No. 22-____

IN THE

Supreme Court of the United States

TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND AND TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA 1992 BENEFIT PLAN,
Petitioners,

v.

UNITED STATES PIPE & FOUNDRY CO., LLC, AND JW ALUMINUM CO.,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

To ensure that retired coal miners receive healthcare benefits, the Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act") imposes continuing and periodic statutory duties on certain coal companies and their affiliates. As long as covered companies are in business, they must maintain individual employer plans ("IEPs") and pay monthly and annual premiums to support two healthcare benefit plans the Act created. In holding that a covered company cannot be enjoined to maintain an IEP after bankruptcy, the Eleventh Circuit rejected a test announced in *Ohio* v. *Kovacs*, 469 U.S. 274 (1985), and used by at least five circuits for determining which rights to equitable relief are dischargeable "claims," 11 U.S.C. § 101(5)(B). And, in holding that a covered company need not pay Coal Act premiums incurred after its bankruptcy ends, the Eleventh Circuit rejected the Second and Tenth Circuits' holdings that Coal Act premiums, like taxes and other statutory exactions, are incurred periodically and thus dischargeable only as to premiums incurred before bankruptcy ends.

The questions presented are:

1. Whether the equitable right to compel a covered company to maintain an IEP is a dischargeable "claim" under 11 U.S.C. § 101(5)(B).

2. Whether the Eleventh Circuit erred in holding that a covered company's Coal Act obligations arose, once and for all time, when the Act became law, such that a bankruptcy discharge relieves a company from its statutory obligations to maintain an IEP and pay Coal Act premiums incurred after bankruptcy.

PARTIES TO THE PROCEEDING

The Petitioners are the Trustees of the United Mine Workers of America Combined Benefit Fund ("Combined Fund") and the Trustees of United Mine Workers of America 1992 Benefit Plan ("1992 Plan"), who, in their capacities as trustees, were appellees in the proceedings below.

- The Trustees of the Combined Fund are:
  - Micheal W. Buckner
  - William P. Hobgood
  - Michael O. McKown
  - Paul B. Piccolini
  - Carl E. Van Horn
  - Gail R. Wilensky
- The Trustees of the 1992 Plan are:
  - Micheal W. Buckner
  - Michael O. McKown
  - Paul B. Piccolini
  - Carlo Tarley

The Respondents are the following entities, who were appellants in the proceeding below:

- United States Pipe and Foundry Company, LLC
- JW Aluminum Company
- JW Window Components LLC*

RELATED PROCEEDINGS

- The Respondents' 1989 bankruptcy proceedings:
  - *In re U.S. Pipe & Foundry Co.*, Case No. 8:89-bk-9744 (Bankr. M.D. Fla.)

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* Since the Eleventh Circuit's decision in this case, the Petitioners and JW Window Components LLC have settled their dispute.

  - *In re JW Aluminum Co.*, Case No. 8:89-bk-9718 (Bankr. M.D. Fla.)
  - *In re JW Window Components Inc.*, Case No. 8:89-bk-9732 (Bankr. M.D. Fla.)
- The Petitioners' 2016 suit against the Respondents:
  - *Holland* v. *U.S. Pipe & Foundry Co.*, Case No. 1:16-cv-1577 (D.D.C.)
- The Respondents' 2017 adversary proceedings against the Petitioners:
  - *U.S. Pipe & Foundry Co.* v. *Holland (In re U.S. Pipe & Foundry Co.)*, Case No. 8:17-ap-00478-MGW (Bankr. M.D. Fla.)
  - *JW Aluminum Co.* v. *Holland (In re JW Aluminum Co.)*, Case No. 8:17-ap-480-MGW (Bankr. M.D. Fla.)
  - *JW Window Components LLC* v. *Holland (In re JW Window Components Inc.)*, Case No. 8:17-ap-479-MGW (Bankr. M.D. Fla.)
- The Respondents' consolidated appeal to the district court:
  - *U.S. Pipe & Foundry Co.* v. *Holland (In re U.S. Pipe & Foundry Co.)*, Case No. 8:19-cv-891-CEH (M.D. Fla.)

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OPINIONS BELOW

The opinion of the bankruptcy court (Pet. App. 60) is published at 599 B.R. 193. The opinion of the district court (Pet. App. 37) is not published but may be found at 2020 WL 6266305. The opinion of the court of appeals (Pet. App. 1) is published at 32 F.4th 1324.

JURISDICTION

From 1989 to 1995, the bankruptcy court exercised jurisdiction over the Respondents' bankruptcy proceedings under 28 U.S.C. § 1334(a) and in accordance with 28 U.S.C. § 157(a). In 2017, the bankruptcy court exercised jurisdiction over the Respondents' adversary proceedings under 28 U.S.C. § 1334(b) and in accordance with 28 U.S.C. § 157(b). That court entered judgment against the Respondents on March 29, 2019.

The Respondents filed a timely notice of appeal to the district court, which exercised appellate jurisdiction under 28 U.S.C. § 158(a)(1). That court affirmed the bankruptcy court's judgment on September 28, 2020.

The Respondents filed a timely notice of appeal to the court of appeals, which exercised appellate jurisdiction under 28 U.S.C. § 158(d)(1). That court reversed the district court's judgment on May 3, 2022.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Bankruptcy Code, 11 U.S.C. § 101(5), defines "claim" as:

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

Relevant provisions of the Coal Industry Retiree Health Benefit Act of 1992 (26 U.S.C. ch. 99) are set out in the Appendix. See Pet. App. 76–103.

STATEMENT

I. Statutory Background—The Coal Act

In the mid-twentieth century, coal-industry employers began providing healthcare benefits to miners through a series of collective bargaining agreements. See *Eastern Enterprises* v. *Apfel*, 524 U.S. 498, 504–11 (1996) (plurality). Over time, as those benefits became more and more expensive, companies tried to escape the costs—especially the costs of *retired* miners' healthcare. Some companies refused to sign new collective bargaining agreements requiring contributions to the private, multiemployer plans providing retiree healthcare benefits. Some shrank and continued mining without union employees. Others quit mining altogether. See *id.* at 511; *Barnhart* v. *Sigmon*

Coal Co., 534 U.S. 438, 445 (2002). And some companies used bankruptcy to shed their contractual obligations to retirees. See, *e.g.*, *In re Chateaugay Corp.*, 64 B.R. 990, 993 (S.D.N.Y. 1986).

These maneuvers threatened the healthcare benefits of more than 120,000 retirees. *Eastern Enterprises*, 524 U.S. at 513. The ensuing labor unrest threatened the nation's energy supply. As the issue drew national attention, Secretary of Labor Elizabeth Dole convened an advisory commission to recommend ways to ensure that retirees would continue receiving healthcare benefits. "The Commission agreed that a statutory obligation to contribute" was required. *Id.* at 511 (internal quotation mark omitted).

Congress heeded the Commission's advice. In 1992, Congress passed the Coal Act, Pub. L. No. 102-486, §§ 19141–19143, 106 Stat. 2776, 3036–56 (Oct. 24, 1992), and directed that it be codified as Chapter 99 of the Internal Revenue Code, see *id.* § 19143(a), 106 Stat. 3037. The Coal Act eliminated the historical, contract-based system for providing healthcare benefits to eligible miners who retired before October 1, 1994. In its place, the Act created a new, statutory system to ensure that eligible retirees continuously receive benefits.

A. The Coal Act's covered companies

The Coal Act imposes obligations on "signatory operators," defined as any company that had signed one of the collective bargaining agreements that required providing healthcare benefits to retired miners before the Act. 26 U.S.C. § 9701(c). For each specific obligation it imposes, the Act subdivides signatory operators into classes, such as "last signatory operators" and "assigned operators." *Ibid.*

The Coal Act also imposes obligations on companies that were closely affiliated with signatory operators when the Act went into effect. In Congress's view, the "financial interdependence of these related entities" made it "appropriate" to impose Coal Act obligations on every company within a signatory operator's controlled group. 138 Cong. Rec. 34001 (1992). Along with signatory operators, these "related persons" are jointly and severally liable for all Coal Act obligations. See 26 U.S.C. § 9701(c)(2) (defining "related persons"); see also *id.* §§ 9704(a), 9711(c), 9712(d)(4) (establishing joint-and-several liability).[1]

B. Covered companies' obligations under the Coal Act

In the Coal Act, Congress devised three distinct programs for providing healthcare benefits to eligible retirees. See *Holland* v. *Arch Coal, Inc.*, 947 F.3d 812, 814 (CADC 2020). First, the Act requires covered companies to maintain their own, individual employer plans ("IEPs") to provide healthcare benefits directly to certain retirees. Second and third are two benefit plans the Act created, the United Mine Workers of America Combined Benefit Fund and the United Mine Workers of America 1992 Benefit Plan, whose trustees are the Petitioners here.

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1 Joint-and-several liability is a form of *primary* liability "that may be apportioned either among two or more parties or to only one or a few select members of the group, at the adversary's discretion." *liability*, BLACK'S LAW DICTIONARY (11th ed. 2019). Below, the Eleventh Circuit erroneously characterized it as *secondary* liability that does not attach until a primarily liable party fails to honor its obligation. See Pet. App. 14 (stating that related persons are "third-party guarantor[s]").

1. Individual Employer Plans

The Coal Act directs a subset of signatory operators and their related persons to provide healthcare benefits directly to certain retirees through privately maintained IEPs. See 26 U.S.C. § 9711(a), (c)(1). This duty to maintain an IEP "shall continue * * * for as long as" a covered company "remains in business." *Ibid.* Maintaining an IEP is a condition of doing business, and a covered company may be relieved of its continuing duty to maintain an IEP only by going out of business—*i.e.*, by ceasing to "conduct[] or derive[] revenue from any business activity, whether or not in the coal industry." *Id.* § 9701(c)(7).

When a covered company shutters its IEP, the 1992 Plan's trustees look to "related persons" who are jointly and severally liable for maintaining that IEP. See *id.* § 9711(c)(1). If no related person is "in business" and prepared to comply immediately, the retirees enrolled in the IEP typically enroll in the 1992 Plan and receive healthcare benefits from the 1992 Plan until an IEP is re-established. See *id.* § 9712(b)(2)(B). Thereafter, the 1992 Plan's trustees continue to look to related persons to re-establish an IEP and sometimes bring litigation to compel related persons to fulfill their statutory duty to do so.

2. The Combined Fund

One healthcare benefit plan the Coal Act created is the United Mine Workers of America Combined Benefit Fund. The Combined Fund, as it's called, displaced two contract-based multiemployer plans that were failing before the Act. See 26 U.S.C. § 9702(a)(1), (b). Unlike those plans, the Combined Fund is not financed via negotiable, contractual obligations to pay

contributions. It is financed in accordance with detailed statutory requirements set in the Coal Act. See *id.* §§ 9704–9706; see also *id.* § 9708 ("All liability for contributions to the Combined Fund that arises on and after February 1, 1993, shall be determined exclusively under this chapter * * * . ").

The Combined Fund provides benefits to a closed set of retirees—those who were receiving benefits from the two displaced multiemployer plans as of July 20, 1992. See *id.* § 9703(f). The Commissioner of Social Security assigned each of these eligible retirees to a signatory operator. See *id.* § 9706(a); see also *id.* § 9701(c). Then, "each plan year" that an assigned operator or its related persons are "in business," they are jointly and severally liable for paying "an annual premium," the amount of which depends on the number of Combined Fund retirees they have been assigned. *Id.* § 9704(a); see *UMWA Combined Benefit Fund* v. *Toffel (In re Walter Energy, Inc.)*, 911 F.3d 1121, 1131 (CA11 2018). Therefore, as with the Coal Act's IEP obligations, covered companies can avoid incurring Combined Fund premiums only by going out of business. They cannot enter into arrangements to avoid paying Combined Fund premiums, see 26 U.S.C. § 9722, and if they refuse to pay the Combined Fund premiums they periodically incur, the statute imposes a $100-per-day penalty, *id.* § 9707(a).

Premiums are not the Combined Fund's only source of funding. Each year, the Combined Fund receives tens of millions of dollars from the Abandoned Mine Reclamation Fund and the federal treasury. See 30 U.S.C. § 1232(h), (i). Over the last decade, the Combined Fund has paid out, on average, more than $100 million in benefits each year.

3. The 1992 Plan

The other healthcare benefit plan the Coal Act created is the United Mine Workers of America 1992 Benefit Plan. The 1992 Plan is "separate" from the Combined Fund, 26 U.S.C. § 9712(a)(1), and provides benefits to two distinct categories of retirees. One category comprises miners who would have been eligible for benefits under the two multiemployer plans the Combined Fund displaced had they retired before the Coal Act's effective date. See *id.* § 9712(b)(2)(A). The other, much larger category comprises retired miners who are supposed to be, but are not, receiving benefits directly from a covered company through an IEP. See *id.* §§ 9711, 9712(b)(2)(B).

The 1992 Plan is financed per the Coal Act's requirements. The relevant operators (*i.e.*, the most recent coal industry employers of retirees enrolled in the 1992 Plan) and their related persons are jointly and severally liable for all amounts owed to the 1992 Plan. See *id.* §§ 9701(c)(4), 9712(d)(1)(A), (d)(3), (d)(4). Whether and to what extent a covered company incurs monthly 1992 Plan premiums depends on the number of retirees attributable to that company who are enrolled in the 1992 Plan. See *id.* § 9712(d)(1)(A), (d)(3). During months when no attributable retirees are enrolled in the 1992 Plan, a covered company incurs no 1992 Plan premiums.

II. Case Background

1. In 1989, Hillsborough Holdings Corporation and its subsidiaries filed voluntary Chapter 11 petitions for reorganization in the United States Bankruptcy Court for the Middle District of Florida. One of Hillsborough's subsidiaries was Walter Industries, Inc., a holding company that owned a coal company

known as Jim Walter Resources, Inc. Hillsborough's other subsidiaries included the Respondents in this case. See Pet. App. 61.

In 1992, three years into the Hillsborough bankruptcies, Congress enacted the Coal Act. Jim Walter Resources was a "signatory operator" covered by the Act. Because the Respondents were affiliated with Jim Walter Resources when the Act became law, they are Jim Walter Resources' jointly-and-severally-liable "related persons." See Pet. App. 24.

Jim Walter Resources was "in business" during its bankruptcy proceedings, so it began incurring Coal Act premiums and was required to maintain an IEP. C.A. App. 1497. The Petitioners told the bankruptcy court that Jim Walter Resources had to pay the premiums it periodically incurred during bankruptcy. The Petitioners did not file a proof of claim for the net present value of any and every Coal Act premium the debtors might incur in the future. Nor did the Petitioners file a proof of claim based on the possibility that the debtors might shutter an IEP sometime after their bankruptcies concluded. See Pet. App. 5.

The Hillsborough bankruptcy proceedings ended in 1995 with a confirmed plan of reorganization and a typical discharge injunction, which discharged "any and all * * * Claims against one or more of the Debtors that arose any time before the Effective Date." Pet. App. 40. Jim Walter Resources and Walter Industries did not act as if they believed their Coal Act obligations were discharged. For each of the next twenty years, Jim Walter Resources and Walter Industries were "in business" and, in accordance with the Coal

Act, maintained an IEP and incurred premiums, paying at least $8.8 million to the Funds.[2] See Pet. App. 42; see also C.A. App. 1176.

After bankruptcy, Walter Industries changed its name to Walter Energy. See Pet. App. 42. Over some years, Walter Energy spun off or sold the Respondents. Even so, the Respondents remained Jim Walter Resources' "related persons" for purposes of the Coal Act because they were affiliates of Jim Walter Resources as of July 20, 1992, the date the Act set for

2 The court of appeals supposed that Jim Walter Resources complied with its Coal Act obligations for twenty years, notwithstanding the 1995 discharge, because a provision in its plan of reorganization required the company "to fund retiree health benefits" after bankruptcy. See Pet. App. 5. The Respondents never argued as much, and for good reason: the court's supposition is not well founded. The term "retiree health benefits" was not defined in the plan, let alone defined to include Coal Act obligations, and the provision in question did not otherwise fix any parameters governing those benefits. See Pet. App. 64 (noting that the Coal Act was nowhere mentioned in the plan). The Bankruptcy Code's analogous definition of "retiree benefits" encompasses only healthcare benefits under a plan *that the debtor "maintained or established" before bankruptcy*. 11 U.S.C. § 1114(a) (emphasis added). Neither the Combined Fund nor the 1992 Plan existed before the Hillsborough bankruptcies, so Jim Walter Resources could not possibly have "maintained or established" them before bankruptcy. Accordingly, the Petitioners dispute the court of appeals' assumption that Jim Walter Resources complied with its Coal Act obligations for twenty years after its bankruptcy solely because of this provision in its plan of reorganization. Jim Walter Resources complied because it recognized that Coal Act obligations are nondischargeable statutory obligations, as the Second Circuit contemporaneously held in *LTV Steel Co.* v. *Shalala (In re Chateaugay II)*, 53 F.3d 478, 498 (CA2 1995).

determining which companies are jointly and severally liable "related persons." See 26 U.S.C. § 9701(c)(2)(B).

2. In 2015, Walter Energy and its remaining subsidiaries, including Jim Walter Resources, filed Chapter 11 bankruptcy petitions in the Northern District of Alabama. During this proceeding, the debtors argued that their Coal Act obligations were "retiree benefits" under 11 U.S.C. § 1114, and they asked the bankruptcy court to eliminate their Coal Act obligations using its powers under Section 1114. The bankruptcy court granted the request in 2015, and the Eleventh Circuit affirmed. See *Walter Energy*, 911 F.3d at 1157. This Court denied a petition for writ of certiorari. See *UMWA Combined Benefit Fund* v. *Toffel*, 139 S. Ct. 2763 (2019).

After the Section 1114 order, Walter Energy, Jim Walter Resources, and the other debtors ceased paying Coal Act premiums and shuttered their IEP. Of the retirees who had been receiving benefits from that IEP, 439 were enrolled in the 1992 Plan, and they continue to receive benefits from the 1992 Plan because no jointly and severally responsible company has set up a replacement IEP. See Pet. App. 66.

3. In 2016, the Petitioners sued the Respondents in the U.S. District Court for the District of Columbia. The Petitioners allege that the Respondents, all of whom are "in business" and "related persons" to Jim Walter Resources, are jointly and severally liable for the Coal Act obligations Jim Walter Resources had ceased fulfilling—maintaining an IEP, paying Combined Fund premiums, and paying 1992 Plan premiums that they began incurring when the 439 retirees were enrolled in the 1992 Plan. The Petitioners seek

a declaration that the Respondents are, in fact, "related persons," an order requiring payment of all unpaid Combined Fund and 1992 Plan premiums, and an injunction directing the Respondents to maintain an IEP for the 439 retirees. See Pet. App. 6.

The Respondents contend that their Coal Act obligations were discharged in 1995. They initiated adversary proceedings against the Petitioners in the Middle District of Florida bankruptcy court, asking that court to enforce the 1995 discharge injunctions against the Petitioners. See Pet. App. 6.

The bankruptcy court (Chief Bankruptcy Judge Williamson) ruled for the Petitioners. See Pet. App. 60–75. The court perceived that the central question is whether the Petitioners' claims arose before or after the 1995 discharge injunction and concluded that the claims arose after. Noting that a bankruptcy discharge does not shield reorganized debtors from taxes they incur after bankruptcy ends, the bankruptcy court held that Coal Act premiums are taxes for bankruptcy purposes. Because "each period gives rise to a new liability," Pet. App. 75, the court determined that the Respondents could be held liable for Combined Fund and 1992 Plan premiums incurred in 2016 and beyond.

4. The Respondents appealed, and the district court (Judge Honeywell) affirmed. The district court agreed that, "because Coal Act premiums are taxes and thus assessed on a periodic basis—either *annually* or *monthly*—each period gives rise to a new liability," Pet. App. 56, and "future assessments are post-bankruptcy obligations that are beyond the scope of an earlier discharge," Pet. App. 58. Also, because bankruptcy discharges only debts, and not statutory obligations that may give rise to debts, the district

court held that the Respondents' statutory obligation to maintain an IEP was not discharged in 1995. See Pet. App. 58 n.7.

5. In a 2–1 decision, the court of appeals (Chief Judge William Pryor, joined by Judge Grant) reversed and held that the Petitioners' claims for post-2016 Combined Fund premiums and 1992 Plan premiums, as well as their claim to compel the Respondents to maintain an IEP, arose when the Coal Act became law. Judge Anderson dissented in part.

a. Combined Fund premiums. The majority held that a "claim" arises before discharge and so is discharged if (1) it is "based on the debtor's conduct that occurred before" discharge and (2) "there is a relationship between the debtor and creditor before that date." Pet. App. 10. Applying that test, the majority rejected the lower courts' holdings that claims for Combined Fund premiums arise periodically and held that the Petitioners' claims for the Combined Fund premiums that the Respondents recently incurred arose, once and for all time, when the Coal Act was enacted. See Pet. App. 10–15; see also Pet. App. 12, 15, 27 (asserting that these claims arise "solely" from the Respondents' pre-discharge conduct).

The majority admitted that its holding (that all Combined Fund premiums a company might ever incur comprise a single dischargeable "claim" that arose when the Coal Act was enacted) conflicts with holdings of the Second and Tenth Circuits (that Combined Fund premiums arise periodically and give rise to dischargeable "claims" only for pre-discharge time periods). See Pet. App. 14–15 (citing *LTV Steel Co.* v. *Shalala (In re Chateaugay II)*, 53 F.3d 478 (CA2 1995), and *UMWA 1992 Benefit Plan* v. *Rushton (In re Sunnyside Coal Co.)*, 146 F.3d 1273 (CA10 1998)).

Like the lower courts in this case, the Second and Tenth Circuits viewed Combined Fund premiums as taxes accruing only in periods when a covered entity engages in the taxable conduct of being "in business." The majority was "unpersuaded by that rationale" in light of its view that Combined Fund liability "turn[s] *solely* on" a debtor's pre-confirmation conduct. Pet. App. 15 (emphasis added).

b. IEPs. The majority next held that the Petitioners' equitable claim to compel the Respondents to comply with their continuing statutory duty to maintain an IEP was discharged in 1995. First, the majority considered whether this is even a "claim" for bankruptcy purposes. The Bankruptcy Code's definition of a dischargeable "claim" includes a "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment." 11 U.S.C. § 101(5)(B). The majority held that the Petitioners' effort to compel the Respondents to maintain an IEP is a "claim" because the Respondents' breach of their statutory obligation to maintain an IEP gave rise to a right to payment—the monthly 1992 Plan premiums that the Respondents began incurring after their 439 retirees were enrolled in the 1992 Plan. See Pet. App. 16. In so ruling, the majority expressly rejected the Seventh Circuit's view that a right to equitable relief is a "claim" under Section 101(5)(B) only when equitable relief and monetary relief are *alternative* remedies, not *cumulative* remedies, for a breach of performance. See Pet. App. 17–19 (discussing *In re Udell*, 18 F.3d 403 (CA7 1994)).

After holding that the Petitioners' equitable claim is a dischargeable "claim," the majority also held that this claim arose when the Coal Act became law for the same reasons the majority held that the Petitioners'

claim for post-2016 Combined Fund premiums arose back then—"the companies' liability [to maintain an IEP] is based *solely* on the companies' pre-confirmation conduct and was fixed in 1992." Pet. App. 16 (emphasis added). The majority rejected Judge Anderson's observation that the Respondents' liability is based on more than their past conduct—it is based on their 2016 breach of their continuing duty to maintain an IEP—and thus held that a discharge can shield a debtor from liability for statutory duties it only ever breaches after bankruptcy. See Pet. App. 17, 19–20.

c. 1992 Plan premiums. The majority finally held that the Petitioners' claims for monthly 1992 Plan premiums the Respondents began incurring in 2016 also were discharged—for the same reasons that the Petitioners' other claims were discharged. See Pet. App. 22–23. The majority purported to catalog a series of cases holding that Coal Act premiums are "dischargeable in bankruptcy." Pet. App. 22. In fact, the dischargeability of Coal Act obligations was *not* addressed in the cases cited. All involved debtors using Section 1114 to modify their Coal Act obligations prospectively, something that would have been practically unnecessary if, as the majority held, the debtors' prospective Coal Act obligations would have been discharged anyway. See p. 10, *supra*.

d. Judge Anderson's partial dissent. Judge Anderson concurred with the majority's holding that the Respondents' statutory duty to pay Combined Fund premiums was discharged in 1995 because "Combined Fund premiums * * * are based solely on pre-confirmation conduct." Pet. App. 27. Judge Anderson dissented, however, from the majority's holding about the Petitioners' claims to compel the Respondents to maintain an IEP and pay 1992 Plan premiums. See

Pet. App. 28–36. Concerning the IEP, Judge Anderson opined that a right to an equitable remedy "cannot exist until there is a breach of performance." Pet. App. 29. He observed that, in no case before this one, had a court ever held "that a claim was discharged under § 101(5)(B) in the absence of a pre-confirmation breach of performance," Pet. App. 35 n.4, and he urged that the majority's contrary holding "is in tension with the established law that a bankruptcy confirmation plan does not discharge claims that arise on account of post-confirmation conduct of the debtor," Pet. App. 34. Judge Anderson also rejected the majority's assertion that "the passage of the Coal Act" alone gave rise to the Petitioners' claims. Pet. App. 30. In his view, while the Respondents' pre-confirmation conduct "may contribute to their liability," Pet. App. 31, the Respondents' own post-bankruptcy conduct—their 2016 breach of their continuing duty to maintain an IEP—was central to the Petitioners' claims both to compel the Respondents to maintain an IEP and to pay 1992 Plan premiums, see Pet. App. 31, 35.

REASONS FOR GRANTING THE PETITION

I. The Eleventh Circuit's decision conflicts with *Ohio* v. *Kovacs* and decisions of at least five other courts of appeals on when a right to equitable relief fits the definition of "claim" under Section 101(5)(B).

Section 101(5)(B) of the Bankruptcy Code defines "claim" as a "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment." 11 U.S.C. § 101(5)(B). The Eleventh Circuit held that the Petitioners' effort to compel the Respondents to maintain an IEP is a "claim" under Section 101(5)(B) because the breach of performance that

gives rise to that equitable right—the breach of Respondents' ongoing statutory duty to maintain an IEP as long as they are "in business"—also gives rise to the Petitioners' right to payment of 1992 Plan premiums.[3] Although the Eleventh Circuit acknowledged that the Petitioners' equitable right (concerning the IEP) and payment right (concerning 1992 Plan premiums) are not *alternative* remedies, such that the Petitioners must elect one or the other, the Eleventh Circuit held that an equitable remedy can be a "claim" under Section 101(5)(B) even when it is not an alternative to, but is merely in addition to, a monetary remedy. In so ruling, the Eleventh Circuit expressly rejected the Seventh Circuit's view that an equitable remedy is a "claim" under Section 101(5)(B) only when it is an alternative to a monetary remedy. See Pet. App. 17 (discussing *Udell*).

In *Udell*, the Seventh Circuit held that a right to an equitable remedy is a "claim" under Section 101(5)(B) only if and to the extent that a "right to payment is an *alternative* to the right to an equitable remedy"—that is, only if "the two remedies would be *substitutes* for one another." *Udell*, 18 F.3d at 408 (emphases added). An equitable remedy is not a

3 The Eleventh Circuit did not explain precisely what it means for a breach of performance to "give[] rise to a right to payment," but in finding that the Respondents' breach of their IEP duty "gives rise to" 1992 Plan premiums, the court appears to have taken a broad view. Under the Coal Act, it is not a company's breach of its IEP duty that triggers its obligation to pay 1992 Plan premiums. A company incurs 1992 Plan premiums only if retirees who are supposed to be receiving benefits from an IEP fail to receive those benefits and are enrolled in the 1992 Plan. See 26 U.S.C. § 9712(d)(1)(A). A company that breaches its IEP duty incurs no 1992 Plan premiums for retirees who are not enrolled in the 1992 Plan.

"claim" under Section 101(5)(B) if it is "*cumulative*" of a right to payment—that is, if plaintiffs can obtain both equitable and monetary relief for the same breach of performance. *Id.* at 409 (emphasis added).

The Eleventh Circuit's express rejection of *Udell* is ultimately a rejection of *Ohio* v. *Kovacs*, 469 U.S. 274 (1985), the decision from which *Udell* derived its construction of Section 101(5)(B). See *Udell*, 18 F.3d at 406–08. In *Kovacs*, the Court analyzed Section 101(5)(B) and held that it "is intended to cause the liquidation or estimation of contingent rights of payment for which there may be an *alternative equitable remedy* with the result that the equitable remedy will be susceptible to being discharged in bankruptcy." *Kovacs*, 469 U.S. at 280 (quoting 124 Cong. Rec. 32393 (1978) (remarks of Rep. Edwards)) (emphasis added). Applying that standard, the Court in *Kovacs* held that an environmental cleanup injunction was discharged insofar as the state had "converted" the injunction "into an obligation to pay money" by doing the cleanup itself. *Id.* at 283. At the same time, the Court emphasized that it was *not* holding that the prospective portion of "the injunction against bringing further toxic wastes on the premises * * * is dischargeable in bankruptcy." *Id.* at 284–85.

Udell is not an outlier in either its construction of Section 101(5)(B) or its reliance on *Kovacs*. The First, Second, Third, and Fifth Circuits also have relied on *Kovacs* to hold that a right to equitable relief for a breach of performance is a "claim" under Section 101(5)(B) only if it is an alternative to a right to payment for the same breach of performance. See *Rederford* v. *U.S. Airways, Inc.*, 589 F.3d 30, 36 (CA1 2009) (citing *Udell* and *Kovacs* and holding that "a

right to an equitable remedy, whether or not fixed, disputed, or reduced to judgment, is a 'claim' within the meaning of the Bankruptcy Code, and subject to bankruptcy proceedings, if a monetary payment is an alternative for the equitable remedy" (internal quotation marks omitted)); *United States* v. *LTV Corp. (In re Chateaugay I)*, 944 F.2d 997, 1008–09 (CA2 1991) (discussing *Kovacs* and holding that "[a]n injunction that does no more than impose an obligation entirely as an alternative to a payment right is dischargeable"); *Air Line Pilots Ass'n* v. *Cont'l Airlines (In re Cont'l Airlines)*, 125 F.3d 120, 132–33 (CA3 1997) (citing *Udell* and *Kovacs* and holding that, under Section 101(5)(B), the question "is whether monetary payment is an alternative for the equitable remedy"); *Sheerin* v. *Davis (In re Davis)*, 3 F.3d 113, 116 (CA5 1993) (quoting *Kovacs* and holding that "Section 101(5)(B) is designed to cause the liquidation of contingent claims for money damages that are alternatives to equitable remedies").[4] These circuits' construction of Section 101(5)(B) has been settled for decades; participants in countless bankruptcies have relied on it.

In the decision below, the Eleventh Circuit asserted that its new and expansive construction of Section 101(5)(B) comports with the statute's "plain lan-

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4 The Tenth Circuit is aligned with these five circuits, albeit in an unpublished opinion. See *Dalvit* v. *United Airlines, Inc.*, 359 F. App'x 904, 910 (CA10 2009) ("Included within a discharge are equitable claims that can be viably replaced with an alternative remedy involving a right to payment. The reverse is also true: equitable remedies, such as a request for prospective injunctive relief, may survive the debtor's discharge if not reducible to a monetary obligation.") (citing *Kovacs*).

guage." Pet. App. 18. But in *Udell*, the Seventh Circuit explained why this supposedly "'plain language' reading of Section 101(5)(B)" is flawed: the "Supreme Court's approach in *Kovacs* * * * belies" it. *Udell*, 18 F.3d at 408. In the nearly forty years since *Kovacs*, only the Eleventh Circuit has neglected the decision's significance and held that a right to an equitable remedy is a "claim" under Section 101(5)(B) even when it is cumulative of a monetary remedy arising from the same underlying breach of performance. The Court should resolve this 5–1 split and decide whether the Petitioners' effort to compel the Respondents to maintain an IEP is a "claim" under Section 101(5)(B).

II. The Eleventh Circuit split from the Second and Tenth Circuits on the dischargeability of Coal Act obligations and on when those obligations arise.

The Eleventh Circuit recognized that its decision conflicts with other appellate courts' decisions on the dischargeability of Coal Act obligations. See Pet. App. 14 (rejecting the Second Circuit's decision in *Chateaugay II* as "unpersuasive"). That conflict flows from the courts' fundamental disagreement about the nature of Coal Act obligations—whether liability accrues periodically based on in-period activity or whether liability accrued all at once when the Act went into effect based on pre-Act activity. In accepting the latter view, the Eleventh Circuit failed to treat Coal Act obligations as *statutory* duties (which are not dischargeable) and instead treated them like *contractual* obligations (which often are dischargeable).

In *Chateaugay II*, a case strikingly similar to this one, the Second Circuit clearly held that Combined Fund premiums incurred after bankruptcy are "not

dischargeable." *Chateaugay II*, 53 F.3d at 498. The debtor in that case, LTV, was similarly situated to the Respondents. Like the Respondents, LTV was in the middle of Chapter 11 reorganization proceedings when the Coal Act was enacted. See *id.* at 497. Also like the Respondents, LTV was covered by the Act and, because it was "in business" during bankruptcy, immediately incurred Combined Fund premiums.

LTV objected to paying premiums "accruing during the bankruptcy period." *Id.* at 496. LTV argued that the premiums it incurred during bankruptcy were really components of a single, "unmatured or contingent" claim that arose before its bankruptcy. *Id.* at 497. The Second Circuit "reject[ed] LTV's contention that its Coal Act obligations arise out of prepetition 'consideration' for purposes of bankruptcy analysis." *Ibid.* The court emphasized: "The obligations here at issue are exclusively statutory in origin," and "the distinction between statutory and contractual obligations is of paramount importance." *Ibid.*

The Second Circuit then considered whether LTV's Combined Fund premiums must be paid immediately as "'taxes * * * incurred by the estate.'" *Id.* at 498 (quoting 11 U.S.C. § 503(b)(1)(B)). After affirming the lower court's conclusion that Combined Fund premiums are "taxes" for bankruptcy purposes, the Second Circuit affirmed the lower court's conclusion that LTV "incurred" Combined Fund premiums during bankruptcy. See *ibid.* (quoting *LTV Corp.* v. *Shalala (In re Chateaugay Corp.)*, 154 B.R. 416, 422 (S.D.N.Y. 1993)); see also *In re Chateaugay*, 154 B.R. at 422 ("[T]here is no doubt that the charges incurred by LTV * * * are a direct consequence of its continued corporate existence; the Coal Act only imposes obliga-

tions on signatories which are still 'in business.'"). Because the Second Circuit correctly held that covered companies incur Combined Fund premiums periodically, only if they are "in business" during an annual, statutory period, the Second Circuit concluded that LTV had to immediately pay "the portion of LTV's Coal Act liability accruing during the pendency of its bankruptcy" and that "[t]he remainder of LTV's obligations was not dischargeable in bankruptcy and is an obligation of the reorganized LTV." *Ibid.*

The Eleventh Circuit's criticisms of the Second Circuit's decision are flawed. See Pet. App. 14–15. It is demonstrably untrue that the Second Circuit "failed to provide any rationale for its holding" on the non-dischargeability of Coal Act premiums incurred after bankruptcy. Pet. App. 14. The Second Circuit clearly held that the Coal Act created a brand-new, *statutory* obligation by which covered companies incur liability for Combined Fund premiums every year they are "in business." The Eleventh Circuit missed this portion of *Chateaugay II* and erroneously accused the Second Circuit of deciding only whether Combined Fund premiums are "taxes" for bankruptcy purposes. See Pet. App. 15 ("[W]hether Coal Act premiums can be considered 'taxes'—as *In re Chateaugay II* held—has no bearing on when claims for those premiums arise."). But that's not all the Second Circuit held. The Bankruptcy Code provision at issue in *Chateaugay II* requires immediate payment, not of taxes *generally*, but of taxes "*incurred by the estate*," 11 U.S.C. § 503(b)(1)(B) (emphasis added), and the Second Circuit correctly found that a covered company *incurs* Combined Fund premiums each year it is "in business," even during bankruptcy. The Second Circuit's holding that LTV's future Coal Act liability

is "not dischargeable in bankruptcy" thus was not an unthought-out assertion tacked on to the end of the court's opinion; it was the logical conclusion of the court's holding that Combined Fund premiums arise periodically whenever a covered company engages in specified, liability-triggering conduct during a statutory period.

Three years after *Chateaugay II*, the Tenth Circuit fully embraced the Second Circuit's reasoning and holding. See *UMWA 1992 Benefit Plan* v. *Rushton (In re Sunnyside Coal Co.)*, 146 F.3d 1273 (CA10 1998). Echoing LTV's objections to paying Combined Fund premiums, the bankruptcy trustee in *Sunnyside* argued that 1992 Plan premiums the estate incurred after shuttering the debtor's IEP during bankruptcy "relate back to a single, unitary, prepetition obligation arising from collective bargaining agreements * * * and the prepetition enactment of the Coal Act." *Id.* at 1279 (internal quotation marks omitted).[5] As the Second Circuit rebuffed LTV's argument, so the Tenth Circuit rebuffed the *Sunnyside* trustee's argument. The Tenth Circuit refused to "disconnect[] Coal Act premiums from their historical roots and statutory context" and "refashion them into collectively bargained payments made under contractual agreements." *Id.* at 1277. Based on the Act's text, the Tenth Circuit held that Coal Act premiums do not give rise to a single, unitary obligation dating back to the Coal Act's enactment; instead, they "accrue for each tax period." *Id.* at 1279.

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5 The *Sunnyside* Chapter 11 petition was filed in 1994, after the Coal Act's enactment. See *Sunnyside*, 146 F.3d at 1275–76.

In the decision below, the Eleventh Circuit barely acknowledged *Sunnyside*, perhaps because *Sunnyside* did not address dischargeability *per se*. But that does not make *Sunnyside* immaterial. By the time of the Tenth Circuit's opinion, the *Sunnyside* bankruptcy proceedings had converted from a Chapter 11 reorganization (which concludes with a discharge) to a Chapter 7 liquidation (which doesn't). See *id.* at 1276. Still, the Tenth Circuit held that the debtor's Coal Act obligations "will continue to accrue until the Trustee has liquidated all of Sunnyside's assets," *id.* at 1280, and, even more significantly, flatly rejected the very premise that the Eleventh Circuit openly accepted—that a covered company's Coal Act obligations are non-periodic obligations that arise "solely" from past conduct, Pet. App. 12, 15, 16.[6]

The Eleventh Circuit claimed that the Fourth Circuit shares its view of Coal Act liability as arising "solely" from past conduct. See Pet. App. 10–11, 13 (citing *UMWA 1992 Benefit Plan* v. *Leckie Smokeless Coal Co.* (*In re Leckie Smokeless Coal Co.*), 99 F.3d 573, 581 n.9 (CA4 1996)). That claim is dubious. Two years after the Fourth Circuit asserted that "the debtors' liability for Coal Act premiums has arisen from their pre-petition, rather than their post-petition, acts," *Leckie*, 99 F.3d at 581, the Fourth Circuit deemed that earlier assertion "speculat[ion]" and endorsed the Second Circuit's contrary holding in *Chateaugay II*, see *Adventure Resources Inc.* v. *Holland*, 137 F.3d 786, 794–95, nn. 8, 11 (CA4 1998). That said,

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6 In non-bankruptcy cases, other courts accept that Coal Act premiums are incurred and arise periodically. See, *e.g.*, *Holland* v. *Bibeau Constr. Co.*, 774 F.3d 8, 14 (CADC 2014) (holding that the Funds' causes of action for premiums "separately accrue[] with each missed payment").

even if the Fourth Circuit were aligned with the Eleventh Circuit, the conflict would remain, for the Second and Tenth Circuits are clearly opposed to the Eleventh Circuit.

To be sure, a covered company's Coal Act liability relates to its past conduct—but only in part. In accordance with the Act's text, only companies that signed certain, past collective bargaining agreements and only companies affiliated with these signatory operators as of a certain, past date can ever possibly be liable to pay premiums or maintain IEPs. But the fact that a company's past conduct determines whether the company is *covered* by the Act does not mean, as the Eleventh Circuit incorrectly concluded, that Coal Act liability arises "solely" from past conduct. For, as the Eleventh Circuit elsewhere recognized, a company incurs Combined Fund premiums, and must maintain an IEP, only in years or months when the company is "in business." Pet. App. 4.

This Court and other courts of appeals have emphatically rejected the proposition that a debtor can be discharged from statutory obligations that apply to its own post-bankruptcy conduct, even when those obligations are based in part on the debtor's pre-bankruptcy conduct. In *Kovacs*, this Court recognized that a reorganized debtor who owned polluted land before bankruptcy could not rely on his discharge to keep polluting after bankruptcy because "anyone in possession of the site * * * must comply with the environmental laws," 469 U.S. at 285. In *O'Loghlin* v. *County of Orange*, 229 F.3d 871 (CA9 2000), the Ninth Circuit held that a reorganized debtor that had hired an employee before bankruptcy, and even discriminated against that employee before bankruptcy, could not

rely on its discharge to discriminate against that employee in violation of federal antidiscrimination statutes after bankruptcy, see *id.* at 874–76. In *CPT Holdings, Inc.* v. *Indus. & Allied Emps. Union Pension Plan, Local 73*, 162 F.3d 405 (CA6 1998), the Sixth Circuit held that a debtor who joined a multiemployer plan before bankruptcy and remained in it throughout bankruptcy could not rely on its discharge to withdraw from the plan after bankruptcy without incurring withdrawal liability, see *id.* at 409. As Judge Anderson aptly summarized here: a debtor cannot be discharged from statutory obligations that apply to "a debtor's own future conduct," Pet. App. 30, and there is no precedent for discharging a debtor from liability for its own post-bankruptcy breach of performance, Pet. App. 35 n.4. In this respect, the Eleventh Circuit's decision on the dischargeability of future, post-bankruptcy Coal Act obligations is radical and unprecedented.

The decision below clearly opens a conflict on the dischargeability of Coal Act obligations a covered company incurs by virtue of being "in business" after bankruptcy, rejects multiple appellate decisions holding that Coal Act premiums are incurred periodically rather than all at once, and stands alone in holding that a discharge can relieve a reorganized debtor from complying with continuing statutory obligations after bankruptcy. These issues deserve further review.

III. The questions presented are important.

The Eleventh Circuit's decision is disruptive, both for bankruptcy law generally and for the Coal Act specifically.

1. Bankruptcy law. Circuit splits are particularly disfavored "in the context of bankruptcy, where uniformity is sufficiently important that our Constitution authorizes Congress to establish 'uniform laws on the subject of bankruptcies throughout the United States.'" *Keystone Gas Gathering, L.L.C.* v. *Ad Hoc Comm. of Unsecured Creditors of Ultra Res., Inc. (In re Ultra Petroleum Corp.)*, 943 F.3d 758, 763–64 (CA5 2019) (quoting *In re Marciano*, 708 F.3d 1123, 1135 (CA9 2013) (Ikuta, J., dissenting)). The split the Eleventh Circuit opened with the First, Second, Third, Fifth, and Seventh Circuits over what counts as a dischargeable "claim" deserves to be resolved quickly because identifying *bona fide* "claims" is vital to efficient and effective bankruptcy proceedings. Potential creditors, unsure of whether their rights are dischargeable "claims," will swamp bankruptcy dockets with proofs of claim so that they are not surprised to find out, years or decades later, that the rights they thought weren't claims were discharged. And debtors with nationwide operations have the flexibility to forum-shop and file voluntary bankruptcy petitions in circuits where their discharges will bar more post-bankruptcy claims. The rules need to be clear and uniform.

The questions of when a right to equitable relief is a "claim" and whether claims for post-bankruptcy duty breaches are dischargeable cut across many areas of the law—much more than the Coal Act. Environmental bankruptcies are a prime example. Because the Eleventh Circuit's decision will have widespread impacts, the Court should not delay reviewing the circuit splits the Eleventh Circuit openly created.

2. The Coal Act. The Coal Act became law because coal employers proved willing to do almost anything—

even file bankruptcy petitions—to avoid providing healthcare benefits to retirees. After surveying the problem, the Coal Commission recommended "a statutory obligation to contribute," and Congress concurred. *Eastern Enterprises*, 524 U.S. at 511 (internal quotation mark omitted). The Coal Act ended the easy-to-avoid contractual system for providing retired miners' healthcare benefits and replaced it with statutory obligations that covered companies cannot avoid except by going out of business. The Eleventh Circuit's holding implies that the Coal Act failed—that Congress was mistaken to assume that statutory obligations are more lasting than contractual obligations. Turns out, Coal Act obligations can be avoided, same as ordinary contractual commitments, with a garden variety bankruptcy discharge.

The Eleventh Circuit's decision in this case upsets significant reliance interests. For thirty years, covered companies have largely accepted the Second Circuit's holding in *Chateaugay II* that future Coal Act obligations are not forever discharged when a debtor emerges from bankruptcy. Concomitantly, for thirty years, the Petitioners have largely not filed proofs of claim in bankruptcy proceedings for future premiums and IEP-related costs that a covered company might incur after bankruptcy. In most long-closed bankruptcies like the Respondents', the Petitioners cannot go back in time and file proofs of claim, so if the Eleventh Circuit's contrary view takes hold, the Petitioners' justifiable reliance on *Chateaugay II* will mean companies like the Respondents get a free pass.[7]

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7 While the Petitioners can file proofs of claim in future bankruptcies for the net present value of a debtor's potential future

(footnote continued on next page)

And that, in turn, presents serious financial implications for the federal government. Each year, the two Coal Act Funds pay out hundreds of millions of dollars in benefits (to say nothing of the amounts paid out through covered companies' IEPs). And each year, the federal government transfers tens of millions of dollars to the Funds because premiums are nowhere near enough to cover the annual outlays. See 30 U.S.C. § 1232(h), (i). By providing companies a means to discharge all of their Coal Act obligations, the decision below will decrease the amount of premiums the Combined Fund and 1992 Plan collect and increase the number of retirees enrolled in the 1992 Plan, which together create a significant risk that the Coal Act Funds will need even more taxpayer funding.

Coal Act liabilities, it's a fair bet that most covered companies and their creditors do not want the Petitioners to file such claims because they would overwhelm most estates. Like the Eleventh Circuit held here, one bankruptcy court once held that a covered company's Coal Act obligations arose once and for all when the Act became effective. Before that decision was reversed, the Petitioners filed proofs of claim for all of that debtor's future Coal Act obligations—*totaling more than $150 million*—which made the Petitioners the largest creditors and changed the course of the proceeding. See *In re Westmoreland Coal Co.*, 213 B.R. 1 (Bankr. D. Colo. 1997), *rev'd & remanded*, No. 97-2002, ECF No. 41 (D. Colo. Aug. 27, 1998).

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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APPENDIX

PETITION APPENDIX

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United States Court of Appeals
for the Eleventh Circuit

In re: UNITED STATES PIPE & FOUNDRY,
Debtor,

UNITED STATES PIPE & FOUNDRY Co., JW ALUMINUM Co., JW WINDOW COMPONENTS LLC,

Plaintiffs-Appellants,

v.

Michael H. HOLLAND, as Trustee of the United Mine Workers of America 1992 Benefit Plan, Michael MCKOWN, as Trustee of the United Mine Workers of America 1992 Benefit Plan, Joseph R. RESCHINI, as Trustee of the United Mine Workers of America 1992 Benefit Plan, Carlo TARLEY, as Trustee of the United Mine Workers of America 1992 Benefit Plan, Michael H. HOLLAND, as Trustee of the United Mine Workers of America Combined Benefit Fund, *et al.*,

Defendants-Appellees.

No. 20-13832

Filed: May 3, 2022

Before WILLIAM PRYOR, Chief Judge, GRANT, and ANDERSON, Circuit Judges.

WILLIAM PRYOR, Chief Judge:

This appeal requires us to decide whether a bankruptcy plan of reorganization confirmed in 1995 discharged the obligation of three debtor companies to

provide future health-care benefits to retired employees of a coal company that was once part of the same corporate family. In 2016, after the coal company's future obligations to the retirees were discharged, the trustees of two health-care benefit funds sued to compel the related companies to pay for the benefits. The bankruptcy court and district court ruled that the 1995 plan of reorganization did not discharge the claims for future benefits. We disagree. The Bankruptcy Code defines a "claim" as a "right to payment, whether or not such right is ... unliquidated," "contingent," "unmatured," or "equitable," and as a "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment." 11 U.S.C. § 101(5). And with exceptions not relevant here, a plan of reorganization discharges a debtor from all claims "that arose before" the "order confirming the plan" unless the plan itself excludes those claims. *Id.* § 1141(d)(1), (1)(A). Because the companies' obligations to provide health-care benefits were fixed before the bankruptcy court confirmed the plan of reorganization, the Trustees' claims for future retiree benefits were discharged in 1995. So, we reverse and remand for further proceedings.

I. BACKGROUND

Several decades ago, the coal industry signed a series of wage agreements ensuring that retired employees and their immediate families would receive health benefits for the rest of their lives. *United Mine Works of Am. Combined Benefit Fund v. Toffel* (*In re Walter Energy, Inc.*), 911 F.3d 1121, 1127–28 (11th Cir. 2018). Industry conditions then changed and threatened the coal industry's continued viability. Coal companies that failed or chose not to renew their wage agreements stopped contributing to the funds

even though their workers continued to receive benefits as "orphaned retirees." *Id.* at 1128. As a result, the retiree funds "were on the brink of insolvency," and worker strikes followed. *Id.* at 1129. In response to the threatened vitality of the funds, Congress converted the "contractual obligation to provide health care benefits ... into a statutory requirement" by enacting the Coal Industry Retiree Health Benefit Act of 1992. Pub. L. No. 102-486, 106 Stat. 3036; *see In re Walter Energy*, 911 F.3d at 1130.

The Coal Act sought to ensure the longevity of the retiree funds through two primary means. First, it required companies to continue to provide benefits. *See* 26 U.S.C. §§ 9704(a), 9711(a), 9712(d)(1), (3). Second, it made all "related person[s]"—which is defined broadly to include a company under common control of a specified coal company and a company that is "member of [a] controlled group of corporations" that includes a specified coal company—jointly and severally liable for all required payments under the Coal Act. *See id.* §§ 9701(c)(2)(A), 9704(a), 9711(c)(1), 9712(d)(4). These provisions addressed the problems caused by coal companies that stopped paying for benefits when they chose not to renew their wage agreements or went out of business.

Whether an entity is a related person under the Coal Act was fixed on July 20, 1992. That is, entities that were related persons in 1992 but are no longer related persons are still related persons, and entities that are now related to a coal company, but were not in 1992, are not. *Id.* § 9701(c)(2)(B). On July 20, 1992, the companies in this appeal were owned by a common parent company, now known as Walter Energy, Inc., that also owned a coal company, Jim Walter Resources, Inc., so the companies are "related persons"

under the Coal Act. *See id.* § 9701(c)(2)(A)(i)–(ii), (c)(2)(B).

The Coal Act imposes three kinds of obligations on covered entities. First, covered entities must pay premiums to the Combined Benefit Fund, *id.* § 9704(a), which was formed from the funds established by earlier wage agreements, *id.* § 9702(a)(2); *In re Walter Energy*, 911 F.3d at 1127 & n.3. The Combined Fund provides benefits to workers who were "eligible to receive, and [were] receiving, benefits from" industry funds on July 20, 1992. 26 U.S.C. § 9703(a), (f). The covered entities pay an annual premium that is calculated by the Commissioner of Social Security and is based on the number of beneficiaries assigned to the coal company and the Combined Fund's estimated costs. *Id.* § 9704(a), (b)–(d). When a covered coal company and all related persons are no longer in business, the premium amount becomes zero. *See id.* § 9704(b)(2), (c)–(d), (f)(1), (f)(2)(B). An entity remains in business so long as it "conducts ... any business activity" or "derives revenue from any business activity, whether or not in the coal industry." *Id.* § 9701(c)(7). Second, the Coal Act requires signatories of the 1978 wage agreement and later agreements to continue providing health-care benefits to workers, as the signatories were doing through individual employer plans under the wage agreements. *Id.* § 9711(a)–(b). Benefits are provided directly to the retired coal miners, and the obligation lasts "for as long as the [specified coal company] (and any related person) remains in business." *Id.* § 9711(a). Finally, some covered entities must pay premiums to the 1992 United Mineworkers of America Benefit Plan. *Id.* § 9712(d)(1).

The 1992 Plan is a benefit fund which was established by the Coal Act. *Id.* § 9712(a)(1). As relevant

here, the 1992 Plan provides benefits to miners who are owed, but are not receiving, benefits under section 9711. *Id.* § 9712(b)(2)(B). Covered entities that fail to provide health-care benefits to their assigned retirees under section 9711 are required to pay monthly premiums to the 1992 Plan. *Id.* § 9712(d).

In 1989, the Jim Walter companies, their parent company, and its other subsidiaries filed petitions for bankruptcy, which were administratively consolidated. In 1995, the bankruptcy court confirmed a consensual plan of reorganization. The Trustees did not file a proof of claim for future Coal Act obligations and did not object to the plan. The Trustees did file a proof of claim in the individual bankruptcy proceeding of Jim Walter Resources. That proof of claim included past-due payments owed under the wage agreements and argued that Coal Act premiums that came due during the pendency of the bankruptcy proceedings were entitled to administrative priority.

The plan of reorganization discharged all "[c]laims" against the companies that "arose at any time before the [e]ffective [d]ate" unless those claims were included in the plan. Walter Energy expressly assumed the obligations to fund retiree health benefits, and the order approving the plan "authorized and directed" Walter Energy "to fund retiree health benefits." Several years after the bankruptcy court confirmed the plan, the companies disassociated themselves from Walter Energy and the coal industry.

In 2015, Walter Energy again filed a petition for bankruptcy. *See Voluntary Petition, In re Walter Energy, Inc.*, No. 15-02741-TOM11 (Bankr. N.D. Ala. Jul. 15, 2015) (ECF No. 1). "The bankruptcy court entered an order ... terminating [Walter Energy's] obligations to provide retirees [benefits under section

9711] as well as to pay premiums to the Funds." *In re Walter Energy*, 911 F.3d at 1134. Walter Energy stopped providing benefits and paying premiums under the Coal Act in April 2016.

In July 2016, the Trustees gave notice to the related companies that the Trustees considered them to be liable for Coal Act obligations. Specifically, the Trustees considered the companies to be liable to pay premiums to the Common Fund and 1992 Plan for the period when Walter Energy was not providing benefits directly to its retirees and to provide benefits directly to retirees through an individual employer plan. The companies refused to pay the premiums or provide the benefits.

The Trustees then sued the companies in the district court for the District of Columbia and sought a declaratory judgment that the companies were liable under the Coal Act, a money judgment for the full amount of past-due premiums, and equitable relief in the form of an injunction ordering the companies to pay premiums and establish and maintain an individual employer plan. *See Amended Complaint, Holland v. U.S. Pipe & Foundry Co.*, No. 1:16-cv-1577 (D.D.C. Mar. 27, 2017) (ECF No. 22). The companies responded by filing complaints in their original consolidated bankruptcy proceeding. The companies asserted that the Trustees' Coal Act claims against the companies were discharged in 1995 and that the Trustees were barred by the plan of reorganization from attempting to enforce those claims. The Trustees moved to dismiss the complaints, and one of the companies, United States Pipe and Foundry Company, LLC, moved for partial summary judgment.

The bankruptcy court treated the Trustees' motion as a motion for summary judgment and granted it,

and the bankruptcy court denied U.S. Pipe's motion. It reasoned that the premiums must be either a "contingent claim or a tax." If the premiums were a contingent claim in 1995, it would have been discharged in the 1995 bankruptcy because under the Bankruptcy Code a "claim" includes any "right to payment" even if the right is "contingent." *See* 11 U.S.C. § 101(5)(A). Alternatively, the bankruptcy court reasoned that if the premiums were a tax, then claims for those premiums would have arisen only when the premiums were assessed, and so they would not have been discharged.

To determine whether Coal Act premiums were taxes, the bankruptcy court applied the test from *County Sanitation District No. 2 of Los Angeles County v. Lorber Industries of California, Inc.* (*In re Lorber*), 675 F.2d 1062 (9th Cir. 1982). It explained that "[u]nder the *Lorber* test, [payments] are a tax if they are (1) regardless of their name, an involuntary pecuniary burden laid on individuals or property (2) imposed by or under authority of the legislature (3) for a public purpose (including defraying governmental expenses) (4) under the state's police or taxing power." The bankruptcy court concluded that the premiums owed under the Coal Act were "unquestionably a tax." It did not address the Trustees' alleged right to compel the companies to provide health-care benefits directly to retirees under section 9711.

The district court affirmed. It agreed with the Trustees and the bankruptcy court that because Coal Act premiums are taxes, claims for those premiums arose only when the premiums were assessed. The district court also addressed the Trustees' claim under section 9711 and concluded that only debts can be discharged in bankruptcy, and not "obligations giving

rise to [ ] debts" like the requirement to provide benefits. (Emphasis omitted.)

II. STANDARD OF REVIEW

"We review *de novo* conclusions of law whether by the bankruptcy court or the district court." *In re Walter Energy*, 911 F.3d at 1135.

III. DISCUSSION

The parties dispute whether the companies' Coal Act obligations were discharged by the 1995 order confirming the companies' plan of reorganization. The parties agree that the Trustees' asserted rights to the payment of Combined Fund and 1992 Plan premiums are "claims" under the Bankruptcy Code. But the Trustees assert that those "claims" arose only when the premiums were assessed to the companies. So, they argue, those claims did not exist in 1995 and could not have been discharged by the consensual plan. The Trustees also argue that their alleged right to compel the companies to provide benefits to retirees under section 9711 of the Coal Act is not a claim because it is a right to an equitable remedy that does not fall within the Bankruptcy Code's definition of "claim." The Trustees conclude that because the companies' Coal Act obligations were not discharged, the Trustees can enforce those obligations. We disagree.

Under the Bankruptcy Code, the term "claim" is defined broadly to include two overlapping kinds of rights. Section 101(5)(A) defines a "claim" to include all "right[s] to payment, whether or not such right[s] [are] ... liquidated, unliquidated, fixed, contingent, matured, unmatured, ... legal, [or] equitable." 11 U.S.C. § 101(5)(A). Section 101(5)(B) addresses equitable remedies and includes all "right[s] to an equitable remedy for breach of performance if such breach

gives rise to a right to payment." *Id.* § 101(5)(B). Based on this statutory text, the Supreme Court has explained that "Congress intended" to enact "the broadest available definition of 'claim,' " *see Johnson v. Home State Bank*, 501 U.S. 78, 83, 111 S.Ct. 2150, 115 L.Ed.2d 66 (1991), to give debtors a "fresh start," *Owaski v. Jet Fla. Sys., Inc.* (*In re Jet Fla. Sys., Inc.*), 883 F.2d 970, 972 (11th Cir. 1989) (internal quotation marks omitted). *See* ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS § 2, at 56 (2012) ("[P]urpose must be derived from the text ...."). "It is as if the bankruptcy process creates two separate firms—the pre-bankruptcy firm that pays off old claims against pre-bankruptcy assets, and the post-bankruptcy firm that acts as a brand new venture." *Bos. & Me. Corp. v. Chi. Pac. Corp.*, 785 F.2d 562, 565 (7th Cir. 1986).

We divide our discussion in two parts. First, we explain why the Trustees' claims for premiums to the Combined Fund were discharged in 1995. Second, we explain why the Trustees' claims under section 9711 and for premiums to the 1992 Plan were discharged in 1995.

A. The Trustees' Claims for Combined Fund Premiums Existed and Were Discharged in 1995.

A claim exists and is dischargeable whenever a debtor's liability on that claim arises from its past conduct and "there is a relationship established ... between an identifiable claimant" and that past conduct. *See Epstein v. Off. Comm. of Unsecured Creditors of Est. of Piper Aircraft Corp.* (*In re Piper Aircraft, Corp.*), 58 F.3d 1573, 1577 (11th Cir. 1995); 11 U.S.C. § 101(12). Requiring a preexisting relationship ensures that creditors have adequate notice that their

rights are at stake to satisfy due process. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950) (explaining that adequate "notice" is "[a]n elementary and fundamental requirement of due process"); *see also Jeld-Wen, Inc. v. Van Brunt* (*In re Grossman's Inc.*), 607 F.3d 114, 123–26 (3d Cir. 2010); *Saint Catherine Hosp. of Ind., LLC v. Ind. Fam. & Soc. Servs. Admin.*, 800 F.3d 312, 315–16 (7th Cir. 2015). So, any liability on a claim based on the debtor's conduct that occurred before the effective date of its plan of reorganization is dischargeable so long as there is a relationship between the debtor and creditor before that date. *See First Nat'l Bank of Oneida, N.A. v. Brandt*, 887 F.3d 1255, 1260 (11th Cir. 2018); 11 U.S.C. § 1141(d)(1), (1)(A); Douglas G. Baird & Thomas H. Jackson, Kovacs *and Toxic Wastes in Bankruptcy*, 36 STAN. L. REV. 1199, 1200 (1984) (explaining that when an "obligation ... arises out of [the debtor's] past conduct," the obligation is dischargeable).

The Trustees held "claims" for future Combined Fund premiums in 1995 because their right to payment was based on the companies' pre-confirmation conduct. In 1995, the companies' liability to the retirees had already been fixed; only the amount owed was uncertain. On July 20, 1992, the companies became "related person[s]" because they were related to a signatory of the relevant coal industry wage agreements. *See* 26 U.S.C. §§ 9701(c)(2), 9704(a), 9706(a). This status as related persons made the companies jointly and severally liable for Combined Fund premiums. *See id.* § 9704(a). And the companies could do nothing outside of bankruptcy to avoid or diminish this liability. *See United Mine Workers of Am. 1992 Benefit Plan v. Leckie Smokeless Coal Co.* (*In re Leckie Smokeless

Coal Co.), 99 F.3d 573, 581 n.9 (4th Cir. 1996) (explaining that Coal Act liability is "fixed" because a covered entity "remains liable" for Coal Act obligations "even if it chooses to cease coal mining operations and to take up an entirely different enterprise"). So, the Trustees held a "claim" in 1995 because they had a "fixed" "right to payment." *See* 11 U.S.C. § 101(5)(A).

To be sure, the amount of the Trustees' right was uncertain, and the Trustees could not maintain a suit against the companies, but neither fact is relevant to our inquiry. Those facts render the Trustees' right merely "unliquidated," *see* 11 U.S.C. § 101(5)(A), because the amount owed was not "fixed, ... agreed upon, or ... capable of ascertainment," *Liquidated Claim*, BLACK'S LAW DICTIONARY (5th ed. 1979); *see also Liquidated Debt*, *id.* ("A debt is liquidated when it is certain what is due and how much is due."), and "unmatured," *see* 11 U.S.C. § 101(5)(A), because it was not "unconditionally due and owing," *see Matured Claim*, BLACK'S LAW DICTIONARY, *supra*. And a "claim"—as the term is defined by the Bankruptcy Code—includes rights that are both "unliquidated" and "unmatured." *See* 11 U.S.C. § 101(5)(A). So, neither the uncertain amount of the Trustees' right to payment nor its enforceability alter the conclusion that the Trustees' claim existed in 1995.

The Trustees also had a sufficient pre-confirmation "relationship" with the companies to be "aware of " their own rights. *See United States v. LTV Corp.* (*In re Chateaugay I*), 944 F.2d 997, 1005 (2d Cir. 1991). The Coal Act was enacted nearly three years before the effective date of the plan of reorganization, *see* Coal Industry Retiree Health Benefit Act of 1992 (enacted October 24, 1992), and the companies' joint and

several liability to pay premiums began nearly two-and-a-half years before that date, *see* 26 U.S.C. § 9704(a), (b)(2) (providing that Combined Fund premiums begin to come due on February 1, 1993). Indeed, the Trustees knew about the companies' liability because the Trustees filed a proof of claim in Jim Walter Resources' original bankruptcy proceedings.

Some confusion might arise from comparing the Coal Act to generally applicable laws. Some laws—such as environmental laws—impose penalties on all entities that violate them. Other laws—such as state unemployment tax laws or antidiscrimination laws—impose obligations on any entity that engages in specified conduct. These laws continue to impose obligations on a debtor after bankruptcy proceedings because the basis of an entity's liability is not pre-confirmation conduct; the obligations arise regardless of bankruptcy status. *Cf. Ohio v. Kovacs*, 469 U.S. 274, 285, 105 S.Ct. 705, 83 L.Ed.2d 649 (1985) (explaining that reorganized entities must comply with general laws); *Mich. Emp. Sec. Comm'n v. Wolverine Radio Co.* (*In re Wolverine Radio Co.*), 930 F.2d 1132, 1149 (6th Cir. 1991) (concluding that post-discharge "unemployment tax liability" is not dischargeable because it "arises only by virtue of ... post-petition employment of workers"); *O'Loghlin v. County of Orange*, 229 F.3d 871, 874–75 (9th Cir. 2000) (holding that, where an employer was a covered entity under the Americans with Disabilities Act after bankruptcy, a "claim that the [employer] violated the [Disabilities Act] after" confirmation was not discharged by the confirmation order).

By contrast, an entity's liability under the Coal Act to pay premiums to the Combined Fund turns solely on the companies' pre-confirmation conduct. *See*

26 U.S.C. §§ 9701(c)(2), 9704(a). The Coal Act imposed liability on the companies on July 20, 1992, because they were related persons to an entity that had signed certain coal-industry wage agreements. And a plurality of the Supreme Court concluded that the Coal Act is unconstitutional in its application to an entity that did not execute the relevant wage agreements. *See E. Enters. v. Apfel*, 524 U.S. 498, 537, 118 S.Ct. 2131, 141 L.Ed.2d 451 (1998) (plurality opinion). So, we cannot say that the companies' liability is based on their post-confirmation conduct.

The Trustees argue that they had no right to payment in 1995 because the companies' "liability [was] triggered" only by their post-confirmation conduct. They maintain that, because the premium amount becomes zero if the companies and all other related persons stop conducting or deriving revenue from any business activity, liability is contingent on the companies' post-confirmation conduct. But the Trustees are mistaken.

The Trustees erroneously assume that in 1995 the companies' liability was "conditioned upon the occurrence of some future event which is itself uncertain, or questionable." *See Contingent*, BLACK'S LAW DICTIONARY, *supra*. As we have explained, the companies' *liability* to pay premiums to the Combined Fund became fixed before 1995 even though the *amount* due each year was contingent and even though that amount might be zero. *See* 11 U.S.C. § 101(5)(A) (defining a "claim" as any "right to payment, whether or not such *right* is ... fixed ... [or] contingent" (emphasis added)); *In re Leckie*, 99 F.3d at 581 n.9. Covered entities remain liable under the Coal Act even when the premium assessed in a given year

is zero. So, the Trustees' claims existed and were discharged in 1995.

The Trustees suggest that the companies' joint and several liability with Walter Energy should affect our analysis, but we disagree. We have explained that "confirmation of a debtor's ... plan [of reorganization] does not discharge the obligations of a third-party guarantor" because the *debtor* is discharged from the debt. *See Shure v. Vermont* (*In re Sure-Snap Corp.*), 983 F.2d 1015, 1019 (11th Cir. 1993) (citing 11 U.S.C. § 524(e)). So, the Trustees' claims against the companies can be discharged even if the Trustees' claims against Walter Energy were not. And although the Trustees did not seek payment from the companies until 2016, "the fact that" the Trustees could not maintain a suit against the companies until Walter Energy stopped paying premiums "does not alter the conclusion" that the Trustees held a claim in 1995 that was discharged in bankruptcy. *See Stewart Foods, Inc. v. Broecker* (*In re Stewart Foods, Inc.*), 64 F.3d 141, 146 (4th Cir. 1995); *Midland Funding, LLC v. Johnson*, ––– U.S. ––––, 137 S. Ct. 1407, 1412, 197 L.Ed.2d 790 (2017).

In support of their argument, the Trustees point to our sister circuit's decision in *LTV Steel Co. v. Shalala* (*In re Chateaugay II*), 53 F.3d 478 (2d Cir. 1995), but that decision is unpersuasive. There, the Second Circuit held that "Coal Act liability" for post-confirmation premiums "was not dischargeable in bankruptcy." *Id.* at 498. But our sister circuit failed to provide any rationale for its holding.

The Trustees posit that the holding of the Second Circuit turned on an unrelated conclusion that Coal Act premiums are "taxes" that "accru[e]" when they are assessed and become due, *id.* (internal quotation

marks omitted); *see also United Mine Workers of Am. 1992 Benefit Plan v. Rushton* (*In re Sunnyside Coal Co.*), 146 F.3d 1273, 1278 (10th Cir. 1998), but even so we are unpersuaded by that rationale for two reasons. First, a " 'claim' "—a term defined broadly in the bankruptcy context—"include[s] a cause of action or right to payment that has not yet accrued or become cognizable." 2 COLLIER ON BANKRUPTCY ¶ 101.05[1] (16th ed. 2022); *see also* 11 U.S.C. § 101(5)(A); *Midland Funding*, 137 S. Ct. at 1412 (explaining that because "[t]he word 'enforceable' does not appear in the [Bankruptcy] Code's definition of 'claim,' " an "unenforceable claim is nonetheless a 'right to payment,' hence a 'claim,' as the [Bankruptcy] Code uses those terms"). Second, nothing in this appeal turns on whether the premiums are taxes. To be sure, many taxes arise periodically, and "claims," in the bankruptcy sense, for future taxes ordinarily do not exist before the debtor engages in the taxable conduct. But even if Coal Act obligations could be considered taxes, the companies' liability would turn solely on their pre-confirmation conduct. *See In re Chateaugay II*, 53 F.3d at 494 ("[T]he Coal Act ... apportions future financial responsibility according to past participation" in the pre-Coal Act health-care system.). So, whether Coal Act premiums can be considered "taxes"—as *In re Chateaugay II* held—has no bearing on when claims for those premiums arise. *See* 11 U.S.C. § 503(b)(1)(B)(i).

B. The Trustees' Claim Under Section 9711 and Resulting Claims for 1992 Plan Premiums Were Discharged in 1995.

The remainder of this appeal concerns the companies' obligation to provide health-care benefits directly to retirees, *see* 26 U.S.C. § 9711(a), and to pay

premiums to the 1992 Plan if the retirees do not receive benefits under section 9711, *see id.* § 9712(b)(2)(B), (d). The companies argue that both obligations were "claims" that existed and were discharged in 1995. We agree and discuss each obligation in turn.

1. The Trustees' Alleged Equitable Right to Compel the Companies to Provide Benefits Is a Claim Under Section 101(5)(B) That Existed and Was Discharged in 1995.

The Trustees' alleged right under section 9711 is a "claim." A creditor holds a "claim" when it has a "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment," 11 U.S.C. § 101(5)(B), and the Trustees held such a claim in 1995. When a covered entity breaches its obligation to provide health-care benefits to retirees under section 9711, the 1992 Plan provides those benefits instead and assesses the entity premiums commensurate with the costs of providing the benefits. *See* 26 U.S.C. § 9712(b)(2)(B), (d)(1)(A), (d)(2). The Trustees assert that such a breach occurred and seek an equitable remedy—specific performance of the companies' obligations under section 9711. Because the Trustees hold a right to an equitable remedy for breach of the companies' obligations under section 9711, and that breach gives rise to a right to payment of premiums to the 1992 Plan, the Trustees' alleged right to specific performance is a "claim."

The Trustees' claim was discharged in 1995. Like with the claim for Combined Fund premiums, the Trustees and the companies had the requisite relationship, and the companies' liability under section 9711 is based solely on the companies' pre-confirmation conduct and was fixed in 1992. *See* 26 U.S.C.

§ 9711(a), (c)(1); *see also id.* § 9712(d)(1), (d)(4); *E. Enters.*, 524 U.S. at 537, 118 S. Ct. 2131 (plurality opinion). As we have explained, it is immaterial that in 1995 the claim was not yet enforceable or that the *amount* of the 1992 Plan premiums was uncertain. Both those facts are irrelevant in determining whether the Trustees held a pre-confirmation "claim" under the Bankruptcy Code. *See Midland Funding*, 137 S. Ct. at 1412; 11 U.S.C. § 101(5)(B). The dissent argues that liability is based only "in part ... on the companies' pre-confirmation conduct" and that the "crucial basis for ... liability is the post-confirmation ... breach" of performance. Dissenting Op. 1328–29, 1330–31, but the dissent confuses the existence of a liability with its enforceability. In 1995, the Trustees held a right to an equitable remedy for breach of performance—and so a claim within the meaning of the statute—and could enforce that right when a breach occurred. *Compare id.* at 1327–28, 1329 (citing *CPT Holdings, Inc. v. Indus. & Allied Emps. Union Pension Plan, Local 73*, 162 F.3d 405, 409 (6th Cir. 1998) (concluding that a creditor did not hold a right to payment under section 101(5)(A) because an "*enforceable* right to payment ... may never" arise (emphasis added))), *with Midland Funding*, 137 S. Ct. at 1412 (explaining, in a decision postdating *CPT Holdings*, that an "unenforceable claim is nonetheless ... a 'claim' ... as the Code uses th[at] term[ ]").

The Trustees resist this conclusion and urge us to apply a test from the Seventh Circuit, first announced in *In re Udell*, for determining whether a right to an equitable remedy is a claim. *See* 18 F.3d 403, 408 (7th Cir. 1994); 11 U.S.C. § 101(5)(B). *Udell* held "that a right to an equitable remedy for breach of performance is a claim if the same breach also gives rise to

a right to a payment *with respect to* the equitable remedy." *In re Udell*, 18 F.3d at 408 (emphasis added) (internal quotation marks omitted). Under that test, "the necessary relationship ... exists" between the right to payment and the equitable remedy if, for example, "the right to payment is an *alternative* to the right to an equitable remedy." *Id.* (emphasis added) (internal quotation marks omitted). By contrast, the necessary relationship does not exist if the breach gives rise to a right to an equitable remedy *in addition to* the right to payment. *Id.* at 408–10. Applying the *Udell* test, the Trustees argue that their alleged right to compel compliance with section 9711 is not a claim because the obligation to pay premiums to the 1992 Plan is not an "alternative" to the obligation under section 9711.

We decline to adopt the *Udell* test. As both the *Udell* majority and concurrence acknowledged, the test that there be some close relationship between the equitable remedy and the right to payment conflicts with the text of section 101(5)(B). *Compare id.* at 408 ("recogniz[ing] the appealing simplicity of [the debtor's] 'plain language' reading of [section] 101(5)(B)" but rejecting that reading), *and id.* at 412 & n.5 (Flaum, J., concurring in the result) (agreeing with the majority opinion "that adding the word 'alternative' immediately before 'right' " in the statute "is necessary for th[e] statute to work in the real world"), *with CSX Corp. v. United States*, 18 F.4th 672, 680 (11th Cir. 2021) ("When the words of a statute are unambiguous, ... judicial inquiry is complete." (internal quotation marks omitted)). *See also* Daniel J. Bussel, *Doing Equity in Bankruptcy*, 34 EMORY BANKR. DEV. J. 13, 42–43 (2017). Section 101(5)(B) directs us to consider only whether the same breach

"gives rise" to both the right to an equitable remedy and a right to payment. 11 U.S.C. § 101(5)(B). And, as we have already explained, the Trustees' right to equitable relief is triggered by the same breach that gives rise to their right to payment of 1992 Plan premiums.

The Trustees and the dissent further suggest that even if the Trustees' right is a claim, that claim did not exist until Walter Energy ceased providing benefits in 2016. Dissenting Op. 1327–28. But the text of the statute is unambiguous that a "right to an equitable remedy" can exist before a "breach of performance" occurs. *See* 11 U.S.C. § 101(5)(B) (explaining that "claim" includes "a right to an equitable remedy ... *whether or not* such right ... is reduced to judgment, fixed, contingent, matured, [or] unmatured" (emphasis added)). The dissent argues that the use of the word " 'breach' " two times in section 101(5)(B) "suggest[s]" that a prior breach is "necessary for a claim." Dissenting Op. 1330. But neither use of the word "breach" in section 101(5)(B) references the timing of that breach; instead, section 101(5)(B) uses the word "breach" to make clear that the "right to an equitable remedy" and the "right to payment" must be connected by a common "breach of performance." *See* 11 U.S.C. § 101(5)(B) (defining "claim" as a "right to an equitable remedy for *breach* of performance if *such breach* gives rise to a right to payment" (emphases added)). And in the light of the plain meaning of the text of section 101(5)(B), it is irrelevant that section 101(5)(A) does not "contain[ ] the word 'breach.' " *Contra* Dissenting Op. 1330–31.

Requiring a pre-confirmation breach would mean that debtors could only "deal[ ] with" "all [their] legal obligations ... in the bankruptcy case" by waiting until

preexisting obligations become due before filing for bankruptcy. *See In re Piper Aircraft*, 58 F.3d at 1576 (internal quotation marks omitted). But a "claim" can be discharged before performance becomes due, so long as the debtor's liability was incurred by pre-confirmation conduct. *See* 11 U.S.C. § 101(5)(B) (including rights to an equitable remedy that are "unmatured"); *cf. In re Stewart Foods*, 64 F.3d at 145–46 (explaining the "pernicious consequences" of requiring an obligation to be breached or to be enforceable before it can be discharged); *Midland Funding*, 137 S. Ct. at 1412 (rejecting the argument that "claim" is limited to "enforceable obligation[s]" (internal quotation marks omitted)). So, because the Trustees held a claim in 1995, that claim was discharged by the plan of reorganization.

The dissent attempts to insert a prior-breach requirement into section 101(5)(B) to "further[ ] the purposes of the ... Code" by ensuring that the "claim ... [is] suitable for bankruptcy," Dissenting Op. 1329–30, but no addition is necessary or appropriate. *See Badgerow v. Walters*, ––– U.S. ––––, 142 S. Ct. 1310, 1318, ––– L.Ed.2d –––– (2022) ("We have no warrant to redline [a statute]."). Requiring that the breach of performance also give rise to a right to payment ensures that a claim can be estimated in monetary terms even if that breach has not yet occurred. The dissent's added requirement would do nothing to "fulfill[ ] the purposes of the ... Code," Dissenting Op. 1330, but would contravene what we have said was Congress's intent that "all legal obligations of the debtor, no matter how remote or contingent[, are able to] be dealt with in ... bankruptcy" if they fall within the statutory definition, *see Midwest Holding #7, LLC v. Anderson* (*In re Tanner Family, LLC*), 556 F.3d

1194, 1197 (11th Cir. 2009) (internal quotation marks omitted) (explaining that this "intent" was "made clear" by the text). And, in any event, we are not at liberty to supplement an unambiguous provision like section 101(5)(B) to accommodate "even the most formidable policy arguments." *See BP P.L.C. v. Mayor of Baltimore*, ––– U.S. ––––, 141 S. Ct. 1532, 1542, 209 L.Ed.2d 631 (2021) (internal quotation marks omitted).

Because we hold that the Trustees' alleged right to specific performance is a "claim" within the meaning of section 101(5)(B), we need not address the companies' argument that the Trustees' right is an "equitable" "right to payment" under section 101(5)(A), too. *Cf. County of San Mateo v. Peabody Energy Corp.* (*In re Peabody Energy Corp.*), 958 F.3d 717, 724 (8th Cir. 2020) (recognizing that equitable remedies are "often" no more than "orders" to make "payments" (alterations adopted) (internal quotation marks omitted)); *Home State Bank*, 501 U.S. at 83–84, 111 S.Ct. 2150 (concluding that the equitable right to foreclose on real property is a claim under both section 101(5)(A) and 101(5)(B)). That is, we need not decide—as some of our sister circuits have concluded—whether a creditor that can enforce a debtor's obligation to make payments to a third party, such as an insurance company or health-care provider, holds a right to payment. *See In re Peabody Energy*, 958 F.3d at 725 ("[A] claim includes virtually all obligations to pay money, without regard to who receives the payment." (citation and internal quotation marks omitted)); *In re Altair Airlines, Inc.*, 727 F.2d 88, 90–91 (3d Cir. 1984) (holding that a collective bargaining agent held a claim even though the rights to payment the agent was authorized to enforce were held by workers and

the payments would go to those workers). Nor need we decide whether the Coal Act allows covered entities to make payments directly to the retirees for their health-care expenditures or whether covered entities must pay an insurance company or health-care provider to provide those benefits to the retirees. *See, e.g.*, 26 U.S.C. § 9711(a) (imposing on certain companies the obligation to "continue to provide health benefits coverage" to covered retirees).

2. The Trustees' Claims for 1992 Plan Premiums Existed and Were Discharged in 1995.

In the light of our earlier conclusions, we have little trouble concluding that all claims against the companies held by the Trustees for 1992 Plan premiums existed and were discharged in 1995. Liability to the 1992 Plan, including liability to provide a security payment and pay prefunding premiums, was fixed before 1995. To be sure, the total amount that would be owed to the 1992 Plan was uncertain. But that uncertainty means only that the Trustees' claims were "unliquidated" and required estimation, not that those claims did not exist. *See* 11 U.S.C. § 101(5)(A). In so holding, we join the many courts that have treated future Combined Fund and 1992 Plan premiums as similarly dischargeable in bankruptcy. *See, e.g.*, *Holland v. Westmoreland Coal Co.* (*In re Westmoreland Coal Co.*), 968 F.3d 526, 531, 536, 544 (5th Cir. 2020) (explaining that "all courts to consider the question have held that Coal Act obligations are subject to modification" and collecting cases); *In re Walter Energy*, 911 F.3d at 1157; *In re Alpha Nat. Res., Inc.*, 552 B.R. 314, 326–28 (Bankr. E.D. Va. 2016); *In re Horizon Nat. Res. Co.*, 316 B.R. 268, 274–79 (Bankr. E.D. Ky. 2004); *see also In re Bethlehem Steel Corp.*, 2004 WL 601656, at *2 (Bankr. S.D.N.Y. Feb. 9, 2004)

(cited in *In re Walter Energy*, 911 F.3d at 1145) (confirming a plan of reorganization in which the Trustees for the Fund and the Plan had voluntarily agreed "not to bring or maintain any legal action against" entities for premiums to the Combined Fund and 1992 Plan in exchange for an upfront payment).

IV. CONCLUSION

We **REVERSE** the judgment in favor of the Trustees and **REMAND** for further proceedings consistent with this opinion.

ANDERSON, Circuit Judge, concurring in part & dissenting in part:

While I agree with the majority that the companies' liability for the Combined Fund premiums, 26 U.S.C. § 9704, was discharged, I do not agree with the majority that the companies' liability for maintaining an Individual Employer Plan, 26 U.S.C. § 9711, was discharged pursuant to 11 U.S.C. § 101(5)(B).[1] Nor do I agree that the companies' liability for premiums to the 1992 Plan, 26 U.S.C. § 9712, was discharged. Thus, I respectfully dissent to that extent.

I.

As the majority notes, Congress enacted the Coal Act in 1993, converting "coal companies' contractual obligations to provide health care benefits to workers ... into a statutory requirement." *United Mine Works*

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[1] Because the majority does not address 11 U.S.C. § 101(5)(A) with respect to this issue, I also do not.

of Am. Combined Benefit Fund v. Toffel (*In re Walter Energy, Inc.*), 911 F.3d 1121, 1130 (11th Cir. 2018). The companies here were related persons to a signatory operator, Jim Walter Resources,[2] as of July 20, 1992. *See* 26 U.S.C. § 9701(c)(2). The companies, then, are jointly and severally liable for the Coal Act obligations of the signatory operator. *See* 26 U.S.C. §§ 9704(a), 9711(c), 9712(d)(4).

The Coal Act created three obligations for signatory operators and their related persons. First, the Coal Act requires the payment of premiums to the Combined Fund to provide health benefits to coal industry retirees and their families who, on July 20, 1992, were receiving "benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan." 26 U.S.C. § 9703(f). Second, the Coal Act requires the maintenance of an Individual Employer Plan ("IEP") for those retirees who were receiving health benefits coverage through an IEP as of February 1, 1993. 26 U.S.C. § 9711. Third, as relevant here, if a covered entity fails to maintain an IEP for those retirees, the Coal Act requires the payment of premiums to the 1992 Plan to cover the cost of providing health benefits to those retirees. 26 U.S.C. § 9712(b)(2)(B).

The companies, their parent company, and Jim Walter Resources all filed bankruptcy petitions in 1989. The consolidated bankruptcy was confirmed in 1995. As required by the confirmation plan, Walter Energy maintained an IEP and paid Combined Fund premiums as required by the Coal Act. It did so until 2016. No premiums were owed to the 1992 Plan until

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[2] Jim Walter Resources was a subsidiary of Walter Industries. After the 1995 bankruptcy, Walter Industries changed its name to Walter Energy.

Walter Energy ceased maintaining its IEP in 2016. Thereafter, the Trustees sued the companies, seeking compliance with the Coal Act in the form of Combined Fund premiums, maintenance of an IEP, and 1992 Plan premiums for the time during which the companies failed to maintain an IEP. In turn, the companies filed an action in their original bankruptcy proceeding, arguing that all their Coal Act obligations were discharged in the 1995 bankruptcy confirmation.

A bankruptcy confirmation "discharges the debtor from any debt that arose before the date of such confirmation." 11 U.S.C. § 1141(d)(1)(A). The Bankruptcy Code defines "debt" as "liability on a claim." 11 U.S.C. § 101(12). In turn, the Bankruptcy Code defines claim as:

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.

11 U.S.C. § 101(5).

Applying this definition, I agree with the majority that the companies' liability to pay Combined Fund premiums was a claim when the Coal Act was enacted and thus was discharged by the companies' 1995 bankruptcy confirmation. However, the IEP obligation was not a claim under § 101(5)(B) until 2016 and could not have been discharged in 1995. Similarly, the

companies' liability for 1992 Plan premiums did not arise until 2016 and was not discharged in 1995.

II.

Before discussing my points of disagreement, I want to briefly explain why I agree that the companies' liability for Combined Fund premiums was discharged in 1995, which, I think, may be helpful in explaining my disagreement. After discussing that issue, I will discuss the IEP obligation and 1992 Plan premiums.

A. The Combined Fund Premiums

In our Circuit, we use the following two-part test for determining whether a claim arose before confirmation: (1) whether "events occurring before confirmation create a relationship ... between the claimant and the debtor[ ]" and (2) whether the "basis for liability is the debtor's pre[-confirmation] conduct." *Epstein v. Off. Comm. of Unsecured Creditors of Est. of Piper Aircraft Corp.* (*In re Piper Aircraft, Corp.*), 58 F.3d 1573, 1577 (11th Cir. 1995).[3] In other words,

[3] Our decision in *In re Piper Aircraft* required a pre-confirmation relationship but pre-petition conduct. 58 F.3d at 1577. The district court had required a pre-petition relationship and pre-petition conduct. *Id.* In explaining why we modified the district court's test and "chang[ed] the focal point of the relationship from the petition date to the confirmation date," we noted that we were making the test "consistent with the policies underlying the Bankruptcy Code." *Id.* at 1577 n.5. That consistency should extend to the timing of the relevant conduct—i.e., pre-confirmation conduct should be required. *See Wright v. Owens Corning*, 679 F.3d 101, 107 (3d Cir. 2012) (citing our decision in *In re Piper Aircraft* to alter its test to look for pre-confirmation instead of pre-petition conduct). Thus, I, like the majority, look for both a pre-confirmation relationship and pre-confirmation conduct here.

we require a pre-confirmation relationship and pre-confirmation conduct.

The companies' status as related persons was determined based on their relationship with a signatory operator on July 20, 1992. *See* 26 U.S.C. § 9703(f). And the companies' liability for Combined Fund premiums was fixed on the Coal Act's effective date, February 1, 1993. *See* 26 U.S.C. § 9702(a)(2). As of that date, the Trustees and the companies had the requisite relationship. And the companies needed to engage in no further conduct for their liability for Combined Fund premiums to attach. While the Trustees right to payment was contingent because it was based on the lifespan of the retirees, the cost of health benefits, and the longevity of other signatory operators and their related persons, the Trustees had a right to payment for all future Combined Fund premiums as of 1993. *See* 26 U.S.C. § 9704(b). Because the companies' liability to pay Combined Fund premiums arose in 1993, I agree with the majority that it was discharged in the companies' 1995 bankruptcy confirmation pursuant to § 101(5)(A).

Two final points are worth mentioning. First, the Trustees' claim for Combined Fund premiums is a claim under § 101(5)(A)—i.e., it is a right to payment. Therefore, it is a claim without the necessity of a breach. *See Stewart Foods, Inc. v. Broecker* (*In re Stewart Foods, Inc.*), 64 F.3d 141, 146 (4th Cir. 1995) (finding that 101 future payments constituted a claim even though the payments were due after the bankruptcy). Second, I also agree with the majority that this appeal does not turn on an analogy to taxes. Majority Op. at 1332–33. The Combined Fund premiums, even if considered taxes, are based solely on pre-confirmation conduct. *See Saint Catherine Hosp. of Ind.,*

LLC v. Ind. Fam. & Soc. Servs. Admin., 800 F.3d 312, 317 (7th Cir. 2015) (rejecting a similar analogy to taxes because the liability was based entirely on pre-petition conduct).

B. The Individual Employer Plan and 1992 Plan Premiums.

Any possible claim pursuant to § 101(5)(B) that the Trustees had to enforce the companies' IEP obligation did not arise until 2016. Nor did any claim for 1992 Plan premium payments arise until 2016. Because a bankruptcy confirmation only "discharges the debtor from any debt that arose before confirmation," 11 U.S.C. § 1141(d)(1)(A), neither of those claims was discharged in the 1995 bankruptcy. I will first address the IEP obligation and then discuss the 1992 Plan premiums.

The Coal Act requires covered entities and their related persons to "continue to provide health benefits coverage ... which is substantially the same as ... the coverage provided by such plan as of January 1, 1992" to any retiree and the retiree's eligible beneficiaries who were receiving such coverage as of February 1, 1993. 26 U.S.C. § 9711(a). The majority argues that the Trustees had a claim with respect to the companies' IEP obligation under § 101(5)(B) and that the claim existed in 1995. Majority Op. at 1333–34. I respectfully believe that this view misunderstands when a claim arises under § 101(5)(B).

A creditor holds a claim under § 101(5)(B) when it has "a right to an equitable remedy for breach of performance if such breach gives rise to a right to payment." Before there is a "breach of performance" by the debtor, the creditor can have no "right to an equitable remedy." This is the same reasoning the Sixth

Circuit employed when it determined that for ERISA withdrawal liability, no right to payment existed "until an employer actually withdraws from a plan." *CPT Holdings, Inc. v. Indus. & Allied Emps. Union Pension Plan, Local 73*, 162 F.3d 405, 409 (6th Cir. 1998). The reasoning of the Sixth Circuit is persuasive. Just as a right to payment for statutory damages cannot exist until the statute is violated, a right to an equitable remedy for breach of performance cannot exist until there is a breach of performance. Since the relevant breach occurred in 2016 when Walter Energy and the companies failed to maintain an IEP, the claim arising out of that breach cannot have been discharged in 1995.

The majority argues that it does not matter whether the Trustees' right to an equitable remedy was enforceable in 1995. Majority Op. at 1333–34. That is true. But the relevant question is whether there existed as of 1995 a "right to an equitable remedy for breach of performance." 11 U.S.C. § 101(5)(B). The majority's focus on the Supreme Court's decision in *Midland Funding, LLC v. Johnson*, ––– U.S. ––––, 137 S. Ct. 1407, 197 L.Ed.2d 790 (2017) is, thus, misplaced. There, the Court determined that a creditor had a right to payment of a debt even though the statute of limitations had expired, making the right to payment unenforceable. *Id.* at 1411. In other words, *Midland Funding* dealt with the judicial enforceability of a right to payment that already existed. Here, the question is when the right to an equitable remedy for breach of performance arises. The Supreme Court's decision in *Midland Funding* sheds no light on that question. And because there was no breach of

performance until 2016, the Trustees' right to an equitable remedy for breach of performance simply did not exist in 1995.

The majority contends that a claim under § 101(5)(B) can exist before a breach occurs "so long as the debtor's liability was incurred by pre-confirmation conduct." Majority Op. at 1335. I submit that the majority misunderstands what conduct gives rise to the claim here. The majority seems to believe that the passage of the Coal Act or the date of determination of related persons or possibly the signing of the national wage agreements is the relevant conduct. But the crucial conduct which gives rise to the basis for the companies' liability is the breach of the IEP obligation. Because the Trustees' hold a claim only because the breach (failure to maintain the IEP) gives rise to a right to payment (1992 Plan premiums), the relevant conduct giving rise to the claim is the companies' breach of their IEP obligation. This was post-confirmation conduct. Thus, the Trustees' claim arising from the companies' post-confirmation conduct could not have been discharged in the 1995 bankruptcy. And while the majority may argue that the right to payment is merely contingent, a debtor's own future conduct cannot make a claim contingent. *See Siegel v. Fed. Home Loan Mortg. Corp.*, 143 F.3d 525, 532–33 (9th Cir. 1998) ("A contingent claim is 'one which the debtor will be called upon to pay only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor.' " (quoting *Fostvedt v. Dow* (*In re Fostvedt*), 823 F.2d 305, 306 (9th Cir. 1987))).

One could argue against this reading of the statute because IEP liability here will be based, in part, on the companies' pre-confirmation conduct. But while

Coal Act liability attaches to companies based on their pre-confirmation conduct, *E. Enters. v. Apfel*, 524 U.S. 498, 537, 118 S. Ct. 2131, 2153, 141 L.Ed.2d 451 (1998) (plurality opinion), holding the debtor liable (notwithstanding bankruptcy) for claims that are based in part on pre-confirmation conduct does not offend the Bankruptcy Code if, as here, the claim arises because of post-confirmation conduct, *CPT Holdings*, 162 F.3d at 406–09 (holding that a company's ERISA withdrawal liability could be based, in part, on its pre-confirmation participation in and contributions to a multiemployer plan because the Plan's claim did not arise until the company's post-confirmation conduct of actually withdrawing from the plan). In binding precedent, we too have held that confirmation does not discharge a debtor from liability based on post-confirmation conduct, even though pre-confirmation conduct—i.e., agreeing to the contract—was also essential for liability to attach. *See Shure v. Vermont* (*In re Sure-Snap Corp.*), 983 F.2d 1015, 1018 (11th Cir. 1993). Similarly, the Sixth Circuit found that it was permissible to base a reorganized debtor's contribution rate to Michigan's employment security fund on that debtor's pre-confirmation contribution history. *Mich. Emp. Sec. Comm'n v. Wolverine Radio Co.* (*In re Wolverine Radio Co.*), 930 F.2d 1132, 1136 (6th Cir. 1991). Therefore, even though the companies' pre-confirmation conduct may contribute to their liability, a claim that depends in part on that conduct is not discharged if it arises because of post-confirmation conduct. Bankruptcy confirmation does not absolve a company of all pre-confirmation conduct. *See In re Piper Aircraft*, 58 F.3d at 1577 (finding that a claim had not arisen because, despite pre-confirmation conduct, there was no pre-confirmation relationship, thus necessarily allowing for a future claim based on that

pre-confirmation conduct). Instead, bankruptcy confirmation discharges claims that arose before confirmation, but not claims that arose after confirmation. And because the companies' post-confirmation 2016 breach of performance—i.e., failure to maintain an IEP—gives rise to the Trustees' claim, the Trustees did not have a claim in 1995 with respect to the companies' IEP obligation.

Requiring a breach for a claim to arise under § 101(5)(B) is critical to furthering the purposes of the Bankruptcy Code. Bankruptcy allows a debtor a "financial 'fresh start' " by resolving all claims against the debtor in the same bankruptcy. *See Owaski v. Jet Fla. Sys., Inc.* (*In re Jet Fla. Sys., Inc.*), 883 F.2d 970, 972 (11th Cir. 1989) (quoting Thomas H. Jackson, *The Fresh-Start Policy in Bankruptcy Law*, 98 Harv. L. Rev. 1393, 1396–97 (1985)). By forcing all present claimants into the bankruptcy, the Bankruptcy Code "facilitate[s] the prime bankruptcy policy of equality of distribution among creditors." *Union Bank v. Wolas*, 502 U.S. 151, 161, 112 S. Ct. 527, 533, 116 L.Ed.2d 514 (1991) (quoting H.R. Rep. No. 95-595, at 177–78 (1977)). In essence, bankruptcy collects all claims against a debtor and divides the debtor's available resources among those claims. Therefore, it is essential that for any claim to be dischargeable in bankruptcy, it must be able to be represented by money damages. Under § 101(5)(B), if the relevant breach does not give rise to a right to payment, the equitable remedy is not a claim because it is irrelevant to providing a financial fresh start to the debtor and equitable distribution to the creditors. And where a breach does give rise to a right to payment, the breach is necessary for a claim to arise under § 101(5)(B) because the breach and related right to payment are

what allow the claim to be suitable for bankruptcy. Thus, requiring a breach before a claim arises under § 101(5)(B) fulfills the purposes of the Bankruptcy Code.

Moreover, requiring such a breach ensures that the essential element of a bankruptcy claim—a right to payment—exists before discharge. Under § 101(5)(B), a breach must give rise to a right to payment for a right to an equitable remedy to be a claim. It is the right to payment that allows the supposed claim to be suitable for bankruptcy—i.e., provides a financial fresh start to the debtor and equitable distribution to creditors. Therefore, a right to payment is the key feature of any bankruptcy claim. *See* 11 U.S.C. § 101(5)(A) (defining claim as a "right to payment); *Id.* § 101(5)(B) (defining claim to include a "right to an equitable remedy for breach of performance if such breach of performance gives rise to a *right to payment*" (emphasis added)). Allowing a discharge when no right to payment exists contravenes the purpose and text of the Bankruptcy Code.

Most significantly, requiring a pre-confirmation breach is faithful to the statutory text. The text of § 101(5)(B) contains the word "breach" twice, suggesting it is necessary for a claim. One could argue that § 101(5)(B) does not explicitly require a breach to occur before confirmation. But § 101(5)(B) defines claim for the entire Bankruptcy Code. Other provisions of the code discuss the relevance of timing. As noted above, § 1141(d)(1)(A) provides that confirmation "discharges the debtor from any debt that arose before the date of such confirmation." Recall that "[t]he term 'debt' means liability on a claim," 11 U.S.C. § 101(12), so that the definitions of debt and claim are coexten-

sive. Similarly, the Bankruptcy Code's section on administrative expenses provides that taxes "incurred by the estate" are an allowed administrative expense. 11 U.S.C. § 503(b)(1)(B). The Bankruptcy Code also provides that "property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case." 11 U.S.C. § 552. The Bankruptcy Code's substantive provisions are riddled with delineations based on timing that impact how different claims are handled. The natural and plausible meaning of § 101(5)(B)—"right to an equitable remedy for breach of performance if such breach gives rise to a right to payment"—is that the existence of a claim depends upon there being a breach of performance. And § 1141(d)(1)(A)—providing that a claim must arise before the date of confirmation—means that the breach of performance must arise—i.e., occur—before confirmation. And this plain meaning is bolstered by the contrast to § 101(5)(A), which neither contains the word "breach" nor requires a breach. *See In re Stewart Foods*, 64 F.3d at 146.

It also seems to me that the majority's position is in tension with the established law that a bankruptcy confirmation plan does not discharge claims that arise on account of post-confirmation conduct of the debtor. *See* 8 Collier on Bankruptcy ¶ 1141.05 ("The discharge operates on all claims that arose before the date of confirmation."); *In re Piper Aircraft*, 58 F.3d at 1577 (holding that one prerequisite for discharge is that the "basis for liability" of the debtor be the debtor's pre-confirmation conduct); *In re Sure-Snap*, 983 F.2d at 1018 (holding that there was no discharge where the basis for the liability of the debtor was the

debtor's post-confirmation conduct). As noted above, although there was pre-confirmation conduct on the part of Walter Energy and the companies, it seems clear to me that the crucial basis for the liability is the post-confirmation 2016 breach of the obligation to maintain an IEP. That post-confirmation breach gave rise to any claim the Trustees' have with respect to the companies' IEP obligation. Because that breach occurred in 2016, the companies' 1995 bankruptcy confirmation could not discharge the Trustees' claim arising from it. As a result, the Trustees' claim with respect to the companies' IEP obligation was not discharged in 1995 pursuant to § 101(5)(B).[4]

After determining that the companies' IEP obligation was not discharged in 1995, it is straightforward to conclude that their liability for 1992 Plan premiums was also not discharged. In 2016, when Walter Energy ceased maintaining its IEP and the companies declined to do so themselves, both Walter Energy and the companies here breached their IEP obligation under 26 U.S.C. § 9711. Thus, the companies' 2016 breach—i.e., post-confirmation conduct—gave rise to the companies' liability to pay 1992 Plan premiums under § 9712. Therefore, the Trustees' claim against the companies for 1992 Plan premiums also arose in 2016. Because that claim did not arise until 2016, it was not discharged in 1995. The existence of security or prefunding requirements, Majority Op. at 1336, do not alter this conclusion. While those requirements arose pre-confirmation, the 1992 Plan premiums at issue here arose because of the companies' breach of

[4] I note that neither the companies nor the majority point to a case holding that a claim was discharged under § 101(5)(B) in the absence of a pre-confirmation breach of performance.

their IEP obligation. Because the companies' obligation to pay 1992 Plan premiums arose based on post-confirmation conduct, it was not discharged in the bankruptcy confirmation.

While the majority notes that courts "have treated Combined Fund and 1992 Plan premiums as similarly dischargeable in bankruptcy," Majority Op. at 1336, my conclusion is not at odds with those decisions. The Trustees' claim for Combined Fund premiums arose in 1993 and was discharged in 1995, but the Trustees' claim for 1992 Plan premiums did not arise until 2016. Therefore, instead of being at odds with those decisions, my view merely requires that for those premiums to be discharged, they must "ar[i]se before the date of [bankruptcy] confirmation." 11 U.S.C. § 1141(d)(1)(A). Because the Trustees' claim for 1992 Plan premiums did not do so, it was not discharged.

III.

While I agree with the majority that the Trustees' claim for Combined Fund premiums was discharged in 1995, I disagree with the majority's holding that the 1995 confirmation also discharged the companies' IEP obligation under § 101(5)(B) and the companies' liability for 1992 Plan premiums. Respectfully, I dissent to that extent.

United States District Court
for the Middle District of Florida,
Tampa Division

UNITED STATES PIPE AND FOUNDRY COMPANY, LLC, *et al.*,

Appellants,

v.

Michael H. HOLLAND, Michael Mckown, Joseph R. Reschini, Carlo Tarley, Michael H. Holland, Michael Mckown, William P. Hobgood, Marty D. Hudson, Joseph R. Reschini, Carl E. Vanhorn, Gail R. Wilensky, United Mine Workers of America 1992 Benefit Plan And United Mine Workers of America Combined Benefit Fund,

Appellees.

Case No. 8:19-cv-891-T-36

Signed 09/28/2020

Charlene Edwards Honeywell, United States District Judge

Before the Court are Appellants' initial brief [Doc. 35], Appellees' brief [Doc. 41], Appellants' reply brief [Doc. 43], Appellants' Notice of Supplemental Authority [Doc. 57], and Appellees' Response to Appellants' Notice of Supplemental Authority [Doc. 58]. Appellants U.S. Pipe and Foundry Company, LLC, JW Aluminum Company, and JW Window Components LLC (hereafter referenced as "Appellants" or "U.S. Pipe") appeal the bankruptcy court's ruling that liabilities arising under the Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act") were not discharged in their jointly administered Chapter 11 bankruptcy

over two decades ago. [Doc. 35 at pp. 10-11]. Appellees, the Trustees of the retirement funds involved, argue that premiums arising pursuant to the Coal Act are taxes and were assessed no sooner than 2016 in this case, such that they were not discharged in the 1995 bankruptcy. [Doc 41 at pp. 2-3]. Having reviewed the arguments presented in this matter, heard oral argument, and being duly advised in the premises, the Court will AFFIRM the bankruptcy court's decision.

I. BACKGROUND

The Coal Act was enacted to preserve for United Mine Workers of America retirees the health benefits that grew out of the 1947 National Bituminous Coal Wage Agreement (NBCWA). *U.S. Steel Corp. v. Astrue*, 495 F.3d 1272, 1275–76 (11th Cir. 2007) (citing *Eastern Enterprises v. Apfel*, 524 U.S. 498, 514 (1998)). It did so by requiring coal companies to provide health care benefits to their retirees through individual employer plans (IEP) and two new multiemployer plans—the Combined Fund and the 1992 Benefit Plan. *In re Walter Energy, Inc.*, 911 F.3d 1121, 1130 (11th Cir. 2018), *cert. denied sub nom. United Mine Workers of Am. Combined Ben. Fund v. Toffel*, 139 S. Ct. 2763, 204 L. Ed. 2d 1148 (2019). The Combined Fund is financed by annual premiums assessed against coal operators who signed "any NBCWA or any other agreement requiring contributions to the 1950 or 1974 Benefit Plans," and the amount of the premium depended on the number of retirees and dependents for which each signatory operator was responsible. *Astrue*, 495 F.3d at 1276. Importantly, "[a] signatory operator must pay premiums to the Combined Fund for as long as it has assigned beneficiaries and 'conducts or derives revenue from any business

activity, whether or not in the coal industry.' " *In re Walter Energy, Inc.*, 911 F.3d at 1131 (*citing* 26 U.S.C. §§ 9701(c)(7), 9706(a)). If a signatory operator ceases all business activities, the Commissioner may assess premiums against a "related person" of the signatory operator, meaning a "successor[ ] in interest" or "business ... under common control." *Id.* (*citing* 26 U.S.C. §§ 9701(c)(2)(A), 9706(a)). The Coal Act imposes a penalty of $100 per beneficiary per day if a company fails to timely pay its premiums. *Id.* (citing 26 U.S.C. §§ 9707(a)(1), (b)).

The 1992 Benefit Plan covered a more limited class of retirees and assessed premiums against a more limited group of coal companies than the Combined Fund. *Id.* at 1132. Only individuals who retired by September 30, 1994, are eligible for coverage. *Id.* at 1131–32 (citing § 9712(b)(2)). Only those coal companies that signed the NBCWA of 1988 were required to pay premiums to the 1992 Benefit Plan for the retirees assigned to it, based on whether the company was the retirees' most recent employer. *Id.* at 1132 (citing § 9712(d)(1), (d)(6)). "These signatory operators [were] required to pay both an annual 'prefunding premium' for all eligible and potentially eligible beneficiaries of the Plan attributable to them and a monthly 'per beneficiary' premium for each beneficiary attributable to them who is actually receiving benefits under the Plan." *Penn Allegh Coal Co. v. Holland*, 183 F.3d 860, 862 (D.C. Cir. 1999) (citing § 9712(d)(1)(A), (B)); *In re Sunnyside Coal Co.*, 146 F.3d 1273, 1275 (10th Cir. 1998) ("[T]he 1992 Fund is financed by a prefunding premium, an annual payment based on the estimated costs of future benefits to orphaned retirees, and a per beneficiary premium, monthly assessments to reimburse the UMWA

for monthly payments made to coal industry retirees."); *In re Olga Coal Co.*, 159 F.3d 62, 65 (2d Cir. 1998) ("The 1992 Plan is financed by monthly, per-beneficiary premiums paid by the last signatory operators of Plan beneficiaries, and is secured by annual prefunding premiums and additional security payments by 1988 last signatory operators."). As with the Combined Fund, related persons could be responsible for the payment of premiums where a coal operator was no longer in business. *In re Walter Energy, Inc.*, 911 F.3d at 1133 (*citing* 26 U.S.C. § 9712(d)(4)). However, there is no penalty for failure to make payment of premiums. *Id.* (*citing* 26 U.S.C. § 9707).

The 1994 Discharge in Bankruptcy

Around 1989, Hillsborough Holdings Corporation and various subsidiaries including Appellants and Walter Industries, Inc.—a holding company that owned a coal mine operator—filed a joint plan for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Middle District of Florida, Tampa Division. [Doc. 25 at p. 92]. The plan, amended as of December 9, 1994, was confirmed on March 2, 1995. *Id.* at pp. 239, 282, 320. By its order, the bankruptcy court discharged as of the effective date "any and all Debts (as such term is defined in Section 101(12) of the Bankruptcy Code) or Claims[1] against one or more of the Debtors that arose at any time before the Effective Date and from any Debt or Claim of a kind spec-

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[1] A "claim" is defined as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5)(A).

ified in Sections 502(g), 502(h) and 502(i) of the Bankruptcy Code." *Id.* at p. 290 ¶ 18. However, the court also explained that:

> Notwithstanding paragraphs 18, 19 and 20 of this Order, nothing in the Modified Consensual Plan, this Order or the injunction and discharge provisions contained therein shall (a) affect or discharge any liability of the Debtors to the "Pension Plans" (as defined *in* the Creditors' Disclosure statement) or the Pension Benefit Guaranty Corporation (the "PBGC") arising from the termination of any of the Pension Plans subsequent to the Effective Date or (b) affect the right of the PBGC to commence any action to collect or recover from the Debtors, their Assets or properties on account of any liability which may arise from the termination of any of the Pension Plans subsequent to the Effective Date.

Id. at p. 293 ¶ 21. By the disclosure statement, the bankruptcy court was notified that "[t]he Debtors have established and maintained at least 23 single-employer pension plans ... to provide retirement benefits for certain of their employees." *Id.* at p. 787. The disclosure statement also noted that "[u]nder the labor contract with the United Mine Workers of America, Jim Walter Resources makes payments into multi-employer pension plan trusts established for union employees." *Id.* at pp. 787, 1151. Notably, the disclosure statement also contained the following:

> The Proponents understand that the Debtors' liability under 29 U.S.C. sec. 1362, if any, in the event of a pension plan termination, shall not be affected in any way by these reorganization proceedings, including by discharge, except

> with respect to Pension Plans, if any, that are terminated prior to the confirmation of a plan of reorganization for the Debtors. The Proponents further understand that such termination of the pension Plans is not anticipated to occur.
>
> The Proponents also intend to use their best efforts to have included in the Confirmation Order language to the effect that (1) as of the Effective Date the Debtors will have no debt to PBGC under 29 U.S.C. sec. 1362 with respect to any pension plan that is not terminated by the Confirmation Date; and (2) accordingly, any liability of the Debtors under U.S.C. sec. 1362 shall not be discharged or otherwise affected by Confirmation of the Creditors' Plan with respect to any Pension plan that has not been terminated prior to Confirmation of the Creditors plan.

Id. at p. 788. Following the discharge, Jim Walter Resources, the Walter Industries' subsidiary that was a coal operator, continued to maintain an individual employer plan—to cover retirees who would have had to be covered by the 1992 Plan—and continued to make payments to the Combined Fund. *Id.* at p. 1516 ¶¶ 7, 8.

The 2015 bankruptcy petition and ensuing litigation

Walter Industries[2] again filed for bankruptcy in July 2015, this time in the Northern District of Alabama. *See In re Walter Energy, Inc.*, 542 B.R. 859, 866 (Bankr. N.D. Ala. 2015), *aff'd*, 911 F.3d 1121 (11th Cir. 2018). Jim Walter Resources maintained the individual employer plan until 2016 and it also paid Combined Fund premiums until 2016. [Doc. 25 at p. 1516 ¶¶ 7, 8, 9]. On or about April 1, 2016, eligible beneficiaries of Walter Industries were enrolled directly in the 1992 Plan. *Id.* ¶ 9. This triggered Walter Industries' obligation to make payment of monthly premiums to the 1992 Benefit Plan. 26 U.S.C. § 9712(d)(1)(A). The Trustees of the 1992 Benefit Plan and the Combined Fund then filed suit against U.S. Pipe, J.W. Aluminum Company, and JW Window Components, LLC in the United States District Court for the District of Columbia, alleging that as a "related person," they were responsible for Walter Industries' Coal Act obligations that arose upon termination of the individual employee plan. [Doc. 25 at pp. 322-331]. Count One of the Amended Complaint alleged that these entities "failed to provide an IEP for those retirees who were formerly in Walter Energy's IEP" in breach of their obligations under the Coal Act. *Id.* at pp. 325-326. Count Two alleged that these entities failed to pay monthly premiums to the 1992 Plan for months April 2016 through July 2016. *Id.* at pp. 326-327. Count Three alleged that the entities failed to make payment of premiums to the Combined Fund. *Id.* at pp. 328-329.

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[2] Walter Industries changed its name to Walter Energy, Inc after emerging from the 1995 bankruptcy proceeding. For ease of reference, the Court will refer to Walter Energy as Walter Industries.

U.S. Pipe, in turn, filed an action for declaratory and injunctive relief in the United States Bankruptcy Court for the Middle District of Florida, contending that the Coal Act obligations had been discharged by the 1995 confirmation order. *Id.* at pp. 77-331. The Trustees moved to dismiss U.S. Pipe's action, arguing that the Coal Act premiums were taxes and that "[n]one of the premium obligations that the Trustees seek to enforce in the D.C. [l]itigation existed at the time of the order confirming the Plan in this case." *Id.* at pp. 356-379. In response, U.S. Pipe argued that the Coal Act obligations existed prior to and were extinguished by the discharge. *Id.* at pp. 382-409. In reply, the Trustees disputed U.S. Pipe's theory that the future premiums were part of a single contingent claim. *Id.* at pp. 1480-1493. U.S. Pipe also filed a motion for partial summary judgment in which it argued that any claim by the Trustees against U.S. Pipe for "related person" liability arose at the latest on February 1, 1993 when the Coal Act obligations became fully effective and were discharged on March 17, 1995, which was the effective date of the Order Confirming the Amended Joint Plan of Reorganization. *Id.* at pp. 410-426; 427-1472. In opposition, the Trustees took the position that there was never a claim for Coal Act premiums at the time of the bankruptcy and there were disputes as to the key facts which made judgment improper. *Id.* at pp. 1495-1517. The Trustees further advocated that the obligation to make payment of Coal Act premiums arose separately in each period in which the criteria for liability existed. *See id.* U.S. Pipe raised various arguments in its reply, including that "[r]elated person" status was determined—once and for all—as of July 20, 1992 and "[t]he joint-and-several liability that attached to 'related persons' became fixed on February 1, 1993,

when the Coal Act became effective." *Id.* at pp. 1518-1536.

The bankruptcy court's decision

On March 29, 2019, the United States Bankruptcy Court for the Middle District of Florida held that the Coal Act premiums at issue were not discharged by the Order Confirming the Amended Joint Plan of Reorganization in 1995. *In re Hillsborough Holdings Corp.*, 599 B.R. 193, 201 (Bankr. M.D. Fla. 2019). In its memorandum opinion, the bankruptcy court reasoned that:

> Because the Coal Act premiums are an involuntary pecuniary burden imposed by Congress for a public purpose under its taxing power, the Court reaches the same conclusion that every Circuit Court of Appeal that has considered the issue has: The Coal Act premiums are taxes. And because they are taxes assessed on a periodic basis (either annually or monthly), each period gives rise to a new liability.

Id. The bankruptcy court acknowledged that it was not writing on a clean slate and there was no reason to not apply the *Lorber* test which warranted a finding that unpaid Coal Act premiums are taxes and therefore not discharged in U.S. Pipe's earlier bankruptcy case. *Id.* Appellants have appealed this decision.

II. ARGUMENTS

Appellants assert that there are various points of error in the bankruptcy court's decision which warrant reversal. First, Appellants argue that Coal Act premiums are claims and were therefore discharged in the bankruptcy case. [Doc. 35 at pp. 28-36]. In so arguing, Appellants contend that Congress defined

'claim' in the Bankruptcy Code very broadly and intended that all legal obligations of the debtor, no matter how remote or contingent to be dealt with in the bankruptcy. *Id.* at p. 28. According to Appellants, the bankruptcy court should have ended its inquiry once it determined that "Coal Act premiums give rise to a 'claim' " and it did not need to consider whether these premiums were taxes. *Id.* at p. 30. Even then, Appellants posit that "[t]here is no carve-out in the Consensual Plan, in the Confirmation Order, or in Section 1141(d) of the Bankruptcy Code for any such taxes." *Id.* at p. 31. Instead, Appellants contend that 'related person' liability is determined once and for all as of February 1, 1993 and is not based on periodic satisfaction of any condition precedent. *Id.* at p. 31. Second, Appellants argue that the functional test applied by the bankruptcy court in finding that the premiums were taxes was superseded by the Supreme Court, which instructed that the proper inquiry is whether Congress had expressed an intent for the premiums to be treated as taxes, which it had not done as to the Coal Act. *Id.* at pp. 36-41. Appellants further argue that even if the functional test was correct, the bankruptcy court did not apply that test correctly and made an additional error in finding that future liabilities could not be discharged as case law establishes that liability for future premiums can be terminated through bankruptcy proceedings. *Id.* at pp. 41-45. Finally, Appellants contend that there are no disputed issues of fact that preclude entry of partial summary judgment on their claims for a declaration that the Coal Act claims at issue in the D.C. litigation have been discharged or for enforcement of the discharge injunction in the Confirmation Order and Consensual Plan. *Id.* at p. 46.

Appellees respond that Appellants are urging the Court to adopt a "simple" theory of the case, by ending its inquiry upon a finding that the Coal Act premium is a tax, which has a "deeply flawed" logic. [Doc. 41 at pp. 27-28]. Instead, Appellees contend that the pertinent question is when the claims arose, and that the bankruptcy court correctly found that claims for Combined Fund and 1992 Plan premiums arose in 2016 when those premiums were assessed against Appellants. *Id.* at p. 28. Appellees also argue that their entitlement to compel Appellants to maintain an IEP arose in 2016 when Appellants failed to maintain an IEP. *Id.* at pp. 28, 44. In fact, Appellees further note that the text of the Coal Act directs the Trustees to assess premiums against covered companies on an *annual* basis for the Combined Fund and on a *monthly* basis for the 1992 Plan and Appellees have taken the position that the obligation to pay premiums could not be discharged in 1995 because it did not arise before 2016. *Id.* at p. 29. Appellees further argue that even if future premiums could be estimated, the payment obligation still arose only upon assessment, which in this case did not occur before 1995. *Id.* at p. 34. In response to Appellants' claim that the Court erred in likening the premiums to taxes, Appellees posit that such comparison is not improper or unnecessary as taxes assessed after a discharge are beyond the scope of the bankruptcy and thus not dischargeable. *Id.* at pp. 35-36, 41. Appellees maintain that the premiums at issue were taxes for bankruptcy purposes and that the bankruptcy court did not apply an incorrect legal standard. *Id.* at pp. 36-41. As to the argument that the bankruptcy court did not address the IEP claims in its order, Appellees concede that the bankruptcy court did not do so, but contend that the bankruptcy court must have perceived that their

claim for equitable relief in the D.C. litigation is not truly a 'claim' in the bankruptcy sense as "Appellants' breach of their IEP obligation does not give rise to a 'right to payment' " and the payment of premiums does not extinguish the duty to maintain an IEP. *Id.* at p. 45.

III. DISCUSSION

It has long been established that "[a] bankruptcy discharge and the concomitant injunction against subsequent actions are designed to give the debtor a financial 'fresh start.' " *In re Jet Fla. Sys., Inc.*, 883 F.2d 970, 972 (11th Cir. 1989). The 'fresh start' is realized by prohibiting creditors from attempting to collect discharged debts. *In re Diaz*, 647 F.3d 1073, 1087 (11th Cir. 2011). Accordingly, Appellants have argued that Appellees are violating this principle by seeking to enforce in the D.C. lawsuit the Coal Act obligations which were discharged in 1995. [Doc. 35 at p. 28]. The bankruptcy court disagreed and held that the Coal Act premiums at issue were not discharged in the 1995 bankruptcy case. "In reviewing bankruptcy court judgments, [this] [C]ourt functions as an appellate court." *In re JLJ Inc.*, 988 F.2d 1112, 1116 (11th Cir. 1993). "[This Court] reviews the bankruptcy court's legal conclusions *de novo*, but must accept the bankruptcy court's factual findings unless they are clearly erroneous." *Id.* (citations omitted). The question presented here, whether the bankruptcy court erred when it determined that future Coal Act premiums were not discharged because like taxes they accrued periodically and were beyond the scope of the 1995 order of confirmation, is a purely legal one. To this extent, the Court reviews the bankruptcy court's decision *de novo*. *Id.*; *In re Herrera-Edwards*,

578 B.R. 853, 860 (Bankr. M.D. Fla. 2017) (stating same).

A. The status of Coal Act premiums as taxes

As the bankruptcy court noted, none of the circuit courts of appeals to have ruled on the Coal Act has addressed the precise issue here. However, the court also noted that circuit courts that have addressed issues relating to Coal Act premiums have applied the test articulated in *In re Lorber Indus. of California, Inc.*, 675 F.2d 1062, 1066 (9th Cir.1982) and have held that these premiums are taxes. The bankruptcy court was unaware of any reason *Lorber* would not apply. The *Lorber* court's test is:

> (T)he elements which characterize an exaction of a "tax" within the meaning of said Section 64, sub. a(4) are as follows:
>
> > (a) An involuntary pecuniary burden, regardless of name, laid upon individuals or property;
> >
> > (b) Imposed by, or under authority of the legislature;
> >
> > (c) For public purposes, including the purposes of defraying expenses of government or undertakings authorized by it;
> >
> > (d) Under the police or taxing power of the state.

Id. It applied this test to surcharges assessed against nonresidential users of the Sanitation District's sewer system and held that because of the characteristics of the charges, they were better classified as non-tax fees than as taxes. *Id.* at 1066-68.

The Second, Third, Fourth, and Tenth Circuits have specifically held that Coal Act premiums are taxes. *In re Chateaugay Corp.*, 53 F.3d 478, 496 (2d Cir. 1995)—which the bankruptcy court also considered—the Court of Appeals for the Second Circuit applied the four-part test set forth in *Lorber* and concluded that "Coal Act obligations are appropriately described as 'taxes' due to their overwhelmingly involuntary nature, their explicitly stated public purpose, and their obvious potential to be imposed pursuant to the taxing power." *Id.* at 498. About two years later, the Fourth Circuit took the same position in *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 583 (4th Cir. 1996), holding that Coal Act premiums are taxes.[3] *See also Carbon Fuel Co. v. USX Corp.*, 100 F.3d 1124, 1137 (4th Cir. 1996) ("[T]he Coal Act premiums are taxes imposed under the Coal Act."). The Fourth Circuit found the reasoning in *In re Chateaugay Corp.* persuasive and adopted that reasoning as its own. *In re Leckie Smokeless Coal Co.*, 99 F.3d at 583. The Fourth Circuit has consistently taken this position. *See, e.g.*, *Adventure Res. Inc. v. Holland*, 137 F.3d 786, 794 (4th Cir. 1998) (holding that Coal Act assessments are taxes); *Pittston Co. v. United States*, 199 F.3d 694, 702 (4th Cir. 1999) ("Although the Government contends that the Coal Act premiums Pittston challenges are not taxes, Fourth Circuit precedent establishes that they are.").

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[3] The court noted in its reasoning that it discerned no basis for distinguishing the meaning of the word "tax" in the Bankruptcy Code from the use of that term in the two statutes at issue, the Anti–Injunction Act, 26 U.S.C. § 7421, and the Declaratory Judgment Act, 28 U.S.C. § 2201. *But see In re Walter Energy, Inc., supra.*

In *In re Sunnyside Coal Co.*, the Court of Appeals for the Tenth Circuit joined the Second and Fourth Circuits holding that Coal Act premiums are taxes, reasoning that "[t]he undeniably involuntary nature of these assessments as crafted by the Coal Act to directly remediate continuing crises in the nation's production of coal qualifies them as taxes." 146 F.3d at 1278. *See also In re CF & I Fabricators of Utah, Inc.*, 150 F.3d 1293, 1300 (10th Cir. 1998) (distinguishing Coal Act cases on the basis that "Coal Act claims are entitled to priority as a tax"). Similarly, the Court of Appeals for the Third Circuit has stated that "Coal Act obligations are taxes" implemented "to continue a benefits program." *Unity Real Estate Co. v. Hudson*, 178 F.3d 649, 675 (3d Cir. 1999) (citing *Lindsey Coal Mining Co. v. Chater*, 90 F.3d 688, 695 (3d Cir.1996)). District courts outside this circuit have also taken this position. *See, e.g.*, *Berwind Corp. v. Apfel*, No. CIV.A. 98-5985, 2000 WL 1337112, at *1 (E.D. Pa. Sept. 15, 2000) (stating that "the court cannot conscientiously hold that Coal Act premiums are not 'taxes' "), *aff'd in part, rev'd in part sub nom. Berwind Corp. v. Comm'r of Soc. Sec.*, 307 F.3d 222 (3d Cir. 2002); *U.S. ex rel. Shank v. Lewis Enterprises, Inc.*, No. CIV. 04-CV-4105-JPG, 2006 WL 1207005, at *3 (S.D. Ill. May 3, 2006) (stating that "[f]unding under the Coal Act has been found to constitute a tax and, under the administration of the Coal Act, constitutes federal funds").

Notwithstanding these cases, U.S. Pipe argues that the bankruptcy court's decision cannot stand in light of the Eleventh Circuit's holding in *In re Walter Energy, Inc* and the Fifth Circuit's recent decision in *In re Westmoreland Coal Co.*, No. 19-20066, 2020 WL

4457954 (5th Cir. Aug. 4, 2020). In *In re Walter Energy, Inc*, the Northern District of Alabama concluded that "Coal Act premiums were not taxes for purposes of the Anti-Injunction Act."[4] 911 F.3d at 1135. The Eleventh Circuit agreed, concluding that "premiums owed to the 1992 Benefit Plan do not qualify as taxes for purposes of the Anti-Injunction Act." *Id.* In its reasoning, the court noted that the Supreme Court in *NFIB* refused to apply "a functional approach to determine whether the exaction imposed by the Affordable Care Act qualifies as a tax for purposes of the Anti-Injunction Act." *Id.* Instead, the court noted that the Supreme Court looked to whether Congress directly or indirectly indicated that the exaction should be treated as a tax for purposes of that Act. *Id.* Applying this approach, the court found that "Congress expressed no intent for the premiums owed to the 1992 Benefit Plan to be treated as taxes for purposes of the Anti-Injunction Act" and "treated as 'significant' Congress's decision to label the exactions owed to the 1992 Benefit Plan not as taxes but as premiums." *Id.* at 1139–40.

Appellees are correct that "the Eleventh Circuit did not treat *NFIB* as rejecting the *Lorber* test for bankruptcy purposes generally." [Doc. 41 at p. 30]. However, Appellants misinterpret the court's holding and have ignored the most salient portions of the opinion that bear on the situation here. Specifically, the Eleventh Circuit stated that "*NFIB* ... recognized

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[4] The Anti-Injunction Act "protects the Government's ability to collect a consistent stream of revenue, by barring litigation to enjoin or otherwise obstruct the collection of taxes." *Id.* (quoting *Nat'l Fed'n of Indep. Bus. v. Sebelius* (*NFIB*), 567 U.S. 519, 544-546 (2012)). "When the Anti-Injunction Act applies, it deprives federal courts of jurisdiction." *Id.*

that even when an exaction qualifies as a tax for purposes of the Constitution, it does not necessarily qualify as a tax for purposes of the Anti-Injunction Act." *In re Walter Energy, Inc*, 911 F.3d at 1136 (citing *NFIB*, 567 U.S. at 544-46). The court further limited its non-functional approach to Anti-Injunction Act cases, stating:

> The Funds' primary argument is that the premiums owed to the 1992 Benefit Plan qualify as taxes for purposes of the Anti-Injunction Act because the premiums are functionally similar to taxes. *Although this argument may explain why the exactions qualify as taxes for purposes of a constitutional inquiry, the Court made clear in NFIB that we do not use such a functional approach to determine whether an exaction qualifies as a tax under the Anti-Injunction Act.* Because both the Anti-Injunction Act and the Coal Act "are creatures of Congress's own creation," the way that these statutes "relate to each other is up to Congress." *NFIB*, 567 U.S. at 544. *We thus look to the text of the Coal Act to determine whether Congress intended for premiums owed to the 1992 Benefit Plan to be treated as taxes for purposes of the Anti-Injunction Act.*

Id. at 1139 (emphasis added). Based on the ruling in *NFIB*, it is apparent that the Supreme Court applies a more stringent standard when deciding whether a measure is a tax for purposes of the Anti-Injunction Act than when making such a decision for constitutional purposes, and the reason for doing so is obvious.

The Court of Appeals for the Fifth Circuit also recognized this in *In re Westmoreland Coal Co.* There, the court had to decide whether section 1114 of the

Bankruptcy Code allows for the modification of Coal Act obligations.[5] 2020 WL 4457954, at *1. In addressing this issue, the court stated that "[t]he key question is whether a Coal Act premium is a 'tax' under the AIA." *Id.* at *5. Again, the Anti-Injunction Act is not at issue in this case, and as Appellees note, the decision "does not break new ground." [Doc. 58 at p. 2]. Even then, the Fifth Circuit's reasoning underscores that a different standard applies when deciding whether a financial measure is a tax for purposes of that statute. In its reasoning, the court explicitly noted that the approach in *NFIB* "stands in contrast to the framework for evaluating whether an exaction is a tax in the *constitutional* sense, in which case the label Congress uses is of minimal importance." *In re Westmoreland Coal Co.*, 2020 WL 4457954, at *5. Because the Anti-Injunction Act uses a label over substance approach, the Court noted that it "applies to something that is not really a tax when it nonetheless has that label, and does not apply to something that is a tax but doesn't have that label." *Id.* (citations omitted). The Court further reasoned that "although the Coal Act's provisions are in the Internal Revenue Code, they are under the subtitle 'Coal Industry Health Benefits' while other subtitles expressly describe their contents as taxes." *Id.*

The Court is not persuaded that the Eleventh Circuit's decision in *In re Walter Energy, Inc.* and the Fifth Circuit's decision in *In re Westmoreland Coal Co.* provide a framework that was meant to address

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[5] Notably, the Notice of Supplemental Authority states that "11 U.S.C. § 1114 was inapplicable to Appellants in their respective bankruptcy cases.... Appellants never provided any 'retiree benefits' to any retired coal miner before (or after) commencing their bankruptcy cases." [Doc. 57 at p. 2 n.1].

the situation before this Court. In both cases, the court construed whether the financial exactions tied to the Coal Act were taxes for purposes of the Anti-Injunction Act. The bankruptcy court was not asked to construe that statute—where the label used is the primary consideration. The appellate courts' ruling in the two cases was confined to that particular statute and does not extend to the broader question of whether an exaction is a tax in the *constitutional* sense. As such, those cases do not compel a finding that Coal Act premiums are not taxes for bankruptcy purposes and none of the cases cited by Appellants support this position. Rather, those cases suggest that the functional test is the proper approach for cases like this. The decisions from the Second, Third, Fourth, and Tenth Circuits are particularly persuasive. The Court concludes that the bankruptcy court did not err in finding that Coal Act premiums constitute taxes. The payment of Coal Act premiums is "undeniably involuntary," *In re Sunnyside Coal Co.*, 146 F.3d at 1278,[6] and undoubtedly for the purpose of ensuring the continued provision of benefits to retirees of coal mining companies, *Unity Real Estate Co.*, 178 F.3d at 675.

B. Were the future premiums subject to discharge

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[6] Even the Fifth Circuit has recently acknowledged this point, reasoning that while "Westmoreland did originally 'obligate[ ] itself' to provide lifetime health care benefits to its retirees through the National Bituminous Coal Wage Agreements," the Coal Act obligations were now "undeniably involuntary." *In re Westmoreland Coal Co.*, 2020 WL 4457954, at *11 (citing *In re Sunnyside Coal Co.*, 146 F.3d at 1278).

Appellees argue that the pertinent question is when the claims arose. "In a corporate Chapter 11 proceeding, confirmation of the plan ... discharges any debts that arose before the date of confirmation." *First Nat'l Bank of Oneida, N.A. v. Brandt*, 887 F.3d 1255, 1260 (11th Cir. 2018)(citing 11 U.S.C. § 1141(d)(1)(A)). On this point, the bankruptcy court held that because the Coal Act premiums are taxes, and thus assessed on a periodic basis—either *annually* or *monthly*—each period gives rise to a new liability. *In re Hillsborough Holdings Corp.*, 599 B.R. at 201. In reaching this conclusion, the court relied primarily on the decisions from the other circuits that have addressed the issue. In *In re Sunnyside Coal Co.*, the Tenth Circuit determined that "Coal Act premiums accrue for each tax period," and would accrue until all assets of Sunnyside had been liquidated. 146 F.3d at 1279, 1280. In so holding, the court rejected an argument that post-petition claims relate back to prepetition obligations arising from collective bargaining agreements between coal operators and unions.

In *In re Chateaugay Corp.*, the Second Circuit noted that while Congress expected "claim" to have the broadest possible scope, its reach is not infinite. 53 F.3d at 497. Because the Coal Act was not enacted until six years after the bankruptcy petition had been filed in that case, the Second Circuit found that no right to payment of Combined Fund premiums could have existed at the time the petition was filed. *Id.* at 496-497. In this same vein, the District Court for the Southern District of New York in *In re Bethlehem Steel Corp*, 2004 WL 601656, at *3-4 (S.D.N.Y. Feb. 9, 2004), has stated that "as long as an IEP remains in place, the 1992 Plan has no enforceable claim against

the employer for monthly premiums" and "the Debtors were not obligated to pay monthly premiums until the date that their IEP was terminated, which occurred postpetition." Citing to 26 U.S.C. § 9712(d)(1)(B), the court reasoned that the Coal Act only requires companies to pay monthly premiums to the 1992 Plan if there are eligible retirees receiving health benefits from the 1992 Plan and as long as a company provides benefits to its retirees directly through its IEP, these retirees are not enrolled in the 1992 Plan. *Id.*

To the contrary, the Fourth Circuit in *In re Leckie Smokeless Coal Co.* held that the 1992 Plan and the Combined Fund had "claims" to future premium payments. 99 F.3d at 581. In that case, the district court concluded that coal operators that had filed voluntary petitions for bankruptcy relief could sell their operations "free and clear" of all successor liabilities that might arise under the Coal Act and the Fourth Circuit affirmed. *Id.* at 575-576. By defining "claim" as broadly as it did, the appellate court reasoned, Congress intended that "all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case." *Id.* at 580. The appellate court also noted that unlike *In re Chateaugay Corp.*, the request for bankruptcy relief came after the Coal Act had been enacted and the liability for premiums had arisen from the debtors' pre-petition rather than post-petition acts. *Id.* at 580. Hence, the liability for future Coal Act premiums was fixed at the time the debtors filed the bankruptcy petitions—even though the amount of those premiums could not then and still cannot be precisely stated. *Id.* at 581 n.9.

In this case, the joint petition was filed on December 27, 1989 and the Coal Act did not become effective

until February 1, 1993. As in *In re Chateaugay Corp.*, no right to payment of Coal Act premiums could have existed at the time of Appellants' petition because the Coal Act had yet to be enacted. 53 F.3d at 496. Even then, the discharge order which became effective on March 17, 1995, would only discharge liabilities that had accrued up to that point. *Brandt*, 887 F.3d at 1260. As the Eleventh Circuit makes clear, a discharge order is not intended to terminate a debtor's obligations.[7] *In re Sure-Snap Corp.*, 983 F.2d 1015, 1018 (11th Cir. 1993). Hence, the Coal Act obligations were not terminated in 1995. Neither is the intent of a discharge order to "insulate the debtor from the costs of post-bankruptcy acts." *Id.* As Coal Act premiums do in fact constitute taxes, future assessments

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[7] Appellants argue, and Appellee concedes that the bankruptcy court did not expressly address the parties' dispute over Appellants' obligation to maintain an IEP, which was raised in Count I of the D.C. lawsuit. [Doc. 35 at p. 32 n.12; Doc. 41 at p. 36; Doc. 25-11 ¶¶ 14-21]. In a footnote in the initial brief, Appellants mentioned that the bankruptcy court made no effort to reconcile its taxes analogy with the IEP claim. [Doc. 35 at p. 32 n.12]. At the hearing, Appellant further explained its position that the IEP obligation was discharged in 1995 and that the bankruptcy court provided no explanation as to how these obligations could survive the discharge. [Doc. 55-1 at pp. 11, 12]. The Court acknowledges that the bankruptcy court did not address this specific issue but finds that it does not change the outcome in this case. The duty to maintain an IEP was an *obligation* imposed by the Coal Act. It is the failure to carry out this *obligation*, i.e. maintain an IEP, which gave rise to a duty to pay 1992 Plan premiums. As the Eleventh Circuit has explained, *bankruptcy is intended to discharge debts, not extinguish the obligations giving rise to those debts*. *Brandt*, 887 F.3d at 1260. As such, while Appellants could be relieved of debt in the form of plan premiums that resulted from their failure to maintain an IEP, the *obligation* to provide an IEP for its employees could not be terminated by bankruptcy.

are post-bankruptcy obligations that are beyond the scope of an earlier order of discharge. Accordingly, the bankruptcy court did not err in finding that the future premiums were not discharged by the 1995 order of discharge.[8]

For the reasons discussed above, the Court agrees with the bankruptcy court that the Coal Act premiums at issue were not discharged by the bankruptcy court in 1995 and that the arguments raised by Appellants are without merit. The decision of the bankruptcy court will be affirmed.

Accordingly, it is hereby ORDERED:

1. The decision of the bankruptcy court is AFFIRMED in all respects.

2. The Clerk is directed to close this case.

DONE AND ORDERED in Tampa, Florida on September 28, 2020.

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[8] The Court notes that, consistent with the language of the disclosure statement, the bankruptcy court's 1995 discharge order specifically excluded any liability of the Debtors to the "Pension Plans" arising from the termination of any of the Pension Plans subsequent to the Effective Date. [Doc. 25 at pp. 293 ¶ 21, 788]. That disclosure statement indicated that "[t]he Debtors have established and maintained at least 23 single-employer pension plans ... to provide retirement benefits for certain of their employees" and that "[u]nder the labor contract with the United Mine Workers of America, Jim Walter Resources makes payments into multi-employer pension plan trusts established for union employees." *Id.* at pp. 787, 1151. Jim Walter Resource maintained an IEP until 2016, which was after the effective date of the 1995 discharge. It appears that the liability that is the subject of the litigation in the District of Columbia was expressly excepted from discharge.

United States Bankruptcy Court
for the Middle District of Florida

In re: HILLSBOROUGH HOLDINGS CORP.,
Debtor

In re: UNITED STATES PIPE AND FOUNDRY
COMPANY, LLC, Debtor

UNITED STATES PIPE AND FOUNDRY COMPANY, LLC,

Plaintiff,

v.

Michael H. HOLLAND, Michael MCKOWN, Joseph R. RESCHINI, and Carlo TARLEY, as Trustees of the United Mine Workers of America 1992 Benefit Plan, *et al.*,

Defendants.

Case Nos. 8:89-bk-09715 through 8:89-bk-9746
and 8:90-bk-11997 Chapter 11

Case No. 8:89-bk-9744

Adv. No. 8:17-ap-00478-MGW

Signed March 29, 2019

Michael G. Williamson, Chief United States Bankruptcy Judge

Under the Coal Industry Retiree Health Benefit Act of 1992, coal mine operators are required to (among other things) pay premiums to two retirement funds to pay for health benefits for certain retired coal

miners. Related persons—those who shared certain common ownership with coal operators as of July 1992—are jointly and severally liable for premiums due under the Coal Act.

Two years ago, United States Pipe and Foundry Company, which previously shared common ownership with a coal operator, was sued for unpaid Coal Act premiums as a "related person." U.S. Pipe, however, contends that any joint and several liability it had under the Coal Act was discharged in U.S. Pipe's chapter 11 bankruptcy case nearly 30 years ago. In rejecting this contention, the Court concludes that because Coal Act premiums are in the nature of a tax, any premiums that came due after the effective date of U.S. Pipe's confirmed plan were not discharged in U.S. Pipe's earlier bankruptcy case.

Undisputed Facts

Nearly thirty years ago, Hillsborough Holdings and thirty of its subsidiaries filed for chapter 11 bankruptcy.[1] This adversary proceeding centers on two of those subsidiaries: United States Pipe and Foundry, LLC and Walter Industries, Inc. Walter Industries was a holding company that owned several companies, including Jim Walter Resources, Inc., which was a coal mine operator.[2] U.S. Pipe, at the time, shared common ownership with Walter Industries.[3]

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[1] *In re Hillsborough Holdings*, Case No. 8:89-bk-09715. The chapter 11 cases filed by Hillsborough Holdings and its subsidiaries (Case Nos. 8:89-bk-09715 through 8:89-bk-09746 and 8:90-bk-11997) were jointly administered. Case No. 8:89-bk-09715, Doc. No. 14.

[2] Adv. Doc. 24-4 at Ex. III.

[3] Adv. Doc. No. 24-1, ¶ 16.

In 1992, three years after Walter Industries and U.S. Pipe filed for bankruptcy, Congress passed the Coal Industry Retiree Health Benefit Act of 1992, which became effective February 1, 1993.[4] At the time, coal retirees (and their dependents) had been receiving health benefits from two multiemployer benefit plans established by various collective bargaining agreements between the United Mine Workers of America and the coal industry. Those plans were known as the 1950 Benefit Trust and the 1974 Benefit Trust.[5] The Coal Act was passed to remedy the "looming insolvency" of the 1950 and 1974 Benefit Trusts.[6]

It did so in three ways: First, the Coal Act required coal operators to establish and maintain individual employer plans to provide retiree health benefits for certain retirees.[7] Second, it combined the 1950 and 1974 Benefit Trusts into a new benefit plan known as the Combined Benefit Fund, which covered retirees who were receiving benefits from the 1950 or 1974 Benefit Trust.[8] Third, it created a new benefit plan known as the 1992 Benefit Plan, which covered coal miners who had retired before September 30, 1994 but were not eligible for the Combined Fund.[9] At the

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[4] Pub. L. No. 102-486, 106 Stat. 2776, 3036 – 56 (codified at 26 U.S.C. §§ 9701–9722).

[5] For a thorough discussion of the history leading to the Coal Act, see *LTV Steel v. Shalala (In re Chateaugay)*, 53 F.3d 478, 481–86 (2d Cir. 1995).

[6] *Id.* at 484–85.

[7] 26 U.S.C. § 9711(a).

[8] 26 U.S.C. § 9702(a)(1), (2); § 9703(b), (f).

[9] 26 U.S.C. § 9711(a), (b).

heart of this proceeding lies the funding mechanisms for the Combined Fund and the 1992 Benefit Plan.

The Combined Fund was funded by annual premiums paid by coal operators who were signatories to one of the earlier collective bargaining agreements dating back to 1950.[10] To determine a coal operator's premium, the Secretary of Health and Human Services was first required to assign each eligible retiree to a coal operator based on who the retiree worked for most recently or the longest.[11] That was required to be done by October 1, 1993.[12] Then, each year, the Secretary of Health and Human Services came up with a per beneficiary premium.[13] A coal operator's Combined Fund premium was assessed on an annual basis by multiplying the per beneficiary premium by the number of retirees assigned to the coal operator.[14]

The 1992 Benefit Plan had a similar funding mechanism. Each coal operator that was a signatory to a 1998 collective bargaining agreement between the United Mine Workers of America and the coal industry was required to pay a monthly per beneficiary premium for each of the coal operator's beneficiaries who were receiving benefits under the 1992 Plan.[15] Each year, the monthly per beneficiary premium may

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[10] 26 U.S.C. § 9701(b)(1), (c)(1); § 9704(a).

[11] 26 U.S.C. § 9704(b)(1); § 9706(a).

[12] 26 U.S.C. § 9706(a).

[13] 26 U.S.C. § 9704(b)(2).

[14] 26 U.S.C. § 9704(b)(1).

[15] 26 U.S.C. § 9712(d)(1).

be adjusted to cover any change in the cost of providing benefits to eligible beneficiaries.[16]

To ensure that the Combined Fund and 1992 Benefit Plans would continue to be funded, the Coal Act also imposes liability on "related persons."[17] "Related persons," under the Coal Act, include companies that shared common ownership with a coal operator as of July 20, 1992.[18] The Coal Act specifically provides that "related persons" are jointly and severally liable for a coal operator's obligation to maintain and establish an individual employer plan, as well as the coal operator's obligation to fund the Combined Fund and 1992 Benefit Plan premiums.[19]

In December 1994, nearly two years after the Coal Act became effective, Walter Industries and U.S. Pipe, along with the other Debtors and various creditors, proposed a chapter 11 plan in their bankruptcy case.[20] Although no specific mention was made of the Coal Act, the proposed plan provided that Walter Industries and another debtor (Jim Walter Computer Services, Inc.) would continue to fund medical benefits for retirees.[21] The proposed plan was silent as to any Coal Act obligations U.S. Pipe may have as a "related person."[22]

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[16] 26 U.S.C. § 9712(d)(2).

[17] 26 U.S.C. § 9704(a); § 9711(a); § 9712(d)(4).

[18] 26 U.S.C. § 9701(c)(2).

[19] 26 U.S.C. § 9704(a); § 9706(a); § 9711(a); § 9712(d)(4).

[20] Adv. Doc. No. 24-6 & 24-7.

[21] Adv. Doc. No. 24-6, ¶ 5.4.

[22] *Id.*

In March 1995, this Court confirmed the chapter 11 plan.[23] Under Bankruptcy Code § 1141, as well as the terms of the confirmed plan, the confirmation order discharged any claims against Walter Industries and U.S. Pipe (as well as the other Debtors) that arose before the confirmation order's effective date:

> Except as otherwise expressly provided in the Modified Consensual Plan or this Order, pursuant to Article XII, Section 12.3 of the Modified Consensual Plan and Section 1141(d) of the Bankruptcy Code, the issuance of this Order shall operate as a discharge effective as of the Effective Date, of any and all Debt (as such term is defined in Section 101(12) of the Bankruptcy Code) or Claims against one or more of the Debtors that arose at any time before the effective date .... On the Effective Date, the Holder of every discharged Debt and Claim will be permanently enjoined from asserting against any and all of the Debtors or any of their respective assets, any other or further Claim based upon law, rule or regulation or any document, instrument, act, omission, transaction or other activity of any kind or nature that occurred prior to the Effective Date, other than as provided in the [ ] Consensual Plan.[24]

For the next twenty years, Walter Industries fulfilled its obligations under the Coal Act, including maintaining an individual employer plan and paying

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[23] Adv. Doc. No. 24-8.

[24] Adv. Doc. No. 24-8, ¶ 18; Adv. Doc. No. 24-6, ¶ 12.2.

premiums to the Combined Benefit Fund.[25] In July 2015, however, Walter Industries filed for bankruptcy a second time—this time in the Northern District of Alabama.[26]

Although it continued to fulfill its Coal Obligations for a short while after filing for bankruptcy, in April 2016, Walter Industries terminated its individual employer plan, dumping 439 of its employees into the 1992 Benefit Plan and triggering liability for monthly premiums for those 439 retirees.[27] But Walter Industries failed to pay the monthly premiums to the 1992 Benefit Plan.[28] By May 2016, Walter Industries had also stopped paying its Combined Fund premiums.[29]

So the trustees for the Combined Fund and the 1992 Benefit Plan sued U.S. Pipe in federal court in Washington D.C., alleging that U.S. Pipe is liable for Walter Industries' obligations under the Coal Act as a "related person."[30] U.S. Pipe, in turn, filed this adversary proceeding seeking a declaration that its Coal

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[25] Adv. Doc. No. 24-1, ¶¶ 14, 15, 27 & 29; Adv. Doc. No. 29-1, ¶¶ 7–9. One technical note: During the bankruptcy case, Walter Industries was merged into Hillsborough Holdings. Adv. Doc. No. 24-4 at § VII.O.6. The surviving entity was renamed Walter Industries, Inc. After emerging from bankruptcy, Walter Industries changed its name to Walter Energy, Inc. That detail is not significant to the Court's ruling. For ease of reference, then, the Court will refer to Walter Energy as Walter Industries.

[26] *In re Walter Energy, Inc.*, Case No. 2:15-bk-02741, Doc. No. 1.

[27] Adv. Doc. No. 29-1, ¶¶ 7–9.

[28] Adv. Doc. No. 24-1, ¶¶ 22–27.

[29] Adv. Doc. No. 24-1, ¶¶ 28–32.

[30] Adv. Doc. No. 1 at Ex. C; Adv. Doc. No. 24-1, ¶ 16.

Act obligations (if any) were discharged nearly a quarter century ago under the confirmation order in its bankruptcy case.[31]

The outcome of this proceeding hinges on the nature of the Coal Act premiums. On the one hand, U.S. Pipe contends the premiums gave rise to a preconfirmation contingent claim that was discharged under the express terms of the 1995 confirmation order.[32] On the other hand, the Trustees contend the premiums are taxes that accrue periodically, in which case any taxes that accrued after the effective date of confirmation would not be discharged.[33] This Court must now decide whether the Coal Act premiums are a contingent claim or a tax.[34]

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[31] Adv. Doc. No. 1.

[32] Adv. Doc. Nos. 1 & 23.

[33] Adv. Doc. No. 29. The Trustees also contend that the Tax Anti-Injunction Act, 26 U.S.C. § 7421(a), precludes this Court from discharging U.S. Pipe's Coal Act liability. Because the Court is ruling, as a matter of law, that U.S. Pipe's Coal Act liability was not discharged, this issue appears to be moot. Even if the issue isn't moot, the Court concludes, largely for the reasons articulated by the Eleventh Circuit in *In re Walter Energy, Inc.*, 911 F.3d 1121, 1136–37 (11th Cir. 2018), that Congress did not intend for the Tax Anti-Injunction Act to bar this suit.

[34] It is worth mentioning the peculiar procedural posture of the case. Initially, the Trustees moved to dismiss U.S. Pipe's complaint. Adv. Doc. No. 17. That motion was fully briefed. Adv. Doc. Nos. 17 & 22. At the time, the case was pending before the Honorable K. Rodney May. Before Judge May had a chance to rule on the Trustees' motion to dismiss, U.S. Pipe moved for summary judgment. Adv. Doc. Nos. 23, 29 & 30. The parties argued the dismissal and summary judgment motions together before Judge May shortly before he retired. When Judge May retired, this proceeding was transferred to this Court. This Court will treat the

(footnote continued on next page)

Conclusions of Law

As a starting point, there is no dispute that the Coal Act premiums give rise to a "claim." Just about any bankruptcy practitioner can recite the definition of a "claim" by heart: Under Bankruptcy Code § 101(5), a claim is a "right to payment," whether it is liquidated or unliquidated, disputed or undisputed, matured or unmatured, or contingent.[35] Under the Coal Act, the Trustees have a right to payment from U.S. Pipe—both now and back when U.S. Pipe confirmed its plan.[36]

But calling the Coal Act premiums a "claim" doesn't mean the premiums aren't a tax. Tax liability, of course, gives rise to a claim. After all, the IRS has a "right to payment" of unpaid taxes from taxpayers who are in bankruptcy. In fact, the Bankruptcy Code contains numerous references to claims for taxes.[37] The significance of a claim being a tax, at least for purposes of this case, is that it helps determine when the claim arose and therefore whether it was discharged under the confirmation order.

Trustee's motion to dismiss as a motion for summary judgment under Rule 7012(d).

[35] 11 U.S.C. § 101(5).

[36] 26 U.S.C. § 9704(a); § 9711(d)(1)(A), (d)(4).

[37] *See, e.g.,* 11 U.S.C. § 502(b)(2) (providing that the court shall, after notice and a hearing, determine the amount of a claim that has been objected to unless "such claim is for a tax assessed against property of the estate"); § 724(b) (providing the manner for distributing property in which the estate has an interest and that is subject to a lien that secures an allowed claim for a tax); § 1305(a)(1) (providing that a "proof of claim may be filed by any entity that holds a claim against the debtor ... for taxes that become payable to a governmental unit while the case is pending").

As the Trustees point out, when a statute provides that a tax corresponds to a particular time period, a separate obligation accrues each period.[38] Take income taxes, for example. Because income taxes are levied on an annual basis, each tax year gives rise to a new tax liability.[39] No one would seriously dispute that a debtor remains liable for income (or other) taxes that accrued after confirmation.

But if the Coal Act premiums are a contingent claim, rather than in the nature of a tax, then the liability would have arisen preconfirmation, when the Coal Act took effect, meaning the Trustees' claim would have been discharged.[40] U.S. Pipe persuasively argues that the Coal Act premiums are a contingent claim.

According to U.S. Pipe, the Coal Act imposed liability on U.S. Pipe for future Combined Fund and 1992 Benefit Plan premiums when the Act became effective on February 1, 1993, more than two years before the confirmation order.[41] It is worth noting that Walter Industries' liability under the Coal Act was predicated, at least in part, on the fact that it was a signatory to a collective bargaining agreement with the Union that predated confirmation by at least two decades.[42] And U.S. Pipe is liable as a "related person" because it shared common ownership with Walter In-

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[38] Adv. Doc. No. 17 (citing *Christian Coalition of Fla., Inc. v. United States*, 662 F.3d 1182, 1195 (11th Cir. 2011)).

[39] *Christian Coal.*, 662 F.3d at 1195.

[40] 11 U.S.C. § 1141(d)(1); Adv. Doc. No. 24-8, ¶ 18.

[41] Adv. Doc. No. 23, ¶¶ 16–25.

[42] 26 U.S.C. § 9701(b)(1), (3); § 9701(c)(1); § 9712(d)(1), (d)(4).

dustries as of July 20, 1992—nearly three years before confirmation.[43] As a consequence, U.S. Pipe contends that its Coal Act liability was established as of February 1, 1993 at the latest, even if the premium payments did not come due until some later point in time (twenty years down the road in this case).[44]

In support of this argument, U.S. Pipe relies on the Fourth Circuit Court of Appeals' decision more than twenty years ago in *In re Leckie*.[45] *Leckie* involved two consolidated cases, both of which were filed after the Coal Act was passed.[46] In both cases, the debtors, who were coal operators, attempted to sell their assets free and clear of their Coal Act liabilities over objections by the Combined Fund and the 1992 Benefit Plan.[47]

After both debtors were permitted to sell their assets free and clear of their Coal Act obligations, the Combined Fund and 1992 Benefit Plan appealed. On appeal, the Combined Fund and 1992 Benefit Plan argued that the district courts couldn't adjudicate the debtors' liability for Coal Act premiums because the

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[43] 26 U.S.C. § 9701(c)(2)(A).

[44] Adv. Doc. No. 23, ¶ 20.

[45] *Id.* at ¶ 23 (discussing *UNWA 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal)*, 99 F.3d 573 (4th Cir. 1996). U.S. Piper actually relied more on the bankruptcy court's decision, which explained that the Coal Act premiums were "contingent upon the number of surviving retirees." *UNWA 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal)*, 201 B.R. 163, 172 (Bankr. S.D. W. Va. 1996). The Fourth Circuit ultimately affirmed the bankruptcy court's decision. *In re Leckie*, 99 F.3d at 580–81.

[46] *In re Leckie*, 99 F.3d at 577–79.

[47] *Id.*

premiums did not give rise to prepetition claims since the premiums had not yet been assessed.[48]

The Fourth Circuit disagreed. Distinguishing the Second Circuit's decision in *LTV Steel Co. v. Shalala (In re Chateaugay Corp.)*, which held that Coal Act premiums were postpetition claims where the Coal Act was passed six years after the debtor filed for bankruptcy, the Fourth Circuit concluded that the debtors' Coal Act liability arose prepetition.[49] Because Congress intended "claim" to be defined broadly, the Fourth Circuit held that the Combined Fund and 1992 Benefit Plan had "claims" for future premiums.[50]

Although that holding supports U.S. Pipe's argument, *Leckie* is somewhat of a double-edged sword for U.S. Pipe because the Fourth Circuit also held that the Coal Act premiums were taxes. One of the arguments raised on appeal in *Leckie* was that the Tax Anti-Injunction Act precluded the districts courts from authorizing the debtors to sell their assets free and clear of their Coal Act liability. The Tax Anti-Injunction Act generally provides that no suit to restrain the collection of any tax shall be maintained in any court.

To determine if the Coal Act premiums were taxes, the Fourth Circuit looked to a four-part test used by (among other courts) the Ninth Circuit in *In re Lorber*

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[48] *Id.* at 579–80.

[49] *Id.* at 580 (distinguishing *LTV Steel v. Shalala (In re Chateaugay Corp.)*, 53 F.3d 478, 481-86 (2d Cir. 1995)).

[50] *Id.* at 580–81.

Industries of California.[51] Under the *Lorber* test, the premiums are a tax if they are (1) regardless of their name, an involuntary pecuniary burden laid on individuals or property (2) imposed by or under the authority of the legislature (3) for a public purpose (including defraying governmental expenses) (4) under the state's police or taxing power.[52] The Fourth Circuit, in *Leckie*, held that the Coal Act premiums easily satisfied the *Lorber* test.[53]

The Fourth Circuit reached the same result two years later in *Adventure Resources Inc. v. Holland*, albeit in a different context.[54] There, the Fourth Circuit considered whether Coal Act premiums were taxes entitled to administrative expense priority.[55] Looking to *Leckie*, the *Adventure Resources Inc. v. Holland* court held that there was no doubt the Coal Act premiums met the definition of a "tax."[56] As discussed below, so too have the Second and Tenth Circuits.

In *In re Chateaugay*, perhaps the leading Coal Act case, the Second Circuit first noted that it was uncontested that Coal Act premiums were an involuntary

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[51] *Id.* at 582–83 (citing *Cnty. Sanitation Dist. No. 2 of Los Angeles Cnty. v. Lorber Indus. Of Cal. (In re Lorber Indus. of Cal.)*, 675 F.2d 1062, 1066 (9th Cir. 1982)).

[52] *In re Lorber Indus.*, 675 F.2d at 1066.

[53] *In re Leckie*, 99 F.3d at 583.

[54] 137 F.3d 786, 794 (4th Cir. 1998).

[55] *Id.* at 793–94.

[56] *Id.* at 794.

burden imposed by Congress.[57] Addressing the remaining factors, the Second Circuit observed that the premiums served a public purpose and were imposed under Congress' taxing power.[58] On that last point, the Second Circuit thought it significant that the Coal Act was placed in Subtitle J of the Internal Revenue Code of 1986 and that Congress granted enforcement powers to the Secretary of the Treasury.[59]

In *In re Sunnyside Coal*, the Tenth Circuit largely adopted the Second Circuit's reasoning in *In re Chateaugay*.[60] But the Tenth Circuit also specifically addressed an argument that the Coal Act didn't serve a public purpose.[61] In that case, the chapter 7 trustee tried to, in the Tenth Circuit's words, "refashion [the Coal Act premiums] into collectively bargained payments made under contractual payments between coal operators and the UMWA."[62] But, as the district court in that case explained, "the evident objective of the Coal Act was the preservation of the nation's coal industry by promoting labor peace through the protection of health benefits for those employees of companies that discontinued operations."[63] In that respect, the Tenth Circuit reasoned that the Coal Act

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[57] *LTV Steel v. Shalala (In re Chateaugay Corp.)*, 53 F.3d 478, 498 (2d Cir. 1995).

[58] *Id.*

[59] *Id.*

[60] *United Mine Workers of Am. v. Rushton*, 146 F.3d 1273, 1276–77 (10th Cir. 1998).

[61] *Id.* at 1277.

[62] *Id.*

[63] *Id.*

premiums are similar to unemployment taxes.[64] Suffice it to say, the Tenth Circuit was unequivocal that the debtor's Coal Act liability arose out of the Coal Act—not a contractual relationship between the coal operators and the Combined Fund and 1992 Benefit Plan.[65]

To be sure, none of the Circuit Courts of Appeal that have concluded that Coal Act premiums were taxes have confronted the precise issue in this case. But each of the courts applied the *Lorber* test. And this Court is unaware of any reason why the *Lorber* test wouldn't apply here to determine whether the unpaid Coal Act premiums at issue are taxes and therefore not discharged in U.S. Pipe's earlier bankruptcy case. Under the *Lorber* test, the Coal Act premiums are unquestionably a tax.

Conclusion

This Court might be inclined to agree with U.S. Pipe if the Court were writing on a clean slate. But it is not. Numerous courts have used the *Lorber* test (or some variation of it) to determine whether a fee is a "constitutional" tax in a variety of bankruptcy contexts (as opposed to a "tax" for Anti-Injunction Act purposes). The Court is not aware of any reason why the *Lorber* test wouldn't apply here.

Nor is the Court aware of—and U.S. Pipe has not cited—any federal court decision that has considered whether Coal Act premiums are taxes under the *Lorber* test and concluded that they are not. Because the Coal Act premiums are an involuntary pecuniary

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[64] *Id.*

[65] *Id.* at 1278.

burden imposed by Congress for a public purpose under its taxing power, the Court reaches the same conclusion that every Circuit Court of Appeal that has considered the issue has: The Coal Act premiums are taxes. And because they are taxes assessed on a periodic basis (either annually or monthly), each period gives rise to a new liability.

Accordingly, the Court will enter a separate judgment finding in favor of the Trustees, as a matter of law, that their Coal Act claims were not discharged in U.S. Pipe's earlier bankruptcy case and that the Trustees didn't violate the discharge injunction by suing U.S. Pipe under the Coal Act.

STATUTORY ADDENDUM

26 U.S.C. § 9701

Definitions of general applicability

Effective: March 23, 2018

(a) Plans and funds.—For purposes of this chapter—

(1) UMWA Benefit Plan.—

(A) In general.—The term "UMWA Benefit Plan" means a plan—

(i) which is described in section 404(c), or a continuation thereof; and

(ii) which provides health benefits to retirees and beneficiaries of the industry which maintained the 1950 UMWA Pension Plan.

(B) 1950 UMWA Benefit Plan.—The term "1950 UMWA Benefit Plan" means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired before 1976.

(C) 1974 UMWA Benefit Plan.—The term "1974 UMWA Benefit Plan" means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired on or after January 1, 1976.

(2) 1950 UMWA Pension Plan.—The term "1950 UMWA Pension Plan" means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired before 1976.

(3) 1974 UMWA Pension Plan.—The term "1974 UMWA Pension Plan" means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired in 1976 and thereafter.

(4) 1992 UMWA Benefit Plan.—The term "1992 UMWA Benefit Plan" means the plan referred to in section 9712.

(5) Combined Fund.—The term "Combined Fund" means the United Mine Workers of America Combined Benefit Fund established under section 9702.

(b) Agreements.—For purposes of this section—

(1) Coal wage agreement.—The term "coal wage agreement" means—

(A) the National Bituminous Coal Wage Agreement, or

(B) any other agreement entered into between an employer in the coal industry and the United Mine Workers of America that required or requires one or both of the following:

(i) the provision of health benefits to retirees of such employer, eligibility for which is based on years of service credited under a plan established by the settlors and described in section 404(c) or a continuation of such plan; or

(ii) contributions to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or any predecessor thereof.

(2) Settlors.—The term "settlors" means the United Mine Workers of America and the Bituminous Coal Operators' Association, Inc. (referred to in this chapter as the "BCOA").

(3) National Bituminous Coal Wage Agreement.—The term "National Bituminous Coal Wage Agreement" means a collective bargaining agreement negotiated by the BCOA and the United Mine Workers of America.

(c) Terms relating to operators.—For purposes of this section—

(1) Signatory operator.—The term "signatory operator" means a person which is or was a signatory to a coal wage agreement.

(2) Related persons.—

(A) In general.—A person shall be considered to be a related person to a signatory operator if that person is—

(i) a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such signatory operator;

(ii) a trade or business which is under common control (as determined under section 52(b)) with such signatory operator; or

(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).

(B) Time for determination.—The relationships described in clauses (i), (ii), and (iii) of subparagraph (A) shall be determined as of July 20, 1992, except that if, on July 20, 1992, a signatory operator is no longer in business, the relationships shall be determined as of the time immediately before such operator ceased to be in business.

(3) 1988 agreement operator.—The term "1988 agreement operator" means—

(A) a signatory operator which was a signatory to the 1988 National Bituminous Coal Wage Agreement,

(B) an employer in the coal industry which was a signatory to an agreement containing pension and health care contribution and benefit provisions which are the same as those contained in the 1988 National Bituminous Coal Wage Agreement, or

(C) an employer from which contributions were actually received after 1987 and before July 20, 1992, by the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan in connection with employment in the coal industry during the period covered by the 1988 National Bituminous Coal Wage Agreement.

(4) Last signatory operator.—The term "last signatory operator" means, with respect to a coal industry retiree, a signatory operator which was the most recent coal industry employer of such retiree.

(5) Assigned operator.—The term "assigned operator" means, with respect to an eligible beneficiary defined in section 9703(f), the signatory operator to which liability under subchapter B with respect to the beneficiary is assigned under section 9706.

(6) Operators of dependent beneficiaries.—For purposes of this chapter, the signatory operator, last signatory operator, or assigned operator of any eligible beneficiary under this chapter who is a coal industry retiree shall be considered to be the signatory operator, last signatory operator, or assigned operator with respect to any other individual who is an eligible beneficiary under this chapter by reason of a relationship to the retiree.

(7) Business.—For purposes of this chapter, a person shall be considered to be in business if such person conducts or derives revenue from any business activity, whether or not in the coal industry.

(8) Successor in interest.—

(A) Safe harbor.—The term "successor in interest" shall not include any person who—

(i) is an unrelated person to an eligible seller described in subparagraph (C); and

(ii) purchases for fair market value assets, or all of the stock, of a related person to such seller, in a bona fide, arm's-length sale.

(B) Unrelated person.—The term "unrelated person" means a purchaser who does not bear a relationship to the eligible seller described in section 267(b).

(C) Eligible seller.—For purposes of this paragraph, the term "eligible seller" means an assigned operator described in section 9704(j)(2) or a related person to such assigned operator.

(d) Enactment date.—For purposes of this chapter, the term "enactment date" means the date of the enactment of this chapter.

26 U.S.C. § 9704

Liability of assigned operators

(a) Annual premiums.—Each assigned operator shall pay to the Combined Fund for each plan year beginning on or after February 1, 1993, an annual premium equal to the sum of the following three premiums—

(1) the health benefit premium determined under subsection (b) for such plan year, plus

(2) the death benefit premium determined under subsection (c) for such plan year, plus

(3) the unassigned beneficiaries premium determined under subsection (d) for such plan year.

Any related person with respect to an assigned operator shall be jointly and severally liable for any premium required to be paid by such operator.

(b) Health benefit premium.—For purposes of this chapter—

(1) In general. —The health benefit premium for any plan year for any assigned operator shall be an amount equal to the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries assigned to such operator under section 9706.

(2) Per beneficiary premium. — The Commissioner of Social Security shall calculate a per beneficiary premium for each plan year beginning on or after February 1, 1993, which is equal to the sum of—

(A) the amount determined by dividing—

(i) the aggregate amount of payments from the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for health benefits (less reimbursements but including administrative costs) for the plan year beginning July 1, 1991, for all individuals covered under such plans for such plan year, by

(ii) the number of such individuals, plus

(B) the amount determined under subparagraph (A) multiplied by the percentage (if any) by which the medical component of the Consumer Price Index for the calendar year in which the plan year begins exceeds such component for 1992.

(3) Adjustments for medicare reductions. — If, by reason of a reduction in benefits under title XVIII

of the Social Security Act, the level of health benefits under the Combined Fund would be reduced, the trustees of the Combined Fund shall increase the per beneficiary premium for the plan year in which the reduction occurs and each subsequent plan year by the amount necessary to maintain the level of health benefits which would have been provided without such reduction.

(c) Death benefit premium.—The death benefit premium for any plan year for any assigned operator shall be equal to the applicable percentage of the amount, actuarially determined, which the Combined Fund will be required to pay during the plan year for death benefits coverage described in section 9703(c).

(d) Unassigned beneficiaries premium.—

(1) Plan years ending on or before September 30, 2006.—For plan years ending on or before September 30, 2006, the unassigned beneficiaries premium for any assigned operator shall be equal to the applicable percentage of the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries who are not assigned under section 9706 to any person for such plan year.

(2) Plan years beginning on or after October 1, 2006

(A) In general.—For plan years beginning on or after October 1, 2006, subject to subparagraph (B), there shall be no unassigned beneficiaries premium, and benefit costs with respect to eligible beneficiaries who are not assigned under section 9706 to any person for any such plan year shall be paid from amounts transferred under section 9705(b).

(B) Inadequate transfers.—If, for any plan year beginning on or after October 1, 2006, the amounts transferred under section 9705(b) are less than the amounts required to be transferred to the Combined Fund under subsection (h)(2)(A) or (i) of section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232), then the unassigned beneficiaries premium for any assigned operator shall be equal to the operator's applicable percentage of the amount required to be so transferred which was not so transferred.

(e) Premium accounts; adjustments

(1) Accounts.— The trustees of the Combined Fund shall establish and maintain 3 separate accounts for each of the premiums described in subsections (b), (c), and (d). Such accounts shall be credited with the premiums received and amounts transferred under section 9705(b) and debited with expenditures allocable to such premiums.

(2) Allocations. —

(A) Administrative expenses.—Administrative costs for any plan year shall be allocated to premium accounts under paragraph (1) on the basis of expenditures (other than administrative costs) from such accounts during the preceding plan year.

(B) Interest.—Interest shall be allocated to the account established for health benefit premiums.

(3) Shortfalls and surpluses

(A) In general. — Except as provided in subparagraph (B), if, for any plan year, there is a shortfall or surplus in any premium account, the premium for the following plan year for each assigned

operator shall be proportionately reduced or increased, whichever is applicable, by the amount of such shortfall or surplus. Amounts credited to an account from amounts transferred under section 9705(b) shall not be taken into account in determining whether there is a surplus in the account for purposes of this paragraph.

(B) Exception.— Subparagraph (A) shall not apply to any surplus in the health benefit premium account or the unassigned beneficiaries premium account which is attributable to—

(i) the excess of the premiums credited to such account for a plan year over the benefits (and administrative costs) debited to such account for the plan year, but such excess shall only be available for purposes of the carryover described in section 9703(b)(2)(C)(ii) (relating to carryovers of premiums not used to provide benefits), or

(ii) interest credited under paragraph (2)(B) for the plan year or any preceding plan year.

(C) No authority for increased payments. — Nothing in this paragraph shall be construed to allow expenditures for health care benefits for any plan year in excess of the limit under section 9703(b)(2).

(f) Applicable percentage. —For purposes of this section—

(1) In general.—The term "applicable percentage" means, with respect to any assigned operator, the percentage determined by dividing the number of eligible beneficiaries assigned under section 9706 to

such operator by the total number of eligible beneficiaries assigned under section 9706 to all such operators (determined on the basis of assignments as of October 1, 1993).

(2) Annual adjustments.—In the case of any plan year beginning on or after October 1, 1994, the applicable percentage for any assigned operator shall be redetermined under paragraph (1) by making the following changes to the assignments as of October 1, 1993:

(A) Such assignments shall be modified to reflect any changes during the period beginning October 1, 1993, and ending on the last day of the preceding plan year pursuant to the appeals process under section 9706(f).

(B) The total number of assigned eligible beneficiaries shall be reduced by the eligible beneficiaries of assigned operators which (and all related persons with respect to which) had ceased business (within the meaning of section 9701(c)(6)) during the period described in subparagraph (A).

(C) In the case of plan years beginning on or after October 1, 2007, the total number of assigned eligible beneficiaries shall be reduced by the eligible beneficiaries whose assignments have been revoked under section 9706(h).

(g) Payment of premiums

(1) In general. —The annual premium under subsection (a) for any plan year shall be payable in 12 equal monthly installments, due on the twenty-fifth day of each calendar month in the plan year. In the case of the plan year beginning February 1, 1993, the annual premium under subsection (a) shall be

added to such premium for the plan year beginning October 1, 1993.

(2) Deductibility. —Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

(h) Information. —The trustees of the Combined Fund shall, not later than 60 days after the enactment date, furnish to the Commissioner of Social Security information as to the benefits and covered beneficiaries under the fund, and such other information as the Secretary [1] may require to compute any premium under this section.

(i) Transition rules

(1) 1988 agreement operators

(A) 1st year costs.—During the plan year of the Combined Fund beginning February 1, 1993, the 1988 agreement operators shall make contributions to the Combined Fund in amounts necessary to pay benefits and administrative costs of the Combined Fund incurred during such year, reduced by the amount transferred to the Combined Fund under section 9705(a) on February 1, 1993.

(B) Deficits from merged plans.—During the period beginning February 1, 1993, and ending September 30, 1994, the 1988 agreement operators shall make contributions to the Combined Fund as are necessary to pay off the expenses accrued (and remaining unpaid) by the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, reduced by the assets of such plans as of such date.

(C) Failure.—If any 1988 agreement operator fails to meet any obligation under this paragraph, any contributions of such operator to the Combined Fund or any other plan described in section 404(c) shall not be deductible under this title until such time as the failure is corrected.

(D) Premium reductions

(i) 1st year payments.—In the case of a 1988 agreement operator making contributions under subparagraph (A), the premium of such operator under subsection (a) shall be reduced by the amount paid under subparagraph (A) by such operator for the plan year beginning February 1, 1993.

(ii) Deficit payments.—In the case a 1988 agreement operator making contributions under subparagraph (B), the premium of such operator under subsection (a) shall be reduced by the amounts which are paid to the Combined Fund by reason of claims arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims based on the "evergreen clause" found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan, and which are allocated to such operator under subparagraph (E).

(iii) Limitation.—Clause (ii) shall not apply to the extent the amounts paid exceed the contributions.

(iv) Plan years.—Premiums under subsection (a) shall be reduced for the first plan year for which amounts described in clause (i) or (ii) are

available and for any succeeding plan year until such amounts are exhausted.

(E) Allocations of contributions and refunds.—Contributions under subparagraphs (A) and (B), and premium reductions under subparagraph (D)(ii), shall be made ratably on the basis of aggregate contributions made by such operators under the applicable 1988 coal wage agreements as of January 31, 1993.

(2) 1st plan year.—In the case of the plan year of the Combined Fund beginning February 1, 1993—

(A) the premiums under subsections (a)(1) and (a)(3) shall be 67 percent of such premiums without regard to this paragraph, and

(B) the premiums under subsection (a) shall be paid as provided in subsection (g).

(3) Startup costs

The 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall pay the costs of the Combined Fund incurred before February 1, 1993. For purposes of this section, such costs shall be treated as administrative expenses incurred for the plan year beginning February 1, 1993.

(j) Prepayment of premium liability

(1) In general.—If—

(A) a payment meeting the requirements of paragraph (3) is made to the Combined Fund by or on behalf of—

(i) any assigned operator to which this subsection applies, or

(ii) any related person to any assigned operator described in clause (i), and

(B) the common parent of the controlled group of corporations described in paragraph (2)(B) is jointly and severally liable for any premium under this section which (but for this subsection) would be required to be paid by the assigned operator or related person,

then such common parent (and no other person) shall be liable for such premium.

(2) Assigned operators to which subsection applies

(A) In general.—This subsection shall apply to any assigned operator if—

(i) the assigned operator (or a related person to the assigned operator)—

(I) made contributions to the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for employment during the period covered by the 1988 agreement; and

(II) is not a 1988 agreement operator,

(ii) the assigned operator (and all related persons to the assigned operator) are not actively engaged in the production of coal as of July 1, 2005, and

(iii) the assigned operator was, as of July 20, 1992, a member of a controlled group of corporations described in subparagraph (B).

(B) Controlled group of corporations.—A controlled group of corporations is described in this subparagraph if the common parent of such group

is a corporation the shares of which are publicly traded on a United States exchange.

(C) Coordination with repeal of assignments.—A person shall not fail to be treated as an assigned operator to which this subsection applies solely because the person ceases to be an assigned operator by reason of section 9706(h)(1) if the person otherwise meets the requirements of this subsection and is liable for the payment of premiums under section 9706(h)(3).

(D) Controlled group.—For purposes of this subsection, the term "controlled group of corporations" has the meaning given such term by section 52(a).

(3) Requirements.—A payment meets the requirements of this paragraph if—

(A) the amount of the payment is not less than the present value of the total premium liability under this chapter with respect to the Combined Fund of the assigned operators or related persons described in paragraph (1) or their assignees, as determined by the operator's or related person's enrolled actuary (as defined in section 7701(a)(35)) using actuarial methods and assumptions each of which is reasonable and which are reasonable in the aggregate, as determined by such enrolled actuary;

(B) such enrolled actuary files with the Secretary of Labor a signed actuarial report containing—

(i) the date of the actuarial valuation applicable to the report; and

(ii) a statement by the enrolled actuary signing the report that, to the best of the actuary's

knowledge, the report is complete and accurate and that in the actuary's opinion the actuarial assumptions used are in the aggregate reasonably related to the experience of the operator and to reasonable expectations; and

(C) 90 calendar days have elapsed after the report required by subparagraph (B) is filed with the Secretary of Labor, and the Secretary of Labor has not notified the assigned operator in writing that the requirements of this paragraph have not been satisfied.

(4) Use of prepayment.—The Combined Fund shall—

(A) establish and maintain an account for each assigned operator or related person by, or on whose behalf, a payment described in paragraph (3) was made,

(B) credit such account with such payment (and any earnings thereon), and

(C) use all amounts in such account exclusively to pay premiums that would (but for this subsection) be required to be paid by the assigned operator.

Upon termination of the obligations for the premium liability of any assigned operator or related person for which such account is maintained, all funds remaining in such account (and earnings thereon) shall be refunded to such person as may be designated by the common parent described in paragraph (1)(B).

26 U.S.C. § 9711

Continued obligations of individual employer plans

(a) Coverage of current recipients.—The last signatory operator of any individual who, as of February 1, 1993, is receiving retiree health benefits from an individual employer plan maintained pursuant to a 1978 or subsequent coal wage agreement shall continue to provide health benefits coverage to such individual and the individual's eligible beneficiaries which is substantially the same as (and subject to all the limitations of) the coverage provided by such plan as of January 1, 1992. Such coverage shall continue to be provided for as long as the last signatory operator (and any related person) remains in business.

(b) Coverage of eligible recipients

(1) In general.—The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal wage agreement, but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual.

(2) Coverage.—Subject to the provisions of subsection (d), health benefits coverage is described in this paragraph if it is substantially the same as (and

subject to all the limitations of) the coverage provided by the individual employer plan as of January 1, 1992. Such coverage shall continue for as long as the last signatory operator (and any related person) remains in business.

(c) Joint and several liability of related persons

(1) In general.—Except as provided in paragraph (2), each related person of a last signatory operator to which subsection (a) or (b) applies shall be jointly and severally liable with the last signatory operator for the provision of health care coverage described in subsection (a) or (b).

(2) Liability limited if security provided.—If—

(A) security meeting the requirements of paragraph (3) is provided by or on behalf of—

(i) any last signatory operator which is an assigned operator described in section 9704(j)(2), or

(ii) any related person to any last signatory operator described in clause (i), and

(B) the common parent of the controlled group of corporations described in section 9704(j)(2)(B) is jointly and severally liable for the provision of health care under this section which, but for this paragraph, would be required to be provided by the last signatory operator or related person,

then, as of the date the security is provided, such common parent (and no other person) shall be liable for the provision of health care under this section which the last signatory operator or related person would otherwise be required to provide. Security

may be provided under this paragraph without regard to whether a payment was made under section 9704(j).

(3) Security.—Security meets the requirements of this paragraph if—

(A) the security—

(i) is in the form of a bond, letter of credit, or cash escrow,

(ii) is provided to the trustees of the 1992 UMWA Benefit Plan solely for the purpose of paying premiums for beneficiaries who would be described in section 9712(b)(2)(B) if the requirements of this section were not met by the last signatory operator, and

(iii) is in an amount equal to 1 year of liability of the last signatory operator under this section, determined by using the average cost of such operator's liability during the prior 3 calendar years;

(B) the security is in addition to any other security required under any other provision of this title; and

(C) the security remains in place for 5 years.

(4) Refunds of security.—The remaining amount of any security provided under this subsection (and earnings thereon) shall be refunded to the last signatory operator as of the earlier of—

(A) the termination of the obligations of the last signatory operator under this section, or

(B) the end of the 5-year period described in paragraph (3)(C).

(d) Managed care and cost containment.—The last signatory operator shall not be treated as failing to meet the requirements of subsection (a) or (b) if benefits are provided to eligible beneficiaries under managed care and cost containment rules and procedures described in section 9712(c) or agreed to by the last signatory operator and the United Mine Workers of America.

(e) Treatment of noncovered employees.—The existence, level, and duration of benefits provided to former employees of a last signatory operator (and their eligible beneficiaries) who are not otherwise covered by this chapter and who are (or were) covered by a coal wage agreement shall only be determined by, and shall be subject to, collective bargaining, lawful unilateral action, or other applicable law.

(f) Eligible beneficiary.—For purposes of this section, the term "eligible beneficiary" means any individual who is eligible for health benefits under a plan described in subsection (a) or (b) by reason of the individual's relationship with the retiree described in such subsection (or to an individual who, based on service and employment history at the time of death, would have been so described but for such death).

(g) Rules applicable to this part and part II.—For purposes of this part and part II—

(1) Successor.—The term "last signatory operator" shall include a successor in interest of such operator.

(2) Reassignment upon purchase.—If a person becomes a successor of a last signatory operator after the enactment date, the last signatory operator may transfer any liability of such operator under this chapter with respect to an eligible beneficiary

to such successor, and such successor shall be treated as the last signatory operator with respect to such eligible beneficiary for purposes of this chapter. Notwithstanding the preceding sentence, the last signatory operator transferring such assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. A last signatory operator shall notify the trustees of the 1992 UMWA Benefit Plan of any transfer described in this paragraph.

26 U.S.C. § 9712

Establishment and coverage of 1992 UMWA Benefit Plan

(a) Creation of plan

(1) In general.—As soon as practicable after the enactment date, the settlors shall create a separate private plan which shall be known as the United Mine Workers of America 1992 Benefit Plan. For purposes of this title, the 1992 UMWA Benefit Plan shall be treated as an organization exempt from taxation under section 501(a). The settlors shall be responsible for designing the structure, administration and terms of the 1992 UMWA Benefit Plan, and for appointment and removal of the members of the board of trustees. The board of trustees shall initially consist of five members and shall thereafter be the number set by the settlors.

(2) Treatment of plan.—The 1992 UMWA Benefit Plan shall be—

(A) a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)),

(B) an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and

(C) a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

(3) Transfers under other Federal statutes

(A) In general.—The 1992 UMWA Benefit Plan shall include any amount transferred to the plan under subsections (h) and (i) of section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232).

(B) Use of funds.—Any amount transferred under subparagraph (A) for any fiscal year shall be used to provide the health benefits described in subsection (c) with respect to any beneficiary for whom no monthly per beneficiary premium is paid pursuant to paragraph (1)(A) or (3) of subsection (d).

(4) Special rule for 1993 plan

(A) In general.—The plan described in section 402(h)(2)(C) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(h)(2)(C)) shall include any amount transferred to the plan under subsections (h) and (i) of section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232).

(B) Use of funds.—Any amount transferred under subparagraph (A) for any fiscal year shall be used to provide the health benefits described in section 402(h)(2)(C)(i) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C.

1232(h)(2)(C)(i)) to individuals described in section 402(h)(2)(C) of such Act (30 U.S.C. 1232(h)(2)(C)).

(b) Coverage requirement

(1) In general.—The 1992 UMWA Benefit Plan shall only provide health benefits coverage to any eligible beneficiary who is not eligible for benefits under the Combined Fund and shall not provide such coverage to any other individual.

(2) Eligible beneficiary.—For purposes of this section, the term "eligible beneficiary" means an individual who—

(A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or

(B) with respect to whom coverage is required to be provided under section 9711, but who does not receive such coverage from the applicable last signatory operator or any related person,

and any individual who is eligible for benefits by reason of a relationship to an individual described in subparagraph (A) or (B). In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

(c) Health benefits

(1) In general.—The 1992 UMWA Benefit Plan shall provide health care benefits coverage to each

eligible beneficiary which is substantially the same as (and subject to all the limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

(2) Managed care.—The 1992 UMWA Benefit Plan shall develop managed care and cost containment rules which shall be applicable to the payment of benefits under this subsection. Application of such rules shall not cause the plan to be treated as failing to meet the requirements of this subsection. Such rules shall preserve freedom of choice while reinforcing managed care network use by allowing a point of service decision as to whether a network medical provider will be used. Major elements of such rules may include, but are not limited to, elements described in paragraph (3).

(3) Major elements of rules.—Elements described in this paragraph are—

(A) implementing formulary for drugs and subjecting the prescription program to a rigorous review of appropriate use,

(B) obtaining a unit price discount in exchange for patient volume and preferred provider status with the amount of the potential discount varying by geographic region,

(C) limiting benefit payments to physicians to the allowable charge under title XVIII of the Social Security Act, while protecting beneficiaries from balance billing by providers,

(D) utilizing, in the claims payment function "appropriateness of service" protocols under title XVIII of the Social Security Act if more stringent,

(E) creating mandatory utilization review (UR) procedures, but placing the responsibility to follow such procedures on the physician or hospital, not the beneficiaries,

(F) selecting the most efficient physicians and state-of-the-art utilization management techniques, including ambulatory care techniques, for medical services delivered by the managed care network, and

(G) utilizing a managed care network provider system, as practiced in the health care industry, at the time medical services are needed (point-of-service) in order to receive maximum benefits available under this subsection.

(4) Last signatory operators.—The board of trustees of the 1992 UMWA Benefit Plan shall permit any last signatory operator required to maintain an individual employer plan under section 9711 to utilize the managed care and cost containment rules and programs developed under this subsection if the operator elects to do so.

(5) Standards of quality.—Any managed care system or cost containment adopted by the board of trustees of the 1992 UMWA Benefit Plan or by a last signatory operator may not be implemented unless it is approved by, and meets the standards of quality adopted by, a medical peer review panel, which has been established—

(A) by the settlors, or

(B) by the United Mine Workers of America and a last signatory operator or group of operators.

Standards of quality shall include accessibility to medical care, taking into account that accessibility

requirements may differ depending on the nature of the medical need.

(d) Guarantee of benefits

(1) In general.—All 1988 last signatory operators shall be responsible for financing the benefits described in subsection (c) by meeting the following requirements in accordance with the contribution requirements established in the 1992 UMWA Benefit Plan:

(A) The payment of a monthly per beneficiary premium by each 1988 last signatory operator for each eligible beneficiary of such operator who is described in subsection (b)(2) and who is receiving benefits under the 1992 UMWA Benefit Plan.

(B) The provision of a security (in the form of a bond, letter of credit, or cash escrow) in an amount equal to a portion of the projected future cost to the 1992 UMWA Benefit Plan of providing health benefits for eligible and potentially eligible beneficiaries attributable to the 1988 last signatory operator.

(C) If the amounts transferred under subsection (a)(3) are less than the amounts required to be transferred to the 1992 UMWA Benefit Plan under subsections (h) and (i) of section 402 of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232), the payment of an additional backstop premium by each 1988 last signatory operator which is equal to such operator's share of the amounts required to be so transferred but which were not so transferred, determined on the basis of the number of eligible and potentially eligible beneficiaries attributable to the operator.

(2) Adjustments.—The 1992 UMWA Benefit Plan shall provide for—

(A) annual adjustments of the per beneficiary premium to cover changes in the cost of providing benefits to eligible beneficiaries, and

(B) adjustments as necessary to the annual backstop premium to reflect changes in the cost of providing benefits to eligible beneficiaries for whom per beneficiary premiums are not paid.

(3) Additional liability.—Any last signatory operator who is not a 1988 last signatory operator shall pay the monthly per beneficiary premium under paragraph (1)(A) for each eligible beneficiary described in such paragraph attributable to that operator.

(4) Joint and several liability.—A 1988 last signatory operator or last signatory operator described in paragraph (3), and any related person to any such operator, shall be jointly and severally liable with such operator for any amount required to be paid by such operator under this section. The provisions of section 9711(c)(2) shall apply to any last signatory operator described in such section (without regard to whether security is provided under such section, a payment is made under section 9704(j), or both) and if security meeting the requirements of section 9711(c)(3) is provided, the common parent described in section 9711(c)(2)(B) shall be exclusively responsible for any liability for premiums under this section which, but for this sentence, would be required to be paid by the last signatory operator or any related person.

(5) Deductibility.—Any premium required by this section shall be deductible without regard to any

limitation on deductibility based on the prefunding of health benefits.

(6) 1988 last signatory operator.—For purposes of this section, the term "1988 last signatory operator" means a last signatory operator which is a 1988 agreement operator.