No. _____

In the
Supreme Court of the United States

FAIRFIELD SENTRY LTD. (IN LIQUIDATION);
FAIRFIELD SIGMA LTD. (IN LIQUIDATION);
FAIRFIELD LAMBDA LTD. (IN LIQUIDATION);
KENNETH M. KRYS; AND GREIG MITCHELL,

Petitioners,

v.

CITIBANK NA LONDON, et al.,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Second Circuit

PETITION FOR WRIT OF CERTIORARI

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March 13, 2026

QUESTION PRESENTED

Petitioners are foreign liquidators seeking to recover assets for innocent investors in foreign-based funds who lost billions of dollars in the infamous Ponzi scheme orchestrated by Bernard L. Madoff. In related proceedings, the domestic SIPC trustee has recovered substantial sums for the benefit of U.S.-based victims of Madoff's fraud. But when petitioners invoked Chapter 15 of the Bankruptcy Code to seek assistance in asserting foreign-law claims for the benefit of foreign victims, the Second Circuit held that the Code extinguished those claims—even though the whole point of Chapter 15 is to facilitate international comity and recovery efforts by foreign liquidators. That decision turns Chapter 15 on its head and flouts bedrock principles of U.S. law. Notwithstanding the strong presumption against extraterritorial application of U.S. law, the Second Circuit atextually extended a "safe harbor" shielding *domestic* securities transactions from certain *domestic*-law claims to create a novel, U.S.-law defense to *foreign*-law claims targeting *foreign* conduct. Making matters worse, the court broke with every other court to address the issue in holding that the safe harbor's restriction on the Code's "avoidance powers" directly bars common-law claims that exist irrespective of any bankruptcy. The upshot is that the promise of Chapter 15 is rendered illusory and foreign victims of Madoff's fraud are left holding the bag, while U.S. victims get meaningful relief.

The question presented is:

Whether the Bankruptcy Code's safe harbor for securities settlement payments, 11 U.S.C. §546(e),

applies extraterritorially to prevent foreign liquidators from pursuing foreign statutory and common-law claims that would be cognizable in foreign courts.

PARTIES TO THE PROCEEDING

There are over 400 parties to the Second Circuit proceedings that gave rise to this petition. A list of those parties is found in Appendix A.

CORPORATE DISCLOSURE STATEMENT

Fairfield Sentry Limited (In Liquidation) does not have a parent corporation, and there is no publicly held corporation owning ten percent (10%) or more of its shares.

Fairfield Sigma Limited (In Liquidation) does not have a parent corporation, and there is no publicly held corporation owning ten percent (10%) or more of its shares.

Fairfield Lambda Limited (in Liquidation) does not have a parent corporation, and there is no publicly held corporation owning ten percent (10%) or more of its shares.

Kenneth M. Krys and Greig Mitchell are individuals.

STATEMENT OF RELATED PROCEEDINGS

This case arises from more than 400 appeals and cross-appeals that were consolidated as *In re Fairfield Sentry Ltd.*, Nos. 22-2101-bk(L), 23-965(L) (2d Cir.). A complete list of these consolidated appeals, as well as the underlying cases in the United States District Court for the Southern District of New York and the United States Bankruptcy Court for the Southern District of New York, is found in Appendix B.

Petitioners are not aware of any other proceedings that are directly related to this case within the meaning of Rule 14.1(b)(iii).

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PETITION FOR WRIT OF CERTIORARI

Chapter 15 of the Bankruptcy Code was designed to facilitate the recovery efforts of foreign liquidators in cases like this. Indeed, this is the most significant litigation ever instituted under that Chapter: It involves hundreds of consolidated actions brought by foreign liquidators seeking some measure of justice for innocent investors who suffered massive losses in the largest Ponzi scheme in history. Yet rather than respect Congress' judgment and this Court's teachings, the decision below renders the promise of Chapter 15 illusory and flouts this Court's caselaw. Only this Court can set things right.

Chapter 15, enacted in 2005, was the culmination of years of U.S.-led efforts to collaborate with approximately 75 other countries to develop uniform rules for international cooperation in complex, cross-border bankruptcies. The idea was to facilitate, not frustrate, foreign bankruptcy proceedings by allowing foreign liquidators to enlist the courts of sister sovereigns to bring assets into those pending proceedings. To that end, Chapter 15 empowers foreign liquidators overseeing a foreign insolvency to bring an ancillary case in the United States against defendants who may properly be sued here (such as respondents) and to assert foreign-law claims in U.S. courts. *See* 8 *Collier on Bankruptcy* ¶1501.01 (16th ed. 2025). This furthers several important objectives: It prevents debtors from "hid[ing] assets in the United States[,] out of the reach of [a] foreign jurisdiction," fosters reciprocal cooperation by other countries when parties in a U.S. bankruptcy seek assets located abroad, and promotes international commerce by

providing predictability and uniformity for businesses that invest overseas. *In re Condor Ins. Ltd.*, 601 F.3d 319, 321-22, 327, 329 (5th Cir. 2010).

The decision below turns Chapter 15 upside down. Consistent with the strong presumption that U.S. law "is meant to apply only within the territorial jurisdiction of the United States," *Morrison v. Nat'l Australia Bank Ltd.*, 561 U.S. 247, 255 (2010), Chapter 15 contemplates that U.S. courts will apply foreign law to foreign conduct, rather than projecting U.S. domestic law abroad. *See Condor*, 601 F.3d at 327-29. According to the Second Circuit here, however, the Bankruptcy Code's "safe harbor," 11 U.S.C. §546(e), which by its terms prevents a *domestic* bankruptcy trustee from using *domestic* statutory avoidance powers to unwind certain settled securities transactions in *domestic* bankruptcies, "applies extraterritorially" in Chapter 15 proceedings to limit a *foreign* liquidator's authority to use *foreign* law to unwind *foreign* transactions. App.182-83. In other words, the Second Circuit held that §546(e) provides a unique, U.S.-law defense to foreign-law claims asserted in Chapter 15 proceedings—even though there would be no comparable defense to those claims in the courts of the relevant foreign jurisdiction. That holding not only defeats Congress' clear intent in enacting Chapter 15, but defies the bedrock rule, "long and often recited in [this Court's] opinions," that the presumption against extraterritoriality can be overcome only by a "clear," "affirmative" directive from Congress. *Morrison*, 561 U.S. at 255.

Making matters worse, the Second Circuit held that §546(e)'s safe harbor restricts not only the use of

"the specific avoidance powers conferred by [nearby provisions of] the Bankruptcy Code," but also the statutory avoidance powers of foreign liquidators and their assertion of "common-law claims." App.203-04, 207-08, 211. That holding is untenable. As this Court explained in *Merit Management Group LP v. FTI Consulting, Inc.*, 583 U.S. 366 (2018), both the text and structure of §546 demonstrate that the safe harbor "operates as an exception to the avoiding powers afforded to the trustee *under the [Code's] substantive avoidance provisions*," namely, §§544, 545, 547, and 548. *Id.* at 378-81 (emphasis added). The safe harbor does not directly bar the assertion by domestic trustees or foreign liquidators of common-law claims—which exist independent of bankruptcy and may be brought by ordinary civil litigants seeking damages (or appropriate equitable relief). In holding otherwise, the Second Circuit broke with literally every other court to consider the issue, including the Seventh Circuit, Eighth Circuit, and numerous district courts and bankruptcy courts. And while some state common-law claims might be impliedly preempted by the Code, there is no implied preemption of foreign law. Thus, in splitting with its sister circuits, the Second Circuit vitiated not only petitioners' foreign statutory avoidance powers but also their foreign common-law claims, without any valid basis in statutory text.

This case warrants the Court's plenary review not only because of that split, but because the stakes are high both financially and in terms of comity. As this Court has repeatedly explained, the presumption against extraterritoriality promotes "international comity" by preventing unnecessary "clashes between

our laws and those of other nations." *Yegiazaryan v. Smagin*, 599 U.S. 533, 541 (2023). Chapter 15 likewise promotes comity by aiding foreign liquidators' efforts to reach assets in the United States—and thereby spurring reciprocal cooperation from other countries. In contrast, the Second Circuit's atextual expansion of §546(e)'s safe harbor increases the potential for "international discord," *id.*, and undermines "the cooperative relationships with other countries" that are "essential" to "international commerce," *Condor*, 601 F.3d at 329.

This case well illustrates the problems. The Second Circuit dismissed *all* of petitioners' claims (totaling approximately *$6 billion*) based on its expansive view of the safe harbor, preventing innocent victims of Madoff's scheme from obtaining recourse even against respondents who allegedly "knew of Madoff's fraud before it was publicly uncovered and cashed out their investments knowing that they were receiving fraudulently inflated returns." CA2.No.23-965, Dkt.449 at 1. That sharply contrasts with the Second Circuit's treatment of the Securities Investor Protection Corporation trustee, whom it has *allowed* to obtain recourse against foreign investors (including many of the respondents here). *See In re Picard*, 917 F.3d 85, 91 (2d Cir. 2019); *see also In re Bernard L. Madoff Inv. Sec. LLC*, 12 F.4th 171, 178 (2d Cir. 2021); *In re Picard*, 657 B.R. 325, 330-32 (S.D.N.Y. 2022). The decision below is thus not just egregiously wrong, but egregiously unfair. This Court should grant review and reverse.

OPINIONS BELOW

The Second Circuit's opinion, 147 F.4th 136, is reproduced at App.158-214. The district court's opinion, 630 F.Supp.3d 463, is reproduced at App.216-80. The bankruptcy court issued a series of opinions: (i) 2021 WL 771677 (Bankr. S.D.N.Y. Feb. 23, 2021), reproduced at App.281-91; (ii) 2020 WL 7345988 (Bankr. S.D.N.Y. Dec. 14, 2020), reproduced at App.292-332; (iii) 596 B.R. 275 (Bankr. S.D.N.Y. 2018), reproduced at App.333-410; and (iv) 2018 WL 3756343 (Bankr. S.D.N.Y. Aug. 6, 2018), reproduced at App.411-41.

JURISDICTION

The court of appeals entered judgment on August 5, 2025, and denied petitioners' timely rehearing petition on October 16, 2025. App.215. On application, Justice Sotomayor extended the time within which to file this petition to and including March 13, 2026. This Court has jurisdiction under 28 U.S.C. §1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant provisions of the Bankruptcy Code are reproduced at App.442-72.

STATEMENT OF THE CASE

A. Legal Background

1. Chapters 7 and 11 of the Bankruptcy Code govern the liquidation and reorganization of U.S. companies under U.S. law. In a proceeding under Chapter 7 or Chapter 11, a "trustee" oversees the administration of the bankruptcy. *See* 11 U.S.C. §§701-03, 1104-06.

The Code grants trustees special powers that do not exist outside of bankruptcy, authorizing them (as relevant here) to "invalidate a limited category of transfers by the debtor or transfers of an interest of the debtor in property." *Merit Mgmt.*, 583 U.S. at 369. These extraordinary domestic statutory powers are set forth in a series of provisions in Chapter 5, which state that a trustee "may avoid" certain transfers. *See* 11 U.S.C. §§544, 545, 547, 548(a)(1), 548(b); *see also id.* §103(a) (Chapter 5 applies "in a case under [C]hapter 7, 11, 12, or 13"). For example, §547 permits a trustee to "avoid" certain "transfer[s] of an interest of the debtor in property" during a statutorily defined "preference period" immediately preceding the bankruptcy filing. *Id.* §547; *see, e.g.*, *Barnhill v. Johnson*, 503 U.S. 393, 396-400 (1992). "Avoiding power" is, in short, a widely used "term of art referring to the right and power, unique to bankruptcy, to invalidate and unwind a debtor's voluntary or involuntary transaction." Avoiding Power, *Norton Bankr. L. & Prac. 3d Dict. of Bankr. Terms* §A160 (2026 update); *see also, e.g.*, *Mission Prod. Holdings, Inc. v. Tempnology, LLC*, 587 U.S. 370, 382 (2019); *Merit Mgmt.*, 583 U.S. at 369-72.

Though extraordinary, the avoiding powers set forth in Chapter 5 are not limitless. "Section 546 of the Code puts certain limits on the avoidance powers set forth" in the surrounding provisions. *Merit Mgmt.*, 583 U.S. at 381 (quoting *Fidelity Fin. Servs., Inc. v. Fink*, 522 U.S. 211, 217 (1998)). One such limit is a carveout, or "safe harbor," for particular types of domestic transactions given qualified protection against the use of the trustee's avoidance powers. *See* 11 U.S.C. §546(e). As relevant here, the safe harbor

provides that "[n]otwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b)" of the Code, "the trustee may *not* avoid a transfer" that is a "settlement payment" "made by or to (or for the benefit of)" a "financial institution" "in connection with a securities contract." *Id.* (emphasis added). Thus, a trustee's statutory "avoidance powers" do not extend to certain payments made in connection with the sale or purchase of a security.

As noted, §546(e)'s safe harbor provides only a qualified exception from the trustee's statutory avoidance powers. *See Merit Mgmt.*, 583 U.S. at 379 ("The very first clause—'Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title'—… indicates that §546(e) operates as an exception to the avoiding powers afforded to the trustee under the substantive avoidance provisions."). Importantly, the safe harbor does not extend to avoidance actions under §548(a)(1)(A), which covers transactions made "with actual intent to hinder, delay, or defraud" creditors. Thus, there is no safe harbor for settled securities transactions made with actual fraudulent intent. *See* 11 U.S.C. §§546(e), 548(a)(1)(A).

2. While Chapters 7 and 11 of the Code govern domestic bankruptcy proceedings and the powers of domestic trustees, Chapter 15 addresses foreign bankruptcies and the powers of foreign bankruptcy representatives enlisting domestic bankruptcy courts for assistance. Historically, "parties to a foreign bankruptcy proceeding could often obtain assistance in U.S. courts," but "parties in a U.S. bankruptcy proceeding could not necessarily count on reciprocal cooperation by foreign jurisdictions—often to the

detriment of U.S. businesses and creditors that were denied access to assets of the debtor located abroad." *Condor*, 601 F.3d at 322. To address this problem, the United States spearheaded efforts to work with other countries to develop a model law setting forth "uniform international rules for cooperation between jurisdictions" in "international bankruptcy case[s]." *Id.* at 321-22. This effort culminated in the enactment of Chapter 15 here, *id.*, and the adoption of "similar statutes" in "foreign jurisdictions," 11 U.S.C. §1508. In short, Chapter 15 was enacted to facilitate cross-border insolvency proceedings, including by providing "assistance" to foreign liquidators and maximizing foreign debtor assets. *See id.* §§1501, 1507(b), 1509(b)(1), (2). Congress has expressly instructed courts to interpret Chapter 15 with this background in mind. *Id.* §1508.

Under Chapter 15, a "foreign representative" may obtain "recognition of a foreign [bankruptcy] proceeding" in a U.S. court. *Id.* §1515. Once a U.S. court has recognized the foreign proceeding, the foreign representative may initiate adversary proceedings and "apply directly" to the U.S. court "for appropriate relief." *Id.* §1509(b). The U.S. court "may, at the request of the foreign representative, grant any appropriate relief," *id.* §1521(a), and "may provide additional assistance" "consistent with the principles of comity," *id.* §1507. Chapter 15 directs U.S. courts to "cooperate to the maximum extent possible with a foreign court or a foreign representative." *Id.* §1525(a); *see Firefighters' Ret. Sys. v. Citco Grp. Ltd.*, 796 F.3d 520, 525 (5th Cir. 2015) ("'Central to Chapter 15 is comity' and the facilitation of cooperation

between multiple nations." (quoting *In re Vitro S.A.B. de CV*, 701 F.3d 1031, 1043 (5th Cir. 2012))).

"Chapter 15 cases are generally intended to be supplementary to cases brought in the debtor's home country." 8 *Collier on Bankruptcy* ¶1501.01. The court in the United States "acts as an adjunct or arm of a foreign bankruptcy court where the main proceedings are conducted." *In re Fairfield Sentry Ltd. Litig.*, 458 B.R. 665, 678-79 (S.D.N.Y. 2011). "The purpose is to maximize assistance to the foreign court conducting the main proceeding," *id.*, which typically entails the application of foreign law. *See, e.g.*, *Condor*, 601 F.3d at 327 ("Congress did not intend to restrict the powers of the U.S. court to apply the law of the country where the main proceeding pends.").

In addition to carrying forward the foreign representative's power to bring claims arising under foreign law, whether statutory or common-law, Chapter 15 grants foreign representatives the power to bring U.S. statutory avoidance claims in certain limited circumstances. Specifically, Chapter 15 allows foreign representatives to initiate or participate as a party-in-interest in domestic bankruptcy proceedings under Chapters 7 and 11, *see* 11 U.S.C. §§1511(a), 1512, and, when a foreign representative does so, Chapter 15 vests the foreign representative with the statutory avoidance powers of a domestic trustee, *see id.* §1523(a). In other words, if a foreign representative, acting under the authority of Chapter 15, initiates or intervenes in a proceeding under Chapter 7 or 11, then the foreign representative can bring statutory avoidance claims under 11 U.S.C.

§§544, 545, 547, 548(a)(1), 548(b), just like a domestic trustee.

3. In the same amendment that added Chapter 15 to the Bankruptcy Code, Congress enacted 11 U.S.C. §561(d). As relevant here, §561(d) provides that "[a]ny provisions" of the Code "relating to securities contracts" "shall apply in a case under [C]hapter 15" "to limit avoidance powers to the same extent as in a proceeding under [C]hapter 7 or 11." Under §561(d), then, the safe harbor's limitation on the avoidance powers conferred in §§544, 545, 547, and 548 of the Bankruptcy Code applies "to the same extent" in proceedings under Chapter 15.

B. Factual Background

Bernie Madoff orchestrated the largest Ponzi scheme in history. App.160. Holding out his company, Bernard L. Madoff Investment Securities LLC ("BLMIS"), as a legitimate investment fund, and promising handsome returns, Madoff raised billions of dollars from investors. But instead of investing the capital he raised (as promised), Madoff simply deposited most of it in bank accounts and then falsified trading records to create the illusion of large and steady investment returns. App.160-61. When investors sought to redeem their investments and collect their "gains," BLMIS paid the redemptions using money raised from other investors. App.160-61. Inevitably, requested redemptions eventually outstripped new money, and the scheme collapsed in 2008. App.163.

Much of the money BLMIS raised came from so-called "feeder funds"—investment funds that pooled money from multiple investors and then placed it in a

master fund on their behalf. *See* App.160-61. Fairfield Sentry, Ltd. ("Sentry"), based in the British Virgin Islands ("BVI"), was one such fund. It sold shares to foreign investors and invested virtually all of the proceeds with BLMIS. *See* App.413. Fairfield Sigma Ltd. and Fairfield Lambda Ltd. were "funds of funds" established for foreign currency (respectively, the Euro and Swiss franc) that invested all their assets in Sentry. *Id.*; *see* App.161.

Investors purchased shares in the Funds by signing a Subscription Agreement, which was substantially identical for all three Funds. App.161. This contractual agreement bound the investors to the terms of the Funds' Articles of Association. App.161. The Subscription Agreement specified that it would be governed by New York law and that "any suit, action or proceeding … with respect to this Agreement and the Fund may be brought in New York." App.161.

Investors could redeem their shares at will. App.413. Those who redeemed their shares before Madoff's Ponzi scheme was uncovered recouped not only their principal, but also substantial (and illusory) gains funded by their fellow investors. While some of those who cashed out at the right time may have just gotten lucky, the allegations in the complaint make clear that some respondents' good timing was not mere luck. A number of respondents had "actual or constructive knowledge" that "the redemption prices were based on fictitious assets"—"and, hence, the redemption prices were inflated"—when they redeemed their shares. App.297-98 & n.7; *see* CA2.23-965, Dkt.300 at A.490-92 (¶¶71-81 of representative complaint). In contrast, many innocent investors had

neither knowledge of the fraud nor good luck, and they saw substantial investments on which they were depending wiped out when the Ponzi scheme came to light.

C. Procedural History

1. After Madoff's Ponzi scheme collapsed, the Funds entered liquidation proceedings under BVI law. App.163. Petitioners (or their predecessors) were tasked with recovering and distributing assets for innocent investors in the Funds. *See* App.163. One potential source of recovery was investors who had redeemed their shares before Madoff's scheme was revealed, thereby recouping not just their principal but also falsely inflated returns paid for by their fellow investors, who stood to receive nothing. *See* App.163.

After filing one set of lawsuits in BVI courts, petitioners commenced related proceedings in the United States to facilitate those efforts. *See* App.164. They did so pursuant the Subscription Agreement's forum-selection clause, which sensibly enables consolidation of global litigation in New York. *See* App.169-78. Petitioners sought and obtained recognition of the BVI liquidation as a "foreign main proceeding," pursuant to Chapter 15. *See* App.165. They then proceeded with the present litigation, which seeks the return of more than $6 billion to foreign victims under various BVI statutory and common-law causes of action. App.164. Most of petitioners' claims target purely foreign conduct.

In a series of decisions, the bankruptcy court dismissed all of petitioners' claims except for their constructive trust claims (under BVI common law) against those respondents that allegedly knew of

Madoff's fraud when they redeemed their shares. App.281-441. The district court affirmed, albeit on somewhat different grounds. App.216-80.

2. The parties cross-appealed and (apart from concluding that respondents were properly subject to jurisdiction in New York) the Second Circuit ruled for respondents across the board, even as to the constructive trust claims against respondents with actual knowledge of the fraud, which both lower courts had preserved. In the Second Circuit's view, "all of the liquidators' claims should have been dismissed pursuant to the safe harbor for securities transactions under §546(e) of the Bankruptcy Code." App.160. Central to this holding was the court's conclusion that "the safe harbor of §546(e) applies extraterritorially through §561(d)." App.192; *see* App.179-92. Although §561(d) contains no express statement of extraterritorial application, the court asserted that §561(d) "must apply extraterritorially if it is to have any effect at all." App.182. The Second Circuit thus concluded that §546(e) blocks foreign representatives from avoiding foreign transactions under foreign law in Chapter 15 proceedings, even when they could avoid those very same transactions in the underlying "foreign main proceeding" in the BVI.

The court further held that §546(e) directly bars not only foreign liquidators' statutory avoidance claims under foreign law—i.e., powers that are unique to liquidation proceedings—but also common-law claims that exist independent of bankruptcy and seek damages or equitable relief. *See* App.203-11. The court reached this surprising (and unprecedented) conclusion by rejecting the view "that 'avoiding

powers' is a term of art referring only to the statutory avoidance powers under the Bankruptcy Code," App.205, and concluding that when a trustee asserts a state common-law claim "such as unjust enrichment or constructive trust," its common-law claim is nonetheless "an avoidance claim" that may be asserted "*only* pursuant to §544(b)," which is covered by the safe harbor, App.209-10. And, finally, because §561(d) applies the safe harbor in a Chapter 15 proceeding "to the same extent as in a proceeding under chapter 7 or 11," the court concluded that "foreign common-law … claims fall within the scope of the safe harbor in cases under Chapter 15." App.194. Thus, even when a foreign liquidator alleges actual knowledge of fraud to bring a foreign common-law claim that could proceed in foreign court, the Second Circuit's decision forecloses the claim. *See* App.211-13.

Petitioners timely sought rehearing en banc, but the Second Circuit denied their petition on October 16, 2025. App.215.

REASONS FOR GRANTING THE PETITION

The decision below converts Chapter 15 of the Bankruptcy Code from a carefully negotiated instrument for facilitating international cooperation and assisting foreign liquidators into a mechanism for extinguishing otherwise-viable foreign-law claims. Every step of the Second Circuit's path to that inequitable conclusion was misguided. In holding that §546(e)'s safe harbor applies extraterritorially to bar foreign-law claims targeting foreign conduct, the Second Circuit flouted this Court's repeated admonitions that only a clear, affirmative instruction

from Congress can overcome the presumption against extraterritoriality. Abiding that caution would have been outcome determinative, as neither §546(e) nor §561(d) contains the requisite instruction—and both provisions can readily be given effect without superimposing a U.S.-law defense on foreign-law claims asserted by foreign representatives through Chapter 15. The net effect of the Second Circuit's extraterritoriality holding is to render Chapter 15 largely useless for foreign liquidators pursuing foreign claims that relate to foreign securities transactions. Indeed, if the decision stands, foreign liquidators may rationally eschew Chapter 15 and revert to fragmented state-court litigation.

The problems with the Second Circuit's related holding that the safe harbor directly bars state and foreign common-law claims are, if anything, even more pronounced and inequitable. The text, context, and structure of §546 permit only one conclusion: The safe harbor "operates as an exception to the avoiding powers afforded to the trustee under the substantive avoidance provisions" of "sections 544, 545, 547, [and] 548." *Merit Mgmt.*, 583 U.S. at 379. That is why the Eighth Circuit, the Seventh Circuit, and a host of district and bankruptcy courts have concluded that state common-law claims are not directly barred by §546(e) because they are *not* "avoidance claims." The decision below, however, all but ignored *Merit Management* and the decisions of other courts. The consequences of that error are dire. While some courts have applied implied-preemption principles to displace certain state common-law claims, implied preemption is wholly inapplicable to foreign law, and the Code is not designed to shield defendants from

liability for knowingly wrongful conduct. The decision below thus not only turned Chapter 15 on its head, but also created a glaring division of authority between our Nation's financial capital and the rest of the country.

For petitioners and the innocent investors they represent, the implications of this decision could hardly be worse. By projecting the safe harbor extraterritorially and dramatically overstating its scope, the decision below renders Chapter 15 useless for recovering any portion of what foreign victims lost due to Madoff's fraud, even against parties with actual knowledge of the fraud. But the Second Circuit's twin errors will have deleterious effects well beyond this case. On the global stage, the decision represents a significant setback for the United States' longstanding efforts to establish uniform rules for cross-border insolvencies. Indeed, rendering Chapter 15 toothless in one of largest transnational bankruptcies in history is a substantial blow to all that Congress and U.S. negotiators hoped to accomplish in Chapter 15 and the broader international agreements it reflects. The decision below will also have baleful domestic repercussions, as the Second Circuit's novel holding that §546(e) directly bars state common-law claims will provide greater protection for those who commit intentionally wrongful acts in the securities context. This Court should grant review and reverse.

I. The Decision Below Defies The Enacted Will Of Congress, Flouts This Court's Teachings, And Creates Clear Circuit Splits.

A. The Second Circuit Badly Erred and Split With the Fifth Circuit in Holding That the Bankruptcy Code's Safe Harbor Applies Extraterritorially.

1. This Court has long applied a strong presumption against extraterritorial application of U.S. law. The test is familiar: Unless "Congress has affirmatively and unmistakably instructed that the provision at issue should apply to foreign conduct," it does not. *Abitron Austria GmbH v. Hetronic Int'l, Inc.*, 600 U.S. 412, 417-18 (2023). Instead, it covers only domestic conduct. This presumption furthers "international comity" by "protect[ing] against unintended clashes between our laws and those of other nations," and it reflects "the commonsense notion that Congress generally legislates with domestic concerns in mind." *Yegiazaryan*, 599 U.S. at 541. Moreover, while always applicable, this presumption is at its "apex" when there is a "risk of conflict" between U.S. law and foreign law. *RJR Nabisco Inc. v. Eur. Cmty.*, 579 U.S. 325, 348 (2016).

Under these settled principles, the Bankruptcy Code's safe harbor, 11 U.S.C. §546(e), governs only domestic conduct, not the foreign-law claims of foreign liquidators. Section 546(e) is located in a part of Chapter 5 that applies only in *domestic* bankruptcies. *See* 11 U.S.C. §103(a). It expressly applies to a "trustee," which is a defined term for the representative of a debtor's estate in a *domestic* proceeding. *See id.* §§701-04, 1104. And it curtails

only the domestic trustee's assertion of domestic avoidance powers (specifically conferred in the adjacent sections of Chapter 5) to target *domestic* transfers, for the simple reason that domestic trustees possess no foreign avoidance powers. *See, e.g.*, *In re Ampal-Am. Isr. Corp.*, 562 B.R. 601, 612 (Bankr. S.D.N.Y. 2017) ("[T]he avoidance provisions of the Bankruptcy Code … do not apply extraterritorially."). Accordingly, the safe harbor, standing alone, restricts only domestic avoidance powers.

Section 561(d) does not extend the safe harbor to foreign conduct. Like §546(e), it makes no mention of "foreign" or "extraterritorial" application, or of any reach "beyond the United States," in connection with limiting avoidance powers. *Cf. Abitron Austria*, 600 U.S. at 420 ("It is a rare statute that clearly evidences extraterritorial effect despite lacking an express statement of extraterritoriality."). Section 561(d) instead merely says that §546(e) "shall apply in a case under chapter 15," i.e., a case involving a foreign bankruptcy, "to limit avoidance powers to *the same extent* as in a proceeding under chapter 7 or 11." 11 U.S.C. §561(d) (emphasis added). That provision thus establishes an "equal treatment" mandate with respect to the relevant avoidance powers. *See Jam v. Int'l Fin. Corp.*, 586 U.S. 199, 208 (2019).

As just explained, "the extent" of §546(e)'s effect "in a proceeding under chapter 7 or 11" is to limit the *domestic* trustee's power to wield *domestic* avoidance powers and target *domestic* transfers. To be sure, by extending the safe harbor to Chapter 15 proceedings, §561(d) limits a foreign liquidator's power to wield U.S.-law avoidance powers to target domestic

transfers. But that is all it does; it does not limit the liquidator's power under foreign statutes to target foreign transfers, as domestic trustees do not possess those powers. Extending §546(e)'s safe harbor in Chapter 15 proceedings to *foreign*-law claims targeting *foreign* transfers would both project the statute extraterritorially and apply the safe harbor to a considerably *greater* extent in Chapter 15 proceedings than in domestic proceedings—not "to the same extent," as §561(d) commands.

In short, §561(d) gives no indication—let alone a "clear" or "unmistakable instruction," *Abitron Austria*, 600 U.S. at 418-19—that Congress intended to apply §546(e)'s safe harbor extraterritorially to limit foreign-law claims regarding foreign conduct.

2. Consistent with those teachings, the Fifth Circuit has correctly rejected the notion that U.S. law overrides foreign law in Chapter 15 proceedings, holding that Chapter 15 allows foreign liquidators to exercise "powers of avoidance supplied by applicable foreign law." *Condor*, 601 F.3d at 324. In reaching that conclusion, the Fifth Circuit emphasized that Chapter 15 was enacted "to advance the goals of comity to foreign jurisdictions" by "facilitat[ing] cooperation between U.S. courts and foreign bankruptcy proceedings." *Id.* at 324-25, 329. Accordingly, the Fifth Circuit held in *Condor* that, under Chapter 15—as under the statutory regime that preceded it—the "parameters" of a foreign liquidator's power are "left to [the] foreign law that creates the [applicable] avoidance powers." *Id.* at 329 (quoting *In re Metzeler*, 68 B.R. 674, 677 (Bankr. S.D.N.Y. 1987)).

The Second Circuit's contrary decision not only splits with the Fifth Circuit, but flouts this Court's repeated admonitions that the presumption against extraterritoriality can be overcome only by an "affirmative[] and "unmistakeabl[e]" statutory directive. *See, e.g.*, *Abitron Austria*, 600 U.S. at 417. The Second Circuit's analysis hinged almost entirely on "the canon against superfluity": It opined that §561(d) "must apply extraterritorially" in order to "serve a meaningful function." App.188; *see* App.182-83. But the court's need to resort to that often inconclusive canon of construction, *see Rimini St., Inc. v. Oracle USA, Inc.*, 586 U.S. 334, 346 (2019), just underscores that the enacted *text* is bereft of any "clear, affirmative indication" that the safe harbor covers transfers that occur entirely outside the United States and would otherwise be avoidable under foreign law. *See Abitron Austria*, 600 U.S. at 419. Statutory text, rather than mere shadows, is necessary to overcome the presumption.

Regardless, the predicate for the Second Circuit's ruling is demonstrably incorrect. There is no actual superfluity, as §561(d) can readily be given effect with respect to conduct occurring *within* the United States. To give just one example, §1523(a) of the Code expressly allows foreign liquidators to assert *domestic* avoidance powers when, acting under the province of Chapter 15, they initiate or participate as a party-in-interest in a Chapter 7 or 11 proceeding: "Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a)." 11 U.S.C. §1523(a). Section

561(d) thus ensures that when a foreign representative exercises one of the *domestic* avoidance powers created §§544, 545, 547, or 548, its use of that power and targeting of domestic transfers is subject to §546(e)'s safe harbor. The decision below resisted that conclusion on the ground that a domestic bankruptcy is always "a separate case from the Chapter 15 proceeding." App.185. But without §561(d), the safe harbor by its terms covers only a domestic "trustee"; only §561(d) extends §546(e) to foreign representatives at all. And §561(d) makes crystal clear that it also covers foreign representatives when they wield the avoidance powers created by Chapter 5. That alone eliminates any superfluity fears.

Finally, the court got matters backwards in positing that "the purpose of Chapter 15 indicates that §561(d) applies extraterritorially." App.188. According to the Second Circuit, Congress intended §561(d) to protect investors from "the risk of avoidance litigation brought by the bankruptcy estates of failed foreign companies." App.191. But the best indicator of congressional intent is always the enacted text, which announces that Chapter 15 seeks to facilitate, not hamstring, foreign insolvency proceedings, consistent with principles of comity and international cooperation. 11 U.S.C. §1508; *see id.* §§1501, 1507(d), 1509(b)(3). The Second Circuit's strained effort to apply §546(e) extraterritorially, restricting foreign liquidators' ability to target foreign transfers under foreign law, does just the opposite.

The Second Circuit's approach is at war with this Court's teachings and in conflict with the caselaw of the Fifth Circuit's respecting them. Instead of

showing comity to foreign jurisdictions, the decision below projects §546(e)'s safe harbor extraterritorially, creating a unique U.S.-law defense to foreign-law claims asserted by foreign liquidators regarding entirely foreign conduct. By "deny[ing] the foreign representative powers of avoidance supplied by applicable foreign law," *contra Condor*, 601 F.3d at 324, the Second Circuit has transformed Chapter 15 from a tool for assisting foreign liquidators into a means of preventing them from recovering assets they could recover in their home courts, and even in state courts.[1]

B. The Second Circuit Further Erred and Split With Multiple Circuits in Holding That the Safe Harbor Directly Blocks Foreign Common-Law Claims That Would Be Cognizable in Foreign Courts.

1. Even assuming *arguendo* that the safe harbor applies extraterritorially to block foreign liquidators from exercising their statutory avoidance powers granted by foreign liquidation law, it still would not bar foreign liquidators from asserting foreign *common-law* claims, such as the billions of dollars' worth of BVI common-law claims at issue here. Courts have long recognized vital distinctions between avoidance claims and common-law claims.

[1] Indeed, petitioners were authorized to bring—and initially *did* bring—many of their common law claims in state court rather than bankruptcy court. *See In re Fairfield Sentry Ltd.*, 458 B.R. at 671-72, 684-85; 8 *Collier on Bankruptcy* ¶1509.06. But because petitioners thereafter accepted Congress' invitation to seek "assistance" through recognition under Chapter 15, the Second Circuit extinguished the entire litigation.

"[A]voidance claims … are 'statutory causes of action belonging to the trustee, not to the [debtor],'" and they "only arise upon the filing of a [bankruptcy] petition." *In re Worldcom, Inc.*, 401 B.R. 637, 645-46 (Bankr. S.D.N.Y. 2009) (quoting *Allegaert v. Perot*, 548 F.2d 432, 436 (2d Cir. 1977)). In stark contrast, common-law claims "belong[] to the debtor" before the initiation of liquidation proceedings. *Id.* at 645. They "exist[] without regard to any bankruptcy proceeding" and may be pursued by any appropriate plaintiff in an ordinary civil action. *E.g.*, *Stern v. Marshall*, 564 U.S. 462, 499 (2011).

By their terms, §546(e) and §561(d) limit only Chapter 5 avoidance claims—not common-law claims. The safe harbor restricts trustees' use of the specific powers conferred by "sections 544, 545, 547, 548(a)(1)(B), and 548(b)" of the Code. 11 U.S.C. §546(e). It thus "operates as an exception to *the avoiding powers* afforded to the trustee under th[ose] substantive avoidance provisions." *Merit Mgmt.*, 583 U.S. at 379 (emphasis added); *accord Fidelity Fin. Servs.,* 522 U.S. at 217 ("Section 546 of the Code puts certain limits on the avoidance powers set forth elsewhere"). It is not some freestanding immunity or restriction on a trustee's ability to pursue actions for the benefit of creditors. Underscoring the point, §561(d) provides that the safe harbor "shall apply in a case under chapter 15 … *to limit avoidance powers* to the same extent as in a proceeding under chapter 7 or 11." 11 U.S.C. §561(d) (emphasis added).

As explained, §561(d) is best read as extending the safe harbor to limit foreign liquidators' ability to wield the specific *domestic* avoidance powers conferred

by Chapter 5 to target *domestic* transfers. *See supra* pp.17-19. But even if §561(d) were construed to restrict foreign liquidators' use of their statutory avoidance powers conferred by *foreign* law to target *foreign* transfers, it would still expressly limit only foreign "avoidance powers"—i.e., statutory powers unique to the bankruptcy context. This has long been common ground. As respondents conceded below, *no other court* has ever held that a foreign common-law claim is an "avoidance claim" for purposes of §546(e)'s safe harbor. SDNY.No.1:19-cv-3911, Dkt.428 at 15. Construing §561 to extend the safe harbor to restrict not only "avoidance powers" (as its plain text provides) but also common-law claims that ordinary plaintiffs may assert outside the bankruptcy context "is nothing more than an attack on the text of the statute." *Merit Mgmt.*, 583 U.S. at 386.

2. Remarkably, the Second Circuit adopted this text-defying approach without so much as mentioning, let alone grappling with, *Merit Management*. The court first held that §546(e)'s safe harbor does not "bar[] only avoidance actions that utilize the statutory avoidance powers" set forth in Chapter 5 of the Code, but instead "directly bars [a] trustee from avoiding a covered transfer" using *any* authority. App.204-05, 208. The court further held that, as used in §546(e), the term "avoiding powers" does not "refer[] only to the statutory avoidance powers under the Bankruptcy Code," and instead (atextually) "encompass[es] common-law claims" that would have the effect of undoing a transfer. App.205. Both holdings fly in the face of this Court's careful interpretation of §546(e) in *Merit Management*.

As *Merit Management* explains, the safe harbor's "very first clause—'Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title'"—"indicates that [it] operates as an exception to the avoiding powers afforded to the trustee under the substantive avoidance provisions." 583 U.S. at 379. The "section heading for §546"—"Limitations on avoiding powers"—"[r]einforc[es] that reading of the safe-harbor." *Id.* at 380. So does the statutory structure: Other subsections of §546 similarly impose limitations on specific statutory avoidance powers expressly granted elsewhere in the Bankruptcy Code. *See* 11 U.S.C. §546(a) (establishing time limits for "[a]n action or proceeding under section 544, 545, 547, 548, or 553"); *id.* §546(b)-(d) (establishing additional rules governing "the rights and powers of a trustee" under adjacent provisions of Chapter 5). Simply put, the Code "creates both a system for avoiding transfers and a safe harbor from avoidance," which "are two sides of the same coin." *Merit Mgmt.*, 583 U.S. at 381. "[I]t is only logical" to read the safe harbor as a limitation on "transfer[s] that the trustee seeks to avoid *pursuant to one of its [statutorily enumerated] avoiding powers*." *Id.* (emphasis added); *accord Fidelity Fin. Servs.*, 522 U.S. at 217.

Compounding its error, the Second Circuit asserted that even if the safe harbor limits only the avoidance powers conferred by §§544, 545, 547, and 548 (which it does), the safe harbor still "directly appl[ies] to common-law claims," supposedly because a bankruptcy trustee is empowered to assert such claims pursuant to §544(b). App.208-09. Respondents never advanced that argument below, and for good reason. Section 544(b) empowers a trustee to "avoid

any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law." 11 U.S.C. §544(b)(1). As the court observed, many states have enacted statutes patterned after the Uniform Voidable Transactions Act and its predecessor. App.209 n.15. Claims under these statutes—colloquially known as fraudulent-conveyance claims—are often asserted through §544(b)(1) and may be barred by the safe harbor. *See, e.g.*, *AP Servs. LLP v. Silva*, 483 B.R. 63, 66-67, 70 (S.D.N.Y. 2012) (holding that §546(e) directly barred a statutory claim under "the New York Debtor and Creditor Law" asserted under §544(b)).

Unlike statutory fraudulent-conveyance claims, however, state common-law claims—e.g., unjust enrichment and breach of fiduciary duty—do not make an "obligation" or an "interest… in property" "voidable" within the meaning of §544(b)(1). They instead permit an appropriate plaintiff to recover monetary damages for unlawful conduct. *See, e.g.*, *In re Hechinger Inv. Co. of Del.*, 274 B.R. 71, 89 n.8 (D. Del. 2002). Consequently, state common-law claims need not be (and typically are not) asserted under §544(b)(1)—which means that, by its terms, the safe harbor does not directly apply to them. *See, e.g.*, *In re Quorum Health Corp.*, 2023 WL 2552399, at *11 (Bankr. D. Del. Mar. 16, 2023) (holding that §546(e) does not bar "illegal dividend and unjust enrichment claims [that] do not seek to 'avoid' transfers" but rather "to hold [defendants] liable for" alleged misconduct); *In re Lehman Bros. Holdings Inc.*, 469 B.R. 415, 435, 440-41, 449-50 (Bankr. S.D.N.Y. 2012) (holding that §546(e) directly bars fraudulent-conveyance claims but not "common law claims"). The

Second Circuit's contrary holding fails to engage with the text of §544(b), rests on erroneous dicta from a bankruptcy-court decision in which the trustee did not even invoke §544(b), *see* App.209 (citing *In re Park S. Sec., LLC*, 326 B.R. 505, 514 (Bankr. S.D.N.Y. 2005)), and is plainly incorrect.

3. The need for this Court's intervention is especially acute because the Second Circuit's unprecedented holding that the Bankruptcy Code's safe harbor "directly" bars common-law claims conflicts with decisions of the Seventh and Eighth Circuits and numerous district and bankruptcy courts.

The first case to consider the issue, *Hechinger*, expressly distinguished "fraudulent transfer claim[s]" seeking "avoidance of [a] transfer" pursuant to §544(b)(1)—which are covered by the safe harbor—from common-law claims seeking "a money judgment," which fall outside the safe harbor. 274 B.R. at 89 & n.8; *see id.* at 86, 95-98. The Eighth Circuit later reached the same conclusion. Citing *Hechinger*, the Eighth Circuit held that §546(e) directly bars plaintiffs from seeking to "*avoid*" certain securities transactions through statutory, fraudulent-transfer claims asserted under 11 U.S.C. §544, but not from asserting state common-law claims seeking *damages*. *Contemp. Indus. Corp. v. Frost*, 564 F.3d 981, 984, 988-89 (8th Cir. 2009) (emphasis added), *abrogated in part on other grounds by Merit Mgmt.*, 583 U.S. 366.

The Seventh Circuit subsequently agreed with the Eighth on this issue. In *Grede v. FCStone, LLC*, 746 F.3d 244 (7th Cir. 2014), a bankruptcy trustee sought to avoid a debtor's "pre-petition transfer," but the Seventh Circuit held that the avoidance action "fell

within §546(e)'s safe harbor." *Id.* at 251. The trustee also brought an "unjust enrichment claim" under state law. *Id.* at 259-60. The court held that this common-law claim was not subject to the safe harbor, citing the Eighth Circuit's decision in *Frost* with approval. The Seventh Circuit ultimately held that "the trustee's unjust enrichment claim is preempted by federal bankruptcy law." *Id.* at 259; *accord Petr Tr. for BWGS, LLC v. BMO Harris Bank N.A.*, 95 F.4th 1090, 1102-03 (7th Cir. 2024) (confirming that the Seventh Circuit has sided with the Eighth Circuit on the scope of the safe harbor).

Several bankruptcy courts have analyzed the issue in more depth, and they all agree that §546(e) does not directly bar state common-law claims. Court after court has concluded that "[t]he plain language of section 546(e)" offers "limited immunity" from *avoidance* claims "but does not bar [p]laintiffs from maintaining all common law claims, intentional fraud claims and any other claims not expressly embraced by" the statute. *Lehman Bros.*, 469 B.R. at 450; *see also, e.g.*, *Quorum Health*, 2023 WL 2552399, at *12 (expressly agreeing with this holding); *In re Hellas Telecomms. (Luxembourg) II SCA*, 526 B.R. 499, 509-13 (Bankr. S.D.N.Y. 2015) (holding that unjust enrichment claim was not barred by §546). Many other courts have considered the issue in the intervening years, and, to the best of petitioners' knowledge, *none* has ever held that the safe harbor directly bars state common-law claims—until now. *See, e.g.*, *In re Nine W. LBO Sec. Litig.*, 482 F.Supp.3d 187, 203, 207-08 (S.D.N.Y. 2020), *aff'd in relevant part*, *In re Nine W. LBO Sec. Litig.*, 87 F.4th 130 (2d Cir. 2023); *In re U.S. Mortg. Corp.*, 492 B.R. 784, 810-11

(Bankr. D.N.J. 2013); *U.S. Bank Nat'l Ass'n v. Verizon Commc'ns Inc.*, 892 F.Supp.2d 805, 814-17, 824-26 (N.D. Tex. 2012); *AP Servs.*, 483 B.R. at 71-72; *In re Loranger Mfg. Corp.*, 324 B.R. 575, 582-86 (Bankr. W.D. Pa. 2005).

The Second Circuit did not deny that its holding on §546(e)'s applicability to common-law claims conflicts with a slew of decisions from other courts. The parties' briefs cited *Hechinger*, *Contemporary Industries*, *Lehman Brothers*, and *Quorum Health* (among several other cases), but the Second Circuit did not mention any of them. The court instead worked to convince itself that two of its own decisions, *In re Nine West LBO Securities Litigation*, 87 F.4th 130 (2d Cir. 2023), and *In re Tribune Co. Fraudulent Conveyance Litigation*, 946 F.3d 66 (2d Cir. 2019), "do[] not foreclose" its novel holding. App.207-08. Even assuming that the decision below can be harmonized with those two cases, that just underscores that Second Circuit caselaw now squarely conflicts with Seventh and Eighth Circuit caselaw, as well as a host of lower court decisions. This Court should grant certiorari to resolve that conflict.

To be sure, as the Seventh Circuit's *Grede* decision illustrates, many of the decisions holding that §546(e)'s safe harbor is inapplicable to common-law claims recognize that *some* state-law claims are nonetheless impliedly preempted by §546(e) or other provisions of the Code. But those implied-preemption holdings produce very different results from the Second Circuit's alone-in-the-Nation view that §546(e) eliminates common-law claims of its own force. First, there will be no basis for finding a conflict when the

common-law claims involve allegations of wrongful conduct that sufficiently distinguish them from avoidance claims. *See Lehman Bros.*, 469 B.R. at 450-51, 455-60.[2] Second, and most significant for this and other Chapter 15 litigation, nothing in implied-preemption principles or the Supremacy Clause suggests that a statute that is silent on preemption may displace foreign law. *See, e.g.*, *In re Bankr. Est. of Norske Skogindustrier ASA*, 629 B.R. 717, 762 (Bankr. S.D.N.Y. 2021); *Al-Kurdi v. United States*, 25 Cl. Ct. 599, 601 n.3 (1992). In short, the Second Circuit's construction of §546(e) conflicts with better reasoned views of every other court to consider the issue, gives a free pass for wrongful conduct, and frustrates the policies of Chapter 15.

II. The Question Presented Is Important, And This Case Is An Ideal Vehicle.

A. This case raises important legal issues that amply warrant this Court's attention.

1. For well over a century, this Court has identified the presumption against extraterritoriality as a bedrock principle of statutory interpretation. In the early 20th century, Justice Holmes described the notion that federal legislation governs "acts … outside the jurisdiction of the United States" as a "startling" departure from "the general and almost universal rule," and a threat to "the comity of nations." *Am. Banana Co. v. United Fruit Co.*, 213 U.S. 347, 355-56

[2] Indeed, the Second Circuit's decision may bar even foreign common-law claims alleging *intentional fraud*, as it not obvious how the §548(a)(1) carveout to the safe harbor would apply to such claims. *See* App.211-13.

(1909). Over the ensuing decades, this Court has "often recited" the rule that "[w]hen a statute gives no clear indication of an extraterritorial application, it has none." *Morrison*, 561 U.S. at 255; *see, e.g.*, *Foley Bros. v. Filardo*, 336 U.S. 281, 284-85 (1949); *Blackmer v. United States*, 284 U.S. 421, 437 (1932). And this Court has repeatedly emphasized the importance of this presumption, as it guards against "clashes between our laws and those of other nations," and the attendant risks of "international discord" and "retaliative action." *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 115-16 (2013) (first quoting *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991), then quoting *Benz v. Compania Naviera Hidalgo, S.A.,* 353 U.S. 138, 147 (1957)).

Recognizing the importance of these issues, this Court has frequently granted certiorari to resolve questions about whether, and to what extent, federal statutes have extraterritorial reach. *See, e.g.*, *Abitron Austria*, 600 U.S. at 417; *Yegiazaryan*, 599 U.S. at 540-41; *Nestlé USA, Inc. v. Doe*, 593 U.S. 628, 632 (2021); *WesternGeco LLC v. ION Geophysical Corp.*, 585 U.S. 407, 412 (2018); *RJR Nabisco*, 579 U.S. at 335. The Court has often needed to remind the courts of appeals—and the Second Circuit in particular—not to "disregard" the presumption against extraterritoriality or convert it into "a craven watchdog indeed." *Morrison*, 561 U.S. at 255, 266 (reversing Second Circuit); *see, e.g.*, *Abitron Austria*, 600 U.S. at 417, 420-21 (reversing Tenth Circuit's ruling that provisions of the Lanham Act apply extraterritorially); *Nestlé*, 593 U.S. at 632 (reversing Ninth Circuit decision that "improperly [permitted] extraterritorial application of the" Alien Tort Statute);

RJR Nabisco, 579 U.S. at 346-55 (reversing Second Circuit decision that improperly permitted extraterritorial application of RICO). And this Court's careful supervision of decisions on extraterritoriality is wise, as "consistent application of the presumption" against extraterritoriality not only prevents friction with other countries but "preserves a stable background against which Congress can legislate with predictable effects." *Yegiazaryan*, 599 U.S. at 541.

The decision below defies this Court's repeated admonitions to rigorously apply the presumption against extraterritoriality, and it does so in a way that effectively nullifies the enacted will of Congress on a sensitive foreign-policy issue. The Second Circuit's creation of a U.S.-law defense to foreign-law claims that Congress has expressly authorized foreign liquidators to assert in federal court is flatly inconsistent with the concerns of international comity underpinning both Chapter 15 and this Court's decisions on extraterritoriality. Even more troubling, the Second Circuit's use of the anti-superfluity canon to project §546(e) extraterritorially—despite the absence of any clear or affirmative statutory language to that effect—is likely to have repercussions beyond the bankruptcy context. By using one of the weakest interpretative canons to overcome one of the strongest presumptions, it resurrects the long-discarded practice of "using congressional silence as a justification for … extraterritorial application." *Morrison*, 561 U.S. at 255, 260-61.

2. "[T]he proper application of the §546(e) safe harbor" is also an important, frequently recurring issue—as this Court recognized by granting certiorari

in *Merit Management*, 583 U.S. at 377. Domestic bankruptcy trustees and foreign liquidators alike are increasingly (and prudently) taking an "expansive approach" to recovering assets for the estate, identifying "a wide-ranging variety of causes of action"—including "common law claims"—that "may apply." *Lehman Bros.*, 469 B.R. at 450. As a result, federal courts frequently confront the question of whether and to what extent §546(e) applies to common-law claims. *See, e.g.*, *Frost*, 564 F.3d at 988; *Nine W.*, 87 F.4th at 150; *U.S. Bank*, 892 F.Supp.2d at 824-26.

By recognizing that §546(e) by its terms does not apply to common-law claims, and applying implied preemption instead, courts outside the Second Circuit strike a sensible balance that allows at least some common-law claims alleging knowing misconduct to proceed. The Second Circuit, by contrast, wipes out even common-law claims that pose no conflict with §546(e) and the rest of the Code. In the process, the Second Circuit gives an inexplicable free pass to those who knowingly profit from fraud, to the detriment of innocent victims. Moreover, the Second Circuit's approach heedlessly eliminates foreign common-law claims that are not subject to implied-preemption principles at all. In doing so, the Second Circuit (mis)interprets §546(e) in a manner that puts it at war with Congress' objectives in enacting Chapter 15.

That makes this the perfect case to resolve the circuit split over §546(e)'s (in)applicability to common-law claims. Applying §546(e)'s safe harbor to directly bar *foreign* statutory avoidance claims and common-law claims, as the Second Circuit did here, threatens

to turn Chapter 15 into a false promise of comity and assistance to foreign liquidators. Indeed, the decision below is likely to "lend a measure of protection to debtors to hide assets in the United States out of the reach of the foreign jurisdiction" by preventing foreign liquidators from recovering assets that they would be able to recover in foreign courts. *See Condor*, 601 F.3d at 327. And the fact that the decision below was rendered by the Second Circuit magnifies its importance, given New York City's status as a hub for global trade and finance.

B. The procedural background of this case also makes it an excellent vehicle to resolve these consequential issues. Whether the safe harbor applies extraterritorially was thoroughly litigated and passed upon by the bankruptcy court, the district court, and the court of appeals. *See* App.179-92; App.253-59; App.389-406. So was the extent (if any) to which the safe harbor applies to common-law claims. *See* App.203-11; App.264-65; App.286-91; App.317-19. Both issues have been fully ventilated and are cleanly presented.

The stakes could hardly be higher: The decision below leaves overseas victims of the Madoff Ponzi scheme who lost *billions* with no viable litigation vehicle for redress. Indeed, it leaves these innocent investors worse off than under current BVI law as applied in the BVI courts, where there is no securities safe harbor. It leaves them worse off than U.S. investors in Madoff's scheme, whose U.S.-law claims have been allowed to proceed to a far greater degree—including against many of the respondents here—notwithstanding §546(e). *See Picard*, 917 F.3d at 91.

And it leaves them worse off than if petitioners had sued in New York state court instead of seeking recognition under Chapter 15. *See supra* n.1. In sum, the Second Circuit transformed Chapter 15 from an instrument of international comity into an obstacle to comity, using a U.S.-law defense to wipe out about $6 billion in foreign-law claims being pursued on behalf of innocent overseas investors. That harsh, perplexing result should not be allowed to stand. This Court should grant certiorari and reverse.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

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March 13, 2026

APPENDIX

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Appendix A

PARTIES TO THE PROCEEDING

Petitioners are Fairfield Sentry Limited (In Liquidation), Fairfield Sigma Limited (In Liquidation), and Fairfield Lambda Limited (in Liquidation) (collectively, the "Funds"), and Kenneth M. Krys and Greig Mitchell, in their capacities as liquidators and foreign representatives of the Funds. Petitioners were plaintiffs/appellants/cross-appellees below.

Respondents were defendants/appellees/cross-appellants below. The following list contains the names of all entities that have participated in this litigation as a respondent, appellee, cross-appellant, or defendant. Entities marked with an asterisk have settled and are no longer parties to the litigation.

- AAAM*
- Abdul Hamid M. Saeed
- ABN AMRO Global Custody
- ABN AMRO Retained Nominees (IOM) Limited
- ABN AMRO SCHWEIZ AG a/k/a ABN AMRO (Switzerland) AG
- Abu Dhabi Investment Authority
- AEB Lux a/k/a American Express Bank (London) a/k/a Standard Chartered PLC
- Al Nahyan Mansour B. Zayed

- All Funds Bank
- Allianzbank SPA/Unifortune Conservative Side Pocket
- Alok Sama
- Altigefi-Altipro Master a/k/a Olympia Capital Management
- American Express Bank n/k/a Standard Chartered International (USA) Ltd.
- American Express Offshore Alternative Investment Fund*
- ANDBanc Andorra a/k/a Andorra Banc Agricol Reig, S.A.
- Andorra Banc Agricol Reig SA
- Arden Asset Management Inc.
- Arden Endowment Advisers Limited
- Arden International Capital Ltd.
- Atlantic Security Bank*
- Avalon Absolute Return Funds PLC
- AXA Isle of Man Limited
- Banc of America Securities, LLC
- Banca Arner SA*
- Banca Carige SPA
- Banca Cesare Ponti SPA

- Banca Commerciale Lugano
- Banca Popolare Dell'Alto Adige Soc. Coop. Resp. Lim.
- Banca Profilo SPA
- Banca Unione Di Credito
- Banco Atlantico (Bahamas) a/k/a Banco Atlantico (Bahamas) Bank & Trust Limited
- Banco Atlantico Gibraltar Ltd. a/k/a EFG Bank (Gibraltar) Ltd.
- Banco Bilbao Vizcaya Argentaria (Portugal) S.A.
- Banco Bilbao Vizcaya Argentaria, S.A.
- Banco General SA Banca Privada
- Banco Inversis SA a/k/a Banco Inversis Net
- Banco Itau Europa International
- Banco Itau Europa Luxembourg*
- Banco Itau International (f/k/a Bank Boston International Florida)
- Banco Nominees (IOM) Limited
- Banco Santander (Suisse) S.A.
- Banco Santander International S.A.
- Bank Boston International Florida

- Bank Hapoalim (Suisse) Ltd. a/k/a Banque Hapoalim (Suisse) S.A.
- Bank Hapoalim BM, London
- Bank Hapoalim Switzerland Ltd.
- Bank J. Safra Sarasin AG, f/k/a Bank Sarasin & Cie
- Bank Julius Baer and Co. Ltd., Zurich a/k/a Bank Julius Baer and Co. Ltd. a/k/a Bank Julius Baer and Co. SA
- Bank Leumi Israel
- Bank Leumi le-Israel B.M.*
- Bank Morgan Stanley AG
- Bank Morgan Stanley SA
- Bank of America National Trust and Savings Association
- Bank of Ireland Nominees Limited
- Bank Sarasin & CIE a/k/a Bank Sarasin & Co.
- Bank Sarasin & Cie AG
- Bank Vontobel AG
- BankMed (Suisse) S.A. f/k/a Banque de la Mediterranee (Suisse) S.A.
- Banque Baring Brothers Sturdza SA f/k/a Banque Baring Brothers Suisse SA

- Banque Cantonale Vaudoise*
- Banque de Luxembourg
- Banque de Reescompte et de Placement a/k/a/ BAREP*
- Banque Degroof Bruxelles a/k/a Banque Degroof SA Bruxelles
- Banque Degroof Luxembourg S.A.
- Banque et Caisse d'Epargne de l'Etat Luxembourg
- Banque Generale du Luxembourg
- Banque Havilland S.A.
- Banque Piguet & Cie S.A.
- Banque Privee Edmond de Rothschild (Europe)
- Banque SCS Alliance SA n/k/a CBH Compagnie Bancaire Helvetique SA
- Banque Syz & Co. SA*
- Banque Vontobel Geneve SA n/k/a Bank Vontobel AG
- Barclays Bank (Suisse) SA
- Barclays Bank SA Madrid
- Barclays Private Bank & Trust (Channel Islands) Limited
- Barfield Nominees Limited

- BBVA (Suisse) SA
- BBVA Fundas Privianza
- BBVA Grand Cayman
- BBVA Miami
- BBVA Zurich/Shares
- BCV AMC Defensive AL Fund*
- Bessemer Trust Company
- BGL BNP Paribas S.A.
- BIE Bank & Trust Bahamas Ltd.
- Bipielle Banke (Suisse)
- BK Hapoalim/B M Tel Aviv
- Blubank Ltd. n/k/a Inteligo Bank Ltd.*
- Blush & Co.
- BNP Paribas (Suisse) SA*
- BNP Paribas (Suisse) SA Ex Fortis*
- BNP Paribas (Suisse) SA Private*
- BNP Paribas Arbitrage SNC
- BNP Paribas España f/k/a Fortis Bank (España)*
- BNP Paribas Luxembourg SA a/k/a BGL BNP Paribas*

- BNP Paribas Private Bank and Trust Cayman Ltd.
- BNP Paribas Securities Nominees Ltd. a/k/a Harrier Holdings Limited*
- BNP Paribas Securities Services Luxembourg
- BNY AIS Nominees Ltd.
- Bordier & Cie*
- BP Alpha
- BP Alpha S.A. n/k/a BP Alpha (Agente De Valores S.A.)
- Bred Banque Populaire
- Brown Brothers Harriman & Co.
- BSI AG
- BSI Ex Banca Del Gottardo
- Bureau of Labor Insurance
- CA Indosuez (Switzerland) SA
- Caceis Bank EX IXIS IS
- Caceis Bank Luxembourg*
- CAIS Bank
- Caliber Investments Ltd.
- Calyon Paris
- Catalunya Caixa f/k/a Caixa Catalunya a/k/a Caixa D'Estalvis de Catalunya

- Cathay Life Insurance Co. Ltd.
- CBESSA a/k/a Banque Privee Espirito Santo SA, f/k/a Compagnie Bancaire Espirito Santo SA
- CDC ICM the GHOS Portfolio a/k/a CDC IXIS Capital Markets
- CDC IXIS
- Celfin International Limited
- Centre College
- Centrum Bank AG (AMS)*
- CGC NA
- Chelsea Trust Company Limited
- Citco Bank Nederland N.V.
- Citco Bank Nederland N.V. Dublin Branch
- Citco Banking Corporation N.V.
- Citco Global Custody (NA) NV
- Citco Global Custody NV
- Citco Group Limited
- Citibank (Switzerland) AG a/k/a Citibank (Switzerland) Zurich*
- Citibank Korea Inc.
- Citibank NA London
- Citigroup Global Markets Limited

- Cititrust Bahamas Limited
- Citivic Nominees Limited*
- Clariden Leu Ltd.
- Clarks Fork Foundation
- Clearstream
- Clearstream Banking SA
- Collins Stewart (CI) Limited
- Commercial Bank of Kuwait
- Compagnie Bancaire Espiritu Santo SA n/ka/ Banque Privee Espirito Santo SA
- Compagnie Bancaire Helvetique
- Corner Banca SA*
- CPR Online
- Credit Agricole (Miami)
- Credit Agricole (Suisse) SA a/k/a Banque du Credit Agricole (Suisse) SA
- Credit Agricole Titres
- Crèdit Andorra/Crediinvest
- Credit Industriel et Commercial Singapore Branch
- Credit Lyonnais Miami n/k/a LCL-LE Credit Lyonnais S.A. Miami

- Credit Lyonnais n/k/a LCL-LE Credit Lyonnais SA
- Credit Suisse (Bahamas) a/k/a Credit Suisse (Bahamas) Limited
- Credit Suisse (Luxembourg) SA
- Credit Suisse AG Nassau Branch Wealth Management
- Credit Suisse AG Zurich
- Credit Suisse AG, Nassau Branch
- Credit Suisse Gibraltar Limited
- Credit Suisse International
- Credit Suisse Nassau Branch Wealth Management a/k/a Credit Suisse Wealth Management Limited
- Credit Suisse Nominees (Guernsey) Limited
- Credit Suisse Nominees a/k/a Credit Suisse Nominees (Guernsey) Limited A/C Gib
- Delta S.P.A
- Deltec Bank & Trust Limited
- Deutsche Bank (Cayman)
- Deutsche Bank (Suisse) SA as Successor to Bank Sal. Oppenheim Jr. & Cie (Schweiz) AG
- Deutsche Bank (Suisse) SA Geneve

- Deutsche Bank AG Singapore
- Deutsche Bank Nominees (Jersey) Limited
- Deutsche Bank Trust Company Americas
- Dexia Banque Internationale à Luxembourg
- Dexia BIL a/k/a Dexia Banque Internationale a Luxembourg
- Dexia Private Bank (Switzerland)
- Dexia World Alternative
- DGAM Alternative Strategy Fund II, SPC – Cell A
- DGAM Alternative Strategy Fund II, SPC – Cell B
- DGAM Alternative Strategy Fund L.P.
- DGAM Asset Allocation Fund L.P.
- DMC (HD) Limited
- Don Chimango SA
- Dreadnought Finance OY
- Dresdner Bank Schweiz*
- Dresdner LateinAmerika AG f/k/a Dresdner Bank LateinAmerika AG
- Edmond de Rothschild (Suisse) S.A.
- Eduardo Fernandez de Valderrama Murillo

- EFG Bank a/k/a EFG Bank AG and/or EFG Bank SA
- EFG Bank SA Switzerland
- EFG Eurofinancier D'Invest MCL
- EFG Private Bank SA*
- Essex 17 Limited
- Essex 21 Limited
- Eurogate Farad Global Niche
- European Financial Group EFG SA a/k/a European Financial Group EFG (Luxembourg) S.A.
- Fairfield Investment Fund Ltd.*
- Fairfield Investment GCI*
- Falcon Private Bank*
- FCP-BE CAEN
- Fidessa Alpha Fund
- FIF Advanced Limited*
- Finter Bank Zurich
- First Gulf Bank*
- Fondo Hunter
- Fortis (Isle of Man) Nominees Limited a/k/a ABN AMRO Fund Services (Isle of Man)

Nominess Limited n/k/a ABN AMRO Retained Nominees (IOM) Limited

- Fortis Bank (Nederland) N.V. n/k/a ABN AMRO Bank N.V.
- Fortis Bank Cayman Limited n/k/a ABN AMRO Fund Services Bank (Cayman) Limited
- Fortis Bank Nederland NV
- Fortis Bank SA/NV n/k/a BNP Paribas Fortis
- Fortis Global Custody Services N.V. n/k/a ABN AMRO Global Custody Services N.V.
- Fortis Global Custody Services NV
- Fox & Co.
- FS ABN AMRO Global Custody
- FS Mizrahi Tefahot Bank Ltd. a/k/a FS United Mizrahi Bank Limited
- FS Oddo & Cie
- FS Stichting Stroeve Global Custody
- FS/AEB Lux a/k/a American Express Bank (London) a/k/a Standard Chartered PLC
- FS/ANDBanc Andorra a/k/a Andorra Banc Agricol Reig, S.A.
- FS/Bank Leumi Israel
- FS/Banque Degroof Bruxelles a/k/a Banque Degroof SA Bruxelles

- FS/BBVA Miami
- FS/BBVA Zurich/Shares
- FS/BK Hapoalim/B M Tel Aviv
- FS/CBESSA a/k/a Banque Privee Espirito Santo SA, f/k/a Compagnie Bancaire Espirito Santo SA
- FS/Fortis Banque Luxembourg
- FS/GSCO London
- FS/GSCO New York
- FS/HSBC Guyerzeller Zurich a/k/a HSBC Trust Company AG
- FS/HSBC Private Banking Nom a/k/a FS/HSBC Private Banking Nominee 1 (Jersey) Ltd.
- FS/ING Lux
- FS/Israel Discount Bank, Limited, Tel Aviv
- FS/LAB/AXA PM
- FS/NBK Kuwait a/k/a National Bank of Kuwait
- FS/NBP Titres
- FS/SG Private Banking (Lugano-Svizzera) SA a/k/a FS/SG Private Banking Suisse SA*
- FS/Swedclient/IAM

- Fullerton Capital PTE, Ltd. f/k/a Goldtree Investments Private Limited*
- Fund Nominees Limited
- Gates Charitable Trust
- GE Brunei Life Ins FD – Lion Capital Balanced (330008)
- GE Brunei Life Ins Fd Slam Balanced
- GE Life
- GE Life – Shareholders FD – Lion Capital FI (330007)
- GE Life S Pore Li In Fd Par Slam FL
- GE Life S Pore Li Inv Fd Par Slam (FI)
- GE Life Shareholders Fd Slam FL
- GE Trust Pte Ltd – Lion Capital FI (330012)
- Global Fund Porvenir
- Grand Cathay Securities (Hong Kong) Limited
- Graziela Strina de Toledo Arruda
- GSCO London
- GSCO New York
- Hambros Guernsey Nominees a/k/a Hambros (Guernsey Nominees) Limited*
- Hansard Europe Limited
- Harmony Capital Fund Ltd.

- Hinduja Bank (Switzerland) SA f/k/a AMAS Bank (Switzerland) Ltd.
- Hontai Life Insurance Company Limited
- HSBC
- HSBC Bank Bermuda Limited f/k/a The Bank of Bermuda Limited
- HSBC Bank USA*
- HSBC Guyerzeller Zurich a/k/a HSBC GuyerzellerTrust Company AG n/k/a HBSC Trust Company AG
- HSBC Institutional Trust Services (Asia) Limited
- HSBC International Trustee Limited
- HSBC Private Bank (C.I.) Limited
- HSBC Private Bank (Guernsey) Ltd. a/k/a HSBC Republic Bank (Guernsey) Ltd. n/k/a HSBC Private Bank (C.I.) Limited
- HSBC Private Bank (Suisse) S.A.
- HSBC Private Bank Suisse S.A.
- HSBC Private Banking Nom a/k/a HSBC Private Banking Nominee 1 (Jersey) Ltd. n/k/a/ Republic Nominees Limited
- HSBC Securities (Panama) SA f/k/a Banistmo Securities, Inc.

- HSBC Securities Services (Luxembourg) S.A.
- HSBC Seoul Branch, Ltd.
- HSH Nordbank Securities S.A.
- Hua Nan Commercial Bank
- Hyperiod (HD) Limited
- Hyposwiss Private Bank Genève f/k/a Anglo Irish Bank (Suisse), S.A.
- ICIB Atlantique Alpha Master
- ICIB Centre France Alpha Prot Master
- ICIB Cote D'Armor Alpha Master
- ICIB Ethias Allocation Master
- ICIB Hyperion Alternative Basket II Master
- ICIB Hyperion Alternative Basket Master
- ICIB Natexis Lux Alpha Master
- ICM Tactical Master
- IDF Global Fund
- IHAG Handelsbank AG*
- Incore Bank AG*
- ING Bank (Suisse) SA, as predecessor to Bank Julius Baer & Co. Ltd.
- ING Lux
- Investec Bank (Switzerland) AG

- IPCM
- Israel Discount Bank, Limited, Tel Aviv
- Jared Trading Limited/BVI
- John E. Niederhuber IRA
- Jorge Herman Melguizo
- Judith Cherwinka a/k/a Judith Cherwinka IRA
- Karen Lefcourt Trust
- Kas Bank
- KAS Depositary Trust Co.
- Kasbank Depositary Trust Company Conc Theta Multistar Low Volatility Fund a/k/a KDTC Conc Theta Multistar Low Volatility Fund
- Kasbank Effecten Bewaarbedrijf N.V.
- Kefong Lee
- Kiangsu Chekiang and Shanghai Residents (H.K.) Association
- Korea Exchange Bank
- Kredietbank SA Luxembourgeoise
- KWI
- LAB/AXA PM
- Legacy Fund Ltd.

- LGT Bank In Liechtenstein AG*
- Liechtensteinische LB Reinvest AMS*
- Life Ins Fund-Par (FI)-Lion Capital-SCND
- Lina Maria Melguizo
- Lion Global Investors f/k/a Lion Fairfield Capital Management
- Liongate Multistrategy Fund SEG Portfolio
- Lloyds TSB Bank Geneva*
- Lombard Odier Darier Hentsch & Cie*
- Lombardy Properties Limited
- Luisa M. Strina
- Martin Lavarello
- Melrose Investments Ltd.
- Meritz Fire & Marine Insurance Company Ltd.
- Merrill Lynch Bank*
- Merrill Lynch International
- Merrill Lynch, Pierce, Fenner & Smith, Inc.
- Milan Clessidra a/k/a Clessidra SGR SpA
- Millennium Multi-Strategy Fund
- Mirabaud & Cie a/k/a Mirabaud & Cie Banquiers Prives

- Mizrahi Tefahot Bank Limited a/k/a United Mizrahi Bank Limited
- Monte Paschi Ireland Ltd.
- Morgan Stanley & Co. International PLC
- Multi-Strategy Fund Limited
- Murdoch & Co.
- Nadine Pavlovsky
- Naidot & Co.
- Natexis Banques Populaires
- National Bank of Kuwait
- Natixis f/k/a IXIS Corporate and Investment Bank
- Natixis Private Banking International SA
- NBK Banque Privee Suisse SA
- NBK Kuwait a/k/a National Bank of Kuwait
- NBP Titres
- Neue Bank AG
- NMAS1 Gestion SGIIC SA
- Nomura International PLC
- NYROY
- OAM
- Oddo & Cie

- Odyssey Alternative Fund Limited
- Oval Alpha Palmares
- Palmares Europlus
- Parson Finance Panama SA*
- Perenco SA
- PFPC Bank Limited a/k/a PFPC International Bank Limited
- Pictet & CIE
- PKB Privatbank AG*
- Platinum All Weather Fund
- Pleasant T. Rowland Foundation Inc.
- PNC International Bank Limited n/k/a BNY Mellon International Bank
- Portobelo Advisors Inc.
- Private Space Ltd.
- Public Bank (Hong Kong) Limited f/k/a Asia Commercial Bank
- Public Bank Nominees Limited
- Quasar Funds SPC a/k/a Quasar Fund SPC Class A and Class B CGCNV
- Rahn & Bodmer Banquiers
- RBC Dexia Investor Service Julius Baer SICAV

- RBC Dexia Investor Services España S.A.
- RBC Dominion Securities, Inc.
- RBC Investor Services Bank SA f/k/a RBC Dexia Investor Services Bank SA
- RBS Coutts Bank Ltd.
- Republic Nominees Limited
- Robinson & Co.
- Rothschild & Cie Banque Paris
- Rothschild & Cie Banque-EGA
- Rothschild Bank AG Zurich (Dublin) a/k/a Rothschild Bank AG
- Rothschild Bank Geneva (Dublin)
- Rothschild Lugano Dublin a/k/a Banca Privata Edmond de Rothschild Lugano S.A.
- Rothschild Trust (Schweiz) AG
- Roya Rebecca Elghanian
- Royal Bank of Canada
- Royal Bank of Canada (Suisse)
- Royal Bank of Canada a/k/a RBC Capital Markets Corporation
- Royal Bank of Canada Singapore Branch
- Safra National Bank of New York*
- SCB Nominees (CI) Ltd.

- Schroder & Co. (Asia) Ltd.
- Schroder & Co. Bank AG
- Schroders Italy SIM SPA
- Sciens CFO 1 Feeder Fund Ltd.
- Sciens Global Opportunity Fund
- SCND Life Ins Fund Par FI Slam
- SEI Investments Trustee and Custodial Services (Ireland) Ltd. Nominee A/C 1
- Select Absolute Strategies SICAV f/k/a ING (L) Alternative Strategies Balanced Growth f/k/a BBL Alternative Strategies Growth
- Sempervirens Capital Management Limited Class E-F Fund
- SG Hambros Bank & Trust (Guernsey) Ltd.*
- SG Hambros Bank (Channel Islands) Limited – Guernsey a/k/a SG Hambros Bank (Channel Islands) Limited*
- SG Hambros Nominees (Jersey) a/k/a SG Hambros Nominees (Jersey) Limited*
- SG Private Banking (Lugano-Svizzera) SA a/k/a FS/SG Private Banking Suisse SA*
- SG Private Banking (Suisse) SA n/k/a Société Générale Private Banking (Suisse) S.A*
- Shareholders Fund - SCMS

- Sherli Elghanian Krayem
- Simgest SpA
- SIS Seeganintersettle
- Six Sis AG a/k/a Sis SegaInterSettle AG
- Six SIS Ltd.
- SNS Global Custody B.V. a/k/a SNS Bank N.V.*
- Société Européenne de Banque S.A.
- "Société Européenne de Banque S.A. n/k/a Intesa Sanpaolo
- Bank Luxembourg SA"
- Societe Generale Bank & Trust (Luxembourg)*
- Societe Generale Bank & Trust S.A. (Luxembourg)*
- Somers Nominees (Far East) Limited
- Stanhope Capital*
- Stichting Stroeve Global Custody
- Strategy Sicav Edpaf
- Sumitomo Trust & Banking Co., Ltd.
- Swedbank
- Swedclient/IAM
- T1 Global Fund Ltd.

- Tatiana Melguizo
- Tayleigh Trust Company Limited
- Tercas – Cassa di Risparmio della Provincia di Teramo S.P.A.
- The Reserve Trust (Tayleigh or Samantha Sackler 1996)
- Theodoor GGC Amsterdam a/k/a Theodoor Gilissen Global Custody N.V.
- UBS (Luxembourg) S.A.
- UBS AG New York
- UBS AG Zurich
- UBS Deutschland AG as successor to Dresdner LateinAmerika AG
- UBS Europe SE, Luxembourg Branch
- UBS Fund Services (Cayman) Limited
- UBS Fund Services (Cayman) Limited Ref Greenlake Arbitrage Fund Ltd.
- UBS Fund Services (Ireland) Ltd.
- UBS Jersey Nominees
- UBS Zurich
- UMR
- Unicorp Bank & Trust Limited

- Verwaltungs und Privat-Bank AG Aktiengesellschaft (AMS)*
- Vontobel Asset Management Inc.
- Vorarlberger Landes UND Hypothekenbank Aktiengesellschaft
- Wall Street Securities S.A. f/k/a Bantal Brothers S.A.
- Wegelin & Company
- Woori Bank
- ZCM Asset Holding Company (Bermuda) Ltd.*
- ZCM Matched Funding Corp.*
- Zurich Bank*
- Zurich Capital Markets Company*

* denotes defendants that have settled or been otherwise dismissed

Appendix B

STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings:

United States Court of Appeals for the Second Circuit

Lead appeal and lead cross-appeal:

- *In re Fairfield Sentry Ltd.*, No. 22-2101-bk(L), judgment entered on August 5, 2025
- *In re Fairfield Sentry Ltd.*, No. 23-965-bk(L), judgment entered on August 5, 2025

Consolidated appeals (in each case judgment entered on August 5, 2025):

- *In re Fairfield Sentry Ltd.*, No. 22-2104-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2107-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2108-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2109-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2111-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2112-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2113-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2114-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2115-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2116-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2117-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2119-bk

- *In re Fairfield Sentry Ltd.*, No. 22-2120-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2121-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2122-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2123-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2125-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2126-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2127-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2128-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2129-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2130-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2131-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2132-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2133-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2134-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2135-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2136-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2137-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2138-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2139-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2140-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2141-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2142-bk

- *In re Fairfield Sentry Ltd.*, No. 22-2143-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2144-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2145-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2146-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2147-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2148-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2149-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2150-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2151-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2152-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2153-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2156-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2157-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2158-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2159-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2161-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2162-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2163-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2164-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2165-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2166-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2167-bk

- *In re Fairfield Sentry Ltd.*, No. 22-2168-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2169-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2170-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2171-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2172-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2173-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2174-bk
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- *In re Fairfield Sentry Ltd.*, No. 22-2180-bk
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- *In re Fairfield Sentry Ltd.*, No. 22-2195-bk
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- *In re Fairfield Sentry Ltd.*, No. 22-2199-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2200-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2201-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2202-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2203-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2204-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2205-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2207-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2208-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2209-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2210-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2211-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2212-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2213-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2214-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2215-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2216-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2218-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2219-bk

- *In re Fairfield Sentry Ltd.*, No. 22-2221-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2222-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2223-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2227-bk
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- *In re Fairfield Sentry Ltd.*, No. 22-2238-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2239-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2240-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2241-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2242-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2243-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2244-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2245-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2246-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2247-bk

- *In re Fairfield Sentry Ltd.*, No. 22-2248-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2249-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2250-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2251-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2252-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2253-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2254-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2255-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2256-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2257-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2258-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2259-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2260-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2261-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2262-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2263-bk
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- *In re Fairfield Sentry Ltd.*, No. 22-2631-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2641-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2642-bk
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- *In re Fairfield Sentry Ltd.*, No. 22-2645-bk
- *In re Fairfield Sentry Ltd.*, No. 22-2654-bk
- *In re Fairfield Sentry Ltd.*, No. 23-687-bk
- *In re Fairfield Sentry Ltd.*, No. 23-695-bk
- *In re Fairfield Sentry Ltd.*, No. 23-697-bk
- *In re Fairfield Sentry Ltd.*, No. 23-715-bk

Consolidated cross-appeals:

- *In re Fairfield Sentry Ltd.*, No. 23-965-bk
- *In re Fairfield Sentry Ltd.*, No. 23-967-bk
- *In re Fairfield Sentry Ltd.*, No. 23-970-bk
- *In re Fairfield Sentry Ltd.*, No. 23-972-bk

- *In re Fairfield Sentry Ltd.*, No. 23-974-bk
- *In re Fairfield Sentry Ltd.*, No. 23-977-bk
- *In re Fairfield Sentry Ltd.*, No. 23-978-bk
- *In re Fairfield Sentry Ltd.*, No. 23-979-bk
- *In re Fairfield Sentry Ltd.*, No. 23-980-bk
- *In re Fairfield Sentry Ltd.*, No. 23-982-bk
- *In re Fairfield Sentry Ltd.*, No. 23-986-bk
- *In re Fairfield Sentry Ltd.*, No. 23-987-bk
- *In re Fairfield Sentry Ltd.*, No. 23-988-bk
- *In re Fairfield Sentry Ltd.*, No. 23-989-bk
- *In re Fairfield Sentry Ltd.*, No. 23-990-bk
- *In re Fairfield Sentry Ltd.*, No. 23-991-bk

United States District Court for the Southern District of New York

Lead case:

- *In re Fairfield Sentry Ltd.*, No. 1:19-cv-03911, judgment entered on August 29, 2022

Consolidated cases:

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04078, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04079, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04081, judgment entered on August 29, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04084, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04089, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04090, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04099, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04100, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04101, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04102, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04105, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04129, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04131, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04134, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04138, judgment entered on August 31, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04145, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04146, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04148, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04153, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04155, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04168, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04170, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04173, judgment entered on September 14, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04178, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04188, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04203, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04219, judgment entered on September 6, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04225, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04254, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04257, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04261, judgment entered on September 14, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04262, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04263, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04265, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04267, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04268, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04274, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04278, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04285, judgment entered on September 2, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04317, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04319, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04324, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04357, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04359, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04364, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04365, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04367, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04369, judgment entered on September 14, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04379, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04381, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04382, judgment entered on September 1, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04384, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04385, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04386, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04388, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04395, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04396, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04414, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04415, judgment entered on August 30, 2022
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- *In re Fairfield Sentry Ltd.,* No. 19-cv-04424, judgment entered on August 31, 2022

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- *In re Fairfield Sentry Ltd.,* No. 19-cv-04431, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04432, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04434, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04437, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04438, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04439, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04441, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04445, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04446, judgment entered on September 2, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04459, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04461, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04475, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04479, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04483, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04484, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04486, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04489, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04490, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04491, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04495, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04498, judgment entered on September 1, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04500, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04501, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04502, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04515, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04533, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04535, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04536, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04539, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04540, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04543, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04545, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04546, judgment entered on September 1, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04547, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04549, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04550, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04552, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04561, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04565, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04567, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04569, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04570, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04571, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04573, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04585, judgment entered on August 29, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04603, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04604, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04605, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04607, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04608, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04610, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04611, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04620, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04623, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04624, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04627, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04657, judgment entered on August 29, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04660, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04668, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04683, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04687, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04691, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04739, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04741, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04742, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04743, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04744, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04765, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04766, judgment entered on August 30, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04767, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04768, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04770, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04771, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04772, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04773, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04778, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04779, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04782, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04785, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04788, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04789, judgment entered on August 31, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04798, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04806, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04809, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04813, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04817, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04818, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04825, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04853, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04860, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04861, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04863, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04864, judgment entered on September 6, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04865, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04869, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04882, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04886, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04888, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04930, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04933, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04934, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04941, judgment entered on August 29, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04944, judgment entered on August 30, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04962, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04963, judgment entered on September 6, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04964, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04965, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04967, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04972, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04973, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04974, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04976, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04979, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04985, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04986, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04988, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04989, judgment entered on August 31, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-04990, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04991, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04994, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04995, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-04998, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05006, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05019, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05020, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05023, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05024, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05030, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05033, judgment entered on August 31, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-05034, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05035, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05040, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05042, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05044, judgment entered on August 31, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05054, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05056, judgment entered on September 14, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05057, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05061, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05067, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05068, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05071, judgment entered on September 8, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-05089, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05106, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05107, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05108, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05109, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05110, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05112, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05115, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05117, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05118, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05119, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05125, judgment entered on September 1, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-05126, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05130, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05131, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05132, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05135, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05142, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05143, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05149, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05153, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05154, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05157, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05220, judgment entered on September 8, 2022

- *In re Fairfield Sentry Ltd.,* No. 19-cv-05223, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05228, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05237, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05238, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05240, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 19-cv-05241, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02703, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02710, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02715, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02731, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02733, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02735, judgment entered on September 6, 2022

- *In re Fairfield Sentry Ltd.,* No. 21-cv-02738, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02744, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02747, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02749, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02750, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02755, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02766, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02774, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02788, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02790, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02794, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02826, judgment entered on September 8, 2022

- *In re Fairfield Sentry Ltd.,* No. 21-cv-02828, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02830, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02835, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02839, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02849, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02853, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02861, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02864, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02964, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02970 , judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02977, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-02980, judgment entered on September 6, 2022

- *In re Fairfield Sentry Ltd.,* No. 21-cv-02997, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03008, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03010, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03018, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03028, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03032, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03042, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03072, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03074, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03077, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03079, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03080, judgment entered on September 2, 2022

- *In re Fairfield Sentry Ltd.,* No. 21-cv-03085, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03088, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03091, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03092, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03097, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03102, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03106, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03110, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03112, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03127, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03130, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03133, judgment entered on September 8, 2022

- *In re Fairfield Sentry Ltd.,* No. 21-cv-03134, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03150, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03157, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03161, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03172, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03176, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03188, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03213, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03215, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03233, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03239, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03243, judgment entered on September 8, 2022

- *In re Fairfield Sentry Ltd.,* No. 21-cv-03248, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03249, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03259, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03281, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03283, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03284, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03285, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03289, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03290, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03292, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03310, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03313, judgment entered on September 8, 2022

- *In re Fairfield Sentry Ltd.,* No. 21-cv-03337, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03340, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03343, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03344, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03347, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03358, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03361, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03364, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03368, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03372, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03380, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03391, judgment entered on September 8, 2022

- *In re Fairfield Sentry Ltd.,* No. 21-cv-03394, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03396, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03397, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03399, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03401, judgment entered on September 1, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03407, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03409, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03417, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03419, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03421, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03426, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03431, judgment entered on September 2, 2022

- *In re Fairfield Sentry Ltd.,* No. 21-cv-03436, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03449, judgment entered on September 2, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03451, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03452, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03458, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03460, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03465, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03472, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03478, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03484, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03488, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03489, judgment entered on September 8, 2022

- *In re Fairfield Sentry Ltd.,* No. 21-cv-03491, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03493, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03508, judgment entered on September 27, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03509, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03510, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03511, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03512, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03515, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03516, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03518, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03519, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03520, judgment entered on September 8, 2022

- *In re Fairfield Sentry Ltd.,* No. 21-cv-03522, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03526, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03528, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03529, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03531, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03537, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03547, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03549, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03553, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03567, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03580, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03615, judgment entered on September 12, 2022

- *In re Fairfield Sentry Ltd.,* No. 21-cv-03654, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03663, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03666, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03670, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03686, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03692, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03732, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03752, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03753, judgment entered on September 6, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03754, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03755, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03759, judgment entered on September 7, 2022

- *In re Fairfield Sentry Ltd.,* No. 21-cv-03767, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03772, judgment entered on September 7, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03781, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03798, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03802, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03813, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03837, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03845, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03856, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03873, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03892, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03897, judgment entered on September 12, 2022

- *In re Fairfield Sentry Ltd.,* No. 21-cv-03901, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03903, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03905, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03907, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03911, judgment entered on September 8, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03939, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03940, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03952, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03953, judgment entered on September 12, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03957, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03966, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03972, judgment entered on September 13, 2022

- *In re Fairfield Sentry Ltd.,* No. 21-cv-03995, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-03998, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-04001, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-04003, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-04008, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-04015, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-04017, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-04020, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-04023, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-04027, judgment entered on September 13, 2022
- *In re Fairfield Sentry Ltd.,* No. 21-cv-04400, judgment entered on April 6, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-04486, judgment entered on April 6, 2023

- *In re Fairfield Sentry Ltd.,* No. 21-cv-04487, judgment entered on April 6, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-04496, judgment entered on April 6, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-3576, judgment entered on March 27, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-3637, judgment entered on March 27, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-3676, judgment entered on March 27, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-3653, judgment entered on March 27, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-4444, judgment entered on March 27, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-3544, judgment entered on March 27, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-3302, judgment entered on March 27, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-3741, judgment entered on March 27, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-3550, judgment entered on March 27, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-3530, judgment entered on March 27, 2023

- *In re Fairfield Sentry Ltd.,* No. 21-cv-3563, judgment entered on March 27, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-4498, judgment entered on March 27, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-4490, judgment entered on March 27, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-4381, judgment entered on March 27, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-4453, judgment entered on March 27, 2023
- *In re Fairfield Sentry Ltd.,* No. 21-cv-4329, judgment entered on March 27, 2023

Removed cases (no judgment):

- *Fairfield Sentry Limited (In Liquidation) v. AXA Isle of Man A/C L&C et al,* No. 1:10-cv-06549-GBD
- *Fairfield Sentry Limited (In Liquidation) et al v. Banco Itau Europa Luxembourg SA et al,* No. 1:10-cv-06558-GBD
- *Fairfield Sentry Limited v. Banque de Commerce et de Placements et al,* No. 1:10-cv-06564-GBD
- *Fairfield Sentry Limited et al v. Banque Sudameris et al,* No. 1:10-cv-06565-GBD

- *Fairfield Sentry Limited et al v. Beneficial Owners of the Accounts Held In The Name of Blubank Ltd.,* No. 1:10-cv-06566-GBD
- *Fairfield Sentry Limited v. BNP Paribas Luxembourg SA et al,* No. 1:10-cv-06552-GBD
- *Fairfield Sentry Limited et al v. BNP Paribas Securities Services Luxembourg et al,* No. 1:10-cv-06559-GBD
- *Fairfield Sentry Limited v. Brown Brothers Harriman & Co. et al,* No. 1:10-cv-06568-GBD
- *Fairfield Sentry Limited et al v. Cacesis Bank Luxembourg et al,* No. 1:10-cv-06550-GBD
- *Fairfield Sentry Limited v. CDC IXIS et al,* No. 1:10-cv-06557-GBD
- *Fairfield Sentry Limited (In Liquidation) v. CitIbank (Switzerland) Zurich et al.,* No. 1:10-cv-06547-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Citibank NA London et al.,* No. 1:10-cv-06548-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Delta National Bank and Trust Co. et al,* No. 1:10-cv-06603-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Deutsche Bank (Cayman) et al,* No. 1:10-cv-06553-GBD

- *Fairfield Sentry Limited (In Liquidation) et al v. Deutsche bank (Suisse) SA Geneve et al,* No. 1:10-cv-06570-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Deutsche Bank AG Singapore et al,* No. 1:10-cv-06560-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Deutsche Bank Trust Company America et al,* No. 1:10-cv-06569-GBD
- *Fairfield Sentry Limited (In Liquidation) et al v. Dresdner Bank LateinAmerika AG et al,* No. 1:10-cv-06556-GBD
- *Fairfield Sentry Limited (In Liquidation) et al v. EFG Bank and Beneficial Owners of the Accounts Held In the Name of EFG Bank,* No. 1:10-cv-06551-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Fidulex Management et al,* No. 1:10-cv-06567-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Fortis (Isle of Man) Nominees Ltd et al,* No. 1:10-cv-06593-GBD
- *Fairfield Sentry Limited (In Liquidation) et al v. FS/Andbanc Andorra et al,* No. 1:10-cv-06592-GBD

- *Fairfield Sentry Limited (In Liquidation) et al v. FS/CBESSA et al,* No. 1:10-cv-06584-GBD
- *Fairfield Sentry Limited (In Liquidation) v. FS/HSBC Private Banking Nom et al,* No. 1:10-cv-06589-GBD
- *Fairfield Sentry Limited (In Liquidation) et al v. HSBC Private Bank (Guernsey) Ltd. et al,* No. 1:10-cv-06591-GBD
- *Fairfield Sentry Limited (In Liquidation) v. HSBC Private Bank (Suisse) SA et al,* No. 1:10-cv-06602-GBD
- *Fairfield Sentry Limited (In Liquidation) v. HSBC Securities Services (Luxembourg) SA et al,* No. 1:10-cv-06590-GBD
- *Fairfield Sentry Limited (In Liquidation) et al v. ING Bank (Suisse) SA et al,* No. 1:10-cv-06604-GBD
- *Fairfield Sentry Limited (In Liquidation) v. JP Morgan Trust Company (Cayman) et al,* No. 1:10-cv-06597-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Kookmin Bank et al,* No. 1:10-cv-06594-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Lacroze,* No. 1:10-cv-06428-VM

- *Fairfield Sentry Limited (In Liquidation) et al v. Lombard Odier Darier Hentsch & Cie et al,* No. 1:10-cv-06601-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Merrill Lynch Bank (Suisse) SA et al,* No. 1:10-cv-06598-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Monte Paschi Ireland Ltd et al,* No. 1:10-cv-06599-GBD
- *Fairfield Sentry Limited (In Liquidation) et al v. Nomura International plc et al,* No. 1:10-cv-06600-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Pictet & Cie et al,* No. 1:10-cv-06627-GBD
- *Fairfield Sentry Limited (In Liquidation) et al v. Robinson & Co. et al,* No. 1:10-cv-06588-GBD
- *Fairfield Sentry Limited (In Liquidation) et al v. Safra National Bank of New York et al,* No. 10-CV-6376-BSJ
- *Fairfield Sentry Limited (In Liquidation) et al v. SNS Global Custody et al,* No. 1:10-cv-06585-GBD
- *Fairfield Sentry Limited (In Liquidation) v. State Street Bank Luxembourg SA et al,* No. 1:10-cv-06587-GBD

- *Fairfield Sentry Limited (In Liquidation) v. UBS AG New York et al,* No. 1:10-cv-06596-GBD
- *Fairfield Sentry Limited (In Liquidation) v. UBS Cayman REF Greenlake Arbitrage et al,* No. 1:10-cv-06586-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Wall Street Securities SA et al,* No. 1:10-cv-06595-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Zurich Capital Markets Company et al,* No. 1:10-cv-06623-GBD
- *Fairfield Sentry Limited (In Liquidation) et al v. ABN AMRO Schweiz AG et al,* No. 1:10-cv-06641-GBD
- *Fairfield Sentry Limited (In Liquidation) v. ABN AMRO Schweiz AG et al,* No. 1:10-cv-06640-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Al Nahyan Mansour B. Zayed et al,* No. 1:10-cv-06769-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Almel Ltd./Pacific Inter. et al,* No. 1:10-cv-06768-GBD

- *Fairfield Sentry Limited (In Liquidation) et al v. Credit Suisse (Bahamas) et al,* No. 1:10-cv-06760-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Northern Navigation America Inc. et al,* No. 1:10-cv-06759-GBD
- *Fairfield Sentry Limited (In Liquidation) v. SG Private Banking (Suisse) SA et al,* No. 1:10-cv-06765-UA
- *Fairfield Sentry Limited (In Liquidation) v. Banco Atlantico (Bahamas) et al,* No. 1:10-cv-06761-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Strina Luisa et al,* No. 1:10-cv-06772-GBD
- *Fairfield Sentry Limited (In Liquidation) et al v. Banco Altantico (Gibraltar) et al,* No. 1:10-cv-06767-UA
- *Fairfield Sentry Limited (In Liquidation) v. Creditio Privato Commerciale SA et al,* No. 1:10-cv-06771-GBD
- *Fairfield Sentry Limited (In Liquidation) v. FIBI Bank (Switzerland) et al,* No. 1:10-cv-06758-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Weston Securities Limited et al, No. 1:10-cv-06762-GBD*

- *Fairfield Sentry Limited (In Liquidation) v. ZCM Asset Holding Company (Bermuda) Limited et al,* No. 1:10-cv-06770-GBD
- *Fairfield Sentry Limited (In Liquidation) v. Fairfield Greenwich Group et al,* No. 1:10-cv-06873-GBD
- *Morning Mist Holdings Limited et al v. Fairfield Greenwich Group et al,* No. 1:10-cv-06874-GBD

United States Bankruptcy Court for the Southern District of New York

Lead case:

- In re Fairfield Sentry Ltd., No. 10-13164

Consolidated cases:

- *Fairfield Sentry Ltd. (In Liquidation), et al. v. RBC Dominion Sec. Sub A/C, et al.,* No. 10-03502, judgment entered on March 3, 2021
- *Fairfield Sigma Ltd. (In Liquidation), et al. v. Tercas – Cassa di Risparmio della Provincia di Teramo S.P.A., et al.,* No. 10-03503, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. FS ABN AMRO Global Custody, et al.,* No. 10-03504, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Banque Privee Edmond De Rothschild (Eur.),*

et al., No. 10-03505, judgment entered on March 3, 2021

- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Meritz Fire & Marine Ins. Co. Ltd., et al.,* No. 10-03507, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Schroder & Co. (Asia) Ltd., et al.,* No. 10-03508, judgment entered on March 18, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Banco Santander (Suisse) S.A., et al.,* No. 10-03509, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Bank Hapoalim (Suisse) Ltd., et al.,* No. 10-03510, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. FS Mizrahi Tefahot Bank Ltd., et al.,* No. 10-03512, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Banque Syz & Co. S.A., et al.,* No. 10-03513, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Banque Piguet & Cie S.A., et al.,* No. 10-03514, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Banco Bilbao Vizcaya Argentaria, S.A., et al.,*

No. 10-03515, judgment entered on March 3, 2021

- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., et al.,* No. 10-03516, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Neue Bank AG, et al.,* No. 10-03519, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Lombardy Props. Ltd., et al.,* No. 10-03521, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Fund Nominees Ltd., et al.,* No. 10-03525, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. SG Private Banking (Suisse) S.A., et al.,* No. 10-03595, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Sherli Elghanian Krayem, et al.,* No. 10-03614, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Bank of Am. Nat'l Trust & Sav. Ass'n, et al.,* No. 10-03615, judgment entered on March 18, 2021

- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Banque de Lux., et al.,* No. 10-03616, judgment entered on March 18, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. FS/BBVA Miami, et al.,* No. 10-03618, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. HSBC Inst. Trust Srvs. (Asia) Ltd., et al.,* No. 10-03619, judgment entered on March 3, 2021
- *Fairfield Sigma Ltd. (In Liquidation), et al. v. Credit Suisse Int'l, et al.,* No. 10-03620, judgment entered on March 3, 2021
- *Fairfield Sigma Ltd. (In Liquidation), et al. v. FS Oddo & Cie, et al.,* No. 10-03621, judgment entered on March 3, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Citibank NA London, et al.,* No. 10-03622, judgment entered on March 18, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Caceis Bank Lux., et al.,* No. 10-03624, judgment entered on March 18, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. EFG Bank, et al.,* No. 10-03625, judgment entered on March 8, 2021

- *Fairfield Sentry Ltd. (In Liquidation), et al. v. BNP Paribas Lux. S.A., et al.,* No. 10-03626, judgment entered on March 18, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. BNP Paribas Sec. Servs. Lux., et al.,* No. 10-03627, judgment entered on March 18, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Robinson & Co., et al.,* No. 10-03628, judgment entered on March 8, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. FS/HSBC Private Banking Nom, et al.,* No. 10-03629, judgment entered on March 8, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. HSBC Sec. Servs. (Lux.) S.A., et al.,* No. 10-03630, judgment entered on March 24, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. HSBC Private Bank (Guernsey) Ltd., et al.,* No. 10-03631, judgment entered on March 8, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. FS/ANDBanc Andorra, et al.,* No. 10-03632, judgment entered on March 8, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. HSBC Private Bank (Suisse) S.A., et al.,* No. 10-03633, judgment entered on March 24, 2021

- *Fairfield Sentry Ltd. (In Liquidation), et al. v. ABN AMRO Schweiz AG, et al.,* No. 10-03635, judgment entered on March 24, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. ABN AMRO Schweiz AG, et al.,* No. 10-03636, judgment entered on March 24, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Citibank (Switz.) AG, et al.,* No. 10-03640, judgment entered on March 8, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Deutsche Bank Trust Co. Am., et al.,* No. 10-03744, judgment entered on March 24, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Deutsche Bank (Suisse) S.A. Geneve, et al.,* No. 10-03745, judgment entered on March 8, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Deutsche Bank (Cayman), et al.,* No. 10-03746, judgment entered on March 8, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Deutsche Bank AG Sing., et al.,* No. 10-03747, judgment entered on March 8, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Blubank Ltd., et al.,* No. 10-03750, judgment entered on March 8, 2021

- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Brown Bros. Harriman & Co., et al.,* No. 10-03752, judgment entered on March 24, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Banco Itau Europa Lux. SA, et al.,* No. 10-03755, judgment entered on March 8, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. FS/CBESSA, et al.,* No. 10-03756, judgment entered on March 9, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. SNS Global Custody B.V., et al.,* No. 10-03757, judgment entered on March 9, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Pictet & Cie, et al.,* No. 10-03764, judgment entered on March 9, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Fortis (Isle of Man) Nominees Ltd., et al.,* No. 10-03776, judgment entered on March 24, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Wall Street Sec. S.A., et al.,* No. 10-03778, judgment entered on March 9, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. UBS AG N.Y., et al.,* No. 10-03780, judgment entered on March 24, 2021

- *Fairfield Sentry Ltd. (In Liquidation), et al. v. SG Private Banking (Suisse) S.A., et al.,* No. 10-03786, judgment entered on March 9, 2021
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Merrill Lynch Bank (Suisse) S.A., et al.,* No. 10-03788, judgment entered on March 24, 2021
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- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Jared Trading Limited/BVI, et al.,* No. 12-01264, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Cais Bank, et al.,* No. 12-01288, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Alok Sama, et al.,* No. 12-01294, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Bank Sarasin & Cie a/k/a Bank Sarasin & Co., et al.,* No. 12-01295, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. John E. Niederhuber IRA, et al.,* No. 12-01296, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Atlantic Security Bank, et al.,* No. 12-01550, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Fortis Bank Cayman Limited n/k/a ABN AMRO Fund Services Bank (Cayman) Limited, et al.,* No. 12-01571, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Hyposwiss Private Bank Geneve f/k/a Anglo*

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- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Select Absolute Strategies SICAV f/k/a ING (L) Alternative Strategies Balanced Growth f/k/a BBL Alternative Strategies Growth, et al.,* No. 12-01601, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Essex 21 Limited, et al.,* No. 12-01716, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Alton Alt. Fund Ltd., et al.,* No. 12-01763, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. RBC Investor Services Bank S.A. f/k/a RBC Dexia Investor Services Bank S.A., et al.,* No. 16-01214, no judgment entered
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- *Fairfield Sentry Limited, at al. v. Clarks Fork Foundation, et al.,* No. 10-03511, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Lacroze, et al.,* No. 10-03528, no judgment entered

- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Alton Select Ltd., et al.,* No. 10-03541, no judgment entered
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- *Fairfield Sentry Limited, et al. v. Banque de Commerce et de Placements, et al.,* No. 10-03748, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Banque Sudameris, et al.,* No. 10-03749, no judgment entered
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- *Fairfield Sentry Limited, at al. v. State Street Bank Luxembourg, et al.,* No. 10-03760, no judgment entered
- *Fairfield Sentry Limited, et al. v. Safra National Bank, et al.,* No. 10-03761 , no judgment entered

- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Kookmin Bank, et al.,* No. 10-03777, no judgment entered
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- *Fairfield Sentry Limited (In Liquidation), et al. v. JP Morgan Trust Company (Cayman) Limited, et al.,* No. 10-03785, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Almel Ltd., et al.,* No. 10-03789, no judgment entered
- *Fairfield Sentry Limited (In Liquidation), et al. v. Credito Privato Commerciale SA, et al.,* No. 10-03797, no judgment entered
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- *Fairfield Sentry Limited, et al. v. Banque Safra Luxembourg SA, et al.,* No. 10-03872, no judgment entered
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- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Hui-Liang Tsai And Chien-Hui Tu, et al.,* No. 11-01466, no judgment entered
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- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Yuanta Asset Mgmt. (H.K.) Ltd., et al.,* No. 11-01588, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Credit Agricole Lux. Private Bank, et al.,* No. 11-01590, no judgment entered
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- *Fairfield Sigma Ltd. (In Liquidation), et al. v. Lung Yen Life Service Co. Ltd., et al.,* No. 11-01608, no judgment entered
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- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Chen Tyan-Wen, et al.,* No. 11-01611, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Presnow Ltd., et al.,* No. 11-01620, no judgment entered
- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Leyden Dev., et al.,* No. 11-01622, no judgment entered
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- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Mario Pacheco Cortes, et al.,* No. 11-02401, no judgment entered

- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Banco Privado Portugues (Cayman) Ltd.,* No. 11-02531, no judgment entered
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- *Fairfield Sentry Ltd. (In Liquidation), et al. v. P.S.I. International Limited, et al.,* No. 11-02592, no judgment entered
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- *Fairfield Sentry Ltd. (In Liquidation), et al. v. Capital Global Management Limited, et al.,* No. 12-01552, no judgment entered
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- *Fairfield Sentry Limited, Fairfield Sigma Limited v. Schroder & Co Bank AG, Beneficial Owners of the Accounts Held in the Name of Schroder & Co Bank AG 1-1000,* No. 650431/2010†
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. Credit Agricole (Suisse) SA, Beneficial Owners of the Accounts Held in the Name of Credit Agricole (Suisse) SA 1-1000,* No. 650433/2010†
- *Fairfield Sentry Limited v. Atu Fund Administrators (BVI) Ltd, Beneficial Owners of the Accounts Held in the Name of Atu Fund Administrators (BVI) Ltd 1-1000,* No. 650539/2010†
- *Fairfield Sentry Limited v. World Strategy Ltd, Beneficial Owners of the Accounts Held in the Name of World Strategy Ltd 1-1000,* No. 650636/2010†
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. BNP Paribas Securities Services Luxembourg, Beneficial Owners of the Accounts Held in the Name of BNP Paribas Securities Services Luxembourg 1-1000,* No. 650637/2010*
- *Fairfield Sentry Limited v. Kookmin Bank, Beneficial Owners of the Accounts Held in the*

Name of Kookmin Bank 1-1000, No. 650638/2010*

- *Fairfield Sentry Limited v. State Street Bank Luxembourg SA, Beneficial Owners of the Accounts Held in the Name of State Street Bank Luxembourg SA,* No. 650639/2010*
- *Fairfield Sentry Limited v. BNP Paribas Luxembourg SA, Beneficial Owners of the Accounts Held in the Name of BNP Paribas Luxembourg SA 1-1000,* No. 650640/2010*
- *Fairfield Sentry Limited v. Barfield Nominees Ltd Guernsey, Beneficial Owners of the Accounts Held in the Name of Barfield Nominees Ltd Guernsey 1-1000,* No. 650641/2010†
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. Dresdner Bank Lateinamerika AG, Beneficial Owners of the Accounts Held in the Name of Dresdner Bank Lateinamerika AG 1-1000,* No. 650644/2010*
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. Safra National Bank of New York, Beneficial Owners of the Accounts Held in the Name of Safra National Bank of New York 1-1000,* No. 650645/2010*
- *Fairfield Sentry Limited v. Banque SCS Alliance SA, Beneficial Owners of the Accounts*

Held in the Name of Banque SCS Alliance SA 1-1000, No. 650646/2010†

- *Fairfield Sentry Limited, Fairfield Lambda Limited, Fairfield Sigma Limited v. Staalbewaarbedrijf B.V., Beneficial Owners of the Accounts Held in the Name of Staalbewaarbedrijf B.V 1-1000,* No. 650647/2010†
- *Fairfield Sentry Limited v. Abu Dhabi Commercial Bank, Beneficial Owners of the Accounts Held in the Name of Abu Dhabi Commercial Bank 1-1000,* No. 650648/2010†
- *Fairfield Sentry Limited v. HSBC Priv Bk Jersey, Beneficial Owners of the Accounts Held in the Name of HSBC Priv Bk Jersey 1-1000,* No. 650649/2010†
- *Fairfield Sentry Limited v. Credit Suisse Nom A/C Gib, Beneficial Owners of the Accounts Held in the Name of Credit Suisse Nom A/C Gib 1-1000,* No. 650650/2010†
- *Fairfield Sentry Limited v. Martello Nominees Limited, Beneficial Owners of the Accounts Held in the Name of Martello Nominees Limited 1-1000,* No. 650651/2010†
- *Fairfield Sentry Limited v. Murdoch & Co, Beneficial Owners of the Accounts Held in the*

Name of Murdoch & Co 1-1000,
No. 650652/2010†

- *Fairfield Sentry Limited v. Al Nahyan Mansour B Zayed, Beneficial Owners of the Accounts Held in the Name of Al Nahyan Mansour B Zayed 1-1000,* No. 650687/2010*
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. HSH Nordbank Securities SA, Beneficial Owners of the Accounts Held in the Name of HSH Nordbank Securities SA 1-1000,* No. 650688/2010†
- *Fairfield Sentry Limited v. TDB Investment Co, Beneficial Owners of the Accounts Held in the Name of TDB Investment Co 1-1000,* No. 650907/2010†
- *Fairfield Sentry Limited v. CDC Ixis, Beneficial Owners of the Accounts Held in the Name of CDC Ixis 1-1000,* No. 650931/2010*
- *Fairfield Sentry Limited v. Guernroy Ltd, Beneficial Owners of the Accounts Held in the Name of Guernroy Ltd 1-1000,* No. 650932/2010†
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. FS/Cbessa, Beneficial Owners of the Accounts Held in the Name of FS/Cbessa 1-1000,* No. 650953/2010*

- *Fairfield Sentry Limited v. Fortis (Isle of Man) Nominees Ltd, Beneficial Owners of the Accounts Held in the Name of Fortis (Isle of Man) Nominees Ltd 1-1000,* No. 650933/2010*
- *Fairfield Sentry Limited v. Northern Navigation America Inc, Beneficial Owners of the Accounts Held in the Name of Northern Navigation America Inc 1-1000,* No. 650934/2010*
- *Fairfield Sentry Limited v. Heritage Bank, Beneficial Owners of the Accounts Held in the Name of Heritage Bank 1-1000,* No. 650935/2010†
- *Fairfield Sentry Limited v. Somers Dublin Ltd, Beneficial Owners of the Accounts Held in the Name of Somers Dublin Ltd 1-1000,* No. 650936/2010†
- *Fairfield Sentry Limited v. Urs Guss Management, Beneficial Owners of the Accounts Held in the Name of Urs Guss Management 1-1000,* No. 650937/2010†
- *Fairfield Sentry Limited v. Firstrand Nominees Limited, Beneficial Owners of the Accounts Held in the Name of Firstrand Nominees Limited 1-1000,* No. 650938/2010†
- *Fairfield Sentry Limited v. Hermann Rohrer, Beneficial Owners of the Accounts Held in the*

Name of Hermann Rohrer 1-1000, No. 650939/2010†

- *Fairfield Sentry Limited v. Betesh and Mizrachi, Beneficial Owners of the Accounts Held in the Name of Betesh and Mizrachi 1-1000,* No. 650940/2010†
- *Fairfield Sentry Limited v. Rulisel Inv Corp, Beneficial Owners of the Accounts Held in the Name of Rulisel Inv Corp 1-1000,* No. 650941/2010†
- *Fairfield Sentry Limited v. Tricounsel Inc, Beneficial Owners of the Accounts Held in the Name of Tricounsel Inc 1-1000,* No. 650942/2010†
- *Fairfield Sentry Limited v. Almel Ltd/ Pacific Inter, Beneficial Owners of the Accounts Held in the Name of Almel Ltd/ Pacific Inter 1-1000,* No. 650943/2010*
- *Fairfield Sentry Limited v. Royal Bank of Canada Trust Company, Beneficial Owners of the Accounts Held in the Name of Royal Bank of Canada Trust Company 1-1000,* No. 650944/2010†
- *Fairfield Sentry Limited v. Banque De Commerce Et De Placements, Beneficial Owners of the Accounts Held in the Name of*

Banque De Commerce Et De Placements 1-1000, No. 650945/2010*

- *Fairfield Sentry Limited v. Weston Securities Limited, Beneficial Owners of the Accounts Held in the Name of Weston Securities Limited 1-1000,* No. 650946/2010*
- *Fairfield Sentry Limited v. Panthersville Assoc Inc, Beneficial Owners of the Accounts Held in the Name of Panthersvile Assoc Inc 1-1000,* No. 650947/2010†
- *Fairfield Sentry Limited v. Seabridge Advisors Ltd, Beneficial Owners of the Accounts Held in the Name of Seabridge Advisors Ltd 1-1000,* No. 650948/2010†
- *Fairfield Sentry Limited v. Banco Bilbao Vizcaya Argentaria, Beneficial Owners of the Accounts Held in the Name of Banco Bilbao Vizcaya Argentaria 1-1000,* No. 650949/2010†
- *Fairfield Sentry Limited v. UBS (Cayman Islands) Ltd, Beneficial Owners of the Accounts Held in the Name of UBS (Cayman Islands) Ltd 1-1000,* No. 650950/2010†
- *Fairfield Sentry Limited v. Horsford Nominees Limited, Beneficial Owners of the Accounts Held in the Name of Horsford Nominees Limited 1-1000,* No. 650951/2010†

- *Fairfield Sentry Limited v. Bank Vontobel AG, Beneficial Owners of the Accounts Held in the Name of Bank Vontobel AG 1-1000,* No. 650952/2010†
- *Fairfield Sentry Limited v. Clearstream Banking A/C Cash, Beneficial Owners of the Accounts Held in the Name of Clearstream Banking A/C Cash 1-1000,* No. 650982/2010†
- *Fairfield Sentry Limited v. Credit Suisse Fides (Zurich), Beneficial Owners of the Accounts Held in the Name of Credit Suisse Fides (Zurich) 1-1000,* No. 650983/2010†
- *Fairfield Sentry Limited v. Deutsche Bank (Cayman), Beneficial Owners of the Accounts Held in the Name of Deutsche Bank (Cayman) 1-1000,* No. 650984/2010*
- *Fairfield Sentry Limited v. Deutsche Bank AG Singapore, Beneficial Owners of the Accounts Held in the Name of Deutsche Bank AG Singapore 1-1000,* No. 650985/2010*
- *Fairfield Sentry Limited v. Tensyr Limited, Beneficial Owners of the Accounts Held in the Name of Tensyr Limited 1-1000,* No. 650986/2010†
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. FS/and Banc Andorra, Beneficial Owners of the Accounts Held in the Name of*

FS/and Banc Andorra 1-1000,
No. 650987/2010*

- *Fairfield Sentry Limited, Fairfield Sigma Limited v. FS/Banca Privada Andorra, Beneficial Owners of the Accounts Held in the Name of FS/Banca Privada Andorra 1-1000,* No. 650988/2010†
- *Fairfield Sigma Limited v. FS/Degroof-Axa Pm, Beneficial Owners of the Accounts Held in the Name of FS/Degroof-Axa Pm 1-1000,* No. 650989/2010†
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. FS/Fortis Banque Luxembourg, Beneficial Owners of the Accounts Held in the Name of FS/Fortis Banque Luxembourg 1-1000,* No. 650990/2010†
- *Fairfield Sentry Limited v. FS/HSBC Private Banking Nom, Beneficial Owners of the Accounts Held in the Name of FS/HSBC Private Banking Nom 1-1000,* No. 650991/2010*
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. Ing Bank (Suisse) SA, Beneficial Owners of the Accounts Held in the Name of Ing Bank (Suisse) SA 1-1000,* No. 650992/2010*

- *Fairfield Sentry Limited v. Fs/Lab/Axa Pm, Beneficial Owners of the Accounts Held in the Name of Fs/Lab/Axa Pm 1-1000,* No. 650993/2010†
- *Fairfield Sentry Limited v. Banco General SA, Beneficial Owners of the Accounts Held in the Name of Banco Generale SA 1-1000,* No. 650981/2010†
- *Fairfield Sentry Limited v. Grosvenor Investment Management Ltd, Beneficial Owners of the Accounts Held in the Name of Grosvenor Investment Management Ltd 1-1000,* No. 650994/2010†
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. Hansard Europe Ltd, Beneficial Owners of the Accounts Held in the Name of Hansard Europe Ltd 1-1000,* No. 650995/2010†
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. Investec Bk Switzerland, Beneficial Owners of the Accounts Held in the Name of Investec Bk Switzerland 1-1000,* No. 650996/2010†
- *Fairfield Sentry Limited v. Hontai Life Insurance Co Ltd, Beneficial Owners of the Accounts Held in the Name of Hontai Life Insurance Co Ltd 1-1000,* No. 650997/2010†

- *Fairfield Sentry Limited v. HSBC Int Trustee Sub A/C, Beneficial Owners of the Accounts Held in the Name of HSBC Int Trustee Sub A/C 1-1000,* No. 650998/2010†
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. HSBC Private Bank (Guernsey) Ltd, Beneficial Owners of the Accounts Held in the Name of HSBC Private Bank (Guernsey) Ltd 1-1000,* No. 650999/2010*
- *Fairfield Sentry Limited v. JP Morgan Trust Company (Cayman), Beneficial Owners of the Accounts Held in the Name of JP Morgan Trust Company (Cayman) 1-1000,* No. 651000/2010*
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. KC (CI) Nominees Ltd, Beneficial Owners of the Accounts Held in the Name of KC (CI) Nominees Ltd 1-1000,* No. 651001/2010†
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. Kredietbank SA Lux/Farad, Beneficial Owners of the Accounts Held in the Name of Kredietbank SA Lux/Farad 1-1000,* No. 651002/2010†
- *Fairfield Sentry Limited v. Ltd Editions Media Inc, Beneficial Owners of the Accounts Held in*

the Name of Ltd Editions Media Inc 1-1000, No. 651003/2010†

- *Fairfield Sentry Limited v. Mejia Monzon Clara Ines, Beneficial Owners of the Accounts Held in the Name of Mejia Monzon Clara Ines 1-1000,* No. 651004/2010†
- *Fairfield Sigma Limited v. Monte Paschi Ireland Ltd, Beneficial Owners of the Accounts Held in the Name of Monte Paschi Ireland Ltd 1-1000,* No. 651005/2010*
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. Nomura International PLC, Beneficial Owners of the Accounts Held in the Name of Nomura International PLC, 1-1000,* No. 651006/2010*
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. Polis Sa, Beneficial Owners of the Accounts Held in the Name of Monte Paschi Ireland Ltd 1-1000,* No. 651007/2010†
- *Fairfield Sentry Limited, Fairfield Sigma Limited v. UBS Luxembourg SA, Beneficial Owners of the Accounts Held in the Name of UBS Luxembourg SA 1-1000,* No. 651008/2010†
- *Fairfield Sentry Limited v. UBS AG New York, Beneficial Owners of the Accounts Held in the*

Name of UBS AG New York 1-1000, No. 651009/2010*

- *Fairfield Sentry Limited v. Stonehage Fund Administrators, Beneficial Owners of the Accounts Held in the Name of Stonehage Fund Administrators 1-1000,* No. 651010/2010†
- *Fairfield Sentry Limited v. Skips AS Pegasus, Beneficial Owners of the Accounts Held in the Name of Skips AS Pegasus 1-1000,* No. 651011/2010†
- *Fairfield Sentry Limited v. Qatar Insurance Company, Beneficial Owners of the Accounts Held in the Name of Qatar Insurance Company 1-1000,* No. 651012/2010†
- *Fairfield Sentry Limited v. Strina Luisa and Graziela Strina, Beneficial Owners of the Accounts Held in the Name of Strina Luisa and Graziela Strina 1-1000,* No. 651013/2010*

* denotes cases removed to federal court;

† denotes discontinued cased

Appendix C

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 22-2101-bk(L), 23-965(L)

IN RE FAIRFIELD SENTRY LTD.,
Debtor.*

Argued: Apr. 12, 2024
Decided: Aug. 5, 2025

Before: Nardini, Menashi, and Lee, *Circuit Judges*.

OPINION

Menashi, *Circuit Judge*:

The debtors in this bankruptcy case—Fairfield Sentry Limited ("Sentry"), Fairfield Sigma Limited ("Sigma"), and Fairfield Lambda Limited ("Lambda" and, together with Sentry and Sigma, the "Funds")—were investment funds based in the British Virgin Islands ("BVI") that invested heavily in Bernard L. Madoff Investment Securities ("BLMIS"). The Funds

* The list of consolidated appeals may be found at Docket No. 22-2101, Order of November 23, 2022, Exhibit A, ECF No. 30; and at Docket No. 23-965, Order of August 3, 2023, Exhibit B, ECF No. 192, and Order of August 28, 2023, ECF No. 295. Parties that have withdrawn from the appeal by letter or stipulation are listed in Docket Nos. 22-2101 and 23-965.

were forced into liquidation in the BVI after BLMIS was exposed as a Ponzi scheme in 2008. The plaintiffs-appellants-cross-appellees—Kenneth M. Krys and Greig Mitchell—are the liquidators appointed for the Funds in the BVI insolvency proceedings. The defendants-appellees-cross-appellants are investors and successors-in-interest of investors in the Funds who redeemed their shares for cash shortly before the collapse of the Ponzi scheme. The Funds are also plaintiffs-appellants-cross-appellees.

In approximately 300 separate actions in the United States, the liquidators attempted to recover the redemption payments made to the defendants, which exceeded $6 billion. These actions were consolidated in the bankruptcy court in the Southern District of New York after the liquidators obtained recognition of the BVI insolvency proceedings pursuant to Chapter 15 of the Bankruptcy Code. In a series of orders, the bankruptcy court dismissed most of the actions on the grounds that (1) it lacked personal jurisdiction over certain defendants, (2) the liquidators were bound by the Net Asset Value calculations that set the price at which the defendants redeemed the shares, and (3) the safe harbor for securities transactions under the Bankruptcy Code barred the liquidators' claims. The bankruptcy court sustained constructive trust claims against certain defendants that allegedly knew or had reason to know that the Net Asset Value calculations were inflated due to the Madoff fraud.

The district court affirmed the judgment of the bankruptcy court. On appeal, the liquidators seek restoration of the nonconstructive- trust claims, and

the defendants seek dismissal of the constructive trust claims. We hold that all of the liquidators' claims should have been dismissed pursuant to the safe harbor for securities transactions under § 546(e) of the Bankruptcy Code. Accordingly, we reverse the judgment insofar as the district court allowed the constructive trust claims to proceed, and we otherwise affirm.

BACKGROUND

Bernard L. Madoff ran the largest Ponzi scheme in history until the SEC exposed the scheme on December 11, 2008. Before then, the Funds raised capital from investors and gave it to BLMIS, supposedly to invest in securities. In fact:

> the money that [the Funds] transferred to BLMIS was not invested, but, rather, was used by Madoff to pay other BLMIS investors or was otherwise misappropriated by Madoff for unauthorized uses. Further, none of the securities shown on statements provided to [the Funds] by BLMIS were in fact purchased for [the Funds]. Additionally, none of the amounts withdrawn by [the Funds] from its accounts with BLMIS were proceeds of sales of securities or other investments. Instead, such amounts represented the monies of more recent investors into the Madoff scheme.

App'x 4620. At the same time, the Funds unknowingly supported Madoff's scheme by attracting "new investors and new investments," which "allow[ed] Madoff to make payments to early investors who sought to liquidate their investments" and to "maintain[] the illusion that BLMIS was making

active investments and engaging in a successful investment strategy." *Id.* at 4630-31. "Sentry was the largest of all the so-called 'feeder funds' to maintain accounts with BLMIS," while "Sigma and Lambda were indirect BLMIS feeder funds established for foreign currency (respectively, Euro and Swiss franc) investment through purchase of shares of Sentry." *Id.* at 4630. "Sentry's account statements with BLMIS as of the end of October 2008 showed in excess of $6 billion of invested assets supposedly held by BLMIS." *Id.*

Investors purchased shares in the Funds by signing the Subscription Agreement, which was substantially identical for all three Funds. The Subscription Agreement bound the investors to the terms of the Funds' Articles of Association. The Subscription Agreement specified that it would be governed by New York law and that "any suit, action or proceeding … with respect to this Agreement and the Fund may be brought in New York." *Id.* at 1029.

Pursuant to the Articles of Association, an investor had the option to redeem its shares in the Fund at any time for cash. The redemption price of each share was to equal the current Net Asset Value per Share ("NAV"). The Articles provided that "[t]he Net Asset Value per Share shall be calculated at the time of each determination by dividing the value of the net assets of the Fund by the number of Shares then in issue or deemed to be in issue" and then applying certain adjustments. *Id.* at 274. The Articles assigned ultimate responsibility for certifying the periodic calculations of the NAV to the directors of the Funds, but in practice the Funds delegated the task of

calculating and certifying the NAV to the administrators of the Funds, primarily Citco Fund Services (Europe) B.V. ("Citco").

"In calculating each of the Funds' Net Asset Value, the Funds' administrators used and relied on account statements provided by BLMIS purportedly showing securities and investments, or interests or rights in securities and investments, held by BLMIS for the account of Sentry." *Id.* at 4631. These account statements, however, were "utterly fictitious." *Id.* at 4632. "[N]o securities were ever purchased or sold by BLMIS for Sentry and any stated cash on hand in the BLMIS accounts was based on misinformation and fictitious account statements.... Indeed, no investments of any kind were ever made by BLMIS for Sentry." *Id.* Rather, the money in Sentry's account with BLMIS was used to perpetuate the Ponzi scheme. As a result, the NAVs that Citco and the Funds certified were artificially inflated. In fact, Sentry's account with BLMIS contained no assets. The liquidators allege that:

> [o]ver the course of fifteen years, in its capacity as service providers to the Funds, Citco reviewed information concerning BLMIS not available to the general public, and expressed internal alarm about what that information showed with respect to the likelihood of fraud at BLMIS, but turned a blind eye to the reality reflected in the information and instead proceed[ed] with issuing the Certificates as if there were no problem.

Id. at 4634. The Funds, however, "believed that the amounts provided in connection with [redemptions by investors] represented the proceeds arising from the profitability" of investments in BLMIS. *Id.* at 4632.

After the exposure of the Ponzi scheme in 2008, "the Funds' boards of directors suspended any further redemptions of Shares and the calculation of the Funds' Net Asset Values," and "[i]n 2009, the Funds were put into liquidation proceedings in the BVI." *Id.* at 4647. The BVI court appointed the liquidators as representatives of the Funds' estates with responsibility for "all aspects of the Funds' business, including protecting, realizing, and distributing assets for the Funds' estates." *Id.* at 4648.

As the district court explained, "[w]hen a Ponzi scheme collapses, those who have already withdrawn some or all of their funds and recovered some or all of their investments are insulated from loss to a certain degree, while those whose money is still invested will suffer substantial loss, and sometimes receive nothing in return." *Fairfield Sentry Ltd. v. Citibank, N.A. London* (*Fairfield V*), 630 F. Supp. 3d 463, 475 n.11 (S.D.N.Y. 2022). For that reason, the liquidators initiated proceedings in the BVI against investors in the Funds—or transferees of such investors—that had redeemed shares before the collapse. The liquidators aimed to recover the redemption payments and "to distribute the recoveries equitably among members" of the Funds. *Id.* at 475. In support of that goal, the liquidators advanced the theory that the redemption payments "were mistaken payments and constituted or formed part of avoidable transactions, and generally represent assets of Sentry's estate that [the

redeeming investors] are not entitled to keep." App'x 4648.

The Commercial Division of the Eastern Caribbean High Court of Justice of the BVI, however, held that the investors had "paid good consideration for the Redemption Payments by surrendering their shares with the Funds, and, consequently, the Liquidators were barred from recovering those payments." *Fairfield V*, 630 F. Supp. 3d at 476. The Eastern Caribbean Court of Appeal affirmed, and the case was then considered by the Privy Council in London. The Privy Council held that "the communications from Sentry to the Redeemers were 'certificates' within the meaning of Article 11, which meant that the NAV as determined by Citco was binding." *Id.* at 477 (citing *Fairfield Sentry Ltd (In Liquidation) v Migani* [2014] UKPC 9, 2014 WL 1219748 (PC)). The Privy Council "based its reasoning on the need for finality and certainty in securities transactions." *Id.* The Privy Council did not consider whether Citco acted in bad faith.

In addition to the BVI proceedings, the liquidators "filed about 300 actions in the United States to claw back over $6 billion" in allegedly inflated redemption payments. *Id.* at 478. While the defendants in the BVI and U.S. proceedings "partially overlapped," the parties in this case "agree that the claims asserted in the U.S. Proceedings are not the same as those asserted in the BVI Proceedings, as they involved different redemption transactions at different time periods." *Id.* at 478 n.22. In the U.S. proceedings, the liquidators asserted causes of action for "(1) unjust enrichment; (2) money had and received; (3) mistaken

payment; (4) constructive trust …; (5) unfair preferences under BVI's Insolvent Act § 245; (6) undervalue transactions under the Insolvent Act § 246 (collectively, the 'BVI Avoidance Claims'); (7) breach of contract; and (8) breach of the implied covenant of good faith and fair dealing." *Id.* at 479.

In July 2010, the bankruptcy court in the Southern District of New York granted recognition of the BVI proceedings as a foreign main proceeding under Chapter 15 of the Bankruptcy Code, consolidated all the cases the liquidators had filed, and stayed the U.S. proceedings pending resolution of the BVI proceedings. Under Chapter 15 of the Bankruptcy Code, if a company has entered insolvency proceedings in a foreign jurisdiction, a representative of its estate may file a petition for recognition of the foreign proceedings in U.S. bankruptcy court. *See* 11 U.S.C. §§ 1504, 1515. Upon the filing of a petition for recognition, the bankruptcy court determines whether to recognize the foreign proceeding as either a "foreign main proceeding," if it is "pending in the country where the debtor has the center of its main interests," or a "foreign nonmain proceeding," if it is pending in the country where the debtor merely "has an establishment." *Id.* § 1517. Recognition as a foreign main proceeding triggers certain automatic protections, including application of the automatic stay within the United States. *Id.* § 1520. Once recognition is granted, the bankruptcy court "may provide additional assistance to a foreign representative under [the Bankruptcy Code] or under other laws of the United States." *Id.* § 1507. In particular, "[u]pon recognition of a foreign proceeding," the bankruptcy court may "grant[] any …

relief that may be available to a trustee," with certain exceptions, including relief pursuant to the statutory avoidance powers granted to the trustee by the Bankruptcy Code. *Id.* § 1521(a)(7).

The bankruptcy court lifted the stay after the Privy Council issued the *Migani* decision in 2014, and the liquidators moved for leave to amend the complaint to add allegations of bad faith on the part of Citco. The defendants moved to dismiss the liquidators' claims on the grounds of lack of personal jurisdiction, failure to state a claim, and the safe harbor for securities transactions of § 546(e) of the Bankruptcy Code. That section provides:

> Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer that is … [a] settlement payment, as defined in section 101 or 741 of this title, made by or to (or for the benefit of) a … financial institution … in connection with a securities contract, as defined in section 741(7), … except under section 548(a)(1)(A) of this title.

Id. § 546(e). Section 561(d), meanwhile, provides that:

> [a]ny provisions of this title relating to securities contracts … shall apply in a case under Chapter 15, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or

> 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).

Id. § 561(d).

The bankruptcy court resolved the motions in a series of orders issued between 2018 and 2020. First, the bankruptcy court decided that the forum selection clause in the Subscription Agreements did not suffice to establish personal jurisdiction over 206 foreign defendants who had moved to dismiss for lack of personal jurisdiction. *In re Fairfield Sentry Ltd.* (*Fairfield I*), No. 10-13164, 2018 WL 3756343, at *8-14 (Bankr. S.D.N.Y. Aug. 6, 2018). Second, the bankruptcy court dismissed all the claims in the complaint except for the BVI Avoidance Claims and the constructive trust claims against the defendants alleged to have known the NAV calculations were inflated. *In re Fairfield Sentry Ltd.* (*Fairfield II*), 596 B.R. 275, 282 (Bankr. S.D.N.Y. 2018). In *Fairfield II*, the bankruptcy court held that (1) *Migani* did not preclude the liquidators' claims under the preclusion rules of either the United States or the BVI; (2) the NAVs stated in the certificates were binding on the Funds—and therefore on the liquidators—regardless of Citco's bad faith, except with respect to the defendants who allegedly knew the NAVs were inflated; (3) the doctrine of *ex turpi causa non oritur actio* did not bar the liquidators' claims; (4) neither the Subscription Agreement nor the Articles required investors to return payments based on inflated NAVs; (5) the redemption payments were settlement payments made in connection with securities contracts and therefore qualified as covered

transactions under the safe harbor for securities transactions of § 546(e); and (6) § 546(e) applied extraterritorially in Chapter 15 by virtue of § 561(d). *See id.* at 290-315.

The bankruptcy court declined to decide in *Fairfield II* whether—despite the transactions being covered—the safe harbor barred the liquidators' claims. *See id.* at 314-15 ("[T]he redemptions at issue were Covered Transactions because they were settlement payments made in connection with securities contracts. The more difficult question is whether the transferor or the transferee was a covered entity—either a financial institution or a financial participant.") (citation omitted). After receiving additional argument on that question, the bankruptcy court decided that the safe harbor barred the liquidators' claims that were based on BVI statutory law. *See In re Fairfield Sentry Ltd.* (*Fairfield III*), No. 10-13164, 2020 WL 7345988, at *7 (Bankr. S.D.N.Y. Dec. 14, 2020). The bankruptcy court decided that the constructive trust claims were not barred, however, because those claims were based on BVI common law. *See id.* at *8. The bankruptcy court reasoned that § 546(e) did not apply directly to the constructive trust claims and did not impliedly preempt those claims because "[c]ourts do not assume that otherwise applicable foreign law is preempted absent express statutory language to that effect." *Id.* at *10.

The bankruptcy court denied the defendants' motion for reconsideration of its decision that the safe harbor did not bar the constructive trust claims. *In re Fairfield Sentry Ltd.* (*Fairfield IV*), No. 10-13164, 2021 WL 771677 (Bankr. S.D.N.Y. Feb. 23, 2021). The

U.S. District Court for the Southern District of New York affirmed the judgment of the bankruptcy court that dismissed all claims except the constructive trust claims. *See Fairfield V*, 630 F. Supp. 3d at 473.

Before this court are two appeals from the judgment of the district court in *Fairfield V*. In the appeal docketed at No. 22-2101, the liquidators argue that the district court should have reversed the bankruptcy court's dismissal of all the non-constructive-trust claims. In the appeal docketed at No. 23-965, the defendants against which the constructive trust claims were asserted argue that the district court should have reversed the bankruptcy court's decision that the constructive trust claims could be maintained despite the safe harbor for securities transactions.

DISCUSSION

These appeals require us to answer two questions. The first question is whether the forum selection clause in the Subscription Agreements establishes personal jurisdiction over the defendants. We conclude that it does. The second question is whether the safe harbor of 11 U.S.C. § 546(e) bars the liquidators' actions. We conclude that the safe harbor applies extraterritorially and bars the actions. Because that conclusion resolves the case, we need not resolve the other disagreements between the parties.

I

"Parties can consent to personal jurisdiction through forum-selection clauses in contractual agreements." *D.H. Blair & Co., Inc. v. Gottdiener*, 462 F.3d 95, 103 (2d Cir. 2006). The Subscription

Agreements for the Funds contain a forum selection clause, which provides as follows:

> Subscriber agrees that any suit, action or proceeding ("Proceeding") with respect to this Agreement and the Fund may be brought in New York. Subscriber irrevocably submits to the jurisdiction of the New York courts with respect to any Proceeding and consents that service of process as provided by New York law may be made upon Subscriber in such Proceeding, and may not claim that a Proceeding has been brought in an inconvenient forum. … Nothing herein shall affect the Fund's right to commence any Proceeding or otherwise to proceed against Subscriber in any other jurisdiction or to serve process upon Subscriber in any manner permitted by any applicable law in any relevant jurisdiction.

App'x 1029. Despite the forum selection clause, the district court held that it lacked personal jurisdiction over 206 of the defendants. The district court "agree[d] with the Bankruptcy Court's determination that the word 'and' should be read conjunctively, and that the claims here are not 'with respect to' the Subscription Agreement." *Fairfield V*, 630 F. Supp. 3d at 482-83. For that reason, the district court held that "the forum selection clause cannot establish the Bankruptcy Court's personal jurisdiction over the relevant Defendants-Appellees." *Id.* at 486.

A

"We review district court decisions on personal jurisdiction for clear error on factual holdings and *de*

novo on legal conclusions." *D.H. Blair*, 462 F.3d at 103 (quoting *Mario Valente Collezioni, Ltd. v. Confezioni Semeraro Paolo, S.R.L.*, 264 F.3d 32, 36 (2d Cir. 2001)).

We have recognized that "[c]ourts applying New York law to contracts using the word 'and' look to the context in which the word is used to determine whether it should be read in the conjunctive or disjunctive sense." *Spanski Enters., Inc. v. Telewizja Polska S.A.*, 832 F. App'x 723, 725 (2d Cir. 2020). That context includes whether the parties used language other than "and" elsewhere in the contract to convey a disjunctive meaning. *See, e.g.*, *id.* ("[R]eading the Agreement as a whole suggests that, when the parties sought to provide for unilateral rights, they used the term 'each party' to distinguish from the conjunctive 'TVP and SEI.'").

As the district court correctly observed, "in other parts of the Subscription Agreement, the parties repeatedly use 'or' or 'and/or' to show disjunctive meaning." *Fairfield V*, 630 F. Supp. 3d at 484.[1] Yet the liquidators do not argue that the word "and" must be read disjunctively. The liquidators concede, for example, that "if a bank invested in one of the Funds through a Subscription Agreement and separately

[1] *See, e.g.*, App'x 1027 ("Subscriber has obtained sufficient information from the Fund or its authorized representatives to evaluate such risks."); *id.* ("The Subscriber irrevocably authorizes the Fund and/or the Administrator to disclose, at any time, any information held by the Fund or the Administrator in relation to the Subscriber or his investment in the Fund to the Investment Manager or any affiliate of the Investment Manager or the Administrator.").

provided banking services to the Fund, any dispute over the banking services would be 'with respect to the Fund,' but not with respect to the Subscription Agreements" and therefore would not be covered by the forum selection clause. Appellants' Br., No. 22-2101, at 50. Accordingly, we accept that the word "and" should be read conjunctively. Under that reading, the forum selection clause covers the liquidators' actions only if those actions are "with respect to" the Subscription Agreements.[2]

The liquidators argue that the district court erred not in reading "and" conjunctively but in concluding that the proceedings here are not "with respect to this [Subscription] Agreement." We agree.

We have explained that the phrase "with respect to" is "synonymous" with phrases such as "related to," "in connection with," and "associated with." *Coregis*

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[2] As the district court recognized, "because the Subscription Agreement regulates the investment relationship between the members and the Funds, any dispute over the Subscription Agreement is necessarily also 'with respect to the fund.'" *Fairfield V*, 630 F. Supp. 3d at 484. For that reason, a conjunctive reading renders "and the Fund" superfluous because the forum selection clause would have the same scope if it applied to proceedings only "with respect to this Agreement." App'x 1029. As a general rule, "[a]n interpretation of a contract that has 'the effect of rendering at least one clause superfluous or meaningless … is not preferred and will be avoided if possible.'" *LaSalle Bank Nat'l Ass'n v. Nomura Asset Cap. Corp.*, 424 F.3d 195, 206 (2d Cir. 2005) (quoting *Shaw Grp., Inc. v. Triplefine Int'l Corp.*, 322 F.3d 115, 124 (2d Cir. 2003)). Such avoidance is not possible here, however, because a disjunctive reading would render "with respect to this Agreement" superfluous. Under that reading, the forum selection clause would have the same scope if it applied to proceedings only "with respect to the Fund."

Ins. Co. v. Am. Health Found., Inc., 241 F.3d 123, 128-29 (2d Cir. 2001). These phrases are "not necessarily tied to the concept of a causal connection" and are "broader in scope" than "the term 'arising out of.'" *Id.*; *see also ACE Cap. Re Overseas Ltd. v. Cent. United Life Ins. Co.*, 307 F.3d 24, 32 (2d Cir. 2002) (describing the phrase "relating to" as "expansive"). "Related" means "connected by reason of an established or discoverable relation." *Coregis*, 241 F.3d at 128 (quoting Webster's Third New International Dictionary 1916 (1986)); *see also Related*, Black's Law Dictionary (12th ed. 2024) ("Connected in some way; having relationship to or with something else."); *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 260 (2013) ("The phrase 'related to' … embraces state laws 'having a connection with or reference to' [the specified subject matter] whether directly or indirectly.") (quoting *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 370 (2008)).

The liquidators' actions have an "established or discoverable relation" to the Subscription Agreements. *Coregis*, 241 F.3d at 128. The liquidators seek "to recover payments made to shareholders for the redemption of shares in the Funds prior to December 2008," when the Ponzi scheme was revealed. App'x 4618. The liquidators allege that these payments "did not conform to or follow the terms of the Funds' Subscription Agreements, Articles of Association and/or other offering documents." *Id.* at 4621. The lawsuits arise out of the relationship between the defendants as investors and the Funds as issuers of securities, and that relationship came into being through the Subscription Agreements. As the liquidators note, "the Subscription Agreements are

the only documents that Defendants executed, and the only documents that bound Defendants to the Funds' Articles of Association, which established the mechanics for processing Fund redemptions." Appellants' Br., No. 22-2101, at 47. While the Subscription Agreements did not expressly incorporate the terms of the Articles of Association, *see Fairfield V*, 630 F. Supp. 3d at 486, those agreements informed investors that the Articles governed their relationship to the Funds. Because of this "discoverable relation" between the liquidators' actions and the Subscription Agreements, the actions are "with respect to" the Agreements. *Coregis*, 241 F.3d at 128-29.

B

The defendants respond that this argument endorses a "but-for" test that we have rejected in cases involving arbitration clauses. *See* Appellees' Br., No. 22-2101, at 77 (citing *Necchi S.p.A. v. Necchi Sewing Mach. Sales Corp.*, 348 F.2d 693 (2d Cir. 1965); *Cooper v. Ruane Cunniff & Goldfarb Inc.*, 990 F.3d 173 (2d Cir. 2021)). The Subscription Agreements represent a but-for cause of the liquidators' actions precisely because those agreements created the investment relationships between the defendants and the Funds. *See Bostock v. Clayton County*, 590 U.S. 644, 656 (2020) (explaining that "but-for" causation "is established whenever a particular outcome would not have happened 'but for' the purported cause").

It is not clear that we have rejected a but-for test for forum selection clauses. We require only a "discoverable relation" between the dispute and the agreement, *Coregis*, 241 F.3d at 128, and but-for

causation might qualify as a "discoverable relation." Two other circuit courts have relied on our decision in *Coregis* to hold that but-for causation does qualify as a sufficient relationship between the dispute and the agreement. *See Carlyle Inv. Mgmt. LLC v. Moonmouth Co. SA*, 779 F.3d 214, 220 (3d Cir. 2015); *Huffington v. T.C. Grp., LLC*, 637 F.3d 18, 22 (1st Cir. 2011). In fact, the insurer-defendant in *Coregis* prevailed on its argument that the lawsuits for which the insured sought coverage were "related to" insolvency because "the Lawsuits would not have been brought *but for* the insolvency of the Companies, and … consequently the Lawsuits arise out of, are based upon, or are related to the insolvency." *Coregis*, 241 F.3d at 126 (emphasis added). Our own precedent therefore suggests that a lawsuit is "related to" its but-for cause.

However that may be, the liquidators disclaim reliance on a but-for test here. *See* Reply Br., No. 22-2101, at 6-7. Our precedents hold that a controversy may "relat[e] to" a contract for purposes of a dispute-resolution clause when the controversy arose out of a subsequent agreement between the parties and the "relationship" between the contract and the subsequent agreement was "clear and direct." *Pervel Indus., Inc. v. T M Wallcovering, Inc.*, 871 F.2d 7, 8-9 (2d Cir. 1989). In this case, there was a "clear and direct" relationship between the Subscription Agreements and the Articles of Association from which the liquidators' claims arose. The purpose of the Subscription Agreements was to make the investors who signed the agreements shareholders in the Funds pursuant to the terms of the Articles. A dispute between investors and the Funds regarding the redemption of shares, which is governed by the

Articles, is "related to" the Subscription Agreements and falls within the scope of the forum-selection clause.

In *David L. Threlkeld & Co. v. Metallgesellschaft Ltd. (London)*, we considered the arbitration rules of the London Metal Exchange, which provided that "[a]ll disputes arising out of or in relation to any contract which contains an [arbitration clause] shall be referred to arbitration." 923 F.2d 245, 247 (2d Cir. 1991) (alteration omitted). The plaintiff and the defendant had entered into forward contracts for commodities trades, and those contracts contained arbitration clauses. The plaintiff "assert[ed] that its claims arise out of a collateral agreement with [the defendant], namely an agreement to value [the plaintiff's] forward contracts, and because the collateral agreement lacks an arbitration clause, the claims are not arbitrable." *Id.* at 251. We rejected that argument because "[t]he forward contracts were the genesis of the parties' relationship; the alleged collateral agreement stemmed directly from the forward contracts," and "[t]he metals contracts between [the parties] represent the subject matter of the alleged valuation agreements." *Id.* at 251-52.

The same reasoning applies here. The Subscription Agreements were "the genesis of the parties' relationship," and while the Articles preceded the Subscription Agreements, the defendants' obligations under the Articles "stemmed directly" from the Subscription Agreements. The two documents obviously share a common "subject matter": the relationship between the defendants, as investors and shareholders, and the Funds. This relationship is

sufficiently "clear and direct" for the liquidators' claims to "relat[e] to" the Subscription Agreements. *Pervel Indus.*, 871 F.2d at 8-9.

The alternative interpretation of the district court is that the Funds sold securities to investors all over the world under Subscription Agreements that would allow the investors to bring lawsuits related to the securities in any forum worldwide. That is commercially implausible. As the First Circuit has explained:

> forum selection clauses have varying purposes, but one reasonably inferred where, as here, a security is being offered to a range of customers is to concentrate all related litigation in a single forum. This assures the defendant that it will be able to litigate all of the actions in one place convenient to it; that one set of rules will apply; that consolidation may be readily available; that inconsistent outcomes can be minimized; and that a single lead precedent can control all cases.

Huffington, 637 F.3d at 22-23. The bankruptcy and district courts expressed skepticism of the liquidators' interpretation of the forum-selection clause on the ground that it would sweep almost any litigation between the subscribers and the Funds into New York. As the liquidators note, "that is a feature of the clause, not a bug." Appellants' Br., No. 22-2101, at 49. The purpose of a forum-selection clause is to "ensure that parties will not be required to defend lawsuits in far-flung fora, and promote uniformity of result." *Martinez v. Bloomberg LP*, 740 F.3d 211, 219 (2d Cir. 2014) (quoting *Magi XXI, Inc. v. Stato della Citta del*

Vaticano, 714 F.3d 714, 722 (2d Cir. 2013)). In fact, "[t]he complexity of this decade-plus-long case illustrates the point." Appellants' Br., No. 22-2101, at 49.[3]

We conclude that the forum-selection clause established personal jurisdiction over all of the defendants.

II

We turn to the merits of the liquidators' claims. The district court agreed with the decision of the bankruptcy court in *Fairfield III* that the safe harbor for securities transactions bars those claims the liquidators brought under BVI statutory law. The district court explained that § 561(d) overcame the presumption against extraterritorial application of American law and that, in any event, the application of the safe harbor to this case was domestic rather than foreign. The district court also agreed with the decision of the bankruptcy court in *Fairfield III* and *Fairfield IV* that the safe harbor does not bar those claims the liquidators brought under BVI common law—namely, unjust enrichment, money had and received, mistaken payment, and constructive trust. Because the bankruptcy court decided in *Fairfield II* that BVI law barred all of the liquidators' common-law

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[3] *See* Appellants' Br., No. 22-2101, at 49 ("Absent a clause concentrating cross-border litigation over billions of dollars in redemption payments in a single forum, the Liquidators would have to slog through expensive and time-consuming discovery and litigation against hundreds of individual Defendants at the threshold, just to establish personal jurisdiction. Contrary to the district court's belief, it makes perfect sense that the parties chose a broad forum selection clause to avoid just that outcome.").

claims except for the constructive trust claims, *see Fairfield II*, 596 B.R. at 300-01, the net result of the district court's decision in *Fairfield V* was that the only claims remaining were the constructive trust claims against the defendants alleged to have known about the inflated NAV calculations.

On appeal, the liquidators argue that the safe harbor does not bar any of the claims. The defendants argue that the safe harbor bars all of the claims, including the constructive trust claims. We agree with the defendants. We first address the liquidators' argument that the defendants' position involves an extraterritorial application of the safe harbor in violation of the presumption against extraterritoriality. We then address the scope of the safe harbor.

A

"It is a basic premise of our legal system that, in general, 'United States law governs domestically but does not rule the world.'" *RJR Nabisco, Inc. v. Eur. Cmty.*, 579 U.S. 325, 335 (2016) (quoting *Microsoft Corp. v. AT&T Corp.*, 550 U.S. 437, 454 (2007)). "This principle finds expression in a canon of statutory construction known as the presumption against extraterritoriality: Absent clearly expressed congressional intent to the contrary, federal laws will be construed to have only domestic application." *Id.* "When a statute gives no clear indication of an extraterritorial application, it has none." *Morrison v. Nat'l Austl. Bank Ltd.*, 561 U.S. 247, 255 (2010).

1

The Supreme Court has identified two reasons for the presumption against extraterritoriality. First and

"[m]ost notably, it serves to avoid the international discord that can result when U.S. law is applied to conduct in foreign countries." *RJR Nabisco*, 579 U.S. at 335. "Although 'a risk of conflict between the American statute and a foreign law' is not a prerequisite for applying the presumption against extraterritoriality, where such a risk is evident, the need to enforce the presumption is at its apex." *Id.* at 348 (citation omitted) (quoting *Morrison*, 561 U.S. at 255). Second, the presumption "reflects the more prosaic 'commonsense notion that Congress generally legislates with domestic concerns in mind.'" *Id.* at 336 (quoting *Smith v. United States*, 507 U.S. 197, 204 n.5 (1993)). Because the "consistent application of the presumption 'preserves a stable background against which Congress can legislate with predictable effects,'" *Yegiazaryan v. Smagin*, 599 U.S. 533, 541 (2023) (alteration omitted) (quoting *Morrison*, 561 U.S. at 261), we "assume that Congress legislates against the backdrop of the presumption," *EEOC v. Arab Am. Oil Co.* (*Aramco*), 499 U.S. 244, 248 (1991).

The Court has prescribed a "two-step framework for analyzing extraterritoriality issues." *RJR Nabisco*, 579 U.S. at 337. "At the first step, we ask whether the presumption against extraterritoriality has been rebutted—that is, whether the statute gives a clear, affirmative indication that it applies extraterritorially." *Id.* If the statute contains such an "unmistakable" indication, "then claims alleging exclusively foreign conduct may proceed." *Abitron Austria GmbH v. Hetronic Int'l, Inc.,* 600 U.S. 412, 418 (2023). At this step, "possible interpretations," *Morrison*, 561 U.S. at 264, broad definitional language, *Abitron*, 600 U.S. at 420-21, and "generic

terms like 'any' or 'every' do not rebut the presumption against extraterritoriality," *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 118 (2013). Still, "an express statement of extraterritoriality is not essential," *RJR Nabisco*, 579 U.S. at 340, because "[a]ssuredly context can be consulted as well," *Morrison*, 561 U.S. at 265.

If the statute does not apply extraterritorially, then we proceed to the second step and ask "whether the case involves a domestic application of the statute." *RJR Nabisco*, 579 U.S. at 337. A court will answer that question "by looking to the statute's 'focus.'" *Id.* "The focus of a statute is the object of its solicitude, which can include the conduct it seeks to regulate, as well as the parties and interests it seeks to protect or vindicate." *WesternGeco LLC v. ION Geophysical Corp.*, 585 U.S. 407, 413-14 (2018) (internal quotation marks and alterations omitted). "If the conduct relevant to the statute's focus occurred in the United States, then the case involves a permissible domestic application even if other conduct occurred abroad." *RJR Nabisco*, 579 U.S. at 337. But "if the conduct relevant to the focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory." *Id.* In this way, "[s]tep two is designed to apply the presumption against extraterritoriality to claims that involve both domestic and foreign activity, separating the activity that matters from the activity that does not." *Abitron*, 600 U.S. at 419.

2

In this case, the district court held that "the presumption against extraterritoriality does not bar the application of § 546(e) to [the liquidators'] claims because (1) Congress has expressed a clear intent to apply § 546(e) extraterritorially through § 561(d), and (2) even if there were no such [c]ongressional intent, the application of § 546(e) here is a domestic one that passes step two of the test." *Fairfield V*, 630 F. Supp. 3d at 489-90. The district court was correct at step one, so we need not proceed to step two.

Section 546(e) does not, by its own terms, apply in a foreign proceeding under Chapter 15. *See* 11 U.S.C. § 546(e). If § 546(e) applies extraterritorially to the proceeding here, it must do so through § 561(d), which provides that any provision "relating to securities contracts" such as § 546(e) "shall apply in a case under chapter 15." *Id.* § 561(d). We therefore ask whether the language of § 561(d) "manifests an unmistakable congressional intent to apply extraterritorially." *RJR Nabisco*, 579 U.S. at 339. We conclude that it does. The only plausible reading of § 561(d) is that it applies extraterritorially.

Section 561(d) must apply extraterritorially if it is to have any effect at all. Through § 561(d), the safe harbor limits the foreign representative's avoidance powers. And the only avoidance powers a foreign representative has in a case under Chapter 15 are those that it possesses under foreign law. Chapter 15 expressly prohibits a foreign representative from using the statutory avoidance powers of the Bankruptcy Code. *See* 11 U.S.C. § 1521(a)(7) (authorizing the court in a Chapter 15 proceeding to

grant a foreign representative "any additional relief that may be available to a trustee, except for relief under sections 522, 544, 545, 547, 548, 550, and 724(a)"). Nor can a foreign representative assert avoidance claims under state law: a bankruptcy trustee may assert such claims only pursuant to § 544(b), and § 1521(a)(7) denies the foreign representative access to relief under that section.[4] The district court correctly recognized that, if § 561(d) is to have any application, it must necessarily apply to avoidance claims under foreign law—that is, it must apply extraterritorially.

3

The liquidators' counterarguments are not convincing. First, the liquidators appeal to § 1523(a), which provides that "[u]pon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a)." 11

[4] We elaborate further on § 544(b) in Part II.B.2. We note that at least one district court—while acknowledging that a foreign representative cannot use § 544(b) to assert state-law fraudulent conveyance claims—has held that such claims may proceed without relying on § 544(b) "if the basis of such relief is non-bankruptcy law and the foreign representative, under non-bankruptcy law, has standing to seek the relief." *In re Massa Falida do Banco Cruzeiro do Sul S.A.*, 567 B.R. 212, 222 (Bankr. S.D. Fla. 2017). We disagree. Section 1521(a)(7) allows a court in a Chapter 15 case to "grant[] any additional relief that may be available to a trustee" except for relief under the avoidance provisions of the Bankruptcy Code. 11 U.S.C. § 1521(a)(7). Relief under state fraudulent transfer laws is available to a trustee only via § 544(b). Accordingly, such relief would be available to a foreign representative only via § 544(b).

U.S.C. § 1523(a). Based on this section, the liquidators assert that the "major premise" of the district court—that a foreign representative has no domestic avoidance powers in a Chapter 15 case—is "flat wrong." Appellants' Br., No. 22-2101, at 59. The liquidators argue that a case under Chapter 7 or 11 in which a foreign representative has intervened to initiate an avoidance action "would plainly be 'a case under chapter 15,' as Chapter 15 is what empowers a foreign liquidator to bring the avoidance action." Reply Br., No. 22-2101, at 20.

The text of § 1523(a) refutes this argument. It applies "in a case concerning the debtor pending *under another chapter* of this title." 11 U.S.C. § 1523(a) (emphasis added). If the case is "under another chapter," it cannot be "under chapter 15" for purposes of § 561(d). The foreign proceeding under Chapter 15 and the domestic proceeding are separate cases; indeed, other sections of Chapter 15 speak of foreign and domestic proceedings concerning the same debtor "pending concurrently."[5] The liquidators' argument also conflicts with the text of § 561(d), which provides that the safe harbor "shall apply in a case under chapter 15 … to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title." 11 U.S.C. § 561(d). This language would not make sense if, as the liquidators contend, the safe

[5] *See* 11 U.S.C. § 1501(b)(3) (stating that Chapter 15 applies when "a foreign proceeding and a case under this title with respect to the same debtor are pending concurrently"); *id.* § 1529 ("If a foreign proceeding and a case under another chapter of this title are pending concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527.").

harbor applies directly to a case under Chapter 7 or 11 in which a foreign representative has intervened.

The liquidators advert to § 1504, which states that "[a] case under [Chapter 15] is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515." *Id.* § 1504. The liquidators argue that this language shows that "[e]verything that follows that filing in the U.S. Courts is 'a case under Chapter 15,' even if the provisions of Chapter 15 empower foreign liquidators to use authorities under other chapters." Reply Br., No. 22-2101, at 20.

Not so. Section 1504 says that a Chapter 15 case begins when a foreign representative petitions for recognition of a foreign proceeding. And § 1523(a) says that once the foreign proceeding has been recognized, the foreign representative has standing to intervene in a case pending under another chapter and to avail himself of the avoidance powers under the Bankruptcy Code. But, as the text of § 1523(a) indicates, the foreign representative's intervention does not transform a case "pending under another chapter of this title" into a case "under Chapter 15." The Chapter 7 or 11 proceeding is a separate case from the Chapter 15 proceeding. Similarly, § 1528 provides that "[a]fter recognition of a foreign main proceeding, a case *under another chapter of this title* may be commenced only if the debtor has assets in the United States." 11 U.S.C. § 1528 (emphasis added). Such a case would be "under another chapter of this title," not "under Chapter 15," even though a Chapter 15 proceeding has been commenced pursuant to § 1504.

A case under Chapter 7 or 11 of the Bankruptcy Code is not a proceeding "under Chapter 15" simply because a foreign representative who has obtained recognition under Chapter 15 intervenes in the case. The Chapter 7 or 11 case, on the one hand, and the Chapter 15 case, on the other, are separate cases.

Second, the liquidators argue that § 561(d) need not apply extraterritorially to have effect because it "limit[s] the power of *domestic* trustees to avoid 'close-out' transactions, which is the focus of § 561 as a whole." Reply Br., No. 22-2101, at 22. Domestic trustees, however, cannot bring Chapter 15 cases.[6] Thus, a domestic trustee has no power to avoid "close-out" transactions—or any other transactions—in Chapter 15. *See* 11 U.S.C. § 1521(a) ("Upon recognition of a foreign proceeding … the court may, *at the request of the foreign representative*, grant any appropriate relief.") (emphasis added).[7] Moreover, § 561(a) already provides that the exercise of close-out rights under securities contracts, commodity

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[6] *See* 11 U.S.C. § 1515(a) ("A *foreign representative* applies to the court for recognition of a foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.") (emphasis added); *id.* § 1509(a) ("A *foreign representative* may commence a case under section 1504 by filing directly with the court a petition for recognition of a foreign proceeding under section 1515.") (emphasis added).

[7] The liquidators respond that "there is no bar to a domestic trustee participating in a proceeding initiated by a foreign representative under Chapter 15, and § 561(d) would make clear that a domestic trustee could not avoid close-out transfers in that proceeding." Reply Br., No. 22-2101, at 22. But the liquidators fail to cite any case in which a domestic trustee intervened in a Chapter 15 proceeding.

contracts, forward contracts, repurchase agreements, swap agreements, and master netting agreements "shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency *in any proceeding under this title*." 11 U.S.C. § 561(a) (emphasis added). Thus, Congress has separately provided that close-out transfers generally cannot be avoided "in any proceeding under this title"—including in Chapter 15—at least with respect to domestic applications.

Third, the liquidators argue that § 561(d) could apply when a foreign representative brings foreign law avoidance claims regarding *domestic* transactions. Appellants' Br., No. 22-2101, at 65. But the liquidators have not identified a case in which a *domestic* transaction was subject to avoidance in a *foreign* bankruptcy under *foreign* law. The liquidators suggest that "in *this very case*, Defendants insist that some of *their own transfers* are domestic transfers targeted by foreign-law avoidance claims." Reply Br., No. 22-2101, at 23. Yet if a court determined that the transfers at issue were domestic, it would likely decide that domestic law applied to the avoidance claims. Generally, "a bankruptcy court must apply the choice of law rules of the forum state," *In re Thelen LLP*, 736 F.3d 213, 219 (2d Cir. 2013), and "[t]he domestic nature of th[e] transfers … tips the scales … in favor of domestic adjudication," *In re Picard*, 917 F.3d 85, 105 (2d Cir. 2019); *see also In re Bankr. Est. of Norske Skogindustrier ASA*, 629 B.R. 717, 736 (Bankr. S.D.N.Y. 2021) ("The Second Circuit recently suggested that the choice of law inquiry for avoidance actions should focus on the location of the debtor's transfer.").

Because § 561(d) must apply extraterritorially to serve a meaningful function, the liquidators fall back on the assertion that "the superfluity canon is no match for the substantive presumption against extraterritoriality." Reply Br., No. 22-2101, at 21. To be sure, we have avoided the suggestion that "the presumption against superfluity necessarily trumps, by itself, the presumption against extraterritoriality in every instance." *United States v. Epskamp*, 832 F.3d 154, 165 n.10 (2d Cir. 2016). But we "rely on the canon against superfluity" when doing so is "consistent with and reinforces our reading of the statute in other respects." *Id.* Here, the domestic interpretation would render the whole of § 561(d) superfluous, and there is an obvious alternative interpretation available. *See Yates v. United States*, 574 U.S. 528, 543 (2015) ("We resist a reading of [a statutory section] that would render superfluous an entire provision passed in proximity as part of the same Act."); *Homaidan v. Sallie Mae, Inc.*, 3 F.4th 595, 602 (2d Cir. 2021) (rejecting an interpretation under which "the other subsections … would be swallowed up"). "[T]he canon against surplusage is strongest when an interpretation would render superfluous another part of the same statutory scheme." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 386 (2013).

In addition to the text of § 561(d), the purpose of Chapter 15 indicates that § 561(d) applies extraterritorially. Section 561(d) applies "in a case under chapter 15," and "the main purpose of chapter 15 is to permit filing by *foreign, not domestic, debtors*." 1 Collier on Bankruptcy ¶ 13.03 (16th ed.) (emphasis

added). A transfer by a foreign debtor initiated in the foreign jurisdiction would likely be considered a foreign transfer for the purpose of the extraterritoriality analysis, even if the recipient is a domestic institution.[8] When Congress provided that § 561(d) applies "in a case under chapter 15," it did so with respect to the prototypical Chapter 15 case and the prototypical type of transfer that would be challenged in a Chapter 15 proceeding. Nothing in the text suggests that it applies to an exceptional or rare circumstance.

Moreover, "the context from which the statute arose" demonstrates that § 561(d) applies the safe harbor of § 546(e) extraterritorially. *Bond v. United States*, 572 U.S. 844, 866 (2014).[9] Congress enacted § 561(d) in response to the collapse of Long Term Capital Management L.P. ("LTCM"), a hedge fund based in the Cayman Islands:

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[8] We have held that when "the debtor is a domestic entity," and "the alleged fraud occurred when the debtor transferred property from U.S. bank accounts," the transfer at issue is a *domestic* transfer, regardless of the nationality of the recipient. *In re Picard*, 917 F.3d at 99 n.9. By parity of reasoning, a transfer by a foreign debtor from a foreign bank account would be a foreign transfer. In *Picard*, we expressed "no opinion on whether either factor standing alone"— the nationality of the debtor or the location of the bank account—"would support a finding that a transfer was domestic." *Id.*

[9] *See* Samuel L. Bray, *The Mischief Rule*, 109 Geo. L.J. 967, 968 (2021) ("The mischief rule instructs an interpreter to consider the problem to which the statute was addressed, and also the way in which the statute is a remedy for that problem. … [T]he generating problem is taken as part of the context for reading the statute.") (footnote omitted).

> [The President's Working Group on Financial Markets] hypothesized the effect of a default on the LTCM Fund's counterparties. It noted that if the LTCM Fund was the subject of a Cayman Islands insolvency proceeding, "its Cayman receiver could have sought a Section 304 injunction prohibiting at least temporarily the liquidation of U.S. collateral pledged by LTCM to its counterparties." This might force U.S. secured creditors to seek the permission of the foreign bankruptcy court to liquidate their collateral, or at least delay them from liquidating any U.S. Treasury securities pledged by the Fund under a master netting agreement.

Fairfield II, 596 B.R. at 312-13 (citation omitted) (quoting President's Working Group, Hedge Funds, Leverage, and the Lessons of Long- Term Capital Management (Apr. 1999)). "Congress and the Working Group were primarily and understandably concerned with U.S. creditors and U.S. markets" but "recognized that the financial contagion they feared did not stop at the border." *Id.* at 314. In fact, § 561(d) expressly provides that enforcement of financial contracts is "not to be limited based on the presence or absence of assets of the debtor in the United States." 11 U.S.C. § 561(d). Accordingly, "a chapter 15 foreign representative (and the bankruptcy court) cannot prevent the enforcement of Close-Out Rights, even if the exercise of those rights involves the transfer of collateral located abroad[,] and cannot invoke non-U.S. law to avoid and recover those transfers if they have already occurred." *Fairfield II*, 596 B.R. at 314.

The problem that Congress sought to address when it enacted § 561(d) required an extraterritorial application. We agree with the amicus that "[i]t cannot be that Congress, legislating in the wake of the LTCM collapse, intended to hobble investors by leaving them exposed to the risk of avoidance litigation brought by the bankruptcy estates of failed foreign companies, especially when the Bankruptcy Code bars domestic trustees from bringing the exact [same] claims."[10]

As the district court recognized, the liquidators seek to "have it both ways—benefiting from the domestic forum Chapter 15 has created for foreign law claims as a matter of comity while trying to avoid the limitations that Chapter 15 imposes on their power to bring these claims." *Fairfield V*, 630 F. Supp. 3d at 490 (internal quotation marks and citation omitted). We have previously doubted that "[a]llowing a plaintiff's claim to go forward because the cause of action applies extraterritorially, while then applying the presumption [against extraterritoriality] to block a different provision setting out defenses to that claim," could be the result Congress intends "when it writes provisions limiting civil liability." *Force v. Facebook*, 934 F.3d 53, 73 (2d Cir. 2019). That result would "seem only to increase the possibility of international friction" and "could also give the plaintiffs an advantage when they sue over extraterritorial wrongdoing that they would not receive if the defendant's conduct occurred domestically." *Id.* It is similarly implausible that Congress intended to allow a foreign debtor and its representative to take

[10] Brief of the Securities Industry and Financial Markets Association as Amicus Curiae Supporting Appellees 14.

advantage of U.S. bankruptcy law to bring avoidance actions unconstrained by the safe harbor that applies to the avoidance actions of a domestic trustee or debtor-in-possession.

5

We agree with the district court insofar as it held that § 561(d) applies § 546(e) extraterritorially. Because "a finding of extraterritoriality at step one will obviate step two's 'focus' inquiry," *RJR Nabisco*, 579 U.S. at 338 n.5, we need not identify the statutory focus or determine whether the conduct in this case occurred abroad.

B

Because the safe harbor of § 546(e) applies extraterritorially through § 561(d), we must decide whether the safe harbor bars the liquidators' claims. The parties agree that the transactions here are "settlement payment[s]" made to "financial institution[s] … in connection with a securities contract." 11 U.S.C. § 546(e). But the liquidators insist that this point is not conclusive. First, the liquidators argue that their statutory claims fall within the carve-out from the safe harbor for intentional fraudulent transfer claims. Second, the liquidators argue that because § 546(e) uses the term "avoid"—a term of art referring to the statutory avoidance powers conferred by the Bankruptcy Code—the safe harbor applies only to statutory avoidance claims under the Bankruptcy Code or under foreign law that exist solely in bankruptcy. That would mean the safe harbor does not apply to common-law claims under domestic or foreign law. To the extent that courts have applied the safe harbor to domestic common-law claims, according to

the liquidators, those decisions have relied on an implied-preemption theory that does not apply to foreign law. Third, the liquidators argue that their constructive trust claims do not resemble traditional avoidance claims because the constructive trust claims depend on the defendants' knowledge and do not depend on the insolvency of the debtor.

The district court rejected the first argument on the ground that the liquidators' claims under BVI statutory law do not contain a fraud element and therefore do not resemble intentional fraudulent transfer claims under § 548(a)(1)(A). But the district court agreed with the liquidators that the safe harbor did not bar the BVI common-law claims because "[t]here is nothing to suggest that Congress intended the Bankruptcy Code to preempt foreign common law claims." *Fairfield V*, 630 F. Supp. 3d at 494. And the bankruptcy court agreed with the liquidators that the constructive trust claims were not avoidance claims because the constructive trust claims "proceed on different theories and different proof" than the BVI avoidance claims. *Fairfield IV*, 2021 WL 771677, at *3.

We reject all three arguments. First, we agree with the liquidators that a foreign-law claim need not include fraud as an element in order to fall within the carve-out for intentional fraudulent transfer claims; it is sufficient if "the facts alleged in support of those claims include actual intent to hinder, delay, or defraud creditors." Appellants' Br., No. 22-2101, at 78. But we conclude that the liquidators do not allege such an intent here. Second, we conclude that § 546(e) applies to domestic common-law claims irrespective of implied-preemption principles. By virtue of § 561(d),

the safe harbor applies in Chapter 15 "to the same extent as in a proceeding under chapter 7 or 11." 11 U.S.C. § 561(d). For that reason, foreign common-law avoidance claims fall within the scope of the safe harbor in cases under Chapter 15. Third, a common-law claim that seeks to avoid a covered transaction does not escape the safe harbor based on its legal theory or required proof. Because the constructive trust claims fall under the safe harbor and do not qualify for the carve-out for intentional fraudulent transfer claims, those claims are barred.

1

The safe harbor of § 546(e) contains a carve-out for avoidance claims brought under § 548(a)(1)(A). *Id.* § 546(e). Section 548(a)(1)(A), in turn, allows the trustee or debtor-in-possession to avoid transfers made and obligations incurred "with actual intent to hinder, delay, or defraud" a creditor. *Id.* § 548(a)(1)(A). The liquidators argue that their claims "allege actual fraud and therefore fall within the exception to the safe harbor." Appellants' Br., No. 22-2101, at 75. According to the liquidators, the statutory claims rely on allegations that Citco acted with the actual intent to hinder, delay, or defraud creditors and that this intent is imputed to the Funds. We disagree.

First, the liquidators have not plausibly alleged that Citco actually intended to hinder, delay, or defraud creditors. The liquidators allege that—after becoming suspicious of BLMIS's operations and attempting three times to verify the existence of the Funds' assets at BLMIS between May 2000 and December 2002—"Citco never again tried to gain evidence from Madoff that the Funds' assets existed

until his fraud was ultimately exposed in December 2008." App'x 4998. Additionally, "Citco failed to verify the pricing information for the Funds' portfolio from independent sources and instead relied on BLMIS statements, even though it knew that such account statements contained incorrect information." *Id.* at 5000. At the same time, "Citco accepted dramatically higher fees—tied directly to the Net Asset Value certified by Citco—in exchange for the risks to Citco of doing business with BLMIS." *Id.*

When credited, the liquidators' allegations might establish that Citco was negligent or reckless with respect to the risk of fraud at BLMIS but do not establish that Citco *intended* to hinder, delay, or defraud creditors. "[M]any courts look to the Restatement (Second) of Torts to refine the concept of intent under section 548." 5 Collier on Bankruptcy ¶ 548.04[a] (16th ed.). According to the Restatement, "[t]he word 'intent' is used … to denote that the actor desires to cause consequences of his act, or that he believes that the consequences are *substantially certain* to result from it." Restatement (Second) of Torts § 8A (1965) (emphasis added). The Restatement explains:

> If the actor *knows that the consequences are certain, or substantially certain*, to result from his act, and still goes ahead, he is treated by the law as if he had in fact desired to produce the result. As the probability that the consequences will follow decreases, and becomes less than substantial certainty, the actor's conduct loses the character of intent, and becomes mere recklessness, as defined in

> § 500. As the probability decreases further, and amounts only to a risk that the result will follow, it becomes ordinary negligence, as defined in § 282.

Id. § 8A cmt. b (emphasis added). It is true, as Judge Hand explained over a hundred years ago, that "in general, civil responsibility is imputed to a man for the usual results of his conduct, regardless of whether in the instance under consideration he actually had those consequences in mind." *In re Condon*, 198 F. 947, 950 (S.D.N.Y. 1912) (L. Hand, J.). But "in specific cases like this," in order to establish an "intent to hinder, delay, or defraud" creditors, "the law requires proof of that added element, his mental apprehension of those consequences, before it attaches to his conduct the result in question." *Id.* at 950-51. The allegations here do not show that Citco was "substantially certain" that BLMIS was a Ponzi scheme and that investors who redeemed shares late would be defrauded. At most, Citco was reckless in continuing to issue the NAV certificates despite its suspicions regarding BLMIS.

We have previously said that a presumption of intent would be appropriate "where a large entity, firm, institution, or corporation is acting in a manner that easily can be foreseen to result in harm." *AUSA Life Ins. Co. v. Ernst & Young*, 206 F.3d 202, 221 (2d Cir. 2000). That case involved a claim of securities fraud against the accounting firm Ernst & Young, which allegedly had falsely certified that the financial statements of one of its auditing clients were prepared in accordance with GAAP and that the client was in compliance with the financial covenants in its debt

securities. We concluded that the investor-plaintiffs had established that Ernst & Young acted with the "intent to deceive, manipulate, or defraud" required to sustain a claim of securities fraud. *Id.* at 221. Ernst & Young had actual knowledge that the financial statements were inaccurate and that the client had defaulted on its debt securities, but it nonetheless certified to the contrary. *See id.* at 207-210. In this case, by contrast, Citco suspected—but did not know—that BLMIS was engaging in fraud. While that suspicion might establish recklessness or negligence, it does not establish that Citco intended to hinder, delay, or defraud investors. *See* Restatement (Second) of Torts § 8A cmt. b.

The Seventh Circuit has similarly stated that even when a transferor's "primary purpose may not have been to render the funds permanently unavailable to [creditors]," an actual intent for purposes of § 548(a)(1)(A) might still be present if the transferor "certainly should have seen this result as a natural consequence of its actions." *In re Sentinel Mgmt. Grp.*, 728 F.3d 660, 667 (7th Cir. 2013). We agree with those jurists who have explained that "*Sentinel* should not be read as replacing the traditional, more demanding standard for ascribing actual intent with a presumption that a person is aware of the natural consequences of her acts." *In re Lyondell Chem. Co.*, 554 B.R. 635, 651 (S.D.N.Y. 2016). While "proof of the natural consequences of one['s] acts may serve as circumstantial evidence that one appreciated those consequences," the fact-finder is nevertheless "required to find, based on all of the direct and circumstantial evidence, that the debtor did form an actual intent to defraud creditors, as that

standard was described by Judge Hand or as intent is described in the Restatement (Second) of Torts." *Id.* at 651 n.17.

To establish an intent to hinder, delay, or defraud creditors, a plaintiff "must show that the debtor had an intent to interfere with creditors' normal collection processes or with other affiliated creditor rights for personal or malign ends." 5 Collier on Bankruptcy ¶ 548.04[a]; *see also In re Lyondell*, 554 B.R. at 650. The liquidators do not allege that Citco interfered with creditors' rights or collection processes. In fact, the liquidators' claims are based on Citco *facilitating* the redemption of the defendants' shares in the Funds. The non-redeeming investors, meanwhile, were not even creditors at the time the defendants redeemed the shares but were shareholders in the Funds. As the bankruptcy court recognized, a shareholder in the Funds became a creditor only after submitting a redemption request. *See Fairfield II*, 596 B.R. at 303 ("[T]he Defendants became creditors when they requested redemptions."). "A contract arose at the time that the [shareholders] served their notices of redemption. At that moment, they were entitled to be paid the NAV per share computed in accordance with Article 11(1) in exchange for their shares." *Id.* at 297. When Citco processed the defendants' redemption requests, the non-redeeming shareholders were not yet creditors of the Funds but shareholders with potential redemption rights.

Moreover, "[t]he requisite actual intent" for purposes of § 548(a)(1)(A) "must be something more than just an intent to prefer one creditor over another." 5 Collier on Bankruptcy ¶ 548.04[a]. Thus,

"[m]ere intent to prefer one creditor over another, although incidentally hindering or delaying creditors, will not establish a fraudulent transfer under section 548(a)(1)." *In re Rubin Bros. Footwear, Inc.*, 119 B.R. 416, 423 (S.D.N.Y. 1990); *accord Richardson v. Germania Bank*, 263 F. 320, 325 (2d Cir. 1919) ("[A] very plain desire to prefer, and thereby incidentally to hinder creditors, is (1) not as a matter of law an intent obnoxious to [the prohibition on fraudulent transfers]; and (2) is not persuasive in point of fact that such intent … ever existed."). The liquidators' allegations establish at most that Citco preferred investors who redeemed shares early over those who allowed their investments to remain with the Funds. Even if Citco were substantially certain that its conduct would result in a preference for some creditors over others, it still would not have had the requisite intent to establish an intentional fraudulent transfer under § 548(a)(1)(A).[11]

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[11] "Under the so-called Ponzi scheme presumption, the existence of a Ponzi scheme demonstrates actual intent as a matter of law because transfers made in the course of a Ponzi scheme could have been made for no purpose other than to hinder, delay or defraud creditors." *In re BLMIS LLC*, 12 F.4th 171, 181 (2d Cir. 2021) (internal quotation marks and alteration omitted). While "most courts" apply some form of the Ponzi scheme presumption, 5 Collier on Bankruptcy ¶ 548.04[3][b], "[s]ome courts have rejected the Ponzi scheme presumption on the ground that it improperly treats preferences as fraudulent transfers," *In re BLMIS*, 12 F.4th at 201 (Menashi, J., concurring) (citing cases). We have "applied the Ponzi scheme presumption in prior cases when its application was uncontested." *Id.* at 202 n.7. In this case, neither party has argued that the presumption alters the analysis applicable to the transfers here. Accordingly, "[w]e need not and therefore do not address" the effect of the

Second, the liquidators have not plausibly alleged that Citco's intent—whatever it was—is attributable to the Funds. Section 548(a)(1)(A) requires that the *debtor* make the transfer with the actual intent to hinder, delay, or defraud creditors. The liquidators claim that "the Citco Administrator's fraudulent intent is attributable to the Funds, which authorized the transfers." Appellants' Br., No. 22-2101, at 75. We disagree.

The liquidators have consistently maintained that the Funds were *victims* of a fraud that Citco perpetrated. The complaint alleges, for example, that "Citco issued the Certificates without good faith. The Funds were the primary victims of Citco's conduct and its lack of good faith in issuing the Certificates." App'x 4643. Under well-established principles, "notice of a fact that an agent knows or has reason to know is not imputed to the principal if the agent acts adversely to the principal in a transaction or matter, intending to act solely for the agent's own purposes or those of another person." Restatement (Third) of Agency § 5.04 (2006); *see Center v. Hampton Affiliates, Inc.*, 66 N.Y.2d 782, 784 (1985) ("[W]hen an agent is engaged in a scheme to defraud his principal, either for his own benefit or that of a third person, the presumption that knowledge held by the agent was disclosed to the principal fails because he cannot be presumed to have disclosed that which would expose and defeat his fraudulent purpose."). If the allegations are correct,

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presumption. *Register.com, Inc. v. Verio, Inc.*, 356 F.3d 393, 435 n.53 (2d Cir. 2004).

Citco's knowledge of the possible fraud at BLMIS would not be imputed to the Funds.

The New York Court of Appeals has emphasized that the adverse interest exception applies only in the "narrow circumstance where the corporation is actually the victim of a scheme undertaken by the agent to benefit himself or a third party personally, which is therefore entirely opposed (*i.e.*, 'adverse') to the corporation's own interests." *Kirschner v. KPMG LLP*, 15 N.Y.3d 446, 467 (2010). It does not apply "[w]here the agent is perpetrating a fraud that will [also] benefit his principal." *Id.* The complaint does not allege that Citco's conduct benefited the Funds as well as Citco but that "[t]he Funds were the primary victims of Citco's conduct." App'x 4643. It is difficult to see how the Funds could have benefited by maintaining investments with BLMIS; the Funds would surely suffer losses when the scheme collapsed, and in the meantime the Funds did not receive the personal benefits from the scheme that Madoff and (allegedly) Citco received.

The Privy Council's explanation of its decision in *Migani* indicates that BVI law would not impute Citco's bad faith to the Funds in this case. *See In re Lyondell*, 554 B.R. at 647 ("State law supplies the governing law principles for assessing the imputation of a corporate officer's intent to a corporation for purposes of § 548.") (citing *O'Melveny & Myers v. FDIC*, 512 U.S. 79, 83 (1994)). The Privy Council stated that even if the issue of Citco's bad faith had been raised in *Migani*, the NAVs nonetheless would have been binding on the Funds because the alleged fraud was "external to the fund," and therefore "the

redemption liabilities were determined by the directors in good faith, as the articles required." *Skandinaviska Enskilda Banken AB (Publ) v. Conway (as Joint Official Liquidators of Weavering Macro Fixed Income Fund Ltd.)* (*Weavering II*) [2019] UKPC 36 ¶ 24.[12]

We conclude that the liquidators' claims do not qualify for the carve-out for intentional fraudulent transfer claims under § 546(e). The allegations do not establish either that Citco acted with the actual intent to hinder, delay, or defraud creditors or that Citco's knowledge of the possible fraud at BLMIS is attributable to the Funds. Because the carve-out does not apply, the claims cannot proceed if the main clause of § 546(e) covers such claims.

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[12] In *Weavering II*, which also involved a Ponzi scheme, the individual responsible for fraudulently inflating the NAVs, Magnus Peterson, was found to have "directly, and through his company WCUK, managed and controlled the Company for all purposes relevant to these proceedings." [2019] UKPC 36 ¶ 25. For that reason, the Privy Council decided that the fraud "cannot be considered external to the Company." *Id.* ¶ 24. The liquidators in *Weavering II*, who sought to recover redemption payments, argued that "Peterson's knowledge of the fraud would not be imputed to the company that he was defrauding." *Id.* ¶ 26. The Board explained that it was "not concerned here with attributing knowledge" but with the fact that Peterson, who had the authority to calculate and to certify the NAVs, did so "on a fraudulent basis." *Id.* The Board explained that while its prior decision in *Migani* did not consider the "operation of the fraud," in that case "the redemption liabilities were determined by the directors in good faith, as the articles required," and "[t]he fraud which operated on the assessment of the NAV was external to the fund." *Id.* ¶ 24.

The liquidators allege in the complaint that "[t]he Redemption Payments that were made to Defendants were mistaken payments and constituted or formed part of *avoidable transactions*, and generally represent assets of Sentry's estate that Defendants are not entitled to keep." App'x 4648 (emphasis added). The liquidators nevertheless argue on appeal that the constructive trust claims are not, in fact, "avoidance claims" within the meaning of the Bankruptcy Code.

In support of that conclusion, the liquidators contend that the safe harbor does not prohibit all "avoidance claims" but instead limits the trustee's ability to use the specific avoidance powers conferred by the Bankruptcy Code. Appellees' Br., No. 23-965, at 18. According to the liquidators, "[i]n this context, 'avoiding power' is a term of art that refers to the extraordinary statutory powers conferred on a trustee in domestic bankruptcy proceedings by §§ 544, 545, 547, and 548 of the Bankruptcy Code." *Id.* at 19. As a result, § 546(e) applies only to claims brought pursuant to the trustee's statutory avoidance powers under the Bankruptcy Code and does not apply to common-law claims that a litigant could bring outside of bankruptcy. *See id.* at 18. The liquidators conclude that § 561(d)—which provides that § 546(e) applies in Chapter 15 "to the same extent" as in Chapter 7 or 11—can apply only to claims brought under foreign statutory law that are analogous to a bankruptcy trustee's statutory avoidance powers. *See id.* at 21.

The liquidators acknowledge that courts have held that § 546(e) bars state common-law claims, but

in their view these courts have not held that § 546(e) directly covers such claims. Instead, according to the liquidators, these courts have held only that § 546(e) might *impliedly preempt* state common-law claims. *See id.* at 26. Because implied preemption applies only to conflicts between federal law and state law, the same bar would not apply in cases of conflict between federal law and foreign law. The liquidators maintain—and the district court agreed—that the rationale for applying the safe harbor to state common-law claims is inapplicable to foreign common-law claims, so the BVI constructive trust claims may proceed against the defendants alleged to have known that the NAV calculations were inflated.

We are not persuaded. The premise of the liquidators' argument—that the safe harbor applies only to the statutory avoidance powers conferred by the Bankruptcy Code—contradicts the statutory text. Section 546(e) does not say that it bars only avoidance actions that utilize the statutory avoidance powers. Rather, it says that "*[n]otwithstanding* sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid" the transfers the safe harbor describes. 11 U.S.C. § 546(e) (emphasis added). According to the liquidators, a statute that says "despite your specific power to avoid transfers, you shall not avoid these transfers" really means "you may avoid these transfers as long as you do not use your specific power to do so." That is not a natural reading of the text. Indeed, the Supreme Court has explained that "[a] 'notwithstanding' clause does not naturally give rise to … an inference" that one may do what the statute forbids using mechanisms other than those identified in the "notwithstanding" clause. *NLRB v.*

SW Gen., Inc., 580 U.S. 288, 302 (2017). Instead, the notwithstanding clause "just shows which of two or more provisions prevails in the event of a conflict." *Id.* Such a clause "simply shows that" the operative provision "overrides" the provisions identified in the notwithstanding clause, "and nothing more." *Id.* at 304. As a result, this sort of clause "confirms rather than constrains breadth." *Id.* at 302.

In this case, the notwithstanding clause of § 546(e) establishes that the safe harbor provision overrides §§ 544, 545, 547, 548(a)(1)(B), and 548(b). It does not imply that the operative language of the safe harbor, which provides that the trustee "may not avoid" a "settlement payment," limits only the use of the enumerated statutory avoidance powers. 11 U.S.C. § 546(e).

We also disagree with the liquidators' assertion that "avoiding powers" is a term of art referring only to the statutory avoidance powers under the Bankruptcy Code. We will recognize a term of art when a statute includes a word or phrase with a "specialized common law meaning." *Food Mktg. Inst. v. Argus Leader Media*, 588 U.S. 427, 438 (2019). In this case, however, the liquidators argue that "avoid" has a *narrower* meaning than it would have had under the common law and that it does *not* encompass common-law claims that seek to avoid transfers. If Congress intended to restrict the ordinary meaning of "avoid" when it enacted the Bankruptcy Code, it would have provided a statutory definition identifying that technical sense. It did not. "Without a statutory definition," we rely on "the phrase's plain meaning at

the time of enactment." *Tanzin v. Tanvir*, 592 U.S. 43, 48 (2020).

The liquidators recognize that courts have applied the safe harbor to bar state common-law claims in addition to claims that rely on statutory avoidance powers. The liquidators argue, however, that these cases did not hold that the state common-law claims were "avoidance claims" within the meaning of the safe harbor but instead that the safe harbor impliedly preempted the state common-law claims. *Cf. Hillman v. Maretta*, 569 U.S. 483, 490 (2013) ("State law is pre-empted … when the state law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'") (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67 (1941)). The liquidators conclude that "the implied-preemption doctrine has no application here" because that doctrine reflects "the unique relationship between federal law and state law under the Constitution" and does not apply to claims under foreign law. Appellees' Br., No. 23-965, at 32-33.

We do not agree that the application of § 546(e) to bar the trustee from avoiding covered transfers through state common-law claims depends on implied preemption. Rather, § 546(e) directly provides that the trustee "may not avoid" such transfers. 11 U.S.C. § 546(e). We have relied on implied preemption to answer a different question. Because § 546(e) provides that "the *trustee* may not avoid" those transfers, *id.* (emphasis added), the question of whether someone other than the trustee may avoid such transfers has arisen. In *In re Tribune Co. Fraudulent Conveyance Litig.*, we explained that "[s]ection 546(e)'s reference to limiting avoidance by a trustee provides appellants

with a plain language argument that only a trustee *et al.*, and not creditors acting on their own behalf, are barred from bringing state law, constructive fraudulent avoidance claims." 946 F.3d 66, 81 (2d Cir. 2019).[13] Our phrasing of the issue assumed that no "plain language argument" was available to suggest that the safe harbor allows *the trustee* to bring state-law avoidance claims. We relied on implied preemption to conclude that—while § 546(e) literally bars only the trustee from avoiding covered transfers—the safe harbor also bars other litigants from avoiding those transfers because of its preemptive effect. *See In re Tribune*, 946 F.3d at 94. That is how the decision has been understood. *See, e.g.*, *In re Nine W. LBO Sec. Litig.*, 482 F. Supp. 3d 187, 203 (S.D.N.Y. 2020) ("In *Tribune* … the Second Circuit held that § 546(e) impliedly preempts state law fraudulent conveyance claims by individual creditors that *would be barred by the safe harbor if brought by a bankruptcy trustee*.") (emphasis added).

We have subsequently applied *Tribune* to affirm the decision of a district court that "unjust enrichment claims" were "preempted by § 546(e) because they seek the same remedy as the Trustees' fraudulent conveyance claims, which it found were safe harbored

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[13] *See also In re Tribune Co. Fraudulent Conveyance Litig.*, 499 B.R. 310, 316 (S.D.N.Y. 2013) ("Section 546(e) addresses its prohibition on avoiding settlement payments only to the bankruptcy trustee …. Because Congress has spoken so clearly with respect to the object of the limitation in Section 546(e), the Court discerns no basis in the text for barring [state-law constructive fraudulent conveyance] claims brought by Individual Creditors who have no relation to the bankruptcy trustee.").

under that provision." *In re Nine W. LBO Sec. Litig.*, 87 F.4th 130, 150 (2d Cir. 2023). We explained that this conclusion followed from "§ 546(e)'s plain language and legislative history," but the parties did not litigate whether the text or the congressional policy was dispositive. *Id.* Our precedent does not foreclose the straightforward conclusion that § 546(e) directly bars the trustee from avoiding a covered transfer through either a statutory or a common-law claim.[14]

The liquidators' contention that the safe harbor does not directly apply to common-law claims is wrong even based on their technical reading of the notwithstanding clause. The parties agree that the safe harbor applies to avoidance actions by a bankruptcy trustee pursuant to § 544, § 545, § 547, or

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[14] We are also not persuaded that whether § 546(e) bars state-law avoidance claims due to text or preemption is dispositive. Section 561(d) provides that the safe harbor of § 546(e) "shall apply in a case under chapter 15 … to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title." 11 U.S.C. § 561(d). If § 546(e) limits avoidance powers in domestic proceedings through text as well as implication, those limitations apply in a case under chapter 15 to the same extent. The statutory directive to apply the same limitations to foreign as to domestic proceedings precludes the argument that the reasoning by which § 546(e) limits certain avoidance powers applies only to the domestic context. Moreover, Congress has provided that "[n]othing in [Chapter 15] prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States." *Id.* § 1506. To the extent that § 546(e) preempts state-law avoidance claims, it does so because extending the safe harbor in that way is necessary to "the accomplishment and execution of the full purposes and objectives of Congress." *Hillman*, 569 U.S. at 490 (quoting *Hines*, 312 U.S. at 67).

§ 548 of the Bankruptcy Code. One of these enumerated provisions—§ 544—expressly empowers the trustee to avoid transfers that could be avoided by an unsecured creditor under applicable state law, including state common law. Specifically, § 544(b)(1) provides that "the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title." 11 U.S.C. § 544(b)(1).

In most cases, the trustee relies on § 544(b)(1) to assert claims under state fraudulent conveyance statutes.[15] But § 544(b)(1) "is not limited to the avoidance of fraudulent transfers [under state statutes]. Rather, it gives a trustee statutory standing to avoid transfers on any grounds that could be asserted by … an unsecured prepetition creditor." *In re Park South Sec., LLC*, 326 B.R. 505, 514 (Bankr. S.D.N.Y. 2005). Thus, a trustee "could employ" § 544(b)(1) "to bring an unjust enrichment claim under state law." *Id.* To the extent that such a claim sought to avoid a transaction that falls within the scope of the safe harbor, however, it would be expressly barred by § 546(e) even under the liquidators' technical reading of that provision.

In fact, an avoidance claim on behalf of creditors based on a common-law theory such as unjust

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[15] *See* 5 Collier on Bankruptcy ¶ 544.06 ("The state laws most frequently used by trustees under section 544(b)(1) are the Uniform Fraudulent Transfer Act ('UFTA') and its successor, the 2014 Uniform Voidable Transactions Act ('UVTA').").

enrichment or constructive trust could be brought by the trustee *only* pursuant to § 544(b). "It is well settled that a bankruptcy trustee has no standing generally to sue third parties on behalf of the estate's creditors, but may only assert claims held by the bankrupt corporation itself." *Shearson Lehman Hutton, Inc. v. Wagoner*, 944 F.2d 114, 118 (2d Cir. 1991); *see also Caplin v. Marine Midland Grace Tr. Co. of N.Y.*, 406 U.S. 416, 428 (1972).[16] Section 544(b) creates an exception to the general rule in *Wagoner*. "[W]hen acting under section 544(b), a trustee is vested with the rights of actual creditors to avoid certain transfers. So even if the trustee itself is otherwise barred from asserting the claim because of *Wagoner*, the trustee, standing in the shoes of the creditors, is not barred from asserting the claim." *In re Stanwich Fin. Servs. Corp.*, 488 B.R. 829, 834 (D. Conn. 2013). Unless he is proceeding under § 544(b), the bankruptcy trustee has no power to assert claims under state law on behalf of creditors. A constructive trust claim under state common law *must* be brought under § 544(b), but even the narrow reading of the safe harbor of § 546(e) would apply to such a claim.

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[16] We expressed uncertainty in *Tribune* as to whether state-law fraudulent conveyance claims become the property of the debtor's estate when a bankruptcy proceeding commences. *See* 946 F.3d at 88. But we did not doubt that the trustee acquires the power to assert such a claim through § 544(b)(1), regardless of whether it is technically part of the debtor's estate. *See id.* (noting the "ambiguities as to exactly what is transferred to trustees *et al.* by Section 544(b)(1)"); *id.* at 89 (observing that "Section 544(b)(1) does not expressly state whether the bundle of rights transferred can revert" to creditors after a bankruptcy proceeding).

The liquidators claim that "even assuming that the Safe Harbor applies extraterritorially through 11 U.S.C. § 561(d), the furthest the statutory limitation on statutory 'avoidance powers' could reach is foreign *statutory* avoidance powers that exist only in bankruptcy." Appellees' Br., No. 23-965, at 13 (citation omitted). But the focus of § 546(e) is the transaction, not the specific legal authority that a domestic trustee would use to avoid that transaction. *Cf. Merit Mgmt. Grp.*, 583 U.S. at 379 ("[T]he focus of the inquiry is the transfer that the trustee seeks to avoid."). It prohibits state statutory as well as common-law claims that seek to avoid covered transactions. We conclude that, through § 561(d), the safe harbor operates in Chapter 15 to prohibit claims under foreign statutory or common law that seek to avoid the same category of covered transactions. That includes the constructive trust claims in this case.

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The liquidators attempt to rescue the constructive trust claims by arguing that the claims "'proceed on different theories and different proof' than avoidance claims under the Bankruptcy Code." Appellees' Br., No. 23-965, at 25 (quoting *Fairfield IV*, 2021 WL 771677, at *3). The liquidators explain that "insolvency is not an element of the Constructive Trust Claims, but obviously is an element of an avoidance action under Chapter 5 of the Code (and a claim under the BVI Insolvency Act)." *Id.* at 24 (internal quotation marks and citation omitted). In addition, "whereas the Constructive Trust Claims require a showing of knowledge on the part of Defendants that the value of the assets they received

was inflated, … knowledge is not an element of any of the avoidance actions created by Chapter 5." *Id.* 24-25.

In general, a constructive trust claim does not require a showing of insolvency and does require bad faith on the part of the recipient of the property. *See, e.g.*, *El Ajou v. Dollar Land Holdings plc* [1994] 2 All ER 685, 700 (identifying the elements of a constructive trust claim under BVI law). But it does not follow from these distinctions that the constructive trust claims are not avoidance claims. Whether a claim is an avoidance claim for purposes of the safe harbor depends on the remedy sought—that is, whether it would avoid a covered transaction—rather than the legal elements of the claim. "[I]t is the remedy sought, rather than the allegations pled, that determines whether § 546(e) preempts a state law claim," *In re Nine W.*, 482 F. Supp. 3d at 207, because "§ 546(e) 'was intended to protect from avoidance proceedings payments by and to commodities and securities firms in the settlement of securities transactions or the execution of securities contracts,'" *In re Nine W.*, 87 F.4th at 150 (quoting *In re Tribune*, 946 F.3d at 90). The liquidators concede that the constructive trust claims seek a "similar remedy" as an avoidance action using the Bankruptcy Code's avoidance powers. Appellees' Br., No. 23-965, at 25. That is dispositive.

In any event, we do not agree that the constructive trust claims proceed on a different theory than a traditional avoidance claim. Taking the liquidators' allegations as true, the defendants did not do anything that would have been wrongful if the Funds had not been insolvent. To the contrary, the defendants were contractually entitled to redeem

their shares at a price based on the NAV that Citco calculated. The liquidators recognize that "[t]he Articles provide shareholders with a contractual right to redeem their shares in exchange for their Redemption Payments at the NAVs determined by the Funds" and that "[t]he Liquidators' claim that Defendants are inequitably retaining funds in excess of the pro rata share purportedly owed to all shareholders … therefore relies on the Funds entering liquidation." *Id.* at 26. It misses the point to insist that constructive trust claims, unlike avoidance claims, require bad faith on the part of the transferee and do not require insolvency. While that may be true of constructive trust claims in general, it is not true of these constructive trust claims. The district court erred in allowing the claims to proceed.

CONCLUSION

By adopting the "broad language" of the safe harbor provision, Congress sought to prevent "settled securities transactions" from being unwound in a way that "would seriously undermine … markets in which certainty, speed, finality, and stability are necessary to attract capital." *In re Tribune*, 946 F.3d at 90-92. "A lack of protection against the unwinding of securities transactions … would be akin to the effect of eliminating the limited liability of investors for the debts of a corporation: a reduction of capital available to American securities markets." *Id.* at 93. Contrary to arguments advanced on appeal, there is "no conflict between Section 546(e)'s language and its purpose." *Id.* at 92. That language operates here to bar claims seeking to avoid covered transactions. We reverse the judgment of the district court insofar as it allowed the

constructive trust claims to proceed and otherwise affirm.

Appendix D

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 22-2101-bk(L), 23-965(L)

IN RE FAIRFIELD SENTRY LTD.,
Debtor.*

Filed: Oct. 16, 2025

ORDER

Appellants in 22-2101(L) and Appellees in 23-965(L) filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

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* The list of consolidated appeals may be found at Docket No. 22-2101, Order of November 23, 2022, Exhibit A, ECF No. 30; and at Docket No. 23-965, Order of August 3, 2023, Exhibit B, ECF No. 192, and Order of August 28, 2023, ECF No. 295. Parties that have withdrawn from the appeal by letter or stipulation are listed in Docket Nos. 22-2101 and 23-965.

Appendix E

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

No. 19-cv-3911
(Administratively Consolidated)

FAIRFIELD SENTRY LIMITED (IN LIQUIDATION), acting by and through the Foreign Representatives thereof, and KENNETH KRYS, solely in his capacity as Foreign Representatives and Liquidator thereof,

Plaintiffs/Appellants,

v.

CITIBANK, N.A. LONDON,

Defendants-Appellees.

Filed: Sept. 22, 2022

AMENDED OPINION & ORDER[1]

VERNON S. BRODERICK, United States District Judge:

This case arises from the infamous Ponzi scheme orchestrated by Bernard L. Madoff through his

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[1] On August 24, 2022, I filed the Opinion & Order in this case affirming the below Bankruptcy Court's decision. (Doc. 593.) The Clerk of Court entered judgment in accordance with the Opinion & Order and closed the case. (Doc. 594.) On September 13, 2022, HSBC Defendants-Appellees filed a letter noting a small number of potential errors with regards to the citations in the original Opinion & Order in this action and requested that I clarify the

investment company Bernard L. Madoff Investment Securities LLC ("BLMIS"), which wreaked havoc throughout the financial industry and investment community after the scheme was exposed in 2008.[2] Plaintiffs-Appellants ("Appellants" or "Liquidators") are liquidators of three investment funds who used to be the major feeder funds of BLMIS; they bring claims against a group of investors, or transferees of investors, who cashed out shortly before the scheme collapsed ("Defendants-Appellees" or "Appellees"). Now before me are two rounds of appeals from a series of orders issued by United States Bankruptcy Judge Stuart M. Bernstein of the Bankruptcy Court of the Southern District of New York (the "Bankruptcy Court"), which partially dismissed Appellants' claims and denied them leave to amend. Because Appellants' claims are barred by (1) lack of personal jurisdiction under the relevant choice of forum provision, (2) the safe harbor provision under the Bankruptcy Code, (3) the British Virgin Islands' Companies Act, and (4) res judicata with regard to certain constructive

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citations. (Doc. 596.) I sought the position of Plaintiffs-Appellants regarding the request for clarification. (Doc. 597.) Plaintiffs-Appellants stated that they did not oppose the request. (Doc. 598.) I enter this Amended Opinion & Order with the corrections to the citations implemented herein. These corrections do not modify the conclusion of my original Opinion & Order, (Doc. 593), and do not affect the Clerk's Judgment entered in this case, (Doc. 594).

[2] Details about Madoff's Ponzi scheme have been recounted by many courts. *See*, *e.g.*, *In re Madoff*, 598 B.R. 102, 106 (S.D.N.Y. 2019), *aff'd* 818 F. App'x 48 (2d Cir. 2020). I do not recount it here except as to provide context to the appeals.

trust claims, the Bankruptcy Court's decision is AFFIRMED.

I. Factual Background

A. The Funds

Fairfield Sentry Limited ("Sentry"), Fairfield Sigma Limited ("Sigma"), and Fairfield Lambda limited ("Lambda") (collectively, the "Funds") were British Virgin Islands ("BVI") investment funds that heavily invested in BLMIS. (PAC ¶ 2.)[3] Sentry was the largest of all the feeder funds[4] of BLMIS, while Sigma and Lambda were indirect BLMIS feeder funds established for foreign currency investments through purchases of shares of Sentry. (*Id.*) The Funds operated by pooling money from investors and issuing shares in return, and investors like Defendants became members of the Funds by entering into a series of subscription agreements (the "Subscription

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[3] "PAC" refers to Appellants' proposed amended complaint filed in *Fairfield Sentry Limited et al. v. Citigroup Global Markets Limited et al.*, Adv. Pro. No. 11-02770 (Bankr. S.D.N.Y.), which was filed in the consolidated adversary proceeding before the Bankruptcy Court as an exhibit to the declaration of David J. Molton in support of Appellants' motion for leave to amend. I use it here as a representative example of Appellants' proposed complaints in this consolidated action. *See Fairfield Sentry Ltd. (In Liquidation), et al. v. Theodoor GGC Amsterdam, et al.*, No. 10-ap-03496 (SMB) (Bankr. S.D.N.Y. 2018) ("Bankr. Doc."), Bankr. Doc. 942 Ex. B, at 224. This PAC is largely identical to the proposed amended complaints filed in other consolidated cases on issues relevant to this appeal. (*See* Doc. 281, at 4 n.2.)

[4] "A feeder fund is an entity that pools money from numerous investors and then places it into a 'master fund' on their behalf." *In re Picard*, 917 F.3d 85, 92 (2d Cir. 2019) (explaining the mechanism of BLMIS).

Agreement") for the purchase of shares in the Funds. (*Id*. ¶ 3.) The members' relationship with the Funds was governed by the Subscription Agreement, the Articles of Association (the "Articles" or singular "Article"), as well as certain other documents. (*Id*. ¶ 8; Hare Decl. ¶ 10.)[5]

Article 10 sets out the procedure for members of the Funds to redeem their shares. (*See* Articles § 10.)[6] Upon receipt of a written redemption request from a member, the Funds were obligated to redeem or purchase the member's shares at a redemption price ("Redemption Price") based on the Net Asset Value per share (the "NAV") as of the close of the relevant business day. (*Id*. § 10(2).) Article 11 specifies how the NAV was to be calculated; it provides that:

> The Net Asset Value per Share of each class shall be determined by the Directors as at the close of business on each Valuation Day .... [and] shall be calculated at the time of each determination by dividing the value of the net assets of the Fund by the number of Shares then in issue or deemed to be in issue[.]
>
> Any certificate as to the Net Asset Value per Share or as to the Subscription Price or Redemption Price therefor given in good faith

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[5] "Hare Decl." refers to the declaration of William Hare in support of Appellants' motion for leave to amend ("Hare Declaration"). (Bankr. Doc. 925.)

[6] "Articles" refers to the Articles of Sentry filed in the Bankruptcy Court as an exhibit to the Hare Declaration. (*See* Hare Decl. Ex. F.) Because the Articles were substantially identical for all three Funds, (Hare Decl. ¶ 10(a)), I cite to this version for convenience.

> by or on behalf of the Directors shall be binding on all parties.

(*Id*. § 11(1).)

The NAV was calculated by the Funds' administrator, Citco Fund Services (Europe) B.V. and its delegatee Citco (Canada) Inc. (together, "Citco"). (PAC ¶ 41.) Under the Administration Agreement between the Funds and Citco, the directors of the Funds ("Directors") delegated to Citco their authority to "redeem Shares in accordance with the provisions and procedures set out in the applicable Fund Documents," including the Articles. (Admin. Agreement ¶ 3.4.)[7]

Relevant to this appeal, the Subscription Agreement contains a choice of forum clause, which provides:

> New York Courts. Subscriber agrees that any suit, action or proceeding ("Proceeding") with respect to this Agreement and the Fund may be brought in New York. Subscriber irrevocably submits to the jurisdiction of the New York courts with respect to any Proceeding and consents that service of process as provided by New York law may be made upon Subscriber in such Proceeding,

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[7] "Admin. Agreement" refers to the Administration Agreement between the Funds and Citco that was filed in the Bankruptcy Court as an exhibit to the declaration of Philip Kite in opposition to Appellants' motion for leave to amend and in support of Appellees' motion to dismiss ("Kite Declaration" or "Kite Decl."). (Bankr. Doc. 963 Ex. O.)

> and may not claim that a Proceeding has been brought in an inconvenient forum.

(PAC ¶ 22; *see also* Subscription Agreement § 19.)[8]

B. The Fraud

As early as 2000, Citco's employees started to raise concerns about BLMIS's investment. They realized that the existence of the Funds' assets at BLMIS could not be verified, and that Madoff's purported investment returns appeared too good to be true. (PAC ¶ 44.) Citco Group's[9] head of internal audit, Ruud Bodewes, raised concerns to the general counsel and manager of Citco Bank Nederland N.V. Dublin Branch (which acted as the Funds' custodian) that Citco might "be in a potential [sic] dangerous situation, since [they did] not seem to have an independent source to verify the information from BLMIS." (*Id.* ¶¶ 46, 50.) Moreover, Citco's head of internal audit for its administrator entities, Ger Jan Meijer, warned Citco Group's Chief Executive Officer, Christopher Smeets, that BLMIS could be a fraud, and that Citco had "a legal obligation to obtain more assurance" of the Funds' assets. (*Id.* ¶¶ 47, 50-51.) Meijer later reiterated his concerns, but was told by a member of the administrator's management to "stop raising the issue." (*Id.* ¶¶ 51, 55.) Nevertheless, Meijer

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[8] "Subscription Agreement" refers to the Subscription Agreement for Fairfield Sentry Limited which was filed by Defendants-Appellees in the Bankruptcy Court as an exhibit to the declaration of Thomas J. Moloney in opposition to Plaintiffs-Appellants' motion to dismiss. (Bankr. Doc. 961 Ex. A.)

[9] Appellants do not define "Citco Group" in the PAC or in their Opening Brief, but the term appears to refer to Citco Group Limited, (*see* PAC ¶ 45), and/or one or more of its related entities.

was assured that Citco "would try to meet with Madoff to investigate." (*Id.*)

On three separate occasions between May 2000 and December 2002, Citco tried to verify the existence of the Funds' assets at BLMIS, and failed each time. (*Id.* ¶¶ 52-61.) No further attempt was made. (*Id.* ¶ 61.) Nor did Citco warn the investors of its inability to verify the existence of the Funds' assets at BLMIS, withdraw from its position as the Funds' administrator, or cease to determine the NAVs for share redemption based on BLMIS's suspicious returns. (*Id.* ¶¶ 62-64.) In 2004, however, in an effort to protect its own assets, Citco's Directors decided to "close down all credit relationships with the Funds to decrease Citco's exposure." (*Id.* ¶ 65 (internal quotation marks omitted).) Moreover, in 2006, Citco negotiated for an 800% increase in its custodian fees as a condition of continuing to do business with the Funds. The new fee was a percentage of the NAV as determined by Citco itself based on the purported returns of the Funds, which was in turn based on the purported returns of BLMIS. (*Id.* ¶ 68.) In other words, Citco did so despite its years of suspicion that BLMIS's returns were highly inflated and that the Funds' NAV was inflated as a result. (*See generally id.* ¶¶ 68-74.)

II. Procedural History

A. The BVI Proceedings

Shortly after Madoff's Ponzi scheme collapsed and the fraud was exposed, the Funds entered into liquidation proceedings before the Commercial Division of the Eastern Caribbean High Court of Justice of the BVI (the "BVI Court"), and Appellants

were appointed as liquidators (i.e. "Liquidators") responsible for protecting and distributing assets for members of the Funds.[10] (PAC ¶¶ 26, 81). The Liquidators then initiated proceedings in the BVI (the "BVI Proceedings") against a number of members or transferees of the members of the Funds who redeemed some or all of their shares before the collapse of the scheme (the "Redeemers") seeking to recover from these Redeemers the redemption payments from the Funds (the "Redemption Payments"), and planned to distribute the recoveries equitably among members.[11] (*See* Open. Br. I 6.)[12] The theory of the claims made by the Liquidators was that the Redemption Payments were mistakenly calculated based on the fictitious, inflated NAVs, such that the Redeemers received much higher payments than what the redeemed shares were actually worth. *See Fairfield Sentry Ltd. v. Theodoor GGC Amsterdam (In*

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[10] According to the Notice of Change Status filed on January 31, 2020, (Bankr. Doc. 2879), Appellants Kenneth Krys and Greig Mitchell were appointed as Joint Liquidators by the BVI Court upon the resignation of their predecessors in 2011 and 2019. The two have since served as the foreign representatives in this action. (*Id.*; *see also* PAC ¶ 26.)

[11] When a Ponzi scheme collapses, those who have already withdrawn some or all of their funds and recovered some or all of their investments are insulated from loss to a certain degree, while those whose money is still invested will suffer substantial loss, and sometimes receive nothing in return. *See Fairfield Sentry Ltd. (In Liquidation) v. Migani*, [2014] UKPC 9, 2014 WL 1219748 (2014) ("*Migani*"); *In re Bernard L. Madoff Inv. Sec. LLC*, 654 F.3d 229, 232 (2d Cir. 2011) (describing the nature of Ponzi schemes).

[12] "Open. Br. I" refers to the Plaintiffs-Appellants' Opening Brief for the first round of appeals. (Doc. 22.)

re Fairfield Sentry Ltd.), 596 B.R. 275, 284 (Bankr. S.D.N.Y. 2018) ("*Fairfield II*"). The Liquidators' theory for recovery in the BVI Proceedings was based purely on the parties' mistake of facts, and there was no allegation that Citco or the Funds were aware of Madoff's fraud or acted in bad faith. *Id*. at 289.

1. The BVI Court Decision

In 2011, the BVI Court issued an opinion after a trial on two "preliminary issues:"[13] (1) whether various communications sent to the Redeemers constituted "certificates" of NAV within the meaning of Article 11 and were therefore binding on the Funds (the "Certification Issue"),[14] and (2) whether the Redeemers gave good consideration for the Redemption Payments by surrendering their shares (the "Good Consideration Issue").[15] *See Fairfield II*, 596 B.R. at 285. The Redeemers argued that a finding that the communications were certificates or that the

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[13] Under the BVI law, "[a] preliminary issues trial is a mechanism for deciding specific issues that are likely to resolve the case." *Fairfield II*, 596 B.R. at 284.

[14] The "communications" were in the form of ordinary course emails sent to shareholders by Citco communicating the final NAV per share for the month, and emails from Citco to shareholders communicating the monthly statement for the individual shareholder. *Migani* ¶ 16.

[15] Under BVI law, if a payment made by mistake was nevertheless properly due to the payee, i.e. the payee has released "good consideration" for the payment, then the payment is not recoverable under a restitution theory. (Open. Br. I 21 n.5 (citing Graham Virgo, *Good Consideration Provided by the Defendant*, The Principles of the Law of Restitution 189-91 (3d ed. 2015); Robert Goff & Gareth Jones, *Good Consideration*, The Law of Unjust Enrichment 822-25 (9th ed. 2016).)

Redeemers had given good consideration would provide a complete defense to the Liquidators' claims. *Id*. at 284. In making its ruling, the BVI Court did not address any factual issues. (*See* Open. Br. I 18 n.4.)

With regard to the Certification Issue, the BVI Court ruled that the various communications sent to the Redeemers were not "certificates" within the meaning of the Articles. *Fairfield II*, 596 B.R. at 286; (*see also* BVI Decision ¶ 33.)[16] However, the BVI Court ruled in favor of the Redeemers on the Good Consideration Issue. *Id*. Specifically, it found that the Redeemers paid good consideration for the Redemption Payments by surrendering their shares with the Funds, and, consequently, the Liquidators were barred from recovering those payments. (BVI Decision ¶¶ 34-36.) Specifically, the BVI Court wrote that:

> Left to myself I would have held that the redemption of shares in this case amounted to a bargain and sale for which the consideration received by Sentry was the surrender of the rights of the redeeming shareholder.
>
> ....
>
> [A] party will not be able to recover a payment made by mistake where the payer has received consideration from the payee.

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[16] "BVI Decision" refers to the decision of the BVI Court issued by Judge Bannister that was filed with the Bankruptcy Court as an exhibit attached to the Kite Declaration. (*See* Kite Decl. Ex. B.)

> In my judgment, therefore, it is not open to Sentry now to seek to recover the price which it paid for the purchase of the shares of redeeming investors simply because it calculated the NAV upon information which has subsequently proved unreliable for reasons connected with any of the redeemers.

(*Id.*)

2. The ECCA Appeal

Each side appealed the BVI Court's decision to the Eastern Caribbean Court of Appeal (the "ECCA"). *See Fairfield II*, 596 B.R. at 287. The ECCA affirmed the BVI Decision. *Id.* (citing *Quilvest Fin. Ltd. v. Fairfield Sentry Ltd. (In Liquidation)*, Nos. HCVAP 2011/041, *et al.*) With regard to the Good Consideration Issue, the ECCA found that upon receiving redemption requests from members, Sentry was obligated to redeem the shares based on the NAV as calculated by Citco. *Id.* Specifically, the ECCA stated that

> It is simply not open to Sentry to recover the redemption prices which it paid for the purchase of the redeemed shares because it has now been discovered that it determined its NAV on unreliable or erroneous information from BLMIS which had nothing to do whatsoever with any of Sentry's shareholders. The shareholders fully performed all their obligations under the contract. Sentry, in paying the redemption price, did so in the discharge of its debt obligations to the redeeming shareholders pursuant to Sentry's Articles which remained perfectly valid and in force.

(ECCA Decision ¶ 87.)[17]

3. Migani

The ECCA decision was appealed to the Judicial Committee of the Privy Council in London (the "Privy Council"),[18] *see Fairfield II*, 596 B.R. at 287-88, which then issued *Migani*, [2014] UKPC 9, 2014 WL 1219748 (2014).[19] In *Migani*, the Privy Council rejected the Liquidators' argument that New York law, which governs the Subscription Agreement, should govern the issues on appeal.[20] *Id.* ¶ 20. The Privy Council found instead that the Liquidators' claims "ar[ose] out of a transaction governed by the Articles," and therefore should be "governed by the same law which governs the Articles themselves," which is the BVI law. *Id.* ¶ 17. The Privy Council also observed that "none of the questions raised by the preliminary issues depends on the Subscription Agreement." *Id.* ¶ 20.

The Privy Council then found that the Certification Issue and the Good Consideration Issue were "closely related and have to be considered together," because whether the Redeemers had exchanged good consideration for those shares

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[17] "ECCA Decision" refers to the decision of the ECCA (the relevant portion written by Pereira, J.) that was filed in the Bankruptcy Court as an exhibit attached to the Kite Declaration. (*See* Kite Decl. Ex. G.)

[18] The Privy Council is the highest court for the BVI and other British Overseas Territories. (Open. Br. I 7.)

[19] A full text of the *Migani* opinion was filed in the Bankruptcy Court as an exhibit to the Hare Declaration. (Hare Decl. Ex. Q.)

[20] Section 16 of the Subscription Agreement provides that its terms are governed by New York law. (*See* Subscription Agreement § 16.)

"depends on whether [the Funds were] bound by the [effect of] the redemption terms," i.e. the effects of the alleged "certificates" and the NAVs issued with them. *Id.* ¶¶ 6, 19. The Privy Council proceeded to reverse the lower courts' decision on the Certification Issue, finding that the communications from Sentry to the Redeemers were "certificates" within the meaning of Article 11, which meant that the NAV as determined by Citco was binding. *Id.* ¶¶ 21-23. The Privy Council based its reasoning on the need for finality and certainty in securities transactions. Specifically, it dismissed the Liquidators' argument—that the NAV issued at the time was not binding due to mutual mistakes—as "an impossible construction," and reasoned that:

> If [the Liquidators] were correct, an essential term of both the subscription for shares and their redemption, namely the price, would not be definitively ascertained at the time when the transaction took effect, nor at the time when the price fell to be paid. Indeed, it would not be definitively ascertained for an indefinite period after the transaction had ostensibly been completed, because unless a certificate was issued it would always be possible to vary the determination of the NAV per share made by the Directors at the time and substitute a different one based on information acquired long afterwards about the existence or value of the assets. This would not only expose Members who had redeemed their shares to an open-ended liability to repay part of the price received if it subsequently appeared that the assets were

> worth less than was thought at the time. It would confer on them an open-ended right to recover more (at the expense of other Members) if it later appeared that they were worth more.
>
> ….
>
> If, as the Articles clearly envisage, the ... Redemption Price are to be definitively ascertained at the time of the ... redemption, then the NAV per share on which those prices are based must be the one determined by the Directors at the time, whether or not the determination was correctly carried out in accordance with Articles 11(2) and (3).

(*Id*. ¶¶ 23-24.)

Accordingly, the Privy Council dismissed the appeal on the Good Consideration issue.[21] Since the NAV was binding, the Redeemers were entitled in the first place to receive the Redemption Payments as calculated based on the erroneous NAV, which means that there was no unjust enrichment. *Id*. ¶ 18 (noting that "[t]he payee of money cannot be said to have been unjustly enriched if he was entitled to receive the sum paid to him" (internal quotation marks omitted)).

B. The U.S. Proceedings

Concurrently with the BVI Proceedings, Plaintiffs-Appellants filed about 300 actions in the United States to claw back over $6 billion worth of inflated Redemption Payments from Defendants-

[21] Under the BVI law, a dismissal of an appeal leaves the lower court ruling in effect. (Doc. 281 ("Con. Br. I"), at 15 n.21.)

Appellees (the "U.S. Proceedings").[22] In June 2010, Plaintiffs-Appellants commenced ancillary proceedings before the Bankruptcy Court to obtain recognition of the BVI Proceedings as "foreign main proceedings" under Chapter 15, specifically §§ 1502, 1515, and 1517 of the Bankruptcy Code.[23] *See In re Fairfield Sentry Ltd.*, No. 10-13164 (SMB), 2018 WL 3756343, at *2 (Bankr. S.D.N.Y. Aug. 6, 2018) ("*Fairfield I*"). In July 2010, the Bankruptcy Court granted Plaintiffs-Appellants' application. *Id.* After the grant of that application, all cases filed by the Plaintiffs-Appellants were consolidated before the Bankruptcy Court. *See Fairfield II*, 596 B.R. at 282.

Plaintiffs-Appellants asserted the following causes of action: (1) unjust enrichment; (2) money had

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[22] Defendants in the BVI Proceedings and the U.S. Proceedings partially overlapped. (Con. Br. I 5 n.3.) The parties agree that the claims asserted in the U.S. Proceedings are not the same as those asserted in the BVI Proceedings, as they involved different redemption transactions at different time periods. *See Fairfield II*, 596 B.R. at 291 ("The parties concede that the claims asserted in the U.S. Redeemer Actions are not the same claims that were asserted in *Migani*."); (*see also* Open. Br. I 17).

[23] A foreign main proceeding is a proceeding "pending in the country where the debtor has the center of its main interests." 11 U.S.C. § 1517(b)(1). "Upon recognition of a foreign main proceeding, Section 1520 provides certain automatic, nondiscretionary relief, including an automatic stay of all proceedings against the debtor in the United States." *In re Fairfield Sentry Ltd.*, 714 F.3d 127, 133 (2d Cir. 2013) (citing 11 U.S.C. § 1520(a)). The ancillary proceedings, on the other hand, "bring people and property beyond the foreign main proceeding's jurisdiction into the foreign main proceeding through the exercise of the United States' jurisdiction." *In re ABC Learning Ctrs. Ltd.*, 728 F.3d 301, 306-07 (3d Cir. 2013).

and received; (3) mistaken payment; (4) constructive trust (collectively, the "BVI Common Law Claims" or "Common Law Claims"); (5) unfair preferences under BVI's Insolvent Act § 245; (6) undervalue transactions under the Insolvent Act § 246 (collectively, the "BVI Avoidance Claims"); (7) breach of contract; and (8) breach of the implied covenant of good faith and fair dealing (collectively, the "BVI Contract Claims"). *Id*. at 289-90. In October 2011, the Bankruptcy Court stayed the U.S. Proceedings pending the resolution of the BVI Proceedings. *See Fairfield I*, 2018 WL 3756343, at *3.

After *Migani* was issued in 2014, the Bankruptcy Court lifted the stay. Around the same time, Plaintiffs-Appellants obtained evidence of Citco's bad faith and moved for leave to amend their complaint accordingly. *Id*. at *6. Plaintiffs-Appellants sought to add allegations that Citco was aware that the NAV based on which it calculated the Redemption Price was inflated, and that such dishonesty benefitted Defendants-Appellees. *Id*. Defendants-Appellees opposed the motion for leave to amend, and moved to dismiss Plaintiffs-Appellants' claims in their entirety based on lack of personal jurisdiction, failure to state a claim, and under the safe harbor defense under the Bankruptcy Code § 546(e). *Id.* As a result of these motions, the Bankruptcy Court issued a series of opinions that gave rise to the appeals before me.

1. Fairfield I

On August 6, 2018, the Bankruptcy Court issued *Fairfield I*, holding that it does not have personal jurisdiction over certain Defendants-Appellees. 2018 WL 3756343, at *10-12. Although the Subscription

Agreement that these Defendants-Appellees entered into provided that they would consent to jurisdiction in New York for claims "with respect to [the Subscription] Agreement and the Fund," (Subscription Agreement § 19), the Bankruptcy Court ruled that the Plaintiffs-Appellants' claims were not "with respect to" the Subscription Agreement. 2018 WL 3756343, at *10-12. Specifically, the Bankruptcy Court found support for its decision in *Migani*, where the Privy Council ruled that the Subscription Agreement was irrelevant to the two preliminary issues. *Id*. at *11.

2. Fairfield II

On December 6, 2018, the Bankruptcy Court issued *Fairfield II*, 596 B.R. 275. The Bankruptcy Court rejected Defendants-Appellees' defense of collateral estoppel, finding that Plaintiffs-Appellants' allegations of mistake made in the BVI Proceedings do not preclude them from alleging Citco's bad faith in the U.S. Proceedings because the bad faith issue was not actually decided. *Id*. at 292-93. However, relying on *Migani* and its progeny, the Bankruptcy Court also found that Plaintiffs-Appellants cannot revisit the propriety of the NAVs after the Funds already made the Redemption Payments, even if the NAVs were allegedly calculated in bad faith. *Id*. at 297. The only exception to this ruling concerned those Defendants-Appellees who at the time of redemption knew that the NAV was inflated (the "Knowledge Defendants"); the Bankruptcy Court allowed Plaintiffs-Appellants' constructive trust claims against these Knowledge Defendants to proceed. *Id*. at 295, 301. The Bankruptcy Court also found that Section 246 of the

BVI Insolvency Act only applies to Plaintiffs-Appellants' claims against those Defendants who at the time of redemption had reason to believe that the NAVs were inflated and that the shares were worthless. *Id.* at 302-05. Finally, the Bankruptcy Court ruled that § 546(e) of the Bankruptcy Code, which creates a safe harbor against certain avoidance claims, is applicable to the Redemption Payments that Plaintiffs-Appellants seek to avoid; however, it did not decide whether § 546(e) actually bars their avoidance claims, leaving that for further briefing.[24] *Id.* at 315-16.

Accordingly, the Bankruptcy Court (1) granted Plaintiffs-Appellants' leave to amend the constructive trust claims against the Knowledge Defendants and the BVI Avoidance Claims against all Defendants, and (2) granted Defendants-Appellees' motion to dismiss the remainder of the claims. *Id.*

3. Denial of Leave to Further Amend

After *Fairfield II*, the parties entered into stipulated judgments (the "Stipulated Judgments" or singular "Stipulated Judgment") in each action, all approved by the Bankruptcy Court between April 2 and 17, 2019. *See Fairfield Sentry Ltd. (In Liquidation) v. Theodoor GGC Amsterdam*, No. 10-ap-03496 (SMB), 2020 WL 4813565, at *3. The Stipulated Judgments were not identical. In certain actions, the Stipulated Judgments permit the Plaintiffs-

[24] The briefing was completed and resulted in the Bankruptcy Court's decision *Fairfield Sentry Ltd. (In Liquidation), et al. v. Theodoor GGC Amsterdam, et al.*, No. 10-ap-03496 (SMB), 2020 WL 7345988 (Bankr. S.D.N.Y. 2020) ("*Fairfield III*").

Appellants to amend their constructive claims against the Knowledge Defendants; however, in twelve of the proceedings (the "Twelve Actions"), the Stipulated Judgments explicitly denied Plaintiffs-Appellants' leave to amend the constructive trust claims and dismissed all Common Law Claims with prejudice. *Id*. In all actions, Plaintiffs-Appellants' request to certify the Stipulated Judgments for immediate appeal were granted pursuant to Rule 54(b) of the Federal Rules of Civil Procedure. *Id*. Plaintiffs-Appellants subsequently filed their first round of appeals ("First Appeal"), where they appeal "[e]ach and every part of the [Stipulated Judgments] that constitutes a final judgment." (*See* Doc. 1, at 2; *see also generally* Open. Br. I.)

On January 15, 2020, Plaintiffs-Appellants filed their motion to further amend the complaints to, among other things, assert constructive trust claims based on new knowledge allegations against the Defendants in the Twelve Actions.[25] 2020 WL 4813565, at *4. On August 10, 2020, the Bankruptcy Court denied Plaintiffs-Appellants' leave to further amend complaints in the Twelve Actions, reasoning that their prior appeal of the dismissal of their common law claims in *Fairfield II* divested the Bankruptcy Court of jurisdiction of this issue. *Id*. at *12.

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[25] In seventeen of the actions where the Stipulated Judgments allowed amendment of constructive trust claims, Plaintiffs-Appellants filed motions to supplement existing knowledge allegations against certain Knowledge Defendants. 2020 WL 4813565 at *4. Those motions are not relevant for the appeals here.

4. Fairfield III

On December 14, 2020, the Bankruptcy Court issued *Fairfield Sentry Ltd. (In Liquidation), et al. v. Theodoor GGC Amsterdam, et al.*, No. 10-ap-03496 (SMB), 2020 WL 7345988 (Bankr. S.D.N.Y. 2020) ("*Fairfield III*"), which ruled that Section 546(e) bars Plaintiffs-Appellants' BVI Avoidance Claims. Plaintiffs-Appellants then filed their second round of appeals which related to this ruling, together with the previous ruling of dismissal for lack of personal jurisdiction in *Fairfield I*, for failure to state BVI Avoidance claims in *Fairfield II*, and for lack of subject matter jurisdiction in the August 2020 order denying their leave to amend ("Second Appeal"). (*See generally* Open. Br. II.)[26]

C. Appeals

In the First Appeal, Appellants filed their opening brief on December 10, 2019. (*See* Doc. 22.) On March 9, 2020, Appellants filed the supplemental brief of Deutsche Bank (Cayman) Limited, (Doc. 253 ("Supp. Br. I")); Appellees filed (1) the supplemental brief of certain Appellees seeking affirmance based on the doctrine of res judicata, (Doc. 266 ("Supp. Br. II")), and (2) their consolidated brief in opposition, (Doc. 281 ("Con. Br. I")). Appellants filed their reply brief on April 23, 2020. (Doc. 361 ("Reply I").) Appellants' reply brief to the supplemental brief of Deutsche Bank (Cayman) Limited, (Doc. 360 ("Supp. Rep. I")), and Appellees' reply brief to the supplemental brief of certain Appellees seeking affirmance based on the

[26] "Open. Br. II" refers to Plaintiffs-Appellants' Opening Brief filed in their second round of appeals. (Doc. 440.)

doctrine of res judicata, (Doc. 359 ("Supp. Rep. II")), were both filed on the same day.

In the Second Appeal, Appellants filed their Opening Brief on July 21, 2021. (Doc. 440.) Appellees filed their consolidated brief in opposition on October 19, 2021. (Doc. 510 ("Con. Br. II")). Appellants' brief was filed on December 3, 2021. (Doc. 531 ("Reply II").)

III. Standard of Review

A district court has jurisdiction pursuant to 28 U.S.C. § 158(a)(1) to hear appeals from final judgments, orders, and decrees of a bankruptcy court. On such an appeal, the district court reviews the bankruptcy court's findings of fact for clear error, and any conclusions of law de novo. *See In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994).

In reviewing a decision of a bankruptcy court, the district court "may affirm on any ground that finds support in the record, and need not limit its review to the bases raised or relied upon in the decisions below." *Freeman v. Journal Register Co.*, 452 B.R. 367, 369 (S.D.N.Y. 2010). The district court may not consider evidence outside the record. *See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 389 B.R. 325, 339 (S.D.N.Y. 2008). Any arguments not raised in the bankruptcy court are considered waived; unless such a waiver results in manifest injustice, the new arguments will not be considered on appeal. *See In re Barquet Grp., Inc.*, 486 B.R. 68, 73 n.3 (S.D.N.Y. 2012); *In re Lionel Corp.*, 29 F.3d 88, 92 (2d Cir. 1994).

IV. Discussion

A. Personal Jurisdiction

Appellants argue that the choice of forum clause in the Subscription Agreement establishes personal jurisdiction over 206 of the Defendants.[27] (*See* Open. Br. II 53.) Because personal jurisdiction is a threshold issue that must be addressed prior to the merits, *In re Rationis Enters. of Pan.*, 261 F.3d 264, 267-68 (2d Cir. 2001), I turn to this issue first.

The Bankruptcy Court ruled that it does not have personal jurisdiction over these Defendants for several reasons. It first found that the language "with respect to the Agreement and the Fund" should be read conjunctively, which means that for Defendants to be subject to New York jurisdiction, the claim must be related to both the Subscription Agreement and the Funds. *Fairfield I*, at *10. The Bankruptcy Court then found that Appellants' actions are only "with respect to" the Fund, not to the Subscription Agreement. *Id.* at *11. In doing so, the Bankruptcy Court relied on *Migani*, where the Privy Council found that the preliminary issues were governed by the Articles, and that the Subscription Agreement was irrelevant. *Id*.

Appellants argue that the Bankruptcy Court erred in relying on *Migani*, because the Privy Council did not consider all of the claims in the action, but only the two preliminary issues. (*See* Open. Br. II 55.) They further argue that their claims are "plainly related to the [S]ubscription [A]greements" because (1) the

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[27] Appellants also asserted personal jurisdiction over these Defendants based on purposeful availment, but the Bankruptcy Court has not ruled on that issue yet. (Open. Br. II 53 n.12.)

Subscription Agreement was the basis of the contractual relationship between the parties, and expressly incorporated all other Fund documents, and (2) the clause uses the term "with respect to" instead of "arise from" or "depend on," suggesting the broad scope of claims applicable to this provision. (*Id*. at 54-56 (internal quotation marks omitted).) Appellants also argue that, in any event, the "and" in the clause should be read disjunctively, which would mean that the relevant Defendants are subject to New York jurisdiction as long as the claims are "with respect to" the Funds. (*Id*. at 57-58.) On the other hand, the Appellees urge me to affirm the Bankruptcy Court's rulings because the "and" should be read conjunctively and the issues here are not "with respect to" the Subscription Agreement. (Con. Br. II 41-47.) The parties do not dispute that New York law should govern the contractual interpretation here. (*See* Open. Br. II 57; Con. Br. II 46-47.)

Under New York law, "[t]o determine the terms of a contract, a court must ascertain the parties' intent based on the language they used." *AIG Europe (Netherlands), N.V. v. UPS Supply Chain Sols., Inc.*, 765 F. Supp. 2d 472, 479 (S.D.N.Y. 2011) (citing *Consarc Corp. v. Marine Midland Bank, N.A.*, 996 F.2d 568, 573 (2d Cir. 1993)). As a threshold matter, the court looks at "whether the contract is ambiguous." *Sunbelt Rentals, Inc. v. Charter Oak Fire Ins. Co.*, 839 F. Supp. 2d 680, 687 (S.D.N.Y. 2012) (citing *Lockheed Martin Corp. v. Retail Holdings, N.V.*, 639 F.3d 63, 69 (2d Cir. 2011)). A contract is ambiguous if it contains language that is "capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the

context of the entire integrated agreement and who is cognizant of the customs, practices, usages and terminology as generally understood in the particular trade or business." *Brass v. Am. Film Techs., Inc.*, 987 F.2d 142, 149 (2d Cir. 1993) (citation omitted). Ambiguity does not arise from "[s]training a contract's language beyond its reasonable and ordinary meaning." *Id.* "When a contract is unambiguous, it must be enforced according to the plain meaning of its terms." *Sunbelt Rentals*, 839 F. Supp. 2d at 687 (internal quotation marks omitted). A contract "must be read as a whole, and if possible, courts must interpret them to effect the general purpose of the contract." *Postlewaite v. McGraw-Hill, Inc.*, 411 F.3d 63, 67 (2d Cir. 2005).

Here, after examining the language and context of the choice of forum clause, I find that it does not establish personal jurisdiction over the relevant Appellees. Specifically, I agree with the Bankruptcy Court's determination that the word "and" should be read conjunctively, and that the claims here are not "with respect to" the Subscription Agreement.

1. Interpreting the Word "And"

Courts may interpret the term "and" to have a conjunctive or disjunctive meaning, depending on the context in which the term is used. *See Consumer Fin. Prot. Bureau v. RD Legal Funding, LLC*, 332 F. Supp. 3d 729, 766-67 (S.D.N.Y. 2018); *Spanski Enters. v. Telewizja Polska S.A.*, 832 F. App'x 723, 725 (2d Cir. 2020) ("[I]t may be found that 'and' includes 'or' or that 'or' includes 'and,' as a reasonable construction requires." (citing 22 N.Y. Jur. 2d Contracts § 240)). Appellants argue that the word "and" as used here has

a disjunctive meaning because New York courts have held that "where nothing on the face of a document shows that a literal construction of the word 'and' was intended, courts interpret 'and' disjunctively." (Open. Br. II 57 (citing to *Lamborn v. Nat'l Park Bank of N.Y.*, 208 N.Y.S. 428, 434 (1st Dep't. 1925) and *Murphy v. Long Island Oyster Farms, Inc.*, 491 N.Y.S.2d 721, 722 (2nd Dep't. 1985).) The two cases Appellants cite, however, addressed situations materially different from this case and are distinguishable and thus not controlling.

In *Lamborn*, the parties contracted for a shipment of goods which was to be delivered in "August and September;" subsequently, there was a request to change the terms from "August and September" to "August and/or September." 208 N.Y.S. 428, 434. The court found that the requested revision was "superfluous" and did nothing to change the meaning of the terms, because in either case, the buyer was bound to receive the shipment as long as it arrived before the end of September. *Id.* at 434-35. In ruling so, the court observed that "'[a]nd' is considered also as 'or' unless the document shows on its face that the word 'and' is to be literally construed." *Id.*

The *Murphy* case concerns a dispute between a landlord and a tenant over a lease which granted the tenant the right to use the underwater lands for "planting, growing, and cultivating thereon and recovery therefrom oysters and other shellfish." 491 N.Y.S.2d 721, 722. The landlord argued that, under the lease, the tenant has no right to harvest naturally grown shellfish because the "and" should be read conjunctively. *Id.* The court disagreed. Citing to

Lamborn, it found that "[n]othing on the face of this document shows that a literal construction of the word 'and' was intended," and that it should be read disjunctively." *Id*.

In these two cases, "and" was interchangeable with "or" because the language of the contracts indicated that "and" was intended to draw a permissive scope within which the party may choose to act. In *Lamborn*, the seller was allowed to ship the goods in August or September; exactly which month is up to the seller to decide. 208 N.Y.S. 428, 434. In *Murphy*, the tenant was allowed to "plant[], grow[], and cultivat[e]" and "recover[]" the shellfish from the underwater land; they could cultivate the shellfish but not recover, or recover them but not cultivate, or do both, or do neither. 491 N.Y.S.2d 721, 722. Nothing in the two contracts indicated that the "and" should be construed literally. *See also S. Telecom Inc. v. ThreeSixty Brands Grp., LLC*, 520 F. Supp. 3d 497, 513 (S.D.N.Y. 2021) (finding "and" to have disjunctive meaning where the agreement provided that certain approval from a licensor "may be based solely on its subjective standards ... and may be withheld in Licensor's sole discretion").

In addition, even where the contract seems to prescribe a permissive scope, the word "and" may still be interpreted conjunctively if, elsewhere in the contract, a different term was used to indicate a disjunctive meaning. *See*, *e.g.*, *Spanski Enters.*, 832 F. App'x at 725 (in the provision "[the licensor] and [the licensee] may extend its term by subsequent 10-year periods," finding the "and" to be conjunctive—i.e. the power to extend is not unilateral but would require the

agreement of both—because elsewhere when the contract referred to unilateral rights, it used "each party" instead).

Here, the choice of forum provision of the Subscription Agreement does not prescribe a permissive scope within which the parties can chose freely. Instead, it provides that if claims are brought "with respect to the Agreement and the Fund," the members must agree to New York's jurisdiction. In other words, the provision protects the members' expectation by specifically naming the type of claims that will drag them into New York. This alone goes against following the disjunctive interpretation in *Lamborn* and *Murphy*. *See* 208 N.Y.S. 428; 491 N.Y.S.2d 721. Moreover, in other parts of the Subscription Agreement, the parties repeatedly use "or" or "and/or" to show disjunctive meaning. (*See* Subscription Agreement ¶ 8 ("Subscriber has obtained sufficient information from the Fund or its authorized representatives to evaluate such risks"; "All information which the Subscriber has provided to the Fund or the Administrator concerning the Subscriber ... is correct and complete as of the date set forth herein"; "[t]he Subscriber irrevocably authorizes the Fund and/or the Administrator to disclose, at any time, any information held by the Fund or the Administrator in relation to the Subscriber or his investment in the Fund to the Investment Manager"); *id*. ¶ 19 ("Subscriber consents to the service of process out of any New York court in any such Proceeding by the mailing of copies thereof, by certified or registered mail").) Those provisions indicate that the "and" in the choice of forum clause is unambiguously used in its "usual conjunctive meaning," *Spanski Enters.*, 832 F.

App'x at 725, as it imposes a mandatory scope where both conditions must be satisfied.

Appellants argue that such a reading would lead to the "absurd" result where "disputes 'with respect to' the agreements but not 'with respect to' the Funds ... would be litigated outside of New York, whereas disputes 'with respect to' both the agreements and to the Funds would be litigated in New York." (Open. Br. II 58.) I disagree. In fact, as the Bankruptcy Court correctly recognized, because the Subscription Agreement regulates the investment relationship between the members and the Funds, any dispute over the Subscription Agreement is necessarily also "with respect to the Fund." *Fairfield I*, at *10. Reading "and" disjunctively would render part of the provision superfluous, and in New York "[i]nterpretations that render provisions of a contract superfluous are particularly disfavored." *Spinelli v. NFL*, 903 F.3d 185, 200 (2d Cir. 2018) (internal quotation marks omitted.) Therefore, the Bankruptcy Court was correct to read "and" conjunctively.

Accordingly, for the relevant Appellees to be subject to New York jurisdiction, Appellants' claims must be "with respect to" both the Subscription Agreement and the Funds.

2. "With Respect to"

In deciding whether Appellants' claims are "with respect to" the Subscription Agreement, I first note that *Migani* does not control. First, *Migani* did not address the issue of choice of forum, only choice of law, which is governed by a different clause under the

Subscription Agreement.[28] *See Migani*, ¶ 20 ("[The counsel for the Fund] suggested that at a further hearing in the High Court, New York law, which is the proper law of the Subscription Agreement, might be relevant. The Board unhesitatingly rejects these submissions.").[29] Second, *Migani* only concerned the preliminary issues raised as potential defenses to the common law claims raised in the BVI Proceedings. It did not address all of the claims raised by Appellants in the current U.S. Proceedings.

In the U.S. Proceedings, Appellants brought common law claims, BVI Avoidance Claims, and BVI Contract Claims, all under the theory that Citco's bad faith rendered the redemption price fraudulently inflated. Appellants do not dispute that the issues related to the NAV and the Redemption Payments here are governed by the Articles, which set out the

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[28] *See infra* n.20.

[29] In ruling that the BVI law should apply, the Privy Council noted that the questions raised by the preliminary issues did not "depend[] on" the terms of the Subscription Agreement. *Id.* The choice of forum clause, however, provides that the claims must be "with respect to" the Agreements; it did not use the more limited "depends on." A claim that does not "depend on" the Agreements may well be "with respect to" them. *See Redhawk Holdings Corp. v. Invs*, 2016 U.S. Dist. LEXIS 84524, at *14 (S.D.N.Y. June 24, 2016) (referring to forum selection terms terms such as "arise out of," "arise from," or "arising under," as "narrow," while referring to terms such as "in connection with," "relating to," "with respect to," "with reference to," or "associated with" as "broad"). However, the Privy Council went on to state that the questions raised by the preliminary issues "depend wholly on the construction of the Articles, which is governed by the law of the British Virgin Islands." *Migani*, ¶ 20. In other words, the terms of the Subscription Agreement were not implicated.

procedure for NAV calculation and redemption. (*See* Open. Br. II 55.) Aside from the forum selection clause at issue, Appellants do not mention any other specific provision of the Subscription Agreement they believe are implicated by their claims. Although the Subscription Agreement mentions "redemption," it only very briefly notes the existence of the "limited provisions for redemptions" in other documents like the Articles, and a very general description of the timing of the redemption payments. (Subscription Agreement § 9.) It does not mention the NAV or the NAV calculation, nor does it mention the standard under which the NAV, NAV calculation, or the information used in connection with the NAV are provided. The limited references contained in the Subscription Agreement do not warrant bringing these agreements into the analysis for purposes of the forum selection clause. The Subscription Agreement simply contains no provision that is relevant enough to make this dispute "with respect to" them.

I reject Appellants' argument that their claims are "with respect to the Subscription Agreement" because the Subscription Agreement was "the basis of the contractual relationship" between the investors and the Funds. (*See* Open. Br. II 55 ("Defendants would have had no shares to redeem without the [Subscription Agreement.]").) Under that logic, almost any dispute between the investors and the Funds would be litigated in New York, since the investors would not have been able to make their investments at all if it were not for the Subscription Agreement. This is clearly not what the forum selection clause intended, as it did not simply say "with respect to the Fund," but further qualified the scope with "the

Agreement." Again, Appellants' interpretation would render the "Agreement" in the clause superfluous, and I decline to adopt it. *See Spinelli*, 903 F.3d at 200.

For a similar reason, I reject Appellants' argument that their claims are "with respect to the Subscription Agreement" because the Subscription Agreement "expressly incorporated all other Funds documents, including the Articles that govern the legal issues in dispute here." (Open. Br. II 55.) First, this argument would render almost any investors' disputes subject to the forum selection clause. Second, under New York law, incorporation by reference in a contract requires the allegedly incorporated document to be "expressly identified" in the contract, and that the language "clearly communicates" the purpose of the reference is to incorporate the referenced material into the contract. *See Miller v. Mercuria Energy Trading, Inc.*, 291 F. Supp. 3d 509, 517 (S.D.N.Y. 2018) (internal quotation marks omitted), *aff'd*, 774 F. App'x 714 (2d Cir. 2019). Neither requirement is met here. The choice of forum clause never "expressly identifies" the Articles nor "clearly communicates" the purpose of incorporation. On the contrary, the terms used throughout the Subscription Agreement indicate that the "Subscription Agreement" is treated as distinct from the "Fund Documents." When only the phrase "Subscription Agreement" is used, it refers to the Subscription Agreement itself, not including the Articles and other Fund Documents. However, when the Subscription Agreement seeks to address issues related to all the Fund Documents, it uses the phrase "Fund Documents" instead. (*Compare* ¶ 2 ("If rejected, the Fund shall promptly return the subscription funds, with any interest actually earned thereon, and

this Agreement shall be void") and ¶ 8 ("Subscriber understands that ... the representations ... made by the Subscriber in this Agreement will be relied upon by the Fund"), *with*, ¶ 2 ("If the Fund accepts this Subscription, Subscriber shall become a shareholder of the Fund and bound by the Fund Documents.") and ¶ 5(a) ("Subscriber understands that the Fund may compulsorily repurchase such Shares in accordance with the Fund Documents."). If the forum selection clause was meant to be "with respect to" all Fund Documents including the Articles, it would have been written to clearly state such.

Therefore, Plaintiffs-Appellants' claims are not "with respect to" the Subscription Agreement, and, accordingly, the forum selection clause cannot establish the Bankruptcy Court's personal jurisdiction over the relevant Defendants-Appellees.

B. Safe Harbor Defense under § 546(e)

Appellants have raised a number of issues on the merits. I will first address the issue regarding Appellees' safe harbor defense under Section 546(e) of the Bankruptcy Code, because a determination that Section 546(e) bars Appellants' BVI Avoidance claims may potentially dispose of the issue related to the Bankruptcy Court's dismissal of the BVI § 246 claim for failure to state a claim, as well as the Appellees' argument that § 546(e) bars Appellants' BVI Common Law Claims.

1. Avoidance

Under the Bankruptcy Code, a bankruptcy trustee is afforded powers to avoid transactions under various avoidance provisions. *See, e.g.*, 11 U.S.C. §§ 544, 545, 547, 548. Specifically, under

§ 548(a)(1)(A), the trustee can avoid any transfer that was made "with actual intent to hinder, delay, or defraud any entity to which the debtor was ... indebted." 11 U.S.C. § 548(a)(1)(A). Such avoidance powers, however, have limitations. Section 546(e) provides for certain transactions a safe harbor from the trustees general avoiding power. *See Merit Mgmt. Grp., LP v. FTI Consulting, Inc.*, 138 S. Ct. 883, 893 (2018). Under § 546(e), a trustee may not avoid a transfer that is a "settlement payment ... made by or to (or for the benefit of) ... a financial institution ... in connection with a securities contract ... except under Section 548(a)(1)(A) of this title." 11 U.S.C. § 546(e). In other words, a transaction qualified under § 546(e) as a "settlement payment ... made by or to (or for the benefit of) a ... financial institution ... in connection with a securities contract" (i.e. a "Qualified Transaction") falls under the safe harbor and cannot be avoided by a trustee; however, such a Qualified Transaction will not be able to benefit from the safe harbor if the transfer was made "with actual intent to hinder, delay, or defraud," § 548(a)(1)(A).

Section 546(e) was designed to protect against the "displacement caused in the commodities and securities markets in the event of a major bankruptcy affecting those industries." *In re Enron Creditors Recovery Corp.*, 651 F.3d 329, 334 (2d Cir. 2011). "If a firm is required to repay amounts received in settled securities transactions," it might fail to "meet its current securities trading obligations," whereby "placing other market participants and the securities markets themselves at risk," potentially leading to a systemic disruption. *Id.*; *see also In re Tribune Co. Fraudulent Conveyance Litig.*, 818 F.3d 98, 120-21 (2d

Cir. 2016) (explaining that § 546(e)'s "larger purpose ... was to promote finality and certainty for investors, by limiting the circumstances, e.g., to cases of intentional fraud, under which securities transactions could be unwound") (internal quotation marks omitted).

Chapter 15 of the Bankruptcy Code was enacted "to provide effective mechanisms for dealing with cases of cross-border insolvency, while promoting international cooperation, legal certainty, fair and efficient administration of cross-border insolvencies, protection and maximization of debtors' assets, and the rescue of financially troubled businesses." *Morning Mist Holdings Ltd. v. Krys (In re Fairfield Sentry Ltd.)*, 714 F.3d 127, 132 (2d Cir. 2013) (internal quotation marks omitted). It allows a "foreign representative" to seek assistance in the United States in connection with a foreign bankruptcy proceeding by commencing an ancillary proceeding for recognition of a foreign proceeding before a United States bankruptcy court. 11 U.S.C. §§ 1501(b)(1), 1504. However, under 11 U.S.C. § 1521, the court in a Chapter 15 case cannot grant any relief under various avoidance provisions under the Bankruptcy Code, including §548. In other words, foreign representatives cannot seek to avoid transfers under the United States bankruptcy law. *In re Fairfield Sentry Ltd.*, 458 B.R. 665, 675-76 (S.D.N.Y. 2011) (explaining that "Chapter 15 merely gives the foreign representatives standing to use the United States courts to assert claims under law other than Chapter 15," and "the causes of action asserted here are not created by Chapter 15.") It has been suggested that the rationale behind this approach was to prevent

forum shopping. *See In re Condor Ins. Ltd.*, 601 F.3d 319, 327 (5th Cir. 2010) (explaining that, otherwise, "foreign representatives would bring an ancillary action simply to gain access to avoidance powers not provided by the law of the foreign proceeding"). Nevertheless, a foreign representative can bring avoidance claims under foreign laws, as Appellants have done here. *See In re Bankr. Estate of Norske Skogindustrier ASA*, 629 B.R. 717, 757 (Bankr. S.D.N.Y. 2021) ("[C]ourts have recognized that section 1521(a)(7) does not prevent a foreign representative from bringing avoidance claims under foreign law." (citing *In re Condor*, 601 F.3d 319)); *In re Fairfield Sentry Ltd.*, 458 B.R. at 675 ("Chapter 15 ... does not prohibit the application of the law as provided by the other sovereign.").

Although a foreign representative cannot raise avoidance claims under the United States Bankruptcy Code, its avoidance power under foreign law in a Chapter 15 proceeding is nevertheless subject to the Bankruptcy Code's limitations. Specifically, § 561(d) extends the § 546(e) safe harbor to claims raised by a foreign representative by providing that

> Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case under chapter 15, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court

> in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).

11 U.S.C. § 561(d).

2. The Redemption Payments and § 561(d)

On appeal, Appellants do not dispute that the Redemption Payments they seek to avoid are Qualified Transactions under § 546(e); instead, they argue that the safe harbor cannot be applied to the Redemption Payments because they are foreign transactions. (*See* Open. Br. II 24.) Pointing to the doctrine of presumption against extraterritoriality—"[w]hen a statue gives no clear indication of an extraterritorial application, it has none," *Morrison v. Nat'l Aus. Bank Ltd.*, 561 U.S. 247, 255 (2010)—Appellants argue that Congress has demonstrated no indication to apply § 546(e) to extraterritorial transactions like the Redemption Payments. (*See* Open. Br. II 25-27.) On the other hand, Appellees do not challenge that the Redemption Payments were purely foreign transactions, or that Congress has expressed no intention to apply Section 546(e) extraterritorially. Instead, relying on *Force v. Facebook, Inc.*, 934 F.3d 53, 73 (2d Cir. 2019), Appellees argue that applying the safe harbor in a United States court is a domestic application of the statute that does not implicate the presumption against extraterritoriality, even if the transaction at issue took place overseas. (*See* Con. Br. II 14-15.)

a. "To the Same Extent"

As an initial matter, I agree with the Bankruptcy Court that the issue here is not whether the safe harbor under § 546(e) applies extraterritorially, but whether § 561(d) makes the § 546(e) safe harbor applicable to extraterritorial transactions like the Redemption Payments. *See Fairfield II*, 596 B.R. at 310 ("Asking whether section 546(e) applies is the wrong question."). However, Appellants seem to suggest that it is sufficient to examine § 546(e) alone, because § 561(d) does nothing to expand the territorial scope of § 546(e). (*See* Open. Br. II 27-34.) Appellants' argument is based on the language of § 561, which specifies that the avoidance powers of a Chapter 15 foreign representative are "limit[ed] ... to the same extent" as those of a domestic bankruptcy trustee. 11 U.S.C. § 561(d). By allowing the safe harbor to "prohibit avoidance of both foreign and domestic transfers in Chapter 15 cases, but bar the avoidance of only domestic transfers in Chapter 7 and Chapter 11 cases," Appellants argue, the Bankruptcy Court "impermissibly expand[ed] the substantive reach of Section 546(e) in Chapter 15 proceedings." (Open. Br. II 29.) Appellants misconstrue the language at issue. Limitation on the powers "to the same extent" does not mean that the scope of a foreign representative's avoidance powers will be exactly the same as those of a domestic trustee. The scope of the avoidance powers of a foreign representative are by nature different from those of a domestic trustee. As explained above, while a domestic trustee is afforded avoidance powers by the Bankruptcy Code under provisions like § 548, the same is not afforded to a foreign representative, who, in a Chapter 15 proceeding, can only bring

avoidance claims outside of the Bankruptcy Code, e.g., under foreign avoidance laws. *See also In re Fairfield Sentry Ltd.*, 458 B.R. at 675-76. Therefore, by imposing limitation on the power of a foreign representative "to the same extent" as bankruptcy trustee, § 561(d) does not mean that the two share the same set of avoidance powers or that the powers will have the same territorial reach, but simply that the foreign representative's powers will be limited in the same way that those of a domestic trustee are limited—for example, neither can avoid transfers with certain features, particularly those specified under § 546(e).

Accordingly, I will turn to § 561(d) to resolve the issue.

b. Extraterritoriality

The presumption against extraterritoriality is a "longstanding principle of American law"; it instructs that "legislation of Congress, unless a contrary intent appears, is meant to apply only within the territorial jurisdiction of the United States." *EEOC v. Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991) ("*Aramco*") (internal quotation marks omitted), *accord RJR Nabisco, Inc. v. European Cmty.*, 579 U.S. 325, 337 (2016). The presumption "serves to protect against unintended clashes between our laws and those of other nations which could result in international discord." *Aramco*, 499 U.S. at 248. The courts apply "a two-step framework for analyzing extraterritoriality issues." *RJR Nabisco*, 579 U.S. at 337. "At the first step, we ask whether the presumption against extraterritoriality has been rebutted—that is, whether the statute gives a clear, affirmative

indication that it applies extraterritorially." *Id*. If the statute is not extraterritorial on its face, then "at the second step we determine whether the case involves a domestic application of the statute, and we do this by looking to the statute's 'focus.'" *Id*. "The focus of a statute is the object of its solicitude, which can include the conduct it seeks to regulate, as well as the parties and interests it seeks to protect or vindicate." *WesternGeco LLC v. ION Geophysical Corp.*, 138 S. Ct. 2129, 2137 (2018) (internal quotation marks omitted). "If the conduct relevant to the statute's focus occurred in the United States, then the case involves a permissible domestic application even if other conduct occurred abroad . . ." *RJR Nabisco*, 579 U.S. at 337. "[B]ut if the conduct relevant to the focus occurred in a foreign country, then the case involves an impermissible extraterritorial application regardless of any other conduct that occurred in U.S. territory." *Id*. Finally, although "a finding of extraterritoriality at step one will obviate step two's 'focus' inquiry," courts may instead "start[] at step two in appropriate cases." *Id*. at 338 n.5.

After examining the statute, I find that the presumption against extraterritoriality does not bar the application of § 546(e) to Appellants' claims because (1) Congress has expressed a clear intent to apply § 546(e) extraterritorially through § 561(d), and (2) even if there were no such Congressional intent, the application of § 546(e) here is a domestic one that passes step two of the test.

Section 546(e) is a safe harbor provision, and safe harbor provisions, by implication, should apply to the same extent as the underlying provision. *See*, *e.g.*,

Merit Mgmt., 138 S. Ct. at 893 (describing avoidance powers and safe harbors as "two sides of the same coin") (internal quotation marks omitted); *see also Fairfield II*, 596 B.R. at 310 n.49. Appellants themselves admit that the safe harbor applies extraterritorially to the same extent as do the avoidance powers. (*See* Open. Br. II 27.) However, in arguing that the safe harbor does not apply extraterritorially, Appellants mistakenly look to the avoidance powers of a domestic trustee, instead of to the powers of a foreign representative. For example, they cite a number of cases where, in a Chapter 7 or 11 proceeding, courts found that § 546(e) does not apply extraterritorially. *See, e.g.*, *In re Zetta Jet USA, Inc.*, 624 B.R. 461, 490 (Bankr. C.D. Cal. 2020) (Chapter 7 and Chapter 11); *In re Maxwell Commun. Corp. PLC*, 186 B.R. 807, 812 (S.D.N.Y. 1995) (Chapter 11). However, Appellants, as foreign representatives, do not have the power to bring avoidance claims under the Bankruptcy Code as the domestic trustees in those cases did. Instead, Appellants should have looked at the foreign representatives' avoidance power under Chapter 15.

Under Chapter 15, there is no specific provision authorizing a foreign representative to bring avoidance claims. Nevertheless, Chapter 15 authorizes the foreign representative to "commence a case [for ancillary proceedings] by filing directly with the court a petition for recognition of a foreign proceeding," 11 U.S.C. § 1509(a), and provides that, "upon recognition of a foreign proceeding," "the court may ... grant any appropriate relief," except the avoidance relief under provisions like § 548, 11 U.S.C § 1521(a). As noted above, courts have read these

provisions to authorize foreign representatives to bring avoidance claims under the foreign laws. *See, e.g.*, *In re Fairfield Sentry Ltd.*, 458 B.R. at 675-76; *In re Condor*, 601 F.3d at 327. Chapter 15 does not prohibit avoidance claims for foreign transfers. In fact, this is the very reason Appellants can bring claims to avoid the Redemption Payments, which are purely foreign transactions, in a U.S. Bankruptcy court. *See In re Fairfield Sentry Ltd.*, 458 B.R. at 675-76 (noting that Chapter 15 "gives the foreign representatives standing to use the United States courts to assert claims under law other than Chapter 15"). Since safe harbor in a Chapter 15 case will apply extraterritorially to the same extent as the foreign representative's avoidance powers do in a Chapter 15 case, and the foreign representative's avoidance powers reach extraterritorial transfers, the natural conclusion is that the safe harbor from the foreign representatives' avoidance powers applies to extraterritorial transfers as well. Appellants cannot have it both ways—benefiting from the domestic forum Chapter 15 has created for foreign law claims "as a matter of comity," (Reply II 17), while trying to avoid the limitations that Chapter 15 imposes on their power to bring these claims. Moreover, if the safe harbor does not apply extraterritorially, then the avoidance powers of a foreign representative would not be "limit[ed] ... to the same extent" as a bankruptcy trustee: the foreign representatives' avoidance powers would be limited only with regard to a portion of the claims it can bring—claims involving domestic transfers— while the bankruptcy trustee's avoidance powers would be limited with regard to all claims it can bring. *See* 11 U.S.C. § 561(d).

Such a conclusion is also consistent with the ruling of *Force*, 934 F.3d 53. In *Force*, the family members of the victims of a terrorist organization sued Facebook under 18 U.S.C. § 2333 for aiding and abetting terrorism and conspiracy for publishing terrorism-related content on its website. *Id*. at 61. Facebook raised an affirmative defense under 47 U.S.C. § 230(c)(1), a provision under the Communications Decency Act of 1996. *Id*. Section 230(c)(1) provides that internet service providers like Facebook "shall [not] be treated as the publisher or speaker of any information provided by" its users. The plaintiffs argued that Section 230(c)(1) does not apply to the foreign posts at issue in that case, noting the presumption against extraterritoriality. Ruling in favor of Facebook, the Court of Appeals first cast doubt on whether the presumption against extraterritoriality is triggered at all, because "it is unclear" how an application of such a liability-limiting provision in a U.S. court is "extraterritorial[]" to begin with. *Id*. at 73. Moreover, even if such an application is extraterritorial, it does not run against the presumption against extraterritoriality. This is especially true because, there, the "cause of action applies extraterritorially"—"applying the presumption to block a different provision setting out defenses to that claim, would seem only to increase the possibility of international friction." *Id*. (noting that "[s]uch a regime could also give plaintiffs an advantage when they sue over extraterritorial wrongdoing that they would not receive if the defendant's conduct occurred domestically.") The Court of Appeals ultimately did not decide whether the presumption against extraterritoriality is "simply

not implicated" in cases involving statutes that merely limit civil liability because it found that the two-step analysis yields the same result: under step two, the language of § 230 indicates that "the primary purpose" of this provision "is limiting civil liability in American courts." *Id.* at 74. Consequently, application of the statute is merely domestic, and the presumption against extraterritoriality posed no barrier to Facebook's defense. *Id.*

Here, similarly, Appellants' cause of action arises under the BVI avoidance law and applies to transactions outside of the United States; the "focus" of § 561(d) is to limit the foreign representative's avoidance power in the United States court. Consequently, under *Force*, it is a domestic application that is permitted under the presumption against extraterritoriality.

Appellants attempt to demonstrate support in cases where the courts ruled that the "focus" of the Bankruptcy Codes' avoidance provisions are the transfers to be avoided, not the limitation of liability in a domestic court. (*See* Open. Br. II 37 (collecting cases).) However, these cases are not on point. None of them discuss the "focus" of § 546(e) for the purpose of extraterritoriality in a Chapter 15 proceeding. For example, *Merit Management* only discusses the "focus" of §546(e) in order to "determine how the safe harbor operates in the context of a transfer that was executed via one or more transactions." 138 S. Ct. at 888. *In re Picard* discusses the focus of § 550 through § 548(a)(1)(A), which is a substantive avoidance provision, instead of a safe harbor provision like § 546(e) which limits the scope of the avoidance

provision. 917 F.3d 85, 99-100 (2d Cir. 2019). Although *In re Hellas Telecomms. (Lux.) II SCA*, 526 B.R. 499 (Bankr. S.D.N.Y. 2015) suggested that "it seems doubtful that Congress intended section 546(e) to apply to ... predominantly foreign transfers," it never actually decided the issue. In any event, that case is not binding on me, and I do not find the reasoning in that case to be persuasive or convincing, because the court there did not consider the application of § 546(e) through the lens of § 561(d). *See id.* at 513-14.

Appellants further argue that such a ruling would open the floodgates: "[i]f every Code provision stating what a trustee 'may' do were always focused on domestic bankruptcy proceedings, then domestic trustees would have vast powers to avoid foreign transfers." (Reply II 12.) This is not correct. The reason the safe harbor applies extraterritorially here is because it is not applied to claims brought by a domestic trustee, but a foreign representative, who has power to avoid extraterritorial transfers in United States Bankruptcy Courts. This is completely consistent with courts' routine rulings that avoidance provisions do not reach foreign transfers in domestic proceedings.[30]

3. Recovery for Redemption Payments and § 561(d) Bars

Appellants further argue that, even if Section 546(e) applies, it does not bar their BVI Avoidance

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[30] The parties disagree concerning the relevance of the "close-out rights" under § 561(d). Because I arrive at my conclusion independently of any consideration of close-out rights, I do not address that issue. In any case, Appellants concede that close-out rights are not at issue here. (Open. Br. II 30.)

claims because they have alleged that the Redemption Payments were made "with actual intent to hinder, delay, or defraud any entity to which the debtor was ... indebted," 11 U.S.C. § 548(a)(1)(A), and therefore are under the exception to the safe harbor. (*See* Open. Br. II 45.) Appellees, on the other hand, argue that the text of § 546(e) is clear that only those claims brought "under Section 548(a)(1)(A)" are excepted from the safe harbor; because Appellants do not, and cannot, bring claims under §548(a)(1)(A), the Redemption Payments are not excluded from the safe harbor. (*See* Con. Br. II 26.) Appellees further argue that the Redemption Payments do not fall under the exception to the safe harbor because, in any case, Appellants do not bring claims made "with actual intent to hinder, delay, or defraud any entity to which the debtor was ... indebted." I will address each argument in turn.

a. "Under Section 548(A)(1)(a)"

In the proceeding below, the Bankruptcy Court found that the BVI Avoidance claims do not fall under the exception to the safe harbor, as they are not claims brought "under section 548(A)(1)(a)." The Bankruptcy Court analogized fraudulent transfer claims under foreign laws with state fraudulent transfer claims and reasoned that, because the state fraudulent transfer claims have been found to be barred by the safe harbor, the same should be true with the foreign fraudulent transfer claims. I find such reasoning to be unconvincing. As is noted in another Bankruptcy Court opinion, *In re Bankr. Estate of Norske Skogindustrier*, 629 B.R. 717—which grappled with the same issue but disagreed with the ruling of

Fairfield II—analogizing foreign law claims with state law claims "sets up a strawman that is wholly inapposite." *Id*. at 761. State law claims are barred under § 546(e) not because they do not literally fall under the § 548(A)(1)(a) exception, but because they are preempted, making the analogy inapposite. *See In re Tribune Co. Fraudulent Conveyance Litig.*, 946 F.3d 66, 90 (2d Cir. 2019) (finding that § 546(e) reflects the Congressional intent to preempt state law claims). On the other hand, federal laws like the Bankruptcy Code do not preempt foreign laws like the BVI Insolvency Act through the Supremacy Clause, nor have Appellees pointed to any indication that Congress attempts to or intended to preempt foreign law claims with § 546(e).

The language of § 561(d) suggests that the foreign representative can seek to avoid transactions made "with actual intent to hinder, delay, or defraud" under foreign laws, just like a domestic trustee would do under § 548(A)(1)(a). As § 561(d) provides, the avoidance powers of a foreign representative are "limit[ed] to the same extent" as those of a domestic trustee. If there are exceptions to the limitation of the domestic trustee's avoidance powers, then it should be the same with those of the foreign representative. Due to the 11 U.S.C. §1521 prohibition on § 548(a)(1)(A) claims in a Chapter 15 case, reading § 546(e) literally would mean that there is no exception at all to the limitation of the foreign representative's avoidance powers. Such a result makes no sense, and clearly is not what Congress intended. Consequently, I reject the Bankruptcy Court's reasoning, and find the Appellants' claims are not barred by the language "under § 548(a)(1)(A)."

b. "With Actual Intent to Hinder, Delay, or Defraud"

However, I agree with the Bankruptcy Court's conclusion that Appellants' BVI Avoidance claims are still barred, because they have failed to bring a fraudulent transfer claim under the BVI law. Specifically, Appellants only bring unfair preference claims under BVI's Insolvent Act § 245, and undervalue transaction claims under the Insolvent Act § 246. Neither requires the transaction to be made "with actual intent to hinder, delay, or defraud." § 548(a)(1)(A). Nevertheless, Appellants argue their claims are not barred, because they have specifically alleged that the Redemption Payments were fraudulent due to Citco's bad faith.[31] They argue that their bad faith allegations mean that their claims meet the requirement of § 546(e), which provides that "trustee cannot avoid [qualified transfers] except for transfers 'under' section § 548(a)(1)(A)."

Appellants misread the statute. The statute provides that "the trustee may not avoid [Qualified Transfers] except under section 548(a)(1)(A) of this statute." In other words, in a Chapter 7 or Chapter 11 proceeding, if the domestic trustee avoids a transaction, the legal basis for the exercise of this avoidance power is § 548(a)(1)(A), i.e. the transaction is to be avoided because it was made "with actual intent to hinder, delay, or defraud." Similarly, when this provision applies to foreign representatives through § 561(d), the statute requires that the legal

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[31] Under BVI law, "bad faith" and "fraud" are governed by the same criteria, making the two terms interchangeable in use. (Open. Br. I 33 n.10.)

basis for the avoidance claim is fraud-related, not simply that the foreign representative has made some allegations of fraud/bad faith. Here, if Appellants prevail on their BVI Avoidance Claims, it would be because the Redemption Payments were made with unfair preference under Insolvent Act § 245, or undervalued under Insolvent Act § 246, not because they were made "with actual intent to hinder, delay, or defraud." Appellants do not explain how their unfair preference claims under BVI's Insolvent Act § 245 or undervalue transaction claims under the Insolvent Act § 246 contain a fraud element,[32] consequently, their claims are not excluded from the safe harbor.

Appellants challenge this reading on the ground that Congress did not use "causes of action" in § 546(e), and therefore did not intend to limit the exception to safe harbor only to "causes of action that are ... labeled 'intentionally fraudulent transfer.'" (Open. Br. II 42.) Although it is true that the statute does not require that the claims be "labeled" as a "fraudulent transfer" claims, it does require that the legal basis for the avoidance is somehow fraud-related. Otherwise, virtually any plaintiff can exploit this exception to the safe harbor by simply adding allegations of fraud while bringing their non-fraud avoidance claims, and they would not need to prove the fraud element in order to prevail on their claims.

As Appellants' claims are barred by § 546(e) through the operation of § 561(d), I need not address

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[32] On the contrary, Appellants on appeal argue that the § 246 Avoidance claim do not require a scienter/knowledge element. (*See* Open. Br. II 49-53.)

whether the Bankruptcy Court's dismissal of Insolvent Act § 246 on other grounds is appropriate.

C. Common Law Claims

Appellants also bring the BVI Common Law claims, including unjust enrichment, and the BVI Contract Claims. The Bankruptcy Court, following the Privy Council's decision in *Migani*, found that these claims fail. *See Fairfield II*, 596 B.R. at 297. The Bankruptcy Court's decision is based on the ruling of *Migani* that the NPV issued by the Funds was binding; alternatively, Appellants, by releasing their claims to shares, provided good consideration for the Redemption Payments. *Id*. The Bankruptcy Court further found that, in any case, as Citco's bad faith is attributed to the Funds, the Funds cannot rely on its wrongdoing to recover payments for itself. On appeal, Appellants seek to distinguish their case from *Migani* by relying on *Skandinaviska Enskilda Banken AB (Publ) v Conway*, [2019] UKPC 36, 2019 WL 03429530 ("*Weavering II*"), a Privy Council case issued after the Bankruptcy Court's decision in *Fairfield II*. Appellants argue that under *Weavering II*, a fraudulently calculated NPV is not binding. (*See* Open. Br. I 33.)

Before addressing the merits of Appellants' arguments, I must resolve two threshold issues raised by Appellees: (1) that these claims are sufficiently similar to the BVI Avoidance Claims to be barred by § 546(e), (*see* Con. Br. II 33-34), and (2) Appellants are collaterally estopped from pleading that the NAV is not binding on them due to Citco's bad faith, because they have lost that issue in the BVI Proceedings, (*see* Con. Br. I 48).

1. Preemption by § 546(e)

Appellees argue that the Common Law and Contract Law claims are barred by § 546(e) because they are "duplicative" of Appellants' BVI Avoidance Claims. However, the sole basis of Appellees' argument is grounded in case law where courts ruled that § 546(e) bars state common law claims. *See, e.g.*, *In re Tribune*, 946 F.3d at 91 (§ 546(e) barring state fraudulent conveyance claims); *In re Nine W. LBO Sec. Litig.*, 482 F. Supp. 3d 187, 207 (S.D.N.Y. 2020) (§ 546(e) barring state unjust enrichment claims); *AP Servs., LLP v. Silva*, 483 B.R. 63, 71 (S.D.N.Y. 2012) (same). Again, a plaintiff cannot bring state law claims that are similar to the claims under the Bankruptcy Code because the state law claims are preempted. *See In re Tribune*, 946 F.3d at 91; *see also supra* IV.A.3.a. As explained above, that reasoning under the Supremacy Clause does not apply to cases where, as here, Appellees are foreign representatives and bring claims under the foreign law. *Id.* There is nothing to suggest that Congress intended the Bankruptcy Code to preempt foreign common law claims. Therefore, this argument fails.

2. Preclusion

Second, Appellees argue that Appellants are precluded from claiming that the NAV was not binding because they have litigated and lost that issue during the BVI Proceedings. Asserting that the federal collateral estoppel rule should apply, Appellees contend that the Liquidators knew of the allegations underlying their current "bad faith" theory but did not present that theory before the BVI courts. (Con. Br. I 50.) Appellants argue that under the

choice-of-law rules in New York, the BVI preclusion law should apply, and because Appellees do not argue preclusion under the BVI law, they have waived that issue. (Reply I. 28 (citing to other briefs).) Separately, Appellees argue that the doctrine of res judicata precludes the claims against those Defendants-Appellees who litigated the Preliminary Issues in the BVI Proceedings (the "PI Defendants"). (*See* Supp. Br. II 5-6.)

I shall first decide which preclusion rules should apply to this issue. On the one hand, case law establishes that "a federal court should normally apply either federal or state law, depending on the nature of the claim, to determine the preclusive effect of a foreign country judgment." *Alfadda v. Fenn*, 966 F. Supp. 1317, 1329 (S.D.N.Y. 1997), *aff'd*, 159 F.3d 41 (2d Cir. 1998); *see also Hurst v. Socialist People's Libyan Arab Jamahiriya*, 474 F. Supp. 2d 19, 32 (D.D.C. 2007) (noting that the prevailing practice appears to be "follow[ing] domestic rules of preclusion, whether they apply those of the applicable federal or state court.") Appellees also point to several cases where courts determined the preclusive effect of foreign decisions under the federal preclusion law. *See Simmtech Co. v. Citibank, N.A.*, No. 13-CV-6768 (KBF), 2016 WL 4184296, at *8 (S.D.N.Y. Aug. 3, 2016), *aff'd*, 697 F. App'x 35 (2d Cir. 2017); *CSFB HOLT LLC v. Collins Stewart Ltd.*, No. 02 CIV. 3069 (LBS), 2004 WL 1794499, at *6 (S.D.N.Y. Aug. 10, 2004). None of these are bankruptcy cases.

On the other hand, the Court of Appeals has specifically ruled that a bankruptcy court should use state choice-of-law decisions "unless there was an

important federal interest or policy concern that would justify application of federal choice of law rules[.]" *In re Coudert Bros. LLP*, 673 F.3d 180, 188 (2d Cir. 2012) (citing *In re Gaston & Snow*, 243 F.3d 599, 607 (2d Cir. 2001)). This is consistent with the non-bankruptcy cases cited above, where the application of the federal preclusion rule is natural because those cases involve federal claims or otherwise involve significant federal interest. *See Alfadda*, 966 F. Supp. at 1329 (RICO claims); *Simmtech Co.*, 2016 WL 4184296, at *8 (claims against a federally-chartered corporation); *CSFB HOLT*, 2004 WL 1794499, at *6 (trademark and copyright infringement). In contrast, courts sitting in diversity deciding state law claims generally look at state choice-of-law rules to determine the preclusive effect of foreign judgments. *See, e.g.*, *Voreep v. Tarom Romanian Air Transp.*, No. 96 CIV. 1384 (LMM), 1999 WL 311811, at *3 (S.D.N.Y. May 18, 1999) (looking to New York choice-of-law rules to determine the preclusive effect of Romanian judgment); *Sberbank of Russia v. Traisman*, No. 3:14CV216 (WWE), 2016 WL 4479533, at *2 (D. Conn. Aug. 23, 2016) (looking to Connecticut choice-of-law rules to determine the preclusive effect of a Russian judgment). In these cases, there was no "important federal interest or policy concern that would justify application of federal choice of law rule." *Coudert Bros.*, 673 F.3d at 188.

Similarly, here, although Appellants brought their claims under Chapter 15, the causes of action all arise under BVI law. *In re Fairfield Sentry Ltd.*, 458 B.R. at 675-76 (explaining that "Chapter 15 merely gives the foreign representatives standing to use the United States courts to assert claims under law other

than Chapter 15," and "the causes of action asserted ... are not created by Chapter 15.") Appellees do not point to any compelling federal interest such that federal choice of law should be applied, nor do I discern any such interests. I agree with Appellants and find that the New York choice of law should apply. Because the New York law looks to the jurisdiction in which judgment was rendered to determine the preclusive effect of the judgment, BVI preclusion law governs.[33] Because Appellees do not argue preclusion under the BVI law,[34] they have waived this argument and Appellants' claims are not precluded.[35]

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[33] Appellees do not dispute that, if New York choice of law applies, BVI law should govern the preclusion effect.

[34] Appellees dropped a one-line footnote arguing that "[e]ven if BVI law were to apply, the Liquidators are still precluded by the BVI doctrines of issue estoppel." (Con. Br. I 48 n.36.) This argument is not properly briefed, and, in any case, I do not consider arguments in a footnote. *See Delaney v. Farley*, 623 F. App'x 14, 17 (2d Cir. 2015) ("Generally, we do not consider arguments raised only in footnotes."); *Weslowski v. Zugibe*, 96 F. Supp. 3d 308, 314 (S.D.N.Y. 2015) (disregarding arguments raised in a footnote because they were not properly raised).

[35] Even if the federal collateral estoppel rule applies, Appellants' common law claims are not barred because (1) the issue of Citco's bad faith was not actually litigated in the BVI Proceedings, and (2) Appellants have demonstrated that they could not have raised the issue of Citco's bad faith prior to 2014. As they explain, they only became aware of the evidence they now allege in 2014. Although, as Appellees point out, Appellants alleged that Citco "acted in bad faith" in a pre-2014 litigation, *Anwar v. Fairfield Greenwich, Ltd.*, 728 F. Supp. 2d 372, 423 (S.D.N.Y. 2010), the allegations there were of a general nature. *See id.* at 443 ("Plaintiffs allege that 'by virtue of the Citco Defendants' long-standing involvement in the Funds, and their experience in fund management, the Citco Defendants knew or

Similarly, Appellees' res judicata argument regarding the PI Defendants fails because Appellees fail to argue preclusion under the BVI law. Moreover, Appellees do not raise objections to Appellants' argument, raised both before this Court and the Bankruptcy Court below, that the BVI res judicata law does not require the Liquidators to bring all accrued redemption claims in the BVI Proceedings. (*See* Supp. Rep. II 10.)

3. Merits

The parties do not dispute that the BVI law applies to the substance of Appellants' claims here. (*See* Open. Br. I 25 n.9.) After examining the BVI law, particularly the BVI Companies Act ("BCA"), I find that Appellants are barred from recovering the Redemption Payments.

BCA § 31 provides that

> (1) A company or a guarantor of an obligation of a company may not assert against a person dealing with the company or with a person who has acquired assets, rights or interests from the company that—

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were willfully blind to the fact that the due diligence and risk controls employed by the Fairfield Defendants were grossly deficient."). In contrast, the allegations in the PAC were very specific and described how the internal concerns raised by Citco's employees were silenced by the upper management. For the same reason, Appellants' claims do not violate the English doctrine of *Henderson v. Henderson*, which precludes a party from "raising in subsequent proceedings matters which were not, but could and should have been raised in earlier ones." *See Fairfield II*, at 293.

> . . .
>
> (e) a document issued on behalf of a company by a director, employee or agent of the company with actual or usual authority to issue the document is not valid or not genuine
>
> . . .
>
> (2) Subsection (1) applies even though a person of the kind specified in paragraphs (b) to (e) of that subsection acts fraudulently or forges a document that appears to have been signed on behalf of the company, unless the person dealing with the company or with a person who has acquired assets, rights or interests from the company has actual knowledge of the fraud or forgery.

BCA § 31. The parties do not dispute that Citco acted as the Funds' "agent" in its function of calculating the NAVs.[36] Therefore, under BCA § 31(1)(e), Liquidators, now acting on behalf of the Funds, cannot assert against those investors who received Redemption Payments that the NAV calculated by Citco was not binding. Further, under § 31(2), the Funds are barred even if Citco acted fraudulently. However, because § 31(2) allows claims against those who "ha[d] actual knowledge of the fraud or forgery," the claims against those Appellees who at the time were aware of the fraudulent nature of the NAV are not barred.

This result is consistent with the principle under the English doctrine of *ex turpi causa non oritur actio* ("*ex turpi*"), which "precludes a party to a contract

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[36] Appellants also concede that Citco's bad faith is imputed to the Funds.

tainted by illegality from recovering money paid under the contract from the other party under the law of unjust enrichment." *Farifield II*, at 297 (citing *Patel v. Mirza*, [2016] UKSC 42, ¶ 9.) In other words, even if the Appellees were unjustly enriched, Appellants acting on behalf of the Funds cannot seek to recover based on the inflated NAVs issued by the Funds themselves.[37]

Appellants raised several arguments why the NAV is nonetheless binding; none of them are convincing. First, they argue that the BCA law only bars a company from asserting that the documents were not "genuine" or "valid," but does not prohibit a company "from providing by contract the conditions to make those documents binding." (Reply I 25.) Pointing to the language of Article 11, which provides that NAVs "given in good faith" are binding, Appellants contend that, by implication, NAVs issued in bad faith are not binding. (Open. Br. I 44-46.) In other words, Appellants suggest that a company's claims will not be barred by BCA § 31(1)(e) if, under the company's own contract, the document is not binding. This argument is not convincing. Even assuming that under Article

[37] Similar to the BVI doctrine of *ex turpi*, the New York doctrine of *in pari delicto* "bars a party that has been injured as a result of its own intentional wrongdoing from recovering for those injuries from another party whose equal or lesser fault contributed to the loss." *In re Lehr Constr. Corp.*, 551 B.R. 732, 739 (S.D.N.Y. 2016) (quoting *Rosenbach v. Diversified Grp., Inc.*, 85 A.D.3d 569, 570 (1st Dep't 2011)). Courts have ruled that this doctrine applies even in a bankruptcy proceeding, where the bankruptcy trustee brings the claim. *See In re ICP Strategic Credit Income Fund Ltd.*, 568 B.R. 596, 612 (S.D.N.Y. 2017).

11, the NAVs issued in bad faith are not binding,[38] it only addresses the legal effect of bad faith NAVs; it says nothing about Citco's authority to issue those NAVs. Citco was authorized by the Directors to calculate the NAVs and issue redemption payments. Even when issuing a NAV in bad faith, Citco still acted "with actual or usual authority."[39] As the Bankruptcy Court correctly observed, those Redemption Payments "were lawful and discharged the Funds' valid obligations" under the Articles. *Fairfield II*, 596 B.R. at 298. Because Citco acted with "actual or usual authority," Appellants' claims are barred and Article 11 does not help them.

Appellants also suggest that they, as the Liquidators, do not recover the money for the benefit of the Funds, but only to equitably distribute the funds

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[38] To be exact, Article 11 only provides that NAVs given in good faith shall be binding; it says nothing about NAVs given in bad faith. The implied term proposed by Appellants—that NAVs given in bad faith shall not be binding—is not obvious from the contract, and I am not going to write terms into Article 11. *See Marks & Spencer pls v. BNP Paribas Secs. Servs. Tr. Co. (Jersey) Ltd.*, [2015] UKSC 72, ¶¶ 22-23 (explaining that a term will be implied into the contract only if a "reasonable reader ... reading the contract at the time was made ... would consider the term to be so obvious as to go without saying or to be necessary for business efficacy" (citing *Attorney General of Belize v. Belize Telecom Ltd.*, [2009] UKPC 10)).

[39] This case does not present the issue where a contract provides that Citco has no authority to issue NAVs if it acts in bad faith. Nevertheless, it is hard to imagine that such a provision would be upheld by a BVI court against the BCA, as it frustrates the statute's purpose by making it almost impossible for "a person dealing with the company" to ascertain whether the agent acts in "actual or usual authority."

among the investors. (*See* Open. Br. I 41-42.) However, the BVI Insolvency Act provides that "[a] liquidator is the agent of the company in liquidation," § 184(2), and BCA creates no exception for companies in liquidation represented by liquidators. In other words, Appellants are no different from the Funds themselves bringing the claims to recover the Redemption Payments.

Appellants next argue that I should follow *Weavering II*, where the Privy Council was faced with a similar situation but ordered the redeemed investors to pay back the money. [2019] UKPC 36. In *Weavering II*, the investment company's manager fraudulently inflated the NAVs by entering into interest rate swaps that he knew to be worthless in order to create an illusion of sustained growth, while in reality the company had suffered substantial losses. After the company went into liquidation, the liquidators sought to recover redemption payments made to the defendant investor who received large payments shortly before the fraudulent scheme collapsed. The claims were brought pursuant to Cayman Island law, which provided that preferential conveyance made at a time when the company is "unable to pay its debts" is invalid. *Id.* ¶ 2. The defendant argued to the Privy Council that the NAVs were not binding because they were fraudulently inflated, Weavering was not obligated to honor those redemption requests, and the company was therefore not "unable to pay its debts" under the meaning of the statute. *Id.* ¶ 12. The Privy Council distinguished this case from *Migani*, because "[*Migani*] does not address the question whether a NAV would be considered to have been determined in accordance with the articles if the directors themselves had fraudulently inflated the value of the

assets." *Id*. ¶ 24. Because this was a fraud "internal to the company," the company was thus "in breach of its duty under the contract to act in good faith." *Id*. ¶ 27. Consequently, the "dishonest valuation of assets was not made 'pursuant to these articles' and therefore was not 'binding on all persons.'" *Id*.

The parties raised various argument concerning why *Weavering II* should or should not govern this case. (*See* Open. Br. I 33-43; Con. Br. I 29-34.) I need not resolve the various issues under BVI case law to address these arguments, because I find that *Weavering II* does not control as it does not concern BCA § 31(1)(e), or a similar Cayman Islands statute. Even if under *Weavering II*, internal fraud or a company's bad faith, like with Citco, may require the unsuspecting redeemers to give back the inflated redemption payments in a liquidation proceeding, that common law ruling would not vitiate the clear statutory prohibition under the BCA against bringing such a claim.[40]

D. Contract Claims

As with their Common Law Claims, Appellants' Contract Claims are based on Article 11's provision that a NAV "given in good faith" shall be binding. Appellants ask me to imply from this provision that (1) a NAV given in bad faith is not binding, and (2) they as Liquidators can sue on behalf of the Funds to recover the Redemption Payment calculated based

[40] Consequently, I do not address other grounds for dismissal found by the Bankruptcy Court, including that Appellees have paid good consideration, and that Appellants cannot restore the situation back to the status quo.

on bad faith NAVs. (Open. Br. I 57-60.) For the same reasons stated above, I need not address Appellants' arguments, because BCA § 31(1)(e) bars Appellants from asserting that the NAVs issued by their agent Citco were not valid. *See supra* IV.C.3. In any case, even if I find that the NAVs calculated on bad faith constitutes a breach of contract, I would decline to imply a term in the Articles allowing the Funds to recover overpayments based on the fraudulently inflated NAVs issued by themselves. Such a term would allow the Funds to benefit from their own fault, which is disfavored under the BVI law, and "a contract will generally be construed in such a way as to prevent a party from taking advantage from its own wrong." *Fairfield II*, 596 B.R. at 299 (citing *Kingate Global Fund v. Kingate Mgmt. Ltd.* [2015] SC (Bda) 65 Com, [157] ("[A] party will not generally be entitled to take advantage of his own breach of contract as against the other party.")).

For those Appellees who were aware of the fraudulent nature of the NAVs at the time of redemption, although the claims against them were not barred by § 31(1)(e), *see* § 31(2), they are still barred by the doctrine of *ex turpi* as the Funds themselves were at fault. *See supra* IV.C.3. As the Bankruptcy Court found—and neither party disputed—the remedy for the Appellants against these Appellees lies in the constructive trust claims. *Fairfield II*, 596 B.R. at 301.

E. The Constructive Trust Claims in the Twelve Actions

Appellants ask me, if I affirm the dismissal of their BVI Common Law Claims and BVI Contract

Claims, to reverse the Bankruptcy Court's denial of their motion in the Twelve Actions for leave to amend the constructive trust claims against the Knowledge Defendants. (Open. Br. II 59.) Appellants argue that they are entitled to bring new constructive trust claims (the "New CT Claims") despite that, in each of the Twelve Actions, they entered into the Stipulated Judgments whereby their previous constructive trust claims (the "Old CT Claims") were dismissed with prejudice.

The Bankruptcy Court found that to the extent Appellants raised issues related to the constructive trust claims in the First Appeal, the Bankruptcy Court was divested of jurisdiction over those claims. Specifically, it found that the New CT Claims and the Old CT Claims are essentially the same. *See* 2020 WL 4813565, at *6, 12. Now that I have affirmed the Bankruptcy Court's ruling in the First Appeal, the issue becomes whether the New CT Claims are barred by the Stipulated Judgments.

A dismissal with prejudice "constitutes a final judgment with the preclusive effect of res judicata not only as to all matters litigated and decided by it, but as to all relevant issues which could have been but were not raised and litigated in the suit." *Samake v. Thunder Lube, Inc.*, 24 F.4th 804, 815 (2d Cir. 2022) (citing *Nemaizer v. Baker*, 793 F.2d 58, 61 (2d Cir. 1986)). The party seeking to invoke res judicata bears the burden to prove that the doctrine bars the second action. *See Stewart v. Transp. Workers Union, Local 100*, 561 F. Supp. 2d 429, 437 (S.D.N.Y. 2008). Once res judicata applies, the second action generally is barred unless the final judgment in the first action

was vacated pursuant to Rule 60(b). *See Nemaizer*, 793 F.2d at 61; *see also Samake*, 24 F.4th at 816 n.7 ("[T]he usual procedure to set aside a notice of dismissal is through a Rule 60(b) motion to vacate the notice." (collecting authorities)).

"In deciding whether a suit is barred by res judicata, it must first be determined that the second suit involves the same claim or—nucleus of operative fact—as the first suit." *Channer v. Dep't of Homeland Sec.*, 527 F.3d 275, 280 (2d Cir. 2008) (internal quotation marks omitted). To determine whether the two actions involve the same claim or the same transaction, "we look to (1) whether the underlying facts are related in time, space, origin, or motivation, (2) whether they form a convenient trial unit, and (3) whether their treatment as a unit conforms to the parties' expectations or business understanding or usage." *Stewart*, 561 F. Supp. 2d at 438 (citing *Marvel Characters v. Simon*, 310 F.3d 280, 287 (2d Cir. 2002)). "Res judicata applies even where new claims are based on newly discovered evidence, unless 'the evidence was either fraudulently concealed or it could not have been discovered with due diligence." *Jean-Gilles v. Cty. of Rockland*, 463 F. Supp. 2d 437, 457 (S.D.N.Y. 2006) (citing *L-TEC Elecs. Corp. v. Cougar Elec. Org., Inc.*, 198 F.3d 85, 88 (2d Cir. 1999)).

The Bankruptcy Court found that the New CT Claims arise out of the same transaction as the Old CT Claims. Appellants argue that the Bankruptcy Court erred because the two sets of claims do not share the same "nucleus of operative fact." Specifically, Appellants argue that although the Old CT Claims centered on Citco's knowledge and bad faith, the New

CT Claims centered on Defendants' knowledge. (*See* Open. Br. I 61.) This argument misconstrues the standard for res judicata. As the Bankruptcy Court correctly pointed out, the two sets of claims concern the same transaction, the same redemption payments, the same allegation of inflated NAVs, and the same legal basis under the BVI common law. *See* 2020 WL 4813565, at *6. The shift in the focus of bad faith from Citco to Defendants is at best a change of legal theory that does not alter the effect of res judicata. *See Garcia v. Scoppetta*, 289 F. Supp. 2d 343, 349 (E.D.N.Y. 2003) ("If the two actions stem from the same transaction or series of transactions, res judicata will bar the second action even if it is based on a different legal theory." (citing *Woods v. Dunlop Tire Corp.*, 972 F.2d 36, 39 (2d Cir. 1996).).

Appellants further argue that the New CT Claims are not barred because they need not plead facts pertaining to Defendants' knowledge until the Bankruptcy Court held in *Fairfield II* that Citco's knowledge was irrelevant for a constructive trust claim. (Open. Br. II 61.) Even assuming that Appellants could not foresee the Bankruptcy Court's ruling, they voluntarily entered into the Stipulated Judgments and agreed to the dismissal with prejudice after *Fairfield II* was issued. If Appellants did not intend to preclude all constructive trust claims in the Twelve Actions, they should not have agreed to the Stipulated Judgments in those actions. Appellants also claims that the facts pertaining to Defendants' knowledge "could not have been discovered with due diligence" because "they were not publicly known until ... after Plaintiffs filed their prior complaints," for the same reason, the New CT Claims are not

precluded even if res judicata applies, because the discovery of new evidence entitles them to vacate the Stipulated Judgments pursuant to Rule 60. (*Id*. at 62.) Appellants do not provide any evidence to show that they genuinely could not have discovered the evidence, and the bare allegation that Defendants' knowledge was not "publicly known" is not sufficient for Appellants to carry their burden. *See Stewart*, 561 F. Supp. 2d at 437; *see also Chestnut v. Wells Fargo Bank, N.A.*, No. 10-CV- 4244(JS)(ARL), 2012 U.S. Dist. LEXIS 119059, at *10 (E.D.N.Y. Aug. 20, 2012) (denying vacatur under Rule 60 where the plaintiffs "fail to explain why they were 'justifiably ignorant' of the [new evidence]").

Consequently, Appellants are not entitled to amend the complaint and add the New CT Claims in the Twelve Actions.[41]

V. Conclusion

For the foregoing reasons, the Bankruptcy Court's decision below is AFFIRMED. This Amended Opinion & Order does not affect the conclusion in my initial Opinion & Order, (Doc. 593), nor does it affect the Clerk's Judgment entered on August 29, 2022, (Doc. 594).

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[41] Consequently, I need not address the argument raised by Deutsche Bank in its Supplemental Brief, because I have affirmed its dismissal on other grounds.

SO ORDERED.

Dated: September 22, 2022

New York, New York

[handwritten: signature]
Vernon S. Broderick
United States District Judge

Appendix F

UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

Adv. Proc. No. 10-03496
(Administratively Consolidated)

FAIRFIELD SENTRY LIMITED (IN LIQUIDATION), et al.,
Plaintiffs,
v.
THEODOOR GGC AMSTERDAM, et al.,
Defendants.

Filed: Feb. 23, 2021

MEMORANDUM DECISION & ORDER DENYING MOTION FOR RECONSIDERATION

STUART M. BERNSTEIN

United States Bankruptcy Judge:[1]

In *Fairfield Sentry Ltd. v. Theodoor GGC Amsterdam* (*In re Fairfield Sentry Ltd.*), Adv. Proc. No. 10-03496 (SMB), 2020 WL 7345988 (Bankr. S.D.N.Y. Dec. 14, 2020) ("*Fairfield II*"), the Court ruled, *inter alia*, that the safe harbor under 11 U.S.C.

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[1] The other Defendants in these administratively consolidated proceedings that have joined in this motion and their counsel are listed, respectively, in Appendix A and B to the Letter from Nowell D. Bamberger, Esq. to the Court, dated Feb. 17, 2021 (the "*Motion*") (ECF Doc. # 3072). "ECF Doc. #" refers to the electronic docket in Adv. Proc. No. 10-03496.

§ 546(e), made applicable pursuant to 11 U.S.C. § 561(d), barred the Liquidators' avoidance claims under the law of the British Virgin Islands ("BVI") (the "BVI Avoidance Claims"), but did not bar the Plaintiffs' BVI common law claims to impose a constructive trust ("Constructive Trust Claims"). The Defendants now seek reconsideration through the *Motion* of the latter ruling, arguing that the Constructive Trust Claims are also barred by the safe harbor. The Liquidators oppose the *Motion*, arguing that the Court did not overlook controlling authority and the Defendants have failed to show a clear error or manifest injustice. (Letter from David Elsberg, Esq. to the Court, dated Feb. 17, 2021 ("*Opposition*") (ECF Doc. # 3073).)[2] I agree and deny the *Motion* for the reasons that follow.

BACKGROUND

The background to the *Motion* is set forth in the Court's prior decisions, *Fairfield Sentry Ltd. v. Theodoor GGC Amsterdam* (*In re Fairfield Sentry Ltd.*), 596 B.R. 275 (Bankr. S.D.N.Y. 2018) ("*Fairfield I*"), *appeal docketed*, No. 1:19-cv-03911-VSB (S.D.N.Y. May 1, 2019) and *Fairfield II*. I assume familiarity with those decisions and limit the discussion to what is germane to this decision.

The plaintiffs are the Liquidators appointed by the BVI Court to oversee the liquidation of Fairfield Sentry Limited, Fairfield Sigma Limited and Fairfield Lambda Limited (the "Funds"), feeder funds that invested all or substantially all of their assets directly

[2] By agreement of the parties and the Court, the *Motion* and the *Opposition* were presented in letters on an expedited basis.

or indirectly with Bernard L. Madoff Investment Securities LLC ("BLMIS").[3] Madoff ran his notorious Ponzi scheme through the investment advisory division of BLMIS. When BLMIS collapsed following Madoff's arrest, so too did the Funds. The Liquidators filed chapter 15 cases as foreign representatives, and the cases were recognized as foreign main proceedings.

The Liquidators filed over 300 substantially similar adversary proceedings against various entities that had redeemed their shares in the Funds prior to the Funds' collapse and the revelation of Madoff's Ponzi scheme. The redemption prices the Funds paid to these redeemers were based on the erroneous belief that the BLMIS investments had substantial value when, in fact, they were worthless or virtually worthless. The Liquidators asserted avoidance claims under sections 245 and 246 of the BVI Insolvency Act of 2003 ("Insolvency Act") to claw back redemptions paid with inflated prices as "unfair preferences" and/or "undervalue transactions" and common law and contract claims under BVI law.

In *Fairfield I*, the Court dismissed all of the Liquidators' claims except for the BVI Avoidance Claims and the Constructive Trust Claims against the so-called Knowledge Defendants who, according to the Liquidators, knew when they redeemed their interests in the Funds that the redemption prices were inflated because they were based on Fairfield Sentry's fictitious BLMIS account statements listing securities

[3] Different individuals have served as Liquidators at different times over the years. Any reference to the Liquidators means the persons serving as Liquidators at the relevant time.

that did not exist. In *Fairfield II*, the Court dismissed the BVI Avoidance Claims pursuant to the safe harbor under 11 U.S.C. §§ 546(e), 561(d), but denied the motion to dismiss the Constructive Trust Claims.

The remaining Knowledge Defendants had made a straightforward argument in support of their motion to dismiss the Constructive Trust Claims: (i) the Constructive Trust Claims sought the same relief as the barred BVI Avoidance Claims, (ii) common law claims that seek the same relief as barred avoidance claims are also barred, and therefore, (iii), the Constructive Trust Claims were barred. (*Consolidated Memorandum of Law in Support of Defendants' Renewed Motion to Dismiss Pursuant to 11 U.S.C. §§ 561(d), 546(e), and 546(g) and for Insufficient Service of Process Under the Hague Service Convention*, dated Mar. 16, 2020 ("*Defendants' Brief*"), at 29-31 (ECF Doc. # 2903).)

In response, the Liquidators identified what they considered to be a fundamental fallacy with the Defendants' argument. The Defendants' supporting authorities involved dismissed U.S. common law claims and were decided on preemption grounds under the Supremacy Clause, but neither preemption nor the Supremacy Clause applied to foreign law claims. Rather, Congress must explicitly displace foreign law, but section 561(d), the hook that drew the BVI Avoidance Claims into the safe harbor under section 546(e), only mentioned avoidance claims and did not refer to foreign common law claims like the Constructive Trust Claims. (*Memorandum of Law in Opposition to Defendants' Renewed Motion to Dismiss*, dated May 29, 2020, at 13-16 (ECF Doc. # 3033).) The

Liquidators also argued that principles of comity counseled against dismissal of the Constructive Trust Claims, *id.* at 16, an issue the Court did not decide, and the Constructive Trust Claims concerned intentional fraudulent transfers that the safe harbor would not prohibit, *id.* at 17, but the Court ruled that the Liquidators had not asserted intentional fraudulent transfer claims. *Fairfield II*, 2020 WL 7345988, at *8-9.

In reply, the Defendants reiterated that the safe harbor barred the Constructive Trust Claims because, like the BVI Avoidance Claims, they sought to unwind the same transfers even though sections 546(e) and 561(d) do not explicitly displace foreign law. (*Consolidated Reply Memorandum of Law in Further Support of Defendants' Renewed Motion to Dismiss,* dated June 19, 2020, at 10-11, 12 (ECF Doc. # 3036).) The Defendants also argued that comity did not provide a basis to sidestep the safe harbor and the Constructive Trust Claims were not intentional fraudulent transfer claims. (*Id.* at 12-13.)

The Court agreed with the Liquidators. The Defendants' authorities relied on principles of preemption under the Supremacy Clause which did not apply to foreign law unless foreign law was explicitly displaced by Congress. Sections 546(e) and 561(d) are limited to avoidance claims and do not explicitly bar foreign common law claims even if they seek the same relief. *Fairfield II*, 2020 WL 7345988, at *9-10. Hence, the Court denied the motion to dismiss the Constructive Trust Claims.

DISCUSSION

A motion for reargument or reconsideration is governed by Local Bankruptcy Rule 9023-1.[4] "The movant must show that the court overlooked controlling decisions or factual matters that might have materially influenced its earlier decision." *In re Asia Glob. Crossing, Ltd.*, 332 B.R. 520, 524 (Bankr. S.D.N.Y. 2005) (citation and internal quotation marks omitted). Alternatively, the movant must demonstrate "the need to correct a clear error or prevent manifest injustice." *Perez v. Progenics Pharm., Inc.*, 46 F. Supp. 3d 310, 314 (S.D.N.Y. 2014) (citation and internal quotation marks omitted). A manifest injustice exists when a "verdict is wholly without legal support," *ING Glob. v. United Parcel Serv. Oasis Supply Corp.*, 757 F.3d 92, 97 (2d Cir. 2014), and the error is one that is obvious to all who view it. *Spizz v. Eluz* (*In re Ampal-Am. Isr. Corp.*), Adv. Proc. No. 14-02110 (SMB), 2020 WL 5242956, at *2 (Bankr. S.D.N.Y. Sept. 1, 2020); *cf. . Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866

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[4] Local Bankruptcy Rule 9023-1(a) states:

> A motion for reargument of a court order determining a motion must be served within fourteen (14) days after the entry of the Court's order determining the original motion, or in the case of a court order resulting in a judgment, within fourteen (14) days after the entry of the judgment, and, unless the Court orders otherwise, shall be made returnable within the same amount of time as required for the original motion. The motion must set forth concisely the matters or controlling decisions which counsel believes the Court has not considered. No oral argument shall be heard unless the Court grants the motion and specifically orders that the matter be re-argued orally.

F.2d 228 (7th Cir.) ("To be clearly erroneous, a decision must strike us as more than just maybe or probably wrong; it must ... strike us as wrong with the force of a five-week-old, unrefrigerated dead fish."), *cert. denied*, 493 U.S. 847 (1989). "These criteria are strictly construed against the moving party so as to avoid repetitive arguments on issues that have been considered fully by the court," *Griffin Indus., Inc. v. Petrojam, Ltd.*, 72 F. Supp. 2d 365, 368 (S.D.N.Y. 1999), and a motion for reconsideration is not an opportunity to present the case under new theories, secure a rehearing on the merits, or otherwise take a "second bite at the apple." *Sequa Corp. v. GBJ Corp.*, 156 F.3d 136, 144 (2d Cir. 1998).

The *Motion* makes three points. First, the Constructive Trust Claims are actually avoidance claims. (*Motion* at 2-7; *id.* at 4 ("The Liquidators' constructive trust claim is an 'avoidance' claim and therefore within the scope of Section 546(e) regardless of how it is labeled.").) Second, the Liquidators stand in the "same shoes" as a U.S. case trustee whose constructive trust claims would be barred. (*Motion* at 5 ("*Fairfield* [*II*] thus erred in permitting a foreign representative to use foreign common law claims to achieve what a domestic trustee cannot do under state law or foreign statutory law.").) Third, the purpose of the safe harbor would be defeated if it did not bar the Constructive Trust Claims. (*Motion* at 6 ("[A]llowing the constructive trust claim that seeks to unwind safe harbored transactions to proceed would frustrate the purpose of Section 546(e), an incongruous result that overlooks the substance of the claim at issue and would defeat the purpose of the application of the safe harbor in Chapter 15 proceedings.").)

The first argument is new. The Defendants had argued in their motion to dismiss that the Constructive Trust Claims sought the same relief as the BVI Avoidance Claims and should be barred for that reason, but never argued that the Constructive Trust Claims *were* avoidance claims. (*Defendants' Brief* at 31 ("It is irrelevant that the Liquidators' claims for knowing receipt sound in unjust enrichment, rather than U.S. or BVI bankruptcy law.").)

While this is sufficient to reject the argument on a motion for reconsideration, it is also wrong. The BVI Avoidance Claims and the Constructive Trust Claims require proof of different elements. To establish a constructive trust claim under English law, which would apply in the BVI, "the plaintiff must show, first, a disposal of his assets in breach of fiduciary duty; second, the beneficial receipt by the defendant of assets which are traceable as representing the assets of the plaintiff; and third, knowledge on the part of the defendant that the assets he received are traceable to a breach of fiduciary duty." *El Ajou v. Dollar Land Holdings Ltd.* [1994] 2 All E.R. 685, 700. Neither breach of fiduciary duty nor the defendant's knowledge, two of the three elements of the Constructive Trust Claims, are elements of the BVI Avoidance Claims. *See Fairfield I*, 596 B.R. at 302 (discussing the BVI Avoidance Claims). Conversely, insolvency is an element of the BVI Avoidance Claims but not the Constructive Trust Claims. *Id.* Furthermore, while the defendant's knowledge is an element of the Constructive Trust Claims, it is part of the "good faith for value" affirmative defense available to fraudulent transferees, *see* Insolvency Act § 250,

that a transferee can assert or waive but the plaintiff need not prove. Thus, while the two sets of claims may ultimately lead to the same result, a money judgment for the amount of the redemption payments, the Constructive Trust and BVI Avoidance Claims proceed on different theories and different proof.

Finally, the Defendants argue that the Constructive Trust Claims are not true constructive trust claims because they are not premised on a breach of fiduciary duty or another tort. (*Motion* at 3.) If the Defendants believe this to be the case, they should move to dismiss the Constructive Trust Claims for failure to state a claim rather than argue that the absence of a breach of fiduciary duty makes them avoidance claims subject to the safe harbor.

The other two points, the "same shoes" and the "frustration of purpose" arguments, are variations of the argument that the Defendants' made and the Court considered and rejected in *Fairfield II*. I assume, as the Defendants' argue, that similar, constructive trust claims asserted by a U.S. case trustee under state law would be barred by the safe harbor because they would "frustrate the purpose of Section 546(e)." "Frustration of purpose" is the language of conflict preemption under the Supremacy Clause. *See Goonan v. Fed. Reserve Bank of N.Y.*, 916 F. Supp. 2d 470, 492 (S.D.N.Y. 2013) ("Conflict preemption 'occurs when compliance with both state and federal law is impossible, or when the state law stands as an obstacle to the accomplishment and execution of the full purposes and objective of Congress.'") (quoting *United States v. Locke,* 529 U.S. 89, 109 (2000)). The Liquidators do not stand in the

"same shoes" as a U.S. case trustee because U.S. preemption law, the basis for the decisions by the Defendants' authorities, does not apply to foreign law claims, and sections 546(e) and 561(d) do not expressly preempt or displace foreign common law claims. *Fairfield II*, 2020 WL 7345988, at *9-10. Thus, even if the assertion of the Constructive Trust Claims frustrates the purpose of the safe harbor, the safe harbor does not bar them. To paraphrase the District Court when it addressed whether the Securities Litigation Uniform Standards Act barred claims under Brazilian law,

> Despite how well a ban on foreign law claims might fit within the larger statutory scheme, this Court is bound by the statute's plain language. [Citation omitted]. Because the plain language of [Bankruptcy Code §§ 546(e) and 561(d) do] not bar foreign law [constructive trust] claims, [the Defendants'] argument fails."

In re Petrobras Sec. Litig., 169 F. Supp. 3d 547, 551-52 (S.D.N.Y. 2016).

At bottom, the Defendants have failed to identify any controlling authority or facts I overlooked, clear error or manifest injustice. Instead, they have either raised a new argument or repackaged old ones that the Court considered and rejected in *Fairfield II*. Accordingly, the *Motion* is denied.

So ordered.

Dated: New York, New York
February 23, 2021

/s/Stuart M. Bernstein
STUART M. BERNSTEIN
United States Bankruptcy Judge