NO. 22-115

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

BRIEF IN OPPOSITION

Matthew W. Moran
VINSON & ELKINS LLP
2001 Ross Avenue
Suite 3900
Dallas, TX 75201
(214) 220-7700

Counsel for United States Pipe and Foundry Co., LLC

Ashley C. Parrish
Counsel of Record
KING & SPALDING LLP
1700 Pennsylvania Ave. NW
Washington, DC 20006
(202) 737-0500
aparrish@kslaw.com

Counsel for Respondents

(additional counsel listed on inside cover)

November 7, 2022

Thomas S. Leatherbury
Katherine Drell Grissel
VINSON & ELKINS LLP
2001 Ross Avenue
Suite 3900
Dallas, TX 75201
(214) 220-7700

Jeremy C. Marwell
VINSON & ELKINS LLP
2200 Pennsylvania Ave. NW
Suite 500 West
Washington, DC 20037
(202) 639-6507

Counsel for
United States Pipe and
Foundry Co., LLC

Scott A. Stichter
STICHTER RIEDEL
BLAIN & POSTLER, PA
110 East Madison Street
Suite 200
Tampa, FL 33602
(813) 229-0144

Counsel for
United States Pipe and
Foundry Co., LLC and
JW Aluminum Co.

Mark M. Maloney
Sarah L. Primrose
Kevin J. O'Brien
KING & SPALDING LLP
1180 Peachtree Street NE
Suite 1600
Atlanta, GA 30309
(404) 572-4600

Counsel for JW
Aluminum Co.

QUESTION PRESENTED

To provide debtors the "fresh start" that is "[o]ne of the main purpose[s] of the federal bankruptcy system," *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1758 (2018), a court order confirming a Chapter 11 bankruptcy plan discharges a debtor's liabilities on claims that arose before the date of confirmation, *see* 11 U.S.C. §§ 1141(d), 101(5), (12). The Bankruptcy Code defines "claim" broadly to include any "right to payment, whether or not such right is … unliquidated," "unmatured," or "contingent," as well as any "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment." *Id.* § 101(5)(A)–(B). This Court has recognized that equitable remedies, as well as rights to monetary payments, that arise from statutory obligations qualify as "claim[s]" that are properly discharged in bankruptcy. *Ohio v. Kovacs*, 469 U.S. 274, 279 (1985). The question presented is:

Did the Eleventh Circuit correctly conclude that petitioners' alleged right to have respondents provide or pay for future retiree benefits under the Coal Industry Retiree Health Benefit Act of 1992, 26 U.S.C. § 9701, *et seq.,* gave rise to "claims" that were discharged under the Bankruptcy Code and the terms of respondents' confirmed bankruptcy plans.

RULE 29.6 STATEMENT

Respondent United States Pipe and Foundry Company, LLC ("U.S. Pipe") states that it is indirectly 100% owned by Quikrete Holdings, Inc. No publicly held company owns 10% or more of the stock of U.S. Pipe or Quikrete Holdings, Inc.

Respondent J.W. Aluminum Co. states that its parent company is JW Aluminum Holding Corp. No publicly held company owns 10% or more of the stock of J.W. Aluminum Co.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

Other Authorities

INTRODUCTION

Recognizing the bedrock principle that bankruptcy provides a fresh start for debtors, free of all debts and liabilities, courts have rejected any suggestion that Congress created an exception to bankruptcy procedures for claims asserted under the Coal Industry Retiree Health Benefit Act of 1992 ("Coal Act"), 26 U.S.C. § 9701, *et seq.* Courts have instead consistently held that liabilities imposed by the Coal Act can be extinguished or modified in bankruptcy. That unremarkable conclusion reflects the fact that the joint-and-several obligations imposed by the Coal Act on coal mine operators and their "related persons" constitute a "right to payment" or "right to an equitable remedy," 11 U.S.C. § 101(5)(A)–(B), that can arise before a plan's confirmation, even though the payment amount that may become due in future years is contingent on certain factors, including the number of remaining beneficiaries, medical costs, and the financial status of the coal mine operator.

In this case, petitioners—the Trustees of the United Mine Workers of America Combined Benefit Fund and the Trustees of the United Mine Workers of America 1992 Benefit Plan (collectively, the "Trustees")—participated more than two decades ago in several jointly administered bankruptcy cases, including those of respondents United States Pipe & Foundry Co., LLC ("US Pipe") and JW Aluminum Co. ("JW Aluminum"). Although the Trustees filed a proof of claim for Coal Act obligations against one of the debtors (the coal mine operator), they failed to file proofs of claims against either US Pipe or JW Aluminum, even though both companies were at the time affiliates of the coal mine operator and, according to the Trustees, liable under the Coal Act as "related persons." As a result, any claims the Trustees could assert under the Coal Act were properly discharged in 1995 when US Pipe and JW Aluminum emerged from bankruptcy following confirmation of a reorganization plan that discharged them from all "claims" and "debts."

Applying well-settled bankruptcy law, the Eleventh Circuit rejected the Trustees' arguments that Coal Act obligations do not exist until payment is requested, holding that the "companies' contingent obligations to provide health-care benefits" were fixed when Congress enacted the Coal Act and were therefore properly discharged in 1995 under the terms of the confirmed plan. App. 2. The court of appeals recognized that all Coal Act obligations imposed on US Pipe and JW Aluminum were based on conduct by coal mine operators and affiliated companies that occurred, and a statutory relationship that existed, before the order confirming the Chapter 11 reorganization plan. App. 9–12. Contrary to the Trustees' arguments, liability under the statute does not phase in and out of existence, arising only when a company "remains in business" and is directed to make payments in a specific amount.

There is no meaningful split in authority or other justification for granting review. In addressing when Coal Act liabilities arise, the Trustees advance the implausible position, disconnected from the Coal Act's text and this Court's precedent, that Congress intended liability not to be fixed based on historic coal mining activities or historic affiliation to a coal mine operator, but instead to be imposed anew each month or year based on whether a party remains "in business." In trying to sustain that far-fetched position, the Trustees rely on cases that address a different legal question (whether Coal Act liabilities are treated as administrative claims for payment priority purposes), and had no occasion to reach the question presented here (when such liabilities arise for purposes of discharge). Nor have the Trustees identified any other split in authority that could warrant this Court's intervention. Although the Eleventh Circuit distinguished between its approach to when an "equitable remedy" qualifies as a dischargeable claim and the approach taken in a Seventh Circuit decision, the outcome of this case would be the same under both frameworks.

The petition should be denied.

STATEMENT OF FACTS

Congress did not create a Coal Act exception to basic principles of bankruptcy law. The Bankruptcy Code provides that when a reorganization plan is confirmed and takes effect, "any debt that arose before the date of such confirmation" is discharged. 11 U.S.C. § 1141(c). The Code defines "debt" as "liability on a claim." *Id.* § 101(12). And it broadly defines "claim" to encompass any "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," as well as any "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." *Id.* § 101(5)(A)–(B). Liabilities imposed by the Coal Act on coal mine operators and their related persons fit comfortably within that broad definition.

1. In late 1994, all of US Pipe's and JW Aluminum's major stakeholders—their creditors, bondholders, and investors—proposed a consensual joint reorganization plan. The proposed plan provided for the discharge of all "debts" and "claims" that arose before its effective date, and for an injunction against anyone seeking to collect discharged "debts" or "claims." In March 1995, the bankruptcy court approved the plan and entered a confirmation order discharging all "debts" and "claims" arising before the plan's effective date. The order permanently enjoined anyone from taking action to recover on those "debts" and "claims."

The Trustees participated in the jointly administered bankruptcy cases, filing claims under the Coal Act against only one debtor (Jim Walter Resources, Inc., a coal mine operator). They did not object to the plan or take any steps to preserve their purported claims against either US Pipe or JW Aluminum. After receiving no objection from the Trustees, the bankruptcy court confirmed the reorganization plan, the plan became effective, and both US Pipe and JW Aluminum went forward with their respective businesses consistent with the "fresh start" principle that is fundamental to bankruptcy law. *Grogan v. Garner*, 498 U.S. 279, 283 (1991) (quoting *In re Van Horne*, 823 F.2d 1285, 1287 (8th Cir. 1987)). The final decree states that both US Pipe and JW Aluminum would emerge from bankruptcy "free and clear of all claims and interests of creditors," and that they were "released from all dischargeable debts." 8 Dist. Ct. App. 1115 (R.35-8 at 113).

More than twenty years later, in 2016, the Trustees sued US Pipe and JW Aluminum seeking to litigate the same (previously unasserted) claims that were discharged in 1995. The Trustees allege that US Pipe and JW Aluminum are liable for certain payment obligations under the Coal Act. The Coal Act, which took effect February 1, 1993, imposed joint-and-several liability on all coal-mine operators that in the years preceding the statute's enactment provided benefits to coal miners as signatories to certain labor agreements (and also imposed liability on any "related person"). *See* 26 U.S.C. §§ 9704(a), 9711(c), 9712(d)(4); *see also id*. § 9701(c)(2) (defining "related person" to include any company that is a member of a "controlled group of corporations" that also includes a "signatory" coal-mine operator as of July 20, 1992).

The Coal Act created three mechanisms for coal mine operators and related persons to pay for healthcare benefits provided to retired coal miners and their families:

- <u>Combined Fund</u>. The Coal Act created the United Mine Workers of America Combined Benefit Fund, which provides healthcare benefits to retired coal miners who were receiving benefits from certain coal industry trust funds as of July 20, 1992. The statute requires "assigned operators" to pay annual premiums to the Combined Fund to help pay for the benefits it provides. 26 U.S.C. §§ 9702(a), 9704.

- Individual Employer Plan ("IEP"). The Coal Act requires the "last signatory operator" of a miner who retired by September 30, 1994, and was receiving healthcare benefits coverage through an IEP, to continue providing healthcare benefits that are substantially similar to the coverage provided through the IEP as of January 1, 1992. *Id.* § 9711(a).
- 1992 Benefit Plan. The Coal Act created the United Mine Workers of America 1992 Benefit Plan, which provides healthcare benefits coverage for (i) coal miners who retired by September 30, 1994, and who otherwise would have been eligible for the Combined Fund, except that they retired after the cut-off date for participation, and (ii) coal miners who retired by September 30, 1994, but were not receiving benefits from the applicable "last signatory operator" through an IEP. The statute requires last signatory operators and their related persons to pay premiums to the 1992 Benefit Plan as an alternative obligation if assigned retirees are not receiving benefits through an IEP. *Id.* § 9712.

For coal-mine operators and related persons, all Coal Act liabilities were fixed on February 1, 1993. *See id.* §§ 9704(i), 9708, 9711, 9712(b)(2). For example, section 9704(a) imposed an unconditional obligation to pay, beginning on February 1, 1993, "an annual premium" in an amount determined by applying a calculation provided in the statute. *Id.*

§ 9704. This joint-and-several obligation applied simultaneously to all coal-mine operators and related persons. *See* Pet. 4 n.1 (contrasting Coal Act primary liability here with secondary liability, which would attach only when a primarily liable party fails to honor its obligations).

The statute's required premium payment obligations and IEP obligation were thus fixed and known before the 1995 confirmation order. They also would not have been difficult to estimate. They are calculated based on the number of remaining beneficiaries and on the anticipated future costs of paying for benefits. *See* 26 U.S.C. §§ 9704, 9712. As courts have noted, "[i]t is not a conceptually difficult task to liquidate Coal Act obligations under §§ 9711 or 9712 to a single sum ... because the groups of beneficiaries are essentially fixed and the obligation does not exceed the lifetime of the beneficiaries." *Buckner v. Westmoreland Coal Co.* (*In re Westmoreland Coal Co.*), 213 B.R. 1, 9 n.9 (Bankr. D. Colo. 1997).

Although US Pipe and JW Aluminum have never been in the coal business, they were once owned by a parent company that also owned a coal operator. The Trustees allege that this former corporate affiliation rendered each company a "related person" that was joint-and-severally liable for the coal operator's payment obligations under the Coal Act. Because those liabilities were fixed in February 1993 when the Coal Act took effect and fell within the definition of "claim," 11 U.S.C. § 101(5), they were discharged when US Pipe's and JW Aluminum's confirmed

Chapter 11 reorganization plan became effective in 1995.

2. After US Pipe and JW Aluminum emerged from Chapter 11 as reorganized entities, they were each spun off or sold to independent third-party entities or investors. For its part, Jim Walter Resources became part of Walter Energy and continued as a coal operator. After a global downturn in coal prices, however, Walter Energy filed for Chapter 11 protection in July 2015. In the subsequent bankruptcy proceedings, Walter Energy obtained approval under section 363 of the Bankruptcy Code to sell substantially all of its assets, free and clear of any Coal Act liabilities. *In re Walter Energy, Inc.*, 911 F.3d 1121, 1134 (11th Cir. 2018). Walter Energy also obtained bankruptcy court approval under section 1114 to terminate the "retiree benefits" it had been providing to certain retired miners. 911 F.3d at 1133–34. The Trustees appealed that order and, ultimately, the Eleventh Circuit affirmed. 911 F.3d at 1156–57.

As a result of Walter Energy's bankruptcy and the section 1114 order, the Coal Act beneficiaries that had been receiving benefits under Walter Energy's IEP became beneficiaries of the 1992 Benefit Plan. *See* 911 F.3d at 1134. Similarly, the beneficiaries in the Combined Fund that were assigned to Walter Energy continued to receive benefits from the Combined Fund, but Walter Energy no longer had any obligation to pay the premiums. *See id.*

3. In 2016, the Trustees sued US Pipe and JW Aluminum on their Coal Act claims in federal district court. *See* Complaint, *Holland v. U.S. Pipe & Foundry Co.*, No. 16-cv-1577 (D.D.C. Aug. 3, 2016), ECF No. 1.

In response, US Pipe and JW Aluminum filed adversary proceedings in bankruptcy court, seeking declarations that the Trustees' claims had been discharged by the 1995 confirmation order, and requesting an injunction to prevent the Trustees from litigating them.

The bankruptcy court agreed that "there is no dispute that the Coal Act premiums give rise to a 'claim,'" App. 68, and recognized that contingent claims for any liability under the statute "would have arisen preconfirmation, when the Coal Act took effect, meaning the Trustees' claims would have been discharged." App. 69. But the bankruptcy court held that Coal Act premiums are "taxes" that purportedly arise anew each plan year. App. 69. The district court affirmed, agreeing with the bankruptcy court that Coal Act premiums are "taxes" that are not fixed until a particular payment amount becomes due. App. 55.

On appeal, the Trustees shifted course, raising new arguments. With respect to Combined Fund and 1992 Plan premiums, the Trustees argued, for the first time, that liability for Combined Fund premiums arises "each year a covered entity is 'in business'," and that liability for 1992 Plan premiums arises "each month a covered entity both retains assets and has orphaned retirees enrolled in the 1992 Plan." 11th Cir. Appellees Br. at 19. The Trustees argued, also for the first time, that the IEP obligation is immune from discharge because a breach does not create a right to payment of money. Their briefing devoted a single passing parenthetical to *In re Udell*, 18 F.3d 403, 408 (7th Cir. 1994). *See* 11th Cir. Appelleees Br. at 37–39.

The Eleventh Circuit reversed and remanded. App. 2. The court of appeals unanimously concluded that the Trustees held "claims" for future Combined Fund premiums that arose before the 1995 discharge because the liability "had already been fixed" in 1995, and "only the amount owed was uncertain." App. 10, 23. For 1992 Plan premiums, the panel majority (Chief Judge Pryor and Judge Grant) held that the obligation to provide 1992 Plan premiums "was fixed before 1995," even if the precise amount of future payments was "uncertain" and "unliquidated." App. 22. The majority "join[ed] the many courts that have treated future Combined Fund and 1992 Plan premiums as similarly dischargeable in bankruptcy." App. 22.

With respect to the IEP obligation, the majority held that the 1992 Plan Trustees held a claim in 1995 because the obligations were fixed and based on pre-confirmation conduct. The majority noted that it was "irrelevant" that the claim was not yet enforceable or that the specific amount of future 1992 Plan premium payments was uncertain. App. 17. The majority further held that the Trustees' claimed right to equitable relief (an injunction to maintain an IEP) is "triggered by the same breach that gives rise to their right to payment of 1992 Plan premiums." App. 19.

Judge Anderson dissented. App. 23. While he agreed that the Trustees had a "claim" for all future Combined Fund premiums in 1995, he would have concluded that there was no "claim" as to the IEP and 1992 Plan premiums, because Walter Energy did not breach its own independent IEP obligation until 2016. App. 28.

REASONS TO DENY THE PETITION

I. The Decision Below Properly Applies Settled Bankruptcy Law.

The Eleventh Circuit's decision properly applies the Bankruptcy Code and decades of precedent. Bankruptcy law is designed to provide debtors with a "fresh start." *Williams v. U.S. Fid. & Guar. Co.,* 236 U.S. 549, 554–55 (1915). As this Court has noted, Congress designed bankruptcy procedures to provide a debtor with "a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt." *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). In a Chapter 11 case, the Code accomplishes that objective by allowing a bankruptcy court to approve a debtor's reorganization plan discharging all *debts* and *claims* that arose before the plan's effective date and by enjoining creditors from commencing new actions to recover on the discharged liabilities. *See* 11 U.S.C. §§ 524(a), 1141(d).

The Bankruptcy Code is intentionally broad in defining what liabilities are discharged when a reorganization plan takes effect. It defines "debt" to include any "liability on a claim." 11 U.S.C. § 101(12). And it broadly defines "claim" to encompass any "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," as well as any "right to an equitable remedy for breach of performance if such breach gives rise to a right to payment." *Id.* § 101(5)(A)–(B). As this Court has recognized, "Congress intended by this language to adopt the broadest available definition of 'claim.'" *Johnson v.*

Home State Bank, 501 U.S. 78, 83 (1991) (citing *Pa. Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 558 (1990)); *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1412 (2017) (same). Congress adopted this "broadest possible definition" to ensure that "all legal obligations of the debtor, *no matter how remote or contingent,* will be able to be dealt with in the bankruptcy case." *Epstein v. Official Comm. of Unsecured Creditors of Estate of Piper Aircraft Corp.* (*In re Piper Aircraft Corp.*), 58 F.3d 1573, 1576 (11th Cir. 1995) (quoting H.R. Rep. No. 95-595, at 309 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5787, 6266).

As the Eleventh Circuit correctly noted, when the Coal Act took effect in 1993, all of the necessary elements existed for the Trustees to claim a "right to payment" (or associated "right to an equitable remedy") under the broad definition of 11 U.S.C. § 101(5)(A)–(B). While the precise amount of payment due each year was not liquidated when the Coal Act took effect, it is well established that a creditor may hold a "claim" even if a cause of action has not yet accrued or the precise amount of the liability is unknown. *See In re Piper Aircraft*, 58 F.3d at 1576 n.2; *see also Bos. & Me. Corp. v. Mass. Bay Transp. Auth.*, 587 F.3d 89, 104 (1st Cir. 2009) (contingent claim for contribution of environmental cleanup barred because claimant knew facts and law giving rise to liability before discharge). In those circumstances, courts can estimate the claim and resolve it through the bankruptcy process.

Accordingly, because the Trustees' right to payment (or associated "right to an equitable remedy") existed in 1993—long before US Pipe's and JW

Aluminum's debts and liabilities were discharged in 1995—the Trustees were obligated to take steps in the bankruptcy cases to preserve their claims. App. 2. That should not have been difficult. The Trustees participated in the jointly administered bankruptcy cases and filed a proof of claim against one debtor for potential premiums owing to the Combined Fund and 1992 Plan. The Trustees also made sure the proposed reorganization plan obligated two debtors (but not US Pipe or JW Aluminum) to continually fund certain retiree health benefits. App. 5. But the Trustees chose not to file claims for Coal Act liability against either US Pipe or JW Aluminum. Nor did they object to the proposed reorganization plan, which expressly discharged all existing debts and claims against US Pipe and JW Aluminum. App. 5.

The Eleventh Circuit's decision is consistent with a long line of decisions recognizing that Coal Act liabilities are appropriately extinguished or modified through the bankruptcy process. In fact, as the Fifth Circuit has noted, "*all courts* to consider the question have held that Coal Act obligations are subject to modification." *In re Westmoreland Coal Co.*, 968 F.3d 526, 536 (5th Cir. 2020) (emphasis added), *cert. denied sub nom. Holland v. Westmoreland Coal Co.*, 141 S. Ct. 2669 (2021) (Mem.). For example, in *In re Leckie Smokeless Coal Co.*, the Fourth Circuit held that the purchaser of a coal operator's assets would not be joint-and-severally liable for future Coal Act obligations because the bankruptcy court extinguished all successor liabilities of the purchaser arising under the Coal Act by entering a sale order under 11 U.S.C. § 363(f)(5). 99 F.3d 573, 575–76 (4th Cir. 1996). Because a free-and-clear sale under section 363 can extinguish only *existing* claims and interests, *see In re Mooney Aircraft, Inc.*, 730 F.2d 367, 375 (5th Cir. 1984), the Fourth Circuit necessarily determined that the entire liability under the Coal Act was in existence at the time of the sale.

Similarly, cases have consistently recognized that any liability to pay future Coal Act premiums can be modified under 11 U.S.C. § 1114. *See Walter*, 911 F.3d at 1150, 1156 (stating that even a coal company "should be permitted to file bankruptcy" and "shed this obligation"). As these cases have explained, there is no "clear indication that Congress intended to carve out Coal Act obligations from section 1114's reach." *In re Westmoreland Coal Co.*, 968 F.3d at 543. Because section 1114 cannot be used to modify obligations that do not yet exist, each of these cases necessarily concluded that any liability for future Coal Act obligations was fixed and in existence at the time of the bankruptcy.

II. There Is No Conflict in Authority That Warrants This Court's Review.

Contrary to the Trustees' suggestions, there is no conflict in circuit court authority that warrants this Court's intervention. The cases they cite are inapposite and readily distinguished.

A. No Meaningful Conflict Exists Over When Coal Act Liabilities Arise.

The Trustees contend that this Court should grant review to address when Coal Act liabilities arise and take effect. The centerpiece of their petition is a novel merits theory—that Coal Act liabilities arise only periodically, based on the post-confirmation "conduct" of a company remaining "in business."

1. There is no serious dispute over the correct answer to when Coal Act liabilities arise. Under longstanding circuit precedent that the Trustees have not challenged, a claim exists before confirmation if there is both past "conduct" and "a relationship" with the claimant. *In re Piper Aircraft*, 58 F.3d at 1577. The Coal Act imposes liability based on past conduct—in particular, historic ties to coal mining. *See E. Enters. v. Apfel*, 524 U.S. 498, 537 (1998) (addressing constitutional claims predicated on the conclusion that the Coal Act imposes *retroactive* liability for past conduct). For coal operators, Congress imposed liability based on the operator's existing contractual commitments as signatories to certain labor agreements. *See* 26 U.S.C. § 9704(c); *see also id.* § 9701(c)(2). For "related persons," their joint-and-several liability arising through corporate affiliation was determined, once and for all, on July 20, 1992, and took effect in 1993 when the Coal Act became law. *See id.*

The Trustees' theory of liability depends on US Pipe's and JW Aluminum's historic affiliation (and alleged statutory relationship) with a coal mining operator. Pet. 10. As noted above, apart from that historic affiliation, US Pipe and JW Aluminum have never operated coal mines and have never engaged in other conduct that could subject them to liability under the Coal Act. Moreover, the Trustees concede that joint-and-several liability is a form of primary liability—not a secondary liability that attaches only after a primarily liable party fails to honor its obligation. Pet. 4 n.1; *accord Honeycutt v. United States*, 137 S. Ct. 1626, 1631 (2017) (joint-and-severally liable entities are "each … liable for the entire amount" (citing Restatement (Second) of Torts § 875 (1977))). Even under the Trustees' view, then, they had a relationship with US Pipe and JW Aluminum in 1993 based on the statutory joint-and-several obligations imposed by the Coal Act when it took effect. App. 11–12. At that time, all of the necessary elements existed for the Trustees to have a "claim" under the broad definition of 11 U.S.C. § 101(5)(A)–(B). The only contingency was the precise amount of each future payment, which would vary depending on the size of the remaining beneficiary population and medical inflation. But that contingency does not change the analysis, as the Bankruptcy Code definition of "claim" expressly includes "contingent," "unmatured," and "unliquidated" claims. *See* 11 U.S.C. § 101(5).

The Trustees assert that because Coal Act premiums are payable at different times, they *arise* at different times under the Bankruptcy Code. Pet. 19, 22, 23 & n.6. But the Eleventh Circuit correctly explained that a "claim" "include[s] a cause of action or right to payment that has not yet *accrued* or become cognizable." App. 15 (emphasis added) (citing 2 Collier on Bankruptcy ¶ 101.05[1] (16th ed. 2022)). The Trustees do not challenge or even acknowledge that holding.

Because the Coal Act imposes joint-and-several liability as of February 1, 1993, based on pre-1993 conduct and relationships, the cases cited by the Trustees concerning liability for post-confirmation conduct are not relevant, and certainly do not create a split in authority. Each of those cases is about liability that arises because of *future* conduct occurring after a bankruptcy reorganization has taken effect. *See, e.g.*, *O'Loghlin v. County of Orange*, 229 F.3d 871, 877 (9th Cir. 2000) (dismissing claim for pre-discharge violations but finding that an employee could pursue her claim for post-discharge violation of statute based on post-discharge behavior). None of the cases conflict with the Eleventh Circuit's decision below. Nor does the Eleventh Circuit's decision shield a debtor from liability for post-discharge conduct.

There is also no conflict between the Eleventh Circuit's decision and this Court's decision in *Ohio v. Kovacs*, 469 U.S. 274 (1985). *Kovacs* recognized that statutory "obligations" often give rise to dischargeable "debts" and "claims." *Id.* at 278–79. As the Court explained, "it makes little sense" to suggest that statutory obligations cannot "constitute a claim for bankruptcy purposes." *Id.* at 279. Accordingly, a statutorily-based "cleanup order [that] had been converted into an obligation to pay money" was fully "dischargeable in bankruptcy." *Id.* at 283; *but cf.* Pet. 19 (asserting without citation that "*statutory* duties … are not dischargeable"). Although *Kovacs* also recognized that discharging existing debts and claims arising from past conduct would not relieve the debtor from complying prospectively with environmental obligations that arise post-discharge, that portion of the decision has no applicability to the retroactive liability imposed by the Coal Act. Here, unlike in *Kovacs,* US Pipe and JW Aluminum are not seeking to immunize their post-discharge operations from statutory or regulatory mandates that may govern post-discharge conduct. They merely seek to enforce their right not to pay or litigate claims that existed in 1995 and were discharged in bankruptcy.

With no credible answers to these points, the Trustees contend that because certain Coal Act liabilities end when a coal mine operator is no longer "in business," the Court should reimagine the Coal Act as somehow regulating the conduct of being "in business." Pet. 20–21. In their view, Coal Act liabilities are not imposed and do not come into existence unless and until a company remains "in business" in each year in which premium payments are owed. Pet. 24–25.

The Trustees' position makes no sense. A liability does not phase in and out of existence merely because a statutory condition for its termination has not occurred. Moreover, the Trustees' position is directly contrary to the premise of this Court's decision in *Eastern Enterprises*, which turned on the understanding that the Coal Act imposes *retroactive* liability. *See E. Enters.*, 524 U.S. at 537. That case would have been wholly different—and there would have been no takings or due process concerns—if the Coal Act did not impose liability based on historic mining operations and instead regulated being "in business," with liability functioning as a tax on ongoing business operations.

There is simply no indication that Congress intended the Coal Act to operate in such an odd fashion. The phrase "in business" appears in the Coal Act only a few times, and never as a periodic liability-triggering condition. For instance, 26 U.S.C. § 9704, governing Combined Fund liabilities for assigned operators and related persons, does not include the phrase "in business." The statute imposing an IEP requirement contemplates that coverage will continue "as long as the last signatory operator (and any related person) remains in business." 26 U.S.C. § 9711. That provision states only that liability for providing an IEP ends when the company is no longer in business; it does not suggest any sort of periodic determination. The phrase "in business" does not appear anywhere in the provision governing 1992 Plan contributions. 26 U.S.C. § 9712. (Although the phrase "in business" does appear in 26 U.S.C. § 9706(a), which required the Commissioner of Social Security to assign beneficiaries by October 1, 1993, that provision has no continuing operation.)

Accordingly, as a matter of plain language, nothing in the Coal Act suggests that liability for making premium payments or for providing an IEP exists only upon a periodic determination that a covered entity has remained "in business." Coal Act liability is not triggered by the future conduct of covered entities; it is based on the past contractual commitments of coal operators and, for their related persons, a one-time determination of corporate affiliation.

2. The Trustees also fail to demonstrate any meaningful split of authority on their "in business" theory or broader questions regarding when Coal Act liabilities arise. Significantly, no other circuit court has ever explicitly addressed, much less accepted, the Trustees' far-fetched "in business" requirement in the context of determining whether Coal Act liabilities qualify as a "claim" under the Bankruptcy Code. Even

the dissent below agreed that future Combined Fund premiums were discharged claims rather than an obligation arising post-discharge. App. 23. The Trustees' fact-bound argument is thus not only unpersuasive, it also does not give rise to any conflict worthy of this Court's review.

The Trustees contend that certain cases have suggested in drive-by-fashion that Coal Act liabilities arise periodically over time or are otherwise not dischargeable. But those cases do not speak to the question presented. They instead involve situations where, unlike here, a proof of claim has been filed and a court must determine whether Coal Act liabilities should be treated as administrative claims for payment priority purposes under 11 U.S.C. § 507(a). In that context, there is no dispute that the creditor has filed a claim with the bankruptcy court that can be assessed in connection with all of the debtor's other assets and liabilities. *See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 383 (1993) ("creditors are required to file a proof of claim with the bankruptcy court before the deadline, or 'bar date,' established by the court") (citing 11 U.S.C. § 1111(a); Fed. R. Bankr. P. 3003(c)(2)). Because these administrative priority cases do not address whether Coal Act obligations may be discharged in bankruptcy under a confirmed plan and 11 U.S.C. § 1141, courts have consistently distinguished them on that basis. *See Walter*, 911 F.3d at 1139 n.25; *see also* Pet. 23 (conceding that the Tenth Circuit "did not address dischargeability *per se*").

Nor do the cases contain any meaningful analysis relevant to the question presented. For example, in

LTV Steel Co. v. Shalala (*In re Chateaugay II*), the court held that Coal Act obligations were "tax[es] ... incurred by the estate" entitled to administrative priority, and thus could be paid as administrative expenses during the pendency of the coal operator's Chapter 11 proceedings under different provisions of the Bankruptcy Code not at issue here. 53 F.3d 478, 496–98 (2d Cir. 1995) (quoting 11 U.S.C. §§ 503(b)(1)(B)). In deciding that Coal Act obligations gave rise to a post-petition administrative claim, the Second Circuit noted—consistent with the Eleventh Circuit's decision below—the broad definition of "claim" and that a "right to payment" existed as of the Coal Act's effective date. *See id.* at 496–97. Although the court rejected the debtor's specific argument that Coal Act liabilities constitute part of the "consideration" (wages) paid for past labor of the debtor's own former miners, *id.* at 497, the Eleventh Circuit never relied on that theory (and US Pipe and JW Aluminum never advanced it). Nor did the Second Circuit state (never mind hold) that Coal Act liabilities accrue only periodically, or address the Trustees' novel "in business" theory.

Although the *Chateaugay II* court stated in dicta, in one unexplained sentence, that the "remainder of" the LTV debtors' "[Coal Act] obligations [were] not dischargeable in bankruptcy," *id.* at 498, that question was not actually before the court, and the court offered no analysis in support or even any suggestion that the issue had been joined. Moreover, unlike in this case, the Trustees asserted claims against all debtors in *Chateaugay II*, so the Second Circuit did not have occasion to analyze the effect of a failure to take steps to preserve a claim. Instead, that decision turned on a conclusion that Coal Act premiums are "taxes." App. 15. But the issue in this case is not whether Coal Act premiums are "taxes," but instead whether the right to payment or right to an equitable remedy arose pre-confirmation. *See also In re: Westmoreland Coal Co*., 968 F.3d at 534–36 (questioning the continued validity of *Chateaugay II* and other cases concluding "that Coal Act premiums are taxes," noting that those cases "predated" *National Federation of Independent Business v. Sebelius,* 567 U.S. 519 (2012), and applied a mode of analysis that *Sebelius* rejected).

Similarly, in *In re Sunnyside Coal Co.*, the Tenth Circuit did not consider whether liability for future premiums constituted a "claim" under 11 U.S.C. § 101(5). 146 F.3d 1273, 1274–80 (10th Cir. 1998). The court's entire analysis was focused on whether post-petition plan premiums were entitled to administrative priority under 11 U.S.C. § 503(b)(1)(B). *See id.* at 1276–80. Because the proceeding had been converted to Chapter 7, there was no reason to address the issue of discharge. *Id.* at 1276.

The Trustees only briefly discuss Fourth Circuit precedent, and do not seriously allege that it conflicts with the decision below. Pet. 23–24. Nor could they. The Eleventh Circuit correctly cited *In re Leckie Smokeless Coal Co.*, 99 F.3d at 581 n.9, as supporting the proposition that Coal Act liability was "fixed" as of that statute's effective date. The subsequent Fourth Circuit panel decision in *Adventure Resources, Inc. v. Holland*, 137 F.3d 786 (4th Cir. 1998), neither purported to overrule *Leckie* nor had the ability to do so. *See McMellon v. United States*, 387 F.3d 329, 333 (4th Cir. 2004) (en banc) (discussing prior panel precedent rule). *Adventure Resources* did not adopt any holding that would conflict with the Eleventh Circuit's decision here; the Fourth Circuit held only that Coal Act liabilities "be accorded administrative expense priority as taxes incurred by the estates." *Adventure Res.*, 137 F.3d at 795.

There is, in short, no circuit split over when Coal Act liabilities arise. The drive-by rulings that the Trustees rely on arise in a different context and do not overcome the many cases holding that liabilities for future Coal Act obligations are properly extinguished or modified in bankruptcy. In the absence of any meaningful and well-defined split, this Court should not intervene.

B. No Meaningful Conflict Exists Over Whether the Coal Act IEP Requirement Constitutes a Claim.

The Trustees next attempt to manufacture a cert-worthy split in authority by focusing on a case that was barely discussed in the lower courts and only briefly mentioned in the briefing below—*In re Udell*, 18 F.3d 403 (7th Cir. 1994). Although the Eleventh Circuit distinguished between its approach (analyzing whether "the same breach 'gives rise' to both the right to an equitable remedy and a right to payment," App. 18–19 (quoting 11 U.S.C. § 101(5)(B))), and portions of the Seventh Circuit's decision in *Udell* (declining "to adopt the *Udell* test," App. 18), the outcome of this case would have been the same under *Udell*'s framework. That is because the right to payment of premiums is an "alternative" remedy—a substitute remedy—to the 1992 Trustees' alleged equitable right to require coal mine operators to maintain an IEP. *See* App. 16.

1. Both the obligation to maintain an IEP and the obligation to pay 1992 Plan premiums function to ensure that eligible individuals receive "health benefits coverage." 26 U.S.C. § 9711(a). The 1992 Plan covers beneficiaries who should be covered by an IEP "but who do[] not receive such coverage from the applicable last signatory operator or any related person." 26 U.S.C. § 9712(b)(2). As the Eleventh Circuit explained, these two provisions represent alternative remedies:

> 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 to the costs of providing the benefits.

App. 16. Put simply, if an IEP were established, the companies would not also be required to pay 1992 Plan premiums. *Penn Allegh Coal Co. v. Holland*, 183 F.3d 860, 862 (D.C. Cir. 1999) (the Coal Act "ensures the continued payment of health benefits to certain retired coal mining employees through *either* an individual employer plan ('IEP') *or* a statutory trust fund") (emphasis added). Given that reality, there is no conflict between the decision here and *Udell*.

In *Udell*, an employer, who had a contractual right (claim) for liquidated damages against the debtor for violating a non-compete provision, also moved for relief from the automatic bankruptcy stay to enforce an equitable covenant not to compete. 18

F.3d at 405. The Seventh Circuit evaluated whether the claim for injunctive relief was a "claim" dischargeable in bankruptcy. The court held: "The proper inquiry under § 101(5)(B), then, is whether [the employer's] right to an injunction 'gives rise' to an alternative or other corollary right to payment of liquidated damages." *Id.* at 407. Applying Indiana law, the Seventh Circuit found that the remedy sought—an equitable injunction—was not a dischargeable "claim" in bankruptcy because the right to an injunction did "not give rise in any other sense to the payment of liquidated damages." *Id.* at 409. Based on the parties' contract, the debtor could not escape the equitable noncompete obligation by simply paying a liquidated damages amount because the parties did not intend the liquidated damages "to be a substitute for performance." *Id.* at 408, 409 n.4 ("The court assumes that the parties would have intended that a 'true' liquidated damages provision would replace the right to specific performance. If that were the case here, [the employer's] right to an injunction would undoubtedly be a 'claim.'"). In that context, the Seventh Circuit concluded, the entitlement to an equitable remedy existed separate from and in addition to the legal right to payment.

Here, unlike the dispute about equitable relief in *Udell*, the Trustees are seeking to impose payment obligations on US Pipe and JW Aluminum as an alternative to an asserted obligation to maintain an IEP. This case raises a dispute over a "right to payment" of money because the Coal Act itself recognizes that the obligation to establish an IEP can be reduced to a monetary obligation to make premium payments. *See* App. 16; *see also* 26 U.S.C. § 9711(c)(3).

The legal remedy (paying money) is not only a perfect substitute for the closely related equitable obligation (providing benefits), it is essentially the same underlying relief. Either remedy results in delivering retiree health benefits to the select pool of retired miners through funding.

Accordingly, because making premium payments is a substitute for establishing an IEP, any practical or legal difference in how the Seventh and Eleventh Circuits might decide whether a particular right to an equitable remedy qualifies as a "claim" in other circumstances is not implicated. *Udell* contemplated that a right to an equitable remedy can be a "claim" not only where a right to payment is an "alternative" to an equitable remedy, but also where the equitable remedy and right to payment are otherwise "sufficiently related." 18 F.3d at 408; *but contra* Pet. 16–17 (erroneously stating that under *Udell*, an equitable remedy is a claim "*only if* and to the extent that" a "right to payment is an alternative to the right to an equitable remedy" (emphasis altered) (quotation marks omitted)). Both of the standards articulated in *Udell* for when an equitable remedy qualifies as a "claim" support the Eleventh Circuit's decision here. Indeed, the Eleventh Circuit recognized the relationship between the two remedies, explaining that the obligation to pay 1992 Plan premiums exists "[w]hen a covered entity breaches its obligation to provide" IEP coverage. App. 16.

In distinguishing *Udell,* the Eleventh Circuit did not reject *Ohio v. Kovacs* as the Trustees mistakenly contend. Instead, the Eleventh Circuit cited *Kovacs* to clarify the distinction between claims for pre- and post-confirmation actions. App. 12. As noted above, *Kovacs* held that a creditor's equitable claim to an injunction compelling the defendant to clean up a contaminated site was a bankruptcy "claim," where it had been reduced to an obligation to pay money. 469 U.S. at 282–83. That holding and rationale *support* the Eleventh Circuit's decision below. Under the Coal Act, the obligation to establish an IEP can be reduced to an obligation to make premium payments. App. 16; 26 U.S.C. § 9711(c)(3).

2. The Trustees also argue that cases from other circuits have stated that an equitable remedy is a "claim" "only if it is an alternative to a right to payment for the same breach." Pet. 17. But the Trustees misstate the holdings of these cases, which they did not rely on in briefing below.

The cited cases do not conflict with the Eleventh Circuit's judgment here. For example, in *Rederford v. U.S. Airways, Inc.*, 589 F.3d 30 (1st Cir. 2009), the First Circuit held that "claims" can include "equitable remedies that may be reduced to payment," thereby ensuring "that even the most 'uncertain and difficult to estimate' claims can be adjudicated in the bankruptcy proceedings." *Id.* at 35–36. The court found that an employee's cause of action for disability discrimination could be discharged, explaining that the purpose of the intentionally broad definition of claim "is to provide finality at the end of the bankruptcy proceeding for the debtor" by "adjudicating, disallowing, or discharging all claims arising before the debtor is discharged from bankruptcy." *Id.* at 36. The Court added that "[i]f equitable claims that are reduceable to payment arising before the debtor's discharge from bankruptcy could be raised later, debtors would be less certain about the effect of their bankruptcy discharge and this would hamper their efforts to reorganize into profitable businesses." *Id.; see also Airline Pilots Ass'n v. Cont'l Airlines* (*In re Cont'l Airlines*), 125 F.3d 120, 135 (3d Cir. 1997) (concluding that a monetary award is "a viable alternative where [the equitable remedy of] reinstatement is impractical"). Here, the 1992 Plan premiums readily satisfy the standards articulated by the First and Third Circuits, because those premiums reduce an equitable remedy to a payment obligation, and make eligible beneficiaries whole for not providing health coverage through an IEP. App. 16.

In re Davis stands for the unremarkable proposition that money damages may not always be an appropriate substitute for equitable relief. 3 F.3d 113, 117 (5th Cir. 1993). The Fifth Circuit recognized that section 101(5)(B) "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." *Id.* at 116 (citing *Kovacs,* 469 U.S. at 279). But there, unlike here, that principle did not apply because the remedies in *Davis* did not have a money damages alternative under Texas law. *Id.* at 117. As a result, the equitable remedies could not be discharged. *See id.* (declining to "analyze the dischargeability" of other "hypothetical debts").

Similarly, in *United States v. LTV Corp.* (*In re Chateaugay I*), the Second Circuit stated that "[t]o the extent that CERCLA affords EPA and others a right to payment in lieu of an order directed solely at cleanup, *Kovacs* indicates that such an order is a 'claim.'" 944 F.2d 997, 1009 (2d Cir. 1991). In *Chateaugay I*, the obligation to pay response costs for past conduct constituted a dischargeable claim, while an order related to continuing pollution was not dischargeable. *Id.* at 1008–09. The court described the relevant inquiry as whether an equitable "obligation may be satisfied by an alternative right to payment." *Id.* at 1008. That standard is readily satisfied here; under the 1992 Plan, the Trustees have incurred the costs of health benefits that would have been provided by the IEP, and then sued US Pipe and JW Aluminum to recover premiums for the same. 26 U.S.C. § 9712(d)(1)(A).

In sum, the cited cases either affirmatively support the Eleventh Circuit's ruling or, to the extent they reach different outcomes on different facts, are readily distinguished. The Coal Act imposes liability based on historic mining operations and all of its remedies can be reduced to an obligation to pay money. Unlike in *Davis*, payment of money is an obvious substitute remedy for any equitable IEP obligation under the Coal Act. 3 F.3d at 117. And unlike in *Chateaugay I,* a fixed and estimable claim to make payments for healthcare dating back to before confirmation is substantially different from pollution that occurs post-confirmation and discharge. 944 F.2d at 1009. As noted above, US Pipe and JW Aluminum are not seeking immunity from regulations or laws that apply to their post-confirmation conduct; they are merely seeking to enforce the discharge of a liability under the Coal Act that was imposed on coal mine operators (and related persons) as of the time the Coal

Act took effect. The only contingency here is not the consequences of future conduct but the precise amount of payment owed. As the Eleventh Circuit explained, that falls comfortably within the Bankruptcy Code's plain text definition of "claim."

III. The Petition Does Not Raise Any Issues That Warrant This Court's Review.

The Trustees have failed to identify any issues worthy of this Court's review. As explained above, there is no actual split in authority interpreting the Bankruptcy Code's definition of claim where, as here, any equitable relief sought is quantifiable into a monetary amount, and a monetary payment is the ultimate remedy sought. Nor is there any split of authority regarding the Trustees' novel "in business" theory, or more generally regarding when Coal Act liabilities arise and take effect. Every court to have considered the issue has found that claims for Coal Act liabilities can be extinguished or modified in bankruptcy.

Because the Trustees' purported right to payment existed while US Pipe's and JW Aluminum's bankruptcy cases were active, the Trustees had ample time to file a claim and object to the proposed reorganization plan. The Bankruptcy Code was designed to ensure that all claims are dealt with in an organized fashion in a single forum. The Trustees are sophisticated parties and if they had wanted to preserve their ability to obtain a right to payment under the Coal Act, they needed to file a proof of claim or otherwise take steps to preserve their rights. *See Midland Funding*, 137 S. Ct. at 1412 (noting that even an "unenforceable claim" is "a 'right to payment,' hence a 'claim,' as the Code uses those terms").

The Trustees contend that they relied on dicta in *Chateaugay II* as a basis for not needing to file proofs of claim, but that not only misreads the cases, it is belied by the fact that the Trustees did file claims for Coal Act liabilities in both the 1995 Jim Walter Resources case and the 2015 Walter Energy case. *See New WEI, Inc. f/k/a Walter Energy, Inc.*, Case No. 15-02741 (Bankr. N.D. Ala. 2015), Claim Nos. 1997–2023. Allowing the Trustees to recover in the circumstances of this case, where they did not file claims against respondents in a decades-old bankruptcy proceeding, would disregard the legitimate reliance interests of debtors who receive discharges in bankruptcy through a confirmed plan—and the parties who have dealt with them in the decades post-discharge. *See In re Cont'l Airlines*, 91 F.3d 553, 565 (3d Cir. 1996) ("The strong public policy in favor of maximizing debtors' estates and facilitating successful reorganization, reflected in the Code itself, clearly weighs in favor of encouraging such reliance.").

Moreover, this case is in an unusual posture that is unlikely to be replicated or repeated. The Coal Act came into existence when US Pipe and JW Aluminum were in bankruptcy but before plan confirmation. Moreover, US Pipe and JW Aluminum were unable to proceed under section 1114 of the Bankruptcy Code because they were never in the coal business and thus never employed coal miners and never paid "retiree benefits" to coal miners. And the Trustees' theory of the case has shifted dramatically during the course of the litigation, with the theories and cases at the centerpiece of their petition barely mentioned below, never mind squarely presented for decision. Accordingly, this case is not an appropriate vehicle for initiating a sweeping change to the interpretation of the Coal Act and the Bankruptcy Code as the Trustees request.

Finally, contrary to the Trustees' assertions, the Coal Act's beneficiaries will not be harmed because coverage will not be terminated. The Coal Act provides a mechanism for continued coverage of the miners—a policy choice made by Congress that should be respected. The Trustees, represented by the same counsel, have participated in every major case holding that Coal Act obligations may be extinguished or modified in bankruptcy—including *Leckie*, *Walter Energy*, and *Westmoreland*—and they have repeatedly criticized those decisions for creating "a blueprint for coal operators to use bankruptcy to avoid their Coal Act obligations." Petition for Writ of Certiorari at 3, *United Mine Workers of America 1992 Benefit Plan v. Leckie Smokeless Coal Co.*, 520 U.S. 1118 (1997) (No. 96-1117), 1997 WL 33557884. Certiorari was properly denied in all of those earlier cases, and the Trustees' predictions of "financial crisis" have never come to pass. *See id.* at 4. There is no reason to believe that this fact-specific case, which involves benefits for a finite number of individual beneficiaries, and which reaches the same legal conclusion as those earlier decisions, would do anything to meaningfully change the funding provided under the Coal Act.

The Trustees are sophisticated parties, and they should not be excused from complying with settled bankrupty procedures. Because they failed to file proofs of claim, their claims were discharged just like any other party that held a contingent claim for future payments. There is no Coal Act exception to the Bankruptcy Code.

CONCLUSION

The Court should deny the petition for certiorari.

Respectfully submitted,

Matthew W. Moran
Thomas S. Leatherbury
Katherine Drell Grissel
VINSON & ELKINS LLP
2001 Ross Avenue
Suite 3900
Dallas, TX 75201
(214) 220-7700

Counsel for
United States Pipe and
Foundry Co., LLC

Ashley C. Parrish
Counsel of Record
KING & SPALDING LLP
1700 Pennsylvania Ave. NW
Washington, DC 20006
(202) 737-0500
aparrish@kslaw.com

Counsel for Respondents

Jeremy Marwell
VINSON & ELKINS LLP
2200 Pennsylvania Ave. NW
Suite 500 West
Washington, DC 20037
(202) 639-6507

Counsel for
United States Pipe and
Foundry Co., LLC

Scott A. Stichter
STICHTER RIEDEL
BLAIN & POSTLER, PA
110 East Madison Street
Suite 200
Tampa, FL 33602
(813) 229-0144

Counsel for
United States Pipe and
Foundry Co., LLC and
JW Aluminum Co.

Mark M. Maloney
Sarah L. Primrose
Kevin J. O'Brien
KING & SPALDING LLP
1180 Peachtree St. NE
Suite 1600
Atlanta, GA 30309
(404) 572-4600

Counsel for
JW Aluminum Co.

November 7, 2022