No. 24-1322

In the Supreme Court of the United States

BARINGS L.L.C., ET AL.,

Petitioners,

v.

AG CENTRE STREET PARTNERSHIP, ET AL.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF IN OPPOSITION

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October 8, 2025

QUESTION PRESENTED

The Chapter 11 plan (the "Plan") for Serta Simmons Bedding, L.L.C. contained an indemnity provision that violated two sections of the Bankruptcy Code, 11 U.S.C. §§ 502(e)(1)(B) and 1129(a)(4). On appeal to the Fifth Circuit, Petitioners contended that the appellate court could do nothing about this violation on the theory that the appeal was "equitably moot" owing to the fact that the Plan had already gone into effect (*i.e.*, had been "substantially consummated"). Rejecting this argument, the court below applied a recognized exception to the equitable mootness doctrine and directed the removal of the impermissible indemnity based on the fact that all affected parties were parties to the appeal and granting the relief would not unwind the Plan nor disrupt the debtor's successful emergence from bankruptcy. The question presented, over which there is no division among the courts of appeals, is:

When a confirmed and substantially consummated Chapter 11 plan contains a discrete provision that violates the Bankruptcy Code, may an appellate court grant relief in the form of excising the impermissible provision rather than directing that the Plan be undone in its entirety, which would force the debtor back into bankruptcy?

PARTIES TO THE PROCEEDING

Citadel Equity Fund Ltd. was an appellant in the court of appeals and a party in interest in the bankruptcy court.

AG Centre Street Partnership L.P., AG Credit Solutions Non-ECI Master Fund, L.P., AG Super Fund Master, L.P., AG SF Master (L), L.P., Ascribe III Investments, LLC, Columbia Cent CLO 21 Limited, Columbia Cent CLO 27 Limited, Columbia Floating Rate Fund, a series of Columbia Funds Series Trust II, Columbia Strategic Income Fund, a series of Columbia Funds Series Trust I, Contrarian Capital Fund I, L.P., Contrarian Credit Feeder Fund, L.P. (previously called Contrarian Distressed Debt Fund, L.P.), Contrarian Centre Street Partnership, L.P., Gamut Capital SSB, LLC, North Star Debt Holdings, L.P., Shackleton 2013-III CLO, Ltd., Shackleton 2013-IV-R CLO, Ltd., Shackleton 2014-V-R CLO, Ltd., Shackleton 2015- VII-R CLO, Ltd., Shackleton 2017-XI CLO, Ltd., Silver Oak Capital, L.L.C., Z Capital Credit Partners CLO 2018-1 Ltd., and Z Capital Credit Partners CLO 2019-1 Ltd. were appellants in the court of appeals and parties in interest in the bankruptcy court.

RULE 29.6 STATEMENT

Citadel Equity Fund Ltd. is indirectly owned by Citadel Wellington LLC, Citadel Kensington Global Strategies Fund Ltd., and Citadel Kensington Global Strategies Fund II Ltd. No publicly held corporation has an ownership interest in 10% or more of these entities.

Ascribe III Investments, LLC; Columbia Cent CLO 21 Limited; Columbia Cent CLO 27 Limited; Columbia Floating Rate Income Fund, a series of Columbia Funds Series Trust II; Columbia Strategic Income Fund, a series of Columbia Funds Series Trust I; Contrarian Capital Fund I, L.P.; Contrarian Credit Feeder Fund, L.P. (previously called Contrarian Distressed Debt Fund, L.P.); Contrarian Centre Street Partnership, L.P.; Shackleton 2013-III CLO, Ltd.; Shackleton 2013-IV-R CLO, Ltd.; Shackleton 2014-V-R CLO, Ltd.; Shackleton 2015-VII-R CLO, Ltd.; Shackleton 2017-XI CLO, Ltd.; Silver Oak Capital, L.L.C.; Z Capital Credit Partners CLO 2018-1 Ltd.; and Z Capital Credit Partners CLO 2019-1 Ltd. have no parent corporations, and no publicly held company own 10% or more of their stock.

Gamut Capital SSB, LLC, is a wholly owned subsidiary of GColumbus Trading LLC. North Star Debt Holdings, L.P., is indirectly controlled by Apollo Global Management, Inc., a publicly held company. AG Centre Street Partnership L.P.; AG Credit Solutions Non-ECI Master Fund, L.P.; AG Super Fund Master, L.P.; and AG SF Master (L), L.P. are indirectly controlled by TPG Inc., a publicly held company. No publicly held company owns 10% or more of those entities' stock.

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The opinion of the Court of Appeals is reported at 125 F.4th 555 (Pet. App. 1a–62a). The decision of the bankruptcy court (Pet. App. 63a–98a) is unpublished, but available at 2023 WL 3855820.

JURISDICTION

The Court of Appeals entered judgment on December 31, 2024. A timely petition for rehearing en banc was denied on February 18, 2025. Pet. App, 169a. On May 1, 2025, Justice Alito granted Petitioners' application to extend the time to file its petition to June 18, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

The following statutory provisions are relevant to this matter: 11 U.S.C. §§ 502(e)(1)(B) & 1129(a)(4).[1]

PRELIMINARY STATEMENT

This matter arises out of the Chapter 11 bankruptcy proceedings of Serta Simmons Bedding, L.L.C. ("Serta"), a leading manufacturer and marketer of bedding products. Petitioners are the beneficiaries of a novel, untested, and highly controversial liability management transaction that occurred in 2020, prior to Serta's bankruptcy. Respondents Citadel Equity Fund Ltd. ("Citadel") and certain other lenders (the "Excluded Lenders") were

[1] The relevant portions of these provisions are reproduced in Petitioners' Appendix. *See* Pet. App. 322a–331a.

creditors of Serta that did not participate in the transaction, but participated in Serta's bankruptcy case.

Prior to the 2020 transaction, Serta owed approximately $1.95 billion in secured debt to a group of lenders under a 2016 credit agreement. *See* Record on Appeal at 305, *Citadel Equity Fund, Ltd v. Serta Simmons Bedding, LLC*, No. 23-20363 (5th Cir.) ("CA5 ROA"). In connection with the 2020 transaction, Serta agreed to issue an aggregate of $1.075 billion in new secured loans to a subset of the lenders under the old 2016 credit agreement (the "PTL Lenders"), replacing their secured loans under the 2016 agreement with new super-priority loans under the terms of a new credit agreement (the "PTL Credit Agreement"). *See* CA5 ROA at 634. Serta and the PTL Lenders, including Petitioners, excluded the remaining 2016 lenders (the aforementioned Excluded Lenders) from the new transaction, thereby subordinating $862 million in previously first-priority debt held by the Excluded Lenders to the new super-priority debt. In light of the novel and controversial nature of the 2020 transaction (and the likelihood that it would be challenged), Serta agreed in the PTL Credit Agreement to indemnify the PTL Lenders for any damages they might be ordered to pay to the Excluded Lenders in connection with that transaction. *See* CA5 ROA at 707.

Almost immediately after the closing of the 2020 transaction, certain Excluded Lenders sued Serta and the PLT Lenders in multiple forums. *See* CA5 ROA at 25890–93. That litigation was ongoing at the time Serta filed for Chapter 11 bankruptcy with a plan of

reorganization that Serta had pre-negotiated with the PTL Lenders. *See* CA5 ROA at 4658–718. Ultimately, the bankruptcy court confirmed a modified version of this plan (the "Plan") with a provision obligating Serta to indemnify certain of the PTL Lenders in the event these lenders were found liable to the Excluded Lenders for their participation in the 2020 transaction.

Citadel and the Excluded Lenders appealed the bankruptcy court's confirmation order, and those appeals were certified for direct review by the Fifth Circuit. By the time the Fifth Circuit heard the appeals, the Plan had been substantially consummated, resulting in, among other things, Serta's issuance of new equity interests, Serta's execution of hundreds of millions of dollars in new syndicated loans, and Serta's payment of substantial sums of money to numerous creditors.

On appeal, the Fifth Circuit held that the indemnity provision in the Plan was unlawful. To begin with, the indemnity violated section 502(e)(1)(B) of the Bankruptcy Code, which explicitly disallows contingent indemnity obligations. Second, it violated section 1123(a)(4) of the Code, which requires that all creditors placed in a particular class in a Chapter 11 plan receive equal treatment. The indemnity provision violated this second requirement because the indemnity benefited only some members of the relevant class (the PTL Lenders) while burdening others (Citadel and other creditors who did not participate in the 2020 transaction). The court of appeals held that, under the circumstances, the proper remedy was to excise the offending indemnity

from the Plan, rather than to overturn the confirmation order and force Serta back into bankruptcy.

In seeking review in this Court, Petitioners do not contest the illegality of the indemnity provision in the Plan. They contend only that the Fifth Circuit could not order the narrow relief of excision. Instead of excision, Petitioners argue that the court of appeals was required to set aside the order confirming the Plan entirely, thus forcing Serta back into bankruptcy. They offer no explanation for how this might be accomplished. As the court of appeals explained, what Petitioners really contend is that nothing realistically may be done to remedy the violation: "They contend it is unfair for this court to excise the indemnity now without letting them go back to the drawing board, which we cannot do without upending the Plan. Thus, on their view, we must do nothing." Pet. App. 50a. In response, the court of appeals explained:

> Such an aggressive position requires nothing less than a full-throated rebuttal. If endorsed, [Petitioners'] argument would effectively abolish appellate review of even clearly unlawful provisions in bankruptcy plans. Parties supporting such provisions could always argue they would have done things differently if they had known the provisions would later be excised. And if we cannot excise specific provisions but must let the parties go back to square one—which we cannot do without destroying the underlying Plan—then the appellate courts are

> effectively stripped of their jurisdiction over bankruptcy appeals, despite Congress's clear intent to the contrary. *See* 28 U.S.C. § 158(d) (providing for direct appellate jurisdiction over bankruptcy court final decisions, judgments, orders, and decrees). That, of course, cannot be so, and we do not accept [Petitioners'] invitation to upset the norms of appellate review by complying with their implausible interpretations of a judge-made, atextual doctrine of pseudo-abstention.

Pet. App. 50a–51a.

The Fifth Circuit's decision does not warrant review. First, there is no conflict among the courts of appeals on the question presented, and Petitioners' attempt to concoct one fails. Petitioners rely on cases in which courts of appeals, after conducting highly fact-specific inquiries, applied the prudential doctrine of equitable mootness to either permit or deny certain forms of appellate relief, none of which resemble the case at hand. Specifically, in the cases Petitioners cite, courts typically declined to grant appellate relief that would unravel substantially consummated plans. Critically, none of those cases stand for the inverse proposition that a court of appeals must *also* deny appellate relief in Chapter 11 bankruptcy cases when the requested appellate relief would *not* unravel the plan. On the contrary, several of the decisions Petitioners cite recognize that an appellate court may order the removal of impermissible plan provisions to avoid parties retaining "ill-gotten gains."

Second, the decision below does not conflict with prior decisions of this Court. This Court has not interpreted sections 502(e)(1)(B) or 1123(a)(4), has not addressed the doctrine of equitable mootness, and the precedents of this Court that Petitioners cite do not support the notion that a court of appeals must upend a substantially consummated Chapter 11 plan rather than provide more narrowly tailored relief.

Third, this case presents an exceptionally poor vehicle for resolving the question presented. To begin with, Petitioners did not develop much of their argument in the court of appeals. For example, the "general contract principles" theory that they now offer appears nowhere in the briefing below. On the contrary, Petitioners presented their argument below largely in passing in connection with their contention that undoing the Plan would wreak havoc on Serta and its stakeholders, and thus the appeal should be dismissed as equitably moot. Ironically, it is the very result that Petitioners contended should be avoided at all costs in the court below—undoing the Plan—that Petitioners now claim was the only relief that could have been pursued.

Finally, certiorari is unwarranted because the Fifth Circuit was entirely correct in its decision for the reasons it explained. The petition should be denied.

BACKGROUND

A. Statutory Background

By operation of law, when a debtor commences a bankruptcy case, a bankruptcy estate is created

consisting of all of the debtor's property. *See* 11 U.S.C. § 541(a); *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 139 S. Ct. 1652, 1658 (2019).

After the commencement of the case, the debtor's pre-bankruptcy monetary obligations become "claims" against the estate. 11 U.S.C. §§ 101(5), 502(b); *Katchen v. Landy*, 382 U.S. 323, 336 (1966). Section 502 of the Code disallows a number of types of claims, including those "for reimbursement or contribution [that are] contingent as of the time of allowance or disallowance of such claim . . . ." 11 U.S.C. § 502(e)(1)(B).

The purpose of section 502(e)(1)(B) is straightforward: to promote equality of distribution among creditors by preventing duplicate claims against the debtor arising from the same debt (one by a creditor against the debtor—here the Excluded Lenders—and then again by the indemnitee—here the PTL Lenders—who makes payment to the creditor and then seeks to enforce the indemnity against the debtor); to facilitate the prompt liquidation and resolution of the debtor's financial obligations; and, in Chapter 11 cases, to promote successful reorganization. *See In re Hemingway Transp., Inc.*, 993 F.2d 915, 923 (1st Cir. 1993). Courts have consistently held that this prohibition of the allowance of reimbursement obligations includes indemnity claims. *See, e.g.*, *In re Vectrix Bus. Sols., Inc.*, No. 01-35656-SAF-11, 2005 WL 3244199, at *3 (Bankr. N.D. Tex. Sept. 1, 2005).

Chapter 11 permits a debtor to reorganize through a plan. 11 U.S.C. § 1121. A plan of reorganization must categorize claims into distinct classes and

provide for the treatment of claims in each class. *Id.* §§ 1122, 1123. As a general matter, if a class of claims is impaired (*i.e.*, will not be paid in full), the claimants in the class are entitled to vote on the plan. *Id.* §§ 1124, 1126.

In order for a plan to be confirmed (and thereby become effective), the plan must comply with all "applicable provisions" of the Bankruptcy Code. *Id.* § 1129(a)(1). This includes section 502, which, as noted, governs the allowance and disallowance of claims. If a claim is disallowed, the creditor may not receive any distribution on account of it under a plan. *See, e.g.*, Fed. R. Bank. P. 3021; *In re Diruzzo*, 527 B.R. 800, 804 (B.A.P. 1st Cir. 2015); *In re Pick & Save, Inc.*, 478 B.R. 110, 121 (Bankr. D.P.R. 2012) ("A disallowed claim will not participate in the case, vote on Chapter 11 plans or receive any payment with regards to that claim."). Applicable provisions of the Code also include section 1123(a)(4), which requires the same treatment for each claim within a class unless the disfavored creditor agrees otherwise. 11 U.S.C. § 1123(a)(4).

Prior to confirmation of a plan, section 1127(a) governs situations in which a "plan proponent" may modify the plan. 11 U.S.C. § 1127(a). Once a plan is confirmed, the transactions contemplated under it may be consummated. Section 1127(b) provides a mechanism by which the "proponent of the plan" or the "reorganized debtor" may modify the plan after confirmation but before "substantial consummation." 11 U.S.C. § 1127(b). Neither of these provisions, however, address modifications to a plan made by a court.

The Code defines "substantial consummation" to mean (i) the transfer of all or substantially all of the property proposed to be transferred under the plan, (ii) the assumption by the debtor or its successor of the business or management of substantially all property dealt with by the plan, and (iii) commencement of distribution under the plan. 11 U.S.C. § 1101(2). Substantial consummation of plans for large corporate debtors often involves the issuance of new debt and equity securities, the payment of large sums of money to numerous parties, and the adoption of new organizational structures. Once consummated, a plan that involves such complex, interconnected transactions may be impracticable to unravel.

The courts of appeals have adopted a judge-made doctrine of abstention from granting relief in appeals from orders confirming Chapter 11 plans where such relief would "prove 'impractical, imprudent, and therefore inequitable.'" *Behrmann v. Nat'l Heritage Found., Inc.*, 663 F.3d 704, 713 (4th Cir. 2011). Notably, this Court "has never endorsed" the doctrine, *Bennett v. Jefferson Cnty.*, 899 F.3d 1240, 1247 (11th Cir. 2018). Although the doctrine has been labeled "equitable mootness," it does not expressly limit appellate review like Article III mootness. *See, e.g.*, *In re Pac. Lumber Co.*, 584 F.3d 229, 240 (5th Cir. 2009). Due to an aggrieved party's statutory right to appeal plan confirmation orders, and the appellate courts' "virtually unflagging obligations" to exercise the jurisdiction conferred on them, the lower courts have held that the doctrine must be narrowly and carefully applied. *In re Semcrude, L.P.*, 728 F.3d 314, 320 (3d Cir. 2013); *In re One2One Commc'ns, LLC*, 805 F.3d 428, 435 (3d Cir. 2015). Equitable mootness

is only a "valid consideration" when, as a factual matter, the relief requested is "almost certain to produce a 'perverse' outcome—significant 'injury to third parties' and/or 'chaos in the bankruptcy court' from a plan in tatters." *In re Semcrude, L.P.*, 728 F.3d at 320 (internal citation omitted). Thus, in the context of applying equitable mootness to substantially consummated plans, lower courts have examined the particular facts and circumstances to determine whether effective relief may be granted that will not cause chaos for the debtor or unduly harm parties not before the court. *See, e.g.*, *In re Pac. Lumber Co.*, 584 F.3d at 240–41.

B. Proceedings Below

As noted, Serta commenced its Chapter 11 bankruptcy case on January 23, 2023. The day after the bankruptcy filing, Serta commenced an adversary proceeding (the "Adversary Proceeding") seeking a declaratory judgment that the 2020 transaction did not violate the parties' original 2016 loan agreement or other applicable legal obligations. The Debtors also filed their first *Joint Chapter 11 Plan of Serta Simmons Bedding, LLC and its Affiliated Debtors* (the "Original Plan"). CA5 ROA at 4658–718. Section 8.5 of the Original Plan, captioned "Survival of the Debtors' Indemnification Obligations," provided in pertinent part:

> [A]ny Indemnification Obligation to indemnify the PTL Lenders with respect to all present and future actions . . . in connection with . . . the 2020 Transaction shall . . . remain in full force and effect . . . [and] survive

> unimpaired and unaffected irrespective of whether such Indemnification Obligation is owed . . . . All such obligations shall be deemed and treated as executory contracts to be assumed by the Debtors under the Plan and shall continue as obligations of the Reorganized Debtors.

Pet. App. at 278a.

On March 16, 2023, UBS AG, in its capacity as agent under the PTL Credit Agreement, filed various proofs of claims in Serta's bankruptcy cases, asserting claims against Serta for "all amounts due and owing by the Debtor Obligors under, or in connection with, the Prepetition PTL [Credit] Agreement," including "all contingent and unliquidated amounts for which any Debtor Obligor is liable, including claims for . . . indemnification and contribution." CA5 ROA at 9404–20, 680-12. These proofs of claim included Serta's indemnity liability. On April 10, 2023, the Excluded Lenders filed an objection to, among other things, the indemnity claims. CA5 ROA at 9404–20. Citadel joined in the Excluded Lenders' objection and subsequently filed a supporting memorandum, requesting that the indemnity claims be disallowed. CA5 ROA at 10553:2.

On May 5, 2023, the PTL Lenders responded to Citadel's objection and insisted on the continued viability of the indemnity. CA5 ROA at 10393:4. They further disputed that the indemnity claims should be disallowed under section 502(e)(1)(B). CA5 ROA at 10395:7 n. 13.

Serta filed revised versions of the Original Plan on March 7, 22, and 23, 2023, CA5 ROA at 7470–532, 7961–8024, 8925–998, and a "First Amended" plan on May 9, 2023. Pet. App. at 15a. Serta's proposed treatment of the indemnity claims remained unchanged in each of these subsequent revisions.

Meanwhile, the bankruptcy court entered an order in the Adversary Proceeding granting summary judgment in favor of Serta and PTL Lenders, finding the 2020 Transaction involved an "open market purchase" permitted under the original 2016 loan agreement, but denying summary judgment on the question whether the 2020 Transaction violated the implied covenant of good faith and fair dealing. The Excluded Lenders filed an appeal of the partial summary ruling. Pet. App. at 14a.

Beginning on May 15, 2023, the bankruptcy court conducted a joint hearing that included a trial on the remaining issues in the Adversary Proceeding and an evidentiary hearing on confirmation of the Debtors' plan (the "Confirmation Hearing"). The night before commencement of the Confirmation Hearing, Serta filed a "Modified First Amended" plan that featured a "new" indemnity:

> Following the Effective Date, the PTL Lenders shall be indemnified by the Reorganized Debtors with respect to all present and future actions, suits, and proceedings against the PTL Lenders or their respective Related Parties in connection with . . . the 2020 Transaction on the same terms and limitations as

> afforded under the PTL Credit Agreement
> . . . .

CA5 ROA at 17656–57 § 8.5.

Having decided to pursue the argument that the plan now contained a "new" indemnity, Serta and the PTL Lenders formally agreed at the Confirmation Hearing that the PTL Lenders' pre-bankruptcy indemnity claims had been "disallowed." CA5 ROA at 2909:10–2910:6. Because the "new" indemnity covered "present and future actions" and would be on "the same terms and limitations as afforded under the PTL Credit Agreement," however, the change was purely cosmetic.

During the Confirmation Hearing, Serta sought to establish that the indemnity was integral to a "comprehensive settlement" with the PTL Lenders. CA5 ROA at 26496:21. On cross-examination, however, Serta's fact witness stated that, although he believed that the indemnity was "a critical part of the deal," he never actually spoke with any lenders about the indemnity and his only understanding as to why it was important was because "it was in every draft [of the plan documents] that I saw . . . ." *Id.* at 26657:16.

The testimony at the Confirmation Hearing also confirmed—as Serta had acknowledged from the very inception of its bankruptcy—the potentially ruinous risk Serta faced in honoring the indemnity as a go-forward obligation under the plan. For example, a director of Serta's finance committee acknowledged that the amount Serta might have to pay to indemnify the PTL Lenders could be "very, very large," CA5 ROA at 26926:3, "possibly approaching a [b]illion dollars." *Id.* at 26940:14–21. He testified further that, if it

materialized, the indemnity would "clearly imperil the company." *Id.* at 26937:23.

On the day before the final day of the Confirmation Hearing, Serta filed a further revised plan (the aforementioned Plan). Pet. App. at 16a. Among other things, the Plan divided claims under the PTL Credit Agreement into two distinct classes: Classes 3 and 4. Class 3 contains claims under the "first lien first out" portion of the facility (the "FLFO Term Loan"). Class 4 contained claims under the "first lien second out" portion of the facility (the "FLSO Term Loan"). Pet. App. at 225a–226a.

The Plan provided that holders of FLFO Claims in Class 3 would receive "New Term Loans" equal to the full allowed amount of their FLFO Claims. Pet. App. at 225a. The "New Term Loans" are what is known as "take back debt," because they did not require the lenders to fund the loans with new money. In turn, the holders of FLSO Claims in Class 4 were slated to receive their pro rata share of (i) 99% of the new common equity interests in the Reorganized Debtors and (ii) the "take back" New Term Loans allocated to Class 4. Pet. App. at 226a. Thus, under the Plan, the lenders under the PTL Credit Agreement would receive substantially all of the economic value of reorganized Serta on account of their secured claims acquired in the 2020 transaction, and not on account of any contribution of new value.

The Plan also provided that holders of claims in Classes 3 and 4 would have the benefit of the indemnity provision. Pet. App. at 279a. However, only the PTL Lenders that participated in the 2020 transaction, and are thus being sued by the Excluded

Lenders, stood to benefit from the indemnity, potentially to the tune of hundreds of millions of dollars, if not far more. Conversely, holders of claims in Classes 3 and 4 who did not participate in the 2020 transaction (*e.g.*, Citadel), and are thus not defendants in the litigation, would receive no benefit at all.

After the Confirmation Hearing, the bankruptcy court confirmed the Plan, Pet. App. at 99a, and found that the 2020 transaction did not breach the implied duty of good faith and fair dealing, *id*. at 98a. Citadel and the Excluded Lenders appealed the bankruptcy court's order confirming the Plan, and the Excluded Lenders appealed the judgment in the Adversary Proceeding. Citadel and the Excluded Lenders requested a stay of the confirmation order from the bankruptcy court, the district court, and the Fifth Circuit, which requests were denied. CA5 ROA at 20499; 40–66; 4108–09.

Thereafter, the Plan was consummated. As the PTL Lenders controlled the satisfaction or waiver of the Plan conditions requiring their "approval" of the execution of certain plan documents in order for the Plan to go forward, *see* Pet. at 10, the PTL Lenders chose to proceed with consummation fully aware of the pendency of an appeal seeking to invalidate the indemnity.

The appeals regarding plan confirmation and the Adversary Proceeding were certified and accepted for direct appeal by the Fifth Circuit under 28 U.S.C. § 158(d), and the Fifth Circuit consolidated the appeals. Serta and the PTL Lenders filed a joint motion to dismiss the appeals from the bankruptcy court's order

confirming the plan, citing equitable mootness. In that context, Petitioners argued below that forcing the Debtors back into bankruptcy proceedings would "wreak . . . havoc" by upsetting the settled expectations of third parties. *See* Appellees' Opposed Mot. to Dismiss Appeals at 21, No. 23-30363, ECF 126 (Feb. 20, 2024).

On December 31, 2024, the Fifth Circuit issued an opinion reversing the bankruptcy court's judgment in the Adversary Proceeding, denying the motion to dismiss the appeals of the confirmation order on grounds of equitable mootness, and reversing the bankruptcy court's approval of the indemnity provision in the Plan.

In declining to dismiss the appeals on grounds of equitable mootness, the Fifth Circuit found that, if the indemnity were to be excised from the plan, it "would not 'affect either the rights of parties not before the court or the success of the plan.'" Pet. App. 46a. In response to Petitioners' argument that excision of the indemnity would be unfair, the Fifth Circuit reasoned that accepting Petitioners' argument—that the court could not excise the indemnity without sending the debtor back into bankruptcy and upending the Plan, and thus it was required to do nothing—would "effectively abolish appellate review of even clearly unlawful provisions in bankruptcy plans." *Id*. at 50a. In addition, the court reasoned that Petitioners were sophisticated parties that had agreed to a "controversial indemnity arising out of a contentious transaction," and thus "could foresee the adverse consequences of an unfavorable appellate ruling." *Id.* at 52a.

On the merits, the Fifth Circuit found that the indemnity contained in the Plan was, in substance, merely a resurrection of the parties' pre-bankruptcy 2020 contractual indemnity obligation that the bankruptcy court had disallowed, and thus constituted an "impermissible end-run around the Code." *Id.* at 57a. The Fifth Circuit further found that the indemnity violated the equal treatment requirement of section 1123(a)(4) of the Code, because the expected value of the indemnity was potentially worth millions of dollars to the parties that participated in the 2020 transaction, but worth little or nothing to parties in the same class that did not.

Finally, the Court determined that "follow[ing] directly from [its] earlier discussion of equitable mootness" the appropriate remedy was to "excise the offending indemnity." *Id.* at 61a.

REASONS FOR DENYING THE PETITION

I. This Case Does Not Present A Question On Which The Circuit Courts Are Divided.

The Fifth Circuit's decision to excise an illegal indemnity from Serta's confirmed Chapter 11 Plan does not conflict with the decisions of other courts of appeals. In their attempt to manufacture a circuit split, Petitioners assert that decisions of the First, Second, Third, and Fourth Circuits stand for the general proposition that "it is improper to make material changes to a confirmed plan without giving the parties a chance to renegotiate." Pet. at 17. Petitioners' assertion, however, incorrectly

characterizes the holdings of those cases and obscures the context in which they were decided.

The cases Petitioners cite involve application of the doctrine of equitable mootness, which Petitioners do not challenge—indeed, they affirmatively invoked the doctrine below (albeit unsuccessfully) in seeking dismissal of the appeals. As applied in the lower courts, the "doctrine of equitable mootness represents a pragmatic recognition by courts that reviewing a judgment may, after time has passed and the judgment has been implemented, prove 'impractical, imprudent, and therefore inequitable.'" *Behrmann*, 663 F.3d at 713. Unlike constitutional mootness, which prohibits appellate review in the absence of an actual case or controversy as required by Article III of the Constitution, equitable mootness arises when an "appellate court deems it prudent for practical reasons to forbear deciding an appeal" because of "its feared consequences should a bankruptcy court's decision approving plan confirmation be reversed." *In re Trib. Media Co.*, 799 F.3d 272, 277–78, n.3 (3d Cir. 2015); *see also In re SW Bos. Hotel Venture, LLC*, 748 F.3d 393, 402 (1st Cir. 2014) (equitable mootness may apply where "remediation has become impracticable or impossible"); *In re Charter Commc'ns, Inc.*, 691 F.3d 476, 481 (2d Cir. 2012) (equitable mootness is a "prudential doctrine" under which an appellate court can dismiss an appeal where granting relief would be "inequitable"); *In re Chateaugay Corp.*, 10 F.3d 944, 950–51 (2d Cir. 1993) ("Within the bankruptcy context, an appeal should also be dismissed as moot when, even though effective relief could conceivably be fashioned, implementation of that relief would be inequitable.") (quotations and citation omitted).

The courts of appeals employ a multi-factor inquiry in evaluating whether the doctrine applies to a specific case. While each court of appeals phrases its prudential factors slightly differently, they are all substantially similar to the factors considered by the Fifth Circuit, namely "(i) whether a stay has been obtained, (ii) whether the plan has been 'substantially consummated,' and (iii) whether the relief requested would affect either the rights of parties not before the court or the success of the plan." Pet. App. 45a (citing *In re Highland Cap. Mgmt., LP*, 48 F.4th 419, 429 (5th Cir. 2022)); *see also, e.g.*, *Ahuja v. LightSquared Inc.*, 644 F. App'x 24, 26–27 (2d Cir. 2016); *In re Semcrude, L.C.,* 728 F.3d at 321; *In re Charter Commc'ns, Inc.*, 691 F.3d at 482; *Blixseth v. Yellowstone Mountain Club*, 609 F. App'x 390, 392 (9th Cir. 2015); *In re U.S. Airways Grp., Inc.*, 369 F.3d 806, 809 (4th Cir. 2004).

The factor-based analysis "ensure[s] that there is no *per se* equitable mootness by requiring a court to examine the actual effects of the requested relief." *In re Charter Commc'ns, Inc.*, 691 F.3d at 482; *see also In re Trib. Media Co.*, 799 F.3d at 278. In particular, a court "cannot rely solely on the debtor's conclusory predictions or opinions that the requested relief would doom the reorganized company" and instead must engage in an "analytical inquiry into the likely effects of the relief an appellant seeks [that] must be based on facts." *In re Charter Commc'ns, Inc.*, 691 F.3d at 482. The doctrine "involves 'a discretionary balancing of equitable and prudential factors'" that is "limited in scope and [should be] cautiously applied.'" *In re PWS Holding Corp.*, 228 F.3d 224, 236 (3d Cir. 2000) (citing *In re Cont'l Airlines*, 91 F.3d 553, 559–60 (3d Cir. 1996)); *see also In re Charter Commc'ns, Inc.*, 691 F.

3d at 483 (stating that dismissal for equitable mootness "lies withing the sound discretion of the district court" acting as appellate court). And because "equitable mootness applies to specific claims, not entire appeals," it must be applied "with a scalpel rather than an axe." *In re Charter Commc'ns, Inc.*, 691 F. 3d at 481–82 (citing *In re Pac. Lumber Co.*, 584 F.3d 229, 240–41 (5th Cir. 2009)); *see also In re Trib. Media Co.*, 799 F.3d 272, 278 (3d Cir. 2015); *In re Lett*, 632 F.3d 1216, 1226 n.21 (11th Cir. 2011); *Ahuja v. LightSquared Inc.*, 644 F. App'x at 27–28 (2d Cir. 2016) (appeal not equitably moot where the court "can order at least some effective relief in the form of monetary damages . . . without knocking the props out from under the completed transaction").

In the cases Petitioners cite, each court engaged in this highly fact-intensive inquiry before ultimately deciding, in the exercise of its discretion, whether it would be imprudent or inequitable to grant certain appellate relief. In doing so, none of courts created a categorical rule forbidding "blue-penciling" of a Chapter 11 plan or requiring a redo of confirmation any time an appellate court finds that a plan should be changed. As those decisions themselves or other decisions of the relevant Circuit Courts demonstrate, it is quite the opposite.

For example, in *In re SW Bos. Hotel Venture, LLC*, 748 F.3d 393 (1st Cir. 2014), the First Circuit adopted the "careful and detailed analysis" of the First Circuit Bankruptcy Appellate Panel *denying* equitable mootness. *Id.* at 403. In conducting its analysis, the Panel had found that granting the relief appellant requested—the modification of a substantially

consummated plan to provide for payment by the debtor of substantial sums to the appellant on account of postpetition interest—would *not* necessarily disrupt the entire plan. *See Prudential Ins. Co. of Am. v. SW Bos. Hotel Venture, LLC (In re SW Bos. Hotel Venture, LLC)*, BAP No. 11-087 (1st Cir. B.A.P., March 12, 2012) (Order Denying Motion to Dismiss Appeal). None of the decisions of the First Circuit stand for the proposition that, in applying the doctrine of equitable mootness, it is impermissible to order the excision of a plan provision as opposed to overturning confirmation of a plan in its entirety.

In *In re Charter Commc'ns, Inc.*, the Second Circuit found that an appeal from a substantially consummated plan is not "automatically equitably moot if the relief requested would require that a confirmed plan be altered." *In re Charter Commc'ns, Inc.*, 691 F.3d at 482. Although the Second Circuit declined to strike the settlement releases contained in the particular Chapter 11 plan in that case, it stated that if a settlement incorporated into a plan "were unlawful, it would not be inequitable to require the parties to that agreement to disgorge their ill-gotten gains, participation in the appeal or not." *Id.* at 484. Rather than refute the Fifth Circuit's analysis in this matter, the Second Circuit's reasoning affirmatively supports it.

In *In re Tribune Media Co.,* 799 F.3d 272 (3d Cir. 2015), the Third Circuit found that there would be "no reason to dismiss as equitably moot an appeal of a confirmation order for a plan now substantially consummated" when "relief would *neither* fatally scramble the plan *nor* significantly harm the interests

of third parties who have justifiably relied on plan confirmation." *Id.* at 278 (emphasis in original). According to the Third Circuit, one of the specific instances in which "reliance on consummation of a plan would not be justified," is the one previously identified by the Second Circuit: when "a third party obtained a benefit that was inconsistent with a contract, statute, or judgment, as any benefit from such an error would result in 'ill-gotten gains.'" *Id.* (citing *In re Charter Commc'ns, Inc.*, 691 F.3d at 484). Moreover, although the Third Circuit held that a portion of the appeal related to releases was indeed equitably moot, a separate issue in the appeal regarding the allocation of certain recoveries was not. Specifically, to the extent the plan allocated a recovery to one class of creditors (Class 1F) that, by contract, should have been allocated to a different class of creditors (Class 1E), equitable mootness would not prevent a modification of the plan to correct that unfair allocation. *Id.* at 283. This was so even if the creditors in Class 1F relied on the payments they received due to the plan's confirmation and implementation because, if their entitlement to the money was unlawful, keeping that money would not be "legally justifiable." *Id.* Once again, this analysis does not support Petitioners' reading of the cases as establishing a circuit conflict—quite the opposite.

In *In re Millenium Lab Holdings II, LLC*, 945 F.3d 126 (3d Cir. 2019), after finding that certain third-party releases essential to obtaining a $325 million settlement payment that "allowed Millenium's survival" were too central to the reorganization to be excised from the Chapter 11 plan, the Third Circuit made clear that its "holding today is specific and

limited to the particular facts of this case" and that nothing in the opinion "should be read to imply that review of reorganization plans involving third-party releases will always or even often be barred as equitably moot and therefore effectively unreviewable." *Id.* at 144 n.20. This is consistent with the Third Circuit's decision in *In re PWS Holding Corp.* Although the Third Circuit there ultimately declined to excise the particular releases from a plan, it found that "[t]he releases (or some of the releases) could be stricken from the plan without undoing other portions of it" and "the plan could go forward even if the releases were struck." *In re PWS Holding Corp.*, 228 F.3d at 236–37.

Likewise, the Fourth Circuit, in *Behrmann v. National Heritage Foundation*, held that an appeal seeking removal of releases from a Chapter 11 plan was not equitably moot because appellants did not demonstrate that such removal would jeopardize the success of the plan or harm third parties. 663 F.3d at 714–15; *see also In re Bate Land & Timber LLC*, 877 F.3d 188, 195 (4th Cir. 2017) (concluding appeal was not equitably moot because "the facts presented do not support the conclusion that 'effective judicial relief is no longer practically available.'"). In doing so, it distinguished *In re U.S. Airways Group, Inc.*, 369 F.3d 806 (4th Cir. 2004) (cited by Petitioners) on factual grounds. Thus, relevant Fourth Circuit precedent also fails to support Petitioners' reading of the decisions as establishing a circuit split.

Like the other circuit courts, the Fifth Circuit in this case undertook a thorough, fact-intensive analysis of the likely effects of the relief Respondents

sought. In *this* case and on *these* facts, the court concluded that it could exercise its discretion to fashion a remedy that would not upset the Plan or harm third parties not before the court. And importantly, petitioners do not even challenge the Fifth Circuit's conclusion that the appeal was not equitably moot—as opposed to its subsequent analysis of the appropriate remedy. That other courts of appeals, employing a similar discretionary fact-based analysis, concluded in *different* cases on *different* facts that the requested relief would be imprudent or inequitable does not mean those decisions are in conflict.

Finally, Petitioners seek to invent a circuit split by declaring that "the appropriate remedy if a plan provision is deemed invalid is a threshold question that arises irrespective of equitable mootness considerations." Pet. at 17. But Petitioners cite nothing in support of this proposition. And all of the authority they cite analyzes the question as part of the equitable mootness inquiry. Moreover, there is simply nothing unusual or extraordinary about a court considering the proper remedy in a matter *after* addressing all relevant legal and procedural issues—quite the opposite. Once again, no conflict exists.

Petitioners' true quarrel is with the Fifth Circuit's finding that the present matter was not equitably moot. Moreover, they seek to entrench in the law a Hobson's Choice for any appellate court considering an appeal of a substantially consummated Chapter 11 plan under which some parties have obtained unlawful benefits: either (i) dismiss the appeal as equitably moot and allow the parties who thereby

escape appellate review to retain any "ill-gotten gains," or (ii) unravel the plan and its associated transactions (including the issuance of publicly-traded debt and equity securities, the distribution of large sums money to creditors, etc.) to allow for a re-vote, with all of the harm to the debtor and third parties that such relief would entail. For Petitioners, there can be no middle ground in the form of some more tailored, less drastic relief. The Fifth Circuit rightfully recognized the absurdity of Petitioners' position, and in rejecting it created no conflict with the decisions of other courts of appeals.

II. The Decision Below Does Not Conflict With This Court's Precedents.

This case also does not present a question on which the court below has deviated from or disregarded this Court's precedents. This Court has never interpreted sections 502(e)(1)(B) or 1123(a)(4) of the Bankruptcy Code. Nor has this Court considered the doctrine of equitable mootness or considered whether excising a plan provision is an appropriate remedy on appeal. Petitioners do not argue seriously to the contrary.

Petitioners suggest more generally that the decision below conflicts with this Court's reasoning in *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 207 (1988), which Petitioners assert stands for the proposition that "the Code provides that it is up to the creditors—and not the courts—to accept or reject a reorganization plan." Pet. at 14. Petitioners, however, fail to complete that quote, which ends with the following qualification: "which fails to provide

them adequate protection or fails to honor the absolute priority rule, 11 U.S.C. § 1126 (1982 ed. and Supp. IV)." *Ahlers*, 485 U.S. at 207. In context, what *Ahlers* establishes is that creditors are entitled to reject a plan that does not comply with the Bankruptcy Code, specifically the Code's absolute priority rule and adequate protection requirements. *Ahlers* does *not* stand for the proposition that an appellate court is prohibited from correcting a plan that violates the Code just because creditors have voted to accept it.[2]

Petitioners also cite to a footnote from *Bank of America National Trust & Savings Ass'n v. 203 N.*

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[2] In *Ahlers*, the Court reviewed a lower court decision concluding that a plan of reorganization could permit a debtor to retain the debtor's equity ownership stake in a family farm even if the creditors voted against the plan, which did not propose to pay the creditors in full. 485 U.S. at 200–03. The Court held that the debtor's retention of the equity ownership interest was contrary to the "absolute priority" rule codified in section 1129(b)(2)(B)(ii) of the Code, and disagreed with the lower court that the debtors' promise of future services qualified for an exception to the rule. *Id*. at 202–06. In doing so, the Court noted that Code allows creditors to vote to accept a plan that fails to honor the absolute priority rule, but the principal creditors entitled to vote did not do so in that case. *Id*. at 206–07. Because those creditors exercised their "prerogative" to object to the plan, and the Code does not allow a court to confirm a plan that violates the absolute priority rule over such an objection, the plan could not be confirmed. *Id*. A bankruptcy court could not, in the name of equity, override this requirement because "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Id*. at 206. If anything, *Ahlers* supports the reasoning of the Fifth Circuit, which corrected a plan that failed to follow the Code.

LaSalle St. Partnership, 526 U.S. 434 (1999) for the proposition that the "Chapter 11 process relies on creditors and equity holders to engage in negotiations toward resolution of their interests." *Id.* at 457 n.28. All that the quoted language establishes is the exceedingly straightforward and uncontroversial proposition that creditors may negotiate with the debtor towards achieving a consensual plan. And contrary to Petitioners' suggestion, the case does *not* stand for the proposition that an appellate court is prohibited from correcting a plan that violates the Code just because creditors have voted to accept it.[3] There is no conflict between the decision below and the precedents of this Court that Petitioners cite.

Finally, Petitioners suggest that, in *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024), the Court reserved the question presented. But the Court left open the question only in the sense that it was neither implicated nor briefed because, in *Purdue*, the Court had stayed the debtor's Chapter 11 plan *before* it could go into effect. In other words, because of the stay,

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[3] In *203 N. LaSalle*, the Court considered whether a plan that provided existing equity holders with the exclusive opportunity to pay new value to retain the equity of a reorganized debtors could be confirmed over the objection of a rejecting class of creditors. The Court held that it could not, as the exclusive opportunity violated the absolute priority rule. In dicta, the Court expressed that the best way to determine whether the price offered by existing equity holders represented full value was to expose the opportunity to the market, which would not occur where the plan provided an exclusive right to purchase and there were no competing plans. That is where the footnote cited by Petitioners came into play: the Court was simply recounting the virtues of creditor voting in determining value.

there was no occasion to address whether, following substantial consummation of a Chapter 11 plan, a court may order relief excising an unlawful provision in the plan. The Court's statement in passing that it was not addressing whether its opinion "would justify unwinding reorganization plans that have already become effective and been substantially consummated," appears to refer merely to the possibility that such appeals could be rendered equitably moot, as had been suggested by the government in its stay application. *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204, 206 (2024); *see also* Application for Stay at 5, 25–27, *Harrington,* 603 U.S. 204 (No. 23A87).

III. This Case Is An Exceptionally Poor Vehicle For Reviewing The Issues Decided Below.

Certiorari should also be denied because this case offers an exceptionally poor vehicle for consideration of the issues Petitioners present. To begin with, Petitioners' argument relies heavily on a severability analysis based on "general contract principles." Pet. at 25–30. Although they fault the Fifth Circuit for failing to adhere to those principles, neither Serta nor Petitioners clearly briefed them below. As this Court has explained, it is a tribunal of "review, not of first view." *See, e.g.*, *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 37 (2012) (citing *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

In addition, Petitioners' presentation of the issues represents a remarkable about-face from what they

argued below. Petitioners' arguments below focused on convincing the Fifth Circuit that the court's hands were effectively tied owing to the substantial consummation of Serta's Plan. *See* Appellees' Opposed Mot. to Dismiss Appeals at 17, No. 23-30363, ECF 126 (Feb. 20, 2024). Specifically, Petitioners contended that granting appellate relief would require unwinding the Plan, forcing Serta back into bankruptcy. This, they argued, could not be done consistent with the doctrine of equitable mootness. As noted, the Fifth Circuit disagreed, concluding that it *could* grant effective relief short of undoing the Plan, and that the doctrine of equitable mootness did not bar a more narrowly tailored remedy.

In this Court, Petitioners assert that they do not "question the propriety of the equitable mootness doctrine," Pet. at 35, insisting instead that the question whether an appellate court can excise an unlawful plan provision "arises irrespective of equitable mootness considerations." Petitioners' Brief at 17. But that is not what they argued below, and that is not how the matter was decided. In the Fifth Circuit, all of Petitioners' arguments were couched in terms of the proper application of the equitable mootness doctrine. The court of appeals plainly disagreed with Petitioners' position, comprehending it for what it was: an attempted misuse of the doctrine. By contending now that the only relief available was for the court of appeals to unwind the Plan, Petitioners' current position in this Court is exactly the opposite of what they argued below could not be done (*i.e.*, unwinding the Plan because of the doctrine of equitable mootness).

This case also presents a poor vehicle for review of the issues Petitioners raise because whether a Chapter 11 plan may include an indemnity provision in violation of sections 502(e)(1)(B) and 1123(a)(4), and whether such a Code violation may be immune from appellate review under equitable mootness principles, presents a novel issue that has not been decided previously by another appellate court. Far more typical is whether a plan may include third-party releases like the ones at issue in *Harrington v. Purdue Pharma L.P.*, 603 U.S. 204 (2024), and whether a plan that does so may be immune from appellate review under the equitable mootness doctrine once the plan is substantially consummated. Because the indemnity issue in this case is both atypical and unlikely to recur, this case presents a poor vehicle for consideration of the kinds of relief a court of appeals may entertain following plan confirmation and consummation.

IV. The Fifth Circuit's Decision Was Correctly Decided.

Petitioners do not take issue with the Fifth Circuit's holding that the inclusion of the indemnity in the Plan violated the Bankruptcy Code, and "do not contest the authority of reviewing courts to hold plan provisions unlawful[.]" Pet. at 35. Rather, Petitioners argue that, unless the reviewing court finds the appeal to be equitably moot, it must unravel a substantially consummated plan and send the debtor back into bankruptcy to redo the plan negotiation and voting process. *Id.* But there is no warrant for such a conclusion.

As the Fifth Circuit recognized, Petitioners are "sophisticated parties" that "agreed to a controversial indemnity arising out of a contentious transaction." Pet. App. 52a. Among other things, Petitioners were keenly aware that the inclusion of the indemnity in the Plan was heavily disputed. They also knew that, after the bankruptcy court confirmed the Plan, the indemnity would be the subject of immediate appeals. Nonetheless, they agreed to move forward with consummation of the Plan, knowing full well that the indemnity provision was at risk. Had Petitioners caused Serta to delay consummation of the Plan (which Petitioners had the option to do), Serta would have remained in bankruptcy and the Plan would not have been consummated. In that situation, the Fifth Circuit might have remanded the case to the bankruptcy court for the formulation of a new plan. Instead, Petitioners chose to gamble on the strength of their claim that, owing to equitable mootness, the court of appeals could do nothing once the Plan had been finalized.

The Fifth Circuit saw through this gambit. As noted at the outset, it stated bluntly: "They contend it is unfair for this court to excise the indemnity now without letting them go back to the drawing board, which we cannot do without upending the plan. Thus, on their view, we must do nothing." Pet. App. 50a. The court then correctly found that "if endorsed, the appellees' argument would effectively abolish appellate review of even clearly unlawful provisions in bankruptcy plans" and "if we cannot excise specific provisions but must let parties go back to square one—which we cannot do without destroying the Plan—then the appellate courts are effectively

stripped of their jurisdiction over bankruptcy appeals despite Congress's clear intent to the contrary." *Id.* at 50a–51a. The court properly declined to adopt Petitioners' position. *See also, e.g.*, *In re Charter Commc'ns, Inc.*, 691 F.3d at 482 (recognizing that unlawful provision may be set aside to avoid a party retaining "ill-gotten gains"); *In re One2One Commc'ns LLC*, 805 F.3d 428 at 435 (courts must consider whether it is possibly to "modif[y] [a substantially consummated plan] in a manner that does not cause its collapse" in equitable mootness considerations); *In re Thorpe Insulation Co.*, 677 F.3d 869, 882 (9th Cir. 2012) (holding that the question of whether a confirmed plan may be altered is not whether third-party interests would be altered, but rather whether such change would be inequitable).

Finally, it is worth noting that the Fifth Circuit's decision does not unfairly harm Petitioners. The PTL Lenders received substantially all of the economic value of reorganized Serta under the Plan. Petitioners were not required to contribute new money or provide material concessions to receive that value. Rather, their principal "concession" was their agreement to convert some of their "second-out" debt into 99% of the equity of the reorganized company. The only alternative to this conversion was a liquidation of Serta, which would have netted them a much lower return. Petitioners' overreaching ambition of having Serta indemnify them for any wrongdoing arising from their participation in the

2020 transaction does not warrant this Court's review of the Fifth Circuit's correct resolution of this matter.[4]

CONCLUSION

For the foregoing reasons, the Petition should be denied.

Respectfully submitted,

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[4] In support of their argument, Petitioners cite several provisions of the Bankruptcy Code and likewise refer to principles of severability borrowed from contract law. *See* Pet. at 21–30. None of the referenced Code provisions, however, refer to the ability of an appellate court to craft remedies in response to unlawful provisions in a confirmed plan. Likewise, Petitioners' reliance on contract principles is entirely misplaced. Regardless of whether a plan functions in some sense like a contract or whether contract principles may be useful in a plan's interpretation, a confirmed plan is a court-approved instrument that binds all parties in interest whether they agreed to it or not. *See* 11 U.S.C. §§ 1129(a), 1141(a). Further, the bankruptcy court has a statutory obligation to ensure that a plan complies with the Code, *id.* § 1129(a)(2), and that determination is, by statute, reviewable on appeal, *see* 28 U.S.C. § 158. There is no warrant to Petitioners' argument that principles of severability borrowed from contract law supplant these statutory directives.

Counsel for Respondent Citadel Equity Fund Ltd.

October 8, 2025

Counsel for Respondents G Centre Street Partnership L.P.; AG Credit Solutions Non-ECI Master Fund, L.P.; AG Super Fund Master, L.P.; AG SF Master (L), L.P.; Ascribe III Investments, LLC; Columbia Cent CLO 21 Limited; Columbia Cent CLO 27 Limited; Columbia Floating Rate Fund, a series of Columbia Funds Series Trust II; Columbia Strategic Income Fund, a series of Columbia Funds Series Trust I; Contrarian Capital Fund I, L.P.; Contrarian Credit Feeder Fund, L.P.; Contrarian Centre Street Partnership, L.P.; Gamut Capital SSB, LLC; North Star Debt Holdings, L.P.; Silver Oak Capital, L.L.C.; Shackleton 2013-III CLO, Ltd.; Shackleton 2013-IV-R CLO, Ltd.; Shackleton 2014-V-R CLO, Ltd.; Shackleton 2015-VII-R CLO, Ltd.; Shackleton 2017-XI CLO, Ltd.; Z Capital Credit Partners CLO 2018-1 Ltd.; and Z Capital Credit Partners CLO 2019-1 Ltd.