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

PETITIONERS' SUPPLEMENTAL BRIEF

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I. This case is a good vehicle for resolving the split over Section 101(5)(B).

The decision below ignores and conflicts with *Ohio* v. *Kovacs*, 469 U.S. 274 (1985). The government agrees the Eleventh Circuit "failed to justify its departure from the reasoning of *Kovacs*" and "created a circuit split" with "at least five courts of appeals." U.S. Br. 11–13. This Court regularly grants certiorari when lower courts ignore binding precedent. See, *e.g.*, *Fellers* v. *United States*, 540 U.S. 519, 525 (2004); *Horn* v. *Banks*, 536 U.S. 266, 271 (2002). Here, the lower court's oversight touches an extremely important issue. Every creditor and every debtor in every bankruptcy needs to know which "rights to equitable relief" are bankruptcy "claims." It's for good reason that the Court, heeding the Constitution's demand for uniform bankruptcy laws, often immediately reviews emergent conflicts in bankruptcy law. See, *e.g.*, *Lamar, Archer & Cofrin LLP* v. *Appling*, 138 S. Ct. 1752, 1758 n.1 (2018); *Harris* v. *Viegelahn*, 575 U.S. 510, 516 (2015); *Clark* v. *Rameker*, 573 U.S. 122, 126–127 (2014). Regional conflicts over the Bankruptcy Code are intolerable and promote forum-shopping.

The preceding points all favor further review, yet the government opposes review because of an imagined vehicle problem. See U.S. Br. 13–16. The government hypothesizes that "petitioners' equitable claim would still qualify as a 'claim' under *Kovacs*'s reasoning and the test applied by multiple courts of appeals." U.S. Br. 13. However prudent it may be to deny certiorari when a petitioner would clearly lose under any standard, this is far from such a case. No court has held that Petitioners would lose under the dominant approach to *Kovacs*. (That the Eleventh Circuit saw fit to open a split over such a fundamental issue shows that it isn't merely academic.) The government's contrary assertion is unfounded and wrong; it distorts *Kovac*'s reasoning and misinterprets the Coal Act.

Following *Kovacs*, most courts hold that equitable remedies for which a right to payment is an "alternative" or "substitute" are bankruptcy "claims," whereas equitable remedies for which a right to payment is "cumulative" or "in addition" are not. *In re Udell*, 18 F.3d 403, 408–409 (CA7 1994); see Pet. 17–18. Whether an equitable remedy and a monetary remedy are alternative or cumulative depends on the wrong or harm each redresses. If they redress the same underlying harm, they are alternative; if they redress different harms, they are cumulative. See *Udell*, 18 F.3d at 409 (holding "(1) an injunction against the future realization of the threat, and (2) liquidated damages for the actual harm that has already accrued" are *cumulative* because they "address *entirely separate remedial concerns*") (emphasis added); *In re Cont'l Airlines*, 125 F.3d 120, 135 (CA3 1997) (holding equitable and monetary remedies are "alternative[s]" when the equitable relief does not "*address a separate remedial concern*") (emphasis added). For this reason, courts routinely hold that injunctions preventing *future harms* are cumulative of damages compensating for *past harms*, even if the past and future harms stem from the ongoing breach of one duty. See *Udell*, 18 F.3d at 409; *Rederford* v. *U.S. Airways, Inc.*, 589 F.3d 30, 37 (CA1 2009) (distinguishing abatement from remediation); see also *In re Davis*, 3 F.3d

113, 117 (CA5 1993) (deeming an equitable remedy cumulative because it "is analogous to an injunction preventing Davis from committing future wrongs").

Petitioners' equitable claim to compel Respondents to establish an IEP and Petitioners' monetary claim to recover past 1992 Plan premiums address entirely separate remedial concerns. By refusing to maintain an IEP, Respondents are breaching their statutory duty to maintain and administer a plan that provides healthcare benefits directly to retirees and their spouses. See 26 U.S.C. § 9711(a), (b). Those beneficiaries were enrolled in the 1992 Plan so they can continue receiving benefits despite Respondents' breach. See 26 U.S.C. § 9712(b)(2), (c). Outside the Coal Act context, similarly abandoned beneficiaries bear the costs of obtaining benefits from a different source: they pay out-of-pocket, then sue their former employer for reimbursement and for an injunction to restore the benefit plan and end the ongoing breach. See, *e.g.*, *UMWA Local 5821* v. *Royal Coal*, 768 F.2d 588 (CA4 1985) (vacating TRO requiring reinstatement of benefit plan). Through the Coal Act, Congress simplified the process by authorizing the 1992 Plan to provide benefits to affected beneficiaries, then charge monthly premiums directly to Respondents. See 26 U.S.C. § 9712(d)(1), (4). Congress's decision to shift beneficiaries' reimbursement remedy to the 1992 Plan does not change the remedy's underlying remedial concern. Petitioners' claim for past 1992 Plan premiums addresses the same wrong that beneficiaries' (hypothetical) claim for reimbursement would address (*i.e.*, "damages for the actual harm that has already accrued," *Udell*, 18 F.3d at 409), which is separate from the wrong addressed by Petitioners' equitable claim (*i.e.*, "an injunction against the future realization of the threat," *ibid.*).

The government contends that Petitioners' IEP-related equitable claim and premium-related damages claim are "express alternatives" because, whether Respondents are "compelled to reestablish [their] IEP in equity or compelled to pay 1992 Plan premiums,"[1] beneficiaries still "receive healthcare benefits." U.S. Br. 14. The government is incorrect.

First, from any perspective, "the outcome is" *not* necessarily "the same whether a covered company * * * reestablish[es] its IEP" or "pay[s] 1992 Plan premiums." U.S. Br. 14. The Coal Act does not require that the 1992 Plan and IEPs provide identical coverage, but rather "substantially the same" coverage. 26 U.S.C. §§ 9711(a), (b)(2), & 9712(c)(1). The Act allows the 1992 Plan and IEPs to adopt programs of cost containment and managed care. See 26 U.S.C. §§ 9711(d), 9712(c)(2)–(5). As a result, costs to the beneficiaries and costs to the plans necessarily vary.

Second, maintaining an IEP and paying 1992 Plan premiums are not "express alternatives," U.S. Br. 14, and neither are the equitable and monetary claims concerning them. Section 9711 mandates that coverage under an IEP "shall continue to be provided for as long as the last signatory operator (and any related person) remains in business." 26 U.S.C.

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1 The government's characterization of Petitioners' damages claim—as seeking to "compel[Respondents] to pay 1992 Plan premiums," U.S. Br. 14—misuses equitable terminology ("compel[]") and thus bespeaks a misunderstanding of the Coal Act, Petitioners' claims, or both.

§ 9711(a), (b)(2). The government reads into the statute an unwritten exception to that duty—that a company can elect to shutter an IEP and pay 1992 Plan premiums instead. Not only would that exception swallow the rule and obliterate Section 9711, see Cert. Reply Br. 4; it also would obliterate Section 9712. Under Section 9712(b)(2)(B), beneficiaries "with respect to whom coverage *is required to be provided under section 9711*" can be enrolled in the 1992 Plan. 26 U.S.C. § 9712(b)(2)(B) (emphasis added). Section 9712(b)(2)(B) defines eligibility for the 1992 Plan in terms of a beneficiary's *entitlement* to benefits under an IEP. That definition would have no effect if IEPs were optional and paying 1992 Plan premiums relieved companies of their IEP duty.[2]

2 The government argues that Section 9711(c)(2)–(3) "reinforces the close relationship between the IEP obligation and 1992 Plan premiums." U.S. Br. 13. Those paragraphs—which Congress added in 2006*, fourteen years after the Coal Act and eleven years after Respondents' discharge*—are irrelevant. See Tax Relief & Health Care Act, Div. C, Title II, Sec. 211, P.L. 109-432, 120 Stat. 2922 (Dec. 20, 2006). The 2006 amendments also added similar provisions to Sections 9704 and 9712, all of which allow a "common parent" to post a special security and thereby assume its subsidiaries' Coal Act obligations. See 26 U.S.C. §§ 9704(j), 9711(c)(2)–(3), 9712(d)(4). A common parent can do so only if its subsidiary is an "assigned operator" that was never bound to a 1988 Wage Agreement, that contributed to the UMWA 1950 and 1974 Pension Plans during the term of the 1988 Wage Agreement before July 20, 1992, and that was no longer engaged in the production of coal by 2005. See 26 U.S.C. § 9704(j)(2)(A)(i)–(iii). Precisely one company in history could possibly satisfy Section 9704(j)(2)'s backward-looking definition: Pittston Coal. Despite the special dispensation, Pittston never even posted the special security. The 2006 amendments therefore have no bearing on this case or any future case, and they do not suggest that, in Congress's eyes, an equitable claim to create

(footnote continued on next page)

Since the Coal Act manifestly does not treat Petitioners' equitable and monetary claims as "express alternatives," the government backpedals and contends that equitable and monetary remedies need not be "perfect substitutes," but need only be "directly correlated," for the equitable remedy to be a "claim" under Section 101(5)(B). U.S. Br. 13–14. This isn't an argument that Petitioners lose under the *Kovacs* standard; it's an attack on the standard itself. The dispositive question is whether equitable and monetary remedies address the same or "separate remedial concerns"—whether they redress the same or separate harms or injuries. *Udell*, 18 F.3d at 409. It is possible for equitable and monetary remedies to address the same remedial concern even if they are not "perfect" or "outright" substitutes. See U.S. Br. 14. The mortgage example the government highlights, see U.S. Br. 14–15, proves Petitioners' point. A lender's equitable right to foreclose is a "claim" under Section 101(5)(B) because it addresses the same remedial concern—the same injury, the same debt—as the lender's right to payment on the mortgage, even though a foreclosure sale might not fully satisfy the mortgage debt. Foreclosure and payment might not be *coextensive* remedies, but they still are *alternative* remedies because they address "the debtor's default on the underlying obligation." *Johnson* v. *Home State Bank*, 501 U.S. 78, 84 (1991).

To recap: The vehicle problem the government identifies is spurious. Petitioners plainly could (and *should*) win under the dominant standard. The Court should grant review and correct the Eleventh Circuit's error on this important question.

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an IEP is an alternative to a monetary claim for unpaid 1992 Plan premiums.

II. The split over when Coal Act obligations arise is real.

The government admits the Eleventh Circuit "likely erred" in holding that Respondents' Coal Act liabilities arose, all at once, before Respondents' 1995 discharge. See U.S. Br. 17. Respondents' liabilities do not arise "solely" from pre-bankruptcy conduct because they "do not arise at all until the breach occurs." *Ibid.* The government acknowledges that the lower court's holding "cannot be reconciled with" the Second Circuit's decision in *LTV Steel Co.* v. *Shalala (In re Chateaugay II)*, 53 F.3d 478 (CA2 1995), U.S. Br. 20, and is "in tension" with the Tenth Circuit's decision in *UMWA 1992 Benefit Plan* v. *Rushton (In re Sunnyside Coal Co.)*, 146 F.3d 1273 (CA10 1998), U.S. Br. 21. And yet, the government opposes further review, arguing that the Second and Tenth Circuits did not "*directly* address[] the question presented here." U.S. Br. 19, 21 (emphasis added). That objection lacks merit.

The Second, Tenth, and Eleventh Circuits all addressed the question of *when* a debtor's Coal Act liabilities arise—specifically, whether they arose all at once upon enactment or whether they arise periodically. Compare Pet. App. 10, with *Chateaugay II*, 53 F.3d at 498, and *Sunnyside*, 146 F.3d at 1279. The government perceives no *direct* conflict because it latches onto an irrelevant distinction—that each court was asked the same question during different stages of the debtors' bankruptcy proceedings. See U.S. Br. 19–21. That distinction is immaterial because neither the question nor its answer is context-dependent. Under the Code, the question of when a claim or debt *arises* determines whether someone is a creditor who may recover from the debtor's estate[3] and also determines whether a claim or debt is dischargeable.[4] For any particular claim, there can be only one answer to the question. It is impossible for a liability to arise *both* before *and* after discharge, and it impossible for a liability to arise *both* all at once *and* periodically. See Cert. Reply Br. 8.

The Second Circuit perceived this truth when it held that LTV had to pay premiums assessed during bankruptcy and that "[t]he remainder of LTV's obligations was not dischargeable in bankruptcy and is an obligation of the reorganized LTV." *Chateaugay II*, 53 F.3d at 498. The government is wrong to insist that dischargeability was not at issue in *Chateaugay II*. U.S. Br. 20. LTV filed that case to resolve whether its post-bankruptcy Coal Act liabilities would be discharged. LTV argued that its liabilities would be discharged because its proposed plan of reorganization did "not provide for payments under the Coal Act, which [the LTV plaintiffs] claim will be at least in excess of $12 million annually. Attempting to settle this issue"—*i.e.*, whether LTV must pay premiums assessed after bankruptcy—"before the confirmation hearing, plaintiffs brought this action for declaratory judgment, * * * seeking to determine [the Act's] application to them." *In re Chateaugay*, 154 B.R. 416, 418

3 See 11 U.S.C. § 101(10) ("creditor" is anyone with "a claim against the debtor that *arose*" before discharge) (emphasis added); see also *In re Piper Aircraft Corp.*, 58 F.3d 1573, 1578 (CA11 1995) (disallowing a claim that might arise after discharge).

4 See 11 U.S.C. § 1141(d)(1)(A) (providing that a confirmed Chapter 11 plan "discharges the debtor from any debt that *arose* before" confirmation) (emphasis added); see also 11 U.S.C. § 727(b) (same for Chapter 7).

(S.D.N.Y. 1993). LTV's plan was confirmed soon after the district court ruled for Petitioners—and long before the Second Circuit decided *Chateaugay II*. See *In re Chateaugay Corp.*, 1993 WL 388809 (S.D.N.Y. Jun. 16, 1993). Dischargeability was, therefore, a focus of the parties' appellate briefing. See Br. of UMWA Combined Benefit Fund, 1994 WL 16012956, at *35–36 (Mar. 31, 1994) (arguing Coal Act obligations "are not dischargeable in bankruptcy and are an obligation of the surviving entity"); Reply Br. of LTV Corp., 1994 WL 16012957, at *4 n.1 (Apr. 13, 1994) ("These claims are discharged"). The government has no basis to ignore *Chateaugay II*'s concluding statement as "dictum." U.S. Br. 20. It is, as the Second Circuit recognizes, a real holding. See *In re Duplan*, 212 F.3d 144, 151 (CA2 2000) ("In *Chateaugay II*, this Court *held* that [Coal Act claims] were not discharged as pre-petition claims * * *.") (emphasis added).[5]

III. The government's other objections lack merit.

1. Section 1114 — The government speculates that Section 1114 of the Bankruptcy Code may limit the impact of the decision below. See U.S. Br. 15, 21–22. Section 1114 empowers courts to modify a debtor's obligation to provide retiree healthcare benefits. See 11 U.S.C. § 1114(e). On the government's view, questions about whether Coal Act obligations survive discharge are "unlikely to arise" again because "companies may be able to eliminate" their obligations under Section 1114. U.S. Br. 15.

5 The government's counter—that *Duplan*'s characterization of *Chateaugay II*'s concluding sentence was also dictum, see U.S. Br. 21 n.3—misses the point, which is that the Second Circuit *recognizes* the sentence as a holding.

Modification under Section 1114 is neither easy nor automatic; it requires a debtor to satisfy significant substantive and procedural requirements. Courts may make only "*necessary* modifications * * * that are *necessary* to permit the reorganization of the debtor" and must "assure[] that all creditors, the debtor and all of the affected parties are treated *fairly* and *equitably*." 11 U.S.C. § 1114(f)(1)(A) (emphases added). In Coal Act cases, the Fifth and Eleventh Circuits recognized that Section 1114 sets a high bar. See *In re Walter Energy, Inc.*, 911 F.3d 1121, 1151 n.36 & 1153 (CA11 2018); *In re Westmoreland Coal Co.*, 968 F.3d 526, 540, 544 (CA5 2020).

While *some* debtors might succeed in clearing Section 1114's high bar, some will not. But on the Eleventh Circuit's holding, debtors do not even need to try to clear it: *every* debtor will automatically escape its Coal Act obligations upon discharge—with no showing of necessity, fairness, or equity. The possibility of Section 1114 relief thus does not undermine the importance of the questions presented. If anything, it heightens the need for further review.

2. Responding to the decision below — Even if Petitioners could file proofs of claim in future Eleventh Circuit bankruptcies, see U.S. Br. 16, 21–22, doing so would not vindicate Petitioners' rights or the Coal Act. The government does not dispute that, on the Eleventh Circuit's view that Petitioners' claims arose as a single unitary obligation on the Coal Act's effective date, Petitioners' proofs of claim would be massive (the net present value of years of future benefits) and would overwhelm most debtors' meager estates. See Pet. 27–28 n.7. If Petitioners' claims were not disallowed (as they might be if the debtor's related person is complying with the Coal Act), Petitioners *and* *every other creditor* would recover only cents on the dollar. Holding that Coal Act obligations arise periodically, then, is not only consistent with Congress's design (as the government readily admits, see U.S. Br. 17); it also is fair and equitable to all interested parties.

3. Past bankruptcies — The government faults Petitioners for not enumerating all the past bankruptcies where, relying on *Chateaugay II*, Petitioners didn't file proofs of claim for a debtor's post-bankruptcy Coal Act obligations. See U.S. Br. 16, 22. According to Petitioners' internal records concerning companies maintaining IEPs, seven were discharged in bankruptcy after the Coal Act was enacted. Those IEPs provide benefits to 3,884 beneficiaries, which is approximately half of the total number of beneficiaries (7,624) currently enrolled in IEPs.

That's a low-end estimate. The total is unknowable because Petitioners do not seek to identify related persons unless a signatory operator stops providing benefits. Meaning, Petitioners do not know all the related persons who, under the Eleventh Circuit's holdings, were discharged from bankruptcy and are no longer jointly-and-severally liable with a signatory operator for Coal Act obligations.

CONCLUSION

The Court should grant the petition.

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