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

SUPPLEMENTAL BRIEF FOR RESPONDENTS

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The United States correctly explains that certiorari should be denied. Respondents submit this short supplemental brief to emphasize why that conclusion is correct, while also addressing subsidiary points advanced by the United States with which respondents disagree. This case does not warrant further review.

1. As to the first question presented, the United States agrees with respondents that the outcome would be the same in any circuit, and that this case is an unsuitable vehicle for further review. U.S.Br. 13–15. The Coal Act obligations here—the equitable IEP obligation and the monetary 1992 plan premiums—are "express alternatives." U.S.Br. 14. As a result, the Coal Act's equitable remedy constitutes a "claim" even under petitioners' preferred test. *Id.* at 13.

Contrary to the government's suggestion, respondents have not backed away from defending the Eleventh Circuit's interpretation of 11 U.S.C. § 101(5)(B), *cf.* U.S.Br. 12, which "falls comfortably within the Bankruptcy Code's plain text definition of 'claim.'" Opp. 30. That definition requires that an equitable remedy and right to payment be "connected by a common 'breach of performance.'" App. 18–19 (quoting 11 U.S.C. § 101(5)(B)); *accord* Opp. 11–12 (arguing that Code "adopt[s] the broadest available definition of 'claim'").

The definition is satisfied here because, as the United States explains, equitable and monetary Coal Act obligations are "express alternatives" and "directly correlated." U.S.Br. 13–14. The IEP

obligation is imposed to provide healthcare coverage to certain beneficiaries, 26 U.S.C. § 9711(a), and the 1992 Plan charges premiums to provide the same benefits "to those who are entitled to receive (but are not in fact receiving) benefits from an IEP," U.S.Br. 13 (citing 26 U.S.C. § 9712(b)(2)(B) & (d)(1)); *see also* App. 16. The IEP obligation thus qualifies as a "claim" under both the express language of the Code and the law of every circuit. U.S.Br. 13 ("petitioners' equitable claim would still qualify as a 'claim' under *Kovac's* reasoning and the test applied by multiple courts of appeals").

The United States errs in suggesting, however, that the Eleventh Circuit's decision creates a meaningful "circuit split." U.S.Br. 12. Although the circuits have articulated slightly different tests, the United States correctly recognizes that there is no "practical difference between [those] tests" for purposes of this case. U.S.Br. 16. Moreover, as the United States implicitly acknowledges, petitioners overstate the holdings of other circuits in attempting to portray a circuit split; the Seventh and other circuits do not apply the strict "alternatives" requirement suggested by petitioners. *Compare* Pet. 16–18 *with* U.S.Br. 12–14 (other circuits ask whether "a right to payment is an adequate alternative *or* substitute remedy," and remedies need not be "outright substitute[s]"); Opp. 24–30 (analyzing cases and explaining why petitioners' reading is incorrect).

The government's suggestion of a "circuit split," and main concern on the merits, appear to rest on a hypothetical fact pattern neither litigated nor decided

here: where a breach "gives rise to *any* right to payment, even a *de minimis* one that is an inadequate alternative to equitable relief." U.S.Br. 12 (emphasis in original). The Eleventh Circuit had no occasion to address that unusual scenario, never mind hold that an equitable remedy would be a "claim" in such circumstances. The Coal Act's monetary remedy here is far more than "de minimis." App. 16.

Nor is the Eleventh Circuit's decision in tension with *Ohio v. Kovacs*, 469 U.S. 274 (1985). The United States reads *Kovacs* as the origin of an "alternative or substitute remedy" test. U.S.Br. 11–12. That test is derived not from the Bankruptcy Code but from certain floor statements by legislators with respect to the Bankruptcy Reform Act. 469 U.S. at 280 & n.8. Although *Kovacs* acknowledged this legislative history, *id.* at 280, the Court did not describe the remedies at issue as alternatives. Nor did it base its holding on any such finding or adopt any "alternative or substitute remedy" test. Instead, the Court quoted the lower court opinions and determined that "[o]n the facts before it . . . we cannot fault the Court of Appeals for concluding that the [equitable obligation] had been converted into an obligation to pay money." *Id.* at 283. Because the equitable remedy (a clean-up order) had been converted into a monetary judgment, *Kovacs* had no need to articulate a definitive test. Given this background, it is unsurprising that circuits have articulated somewhat different formulations for defining "claim" in section 101(5)(B). This Court does not, however, grant review to address "minor linguistic discrepancies" that are "not outcome determinative." Stephen M. Shapiro et al., Supreme Court Practice § 4.3 & n.21 (11th ed. 2019) (citing

Stephen G. Breyer, *Reflections on the Role of Appellate Courts*, 8 J. App. Prac. & Process 91, 96 (2006)).

2. As to the second question presented, the United States recognizes that petitioners have not challenged the Eleventh Circuit's longstanding test for when a pre-confirmation claim arises, and that the panel's application of that test to the idiosyncratic facts of this case does not have broader implications. U.S.Br. 17–18. There is no conflict among the circuits. *Id.* at 19–21. And petitioners' request for factbound error correction does not warrant review.

The Eleventh Circuit correctly held that Combined Fund obligations, equitable IEP obligations, and 1992 Plan premium obligations constituted dischargeable "claims." From the date of its enactment, the Coal Act imposed a "retroactive burden" for responsible parties to provide benefits to certain retired miners based on past mining operations and historic commitments. *See E. Enters. v. Apfel*, 524 U.S. 498, 538 (1998) (plurality opinion). As the government explains, related persons have always been "jointly and severally liable for [their] signatory operator's Coal Act obligations." U.S.Br. 2–3; Opp. 15–16.

The United States raises no concern with the Eleventh Circuit's holding that Combined Fund premium liabilities "became fixed before 1995" and thus constituted a dischargeable claim. App. 13. It nonetheless suggests that equitable IEP obligations and 1992 Plan premiums were not claims "until [a] breach occur[red]." U.S.Br. 17. Even setting aside the fact that related persons were primarily liable to provide an IEP upon passage of the Coal Act, the

government cites no case holding that a bankruptcy claim cannot exist until a breach. To the contrary, the courts of appeals have consistently held that a dischargeable "claim" can exist even before an enforceable right to payment. *See In re Castellino Villas, A.K.F. LLC*, 836 F.3d 1028, 1034 (9th Cir. 2016); *In re Grossman's Inc.*, 607 F.3d 114, 121 (3d Cir. 2010) (en banc); *In re Tanner Family, LLC*, 556 F.3d 1194, 1197 (11th Cir. 2009); *accord Midland Funding, LLC v. Johnson*, 581 U.S. 224, 229 (2017) (an "unenforceable claim is nonetheless . . . a 'claim' . . . as the Code uses th[at] term[]"). The Eleventh Circuit's reasoning—that "the timing of th[e] breach" is irrelevant to whether a "claim" exists, App. 19—is correct and consistent with precedent.[1]

The government's alternative framing—that a right "do[es] not arise at all until the breach occurs" and petitioners could have "maintained a suit," U.S.Br. 17–18—resembles the "accrual" test that courts have uniformly rejected. The sole circuit to have previously applied that test has now disavowed it as focused "too narrow[ly]" on the phrase "right to payment" and not "giv[ing] sufficient weight to the [statutory] words modifying it: 'contingent,'

[1] The government argues that the equitable right here should not qualify as "contingent," U.S.Br. 17–19—an argument petitioners never made below and the Eleventh Circuit never addressed. The argument is also unavailing. Because the Coal Act imposes joint-and-several liability on coal operators and related persons, and because the 1992 Plan exists to provide healthcare benefits "to those who are entitled to receive (but are not in fact receiving) benefits from an IEP," U.S.Br. 13, all parties must have "reasonably contemplated," *id.* at 18, the possibility that Walter Energy might cease providing Coal Act benefits.

'unmatured,' and 'unliquidated.'" *Grossman's*, 607 F.3d at 121 (quoting 11 U.S.C. § 101(5)(A) and overruling *In re M. Frenville Co.*, 744 F.2d 332, 336 (3d Cir. 1984)). Indeed, before it was overruled, the accrual test was "one of the most criticized and least followed precedents decided under the current Bankruptcy Code." *Grossman's*, 607 F.3d at 120 (citation omitted).

3. In all events, the government agrees with respondents that further review is not warranted. This case is a poor vehicle to address either question presented, because (as to the first) the result is the same under petitioners' preferred approach, and (as to the second) the decision below is primarily an application, to the specific facts of this case, of the Eleventh Circuit's unchallenged pre-existing framework for determining when a claim arises. U.S.Br. 16–17; *see In re Piper Aircraft, Corp.*, 58 F.3d 1573, 1577 (11th Cir. 1995). The unique procedural and substantive issues relating to this 28-year-old bankruptcy discharge are unlikely to recur. As the United States explains, Coal Act obligations of coal operators are subject to termination under 11 U.S.C. § 1114. U.S.Br. 15. And, if future bankruptcy cases arise involving related persons, the Trustees can "protect their rights by filing a proof of claim." U.S.Br. 16. Respondents are not aware of, and their extensive research has not identified, any other case in which related-person Coal Act liability was disputed on the basis of a prior bankruptcy discharge. The decision below also has no implications for other cases involving "generally applicable laws." U.S.Br. 22.

The Court should deny the petition for certiorari.

Respectfully submitted,

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