

(1) Section 1109(b)'s text is capacious. To start, it provides an illustrative but not exhaustive list of parties in interest, all of which are directly affected by a reorganization plan either because they have a financial interest in the estate's assets or because they represent parties that do. This Court has observed that Congress uses the phrase "party in interest" in bankruptcy provisions when it intends the provision to apply "broadly." *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N. A.*, 530 U. S. 1, 7. This understanding aligns with the ordinary meaning of the terms "party" and "interest," which together refer to entities that are potentially concerned with, or affected by, a proceeding. The historical context and purpose of §1109(b) also support this interpretation. Congress consistently has acted to promote greater participation in reorganization proceedings. That expansion of participatory rights continued with the enactment of §1109(b). Broad participation promotes a fair and equitable reorganization process. Pp. 7–11.

(2) Applying these principles, insurers such as Truck are parties in interest. An insurer with financial responsibility for bankruptcy claims can be directly and adversely affected by the reorganization proceedings in myriad ways. In this case, for example, Truck will have to pay the vast majority of the Trust's liability, and §524(g)'s channeling injunction, which stays any action against the Debtors, means that Truck would stand alone in carrying that financial burden. According to Truck, however, a plan that lacks the disclosure requirements for the uninsured claims risks exposing Truck to millions of dollars in fraudulent tort claims. The Government frames Truck's interest slightly differently, but the result is the same: Where a proposed plan "allows a party to put its hands into other people's pockets, the ones with the pockets are entitled to be fully heard and to have their legitimate objections addressed." *In re Global Indus. Technologies, Inc.*, 645 F. 3d 201, 204.

Providing Truck an opportunity to be heard is consistent with

§1109(b)'s purpose of promoting a fair and equitable reorganization process. Here, the Plan eliminates the Debtors ongoing liability, and claimants similarly have little incentive to propose barriers to their ability to recover from Truck. Truck may well be the only entity with an incentive to identify problems with the Plan. Pp. 11–13.

(b) The Court of Appeals looked exclusively at whether the Plan altered Truck's contract rights or its "quantum of liability." This approach, known as the "insurance neutrality" doctrine, is conceptually wrong and makes little practical sense. Conceptually, the doctrine conflates the merits of an objection with the threshold party in interest inquiry. The §1109(b) inquiry asks whether the reorganization proceedings might affect a prospective party, not how a particular reorganization plan actually affects that party. Practically, the doctrine is too limited in its scope. By focusing on the insurer's prepetition obligations and policy rights, the doctrine wrongly ignores all the other ways in which bankruptcy proceedings and reorganization plans can alter and impose obligations on insurers and debtors. The fact that Truck's financial exposure may be directly and adversely affected by a plan is sufficient to give Truck a right to voice its objections. Finally, in resisting the text of §1109(b), the Debtors emphasize the risks of allowing "peripheral parties" to derail a reorganization. This "parade of horribles" argument cannot override the statute's text, and in any event, §1109(b) provides parties in interest only an opportunity to be heard—not a vote or a veto in the proceedings. In all events, the Court today does not opine on the outer bounds of §1109. Difficult cases may require courts to evaluate whether truly peripheral parties have a sufficiently direct interest to be heard. This case is not one of them because insurers such as Truck with financial responsibility for claims are not peripheral parties. Pp. 13–15.

60 F. 4th 73, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which all other Members joined, except ALITO, J., who took no part in the consideration or decision of the case.

SUPREME COURT OF THE UNITED STATES

No. 22–1079

TRUCK INSURANCE EXCHANGE, PETITIONER *v.* KAISER GYPSUM COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[June 6, 2024]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

The Bankruptcy Code allows any "party in interest" to "raise" and "be heard on any issue" in a Chapter 11 bankruptcy. 11 U. S. C. §1109(b). The question in this case is whether an insurer with financial responsibility for a bankruptcy claim is a "party in interest" under this provision.

Truck Insurance Exchange (Truck) is the primary insurer for companies that manufactured and sold products containing asbestos. Those companies filed for Chapter 11 bankruptcy after facing thousands of asbestos-related lawsuits. Truck is obligated to pay up to $500,000 per asbestos claim covered under its insurance contracts with the companies. Truck sought to object to the companies' bankruptcy reorganization plan primarily because the plan lacked disclosure requirements that Truck thought could save it from paying millions of dollars in fraudulent claims.

The Court of Appeals concluded that Truck was not a "party in interest" because the reorganization plan was "insurance neutral"; that is, the plan neither increased Truck's prepetition obligations nor impaired its rights under the insurance contracts. This Court disagrees. The insurance neutrality doctrine conflates the merits of an insurer's objection with the threshold §1109(b) question of who qualifies as a "party in interest." Section 1109(b) asks whether the reorganization proceedings might directly affect a prospective party, not how a particular reorganization plan actually affects that party.

Truck is a "party in interest" under §1109(b). An insurer with financial responsibility for a bankruptcy claim is sufficiently concerned with, or affected by, the proceedings to be a "party in interest" that can raise objections to a reorganization plan. Section 1109(b) grants insurers neither a vote nor a veto; it simply provides them a voice in the proceedings.

I

A

Bankruptcy offers individuals and businesses in financial distress a fresh start to reorganize, discharge their debts, and maximize the property available to creditors. "Chapter 11 of the Bankruptcy Code enables a debtor company to reorganize its business under a court-approved plan governing the distribution of assets to creditors." *U. S. Bank N. A.* v. *Village at Lakeridge, LLC*, 583 U. S. 387, 389 (2018). This plan, which is primarily the product of negotiations between the debtor and creditors, "govern[s] the distribution of valuable assets from the debtor's estate and often keep[s] the business operating as a going concern." *Czyzewski* v. *Jevic Holding Corp.*, 580 U. S. 451, 455 (2017). Chapter 11 strikes "a balance between a debtor's interest in reorganizing and restructuring its debts and the creditors' interest in maximizing the value of the bankruptcy estate." *Florida Dept. of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U. S. 33, 51 (2008).

Section 1109(b) of the Bankruptcy Code addresses which stakeholders can participate, and to what extent, in these reorganization proceedings:

> "A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter."

A "party in interest" enjoys certain rights in the proceedings, including the ability to file a Chapter 11 plan when a trustee has been appointed, 11 U. S. C. §1121(c)(1); request the appointment or removal of a trustee, §§1104, 1105; challenge the good faith of persons voting to approve a plan, §1126(e); and object to confirmation of a plan, §1128(b).

B

This case concerns the Chapter 11 reorganization of companies facing overwhelming asbestos liability. Exposure to asbestos, a natural mineral used in industrial work, has led to devastating health consequences for millions of people. See National Cancer Institute, Asbestos Exposure and Cancer Risk (Nov. 29, 2021). Companies filing for bankruptcy because of asbestos liability face unique challenges. "'[B]ecause of a latency period that may last as long as 40 years for some asbestos related diseases, a continuing stream of claims can be expected.'" *Amchem Products, Inc.* v. *Windsor*, 521 U. S. 591, 598 (1997). Claims therefore arrive on a long and unpredictable timeline. If bankruptcy proceedings resolved only existing asbestos liability, companies would face unknown future liability and claimants might be unable to recover just because their injuries had not yet manifested.

Congress responded to these challenges in §524(g) of the Bankruptcy Code. This section allows a Chapter 11 debtor with substantial asbestos-related liability to establish and fund a trust that assumes the debtor's liability for "damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products." §524(g)(2)(B)(i)(I). Section 524(g) then channels all present and future claims into the trust by "enjoin[ing] entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery" for claims "to be paid in whole or in part by [the] trust." Finally, §524(g) imposes safeguards, including the appointment of a representative to protect the interest of future claimants, §524(g)(4)(B)(i); treatment of "present claims and future demands that involve similar claims in substantially the same manner," §524(g)(2)(B)(ii)(V); and approval from at least 75% of current claimants, §524(g)(2)(B)(ii)(IV)(bb). This all "ensure[s] that health claims can be asserted only against the Trust and that [the company's] operating entities will be protected from an onslaught of crippling lawsuits that could jeopardize the entire reorganization effort." *Kane* v. *Johns-Mansville Corp.*, 843 F. 2d 636, 640 (CA2 1988). It also ensures that "future claimants" are "treated identically to the present claimants." *Ibid.*

C

Kaiser Gypsum Company, Inc., and its parent company, Hanson Permanente Cement, Inc., manufactured and sold products that, at some point, contained asbestos. The companies faced tens of thousands of asbestos-related lawsuits as a result. To resolve their liabilities, both companies (Debtors) filed for Chapter 11 bankruptcy. The Bankruptcy Court in turn appointed representatives for the current and future asbestos claimants (Claimants). The Debtors eventually agreed on a proposed reorganization plan (Plan) with the Claimants, various creditors and government agencies, and all but one of their insurance providers.

The Plan creates a §524(g) Asbestos Personal Injury Trust (Trust) that assumes the Debtors' liabilities and is funded by the Debtors and their parent company. The Plan also transfers "all of the Debtors' rights" under their insurance contracts to the Trust, including "all rights to coverage and insurance proceeds." App. to Pet. for Cert. 181a.

Truck was the Debtors' primary insurer. It issued policies that covered the Debtors from 1965 through 1983. Truck is contractually obligated to defend each covered asbestos personal injury claim and typically indemnify the Debtors for up to $500,000 per claim. The Debtors have to pay a $5,000 deductible per claim, and assist and cooperate with Truck in defending against the claims. The Plan required the Bankruptcy Court to make a finding that the Debtors' conduct in the bankruptcy proceedings neither violated this assistance-and-cooperation duty nor breached any implied covenant of good faith and fair dealing (Plan Finding).

The Plan treats insured and uninsured claims differently. Insured claims are filed "in the tort system to obtain the benefit of [the] insurance coverage." *Id.,* at 241a. Truck has to defend these lawsuits, and if the claimant obtains a favorable judgment, the Trust pays the deductible and Truck pays up to $500,000 per claim. Uninsured claims, however, are submitted directly to the Trust for resolution. As part of that process, claimants have to identify "all other [related] claims" and file a release authorizing the Trust to obtain documentation from other asbestos trusts about other submitted claims. See 2 App. 428–431. These disclosure requirements are intended to reduce fraudulent and duplicative claims.[1]

Truck was the only party involved in the bankruptcy that

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[1] Without these requirements, Truck contends, it can be difficult to trace an asbestos injury to a particular exposure or to identify earlier claims against other entities. Knowing a claimant's other exposures and claims helps prevent inflated recoveries. The Debtors and Claimants contend that Truck was not entitled to these disclosures before bankruptcy and could still obtain them in discovery in the tort system. That ignores the practical and legal consequences of the Debtors' bankruptcy petition. See *infra*, at 14. Indeed, in recent years, "nearly every Section 524(g) trust has included almost identical fraud-prevention measures to protect debtors and their insurers." Brief for Petitioner 10. In any event, these are merits arguments on which Truck is entitled to be heard.

did not support the Plan. It advanced three main objections. First, and most relevant here, the Plan was not "proposed in good faith," 11 U. S. C. §1129(a)(3), "because it reflected a collusive agreement between the Debtors and claimant representatives," and did not require "the same disclosures and authorizations" for insured and uninsured claims, *In re Kaiser Gypsum Co.*, 60 F. 4th 73, 80 (CA4 2023). This "disparate treatment would expose [Truck] to millions of dollars in fraudulent tort claims." *Ibid.* Second, the Plan Finding impermissibly altered Truck's rights under its insurance policies "by relieving the Debtors of their assistance-and-cooperation obligations and by barring Truck from raising the Debtors' bankruptcy conduct as a defense in future coverage disputes." *Ibid.* Third, the Trust did not comply with various provisions of §524(g), including the requirement to "deal equitably with claims and future demands," as required by §524(g)(2)(B)(ii)(III).

Following the Bankruptcy Court's recommendation, the District Court confirmed the Plan. Relevant here, it concluded that "Truck has limited standing to object to the Plan solely on the grounds that the Plan is not insurance neutral." *In re Kaiser Gypsum Co.,* 2021 WL 3215102, *27 (WDNC, July 28, 2021). The court found, however, that the Plan was "insurance neutral" because it "neither increase[d] Truck's obligations nor impair[ed] its prepetition contractual rights under the Truck Policies. The Plan simply restore[d] Truck to its position immediately prior to the Petition Date." *Id.*, at *26. The court also rejected Truck's challenge to the Plan Finding because the Plan expressly provided that the Debtors "will continue to fulfill their cooperation obligations arising under" the policies. *Id.,* at *27.

The Fourth Circuit affirmed, agreeing with the District Court that Truck was not a "party in interest" under §1109(b) because the Plan did not "increase [Truck's] prepetition obligations or impair [Truck's] pre-petition policy rights." 60 F. 4th, at 83. In other words, the Plan was "insurance neutral" because it did not "alte[r] Truck's prebankruptcy 'quantum of liability'" given that Truck was "not entitled" to the "fraud-prevention measures" it sought. *Id.*, at 87. The court also concluded that the Plan Finding did not alter Truck's contractual rights and that the Debtors did not "breach their assistance-and-cooperation obligations or the implied covenant of good faith and fair dealing." *Id.,* at 84.

This Court granted certiorari to decide whether an insurer with financial responsibility for a bankruptcy claim is a "party in interest" under §1109(b). 601 U. S. ___ (2023).[2]

II

Courts must determine on a case-by-case basis whether a prospective party has a sufficient stake in reorganization proceedings to be a "party in interest." Section 1109(b)'s text, context, and history confirm that an insurer such as Truck with financial responsibility for a bankruptcy claim is a "party in interest" because it may be directly and adversely affected by the reorganization plan.

A

Section 1109(b) permits any "party in interest" to "appear and be heard on any issue" in a Chapter 11 proceeding. This text is capacious. To start, §1109(b) provides an illustrative but not exhaustive list of parties in interest. See *supra*, at 3. A common thread uniting the seven listed parties is that each may be directly affected by a reorganization plan either because they have a financial interest in the estate's assets (the debtor, creditor, and equity security

[2] The courts below also addressed whether Truck is a "party in interest" on the separate basis that it is "a creditor." 11 U. S. C. §1109(b). Because this Court holds that Truck is a "party in interest" based on its insurer status, the Court does not address alternative arguments based on Truck's creditor status.

holder) or because they represent parties that do (a creditors' committee, an equity security holders' committee, a trustee, and an indenture trustee). "The general theory behind [§1109(b)] is that anyone holding a direct financial stake in the outcome of the case should have an opportunity (either directly or through an appropriate representative) to participate in the adjudication of any issue that may ultimately shape the disposition of his or her interest." 7 Collier on Bankruptcy ¶1109.01 (16th ed. 2023). This understanding aligns with this Court's observation that Congress uses the phrase "'party in interest'" in bankruptcy provisions when it intends the provision to apply "broadly." *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N. A.*, 530 U. S. 1, 7 (2000) (quoting 11 U. S. C. §502(a)).

The ordinary meaning of the terms "party" and "interest" confirms this. "Party" in this context is best understood as "[a] person who constitutes or is one of those who compose . . . one or [the] other of the two sides in an action or affair; one concerned in an affair; a participator; as, a *party* in interest." Webster's New International Dictionary 1784 (2d ed. 1949). "Interest" is best understood as "[c]oncern, or the state of being concerned or affected, esp[ecially] with respect to advantage, personal or general." *Id.,* at 1294. The plain meaning of the phrase thus refers to entities that are potentially concerned with or affected by a proceeding.[3] The parties in this case land on roughly this same definition. See Brief for Petitioner 26 (defining "party in interest" as anyone that may be "'directly and adversely affected' by

[3] Legal dictionaries from the time of §1109(b)'s enactment and onward similarly define the phrase "party in interest." See Ballentine's Law Dictionary 920 (3d ed. 1969) (defining "party in interest" as a "party to an action who has an actual interest in the controversy, as distinguished from a nominal party"); cf. Black's Law Dictionary 1122 (6th ed. 1990) ("Primary meaning ascribed the term 'party in interest' in bankruptcy cases is one whose pecuniary interest is directly affected by the bankruptcy proceeding").

the reorganization" (alterations omitted)); Brief for Debtor-Side Respondents 29 ("To the extent Truck acknowledges that a 'party in interest' under Section 1109(b) is someone 'directly and adversely affected by the reorganization,' the parties are in violent agreement"); Brief for Claimant Respondents 1 (similar).[4]

The historical context and purpose of §1109(b) also support this interpretation. Congress consistently has acted to promote greater participation in reorganization proceedings. Section 77B of the Bankruptcy Act of 1898, for example, provided debtors the right to be heard on all issues, but limited the right of creditors and stockholders to only certain issues. See 11 U. S. C. §207 (1946 ed.). Section 206 of the Bankruptcy Act of 1938 broadened participation and provided that "[the] debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter." §606. Although the 1938 Act allowed a "party in interest" to intervene "for cause shown," it permitted only

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[4] The phrase "party in interest" appears in other statutory contexts. The Court's analysis of the term today does not apply across all other, unrelated statutory schemes. The term's meaning elsewhere will turn on the text, structure, context, history, and purpose of those statutory provisions, just as it does here. Still, precedent confirms that this Court's interpretation of §1109(b) is not an outlier. See, *e.g.*, *Western Pacific California R. Co.* v. *Southern Pacific Co.*, 284 U. S. 47, 51–52 (1931) (competitor railroad was a "party in interest" under the Transportation Act of 1920 because the challenged railroad expansion had the potential to "directly and adversely affect the complainant's welfare by bringing about some material change in the transportation situation"); *L. Singer & Sons* v. *Union Pacific R. Co.*, 311 U. S. 295, 304 (1940) (food vendors were not a "party in interest" under the Transportation Act of 1920 because a "person engaged in business within or adjacent to a public market" was only "indirectly and consequentially affected" by a railroad "seeking only to serve a competing market by means of an extension"); *Alton R. Co.* v. *United States*, 315 U. S. 15, 19–20 (1942) (railroad companies were "parties in interest" under the Motor Carrier Act of 1935 because they were "directly affected by competition with the motor transport industry").

the four named parties to intervene as of right. Still, the Advisory Committee's Note to Former Chapter X, Bkrtcy. Rule 10–210(a) (1976), which implemented §206, noted that the section "was originally enacted to broaden the practice that had developed upon former §77 . . . . This broader concept was to insure fair representation and to prevent excessive control over the proceedings by insider groups." 11 U. S. C. App., p. 1445 (1976 ed.).

In 1978, Congress enacted the Bankruptcy Code containing §1109(b), which continued the expansion of participatory rights in reorganization proceedings. Congress moved from an exclusive list to the general and capacious term "party in interest," accompanied by a nonexhaustive list of parties in interest. These parties "may raise and may appear and be heard on any issue." 11 U. S. C. §1109(b). "Section 206 . . . and Chapter X Rule 10–210(a), the predecessor provisions of section 1109(b) of the Code, constituted an effort to encourage and promote greater participation in reorganization cases. . . . Section 1109(b) continues in this tradition and should be understood in the same way." *In re Amatex Corp.*, 755 F. 2d 1034, 1042 (CA3 1985).

Now consider the purpose of §1109(b). Broad participation promotes a fair and equitable reorganization process. The Bankruptcy Code seeks to prevent "the danger inherent in any reorganization plan proposed by a debtor" that "the plan will simply turn out to be too good a deal for the debtor's owners." *Bank of America Nat. Trust and Sav. Assn.* v. *203 North LaSalle Street Partnership*, 526 U. S. 434, 444 (1999); see also *ibid.* (discussing Congress's concern that "'a few insiders, whether representatives of management or major creditors, [could] use the reorganization process to gain an unfair advantage'"). Section 1109(b) addresses this concern. "[D]rafters and early commentators hoped that an expansive definition [of "party in interest" in §1109(b)] would allow a broad range of individual and minority interests to intervene in Chapter 11 cases, and expressly warned that undue restrictions on who may be a party in interest might enable dominant interests to control the restructuring process." D. Dick, The Chapter 11 Efficiency Fallacy, 2013 B. Y. U. L. Rev. 759, 774–775 (2014). In short, §1109(b) was "designed to serve . . . the policies of inclusion underlying the chapter 11 process." 7 Collier on Bankruptcy ¶1109.02.

B

Applying these principles, the Court holds that insurers such as Truck with financial responsibility for bankruptcy claims are parties in interest.

Bankruptcy reorganization proceedings can affect an insurer's interests in myriad ways. A reorganization plan can impair an insurer's contractual right to control settlement or defend claims. A plan can abrogate an insurer's right to contribution from other insurance carriers. Or, as alleged here, a plan may be collusive, in violation of the debtor's duty to cooperate and assist, and impair the insurer's financial interests by inviting fraudulent claims. The list goes on. See, *e.g.*, Brief for American Property Casualty Insurance Association et al. as *Amici Curiae* 16–17 (American Property Brief) ("For example, a plan that purports to maintain an insurer's coverage defenses could nonetheless allow claims at amounts far above their actual value and out of line with the claimants' injuries or the payment of claims for which little to no proof of injury is required"). An insurer with financial responsibility for bankruptcy claims can be directly and adversely affected by the reorganization proceedings in these and many other ways, making it a "party in interest" in those proceedings.

Take Truck, for example. Truck will have to pay the vast majority of the Trust's liability—up to $500,000 per claim for thousands of covered asbestos-injury claims. The proposed Plan would have Truck stand alone in carrying the financial burden, because the §524(g) channeling injunction "permanently and forever stay[s], restrain[s] and enjoin[s]" any action against Debtors, App. to Pet. for Cert. 178a, and other "[e]ntities, other than Asbestos Insurers," *id.*, at 201a. According to Truck, however, a plan that lacks the disclosure requirements for the uninsured claims risks exposing Truck "to millions of dollars in fraudulent tort claims." 60 F. 4th, at 80. That potential financial harm—attributable to Truck's status as an insurer with financial responsibility for bankruptcy claims—gives Truck an interest in bankruptcy proceedings and whatever reorganization plan is proposed and eventually adopted.

The Government frames Truck's interest in a slightly different but substantively identical way. According to the Government, Truck is a party in interest because it "is a party to a contract with the debtor that is property of the estate and may be interpreted, assigned, or otherwise affected by the Chapter 11 proceedings." Brief for United States as *Amicus Curiae* 13. This is just another side of the same coin. Those executory contracts are the ones that give insurers an interest in the proceedings and, in this case, make Truck financially responsible for the bankruptcy claims. So, whether Truck's direct interest is framed as its executory contracts or instead its obligations resulting from those contracts, it cashes out in the same way: Where a proposed plan "allows a party to put its hands into other people's pockets, the ones with the pockets are entitled to be fully heard and to have their legitimate objections addressed." *In re Global Indus. Technologies, Inc.*, 645 F. 3d 201, 204 (CA3 2011).

This opportunity to be heard is consistent with §1109(b)'s purpose. In this case, neither the Debtors nor the Claimants have an incentive to limit the postconfirmation cost of defending or paying claims. For the Debtors, the Plan eliminates all of their ongoing liability. The Claimants similarly have little incentive to propose barriers to their ability to recover from Truck. Truck may well be the only entity with an incentive to identify problems with the Plan. This "realignment of the insured's economic incentives . . . makes participation in the bankruptcy by insurers—who will ultimately be asked to foot the bill for most or all of those claims—critical." American Property Brief 15–16.

III

The Court of Appeals looked exclusively to whether the Plan altered Truck's contract rights or its "quantum of liability." Under this approach, known as the "insurance neutrality" doctrine, courts ask if the plan "increase[s] the insurer's pre-petition obligations or impair[s] the insurer's pre-petition policy rights." 60 F. 4th, at 83, 87. This doctrine is conceptually wrong and makes little practical sense.

Conceptually, the insurance neutrality doctrine conflates the merits of an objection with the threshold party in interest inquiry. The §1109(b) inquiry asks whether the reorganization proceedings might affect a prospective party, not how a particular reorganization plan actually affects that party. Indeed, §1109(b) cannot "depend on a plan-specific rule—that standard would be unusable for the Code provisions empowering a party in interest to request acts unrelated to a specific plan or that occur before a plan is confirmed or even proposed." Reply Brief 11; see also *supra*, at 3 (a party in interest, for example, can file a Chapter 11 plan when a trustee has been appointed or request the appointment and removal of a trustee). Practically, the insurance neutrality doctrine is too limited in its scope. It zooms in on the insurer's prepetition obligations and policy rights. That wrongly ignores all the other ways in which bankruptcy proceedings and reorganization plans can alter and impose obligations on insurers. See *supra*, at 11–12.

In defending the decision below, the Debtors and Claimants contend that Truck faces similar exposure in the tort system before and after bankruptcy, in part because Truck was not entitled to the disclosure provisions before the bankruptcy. That may be so, but this argument suffers from the same flaw identified above—at bottom, it concerns the merits of whether the Plan should include the disclosure provisions for insured claims in accordance with §§524(g) and 1129. See *supra*, at 5–6 (describing Truck's objections). Whether and how the particular proposed Plan here affects Truck's prepetition and postpetition obligations and exposure is not the question. The fact that Truck's financial exposure may be directly and adversely affected by a plan is sufficient to give Truck (and other insurers with financial responsibility for bankruptcy claims) a right to voice its objections in reorganization proceedings. The Debtors' and Claimants' argument also ignores the practical and legal consequences of the Debtors' bankruptcy proceedings and reorganization plan. They transformed the Debtors' asbestos liabilities into bankruptcy claims that Truck will now have to indemnify through the Trust without the protections of disclosure requirements in place for uninsured claims filed directly with the Trust.

Finally, in resisting the text of §1109(b), the Debtors emphasize the risk of allowing "'peripheral parties' to derail a reorganization." Brief for Debtor-Side Respondents 33. To start, a "parade of horribles" argument generally cannot "surmount the plain language of the statute." *Arthur Andersen LLP* v. *Carlisle*, 556 U. S. 624, 629 (2009). Moreover, §1109(b) provides parties in interest only an opportunity to be heard—not a vote or a veto in the proceedings.[5] In all events, the Court today does not opine on the outer bounds of §1109. Of course, a party in interest is "not intended to

[5] Bankruptcy courts also have equitable discretion to control participation in a proceeding. See, *e.g.*, 11 U. S. C. §105(a) ("No provision of [the Code] providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process").

include literally every conceivable entity that may be involved in or affected by the chapter 11 proceedings." 7 Collier on Bankruptcy ¶1109.03. There may be difficult cases that require courts to evaluate whether truly peripheral parties have a sufficiently direct interest. This case is not one of them. Insurers such as Truck with financial responsibility for claims are not peripheral parties.

* * *

Section 1109(b) provides parties in interest a voice in bankruptcy proceedings. An insurer with financial responsibility for bankruptcy claims is a "party in interest" that may object to a Chapter 11 plan of reorganization.

The judgment of the United States Court of Appeals for the Fourth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE ALITO took no part in the consideration or decision of this case.

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

OFFICE OF THE UNITED STATES TRUSTEE *v.* JOHN Q. HAMMONS FALL 2006, LLC, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 22–1238. Argued January 9, 2024—Decided June 14, 2024

Two Terms ago, in *Siegel* v. *Fitzgerald*, 596 U. S. 464, the Court held that a statute violated the Bankruptcy Clause's uniformity requirement because it permitted different fees for Chapter 11 debtors depending on the district where their case was filed. In this case, the Court is asked to determine the appropriate remedy for that constitutional violation. As noted in *Siegel*, there are three options: (1) refund fees for the thousands of debtors charged higher fees in districts administered by the U. S. Trustee Program, (2) retroactively extract higher fees from the small number of debtors charged lower fees in districts administered by the Bankruptcy Administrator Program, or (3) require only prospective fee parity. See *id.*, at 480.

As in *Siegel*, this case arises from a case filed in a U. S. Trustee district. In 2016, 76 legal entities filed for Chapter 11 bankruptcy in the District of Kansas. In 2018, under the amended fee statute the Court later found unconstitutional in *Siegel*, the debtors began paying higher fees than they would have if their case had been filed in a Bankruptcy Administrator district. In 2020, the debtors challenged the constitutionality of those fees. The Bankruptcy Court found no constitutional violation, but the Tenth Circuit, anticipating *Siegel*, reversed. To remedy the constitutional violation, the Tenth Circuit ordered a refund of the debtors' quarterly fees to the extent they exceeded the lower fees paid in the Bankruptcy Administrator districts. This Court vacated that judgment and remanded the case in light of *Siegel*, and the Tenth Circuit reinstated its original opinion without alteration.

Held: Prospective parity is the appropriate remedy for the short-lived and small disparity created by the fee statute held unconstitutional in *Siegel*. Pp. 5–16.

(a) Across remedial contexts, "the nature of the violation determines the scope of the remedy." *Swann* v. *Charlotte-Mecklenburg Bd. of Ed.*, 402 U. S. 1, 16. Three aspects of the Court's holding in *Siegel* are relevant here. First, the violation identified was nonuniformity, not high fees. Second, the fee disparity was short lived, lasting only from 2018 to 2021. Third, the disparity was small: 98% of the relevant class of debtors still paid uniform fees. Pp. 5–7.

(b) To determine the appropriate remedy for this short-lived and small disparity, the Court asks "what the legislature would have willed had it been apprised of the constitutional infirmity." *Sessions* v. *Morales-Santana*, 582 U. S. 47, 74. In cases involving unequal treatment, the Court focuses on two considerations: Congress's "intensity of commitment" to the more broadly applicable rule, and "the degree of potential disruption to the statutory scheme that would occur" if the Court were to extend the exception. *Id.,* at 75. Here, faced with the short-lived and small fee disparity created by the constitutional violation identified in *Siegel*, Congress would have wanted prospective parity, not a refund or retrospective raising of fees.

To start, Congress has demonstrated intense commitment to the more broadly applicable rule, higher fees in U. S. Trustee districts. That commitment stems from Congress's desire for the U. S. Trustee program to "be funded in its entirety by user fees." *Siegel*, 596 U. S., at 469. In light of this desire, it is not surprising that, in the 2017 fee statute at issue in *Siegel*, Congress chose to address a funding shortfall for the U. S. Trustee program by raising fees on the largest Chapter 11 debtors. In 2021, when Congress amended the fee statute to require uniform fees, it kept fees at an elevated level "to further the long-standing goal of Congress of ensuring that the bankruptcy system is self-funded." §2(b), 134 Stat. 5086.

Now consider the disruption that would follow from extending the exception, lower fees in Bankruptcy Administrator districts. Retrospectively lowering fees for all relevant debtors in U. S. Trustee districts would cost approximately $326 million. Thus, in mandating a refund, this Court would transform a program Congress designed to be self-funding into an enormous bill for taxpayers. On top of that, respondents' proposed refund would almost certainly exacerbate the existing fee disparity.

The only remaining question, then, is whether Congress would have wanted to retrospectively impose higher fees on debtors in Bankruptcy Administrator districts. The best evidence that Congress would not want such a remedy is that Congress itself chose not to pursue that course when amending the fee statute in 2021. Congress's choice makes sense. Retrospectively raising fees in Bankruptcy Administrator districts would do nothing to achieve Congress's goal of keeping the

U. S. Trustee program self-funding. What is more, there are serious practical challenges to a retrospective imposition of higher fees, including the logistical problems with locating all the former debtors or their successors who would owe the higher fees. Pp. 7–14.

(c) Relying on a series of cases involving unconstitutional state taxes, respondents and the dissent claim that due process requires overriding Congress's clear intent. See, *e.g., McKesson Corp.* v. *Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18; *Harper* v. *Virginia Dept. of Taxation*, 509 U. S. 86. These cases, respondents contend, stand for the proposition that unless an "exclusive" predeprivation remedy is both "clear and certain," *Newsweek, Inc.* v. *Florida Dept. of Revenue*, 522 U. S. 442, 443–444 (*per curiam*), due process requires "meaningful backward-looking relief," *McKesson*, 496 U. S., at 31. And, they claim, the predeprivation remedy here was neither exclusive nor clear and certain.

The tax cases, assuming that they are even applicable here, do not entitle respondents to relief. In those cases, the Court held that the existence of a predeprivation hearing would be enough to satisfy the Due Process Clause. See *Harper*, 509 U. S., at 101. Respondents acknowledge that they had the opportunity to challenge their fees before they paid them, so due process is satisfied. Respondents misread this Court's later decisions on bait-and-switch schemes as displacing that basic holding. To be sure, due process may sometimes constrain the Court's remedial options. In this case, though, due process does not mandate any particular remedy. Thus, as the tax cases themselves advise, the Court must "implement what the legislature would have willed." *Levin* v. *Commerce Energy, Inc.*, 560 U. S. 413, 427. Pp. 13–16.

15 F. 4th 1011, reversed and remanded.

JACKSON, J., delivered the opinion of the Court, in which ROBERTS, C. J., and ALITO, SOTOMAYOR, KAGAN, and KAVANAUGH, JJ., joined. GORSUCH, J., filed a dissenting opinion, in which THOMAS and BARRETT, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 22–1238

OFFICE OF THE UNITED STATES TRUSTEE, PETITIONER *v.* JOHN Q. HAMMONS FALL 2006, LLC, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[June 14, 2024]

JUSTICE JACKSON delivered the opinion of the Court.

Two Terms ago, in *Siegel* v. *Fitzgerald*, 596 U. S. 464 (2022), we held that a statute violated the Bankruptcy Clause's uniformity requirement because it permitted different fees for Chapter 11 debtors depending on the district where their case was filed. See *id.*, at 479–480, and n. 2. Today, we are asked to determine the remedy for that constitutional violation. We agree with the Government that the appropriate remedy is prospective parity. Requiring equal fees for otherwise identical Chapter 11 debtors going forward comports with congressional intent, corrects the constitutional wrong, and complies with due process.

Resisting this conclusion, respondents, a group of Chapter 11 debtors, argue that they are entitled to a refund. But, as respondents forthrightly concede, adopting their preferred remedy would require us to undercut congressional intent and transform, by judicial fiat, a program that Congress designed to be self-funding into an estimated $326 million bill for taxpayers. Neither remedial principles nor due process requires that incongruous result. We reverse.

I

A

The federal bankruptcy system is administered by two programs. See *id.,* at 468–470. The U. S. Trustee Program, housed within the Department of Justice, administers 88 of the 94 bankruptcy districts. The six remaining districts, all in Alabama and North Carolina, are administered by the Bankruptcy Administrator Program, which the Administrative Office of the U. S. Courts runs under the supervision of the Judicial Conference.

For our purposes, the most salient difference between these two programs is their funding. Congress designed the U. S. Trustee Program to be entirely self-funded by user fees paid by debtors. See 28 U. S. C. §589a(b). By contrast, Congress supports the Bankruptcy Administrator Program through its general appropriation for the Judiciary, with fees used only to offset that funding. See §1930(a)(7).

Despite these different funding schemes, the fees charged to debtors in U. S. Trustee and Bankruptcy Administrator districts were identical between 2001 and 2018. See *Siegel*, 596 U. S., at 470. During that almost two-decade period, Congress would set the filing and quarterly fees for U. S. Trustee districts, and then the Judicial Conference, pursuant to a standing order, would require Bankruptcy Administrator districts to match them. See *ibid.* (citing Report of the Proceedings of the Judicial Conference of the United States 46 (Sept./Oct. 2001) (Report Proceedings)).

In 2017, facing a funding shortfall for the U. S. Trustee Program, Congress amended the fee statute to raise fees in U. S. Trustee districts. See 596 U. S., at 470–471. Specifically, Congress increased quarterly fees for new and pending Chapter 11 cases in which debtors disbursed $1 million or more in that quarter. See Div. B, 131 Stat. 1232 (2017 Act). Consistent with its goal of maintaining a self-funding U. S. Trustee Program, Congress made the fee increase for large debtors conditional on the operating fund for the program falling below $200 million in the prior fiscal year. See *Siegel*, 596 U. S., at 470–471. That threshold was met in 2017, so, starting in January 2018, fees increased for large Chapter 11 debtors in U. S. Trustee districts. See *ibid.*

Despite the Judicial Conference's standing order, though, fees did not immediately increase in Bankruptcy Administrator districts. See *ibid*. For reasons that remain obscure, it was not until October 2018 that the Judicial Conference increased fees for newly filed cases in Bankruptcy Administrator districts. See Report Proceedings 11–12 (Sept. 13, 2018). And fees for already pending large Chapter 11 cases in Bankruptcy Administrator districts remained at their 2017 level until Congress mandated equal fees in 2021. See Pub. L. 116–325, §3(d)(2), 134 Stat. 5088 (2021 Act). In the interim, a disparity emerged between the fees paid by large Chapter 11 debtors in U. S. Trustee districts and those paid by large Chapter 11 debtors in Bankruptcy Administrator districts. See *Siegel*, 596 U. S., at 478–479.

B

In *Siegel*, we traced the origin of that disparity to a single statutory word. See *id.*, at 479–480. The fee statute passed by Congress, and in effect at the time of the 2017 increase, read: "[T]he Judicial Conference of the United States *may* require the debtor in a case under chapter 11 of title 11" in a Bankruptcy Administrator district "to pay fees equal to those imposed" on otherwise identical debtors in U. S. Trustee districts. 28 U. S. C. §1930(a)(7) (emphasis added). That permissive language, we explained, violated the Constitution's Bankruptcy Clause. *Siegel*, 596 U. S., at 480, n. 2.

The Bankruptcy Clause empowers Congress "[t]o establish . . . Laws on the subject of Bankruptcies throughout the United States," but it requires that such laws be "uniform." Art. I, §8, cl. 4. Though the Clause "confers broad authority on Congress," including the flexibility to "enact geographically limited bankruptcy laws . . . if it is responding to a geographically limited problem," we concluded that the Clause's grant of power did not extend to the disparate fees facilitated by the permissive language in the fee statute. *Siegel*, 596 U. S., at 476–477. As we explained, Congress could not constitutionally "treat identical debtors differently based on an artificial funding distinction that Congress itself created." *Id.*, at 479–480.

Having found a constitutional wrong, we then faced the question of how to remedy it. We acknowledged three options: (1) refund fees for those charged more in U. S. Trustee districts, (2) retroactively extract higher fees from those charged less in Bankruptcy Administrator districts, or (3) require only prospective parity. See *id.*, at 480. The final option, we noted, was already in effect: By the time *Siegel* reached our Court, Congress had replaced the permissive "may" in the fee statute with a mandatory "shall," resulting in equal fees for U. S. Trustee and Bankruptcy Administrator districts as of April 2021. *Id.*, at 471 (quoting Pub. L. 116–325, §3(d)(2), 134 Stat. 5088). But, because the remedial question had not been passed on below, we remanded for the Fourth Circuit to address it in the first instance. See *Siegel*, 596 U. S., at 481.

C

As in *Siegel*, this case arises from a Chapter 11 case filed in a U. S. Trustee district. Cf. *id.*, at 471. In 2016, a group of 76 legal entities related to a chain of hotels and resorts filed for bankruptcy in the District of Kansas. Starting in January 2018, the debtors were subjected to increased quarterly fees under the amended fee statute. In March 2020, the debtors challenged the constitutionality of those fees, seeking both a refund of fees already paid and a reversion of future fees to their 2017 level. See Debtors' Motion

To Determine Extent of Liability for Quarterly Fees Payable in No. 16–21142 (Bkrtcy. Ct. Kan., Mar. 3, 2020), ECF Doc. 2823. Finding no constitutional violation, the Bankruptcy Court did not reach the remedial question. See *In re John Q. Hammons Fall 2006, LLC*, 618 B. R. 519, 525–526 (Kan. 2020).

The Tenth Circuit reversed. See *In re John Q. Hammons Fall 2006, LLC,* 15 F. 4th 1011, 1016 (2021). It anticipated our holding in *Siegel* and found that the fee statute permitting nonuniform fees violated the Bankruptcy Clause. See *id.*, at 1025. To remedy that violation, the panel then ordered a refund of the debtors' quarterly fees so that they equaled the lower fees the debtors would have paid had their case been filed in a Bankruptcy Administrator district. See *id.*, at 1025–1026. The U. S. Trustee sought certiorari. After deciding *Siegel*, we granted the petition, vacated the Tenth Circuit's judgment, and remanded for further consideration. 596 U. S. ___ (2022). The Tenth Circuit sought supplemental briefing, but ultimately reinstated its original opinion without alteration. See *In re John Q. Hammons Fall 2006, LLC*, 2022 WL 3354682, *1 (Aug. 15, 2022). After rehearing was denied, the U. S. Trustee again petitioned for review.

We granted certiorari to answer the remedial question left open in *Siegel*. 600 U. S. ___ (2023).

II

Across remedial contexts, "the nature of the violation determines the scope of the remedy." *Swann* v. *Charlotte-Mecklenburg Bd. of Ed.*, 402 U. S. 1, 16 (1971); see also *Ayotte* v. *Planned Parenthood of Northern New Eng.*, 546 U. S. 320, 328 (2006) ("Generally speaking, when confronting a constitutional flaw in a statute, we try to limit the solution to the problem"). Accordingly, before we can determine the appropriate remedy for the Bankruptcy Clause violation in this case, we must bear down upon the particulars of the constitutional violation we identified in *Siegel*. Three aspects of our holding are worth highlighting.

First, the violation we identified was nonuniformity, not high fees. There was no doubt raised in *Siegel* about Congress's power to raise fees for large Chapter 11 debtors. The constitutional issue arose only because the fee statute's permissive language effectively "exempted debtors in" Bankruptcy Administrator districts from paying the new rates, resulting in a disparity in fees between the two types of bankruptcy districts. *Siegel*, 596 U. S., at 468. Though respondents understandably complain about their higher payments, our task is not necessarily to reduce them; it is to remedy the disparity.[1]

Second, the fee disparity at issue here was short lived. It began in January 2018. By October 2018, the Judicial Conference required newly filed Chapter 11 cases in Bankruptcy Administrator districts to pay the higher fees. And starting in April 2021, Congress required uniform fees for pending cases too. Due to these policy shifts by the Judicial Conference and Congress, a large Chapter 11 debtor was subject to, at most, three years and three months of nonuniform treatment.

Finally, the disparity was small. The Government estimates (and respondents do not dispute) that, during the relevant period, only about 50 out of the more than 2,000 cases involving large Chapter 11 debtors were filed in Bankruptcy Administrator districts—a mere 2%. See Brief for Petitioner 11; Reply Brief 16–19. Therefore, even when the

[1] Notably, even with the 2017 Act's increase, large Chapter 11 debtors in U. S. Trustee districts often paid lower fees, relative to their disbursements, than much smaller debtors. For example, fees for those with disbursements over $1 million, like respondents, were capped at 1% of disbursements, while fees for those debtors disbursing $15,000 or less were set at a flat rate of $325, for a minimum of about 2.2%. See §1004(a)(2), 131 Stat. 1232, 28 U. S. C. §1930(a)(6)(A).

statute unconstitutionally permitted the complained-of fee disparity, 98% of the relevant class of debtors still paid uniform fees.

In short, the constitutional violation we identified in *Siegel* created a monetary disparity in bankruptcy fees that was short lived and small. With the limited nature of the constitutional problem in mind, we now turn to the question of how to remedy it.

III

A

"[T]he touchstone for any decision about remedy is legislative intent." *Ayotte*, 546 U. S., at 330. Thus, the key question in determining how to remedy a constitutional violation wrought by the legislative process is always "'what the legislature would have willed had it been apprised of the constitutional infirmity.'" *Sessions* v. *Morales-Santana*, 582 U. S. 47, 73–74 (2017) (quoting *Levin* v. *Commerce Energy, Inc.*, 560 U. S. 413, 427 (2010)). In cases involving unequal treatment, answering this question generally leads to a focus on two considerations: Congress's "'"intensity of commitment"'" to the more broadly applicable rule, and "'"the degree of potential disruption of the statutory scheme that would occur"'" if we were to extend the exception. *Morales-Santana*, 582 U. S., at 75 (quoting *Heckler* v. *Mathews*, 465 U. S. 728, 739, n. 5 (1984)). In light of our limited institutional competence, we are also cognizant that Congress likely would not have intended relief that is impractical or unworkable. See, *e.g.*, *Seila Law LLC* v. *Consumer Financial Protection Bureau*, 591 U. S. 197, 236–237 (2020) (opinion of ROBERTS, C. J.); *Los Angeles Dept. of Water and Power* v. *Manhart*, 435 U. S. 702, 718–723 (1978). And we must keep in mind that our ultimate aim is to remedy the constitutional wrong consistent with congressional intent, not to provide the complaining parties' preferred form of relief. See, *e.g.*, *Barr* v. *American Assn. of Political*

Consultants, Inc., 591 U. S. 610, 634–635 (2020) (opinion of KAVANAUGH, J.); *Morales-Santana*, 582 U. S., at 77, n. 29.

As respondents acknowledge, "Congress's intentions here were unmistakable." Brief for Respondents 31. Faced with the constitutional violation we identified in *Siegel*, Congress would have wanted prospective parity, not a refund or retrospective raising of fees. In other words, to remedy the fee disparity, Congress would have wanted to impose equal fees in all districts going forward. This conclusion is clear from the intensity of Congress's commitment to raising fees in U. S. Trustee districts, the extreme disruption a refund would cause to the bankruptcy system, and Congress's own decision to remedy the wrong we face by imposing equal fees going forward. We discuss each of these considerations in turn.

Start with Congress's commitment to higher fees in U. S. Trustee districts. Congress designed the U. S. Trustee Program to "be funded in its entirety by user fees." *Siegel*, 596 U. S., at 469. Chapter 11 cases play a central role in achieving that goal. Congress required 100% of Chapter 11 quarterly fees to be deposited in the U. S. Trustee's operating fund. §589a(b)(5).[2] By 2017, almost two-thirds of the U. S. Trustee Program's funding came from Chapter 11 fees alone. See H. R. Rep. No. 115–130, p. 7, n. 26 (2017). It is not surprising, then, that when there was a funding shortfall for the U. S. Trustee Program, Congress chose to address it by raising fees on the largest Chapter 11 debtors. See *Siegel*, 596 U. S., at 470.

In 2021, when Congress amended the fee statute, it removed any doubts about its commitment to raising fees in order to keep the U. S. Trustee Program self-funded. The statute specifically stated that the purpose of keeping fees

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[2] As part of the 2017 Act, Congress committed 98% of the money that the fee increase generated to funding the U. S. Trustee Program; the remaining 2% was deposited in the general fund of the Treasury. See §1004, 131 Stat. 1232.

at an elevated level was "to further the long-standing goal of Congress of ensuring that the bankruptcy system is self-funded, at no cost to the taxpayer." 2021 Act §2(b); see also §2(a)(1). Respondents point to nothing—in the history of the bankruptcy system, the design of the U. S. Trustee Program, or the 2017 or 2021 Acts—that cuts against Congress's stated commitment to having higher fees for large Chapter 11 debtors in U. S. Trustee districts.

Now consider the flipside of this clear congressional commitment: the disruption that would follow from granting respondents' request to refund their fees. Our imposition of a refund would significantly undermine Congress's goal of keeping the U. S. Trustee Program self-funded. Respondents do not dispute that refunding all large Chapter 11 debtors in U. S. Trustee districts would be expensive; the Government estimates it would cost approximately $326 million. See Brief for Petitioner 35–36; see also Brief for Respondents 21, and n. 6. If the Government's estimate is even close to correct, the cost of the refund would greatly exceed the $200 million threshold Congress selected in 2017 to signal fiscal distress in the U. S. Trustee Program and trigger higher fees. See *Siegel*, 596 U. S., at 470–471. Thus, in mandating such a remedy, we would transform a program Congress designed to be self-funding into an enormous bill for taxpayers. It is hard to imagine a remedy more diametrically opposed to clear congressional intent.

On top of that, respondents' proposed refund would almost certainly exacerbate the small fee disparity we are attempting to remedy. As already noted, respondents are among the 98% of large Chapter 11 debtors who paid higher fees starting in 2018, just as Congress wanted. By refunding them, we would add to the past nonuniformity by increasing the tiny percentage of debtors—currently 2%—who paid lower fees. As the Government aptly notes, even if 95% of the debtors in U. S. Trustee districts that paid higher fees received a refund, we would still end up creating a greater overall disparity than what resulted from Congress's requirement of prospective parity. See Brief for Petitioner 40.

Of course, it is true that the disparity could be entirely eliminated if all the debtors who paid higher fees were given a refund. But that theoretical possibility blinks reality. The Government estimates that 85% of the large Chapter 11 cases subject to higher fees between January 2018 and April 2021 have closed, and some of those debtors have been liquidated or otherwise ceased to exist. See Reply Brief 20. Respondents offer no meaningful path to reducing the small existing disparity through refunds. Instead, they encourage us to defy congressional intent, disrupt the U. S. Trustee Program's self-funding mandate, and divert the attendant costs to taxpayers—all to give them a remedy that will make the disparity caused by the constitutional violation worse.

The only real question, then, is whether Congress would have wanted to retrospectively impose higher fees on debtors in Bankruptcy Administrator districts. The best evidence that Congress did not intend such a remedy is that Congress itself chose not to pursue that course. In the 2021 Act, as respondents acknowledge, "Congress revised the fee scheme to address this very issue, and it did so by mandating equal fees *prospectively only*." Brief for Respondents 31 (citing Pub. L. 116–325, §§3(d)(2), 3(e)(2)(B), 134 Stat. 5088–5089); see also 28 U. S. C. §1930(a)(6)(B)(ii)(II).

Congress's choice makes sense. Because fees collected in Bankruptcy Administrator districts go toward offsetting the Judiciary's appropriation, not to supporting the U. S. Trustee Program, retrospectively raising fees in Bankruptcy Administrator districts would do nothing to achieve Congress's goal of keeping the U. S. Trustee Program self-funding. See §1930(a)(7). Thus, with the 2021 Act, Congress evinced a clear desire to comply with the constitutional mandate of uniformity by requiring prospective parity, but it reasonably chose not to impose higher fees retrospectively in Bankruptcy Administrator districts.

What is more, there are serious practical challenges to a retrospective imposition of higher fees. As in U. S. Trustee districts, many of the debtors who paid lower fees in Bankruptcy Administrator districts have exited bankruptcy or ceased to exist. See Brief for Respondents 38–39. Indeed, the Government estimates that only 10 of the roughly 50 cases involving debtors who paid lower fees are still open. See Reply Brief 17–18. Moreover, locating all the former debtors or their successors would not end the practical problems. The Government would be forced to extract fees from funds that might already be disbursed, inevitably prompting additional litigation and even the unwinding of closed cases. See *ibid.* And all that effort would be directed against parties who followed the law and complied with the fee schedule imposed by the Judicial Conference under the 2017 Act.

Our remedial principles do not require us to follow that unintended, impractical course. Faced with far more serious dignitary harms than those implicated by a small and short-lived disparity in bankruptcy fees for large debtors, we have deemed prospective parity sufficient to remedy unconstitutional differences in treatment. See *Heckler*, 465 U. S., at 740, n. 8 ("[W]e have often recognized that the victims of a discriminatory government program may be remedied by an end to the preferential treatment for others"); see also, *e.g.*, *Morales-Santana*, 582 U. S., at 77 (sex discrimination); *Manhart*, 435 U. S., at 721 (same). Here, Congress would have wanted prospective parity, and that remedy is sufficient to address the small, short-lived disparity caused by the constitutional violation we identified in *Siegel*.

B

The dissent offers three primary responses to our analysis thus far. First, the dissent argues that congressional intent is irrelevant, and we should simply defer to the plaintiffs' request for damages. See *post,* at 9, 11 (opinion of GORSUCH, J.). For their part, respondents do not claim that this is how our remedial precedent works; as already noted, they agree that "courts crafting constitutional remedies consult 'the legislature's intent.'" Brief for Respondents 31 (quoting *Morales-Santana*, 582 U. S., at 73). That's for good reason: The dissent's argument turns on a misapprehension of the constitutional wrong at issue here. The remedial question before us is not whether to pay damages or not; it is how to address a short-lived and small disparity. "How equality is accomplished—by extension or invalidation of the unequally distributed benefit or burden, or some other measure—is a matter on which the Constitution is silent." *Levin,* 560 U. S., at 426–427. So, when seeking to remedy an unconstitutional disparity, rather than divining the right answer ourselves or picking a party's preferred form of relief (which may, as in this case, make the disparity worse), we generally look to the intent of the Legislature. See *id.*, at 427–428.

Second, the dissent argues that, if we are to rely on congressional intent, it actually points to a refund. See *post*, at 13–14. For support, the dissent cites only to the fiscal year 2020 appropriations law. See *post,* at 13 (citing 133 Stat. 2398). But, again, there is a reason that respondents do not advance this argument; in fact, they concede that "Congress . . . address[ed] this very issue" and mandated prospective equalization of fees. Brief for Respondents 31. The dissent cites boilerplate language that simply allows the U. S. Trustee to respond effectively to commonplace overpayments by debtors. See Pub. L. 116–93, 133 Stat. 2398 ("[D]eposits . . . and amounts herein appropriated shall be available in such amounts as may be necessary to pay refunds due depositors"). Such statements have been part of every appropriations law for years, including before the disparity at issue here came into existence. See, *e.g.*, 131 Stat. 195 (2017 appropriations law); 129 Stat. 2298 (2016 appropriations law). Far from confirming a congressional intent to authorize an estimated $326 million refund here, the broader provision the dissent invokes underscores that a refund would send the U. S. Trustee Program into fiscal freefall, contradicting Congress's intent to have the program be self-funding. See 133 Stat. 2398 (estimating fee revenue and structuring appropriations "so as to result in a final fiscal year 2020 appropriation from the general fund estimated at $0").

Finally, the dissent suggests we need not address congressional intent at all, because the Government actually promised these respondents a refund. See, *e.g.*, *post*, at 1, 5–7, 18–19, n. 7. Once again, the dissent relies on an argument respondents have not advanced in this Court. And, once again, the dissent might have done better following respondents' cue. The relied-upon passage in the Government's bankruptcy court filing is nothing more than a request by the Government not to be forced to provide any remedy until after it has exhausted all appeals. See Objection of the United States to Debtor's Motion To Determine Extent of Liability for Quarterly Fees Payable in No. 16–21142 (Bkrtcy. Ct. Kan., Apr. 27, 2020), ECF Doc. 2868, pp. 59–61. Read fairly, the Government promised only what you would expect: that it would comply with a final judgment. See *ibid.*; see also Reply Brief 7, n. 1 ("Although the government does not believe a refund is the appropriate remedy, if it is subject to a judgment directing it to pay a refund, it will of course comply").

In sum, while the dissent invents new arguments to arrive at its favored outcome, we prefer to stick with the parties and our controlling precedent.[3]

IV

Respondents and the dissent ask us to override Congress's clear intent because, they claim, due process requires it. See *post*, at 14–18. To advance this argument, they rely on a series of cases involving unconstitutional state taxes. See, *e.g.*, *McKesson Corp.* v. *Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18 (1990); *Harper* v. *Virginia Dept. of Taxation*, 509 U. S. 86 (1993); *Reich* v. *Collins*, 513 U. S. 106 (1994); *Newsweek, Inc.* v. *Florida Dept. of Revenue*, 522 U. S. 442 (1998) (*per curiam*). In respondents' view, these cases stand for the proposition that "due process requires 'meaningful backward-looking relief' unless an 'exclusive' predeprivation remedy is both 'clear and certain.'" Brief for Respondents 22 (first quoting Brief for Petitioner 29, in turn quoting *McKesson*, 496 U. S., at 31, then quoting *Newsweek*, 522 U. S., at 443–444; capitalization and boldface deleted). Respondents claim that because the predeprivation remedy here was neither exclusive nor clear and certain, they are entitled to a refund. See Brief for Respondents 22–28.

We disagree. To start, we note that the tax cases arrived at their holdings only after scrutinizing close to a century of tax-specific jurisprudence and carefully analyzing the unique interests the taxation context involves, including the Government's "exceedingly strong interest in financial stability" and the attendant need for prompt payment and postdeprivation protections. See *McKesson*, 496 U. S., at

[3] The dissent attempts, in various additional ways, to cabin, qualify, or contradict our analysis, including by wrongly suggesting that it rests on the party presentation principle. See *post*, at 13, n. 4. Readers are reminded that the dissent is "just that." *National Pork Producers Council* v. *Ross*, 598 U. S. 356, 389, n. 4 (2023) (opinion of GORSUCH, J.).

37; see also *id.*, at 32–38. The dissent does not dispute this, nor does it adequately explain why we deemed such history and context so central to our holdings in the tax cases. See *post*, at 17–18. For their part, respondents simply ignore this context entirely. Instead, they replace the word "tax" with "fee," see Brief for Respondents 22, and assert that the constitutional holding of the tax cases applies to any case involving "monetary injury," including those arising from the voluntary, fee-for-service bankruptcy system, *id.*, at 9.

No matter, though. Even assuming that the tax cases apply, respondents are not entitled to relief under them. We held in those cases that if there was "'a meaningful opportunity for taxpayers to withhold contested tax assessments and to challenge their validity in a predeprivation hearing,' the 'availability of a predeprivation hearing constitute[d] a procedural safeguard . . . sufficient by itself to satisfy the Due Process Clause.'" *Harper*, 509 U. S., at 101 (quoting *McKesson*, 496 U. S., at 38, n. 21). Here, respondents acknowledge that they had the opportunity to challenge their fees before they paid them. See Brief for Respondents 25 ("[T]he same bankruptcy procedures are open and available before or after paying an invalid fee. Both are equally acceptable for a party to assert and preserve its rights"). Under the tax cases, then, respondents are not entitled to any particular remedy.

Respondents and the dissent misread our later decisions as displacing that basic holding. In subsequent cases, we addressed situations where a State "reconfigure[d] its scheme, unfairly, in *mid-course*—to 'bait and switch'" taxpayers out of a refund remedy guaranteed under state law. *Reich*, 513 U. S., at 111; see also *Newsweek*, 522 U. S., at 444. We held that States could not hold open a postdeprivation refund remedy to encourage payment and then take it away after taxpayers paid. See *Reich*, 513 U. S., at 111–112; *Newsweek*, 522 U. S., at 444–445. In this case, though, there was neither a guaranteed refund remedy nor a bait and switch. Nothing in the Bankruptcy Code promises a refund to those who successfully challenge their fees. And respondents point to no previously available statutory remedy of which the Government has now deprived them. So those later cases do not help respondents either.

With all that said, nothing we say here should be taken to diminish or depart from the holdings of the tax cases as they apply in the tax context. Nor do we mean to suggest that congressional intent is an entirely unchecked guide in our remedial analysis for constitutional violations. We cannot remedy an old constitutional problem by creating a new one, so due process and other constitutional protections undoubtedly will limit the possible remedies in many cases. See *Barr*, 591 U. S., at 633. Here, though, due process does not mandate any particular remedy. Therefore, as the tax cases themselves advise, we must, "within the bounds of [our] institutional competence, . . . implement what the legislature would have willed." *Levin*, 560 U. S., at 427.

* * *

Faced with the unconstitutional nonuniformity we recognized in *Siegel*, Congress would have provided for uniform fees going forward. That remedy cures the constitutional violation, and due process does not require another result. The judgment of the Court of Appeals for the Tenth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 22–1238

OFFICE OF THE UNITED STATES TRUSTEE, PETITIONER *v.* JOHN Q. HAMMONS FALL 2006, LLC, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[June 14, 2024]

JUSTICE GORSUCH, with whom JUSTICE THOMAS and JUSTICE BARRETT join, dissenting.

What's a constitutional wrong worth these days? The Court's answer today seems to be: not much. Between 2018 and 2020, the government charged fees to bankruptcy debtors that varied arbitrarily from region to region, leaving some debtors millions of dollars worse off than others. Two years ago, we held that this geographically discriminatory treatment violated the Constitution's Bankruptcy Clause—a provision that, we stressed, was not "toothless." *Siegel* v. *Fitzgerald*, 596 U. S. 464, 468 (2022). Today, however, the Court performs a remedial root canal, permitting the government to keep the cash it extracted from its unconstitutional fee regime.

The path the Court follows is as striking as its destination. Never mind that a refund is the traditional remedy for unlawfully imposed fees. Never mind that the government promised to supply precisely that relief if the debtors in this case prevailed, as they have, in their constitutional challenge. Never mind that backtracking on that promise raises separate due process concerns. As the majority sees it, supplying meaningful relief is simply not worth the effort. Respectfully, that alien approach to remedies has no place in our jurisprudence.

I

A

Certainty is the lifeblood of bankruptcy. For the system to function, a debtor must be certain that putting all his assets on the table for creditors will afford him a fresh start. So too must a creditor have certainty about what priority his loan may or may not enjoy in the event of a borrower's bankruptcy. Recognizing as much, our Constitution grants Congress power to establish "uniform Laws on the subject of Bankruptcies throughout the United States." Art. I, §8, cl. 4; see 3 J. Story, Commentaries on the Constitution of the United States §§1101–1103, pp. 4–8 (1833). That provision affords Congress some "flexibility" in drafting bankruptcy laws, but it does not tolerate laws that treat parties in bankruptcy differently based on the "arbitrary" happenstance of their "geograph[y]." *Siegel*, 596 U. S., at 476. Laws like those, this Court has held, do not apply "uniform[ly] . . . throughout the United States."

Our case arises from a violation of that uniformity requirement. In much of the country, the United States Trustee Program, housed in the Department of Justice, handles administrative tasks once handled by bankruptcy courts. *Id.*, at 468. The Trustee Program is funded by quarterly fees paid principally "by debtors who file cases under Chapter 11 of the Bankruptcy Code." *Id.*, at 469; see 28 U. S. C. §1930(a)(6)(A). Thanks to a quirk of history, however, six federal judicial districts are not in the Trustee Program. Instead, they are part of the so-called Administrator Program, overseen by the Judicial Conference of the United States and "funded by the Judiciary's general budget." *Siegel*, 596 U. S., at 469. In those districts, Congress did not require debtors to pay fees "at all." *Ibid.* That is, until a lower court highlighted the disparity and held it violated the Bankruptcy Clause. *St. Angelo* v. *Victoria Farms, Inc.*, 38 F. 3d 1525, 1529–1532 (CA9 1994).

In 2000, Congress implemented a fix. It provided that "the Judicial Conference of the United States may require" debtors in Administrator Program districts "to pay fees equal to those" debtors pay in Trustee Program districts. 114 Stat. 2412 (enacting §1930(a)(7)). Although the statutory language ("may require") was permissive, the Judicial Conference took the hint and began charging the same fees as those levied in Trustee Program districts, thus putting all debtors on equal footing. *Siegel*, 596 U. S., at 470.

The solution didn't last. Come 2017, Congress enacted temporary measures to boost Trustee Program funding. There, Congress directed that, whenever Trustee Program funds dropped below $200 million, certain bankruptcy estates had to pay new and much higher quarterly fees (where some once paid $30,000, for example, the law now required them to pay up to $250,000). §1004, 131 Stat. 1232; see *Siegel*, 596 U. S., at 470. The 2017 Act "applied to all pending cases" in Trustee Program districts. *Id.*, at 471. But for reasons not entirely clear from the record before us, the Judicial Conference didn't immediately follow suit. It waited until October 2018 to implement those changes in Administrator Program districts—and even then applied them "only to newly filed cases." *Ibid.*

Ultimately, Congress had to intercede again. At the close of 2020, Congress withdrew its direction to the Judicial Conference providing that it "may require" debtors in Administrator Program districts to pay the same fees as debtors in Trustee Program districts. In its place, Congress issued a more emphatic instruction, telling the Judicial Conference that it "shall" ensure that quarterly fees remain "consistent across all Federal judicial districts." §§2–3, 134 Stat. 5086, 5088.

But if that solved the problem going forward, it left another question unanswered: what to do about Trustee Program debtors who had paid more in fees between 2018 and 2020 than did their similarly situated Administrator Program counterparts. Many Trustee Program debtors brought challenges alleging that the fees they had paid violated the uniformity requirement of the Bankruptcy Clause. And in 2022, we agreed with them, holding that the debtors before us had been subject to "arbitrary geographically disparate" fees in violation of the Constitution. *Siegel*, 596 U. S., at 476. After reaching that conclusion, we remanded the case then before us for a lower court to determine "the appropriate remedy . . . in the first instance." *Id.*, at 480–481.

B

John Q. Hammons Hotels & Resorts found itself in the middle of this mess. In 2016, various entities affiliated with Hammons filed Chapter 11 bankruptcy petitions in the District of Kansas, a Trustee Program district. *In re John Q. Hammons Fall 2006, LLC*, 15 F. 4th 1011, 1018 (CA10 2021). The cases remained pending after the 2017 Act kicked in and before the 2020 Act mandated fee uniformity across the Nation. So Hammons was charged higher quarterly fees than debtors in Administrator Program districts.

Hammons did not challenge the fee disparity immediately. That would have come at a heavy cost: Until Hammons paid its fees in full, the bankruptcy court could not confirm Hammons's plan of reorganization, a vital step in the Chapter 11 process. See 11 U. S. C. §1129(a)(12). Worse, as a debtor defaulting on its fees, Hammons would also have run the risk of being kicked out of the Chapter 11 process entirely. §§1112(b)(1), (b)(4)(K).

So Hammons waited until early 2020. By that time the bankruptcy court had confirmed its plan. See Debtors' Motion To Determine Extent of Liability for Quarterly Fees in No. 16–21142 (Bkrtcy. Ct. Kan., Mar. 3, 2020), ECF Doc. 2823, p. 5. But by that time Hammons had also "paid over $2.5 million more in quarterly fees than [it] would have paid had [it] filed in" an Administrator Program district. 15 F. 4th, at 1018. Arguing that this discriminatory treatment was unconstitutional under the Bankruptcy Clause, Hammons sought a refund of those excess payments. ECF Doc. 2823, at 8.

The U. S. Trustee opposed the request. But he promised that "[i]f [Hammons] prevail[ed] after all levels of review on [its] claim that [the fee disparity] is unconstitutional, the government [would] refund fees to the extent they were overpaid." Objection of the United States to Debtor's Motion to Determine Extent of Liability for Quarterly Fees in No. 16–21142 (Bkrtcy. Ct. Kan., Apr. 27, 2020), ECF Doc. 2868, p. 59. As reassurance, the U. S. Trustee stressed that Congress had "authorized payments of refunds . . . in its most recent annual appropriation law." *Id.*, at 59–60 (citing 133 Stat. 2398).

This long-promised payment eventually came due. Anticipating our decision in *Siegel* by a year, in 2021 the Tenth Circuit held that Hammons had been subjected to an arbitrary and geographically disparate fee forbidden by the Bankruptcy Clause. 15 F. 4th, at 1023. By way of remedy, that court held the Trustee to its promise, ordering him to pay Hammons a refund of the fees it had paid in excess of those it would have owed in an Administrator Program district during the same period. *Id.*, at 1026. This Court granted certiorari to address what remedy is due debtors, like Hammons, who were charged unconstitutional fees between 2018 and 2020—the question we left open in *Siegel*. 600 U. S. ___ (2023).

II

A

Where does that leave us? Before this Court, the U. S. Trustee does not question Hammons suffered a constitutional injury in having to pay nonuniform fees. That much was settled by *Siegel*. Nor does the U. S. Trustee dispute he promised to refund Hammons its overpayments should it prevail—as it has now prevailed—on the merits of its constitutional claim. Everyone agrees those fees total approximately $2.5 million. Even more than that, it is undisputed Congress has already taken the affirmative step of appropriating funds for refunds in cases just like this one. With all that beyond dispute, the next step should be too: Just as the Tenth Circuit held, the U. S. Trustee should be ordered to make Hammons whole for its injury and pay the promised refund.

Traditional remedial principles command that result. No one argues, for example, that sovereign immunity bars this suit or others like it. Nor is there a question Hammons sought a refund in a timely fashion. As the U. S. Trustee puts it, Congress has allowed "[t]he amounts of the payments [to] be litigated at the time of the budget submission; by filing an adversary proceeding to challenge fees at any time while the bankruptcy case is ongoing; or by filing a district court action after the case has terminated." Brief for Petitioner 5–6. And Hammons brought its fee challenge while its bankruptcy case was still ongoing. It is long since settled, too, that where (as here) Congress has provided "a general right to sue" for the invasion of a legal right but has not specified any particular form of relief, "federal courts may use any available remedy to make good the wrong done." *Barnes* v. *Gorman*, 536 U. S. 181, 189 (2002) (internal quotation marks omitted). And where (as here), someone pays money—or has money withheld from him—because of invalid government action, the most appropriate remedy is monetary relief.

Centuries of judicial practice confirm as much. This Court has long said that the "[a]ppropriate remedy" for "duties or taxes erroneously or illegally assessed . . . is an action of assumpsit for money had and received." *Philadelphia* v. *Collector*, 5 Wall. 720, 731 (1867). We have held that "the law . . . will compel restitution or compensation" "if a county obtains the money or property of others without authority." *City of Louisiana* v. *Wood*, 102 U. S. 294, 299 (1880) (internal quotation marks omitted). And on the theory that "the appropriate remedy" for unconstitutional discrimination "is a mandate of equal treatment," *Heckler* v. *Mathews*, 465 U. S. 728, 740 (1984) (emphasis deleted), we have "regularly . . . affirmed District Court judgments ordering that welfare benefits be paid to members of an unconstitutionally excluded class," *Califano* v. *Westcott*, 443 U. S. 76, 90 (1979).

Our longstanding precedents should make short work of this case. Hammons remitted to the U. S. Trustee more than $2.5 million in "overpayments." *Siegel*, 596 U. S., at 472 (internal quotation marks omitted). Those overpayments were exacted in violation of the Bankruptcy Clause. To remedy the violation, Hammons is entitled to a refund—the relief the U. S. Trustee promised from the start.

B

Despite all this, the government now tries to backtrack. Yes, it promised to pay should Hammons prove a constitutional injury. Yes, Hammons has now done exactly that, consistent with *Siegel*. Yes, Congress has appropriated sums to make Hammons and others like it whole. And, yes, traditional remedial principles would seem to dictate just that form of relief. Still, the government insists, it should not be forced to pay. It's an astonishing claim, made all the more astonishing by the fact a majority of the Court goes along with it.

How do they get there? To determine the appropriate remedy for Hammons's constitutional injury, the government and majority reason, we "must adopt the remedial course Congress likely would have chosen had it been apprised of the constitutional infirmity." Brief for Petitioner 14 (internal quotation marks omitted). And, they continue, had Congress known in 2017 that the disparate fee arrangement was unconstitutional, it would have responded by imposing higher fees on debtors in the Administrator Program districts. *Id.*, at 14–15. And, the government and majority say, "[t]he most appropriate way to effectuate that remedy is on a purely prospective basis"—ensuring that fees are "uniform going forward." *Id.*, at 20. Of course, Congress already provided just this prospective relief in the 2020 Act. So really, the government and majority conclude, that means "no further relief is required." *Ibid.*; see *ante*, at 7–11. Presto: No refund for Hammons. It is a line of reasoning as bold as it is untenable.[1]

1

Start with the government and majority's major premise: the notion that our only proper role is to speculate about—and then give effect to—the course of action Congress would have taken to address the constitutional injury its fee regime imposed had it been warned in advance. Consider what that would mean in a more familiar context. Suppose you suffered some form of arbitrary and unlawful discrimination in the workplace and sued your employer for damages. In response, suppose your employer reassured you that, had it known beforehand what the incident would mean for its wallet, it would have taken steps to avoid the incident—and it promises to do better in the future. In what world does your employer's promise of a *prospective-only* remedy do anything to redress your *past* injuries? And why would it matter what the employer might have done

[1] In the alternative, the government contends, the Court should "direct the Judicial Conference to . . . collect increased fees from" debtors in Administrator Program districts that did not pay the increased fees. Brief for Petitioner 34. Rightly, the Court declines this invitation. See *ante*, at 10–11. The Judicial Conference is not a party to this case, so we lack power to enter an order that would bind it. And shaking down debtors—many of whom are no longer in Chapter 11 proceedings—for additional fees many years after the fact would raise serious due process concerns.

differently?

None of that comports with traditional remedial principles. A promise of fee uniformity going forward may prevent future discrimination between debtors. But it does nothing to remedy fees unlawfully exacted in the past. Far from an "appropriate remedy," the majority's *prospective* remedy for a *past* injury is no remedy at all. By overlooking the (obvious) distinction between prospective and retrospective relief, the majority defies this Court's teaching that, in cases like this one, "effective relief consists of damages, not an injunction." *Tanzin* v. *Tanvir*, 592 U. S. 43, 51 (2020).

Nor is it sensible to ask what remedy the government might prefer. This Court has long held that, in our legal system, it is the plaintiff, not the defendant, who "has a right to choose" what form of legally permissible relief he will seek. *Twist* v. *Prairie Oil & Gas Co.*, 274 U. S. 684, 689 (1927). And for just as long we have considered irrelevant a defendant's plea that, if he had known what he was doing was wrong, "he would have pursued a different course of action within the law." *Corsicana Nat. Bank of Corsicana* v. *Johnson*, 251 U. S. 68, 88 (1919). Entertaining that kind of "hypothesis," we have explained, "would be an unwarranted resort to fiction in aid of a wrongdoer, and at the expense of the party injured." *Ibid.*

Seeking a way around these problems and following the government's lead, the majority points to cases in which plaintiffs sought prospective equitable relief from an unconstitutional law. See Brief for Petitioner 14–15.[2] And in *that* posture, those cases indicate, the Court has sometimes

[2] See *Barr* v. *American Assn. of Political Consultants, Inc.*, 591 U. S. 610, 617 (2020) (opinion of KAVANAUGH, J.) (seeking a declaration); *Sessions* v. *Morales-Santana*, 582 U. S. 47, 77 (2017) (grant of citizenship); *Ayotte* v. *Planned Parenthood of Northern New Eng.*, 546 U. S. 320, 325 (2006) (declaration and injunction); *Levin* v. *Commerce Energy, Inc.*, 560 U. S. 413, 419 (2010) (same).

thought it appropriate to ask how much of the challenged statute it should declare inoperative going forward: Should the whole statute, or only parts of it, be held unenforceable in the future?

That question, the Court has sometimes said, poses one of "severability." *Barr* v. *American Assn. of Political Consultants, Inc.*, 591 U. S. 610, 614 (2020) (opinion of KAVANAUGH, J.); see *Ayotte* v. *Planned Parenthood of Northern New Eng.*, 546 U. S. 320, 331–332 (2006). Sometimes, Congress will include an express severability clause providing that the unconstitutionality of any one provision will not preclude the enforcement of others going forward. *Barr*, 591 U. S., at 623. But what happens when a statute contains no such provision? In cases like that, this Court has, from time to time, resorted to asking the hypothetical question: What would Congress "have willed" about the law's future application had it foreseen its constitutional defect? *Levin* v. *Commerce Energy, Inc.*, 560 U. S. 413, 427 (2010).

So, for example, in *Sessions* v. *Morales-Santana*, 582 U. S. 47 (2017), the Court faced a statute that supplied a faster path to citizenship for children born abroad to American mothers than for those born abroad to American fathers. *Id.*, at 51. The Court held that law violated the Equal Protection Clause. *Id.*, at 72. To resolve how the law should operate going forward consistent with the Constitution, the Court asked whether Congress would have preferred the "'withdrawal of benefits'" from children of American mothers or the "'extension of benefits'" to children of American fathers, and chose the former option. *Id.*, at 73.[3]

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[3] Proceeding this way—asking what a hypothetical Congress might have done (but didn't do)—has drawn its fair share of criticism, including from Members of today's majority, as beyond the scope of the judicial power. See, *e.g.*, *Murphy* v. *National Collegiate Athletic Assn.*, 584 U. S. 453, 486–488 (2018) (THOMAS, J., concurring); *Barr*, 591 U. S., at 625

None of that, however, has anything to do with our case. Hammons seeks damages to remedy a past violation. The company does not seek from us any form of prospective relief. As a result, we have no occasion to take a scalpel to Congress's work. We do not face anything like the question whether to extend or withdraw benefits to ensure a statute's constitutional operation going forward. Indeed, attempting to do so in this case would be utterly pointless, for in 2020 Congress *already* modified the challenged provision to remove its constitutional infirmity going forward. And just because *future* parties will not be injured does nothing to erase the fact that parties injured by *past* misconduct are entitled to relief.

The decisions the majority relies upon only confirm the point. Take *Morales-Santana*. While the Court consulted hypothetical legislative intent to resolve a question about the scope of prospective relief, it also acknowledged limits on the propriety of that course. It observed, for example, that legislative intent is "irrelevant" when "a defendant [is] convicted under a law classifying on an impermissible basis"; for that past harm, he is entitled to relief "without regard to the manner in which" Congress might have wanted to "cure the infirmity." *Id.*, at 74, n. 24. The Court stressed, too, that we "loo[k] to Justice Harlan's concurring opinion in *Welsh* v. *United States*," 398 U. S. 333 (1970), when considering remedies for discriminatory treatment. 582 U. S., at 75. And that opinion is wholly inconsistent with the majority's approach today. Guessing how the legislature

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(KAVANAUGH, J., joined by ROBERTS, C. J., and ALITO, J.) ("[C]ourts are not well equipped to imaginatively reconstruct a prior Congress's hypothetical intent"); *id.*, at 652–653 (GORSUCH, J., concurring in judgment in part and dissenting in part); *United States* v. *Arthrex, Inc.*, 594 U. S. 1, 32–35 (2021) (GORSUCH, J., concurring in part and dissenting in part). Even those who have *advocated* for the practice agree it "is essentially legislative." R. Ginsburg, Some Thoughts on Judicial Authority To Repair Unconstitutional Legislation, 28 Clev. St. L. Rev. 301, 317 (1979); accord, *ante*, at 7.

would have fixed a statute had it known of a constitutional defect might be appropriate "in an action for a declaratory judgment or an action in equity," Justice Harlan wrote. *Welsh*, 398 U. S., at 363–364 (opinion concurring in result) (internal quotation marks omitted). But, he added, that course is *not* "appropriate" in cases, like the one before him, where the plaintiff sought relief for a past harm and the result of guesswork about legislative intentions could leave him "remediless." *Id.*, at 362.

The few decisions the majority cites addressing requests for retrospective relief make a similar point. Consider *Los Angeles Dept. of Water and Power* v. *Manhart*, 435 U. S. 702 (1978), a case alleging unlawful discrimination under Title VII of the Civil Rights Act of 1964. See *ante,* at 7. That statute, the Court observed, provides that "retroactive relief 'may' be awarded if it is 'appropriate.'" 435 U. S., at 719. Despite the permissive statutory language, the Court recognized the traditional "presumption in favor of" money damages to remedy past discrimination. *Ibid*. This presumption, *Manhart* continued, was so strong it "can seldom be overcome." *Ibid.* Exactly so.[4]

[4] With so much against it, the majority replies that I have "misapprehen[ded]" the "constitutional wrong at issue here." *Ante,* at 12. That charge is misdirected. Everyone appreciates that the question before us is how to remedy a past violation of the Bankruptcy Clause. It is only the majority that steadfastly refuses to recognize what remedy our cases call for when that kind of past wrong is established: damages. Trying another line of response, the majority seeks to characterize our centuries-old precedents concerning retrospective relief and the irrelevance of the severability decisions on which it relies as "new arguments." *Ante*, at 13. But this reply is no more persuasive. The majority proceeds as if Hammons didn't argue that it had a "'legal right to recover the amount of the funds unlawfully exacted of it,'" Brief for Respondents 11 (brackets omitted); that the cases cited by the government concerned "principles of *severability*, not backward-looking remedies," *id.*, at 19; or that it was entirely unilluminating to consider the intent of the "Congress [that] created the statutory scheme that resulted in th[e] constitutional infirmity," Brief in Opposition 20. Still, if the majority wishes to

2

Turn now to the minor premise of the majority's argument and a second, independent problem emerges. Relying on severability precedents, the majority reasons that Congress would not have wanted to issue refunds in cases like this one. But even assuming speculation about Congress's wishes has anything to do with the scope of retrospective relief, it would still require a refund here.

When searching for congressional intent, we have said, there is no better place to look than "existing statutory text." *Lamie* v. *United States Trustee*, 540 U. S. 526, 534 (2004). Even in severability cases, we have taken pains to stress that courts may not elevate judicial guesswork about "Congress's hypothetical intent" over "statutory text," which is "the definitive expression of Congress's will." *Barr*, 591 U. S., at 624–625 (opinion of KAVANAUGH, J.).

Follow those directions here and we end up at a refund. As the government has admitted, existing statutory text reveals that "Congress [has] authorized payments of refunds" from appropriated funds. ECF Doc. 2868, at 59–60; see 133 Stat. 2398. This fact is as sure a sign as any that Congress didn't believe refunds would cause the sort of "'disruption of the statutory scheme'" the majority worries over. *Ante*, at 7. The law gives us our answer—refunds—no guesswork necessary.

How does the majority respond? It points to Congress's decision in the 2020 Act to "'mandat[e] equal fees *prospectively*.'" *Ante*, at 10. And that decision, the majority asserts, is "[t]he best evidence that Congress did not intend" for us to permit refunds. *Ibid.* But the majority never ex-

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rest its holding today on the lack of party presentation of these arguments, I will not stand in its way, for it means debtors who have more forcefully pressed the arguments the majority overlooks need not join Hammons on the remedial trash-heap. Courts below remain free to consider those arguments.

plains why that inference is a good, let alone the best, inference to draw from the 2020 Act's silence about retroactive relief. Given that Congress had already legislated to provide for refunds, why would it need to repeat itself in the 2020 Act? Cf. *Bowen* v. *Michigan Academy of Family Physicians*, 476 U. S. 667, 681 (1986) ("We ordinarily presume that Congress intends the executive to obey its statutory commands"). And, particularly in those circumstances, why wouldn't the better inference be that Congress assumed courts would apply their ordinary rules and recognize that refunds are the appropriate remedy for illegal fees already exacted?[5]

III

A

Traditional remedial principles guarantee Hammons a refund. Nothing the majority offers begins to suggest otherwise. Still, even if we could somehow put all that aside, this Court's due process precedents would demand the same result.

Those precedents contemplate cases like this one. We have held that, if an individual "reasonably relie[s] on the apparent availability of a postpayment refund when paying" a contested fee, the government may not later "declare, only after the disputed [fees] have been paid, that no such

[5] Alternatively, in places, the majority seems to suggest that we should dismiss Congress's authorization of moneys for refunds as "boilerplate language," *ante*, at 12—as if an appropriation were a meaningless formality rather than an act of constitutional magnitude, see Art. I, §9, cl. 7; *Consumer Financial Protection Bureau* v. *Community Financial Services Assn. of America, Ltd.*, 601 U. S. 416 (2024). In other places yet, the majority seems to suggest that the party-presentation principle somehow allows the Court to ignore Congress's authorization of refunds entirely, see *ante*, at 12—a proposition that runs headlong into the settled rule that no party may "'waiv[e]'" the proper interpretation of the law by "fail[ing] to invoke it." *EEOC* v. *FLRA*, 476 U. S. 19, 23 (1986) (*per curiam*); see also, *e.g.*, *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 56 (2006).

remedy exists." *Newsweek, Inc.* v. *Florida Dept. of Revenue*, 522 U. S. 442, 444–445 (1998) (*per curiam*) (internal quotation marks omitted). This due process rule holds true even when the individual had the option of pursuing a "prepayment remedy" but chose instead to take the "apparent[ly] availab[le]" postpayment route. *Id.*, at 443, 445. It does because due process prevents the government from engaging in a "'bait and switch'" by later refusing to honor any remedial path it previously held open to the plaintiff. *Reich* v. *Collins*, 513 U. S. 106, 111 (1994).

The majority's failure to supply a refund violates that rule. Start with the bait the government offered. As constitutional challenges like Hammons's began trickling in, U. S. Trustees across the country urged courts against awarding injunctive relief or setoffs to parties contesting their disparate fee assessments. That kind of relief was unnecessary, the government contended, precisely "because the statute appropriating funds to the United States Trustee Program . . . permits refunds from the U. S. Trustee System Fund . . . according to standard procedures." Memorandum of Law in Support of Defendants' Motion for Summary Judgment in *In re MF Global Holdings Ltd.*, No. 19–01379 (Bkrtcy. Ct. SDNY, Nov. 21, 2019), ECF Doc. 13, pp. 48–49. With representations like these—representations the government would repeat in Hammons's own bankruptcy proceeding, see Part I–B, *supra*—who could doubt that the opportunity to seek a postpayment refund was anything less than "'clear and certain'"? *Reich*, 513 U. S., at 111. Or that Hammons's decision to choose this route rather than delay its plan confirmation to pursue a prepayment challenge was anything other than "reasonabl[e]"? *Newsweek*, 522 U. S., at 445.

Now the impermissible switch. Even as it continues to maintain that "[t]he amounts of the payments can be litigated . . . at any time," Brief for Petitioner 5–6, the U. S. Trustee asks us to "declare, only after the disputed [fees] have been paid, that no such remedy exists," *Reich*, 513 U. S., at 108. Try as litigants might, the government now insists, they cannot in fact secure "refunds from the U. S. Trustee System Fund" under *any* "procedures." ECF Doc. 13, at 49.

That bait and switch violates due process, plain and simple. We should not be in the business of tolerating such "contrived and self-serving" changes in position. *McKesson Corp.* v. *Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18, 42 (1990). Rather, our precedents "requir[e] the [government] to provide the remedy it has promised." *Alden* v. *Maine*, 527 U. S. 706, 740 (1999); accord, *Newsweek*, 522 U. S., at 445; see *McKesson*, 496 U. S., at 31 (government "obligate[d]" to supply "meaningful backward-looking relief").

B

How does the majority answer this latest problem? On its telling, the only bait and switch our due process precedents guard against arises when the government holds open the possibility of a postpayment refund and then removes that option by statute or regulation after a party has paid the fee it wishes to contest. *Ante*, at 15–16. So, yes, the Trustee promised that litigants could pay now and litigate for a refund later. But, the majority insists, Hammons should have disregarded those representations and seized "the opportunity" always provided by statute to seek injunctive relief "before [it] paid" the challenged fees. *Ante*, at 15.[6]

This argument, too, misreads our precedents. The availability of "predeprivation remedies," we have explained, is

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[6] Pause to notice that, under the majority's logic, debtors who did choose to "withhol[d] the unconstitutional fees" and brought *pre*payment challenges may not now be ordered to hand over that money. Brief for MF Global Holdings Ltd. as *Amicus Curiae* 5 (boldface and capitalization deleted); see *ante*, at 16 (courts "cannot remedy an old constitutional problem by creating a new one").

"beside the point" when a party reasonably relies on the apparent availability of a postpayment remedy. *Reich*, 513 U. S., at 113. Nor is it the case that an impermissible bait and switch can be accomplished only through statutory or regulatory changes. In *Newsweek* and *Reich*, for example, this Court held that a state-court decision violated due process by robbing the taxpayer of a postpayment remedy that appeared available until the court ruled otherwise. *Newsweek*, 522 U. S., at 443–445; *Reich*, 513 U. S., at 111–113. Indeed, *Newsweek* summarily reversed a lower court for "fail[ing] to consider" this point. 522 U. S., at 443. The case before us is therefore no different from those we've considered before, except in one respect: In *Newsweek* and *Reich*, this Court cured the lower courts' due process violation; here, the Court itself creates one by robbing Hammons of a postpayment remedy that until this moment appeared available.

With nowhere left to go, the majority tries to suggest that our due process precedents are limited to the tax context. *Ante*, at 14. It's the "[g]overnment's exceedingly strong interest in" prompt tax payments, the majority reasons, that brings with it the "postdeprivation protections" discussed in our tax cases. *Ibid.* (internal quotation marks omitted). But the majority does not explain why, as a matter of due process, the government's promises about the availability of postdeprivation procedures must be honored only in the tax context. Nor could it. If there's anything unique about our tax decisions, it's our treatment of "the field of taxation" as an area where we've "afforded [governments] great flexibility in satisfying the requirements of due process." *National Private Truck Council, Inc.* v. *Oklahoma Tax Comm'n*, 515 U. S. 582, 587 (1995). In other words, we have long treated the procedural protections described in our tax cases as some of the most government-friendly due process will tolerate. See *Londoner* v. *City and County of Denver*, 210 U. S. 373, 385–386 (1908). And if a bait and switch is impermissible in the tax context, surely it must be in others.

This is hardly a new message. Reprimanding the Georgia Supreme Court for announcing there was no postpayment remedy only after the plaintiffs had paid a contested tax in reliance on that remedy, this Court in *Reich* explained that the case before it bore "a remarkable resemblance to *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449 (1958)." 513 U. S., at 112. And *Patterson* concerned a challenge to a state court's contempt holding, not anything having to do with a tax. There, the Court held that, if "nothing 'suggest[s]'" a particular procedural route "'is the *exclusive* remedy,'" due process prohibits a government from later penalizing an individual for pursuing one available route rather than another. 513 U. S., at 113. Precisely the same reasoning and rule apply here—another inconvenient fact the majority prefers to ignore. See *ante*, at 15 (asserting there's no "dispute" that *McKesson* and its progeny apply only to taxes). In choosing this path, however, the majority sends a clear message to lower courts and litigants: Next time the government asks you to hold off on pursuing a remedy on the promise you can always pursue it later, its representations are worth no more than the relief the Court awards Hammons today.[7]

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[7] Failing all else, the majority tries to reconceive the government's promise to pay as a representation merely that the government "would comply with a final judgment." *Ante*, at 13. But why the government would need to state this obvious point goes unexplained. And try as the majority might, what the government *actually* wrote leaves little room for reimagination: "If Debtors prevail after all levels of review on their claim that the 2017 amendment does not apply to this case or is unconstitutional, the government will refund fees to the extent they were overpaid." ECF Doc. 2868, at 59. Nor does the majority even attempt to explain away the government's concession before this Court that "[t]he amounts of the payments can be litigated . . . at any time." Brief for Petitioner 5–6.

IV

The government's final salvo has to do with an appeal to public policy. Because there are fewer Administrator Program debtors who paid lower fees between 2018 and 2020 than there are Trustee Program debtors who paid arbitrarily higher fees during that period, the government reasons it is preferable either to try to recoup money from Administrator Program debtors or to do nothing at all. Brief for Petitioner 37–40. A refund to Trustee Program debtors, the government warns, would "transfe[r] to taxpayers substantial costs." Reply Brief 2; see Brief for Petitioner 35. The majority echoes these concerns. Providing a refund, it says, would be "enormous[ly]" "disrupti[ve]," in part because reimbursing debtors in Trustee Program districts "would be expensive." *Ante*, at 9.[8]

These concerns may be animated by prudent fiscal policy, but that is not how remedies work. Declining to pay an injured plaintiff will *always* be the cheapest option for the defendant. But when a refund is "otherwise available" as a matter of law, "the cost of [the] refund" cannot "justify a decision to withhold it." *McKesson*, 496 U. S., at 51, n. 35. Consider how different, for example, our equality jurisprudence would look were it any other way. In the 1970s, pointing to the price tag associated with extending equal benefits to men and women was a favorite tactic of the federal government. See, *e.g.*, Brief for Appellant in *Wein-*

[8] At times, the majority appears so eager to inflate the consequences of supplying meaningful relief that it contradicts the government's more moderate position. It asserts, for example, that the statute authorizing refunds somehow proves that "refund[s] would send the U. S. Trustee program into fiscal freefall." *Ante*, at 13. But the majority does not supply whatever back-of-the-napkin calculation leads it to contradict the U. S. Trustee's more informed representation that the program's hundreds of millions of dollars in funds are more than sufficient to reimburse Hammons and others. See Part I–B, *supra*.

berger v. *Wiesenfeld*, O. T. 1974, No. 73–1892, p. 22 (extending "'mother's benefits' to fathers" might lead to "over $300 million" in costs, equivalent to many times more than that amount today). Should this Court have balked at the sticker price for remedying this "monetary disparity"? *Ante*, at 7. More recently, the government argued that a "damages remedy against federal employees" for religious discrimination was too costly to count as "'appropriate relief,'" Brief for Petitioners in *Tanzin* v. *Tanvir*, O. T. 2020, No. 19–71, p. 30, even though damages were "the *only* form of relief that [could] remedy some . . . violations," *Tanzin*, 592 U. S., at 51. Should we have stopped to perform a cost-benefit analysis there, too?[9]

V

I struggle to understand why today the majority so readily dismisses any remedy in this case—all to save the government from the trouble of issuing funds the Legislature has appropriated and the Executive has promised to pay. As I see it, two possible lines of thinking may explain this unusual outcome, neither reassuring.

One possibility is that the majority views Bankruptcy Clause violations as less worthy of relief than other constitutional violations. The majority nods in that direction

[9] Besides emphasizing the cost to the fisc as a ground for its decision, the majority also cites the fact that granting Hammons a refund will not guarantee the past disparities will "be entirely eliminated." *Ante*, at 10. Why? Because not every overpaying debtor in a Trustee Program district has sought reimbursement. *Ibid*. But, as best I can tell, this Court has never before declined to remedy a plaintiff's constitutional harm on the theory that other would-be plaintiffs forfeited or waived their right to seek similar relief. Such a rule would be dangerous indeed for those seeking to vindicate their constitutional rights. As the government concedes, too, "there is a putative class action on behalf of all affected debtors pending in the Court of Federal Claims." Brief for Petitioner 36. Given the weight the majority places on Hammons's inability to recover for all affected debtors, it's far from clear what the impact of today's decision is on that action.

when it compares today's decision to others involving what it calls "far more serious dignitary harms." *Ante*, at 11. But if that's the reason, it is hardly a convincing one. After all, the majority describes its "What would Congress have done?" approach to remedies as universally applicable—governing questions of retrospective relief in sex discrimination and free exercise cases no less than those arising under the Bankruptcy Clause. See *ante*, at 7. Nor do we as judges have any warrant to play favorites among the Constitution's provisions, exalting some while relegating others to the status of "a second-class right." *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*, 597 U. S. 1, 70 (2022) (internal quotation marks omitted).

The other possibility is no better. Perhaps the majority thinks supplying relief isn't worth the trouble because the constitutional violation at issue here was, as the majority puts it, "short-lived and small." *Ante*, at 12. After all, the violation began in 2018 and ended in 2020. But on what account does a multiyear violation of the Constitution count as "short-lived"? And how does that violation count as "small" when it cost Hammons $2.5 million and, as the majority itself emphasizes, cost others millions more? Cf. *Culley* v. *Marshall*, 601 U. S. 377, 411–412 (2024) (SOTOMAYOR, J., joined by KAGAN and JACKSON, JJ., dissenting) (months-long deprivation of a car is a harm of constitutional proportions); *Wellness Int'l Network, Ltd.* v. *Sharif*, 575 U. S. 665, 703 (2015) (ROBERTS, C. J., dissenting) (insisting there is no "'*de minimis*'" exception for constitutional "incursion[s]"). Consider, too, what that kind of thinking could mean for those seeking retrospective relief for other constitutional violations. It's not hard to imagine today's decision receiving a warm welcome from those who seek to engage in only a dash of discrimination or only a brief denial of some other constitutionally protected right. The rest of us can only hope that the Court corrects its mistake before it metastasizes too far beyond the bankruptcy context.[10]

Respectfully, I dissent.

[10] One might wonder as well: By declining to supply a damages remedy for a constitutional violation even when statutory law authorizes it, what is left of the mistaken notion that the Constitution demands a damages remedy for its violation even in the absence of statutory authority? See *Egbert* v. *Boule*, 596 U. S. 482, 508–509 (2022) (SOTOMAYOR, J., joined by, *inter alios*, KAGAN, J., concurring in judgment and dissenting in part); *Armstrong* v. *Exceptional Child Center, Inc.*, 575 U. S. 320, 338 (2015) (SOTOMAYOR, J., joined by, *inter alios*, KAGAN, J., dissenting).

AUGUST 28, 2024

Houston Judge Confirms an 'Opt-Out' Plan with Nondebtor Releases

> In the first opinion on the issue after Purdue, Bankruptcy Judge Christopher Lopez holds that Purdue did not change Fifth Circuit law where 'hundreds' of 'opt-out' plans have been confirmed with nondebtor releases.

In the first opinion on the topic since the Supreme Court's *Purdue* decision in late June, Bankruptcy Judge Christopher M. Lopez of Houston confirmed a so-called opt-out chapter 11 plan with nondebtor, third-party releases. He held that *Purdue* did not change governing law in the Fifth Circuit.

The chapter 11 reorganization before Judge Lopez was preceded by pitched battles between creditor groups that continued after filing. On the main battlefield, there was a settlement in bankruptcy court that satisfied all but one group of sophisticated lenders. They objected to confirmation of the plan on several grounds, but Judge Lopez dismissed their objections in his August 16 opinion.

The only other objection came from the U.S. Trustee, who opposed confirmation because the plan would bestow releases on nondebtors. The debtor contended that the releases were consensual because creditors could opt out.

The U.S. Trustee argued that the supposedly consensual releases were coercive and that the releases should be given only by creditors who opt in. Notably, any creditor who voted in favor of the plan could not opt out, and creditors who did not vote would be bound by the releases. In addition, creditors who opted out could not sue unless the bankruptcy court were to determine that the claims were colorable.

The debtor gave extensive notice about the opt-out provisions in the plan. About 100 creditors opted out, Judge Lopez said in his opinion.

Opting Out Is Ok

Addressing the U.S. Trustee's confirmation objection and citing *Bank N.Y. Tr. Co. v. Off. Unsecured Creditors' Comm. (In re Pac. Lumber Co.)*, 584 F.3d 229 (5th Cir. 2009), and *Feld v. Zale Corp. (In re Zale Corp.)*, 62 F.3d 746 (5th Cir. 1995), Judge Lopez said in his August 16 opinion that *Purdue* "did not change law in this Circuit." *Harrington v. Purdue Pharma L.P.*, 219 L. Ed. 2d 721, 144 S. Ct. 2085 (Sup. Ct. June 27, 2024). To read ABI's report on *Purdue*, **click here**.

In the wake of *Pacific Lumber* and *Zale*, Judge Lopez said that "Fifth Circuit case law appeared to prohibit non-consensual third-party releases." However, he went on to say that the plan before him "does not include non-consensual third-party releases like the ones addressed in *Purdue*."

Did *Purdue* change Fifth Circuit law on consensual releases? As Judge Lopez read *Purdue*, "the Supreme Court said nothing [that] should cast doubt on consensual" releases. He quoted the majority opinion in *Purdue* where Justice

Neil M. Gorsuch said, "Nor do we have occasion today to express a view on what qualifies as a consensual release." *Purdue*, 144 S. Ct. at 2087–88.

Citing a decision from a bankruptcy judge in Delaware before *Purdue*, Judge Lopez saw "nothing improper with an opt-out feature for consensual third-party releases in a chapter 11 plan." *See In re Arsenal Intermediate Holdings, L.L.C.*, 23-10097, 2023 WL 2655592, at *6–8 (Bankr. D. Del. Mar. 27, 2023). To read ABI's report on *Arsenal*, **click here**.

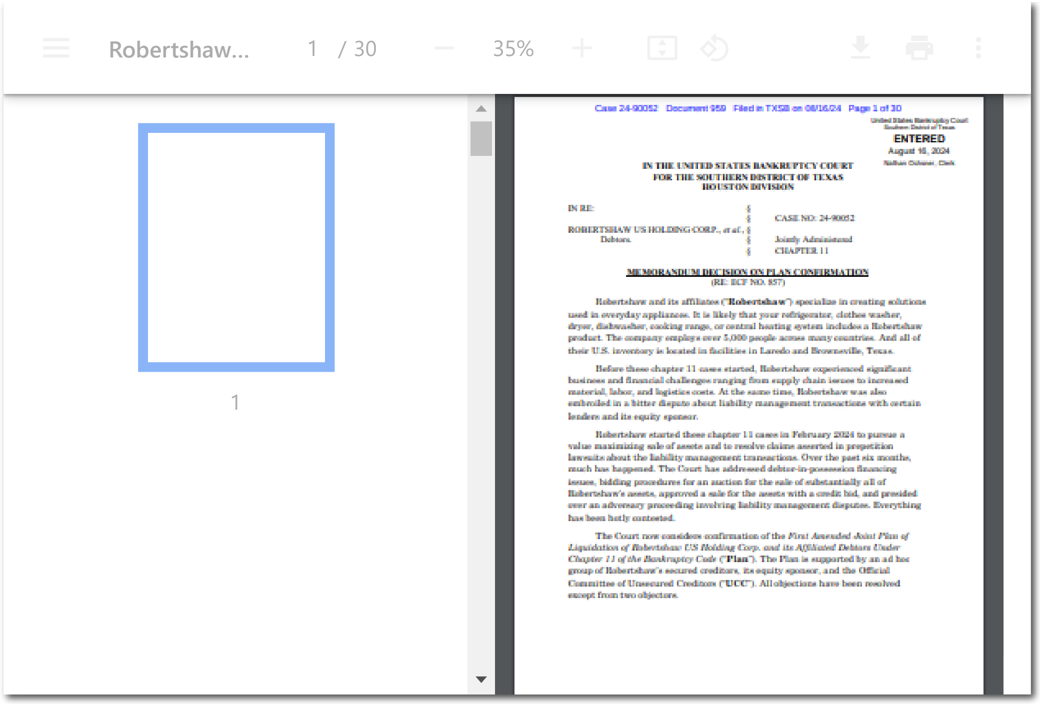
"Hundreds of chapter 11 cases have been confirmed in this District with consensual third-party releases with an opt-out. And, again, *Purdue* did not change the law in this Circuit," Judge Lopez said. Regarding the plan before him, Judge Lopez recited how the debtor had given detailed notices about the plan and the opt-out provisions.

Furthermore, Judge Lopez said that the "third-party releases are also narrowly tailored to this case." As often happens, he said that the releases were a "core" consideration in the plan to eliminate more than $640 million in debt.

Citing support from the official creditors' committee, Judge Lopez overruled the U.S. Trustee's objection and said he would confirm the plan, given how "the third-party releases are consensual and narrowly tailored."

Opinion Link

PREVIEW



Case 24-90052 Document 959 Filed in TXSB on 08/16/24 Page 1 of 30

ENTERED
August 16, 2024

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:	§	
	§	CASE NO: 24-90052
ROBERTSHAW US HOLDING CORP., *et al.*,	§	
Debtors.	§	Jointly Administered
	§	CHAPTER 11

MEMORANDUM DECISION ON PLAN CONFIRMATION
(RE: ECF NO. 857)

Robertshaw and its affiliates ("**Robertshaw**") specialize in creating solutions used in everyday appliances. It is likely that your refrigerator, clothes washer, dryer, dishwasher, cooking range, or central heating system includes a Robertshaw product. The company employs over 5,000 people across many countries. And all of their U.S. inventory is located in facilities in Laredo and Brownsville, Texas.

Before these chapter 11 cases started, Robertshaw experienced significant business and financial challenges ranging from supply chain issues to increased material, labor, and logistics costs. At the same time, Robertshaw was also embroiled in a bitter dispute about liability management transactions with certain lenders and its equity sponsor.

Robertshaw started these chapter 11 cases in February 2024 to pursue a value maximizing sale of assets and to resolve claims asserted in prepetition lawsuits about the liability management transactions. Over the past six months, much has happened. The Court has addressed debtor-in-possession financing issues, bidding procedures for an auction for the sale of substantially all of Robertshaw's assets, approved a sale for the assets with a credit bid, and presided over an adversary proceeding involving liability management disputes. Everything has been hotly contested.

The Court now considers confirmation of the *First Amended Joint Plan of Liquidation of Robertshaw US Holding Corp. and its Affiliated Debtors Under Chapter 11 of the Bankruptcy Code* ("**Plan**"). The Plan is supported by an ad hoc group of Robertshaw's secured creditors, its equity sponsor, and the Official Committee of Unsecured Creditors ("**UCC**"). All objections have been resolved except from two objectors.

https://abi-opinions.s3.amazonaws.com/Robertshaw+confirmation.pdf

Case Details

Case Citation	In re Robertshaw US Holdings Corp., 24-90052 (Bankr. S.D. Tex. Aug. 16, 2024).
Case Name	In re Robertshaw US Holdings Corp.
Case Type	Business
Court	5th Circuit Texas Texas Southern District
Bankruptcy Tags	Plan Confirmation Business Reorganization

Post new comment

Your name

United States Bankruptcy Court
Southern District of Texas
ENTERED
August 16, 2024
Nathan Ochsner, Clerk

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
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Invesco Senior Secured Management, Inc. and certain related funds ("**Invesco**") object to plan confirmation for several reasons, including a global settlement with the UCC embodied in the Plan, plan classification under Bankruptcy Code § 1122, unfair discrimination under § 1129(b)(1), and plan feasibility under § 1129(a)(11). Separately, the U.S. Trustee alleges the opt-out feature for consensual third-party releases under the Plan is improper in light of the recent U.S. Supreme Court decision in *Harrington v. Purdue Pharma, L.P.*, 144 S. Ct. 2071 (2024). For the reasons stated below, each of the objections is overruled. The Court confirms the Plan.

Jurisdiction and Venue

The Court has jurisdiction under 28 U.S.C. § 1334(b). Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding under 28 U.S.C. §§ 157(b)(2)(L). The Court has constitutional authority to enter final orders and judgments. *Stern v. Marshall*, 564 U.S. 462, 486–87 (2011).

Background

The record ("**Record** ") established to support confirmation of the Plan includes:

All documents identified on Robertshaw's Amended Witness and Exhibit List (ECF Nos. 868, 870), including:

- the Plan;
- Disclosure Statement related to the Plan;
- Settlement Term Sheet with the UCC;
- First Amended Plan Supplement;
- Declaration Alex Orchowski of Kroll Restructuring Administration LLC, including the voting and tabulation reports annexed to the declaration ("**Voting Report**");
- Declaration of Stephen Spitzer of AlixPartners (as modified on the record at the hearing);
- Declaration of Scott D. Vogel, Independent Director (as modified on the record at the hearing);
- Declaration of Neil Goldman, Independent Director (as modified on the record at the hearing); and
- Declaration of Andrew Scruton of FTI Consulting, Inc.

All documents identified on the Witness and Exhibit List (ECF No. 839) filed by One Rock Capital Partners, LLC ("**One Rock**"), including all documents filed in Adversary Case No. 24-03024 (the adversary proceeding about the liability management transactions).

All documents identified on the Witness and Exhibit List (ECF No. 840) filed by the Ad Hoc Group (defined below), including:

- June 20, 2024 Memorandum Decision and Order (Adv. Proc. No. 24-03024, ECF No. 351);
- Super-Priority Credit Agreement, dated May 9, 2023 (Adv. Proc. No. 24-03024, ECF No. 2-1);
- Trial Day 2 (May 24, 2024) Transcript (Adv. Proc. No. 24-03024, ECF No. 325);
- Trial Day 4 (May 29, 2024) Transcript (Adv. Proc. No. 24-03024, ECF No. 336); and
- Trial Day 5 (May 30, 2024) Transcript (Adv. Proc. No. 24-03024, ECF No. 339).

All documents identified on Invesco's Witness and Exhibit List (ECF No. 836), including all documents filed in these chapter 11 cases.

No objecting party elected to cross examine a witness or offer counter-fact or expert testimony at the confirmation hearing. So all statements in the Declarations referenced above in support of plan confirmation (as modified on the record at the confirmation hearing) are unrefuted.

The undisputed evidence admitted into the Record in support of confirmation demonstrates, by a preponderance of the evidence, that the Plan is confirmable and should be confirmed. The Plan satisfies all applicable requirements under the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. The Plan is in the best interests of Robertshaw and the estates.

All consensual resolutions to objections to confirmation—including an objection from the U.S. Trustee about exculpations in the Plan—as stated on the record at the confirmation hearing are in the best interests of Robertshaw and the estates and supported by the Record. All objections to confirmation that were not withdrawn or resolved by agreement at or before the confirmation hearing are overruled for the reasons stated below.

The findings and conclusions in this Memorandum Decision are the Court's findings of fact and conclusions of law under Bankruptcy Rule 7052, made applicable to Plan confirmation under Bankruptcy Rule 9014. Factual and legal conclusions will be treated as such; however they are labeled.

Below is a brief background about important matters in these chapter 11 cases that relate to Plan confirmation. Much of the background about the prepetition litigation and a significant adversary proceeding are detailed in the Court's June 2024 decision in Adv. No. 24-03024 ("**Adversary Decision**"). The Record includes the Adversary Decision and all documents admitted in the adversary proceeding.[1] Many important facts in the Adversary Decision are repeated below to provide a thorough description.

Robertshaw's Prepetition Liability Management Transactions
<u>and Related History with Prepetition Lenders</u>

In 2018, an affiliate of One Rock acquired Robertshaw from its prior sponsor.[2] The purchase was financed with $510 million in first-lien term loans under a First-Lien Credit Agreement, $110 million in second-lien term loans under a Second-Lien Credit Agreement (together, the "**Original Credit Agreements**"), and about $260 million of equity.[3] To finance operations, Robertshaw entered a separate asset-based revolving facility maturing in December 2023 ("**ABL Facility**").[4]

I. The May 2023 Uptier Transaction

In May 2023, Robertshaw negotiated a liability management transaction with Bain Capital Credit, LP on behalf of certain of its managed funds ("**Bain Capital**"), Canyon Capital Advisors LLC on behalf of certain of its managed funds ("**Canyon Capital**"), Eaton Vance Management on behalf of certain of its managed funds ("**Eaton Vance**") (collectively, the "**Ad Hoc Group**"), and Invesco under the Original Credit Agreements.[5] Invesco and the Ad Hoc Group formed an ad hoc group to reach "Required Lender" status. The lenders proposed a transaction through which the parties would amend the Original Credit Agreements to (i) execute a new Super-Priority Credit Agreement ("**SPCA**"), (ii) provide $95

[1] Footnotes 2 through 68 are all citations to documents in Adversary Proceeding Case No. 24-03024, which were admitted under the witness and exhibit list filed at ECF No. 839 in Case No. 24-90052. Trial transcripts from the Adversary Proceeding are referenced throughout this decision as Tr.2 (ECF No. 325), Tr.3 (ECF No. 340), Tr.4 (ECF No. 336), Tr.5 (ECF No. 339), and Tr.6 (ECF No. 346).
[2] Tr.3 10:2–11.
[3] Tr.3 10:2–11.
[4] ABL Credit Agreement, Joint Exhibit 1, ECF No. 250-11.
[5] Tr.4 65:4–22, 407:2–14.

million of new First-Out New Money Term Loans, and (iii) allow participating lenders to exchange their existing first- and second-lien loans under the Original Credit Agreements for Second-Out and Third-Out Term Loans under the SPCA ("**May Transactions**").[6] This type of liability management transaction is often called an uptier. It was realized through a series of transactions in a short time span, the steps of which were laid out in advance.[7] The SPCA is governed by New York law.[8]

The SPCA adopted much of the same (or similar) language as the Original Credit Agreements, while making some changes thought prudent by the participating lenders then to try to protect their position.[9] This included adding blockers to protect against some future lender-on-lender type actions, but not all.[10] Matthew Brooks, a managing director at Invesco, testified that they "*limited* the ability to do another uptier" but outright "*eliminated* the ability to do any sort of dropdown transactions."[11] The SPCA did not materially change the definition of "Required Lender." Required Lender status, as the parties understood it, was designed to be fungible—whichever party or group meets the status may fluctuate from time to time as debt is bought or traded or ad hoc groups form and dissemble.[12] The dispositive authority on which party or group holds enough debt to be Required Lender is a register maintained by an Administrative Agent.[13]

The SPCA defines "Required Lender" to mean "[l]enders having Loans representing more than 50.0% of the sum of the total First-Out New Money Term Loans and Second-Out Term Loans at such time."[14] Section 9.02 of the SPCA allows Required Lenders to amend the SPCA, subject to enumerated exceptions (commonly referred to as "sacred rights").[15] Required Lender status gives lenders the right to, among other things, (i) agree with Robertshaw, as "Borrower," to incur additional "Indebtedness," including, but not limited to, the issuance of more term loans under the SPCA; (ii) consent to or waive any breaches, defaults, or "Events of Default";

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[6] Super-Priority Credit Agreement at Recitals, ECF No. 250-1.
[7] Tr.4 306:3–307:18.
[8] Super-Priority Credit Agreement, § 9.10, Joint Exhibit 1, ECF No. 250-1.
[9] Tr.4 256:13–258:21, 409:22–410:15.
[10] Tr.4 409:22–410:15.
[11] Tr.4 409:22—410:15.
[12] Tr.4 256:13—260:15.
[13] Super-Priority Credit Agreement, § 9.05(b)(iv), Joint Exhibit 1, ECF No. 250-1; Tr.4 25:22–25.
[14] Super-Priority Credit Agreement, § 1.01 "Required Lender," Joint Exhibit 1, ECF No. 250-1.
[15] Super-Priority Credit Agreement, § 9.02(b)(A), Joint Exhibit 1, ECF No. 250-1.

and (iii) direct the Administrative Agent to pursue remedies in the event of a breach, default, or Event of Default.[16]

Around July 2023, Invesco acquired more than 50% of the total First-Out and Second-Out Term Loans issued in connection with the May Transactions and obtained Required Lender status.[17] The Ad Hoc Group did not know about this change.[18] Invesco met the Required Lender criteria because it owned a majority of the First-Out Term Loans but not the Second-Out Loans.[19] So the status was arguably fragile. Another lender (or group of lenders) could buy up the majority of the Second-Out Term Loans and Robertshaw could pay down some of the First-Out Term Loans. In that case, Invesco would cease to be a Required Lender.

II. Invesco Led Amendment Nos. 1-4

Robertshaw faced another liquidity crunch in the Fall of 2023, despite its efforts to implement a turnaround plan supported by the company's advisors and One Rock.[20] A key component of this plan involved improving its customer relationships and contracts.[21] To address its liquidity issues and continue forward, it was close to entering into the "**Brigade Deal**," which would have refinanced the ABL facility set to mature in December 2023 and provided a cash infusion to Robertshaw to make interest payments due under the SPCA.[22]

Invesco found it troubling that, though it was Required Lender, the company sought financing from an outside source it believed to be a historically "difficult counterparty."[23] Invesco reached out through joint counsel to the ad hoc group that participated in the May Transactions to inform Robertshaw that it would not support the Brigade Deal.[24] Invesco also believed the ad hoc group of lenders disbanded once the SPCA was effective.[25] So it did not inform the other lenders that it had retained separate counsel to start working on amendments to the SPCA because Robertshaw had missed an interest payment, and the grace period was almost up.[26]

[16] Super-Priority Credit Agreement, § 9.02, Joint Exhibit 1, ECF No. 250-1.
[17] Tr.4 321:6–10.
[18] Tr.4 167:5–23, 322:1–23.
[19] Tr.4 15:19–16:3, 322:2–23; Plaintiff Exhibit 78 at 2786, ECF No. 243-29.
[20] Tr.3 32:22–34:23.
[21] Tr.3 32:22–34:23.
[22] Tr.6 10:1–11:25, 12:6–19.
[23] Tr.4 54:8–55:21, 335:7–336:13.
[24] Tr.4 336:22–347:5.
[25] Tr.4 68:6–69:22, 320:3–16.
[26] Tr.4 74:22–75:4, 77:1–17, 164:24–165:7, 168:20–169:8.

Invesco and Robertshaw entered into Amendment No. 1 on October 5, 2023.[27] It extended Robertshaw's grace period to make the missed interest payment due at the end of September to October 13.[28] Without this amendment, failure to make the payment by October 6, 2023 would have resulted in an "Event of Default."[29]

At the same time, the parties discussed a proposal for Robertshaw to enter into a new ABL facility. Invesco offered Robertshaw a bridge loan of $17 million in the form of additional First-Out Term Loans in exchange for Robertshaw's agreement to negotiate two other financing transactions with Invesco, including (i) a new $40 million "delayed draw term loan facility" conditioned upon Robertshaw's agreement to "repurchase" (i.e., uptier)[30] "100% of the Invesco owned Third-Out Term Loans at par" through "open market purchases" and (ii) a new $73.4 million ABL facility under which Invesco would exchange its Third-Out Term Loans for "New ABL Loans."[31] The Ad Hoc Group was not informed about this Amendment, the missed interest payment which necessitated the Amendment, or the financing proposal.[32]

Invesco and Robertshaw failed to negotiate the terms of Invesco's financing proposal. On October 13, 2023, Invesco and Robertshaw executed Amendment No. 2.[33] Invesco agreed to provide Robertshaw with the $17 million bridge loan in the form of new incremental First-Out Term Loans to make the missed interest payment. Mr. Brooks from Invesco testified that Invesco understood that Required Lenders could amend § 6.01 of the SPCA to allow for additional "Indebtedness"—which is permitted in Amendment No. 2.[34] To the extent this new "Indebtedness" could breach the terms of the SPCA, Invesco waived all potential defaults.[35] Invesco also committed to provide an additional $40 million term loan if certain conditions were met, but it set a November 8 deadline for Robertshaw to refinance the ABL Facility. It also included the potential for a new liability management transaction

[27] Amendment No. 1 To Super-Priority Credit Agreement at Preamble, Plaintiff Exhibit 1, ECF No. 242-1.
[28] Amendment No. 1 To Super-Priority Credit Agreement, §3, Plaintiff Exhibit 1, ECF No. 242-1.
[29] Amendment No. 1 To Super-Priority Credit Agreement at Preamble, Plaintiff Exhibit 1, ECF No. 242-1.
[30] Plaintiff Exhibit 323 at 3, ECF No. 248-35; Tr.4 283:9–284:21.
[31] Plaintiff Exhibit No. 61, ECF No. 243-11.
[32] Plaintiff Exhibit 64, ECF No. 243-14; Plaintiff Exhibit 62, ECF No. 243-12; Tr.4 348:16—351:21; Tr.4 359:3–361:23.
[33] Tr.4 362:5–363:8.
[34] Tr.4 268:5–22.
[35] Amendment No. 2 To Super-Priority Credit Agreement, §7, Plaintiff Exhibit 2, ECF No. 242-2.

for Invesco's Third-Out Loans. The Ad Hoc Group were not informed about this Amendment.

Robertshaw and Invesco failed to reach agreement on the terms of a new ABL facility, and the December 2023 existing ABL Facility maturity loomed. So the parties executed Amendment No. 3, which extended the November 8 deadline to November 10. The Ad Hoc Group were not informed about this Amendment.

Invesco and Robertshaw then signed Amendment No. 4 in November 2023. In exchange primarily for an extension of the time to declare an Event of Default under the SPCA until December 13, Robertshaw would start a chapter 11 bankruptcy case by no later than January 2, 2024 and, as a debtor in possession, to:

- Negotiate, in good faith, a debtor in possession financing facility, a restructuring support agreement, and a stalking horse purchase agreement with Invesco.[36]

- Confirm that the board of its parent had directed their professionals to begin the above negotiations.[37]

- Deliver to Invesco a wind-down budget following the close of the stalking-horse sale, a list of critical vendors to be paid by the debtor in possession financing along with justifications for those payments, a summary of Robertshaw's executory contracts along with recommendations regarding their treatment.[38]

Amendment No. 4 also required Robertshaw to appoint an "Independent Director" to the Board of Directors of Robertshaw's parent company. It gave the "Independent Director" sole authority to negotiate the terms of the bankruptcy milestones laid out in the Amendment.[39] Invesco selected Neal Goldman.[40] The Ad Hoc Group were not informed about this Amendment.

[36] Amendment No. 4 To Super-Priority Credit Agreement, §7(e), Plaintiff Exhibit 4, ECF No. 242-4.
[37] Amendment No. 4 To Super-Priority Credit Agreement, §7(f)(i), Plaintiff Exhibit 4, ECF No. 242-4.
[38] Amendment No. 4 To Super-Priority Credit Agreement, §7(f)(v), Plaintiff Exhibit 4, ECF No. 242-4.
[39] Amendment No. 4 To Super-Priority Credit Agreement, §7(f)(iv)(2), Plaintiff Exhibit 4, ECF No. 242-4.
[40] Tr.2 10:11–12:12.

Invesco was aware of Robertshaw's aversion to filing on January 2, which would have interfered with its existing turnaround plan—particularly the customer relations component.[41] There were discussions of a non-bankruptcy path.[42] Invesco ultimately declined to a discuss out-of-court alternatives until Robertshaw signed Amendment No. 4.[43] Taking his fiduciary duty as independent director seriously, Mr. Goldman instructed Robertshaw's advisors to look for alternative solutions.[44]

Invesco directed the administrative agent in writing not to post any of these amendments.[45] Based on conversations with Mr. Brooks, advisors for Robertshaw believed it would jeopardize negotiations around an out-of-court deal with Invesco if Robertshaw posted the amendments.[46] Around November 15, the Ad Hoc Group learned about the amendments when a third party casually mentioned them to an employee at Bain Capital.[47] Counsel for the Ad Hoc Group then reached out to the Administrative Agent on November 16 demanding that the amendments be posted. Amendment Nos. 1–4 were posted later that day.

III. The December Transactions and Amendment No. 5

After discovering the Invesco-led Amendments and looming bankruptcy, the Ad Hoc Group started working with Robertshaw and One Rock on alternative financing solutions and ultimately submitted a proposal.[48] The board's advisors presented an analysis of the relative benefits of the December Transactions compared to filing for bankruptcy on January 2. The record is undisputed that the company desperately needed the additional liquidity and runway provided by the December Transactions. Based on that analysis, the board, including Mr. Goldman, voted to approve the transactions.[49] The December Transactions consisted of six sequential steps:

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[41] Tr.2 20:20–21:19; Tr.3 37:1–41:14.
[42] Tr.3 37:1–41:14; Joint Exhibit 25, ECF No. 250-29; Plaintiff Exhibit 91, ECF No. 243-43.
[43] Plaintiff Exhibit 91, ECF No. 243-43.
[44] Tr.2 11:3–12, 14:2–15:17.
[45] Tr.5 246:23–247:7; Deposition Testimony of Administrative Agent (Jennifer Anderson), ECF No. 312-1 at 4.
[46] Tr.6 63:7–24.
[47] Tr.4 172:2–173:3, 378:20–379:25.
[48] Plaintiff Exhibit 148, ECF No. 244-51.
[49] Tr.2 15:25–20:14, 166:8–23; Plaintiff Exhibit 247, ECF No. 246-47.

First, Range Parent's ("**Holdings**")[50] parent, Range Investor LLC, formed RS Funding Holdings, LLC ("**RS Funding**").[51] Holdings is Robertshaw's parent. Range Investor holds 100% of the voting interest in RS Funding.[52] Robertshaw holds 100% of the economic interest in RS Funding.[53]

Second, on December 11, the Ad Hoc Group and One Rock loaned $228.3 million to RS Funding ("**RS Funding Credit Agreement**").[54]

Third, exercising its power as 100% voting interest owner, Holdings instructed RS Funding to distribute the proceeds of the $228.3 million loan to Robertshaw.[55]

Fourth, Robertshaw used the funds from RS Funding to (i) pay off the outstanding $30 million ABL Facility in full; (ii) voluntarily prepay $117.6 million of the outstanding First-Out Term Loans; and (iii) pay an additional $30.7 million in required make-whole payments to the holders of First-Out Term Loans.[56] The prepayment was made to the Administrative Agent, who, in turn, disbursed the funds to the appropriate First-Out Term Loan Lenders and recorded the prepayment in the register.[57] After the prepayment, the register maintained by the Administrative Agent reflected that the Invesco no longer owned more than 50% of the combined First- and Second-Out Term Loans needed to maintain Required Lender status.[58] The Ad Hoc Group now held Required Lender status.[59]

[50] Super-Priority Credit Agreement at Preamble, Joint Exhibit 1, ECF No. 250-1.
[51] Plaintiff Exhibit 148 at 7, ECF No. 244-51.
[52] Plaintiff Exhibit 148 at 7, ECF No. 244-51.
[53] Plaintiff Exhibit 148 at 7, ECF No. 244-51.
[54] Plaintiff Exhibit 148 at 5, ECF No. 244-51.
[55] Plaintiff Exhibit 148 at 7, ECF No. 244-51.
[56] Plaintiff Exhibit 148 at 7, ECF No. 244-51.
[57] Tr.4 315:17–317:1.
[58] Plaintiff Exhibit 16, ECF No. 242-20.
[59] Plaintiff Exhibit 16, ECF No. 242-20.

> *Fifth*, the Ad Hoc Group, as Required Lenders, executed Amendment No. 5 to the SCPA.[60] This Amendment authorized Robertshaw to issue $228 million in incremental debt.[61]
>
> *Sixth*, once the conditions precedent to Amendment No. 5 were either met or waived, Robertshaw issued $218 million in new First-Out and Second-Out Loans.[62] Robertshaw returned an equivalent amount to RS Funding, which repaid the loan under the RS Funding Credit Agreement.[63]

Invesco received over $90 million. It tried to reject the prepayment (and now holds the funds in protest in escrow).[64] But the Administrative Agent, tasked with disbursing funds in accordance with the register, disbursed the funds to Invesco.[65] Invesco sent notice of an Event of Default under the SCPA to Robertshaw based on this allegation on December 11, 2023.[66]

Invesco challenged the prepayment as violating the SPCA because not all the proceeds were used to pay off existing indebtedness, and they were not distributed pro rata among all tranches of debt. Instead, a portion of the RS Funding cash distribution was added to Robertshaw's balance sheet, and some was used to pay off the ABL. Only the First-Out Term Loans received a prepayment. This allegedly violated § 2.11(b)(iii) and (vi) of the SPCA.

IV. Invesco Files Suit in New York State Court

Less than two weeks after the execution of Amendment No. 5, Invesco filed a complaint in the Supreme Court of the State of New York, asserting claims for (i) breach of the SPCA against Robertshaw and the Ad Hoc Group; (ii) breach of the covenant of good faith and fair dealing against Robertshaw and the Ad Hoc Group; (iii) tortious interference with contract against One Rock; and (iv) intentional and constructive fraudulent transfer against the Ad Hoc Group and One Rock. Invesco also sought a preliminary injunction "(i) enjoining any transactions or arrangements purportedly requiring only the consent or direction of the Ad Hoc Group and/or One Rock, including but not limited to those in Amendment No. 5,

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60 Plaintiff Exhibit 148 at 7, ECF No. 244-51.
61 Amendment No. 5 To Super-Priority Credit Agreement, Plaintiff Exhibit 5, ECF No. 242-5.
62 Plaintiff Exhibit 148 at 7, ECF No. 244-51.
63 Plaintiff Exhibit 148 at 7, ECF No. 244-51.
64 Tr.4 315:17–317:1; Tr.5 15:16–21.
65 Tr.4 315:17–317:1.
66 Plaintiff Exhibit 348, ECF No. 248-67.

(ii) enjoining the execution of Amendment No. 5 by the Administrative Agent, and (iii) reinstating of Amendment No. 4."[67]

The New York State Court did not rule on Invesco's motion before the petition date in these bankruptcy cases. This litigation is currently stayed.

V. Robertshaw Starts Bankruptcy Cases and the Invesco Adversary

Robertshaw started these bankruptcy cases on February 15, 2024. Robertshaw, One Rock, and the Ad Hoc Group started Adversary No. 24-03024 on the same day, seeking a declaration that the transactions, including Amendment No. 5, were valid and enforceable and that neither the Ad Hoc Group nor Robertshaw breached the SPCA by entering into them. One Rock also sought a declaration that it did not tortiously interfere with the SPCA under New York law.

Invesco filed two counterclaims seeking declaratory judgment against Robertshaw that it breached the SPCA and that Invesco was still Required Lender.[68]

After a full evidentiary trial, the Court issued the Adversary Decision. The Court found that the members of the Ad Hoc Group and One Rock were the Required Lenders under the SPCA. And the SPCA as amended by Amendment No. 5 was valid and enforceable. The Court also held that the Ad Hoc Group did not breach the SPCA, there was no breach any implied duty of good faith and fair dealing under New York law, and One Rock did not tortiously interfere with the SPCA under New York law.

The Court, however, did find that Robertshaw breached the SPCA by failing to remit 100% of the "Net Proceeds" of the $228 million loan from One Rock and the Ad Hoc Group to RS Funding. Invesco had a right to file a proof of claim in the main bankruptcy case for any alleged monetary damages arising out the breach.

Invesco filed the proof of claim. Robertshaw, the Ad Hoc Group, and One Rock objected. The Court conducted an evidentiary hearing on August 2, 2024 and took the matter under advisement.

[67] Plaintiff Exhibit 170, ECF No. 245-20.
[68] Invesco's Answer, Affirmative Defenses, and Counterclaims at 39, ECF No. 45.

VI. The Guardian Action

There was also prepetition litigation about the May Transactions. In November 2023, certain prepetition lenders sued Robertshaw, the Ad Hoc Group, and Invesco (which was aligned with the current Ad Hoc Group on this uptier) in New York State Court ("**Guardian Action**"). The Guardian Action was removed to this Court on the petition date (Adv. No. 24-03025).

In March 2024, the parties agreed on a global settlement of all claims asserted in the Guardian Action and the related adversary proceeding. In April 2024, the parties agreed to a joint stipulation staying the adversary proceeding pending negotiation of definitive documentation of the settlement.

The Asset Auction and Sale Order

In March 2024, the Court entered an order approving Robertshaw's bidding procedures, including designation of a "Stalking Horse Bidder" (ECF No. 359). The Stalking Horse Bidder is an entity formed by or on behalf of the Ad Hoc Group and One Rock. This order established a bid deadline and auction procedures. Ultimately, neither Invesco nor any other party submitted a competing bid. So the auction was cancelled and the Stalking Horse bid was designated as the "Successful Bid."

In June 2024, the Court entered an order approving the sale of the North American Debtors' assets to the Stalking Horse Bidder (a/k/a "**Purchaser**") on the terms described in the Asset Purchase Agreement ("**Sale Order**") (ECF No. 681). The Asset Purchase Agreement includes aggregate consideration of (i) a credit bid under § 363(k) of the Bankruptcy Code for about $286 million, comprised of the principal amount of $217 million of Prepetition Secured Super-priority Claims plus accrued and unpaid interest, and about $65 million in DIP financing obligations; (ii) payment of a "Post-Effective Date Amount"; and (iii) assumption of Assumed Liabilities (as defined in the Asset Purchase Agreement).

In July 2024, Invesco sought a stay of the Sale Order pending appeal. The Court denied the motion. On August 12, 2024, the U.S. District Court for the Southern District of Texas entered an order staying the Sale Order, on an interim basis, pending full briefing and a decision on whether a stay pending appeal is merited (ECF No. 944).

Summary of the Plan

In June 2024, the Court entered an order approving the Disclosure Statement for the Plan, established the deadline for objecting to confirmation of the Plan, and the confirmation hearing date (ECF No. 676).

This a liquidating chapter 11 plan. Under the Sale Order, Robertshaw intends to sell substantially all assets to Purchaser. The Plan provides for required distributions, appointment of a plan administrator to make distributions and wind up Robertshaw's estates, and a liquidating trust to administer and liquidate retained causes of action.

Under the Plan, voting classes receive the following treatment:

• Class 5 (General Unsecured Claims) will receive (a) a pro rata share of the GUC Recovery Pool (about $11 million net of Go-Forward Claims described below), and (b) its pro rata share of proceeds (if any) realized from the liquidation trustee's pursuit of retained causes of action;

• Class 6 (Funded Debt Deficiency Claims) will receive their pro rata share of a Funded Debt Deficiency Claim Pool (about $10 million), subject to the waterfall provisions of the SPCA, including treatment of interest whether accruing pre or postpetition and whether or not allowed, with the following specific treatments:

o Class 6a (First-Out Funded Debt Deficiency Claims) will also receive a pro rata share of proceeds (if any) realized from the liquidation trustee's pursuit of retained causes of action;

o Classes 6b (Second-Out), 6c (Third-Out), 6d (Fourth-Out), and 6e (Fifth-Out) Funded Debt Deficiency Claims will receive treatment as described for all Class 6 Claims; and

o Classes 6f (Sixth-Out) and 6g (Seventh-Out) Funded Debt Deficiency Claims will receive treatment as described for all Class 6 Claims, but also subject to intercreditor agreements.

In addition,

Class 3 (Prepetition Secured Super-priority Claims) will receive, through an ownership interest in Purchaser, allocable share of the purchased assets and will receive no additional recovery on account of this Claim; and

Class 10 (Existing Equity Interests) will be cancelled, released and extinguished on the effective date.

The Plan also incorporates the terms of a settlement with the UCC ("**Committee Settlement**").

<u>Summary of the Committee Settlement</u>

The Committee Settlement includes the following high-level key terms:

- Plan confirmation is a condition precedent to consummation of the sale transaction;

- Purchaser will assume prepetition General Unsecured Claims held by a creditor that provides, or will provide, goods and services necessary to the operation of Robertshaw's business after consummation of the sale transaction, as determined by Robertshaw and Purchaser, in consultation with the UCC ("**Go-Forward Trade Claims**");

- all claims or causes of action—other than retained causes of action owned by Robertshaw's estates and arising under § 547 of the Bankruptcy Code—will be discharged, released, and enjoined;

- in consideration for certain releases and exculpations in the Plan, the Ad Hoc Group and One Rock will (a) redirect any proceeds on account of the SPCA and (b) cause Purchaser to contribute to Robertshaw cash sufficient to fund administrative claims, priority tax claims, and cash to be earmarked for, a "GUC Recovery Pool" equal to $11 million;

- in settlement of any derivative or other claims that could be pursued by or on behalf of the estates against the Ad Hoc Group and One Rock, among others, holders of unsecured deficiency claims related to the SPCA (other than the Ad Hoc Group and One Rock), Sixth Out Credit Agreement, and Seventh Out Credit Agreement will share in a $10 million "Funded Debt Deficiency Pool" to be contributed by Purchaser;

- contingent on approval of the Committee Settlement and consummation of the sale transaction, the Ad Hoc Group and One Rock will not receive any payment from the Funded Debt Deficiency Claim Pool on account of First-Out Funded Debt Deficiency Claims or, with limited exceptions, Second-Out Funded Deficiency Claims; and

- holders of administrative and priority tax claims will receive cash to satisfy their claims in full.[69]

[69] Scruton Decl. ¶ 13, ECF No. 868-25.

Summary of Invesco and U.S. Trustee Objections to the Plan

According to Invesco, the Committee Settlement is not in the best interest of Robertshaw's estates and creditors, the Plan improperly classifies unsecured claims in violation of § 1122 of the Bankruptcy Code, the Plan unfairly discriminates against Classes 6b and 6c in violation of § 1129(b)(1), and the Plan is not feasible in violation of § 1129(a)(11). Separately, the U.S. Trustee alleges the opt-out feature for third-party releases under the Plan should be rejected in light of the recent U.S. Supreme Court decision in *Harrington v. Purdue Pharma*.

Invesco's Objections are Overruled

I. The Committee Settlement is Approved

Interpreting the Bankruptcy Code begins with analyzing the text. *See Whitlock v. Lowe* (*In re DeBerry*), 945 F.3d 943, 947 (5th Cir. 2019) ("In matters of statutory interpretation, text is always the alpha."); *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) ("The preeminent canon of statutory interpretation requires [the court] to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.'") (quoting *Conn. Nat. Bank v. Germain*, 503 U.S. 249, 253–54 (1992)).

Section 1123(b)(3)(A) of the Bankruptcy Code provides that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A). The legal test is the same one used to consider settlements under Bankruptcy Rule 9019. That is whether the settlement is fair, equitable, and in the best interest of the estate. *Off. Comm. of Unsecured Creditors v. Moeller* (*In re Age Ref., Inc.*), 801 F.3d 530, 540 (5th Cir. 2015) (citation omitted). In determining whether a settlement is fair and equitable, the Fifth Circuit applies a three-part test: (1) the probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law; (2) the complexity and likely duration of litigation and any attendant expense, inconvenience, and delay; and (3) all other factors bearing on the wisdom of the compromise, including (i) the best interests of creditors, with proper deference to their reasonable views and (ii) the extent to which the settlement is truly the product of arm's-length bargaining, and not of fraud or collusion. *Id.* (citations omitted).

For the first factor above, a bankruptcy court does not have to conduct a "mini-trial" to determine the "probable outcome of any claims waived in the settlement." *Off. Comm. of Unsecured Creditors v. Cajun Elec. Power Co-op., Inc.* (*In re Cajun Elec. Power Co-op., Inc.*), 119 F.3d 349, 356 (5th Cir. 1997) (citation omitted). Instead, a court must "apprise [itself] of the relevant facts and law so that

[it] can make an informed and intelligent decision." *Id.* "Great judicial deference is given to the [debtor's] exercise of business judgement." *GBL Holding Co. v. Blackburn/Travis/Cole, Ltd.* (*In re State Park Bldg. Grp., Ltd.*), 331 B.R. 251, 254 (Bankr. N.D. Tex. 2005) (citation omitted). Thus, approval of a settlement agreement is a matter within the sound discretion of the bankruptcy court. *See United States v. AWECO, Inc.* (*In re AWECO, Inc.*), 725 F.2d 293, 297 (5th Cir. 1984), *cert. denied*, 469 U.S. 880 (1984).

Invesco says the Committee Settlement is not in the best interest of Robertshaw's estates or creditors. Invesco believes Robertshaw may pursue fraudulent transfer claims against One Rock and the Ad Hoc Group based on the December Transactions that may yield up to $228 million for the benefit of creditors. Invesco says the Committee Settlement releases these parties for about $21 million with no colorable rationale. According to Invesco, there is a high probability of success on constructive fraudulent transfer claims against One Rock and the Ad Hoc Group. Invesco also believes that there are many badges of fraud to establish that transfers were made with actual intent to hinder, delay, or defraud creditors. Not surprisingly, Invesco also says pursuing these claims will not be expensive or complicated because, among other things, the elements are "easily established," related issues have been adjudicated efficiently, and the Ad Hoc Group and One Rock have sufficient funds to satisfy a judgment.[70]

Robertshaw, the UCC, the Ad Hoc Group, and One Rock urge the Court to approve the Committee Settlement. They introduced unrefuted evidence in the Record about the UCC and Robertshaw's separate investigations and evaluation of potential claims and causes of action, including the December Transactions. They claim the Committee Settlement is fair, equitable, and in the best interest of the estates and creditors. The Court agrees.

Two investigations were conducted that strongly support approving the Committee Settlement. The first started in December 2023 when Robertshaw's Board of Directors established a "Restructuring Committee" consisting of two independent directors—Neil Goldman and Scott D. Vogel.[71] Robertshaw also retained Weil, Gotshal & Manges LLP to assist with an investigation about potential claims Robertshaw may hold against different parties, including avoidance actions.[72]

[70] Invesco's Obj. ¶¶ 48, 73.
[71] Vogel Decl. ¶ 7, ECF No. 868-23.
[72] Vogel Decl. ¶¶ 7, 17.

At the direction of the Restructuring Committee, Weil conducted a thorough investigation into the transactions leading up to the petition date, including the transactions that Invesco alleges are fraudulent transfers.[73] During its investigation Weil reviewed more than 16,000 documents, conducted interviews with Robertshaw's Board, senior management, and advisors, attended depositions in connection with the adversary proceeding about the December Transactions.[74] Weil also researched potential claims held by Robertshaw against any of the proposed released parties under the Plan. Potential claims included avoidance actions and breach of fiduciary duty claims against Robertshaw's Board and officers.[75]

In June 2024, Weil explained its findings to the Restructuring Committee in two parts and gave members a chance to ask questions.[76] Weil explained its findings to Goldman and Vogel about potential claims arising out of the May Transactions and Amendment Nos. 1-4 of the SPCA.[77] Then, Weil presented its findings about the December Transactions to Vogel but not Goldman. Goldman recused himself from consideration of matters related to the December Transactions because he served as an independent director during the relevant time and would receive a release under the Plan related to these Transactions.[78] Goldman and Vogel analyzed all aspects of the proposed releases under the Plan, except about the December Transactions (which only Vogel assessed).[79]

Based on a review of the factual record, Weil's findings and recommendations, the Restructuring Committee determined that viable causes of action held by Robertshaw against any of the Released Parties did not exist or that pursuing such claims had minimal value on a cost-adjusted basis.[80] So these claims held little value in light of the Committee Settlement. [81] Based on the Restructuring Committee's proposal, the full Robertshaw Board approved the Committee Settlement.[82]

The UCC also conducted its own investigations, and reached the same conclusion. The UCC—working with its counsel and financial advisors—evaluated potential causes of action held by Robertshaw for the potential benefit of unsecured

[73] *See* Vogel Decl. ¶ 17.
[74] Vogel Decl. ¶ 17.
[75] Vogel Decl. ¶ 17.
[76] Vogel Decl. ¶ 18.
[77] Vogel Decl. ¶ 19.
[78] Vogel Decl. ¶ 19.
[79] Vogel Decl. ¶ 21.
[80] Vogel Decl. ¶ 22; Aug. 2, 2024 Tr. 21:4–12.
[81] Vogel Decl. ¶ 22; Aug. 2, 2024 Tr. 21:4–12.
[82] Vogel Decl. ¶ 23; Aug. 2, 2024 Tr. 21:4–12.

creditors.[83] That included causes of action that could be brought against One Rock and Robertshaw's current and former directors and officers.[84] It also included potential claims the UCC could be entitled to bring on behalf of the estate, including fraudulent transfer claims.[85] During its investigations, the UCC, through its counsel, reviewed thousands of documents, participated in numerous depositions, held an in-person meeting with Invesco representatives and counsel, and met with Robertshaw's independent directors to gain an understanding of their views on potential claims.[86]

The UCC prepared an adversary complaint and was prepared to seek standing to pursue causes of action against One Rock, the Ad Hoc Group, and Invesco.[87] The UCC also considered potential settlements, including a global settlement with One Rock, the Ad Hoc Group, and Invesco.[88] Ultimately, after weeks of negotiations, the UCC executed a settlement agreement with Robertshaw, the Ad Hoc Group, and One Rock.[89]

The UCC considered the factors below in entering into the Committee Settlement:

- the merits of the potential estate claims and causes of action identified in its draft complaint;

- the costs versus the benefits of litigating such claims and causes of action;

- the merits of potential safe harbor defenses to the fraudulent conveyance claims;

- the risk that viewing the steps of the December Transactions as an integrated transaction would undermine the chances of prevailing on a fraudulent transfer claim; [90]

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[83] Scruton Decl. ¶ 7.
[84] Scruton Decl. ¶ 7.
[85] Scruton Decl. ¶ 8.
[86] Scruton Decl. ¶ 8.
[87] Scruton Decl. ¶ 8.
[88] Scruton Decl. ¶ 11.
[89] Scruton Decl. ¶ 11.
[90] Fraudulent transfer law generally requires a court to analyze each transaction separately. But there is an equitable doctrine that allows courts to "dispense with the structure of structures of a transaction or series of transactions." *See, e.g.*, *In re Maxus Energy Corp.*, 641 B.R. 467, 531–32 (Bankr. D. Del. 2022). The potential net effect of these transactions in a fraudulent transfer context

- the fact that holders of Funded Debt Deficiency Claims may be subject to disallowance, subordination, and other claims that could affect their ability to receive a recovery on account of their Claims under the Plan; and

- the fact that there were no other bids for the sale of Robertshaw's assets such that litigation with the Ad Hoc Group and One Rock might threaten the sale transaction, Robertshaw's ability to exit chapter 11, and future of Robertshaw as a go-forward business.[91]

After a careful and thorough investigation and analysis, the UCC concluded that the probability of a successful recovery for all unsecured creditors was uncertain, and the attendant risk and expenses of litigation weighed in favor of the certainty of the Committee Settlement.[92]

Based on the Record, the Court approves the Committee Settlement. It is fair and equitable, and in the best interest of Robertshaw's estates and creditors. The probability of success in litigating fraudulent transfer claims about the December Transactions is complex and will require analyzing many disputed issues of fact and law.

This Court conducted a trial about the December Transactions, but that will not streamline many fact intensive issue related to solvency, intent to hinder, delay, or defraud creditors, and reasonably equivalent value. Complicating matters more, the transferee in the December Transactions was an entity named RS Funding, which eventually merged into Robertshaw and no longer exists. Moreover, establishing badges of fraud in intentional fraudulent transfer cases is inherently fact intensive. And the focus would be on Robertshaw's alleged fraudulent intent as the transferor, not the Ad Hoc Group or One Rock's intent. There is no assurance Robertshaw would prevail.

Furthermore, the Record shows that Robertshaw engaged in the December Transactions to afford itself "time and runway" to, among other things, negotiate with customers, implement their out-of-court restructuring efforts, or, in the worst-case scenario, negotiate the terms of a chapter 11 plan that would benefit all stakeholders.[93] This Court also previously found in the Adversary Decision that the

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could mean that Robertshaw received reasonably equivalent value, which would negate a constructive fraudulent transfer claim.

[91] Scruton Decl. ¶ 15. Again, Invesco had a full and fair opportunity to participate in the auction for the sale of Robertshaw's assets and elected no to do so.

[92] *See* Scruton Decl. ¶¶ 13, 17.

[93] Goldman Decl. ¶ 9.

members of the Ad Hoc Group and One Rock engaged in the December Transactions to, among other things, increase Robertshaw's liquidity and allow the company to continue its turnaround plan and that One Rock did not tortiously interfere with the SPCA.

The negotiations between the UCC and other settlement parties were the product of extensive arm's-length bargaining. The UCC is a true independent party who actively participated in these cases and considered the interest of all unsecured creditors. No one also disputes that the Restructuring Committee acted independently. There is also no evidence of fraud or collusion here. The Restructuring Committee and the UCC conducted extensive analysis about potential claims, potential defenses to these claims, and the probability of success. They independently concluded that potential defendants have meritorious defenses and the cost to litigate fraudulent transfer claims about the December Transactions will be complicated, expensive, and long.

The Court considered the paramount interest of the estates and creditors, including Invesco and every creditor who rejected the Plan. A meaningful and certain recovery now rather than the uncertainty of a complex litigation, including what happens to the business during such litigation and the proposed sale of Robertshaw's assets, reflects Robertshaw's sound exercise of business judgment.

The Court approves the Committee Settlement.

II. The Plan Properly Classifies Claims Under Section 1122 of the Bankruptcy Code

Section 1122(a) of the Bankruptcy Code provides that a "plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). Substantially similar claims may be separately classified for "good business reasons." *Bank N.Y. Tr. Co. v. Off. Unsecured Creditors' Comm.* (*In re Pac. Lumber Co.*), 584 F.3d 229, 251 (5th Cir. 2009) (quoting *Phoenix Mut. Life Ins. v. Greystone III Joint Venture* (*In re Greystone III Joint Venture*), 995 F.2d 1274, 1281 (5th Cir.1991), *cert. denied,* 506 U.S. 821 (1992)). But it "may only be undertaken for reasons independent of the debtor's motivation to secure the vote of an impaired, assenting class of claims." *Greystone*, 995 F.2d at 1279. Robertshaw bears the burden of proving classification is proper by a preponderance of the evidence. *See Heartland Fed. Sav. & Loan Ass'n v. Briscoe Enters., Ltd., II* (*In re Briscoe Enters., Ltd., II*) 994 F.2d 1160, 1165 (5th Cir. 1993). Based on the Record, the Court finds the classification scheme in the Plan complies with the requirements of § 1122(a).

Invesco argues that there is "no apparent business justification for the Plan's separate classification of General Unsecured Claims and Funded Debt Deficiency Claims" because the general unsecured creditors in Class 5 includes unsecured claims that are not Go-Forward Trade Claims.[94] The unrefuted evidence, however, proves otherwise.

The Spitzer Declaration, as modified at the confirmation hearing, established that the vendor community for Robertshaw's business is relatively small and specialized.[95] And Robertshaw's "ability to maintain good relationships with vendors has certain value for the company's ongoing relationship even if [Robertshaw] does not utilize their services on a go-forward basis."[96] Also, the "majority of Holders of General Unsecured Claims are trade creditors who have the potential to reestablish a relationship with [Robertshaw] in the future."[97] So even if some trade creditors in Class 5 are not Go-Forward Trade Claims now, there is still reason to believe that "[Robertshaw] may need to utilize several of the class five creditors in the Debtors' day-to-day operations going forward."[98]

There is another reason. Each Class 6 Deficiency Class's right to recovery against Robertshaw is determined by the waterfall provisions in the SPCA. The Plan's classification scheme mirrors the waterfall in the SPCA keeping like claims with like claims and the legal relations among the parties intact. In other words, claims "which share common priority and rights against the debtor's estate" have been classified together. *Save Our Springs (S.O.S.) All., Inc. v. WSI (II)-COS, L.L.C.,* (*In re Save Our Springs (S.O.S.) All., Inc.*), 632 F.3d 168, 174 (5th Cir. 2011).

Along with treating each sub-class of Funded Debt Deficiency Claims as a separate voting class, the separate legal rights as between the General Unsecured Claims in Class 5 and the Funded Debt Deficiency Claims in Class 6(b) and 6(c) justify their separate classification too. The claims in Class 6 derive from the SPCA and Class 5 claims derive from Robertshaw's business operations.

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[94] Invesco's Obj. ¶ 88.
[95] Spitzer Decl. ¶ 22, ECF No. 868-22.
[96] Aug. 2, 2024 Tr. 31:18–32:13.
[97] Spitzer Decl. ¶ 21.
[98] Aug. 2, 2024 Tr. 30:14–31:5, 32:4–13.

Thus, the Plan separately classifies Claims based on valid business and legal reasons. The classifications were not proposed to create a consenting impaired class or to manipulate class voting. The Plan satisfies § 1122.

III. The Plan Does Not Discriminate Unfairly in Violation of Section 1129(b)(1) of the Bankruptcy Code

Section 1129(a) of the Bankruptcy Code says that a bankruptcy court shall confirm a plan only if all the requirements under subsection (a) are met. 11 U.S.C. § 1129(a). Section 1129(a)(8) requires all impaired classes to vote for the plan. But that's not the end of the analysis. Section 1129(b) permits plan confirmation, despite § 1129(a)(8), if all (i) other requirements under 1129(a) are met and (ii) the plan does not discriminate unfairly, and is fair and equitable, with respect to an impaired non-accepting class. 11 U.S.C. § 1129(b)(1). So a plan may discriminate between classes, but it cannot discriminate unfairly. Invesco notes that Classes 6b and 6c Funded Debt Deficiency Claims rejected the Plan.[99] So Robertshaw bears the burden to prove by a preponderance of the evidence that the Plan does not discriminate unfairly against these Classes.

The Bankruptcy Code does not define what it means to "discriminate unfairly." Courts generally assess unfair discrimination based on the facts and circumstances presented in the case. *See, e.g.*, *In re Idearc Inc.*, 423 B.R. 138, 160 (Bankr. N.D. Tex. 2009), aff'd, 662 F.3d 315 (5th Cir. 2011). In other words, "for payment to be preferred to one creditor or class over others, the [c]ourt must find an articulable basis for the preference." *In re Mortg. Inv. Co. of El Paso, Tex.*, 111 B.R. 604, 614–15 (Bankr. W.D. Tex. 1990). Some courts have utilized multi-factor tests[100] or rebuttable presumption tests[101] as an analytical framework to assess unfair discrimination. They are helpful considerations, but could be construed to either create additional burdens on the debtor to satisfy this prong or appear to repeat standards already required in other parts of § 1129 required for confirmation. The text requires a plan not to unfairly discriminate against an impaired non-accepting class. Thus, Robertshaw must articulate a basis for discriminating between two classes and show by a preponderance of the evidence that such discrimination is not unfair to impaired rejecting classes.

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[99] Invesco's Obj. ¶ 76.

[100] *In re Creekside Landing, Ltd.,* 140 B.R. 713, 716 (Bankr. M.D. Tenn. 1992) ((1) Whether the discrimination is supported by a reasonable basis, (2) Whether the debtor can confirm and consummate a plan without the discrimination, (3) Whether the discrimination is proposed in good faith, and (4) The treatment of the classes discriminated against)).

[101] *In re Sentry Operating Co. of Tex., Inc.,* 264 B.R. 850, 863 (Bankr. S.D. Tex. 2001) (using rebuttable presumption multi-factor test).

Invesco argues Robertshaw cannot satisfy its burden with respect to Classes 6b and 6c as compared to the percentage recovery to holders of Class 5 General Unsecured Claims. It argues that Classes 6b and 6c are of equal rank and priority with General Unsecured Claims and Go-Forward Trade Claims in Class 5 because they are all unsecured, non-priority claims. Based on the Disclosure Statement, Class 6b creditors are estimated to receive a 5% recovery and Class 6c creditors may receive no recovery.[102] But Class 5 creditors are estimated to recover about 40% and Go-Forward Trade Claims will recover 100%.[103] And, unlike holders of Go-Forward Trade Claims, other Class 5 creditors will supposedly not contribute in any way to Robertshaw's business in the future. The Court disagrees with Invesco. Based on the unrefuted Record, the Plan does not discriminate unfairly against the dissenting classes.[104]

First, the evidence shows that there is a business justification for the discrimination. Go-Forward Claims are being paid by Purchaser and will provide future business to the company. Many other holders of general unsecured claims are potential trade vendors that Robertshaw may do business with in the future.[105] Discriminating between trade claims that may give rise to future business dealings compared to Funded Debt Claims, for which the evidence shows will not contribute similarly on a go-forward basis, [106] does not amount to unfair discrimination. There is no material evidence in the Record proving otherwise.

Second, no unsecured creditor is entitled to a greater recovery than they are receiving under the Plan. The liquidation analysis confirms this point.[107] Robertshaw is selling substantially all assets to Purchaser—including cash. Moreover, the final order approving debtor in possession financing (ECF No. 357) provides that the Prepetition First Out Super-Priority Secured Parties (as defined in the order) hold valid liens on "substantially all of the assets" of Robertshaw.[108] So the only unencumbered cash available for distribution to unsecured creditors will come from Purchaser as a gift.

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[102] Invesco's Obj. ¶ 39; Disclosure Statement at 42, ECF No. 868-16.
[103] Spitzer Decl., Exhibit. B.
[104] For the reasons stated above, the Plan satisfies any of these other unfair discrimination standards.
[105] Spitzer Decl. ¶ 21.
[106] Spitzer Decl. ¶ 21.
[107] Spitzer Decl., Exhibit A.
[108] *See* DIP Order ¶ E.1(a)(i), (ii), ECF No. 357.

As part of the Committee Settlement, Purchaser will provide the cash to pay Class 5 General Unsecured Claims and Class 6 Funded Debt Deficiency Claims.[109] Purchaser will provide $10 million for Class 6 Claims to be disbursed on a pro rata basis in accordance with the SPCA and $11 million for Class 5.[110] Senior creditors may share proceeds with junior creditors as long as the junior creditors receive what they would have received otherwise without such sharing. *In re MCorp Financial, Inc.*, 160 B.R. 941, 960 (S.D. Tex. 1993); *see also In re Nuverra Evtl. Sols., Inc.*, 590 B.R. 75, 95 (D. Del. 2018). Here, based on § 506(c) of the Bankruptcy Code, the Funded Debt Deficiency Claims are junior to the Prepetition Secured Super Priority Claims credit bid.

Under the Committee Settlement the Ad Hoc Group and One Rock also agree to waive any recovery on account of their respective Class 6a Claims and allow value to flow to Class 6b Claims.[111] Under § 2.18(b) of the SPCA, Prepetition First-Out Term Loans recover in full before Prepetition Second Out Term Loans and junior tranches. So the remaining First-Out Funded Debt Deficiency Claims will recover in full the allowed amounts of their claims, and the excess value will flow to Class 6b. The Ad Hoc Group and One Rock also agree to waive any recovery on account of their Class 6b Claims.[112] As a result, the non-waiving holders in Class 6b are estimated to receive a greater recovery on account of their Claims.[113] According to the unrefuted Spitzer Declaration, "because the Ad Hoc Group holds approximately 51% of the Prepetition Second Out Term Loans, they are essentially providing $20 million of value to the Funded Debt Deficiency Claim Pool."[114] Non-waiving holders of claims in these and other Class 6 creditors may also receive increased recovery from retained causes of action.

For these reasons, there are business and legally sound reasons for the treatment afforded to Class 5 and Class 6. The Plan does not unfairly discriminate against any dissenting classes. Section 1129(b)(1) is satisfied.

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[109] Spitzer Decl. ¶ 71; Plan at 3 (definition of "Additional Sale Consideration").
[110] *See* Plan at 3 (definition of "Additional Sale Consideration"); Spitzer Decl. ¶ 71; Vogel Decl. ¶ 10(c), (d).
[111] Vogel Decl. ¶ 11.
[112] Vogel Decl. ¶ 11.
[113] Spitzer Decl. ¶ 12, Exhibit B.
[114] Spitzer Decl. ¶ 12 n.4.

IV. The Plan is Feasible Under Section 1129(a)(11) of the Bankruptcy Code

Section 1129(a)(11) requires that confirmation "of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan, unless such liquidation or reorganization is proposed in the plan." 11 U.S.C. § 1129(a)(11).

This is a liquidating chapter 11 plan. So feasibility is established when the liquidation itself is feasible. *See e.g., In re Heritage Org., L.L.C.*, 375 B.R. 230, 311 (Bankr. N.D. Tex. 2007). Funding from Purchaser will be disbursed in accordance with Plan. Any remaining assets, including retained causes of action, will be administered through the plan administrator or the liquidation trust.[115] Robertshaw and its professionals analyzed the ability to meet obligations under the Plan and project that there are sufficient amounts to pay professional fee claims, administer the wind down of Robertshaw's estates, and make required Plan distributions.[116] And Article V.F of the Plan says that if there is a shortfall Purchaser will fund the extra amounts to the "Additional Sale Consideration, the Professional Fee Escrow Amount, and the Wind-Down Reserve."[117]

Invesco argues that the Plan is not feasible "because it does not account for at least $118.4 million to $154.4 million in damages and indemnifiable and reimbursable expenses that Invesco has asserted in its proof of claim, which are secured and must be paid before the Ad Hoc Group and One Rock's credit bid may be consummated."[118] This Court recently held a separate evidentiary hearing about Invesco's proof of claim. Invesco's lack of evidence coupled with bedrock New York law cause Invesco to hold only an unsecured claim that will not impact Plan feasibility. The Court will issue a separate decision detailing its findings of fact and conclusions of law on Invesco's proof of claim. The Plan complies with § 1129(a)(11).

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[115] Spitzer Decl. ¶ 70.
[116] Spitzer Decl. ¶ 71.
[117] Spitzer Decl. ¶ 71; *see also* Plan at 36 ("[I]f the Retained Cash is insufficient to fund the Additional Sale Consideration, the Professional Fee Escrow Amount and the Wind-Down Reserve, the Purchaser shall fund all necessary additional amounts on or prior to the Effective Date.").
[118] Invesco's Obj. ¶ 92.

The U.S. Trustee's Objection is Overruled

The Supreme Court's recent decision in *Harrington v. Purdue Pharma* resolved a circuit-split about non-consensual third-party releases in chapter 11 plans. The Court held that the Bankruptcy Code does not "authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants." *Purdue Pharma*, 144 S. Ct. at 2088. Even before *Purdue*, Fifth Circuit case law appeared to prohibit non-consensual third-party releases. *See Feld v. Zale Corp.* (*In re Zale Corp.*), 62 F.3d 746 (5th Cir. 1995); *In re Pac. Lumber Co.*, 584 F.3d 299. So *Purdue* did not change the law in this Circuit.

The Plan does not include non-consensual third-party releases like the ones addressed in *Purdue*. It contains consensual ones. So the *Purdue* decision does not apply here. The U.S. Trustee provided comments to Robertshaw on the Plan solicitation materials before they were approved by this Court.[119] Now it objects to the consensual third-party releases on the basis of the *Purdue* decision. The Trustee wants to use the *Purdue* holding as an opportunity to advance its long-held position that consensual third-party releases in a plan should require an opt-in feature, rather than an opt-out.

To be clear, the Trustee does not object to consensual third-party releases in a chapter 11 plan, it just wants opt-in versus opt-out. The Trustee says that *Purdue* clarifies that third-party releases are between two nondebtors (but that was always the case). The Trustee also says the opt-outs are "coercive" and otherwise improper. Robertshaw, the Ad Hoc Group, One Rock, and the UCC argue the third-party releases are appropriate under the law.

The Trustee's objection is overruled for several reasons. First, the *Purdue* decision was about non-consensual third-party releases and the Supreme Court said nothing should cast doubt on consensual ones:

> As important as the question we decide today are ones we do not. ***Nothing in what we have said should be construed to call into question consensual third-party releases offered in connection with a bankruptcy reorganization plan***; those sorts of releases pose different questions and may rest on different legal grounds than the nonconsensual release at issue here. *See, e.g.*, *In re Specialty Equipment Cos.*, 3 F.3d 1043, 1047

[119] Aug. 2, 2024 Tr. 123:12–19.

> (CA7 1993). ***Nor do we have occasion today to express a view on what qualifies as a consensual release*** or pass upon a plan that provides for the full satisfaction of claims against a third-party nondebtor . . . ***Confining ourselves to the question presented, we hold only that the bankruptcy code does not authorize a release and injunction that, as part of a plan of reorganization under Chapter 11, effectively seeks to discharge claims against a nondebtor without the consent of affected claimants***.

Purdue Pharma, 144 S. Ct. at 2087–88 (emphasis added).

A few important points here. Nothing is construed to question consensual third-party releases offered in connection with a chapter 11 plan. There was also no occasion for the Supreme Court to express a view on what constitutes a consensual release. The Supreme Court confined its decision to the question presented. This Court will not narrow or expand the scope of the Supreme Court's holding. These words must be read literally.

Second, contrary to the Trustee's position, the consensual third-party releases in the Plan are appropriate, afforded affected parties constitutional due process, and a meaningful opportunity to opt out. There is nothing improper with an opt-out feature for consensual third-party releases in a chapter 11 plan. *See, e.g.*, *In re Arsenal Intermediate Holdings, L.L.C.*, No. 23-10097 (CTG), 2023 WL 2655592, at *6–8 (Bankr. D. Del. Mar. 27, 2023).[120] And what constitutes consent, including opt-out features and deemed consent for not opting out, has long been settled in this District. *See, e.g.*, *Cole v. Nabors Corp. Servs., Inc.* (*In re CJ Holding Co.*), 597 B.R. 597, 608–09 (S.D. Tex. 2019). Hundreds of chapter 11 cases have been confirmed in this District with consensual third-party releases with an opt-out. And, again, *Purdue* did not change the law in this Circuit.

The third-party releases in the Plan satisfy applicable law and the Procedures for Complex Cases in the Southern District of Texas. Parties in interest were provided detailed notice about the Plan, the deadline to object to plan confirmation, the voting deadline, and the opportunity to opt out of the third-party releases. The Disclosure Statement included a detailed description about the third-

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[120] The U.S. Supreme Court and the Fifth Circuit have also approved opt-outs in non-bankruptcy cases like class actions as providing consent. *See, e.g.*, *Phillips Petroleum Co. v. Irl Shutts*, 472 U.S. 797, 811–12 (1985) (approving opt-out); *Seacor Holdings, Inc. v. Mason, (In re Deepwater Horizon)*, 819 F.3d 190 (5th Cir. 2016) (same).

party releases and the opt-out.[121] The Affidavit of Service dated July 26, 2024, also shows ballots were sent to holders of Claims in voting classes 5, 6a, 6b, 6c, 6d, 6e, 6f, and 6g.[122] All ballots provided claimants an opportunity to opt out. Non-voting parties in Classes 1, 2, 3, 4, 7, 8, 9, and 10 received a Notice of Non-Voting Status that offered a chance to opt out too.[123] The ballots and the Notice of Non-Voting Status allowed parties to carefully review and consider the terms of the third-party release and the consequences of electing not to opt-out. Each of the ballots advises in bold, that:

> **If you submit your Ballot without this box checked, or if you do not submit your Ballot by the Voting Deadline, you will be deemed to consent to the releases contained in Article X.C of the Plan to the fullest extent permitted by applicable law.**[124]

Robertshaw also caused the third-party release language to be published in the Wall Street Journal.[125] The Voting Report shows that over 100 creditors opted out of the third-party releases.[126] Based on the Record, the third-party release language is specific enough to put releasing parties on notice of the types of claims released. And that the opt-out worked. There is no evidence in the Record of coercion or confusion alleged by the Trustee.

The third-party releases are also narrowly tailored to this case. They consensually release parties from claims and causes of action based on or relating to, among other things, Robertshaw and the bankruptcy estates, Robertshaw's capital structure, the chapter 11 cases, the purchase, sale, or rescission of the purchase or sale of any asset or security of Robertshaw, the May Transactions, the December Transactions, the SPCA and related agreements (including intercreditor agreements), Robertshaw's in or out-of-court restructuring and recapitalization efforts, the Sale Order, the Disclosure Statement, the DIP Order, the DIP documents, and the Plan and related agreements.[127] There is also an important carve-out for Released Claims unrelated to Robertshaw, claims preserved by the Plan or related documents, or claims arising from an act or omission judicially determined by a final order to have constituted actual fraud, gross negligence,

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[121] Disclosure Statement at ii, v, 5, 58, 61.
[122] Aff. Service, ECF No. 812.
[123] *See* Aff. Service at 136–39.
[124] *See* Aff. Service at 26, 41, 55, 69, 83, 97, 111, 125.
[125] *See* Certificate Publication, ECF No. 728.
[126] *See* Orchowski Decl. ¶ 12, ECF No. 868-21.
[127] Plan at 65.

willful misconduct, or criminal conduct (other than with respect to or relating to the adversary actions).[128]

Furthermore, based on the unrefuted Declaration of Stephen Spitzer, the third-party release "is an integral part of the Plan and was a condition of the settlements set forth therein."[129] And the releases were a "core" consideration "among the parties to the Restructuring Support Agreement, instrumental in the development of the Plan, and crucial in facilitating and gaining support for the Plan and the chapter 11 Cases by the Released Parties, including the concessions resulting in the elimination of over $640 million in funded debt obligations."[130] There is no evidence in the Record to refute these findings. Thus, the third-party releases are consensual and narrowly tailored. The UCC—an active participant in these cases with a fiduciary duty to all unsecured creditors—doesn't oppose the opt-out for the releases either. The U.S. Trustee's objection is overruled.[131]

Conclusion

For the reasons stated above, the Plan, including the Committee Settlement, satisfies all requirements under the Bankruptcy Code and applicable law. The Plan preserves and creates value for all stakeholders, including trade creditors on a go-forward basis. It also allows a company with a proud American history of operating for over 100 years to emerge from chapter 11 and saves jobs. The Court confirms the Plan. The Court will issue a separate confirmation order incorporating this Memorandum Decision.

Signed: August 16, 2024

Christopher Lopez
United States Bankruptcy Judge

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[128] *Id.*
[129] Spitzer Decl. ¶ 60.
[130] Spitzer Decl. ¶ 60; *see also* Vogel Decl. ¶ 30.
[131] The U.S. Trustee and Invesco stated at the confirmation hearing that certain language in the Plan could be construed to still bind a third-party subject to the releases even if they opted out. To avoid any such confusion, the Confirmation Order will state that any party who opted out of the third-party releases in the Plan is not bound by such releases.

Faculty

Sasha M. Gurvitz is a partner with KTBS Law LLP in Los Angeles and has represented clients in a variety of restructuring roles, both out of court and in chapter 11 cases in Delaware, New York, California, Nevada and Indiana. She has represented several chapter 11 debtors in complex Delaware bankruptcy cases. She also has experience representing official creditors' committees, purchasers of assets, secured lenders, contract counterparties, landlords, equityholders, chapter 11 trustees and other chapter 11 stakeholders. Ms. Gurvitz's chapter 11 practice has been focused on mass tort, hospital, real estate, retail and restaurant cases. She also has worked on significant out-of-court workouts in the health care industry, as well as in the retail and marijuana industries. In addition to her primary restructuring work, Ms. Gurvitz has represented clients in federal multi-district litigation, in fraudulent-transfer actions and in appeals, including to the U.S. Court of Appeals for the Third, Seventh Circuit and Ninth Circuits. She is a member of the California State Bar, ABI, the Turnaround Management Association (TMA) and the Financial Lawyers Conference. In addition, she serves as president of TMA's Southern California chapter, as a co-chair of ABI's Southwest Bankruptcy Conference, and on the exxecutive committee of the Financial Lawyers Conference. Ms. Gurvitz has been named a *Super Lawyers* "Rising Star" from 2019-23 and as a member of ABI's 2021 class of "40 Under 40." She has written articles for several bankruptcy publications, including *Colliers on Bankruptcy*, *Colliers Practice Guide*, the *Norton Adviser* and *Law360*, and she is a frequent speaker at conferences on bankruptcy-related topics. Ms. Gurvitz received her undergraduate degree with highest honors from the University of California, Berkeley and her J.D. from UCLA School of Law, where she graduated tenth in her class, was admitted to the Order of the Coif and was awarded the 2013 American Bankruptcy Institute Medal of Excellence.

Hon. Meredith A. Jury is a retired U.S. Bankruptcy Judge for the Central District of California in Riverside, appointed from 1997-2018 by the Ninth Circuit Court of Appeals. She also served on the Ninth Circuit Bankruptcy Appellate Panel (BAP) from 2007-17. Since her retirement, she has been writing *pro bono* appellate briefs for consumer debtors or amicus for NACBA. Prior to her appointment to the bench, Judge Jury had spent her entire attorney career as a civil, municipal and bankruptcy litigator for the law firm of Best, Best & Krieger in Riverside, joining as the first woman associate in 1976 and becoming its first woman partner in 1982. She has participated in innumerable panels about various aspects of bankruptcy law at local and Ninth Circuit programs. As a member of the BAP, Judge Jury was lead author of *In re Vallejo*, 408 B.R. 280 (B.A.P. 9th Cir. 2009), primarily concerning the eligibility of a city to file chapter 9. She received her B.A. *cum laude* from the University of Colorado, where she was elected Phi Beta Kappa, and her J.D. from UCLA. She also received Masters degrees in economics and English/education from the University of Wisconsin.

Christopher A. Ward chairs Polsinelli PC's Bankruptcy & Financial Restructuring Practice and is the managing shareholder of the firm's Wilmington, Del., office. He also is ABI's President. Mr. Ward focuses his practice on corporate bankruptcy, financial restructuring, bankruptcy and distressed litigation, and distressed-asset sales, as well as nonbankruptcy alternatives. He has been lead chapter 11 debtor's counsel in the bankruptcies of Esco Ltd., Lucky's Markets, Elements Behavioral Health, Orchids Paper Products and Bayou Steel Group, among many others. Mr. Ward has been recognized for excellence in Delaware Bankruptcy/Restructuring by *Chambers USA* since 2010, recognized by

SuperLawyers in Delaware for Bankruptcy & Creditor Rights in 2012 and since 2014, and recognized in *The Best Lawyers in America* for Bankruptcy/Restructuring in Delaware since 2015. He is also an editor and contributor to the app version of Polsinelli's *The Devil's Dictionary of Bankruptcy Terms*, which has its own dedicated website and is available for free on iTunes. Mr. Ward co-authored ABI's *A Business Creditors' Guide to Distressed Vendors, Debt Collection and Bankruptcy* and was editor and co-author of ABI's *The Chief Restructuring Officer's Guide to Bankruptcy*, and he is routinely quoted in the *Wall Street Journal*, *Law360* and *The Deal* on restructuring issues. He received his B.A. from Moravian College in 1995 and his J.D. *cum laude* from Widener University School of Law in 1999.

Eric D. Winston is a partner in the Los Angeles office of Quinn Emanuel Urquhart & Sullivan, LLP, where his practice includes all areas of corporate insolvency and reorganization and insolvency and valuation-related litigation. He has represented debtors, creditors' committees, secured lenders, bondholders, hedge funds, intellectual property counterparties, trade creditors and asset acquirers across numerous industries, both out of court and in connection with chapter 9, chapter 11, chapter 15, SIPA and SEC receivership cases. Mr. Winston also routinely advises hedge funds and other investors in distressed companies with respect to indentures, credit agreements and other capital structure and corporate governance issues. His recent representative cases include *Core Media (AOG Entertainment)*, *SandRidge Exploration*, *Circuit City*, *Relativity Media*, *Gaming & Leisure Properties/Cannery Casino*, *Lehman Brothers Holdings*, *Bernard L. Madoff Investment Securities/Fairfield Sentry*, *Residential Capital*, *Town of Mammoth Lakes*, *Eastman Kodak*, *Station Casinos*, *SemGroup*, *Fontainebleau Las Vegas* and *SK Foods.* Previously, he as a shareholder with Stutman Treister & Glatt and a law clerk to Hon. William J. Holloway Jr. of the U.S. Court of Appeals for the Tenth Circuit. Mr. Winston is a frequent speaker and has guest lectured at Loyola and University of Southern California law schools. He has written several law review articles, is the LEXIS practice advisor on claims trading, and has been a member of the State Bar of California Insolvency Law Committee and the U.S. District Court for the Central District of California Attorney Discipline Committee. Mr. Winston has been listed in *Chambers USA* for California Bankruptcy/Restructuring Litigation for 2013-15, named in *The Legal 500* as a "Recommended Lawyer" for 2013, recognized as a "Rising Star" by Thomson Reuters *Super Lawyers* from 2004-13 and in 2014-16 as a "Super Lawyer for Bankruptcy," and named by *Turnarounds & Workouts* as being an "Outstanding Young Restructuring Lawyer" in 2005 and 2012. He is a member of the American Bar Association and the International Association of Restructuring, Insolvency & Bankruptcy Professionals, and served as co-vice chair of the State Bar of California's Insolvency Law Committee from 2008-09. He is also a member of the Association of Insolvency and Restructuring Advisors and the Los Angeles County Bar Association. Mr. Winston is admitted to the State Bar of California, the U.S. Courts of Appeals for the Second, Third, Ninth and Tenth Circuits, and the U.S. District Courts for the Central, Eastern, Northern and Southern Districts of California. He received his B.A. in political science with high honors from the University of California at Berkeley in 1995 and his J.D. from the University of California at Los Angeles School of Law in 1998, where he was a managing editor of the *UCLA Journal of Environmental Law & Policy* and served as an extern to the U.S. Department of Justice's Civil Rights Division.