No. 22-115

IN THE

Supreme Court of the United States

MICHEAL W. BUCKNER, AS TRUSTEE OF THE UNITED MINE WORKERS OF AMERICA 1992 BENEFIT PLAN, ET AL.,
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

REPLY BRIEF

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A divided panel of the Eleventh Circuit expressly opened two circuit splits: a 5–1 split on the test for when a right to an equitable remedy is a dischargeable "claim," and a 2–1 split on when claims for Coal Act obligations arise. The first conflict relates to one of the most important questions in bankruptcy ("What counts as a dischargeable claim?"). The second conflict is critical to the future of the Coal Act. In light of the Eleventh Circuit's laudable candor, both conflicts are clearly presented, clearly defined, and clearly pertinent to the resolution of this case.

Respondents do not meaningfully dispute that, on both questions presented, the Eleventh Circuit broke with seven circuit-level decisions and one decision of this Court. Instead, Respondents insist that further review is unnecessary because the two judges in the Eleventh Circuit majority—Chief Judge Pryor and Judge Grant—reached the correct result. See Opp. 11–20. But "[t]his Court's review * * * depends on numerous factors *other than the perceived correctness of the judgment [it is] asked to review*." *Ross* v. *Moffitt*, 417 U.S. 600, 616–17 (1974) (emphasis added). For present purposes, it suffices to observe that the other three judges who heard this case—the bankruptcy judge, the district judge, and Judge Anderson—say the Eleventh Circuit majority reached the wrong result.

Respondents' other objections to further review lack merit. On the first question presented, Respondents argue that they would win even if the Eleventh Circuit majority hadn't spurned *Ohio* v. *Kovacs*,

469 U.S. 274 (1985), and the five circuits that faithfully follow it. See Opp. 23–30. Respondents' argument fails because it rests on a novel interpretation of the Coal Act, namely, that a covered company can elect between providing benefits to its Coal Act-eligible beneficiaries through an IEP and paying the 1992 Plan for the costs of providing benefits to them. See Opp. 24–27. Given the wealth of case law about the Coal Act issued in its 30-years-and-counting life, it's telling that Respondents cite no district-court decision, appellate-court decision, or even a dissenting opinion in support of their interpretation. It is radical and wrong.

On the second question presented, Respondents contend that the split over the dischargeability of future Coal Act obligations is illusory because, when the Second and Tenth Circuits addressed the question of when Coal Act claims arise, they did so *before* the debtors were discharged, whereas the Eleventh Circuit addressed the question *after* the debtors were discharged. See Opp. 20–23. That distinction makes no difference. It's still the same question, and the courts' divergent answers are substantively incompatible.

I. This case is a good vehicle for resolving the split over the test for determining which equitable rights are dischargeable "claims."

A "right to an equitable remedy for breach of performance" is a "claim" only if "such breach gives rise to a right to payment." 11 U.S.C. § 101(5)(B). The Eleventh Circuit expressly created a circuit split over what Section 101(5)(B) means—whether equitable relief is a "claim" only when equitable and monetary relief are *alternative* remedies arising from a breach of performance or whether equitable relief is a "claim"

even when equitable and monetary relief are *cumulative* remedies. Compare *In re Udell*, 18 F.3d 403 (CA7 1994) (adopting the alternative-remedy approach), with Pet. App. 18 ("We decline to adopt the *Udell* test."). Respondents do not deny the split exists. They cannot deny it, so they propose three reasons why the Court should not resolve it now.

First, Respondents suggest the split is not "meaningful" and that the Eleventh Circuit created it unnecessarily because "the outcome of this case would have been the same under *Udell*'s framework." Opp. 23. The linchpin of this objection is Respondents' contention that their statutory obligations to maintain an IEP and pay 1992 Plan premiums are "alternative" obligations and "perfect substitute[s]." Opp. 23–26. Respondents stuck this interpretation at the tail end of their brief in the court of appeals, see Respondents' CA Br. 54–55, and the Eleventh Circuit rightly did not adopt it.

Under the Coal Act, maintaining an IEP and paying 1992 Plan premiums are not alternative obligations. Congress required covered companies to maintain IEPs for eligible beneficiaries for as long as the companies remain in business. See 26 U.S.C. § 9711. Congress also required the 1992 Plan to provide benefits to beneficiaries who should be receiving benefits through an IEP but are not. See 26 U.S.C. § 9712. Every month the 1992 Plan provides benefits to such beneficiaries, a covered company in breach of its IEP-related duties must pay premiums. *Ibid.* The 1992 Plan's entitlement to seek *retrospective* monetary relief for the months when a covered company is breaching its statutory duty is not an alternative to seeking *prospective* equitable relief to end the company's continuing breach.

Look at it this way: if Respondents established an IEP tomorrow, they would still have to pay all the 1992 Plan premiums they've incurred over the past six years. And if Respondents paid all those incurred premiums tomorrow, they would still have to establish an IEP going forward. Thus, it is not true that, "if an IEP were established, the companies would not also be required to pay 1992 Plan premiums," Opp. 24, and it is not true that Petitioners are "seeking to impose payment obligations on [Respondents] as an alternative to an asserted obligation to maintain an IEP," Opp. 25.

Respondents' position—that the equitable and monetary relief Petitioners seek are alternatives—nullifies an entire section of the U.S. Code, 26 U.S.C. § 9711, which imposes the IEP obligation. For, if dumping beneficiaries into the 1992 Plan and paying monthly premiums were a lawful alternative to maintaining an IEP, every covered company would have done so already. (After all, the Coal Act exists because covered companies proved they would go to great lengths to avoid having to provide healthcare to retired miners. See Pet. 2–3.) Yet, Respondents fail to cite even one example of a covered company executing the dump-and-pay maneuver that they claim is obvious on the face of the Act.

Second, Respondents try to make the conflict appear a little shallower. See Opp. 27. They admit that the Eleventh Circuit expressly broke with the Seventh Circuit. See Opp. 23. (That's one.) They also admit that the Second and Fifth Circuits have the same

"alternative, not cumulative" test as the Seventh Circuit. See Opp. 28–29.[1] (That's two and three.) Respondents only directly challenge Petitioners' contention that the First and Third Circuits are in line with the Second, Fifth, and Seventh Circuits. Putting aside that a 3–1 split on this question would be as cert-worthy as a 5–1 split, Respondents' treatment of the First and Third Circuits' decisions is pure semantics. In Respondents' view, the First and Third Circuits hold that an equitable remedy is a "claim" under Section 101(5)(b) only when it can be "reduce[d] * * * to a payment obligation." Opp. 27–28. That's not the test the Eleventh Circuit adopted, nor is it a third test. It's just another way of saying that a claim exists when equitable and monetary relief are "alternatives," and that's the very synonym both courts use to describe their tests. See *Rederford* v. *U.S. Airways, Inc.*, 589 F.3d 30, 36 (CA1 2009) ("[A] right to an equitable remedy * * * is a 'claim' within the meaning of the Bankruptcy Code * * * if a monetary payment is an *alternative* for the equitable remedy.") (emphasis added and cleaned up); *Air Line Pilots Ass'n* v. *Cont'l Airlines (In re Cont'l Airlines)*, 125 F.3d 120, 132–33 (CA3 1997) (noting that the question "is whether monetary payment is an *alternative* for the equitable remedy") (emphasis added).

Finally, Respondents' suggestion that this issue is not preserved is baseless. Petitioners did not raise the issue "for the first time" on appeal, Opp. 9; Petitioners raised it at every level, see Petitioners' DCT

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1 Respondents purport to distinguish the Second and Fifth Circuits' decisions the same way they purport to distinguish *Udell*—by arguing that they still prevail under those circuits' standards. See Opp. 28–29.

Br. 36; Petitioners' S.J. Opp. Br. 13–14. Furthermore, that Petitioners cited *Udell* only once in their lower-court brief should be no surprise. Opp. 9, 27. Until the decision below, every appellate court to consider the issue had sided with the Seventh Circuit.

II. The split over when Coal Act obligations arise is real and ripe for further review.

The Eleventh Circuit also expressly created a circuit conflict on *when* claims for Coal Act liabilities arise. Pet. App. 14–15. Respondents contend that the Eleventh Circuit overstated the conflict, and to make it seem like the circuits are aligned, Respondents mischaracterize Petitioners' arguments. Petitioners have never—ever—argued that there is a Coal Act "exception" to discharge, Opp. 1, 3, or that statutory claims are exempt from discharge, Opp. 17. Petitioners recognize that claims for Coal Act obligations, like claims for other statutory obligations, can be discharged—*to the extent they arise before discharge*. The question on which the circuits are split is whether claims for Coal Act obligations arise periodically (as the Second and Tenth Circuits hold) or whether they arose all at once when the Coal Act was enacted (as the Eleventh Circuit holds).

The answer to that question turns on whether a company's Coal Act liability depends solely on its historical conduct or also on its in-period conduct. See Pet. 19–23. The Eleventh Circuit reached its all-at-once decision because it held that Coal Act obligations depend "solely" on historical conduct. See Pet. App. 12, 15, 27. The Second and Tenth Circuits squarely rejected the notion that Coal Act liability depends entirely on historical conduct. See *LTV Steel Co.* v. *Shalala (In re Chateaugay II)*, 53 F.3d 478, 497

(CA2 1995) ("We reject LTV's contention that its Coal Act obligations arise out of pre-petition 'consideration' for purposes of the bankruptcy analysis."); *UMWA 1992 Benefit Plan* v. *Rushton (In re Sunnyside Coal Co.)*, 146 F.3d 1273, 1279 (CA10 1998) (rejecting argument that all Coal Act liabilities "relate back to a single, unitary, prepetition obligation arising from collective bargaining agreements * * * and the prepetition enactment of the Coal Act"); see also Pet. App. 30 (Anderson, J., concurring in part and dissenting in part) ("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.").

Respondents falsely accuse Petitioners of disputing the historical basis for Respondents' Coal Act obligations. See Opp. 15–16. Petitioners have consistently argued that Coal Act obligations turn *in part* on historical conduct and *in part* on current, in-period conduct. See, *e.g.*, Pet. 24. A company's historical conduct is what makes the company covered by the Coal Act, and a company's in-period conduct—*e.g.*, conducting business activity, 26 U.S.C. § 9701(c)(7)—is what makes the company's periodic obligations accrue. In this way, Coal Act liability is functionally no different than a periodic tax on business income or property ownership.[2]

Respondents' attempts to distinguish the Second and Tenth Circuits' decisions are unavailing. Mainly,

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2 Thus, Respondents' argument about *Eastern Enterprises* v. *Apfel*, 524 U.S. 498 (1998), is a red herring. See Opp. 17–18. Petitioners don't deny that the Coal Act is partially retrospective; the point of disagreement is whether the Coal Act is also prospective.

Respondents point out that those courts addressed the question of when Coal Act claims arise in connection with requests for payment of administrative expenses incurred by the debtors' estates during bankruptcy. See Opp. 20. That procedural posture is not a material distinction. The Second and Tenth Circuits considered when Coal Act claims arise because claims that arise before bankruptcy cannot qualify as administrative expenses incurred by the estate. See *Chateaugay II*, 53 F.3d at 497; *Sunnyside*, 146 F.3d at 1279; cf. *Hall* v. *United States*, 566 U.S. 506, 519–20 (2012) ("[A]ll taxes 'incurred by the estate' are necessarily incurred postpetition.") (quoting 11 U.S.C. § 503(b)(1)(B)). The Eleventh Circuit considered when Coal Act claims arise because claims that arise after bankruptcy are not dischargeable. All three courts considered the same underlying question ("Do Coal Act claims arise all at once or periodically?").[3] What's more, the Eleventh Circuit's answer to that question ("They arise all at once.") necessarily denotes that Coal Act obligations cannot be "incurred by the estate" and paid as administrative expenses, and the other circuits' answer to that question ("They arise periodically.") necessarily denotes that future, post-bankruptcy Coal Act liabilities cannot be discharged.

Chateaugay II was more than an administrative-expense case. The Second Circuit explicitly held that

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3 Respondents' assertion that other "courts" have "consistently distinguished" the administrative-expense cases from discharge cases "on that basis," Opp. 20, is demonstrably untrue. Respondents cite only one decision, *UMWA Combined Benefit Fund* v. *Toffel (In re Walter Energy, Inc.)*, 911 F.3d 1121 (CA11 2018), and nowhere in that decision did the court distinguish administrative-expense cases from discharge cases, much less "on that basis." See *id.* at 1139 n.25.

the debtor would incur Coal Act liabilities after bankruptcy—that future Coal Act liabilities are "not dischargeable" and remain "obligation[s] of the reorganized" debtor. *Chateaugay II*, 53 F.3d at 498. Respondents write off that language as dictum, Opp. 21, but the Second Circuit rightly treats it as a holding, see *Goldman, Sachs & Co.* v. *Esso, Inc.* (*In re Duplan Corp.*), 212 F.3d 144, 151 (CA2 2000) ("In *Chateaugay II*, this Court *held* that claims against the bankrupt debtor under the Coal Act * * * were not discharged.") (emphasis added). It was a true holding because the question of when Coal Act claims arise affected the value of Petitioners' administrative-expense claim in *Chateaugay II*. Without the Second Circuit's holding that the reorganized debtor would incur Coal Act liabilities after bankruptcy, Petitioners would have been entitled to an immediate, administrative-expense-priority payment equal to the net present value of every Coal Act premium the reorganized debtor might incur after bankruptcy. By holding that future Coal Act liabilities are "not dischargeable," however, the Second Circuit's decision entitled Petitioners to immediate, administrative-expense-priority payment of only the Coal Act premiums the debtor's estate incurred during bankruptcy.

Respondents assert that the "entire analysis" in *Sunnyside* concerned "whether *post-petition plan premiums* were entitled to administrative priority." Opp. 22 (emphasis added). That's not a fair representation of the decision. The Coal Act premiums at issue were incurred post-petition, but the *Sunnyside* trustee opposed paying those premiums on the ground that any claim for Coal Act premiums arose prepetition, upon "the enactment of the Coal Act." *Sunnyside*, 146 F.3d at 1278–79. Like the Second Circuit, the

Tenth Circuit squarely addressed the question of *when* Coal Act claims arise. And like the Second Circuit, the Tenth Circuit squarely rejected the proposition that Coal Act claims arose all at once. *Id.* at 1279.

To bolster the Eleventh Circuit's conclusion, Respondents try to align it with decisions holding that bankruptcy courts can prospectively terminate a debtor's Coal Act obligations pursuant to 11 U.S.C. § 1114. See Opp. 13–14 (citing *In re Walter Energy, Inc.*, 911 F.3d 1121 (CA11 2018), and *Holland* v. *Westmoreland Coal Co.* (*In re Westmoreland Coal Co.*), 968 F.3d 526 (CA5 2020)). None of these cases concerns *when* Coal Act claims arise or whether post-bankruptcy Coal Act obligations are discharged, as Respondents falsely assert. Opp. 10; see Pet. 14. On the contrary, the Section 1114 cases underscore the circuit conflict here. Courts in those cases used Section 1114 to terminate debtors' Coal Act obligations because the courts perceived that the debtors' obligation to comply with the Coal Act after bankruptcy was not dischargeable and would have survived but for the courts' use of Section 1114.

Respondents do not identify any vehicle problems with the second question presented. Petitioners' argument that Coal Act liability partially depends on a covered company's periodic activity, like being "in business," is not a "new" or "novel" theory raised for the first time before the Eleventh Circuit. Opp. 9, 14. Petitioners made this argument at every level. See Petitioners' DCT Br. 10–12, 14, 20–21, 34–35; Petitioners' S.J. Opp. Br. 7, 13. By addressing the argument head-on, the Eleventh Circuit rightly determined the argument was not forfeited.

Nor is it a problem that Petitioners filed no proofs of claim in Respondents' bankruptcies. Opp. 1–2; see,

e.g., Opp. 4, 13, 21, 31. Petitioners' position always has been that Coal Act liabilities arise periodically, and the Coal Act liabilities that Respondents incurred during their bankruptcies were taken care of by Respondents' jointly-and-severally liable affiliates. See Pet. 8–9. Petitioners therefore saw no reason to file proofs of claim (and Respondents probably wouldn't have appreciated Petitioners becoming the largest creditor in their bankruptcies, see Pet. 27 n.7). It's not a vehicle problem that Petitioners didn't have a crystal ball in 1995 and couldn't predict that, in 2022, the Eleventh Circuit would reject *Chateaugay II*.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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