No. 24A_____

IN THE

Supreme Court of the United States

BARINGS LLC, ET AL.,

Applicants,

v.

AG CENTRE STREET PARTNERSHIP, ET AL.,

Respondents.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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CORPORATE DISCLOSURE STATEMENT

Under this Court's Rule 29.6, Applicants state the following:

Applicant Barings LLC is a wholly-owned subsidiary of MM Asset Management Holding LLC, which is a wholly-owned subsidiary of MassMutual Holding LLC, which, in turn, is a wholly-owned subsidiary of Massachusetts Mutual Life Insurance Company. Massachusetts Mutual Life Insurance Company has no parent company, and no publicly held corporation has an ownership interest in 10% or more of Massachusetts Mutual Life Insurance Company's stock.

Applicant Boston Management and Research, Inc. is a wholly-owned subsidiary of Eaton Vance Management, which is a wholly-owned subsidiary of Morgan Stanley Capital Management, LLC, which, in turn, is a wholly-owned subsidiary of Morgan Stanley, a publicly traded corporation. Morgan Stanley has no parent corporation; based on Securities and Exchange Commission rules regarding beneficial ownership, Mitsubishi UFJ Financial Group, Inc., 4-5, Marunouchi 1-chome, Chiyoda-ku, Tokyo 100-8330, beneficially owns greater than 10% of Morgan Stanley's outstanding common stock.

Applicant Eaton Vance Management is a wholly-owned subsidiary of Morgan Stanley Capital Management, LLC, which, in turn, is a wholly-owned subsidiary of Morgan Stanley, a publicly traded corporation. Morgan Stanley has no parent corporation; based on Securities and Exchange Commission rules regarding beneficial ownership, Mitsubishi UFJ Financial Group, Inc., 4-5, Marunouchi 1-chome, Chiyoda-ku, Tokyo 100-8330, beneficially owns greater than 10% of Morgan Stanley's outstanding common stock.

Applicant Invesco Senior Secured Management, Inc. is an indirectly wholly-owned subsidiary of Invesco Ltd., a publicly held corporation. Invesco Ltd. has no parent company; based on Securities and Exchange Commission rules regarding beneficial ownership, BlackRock, Inc., The Vanguard Group, and Massachusetts Mutual Life Insurance Company each owns greater than 10% of Invesco Ltd.'s outstanding common stock.

Applicant UBS Asset Management (Americas) LLC (as successor in interest to Credit Suisse Asset Management LLC) is a wholly-owned indirect subsidiary of UBS Group AG, which has no parent company, and no publicly traded corporation owns 10% or more of its stock.

TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Pursuant to this Court's Rule 13.5, Applicants Barings LLC, Boston Management and Research, Eaton Vance Management, Invesco Senior Secured Management, Inc., and UBS Asset Management (Americas) LLC request a 60-day extension of time, to and including July 18, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit. The court of appeals entered its judgment on December 31, 2024, App., *infra*, 1a, and denied Applicants' timely petition for rehearing on February 18, 2025, *id.* at 56a. Unless extended, the time within which to file a petition for a writ of certiorari will expire on May 19, 2025. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1).

1. This case presents an important, recurring question that has divided circuits regarding the proper relief when an appellate court determines that a material provision in a consummated Chapter 11 bankruptcy plan is unenforceable. Last Term, in *Harrington* v. *Purdue Pharma, L.P.*, 603 U.S. 204 (2024), this Court held unlawful certain provisions in a confirmed bankruptcy plan and then vacated and remanded—unwinding and providing for a do-over of the plan. But that plan had been stayed pending appeal, and *Purdue* explicitly did not address whether an appellate court must remand for a do-over when it holds a provision in a consummated plan unlawful. That is the question presented by this case, and one that has divided the circuits.

a. The First, Second, Third, and Fourth Circuits have recognized that an

appellate court cannot simply excise material plan provisions from a consummated plan. *In re Financial Oversight and Management Board for Puerto Rico*, 989 F.3d 123 (1st Cir. 2021); *In re Charter Communications, Inc.*, 691 F.3d 476, 486 (2d Cir. 2012); *In re Tribune Media Co.*, 799 F.3d 272, 281 (3d Cir. 2015); *In re U.S. Airways Group, Inc.*, 369 F.3d 806, 811 (4th Cir. 2004). Instead, appellate modification of an integral plan provision requires a "redo" of the plan, *Tribune*, 799 F.3d at 281, involving "renewed negotiations" with creditors in "reopened" bankruptcy-court proceedings, *Charter*, 691 F.3d at 486 & n.5.

b. This result comports with the Bankruptcy Code's detailed voting system empowering creditors to approve or reject changes to a Chapter 11 plan. See 11 U.S.C. §§ 1127, 1129. Under the Code, pre- and post-confirmation material modifications to a Chapter 11 plan must be approved by creditors. See *id.* § 1127(b); Fed. R. Bankr. P. 3019(a). The same rule should apply for modifications made by an appellate court.

c. Moreover, confirmed bankruptcy plans are treated as a contract. See 8 Collier on Bankruptcy § 1142.04[2] (16th ed. 2025). As several of these circuits have recognized, whether a plan provision can be excised is thus a question of severability, and an appellate court should conduct a severability analysis before excision. Where, for example, the plan contains a severability clause, the provision may be excisable without a revote by creditors. See, *e.g.*, *National Heritage Foundation, Inc.* v. *Highbourne Foundation*, 760 F.3d 344, 349 (4th Cir. 2014). In contrast, where a plan contains a nonseverability provision, as is the case here, that is persuasive evidence that the only remedy is vacatur and remand for a new vote or "redo" of the plan. See

Puerto Rico, 989 F.3d at 132; *In re Millennium Lab Holdings II, LLC*, 945 F.3d 126, 141 (3d Cir. 2019).

d. In the decision below, the Fifth Circuit diverged from these circuits and excised an indemnity provision from the Chapter 11 bankruptcy plan of Serta Simmons Bedding, LLC ("Serta"), a manufacturer of mattress and bedding, without offering a revote to creditors. App. 44a-46a, 54a. The Fifth Circuit excised the provision without performing a severability analysis of the plan, even though the plan contained a nonseverability provision, and the undisputed testimony before the bankruptcy court was that the indemnity was a *sine qua non* for the plan. *Id.* at 15a-16a. Only one other court has taken a similar position to the Fifth Circuit, though it stopped short of the Fifth Circuit's aggressive stance, merely concluding that some form of relief short of revoting on the plan was theoretically possible. *In re Transwest Resort Properties, Inc.*, 801 F.3d 1161, 1172–73 (9th Cir. 2015).

e. Given the conflict and confusion among the circuits over the proper remedy when a plan provision is deemed unlawful on appeal, the Fifth Circuit's decision warrants this Court's review.

2. Additional time is necessary for counsel to prepare a petition that would be helpful to the Court.

a. The proceedings before the bankruptcy court involved multiple actions, spawned multiple appeals, and concern hundreds of interested creditors. Counsel represents many of those creditors that negotiated Serta's Chapter 11 plan and have a significant interest in the forthcoming petition for a writ of certiorari. Counsel will require more time to ensure their agreement with that petition.

b. Moreover, counsel for the Applicants has significant professional responsibilities in other time-sensitive matters before and after the current May 19 deadline, including a bankruptcy court hearing in a different matter on May 7, a petition for a writ of certiorari in *Maverick Gaming LLC* v. *United States*, No. 24A804, due on May 12, a D.C. Circuit merits brief due on May 15, and an opposition to a petition for a writ of certiorari in *Kingdom of Spain* v. *Blasket Renewable Investments LLC*, No. 24A822, that will be due on or around June 2.

c. Accordingly, the Applicants respectfully request that the time to file a petition for a writ of certiorari be extended by 60 days, to and including July 18, 2025.

Respectfully submitted.

/s/ Matthew D. McGill

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April 25, 2025