

No. 25-208

IN THE
Supreme Court of the United States

IN RE: SANCHEZ ENERGY CORPORATION, *et al.*,
Debtors,

DELAWARE TRUST COMPANY, AS LIEN-RELATED
LITIGATION CREDITOR REPRESENTATIVE
Petitioner,

v.

AD HOC GROUP OF SENIOR SECURED NOTEHOLDERS
AND DIP LENDERS AND WILMINGTON SAVINGS FUND
SOCIETY, FSB,
Respondents.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fifth Circuit**

BRIEF IN OPPOSITION

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QUESTION PRESENTED

This case is about the allocation of equity in an energy company among the creditors of its bankrupt predecessor, Sanchez Energy Corporation. Respondents are secured creditors that held nonpossessory liens on Sanchez's assets; Petitioner represents unsecured creditors. The bankruptcy court held that Respondents' second-priority liens were potentially defective and that the Sanchez estate could have "hypothetically" recovered hundreds of millions in damages, so it gave the unsecured creditors most of the stock.

The Fifth Circuit reversed on two alternative grounds. First, it held that under the terms of the bankruptcy court's reorganization plan (governed by state contract law), Respondents' *first-priority* liens on Sanchez's assets entitled them to essentially all the equity in the new company. Second, it held that, in any event, the Bankruptcy Code precluded a hypothetical damages award for the second-priority liens, since Respondents had already returned those liens to the estate.

Properly framed, the question presented is:

Whether the Fifth Circuit correctly held, as an alternative ground of decision, that the Bankruptcy Code precludes the Sanchez estate from recovering the hypothetical value of nonpossessory liens that had already been returned to the estate.

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TABLE OF CONTENTS

	Page
QUESTION PRESENTED.....	i
RULE 29.6 STATEMENT.....	ii
INTRODUCTION.....	1
STATEMENT OF THE CASE	4
REASONS FOR DENYING THE PETITION.....	12
I. PETITIONER DOES NOT CHALLENGE THE FIFTH CIRCUIT’S INTERPRETATION OF THE PLAN.	12
II. THERE IS NO CIRCUIT CONFLICT REQUIRING THIS COURT’S REVIEW.	15
III. THE DECISION BELOW IS CORRECT.....	24
IV. THIS CASE IS A POOR VEHICLE TO CONSIDER A QUESTION THAT, IN ALL EVENTS, LACKS NATIONAL IMPORTANCE.	31
CONCLUSION	34

TABLE OF AUTHORITIES

Page(s)

CASES

<i>Apple Inc. v. Cal. Inst. of Tech.</i> , 143 S. Ct. 2658 (2023)	33
<i>Gettinger v. Picard</i> , 141 S. Ct. 2603 (2021)	33
<i>In re Belmonte</i> , 931 F.3d 147 (2d Cir. 2019)	24
<i>In re Broumas</i> , 135 F.3d 769 (4th Cir. Feb. 24, 1998)	18, 27-29
<i>In re Burns</i> , 322 F.3d 421 (6th Cir. 2003)	33
<i>In re Haberman</i> , 516 F.3d 1207 (10th Cir. 2008)	32
<i>In re Integra Realty Res., Inc.</i> , 354 F.3d 1246 (10th Cir. 2004)	28
<i>In re Straightline Investments, Inc.</i> , 525 F.3d 870 (9th Cir. 2008)	18, 19
<i>In re Taylor</i> , 599 F.3d 880 (9th Cir. 2010)	19
<i>In re TransCare Corp.</i> , 2021 WL 4459733 (S.D.N.Y. Sep. 29, 2021)	23

TABLE OF AUTHORITIES

(continued)

	Page(s)
<i>In re TransCare Corp.</i> , 81 F.4th 37 (2d Cir. 2023).....	19-23, 28
<i>In re TransCare Corp.</i> , 2025 WL 1467075 (S.D.N.Y. May 22, 2025)	22
<i>In re Trout</i> , 609 F.3d 1106 (10th Cir. 2010)....	16, 17, 24, 30, 32
<i>Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin</i> , 599 U.S. 382 (2023)	26
<i>Luna Perez v. Sturgis Pub. Sch.</i> , 598 U.S. 142 (2023)	27

STATUTES

11 U.S.C. § 101	26
11 U.S.C. § 102	3, 25, 26
11 U.S.C. § 547	6, 8
11 U.S.C. § 550	3, 11, 14, 16-22, 25-28, 31-34
11 U.S.C. § 551	17, 32, 33

TABLE OF AUTHORITIES
(continued)

	Page(s)
 OTHER AUTHORITIES	
COLLIER ON BANKRUPTCY (16th ed. 2022).....	21, 26, 32
Bryan A. Garner, <i>DICTIONARY OF LEGAL</i> <i>USAGE</i> (3d ed. 2011)	25
Antonin Scalia & Bryan A. Garner, <i>READING LAW: THE INTERPRETATION</i> <i>OF LEGAL TEXTS</i> (2012).....	25
S. Shapiro, et al., <i>SUPREME COURT</i> <i>PRACTICE</i> (11th ed.).....	15

INTRODUCTION

Respondents loaned \$500 million to Sanchez Energy Corporation, secured by liens on Sanchez's assets. After Sanchez declared bankruptcy, Respondents upped the ante, extending an additional \$100 million of essential "debtor-in-possession" (or "DIP") financing secured by superpriority liens. Soon the Covid-19 pandemic hit, and all of the creditors agreed that Sanchez's enterprise value had plummeted to \$85 million. Rather than foreclose on the assets, the creditors agreed to a reorganization plan approved by the bankruptcy court, in which they returned their liens to the Sanchez estate in exchange for equity in a new entity. But there was a hitch: some of Sanchez's Unsecured Creditors (represented by Petitioner) contended that a subset of Respondents' liens were avoidable, making the Unsecured Creditors entitled to some equity in the reorganized company. The Plan thus provided for a multiphase litigation process to assess the liens and allocate equity—an arrangement that both courts below described as "unusual" and Petitioner itself described as "bespoke."

The bankruptcy court ultimately held at Phase One that the DIP liens were valid and so Respondents had a rightful claim on the first \$100 million of Sanchez's assets. That should have ended the litigation—Respondents' \$100 million DIP lien rights exceeded Sanchez's \$85 million value—but the bankruptcy court forged on anyway. It held at Phase Two that a subset of the pre-petition liens were potentially invalid because of a clerical defect, and it held at Phase Three that the estate hypothetically could have received \$200 million in damages as a remedy. It thus

awarded Respondents less than a third of the equity (85/285).

The Fifth Circuit reversed on two distinct grounds, either of which is sufficient to support the judgment.

First, it held that under the terms of the “bespoke” Plan, the outcome of Phase One fully resolved the equity distribution: Respondents were entitled to essentially all of it on account of their DIP liens. Petitioner does not challenge this holding; indeed, Petitioner hardly makes reference to it—presumably because the court’s interpretation of the Plan was governed by state contract law. But as the Fifth Circuit explained, “[t]he Plan provided an opportunity for the unsecured creditors to recover some equity *only if* they were able to” prevail at Phase One—and they did not. Pet.App.14a. As a result, nothing this Court can say about Petitioner’s question presented would affect the bottom line in this case. The petition can and should be denied on that ground alone.

Second, although Phase Three was unnecessary in light of the outcome of Phase One, the Fifth Circuit held that the bankruptcy court had mishandled Phase Three in any event. Because Respondents returned their nonpossessory, pre-petition liens to the estate pursuant to the Plan, § 550 of the Bankruptcy Code precluded the bankruptcy court from *also* ordering damages.

Even if this Court could render an advisory opinion on that alternative holding, review is unwarranted. For one, there is no circuit split. Three circuits (the Fourth, Fifth, and Tenth) have considered the application of § 550 to nonpossessory liens like those at issue here—and each held that a value award was

not permitted. While Petitioner harps on cases from the Second and Ninth Circuits, the Fifth Circuit itself explained why the former was “not to the contrary,” and the latter involved a distinct fact pattern that is not implicated by the decision below.

The absence of a split is unsurprising, given the clear statutory text. Section 550(a) provides that when a transfer of property is avoided, the bankruptcy estate “may recover ... the property transferred, *or*, if the court so orders, the value of such property.” 11 U.S.C. § 550(a) (emphasis added). Though “or” can sometimes be non-exclusive in bankruptcy, *see id.* § 102(5), it ultimately turns on the context in which that word is used. And here, the statutory context—including § 550(d)’s limitation of the trustee to “only a single satisfaction under subsection (a) of this section”—forecloses Petitioner’s interpretation, as the “recovery of the ‘value’ of the pre-petition liens *in addition to* the return of the liens to the debtors’ estate” would violate the single-satisfaction rule. Pet.App.20a.

Finally, the application of § 550 to nonpossessory liens has little national importance, as evidenced by the near absence of such cases. Nor would this case be a vehicle for addressing the application of § 550 to other property (such as Petitioner’s wrecked-car hypothetical), as nonpossessory liens raise distinctive considerations emphasized by the circuit courts that have considered this question. And the posture of this case—a “unique” and “bespoke” reorganization plan and a “hypothetical” § 550 valuation—makes it a highly unusual one for considering Petitioner’s question. The petition should be denied.

STATEMENT OF THE CASE

1. Sanchez Energy Corporation was a Texas oil and gas company. Pet.App.2a. In 2018, Sanchez borrowed \$500 million by issuing senior secured notes to a group of Secured Creditors. As collateral, the Secured Creditors were given nonpossessory liens in Sanchez's corporate assets (referred to here as "pre-petition liens"). *Id.* Several of these nonpossessory liens covered valuable oil and gas interests known as the "HHK Leases." *Id.* As "nonpossessory" lienholders, the Secured Creditors did not actually possess Sanchez's assets but rather had only a contingent right to seize and sell them in the event of a default—a right indisputably never exercised. Thus, it was Sanchez that controlled the HHK Leases, extracted and sold the oil and gas from the leased property, and collected and spent the cash proceeds. Pet.App.33a.

In early 2019, the Secured Creditors discovered clerical errors in the deeds of trust perfecting some of the pre-petition liens, including those on the HHK Leases. Pet.App.3a, 33a-34a. Sanchez refused to correct the defects, so to ensure these liens were properly perfected, the Secured Creditors filed "Correction Affidavits" in June and July of 2019. *Id.*

Around this time, Sanchez came to the brink of insolvency, for it not only owed \$500 million to its Secured Creditors, but it also owed \$1.75 billion on unsecured notes. Pet.App.2a. Sanchez filed for Chapter 11 on August 11, 2019. Pet.App.3a, 35a. As will become important, the bankruptcy petition was filed 45 days after the first Correction Affidavit was recorded. *Id.*

2. Meanwhile, Sanchez sought to obtain DIP financing to fund the company's operations during the bankruptcy case. Pet.App.3a, 36a. Ultimately, only two proposals were submitted: one from a subset of Secured Creditors, and another from a subset of Unsecured Creditors. Pet.App.3a, 36a-37a. Both sought first-priority liens on all of Sanchez's assets in exchange for the new funding. That was no problem for the Secured Creditors, as their pre-petition liens were already first in line and so could be consensually subordinated to new financing. The Unsecured Creditors, however, would have needed to "prime" (*i.e.*, nonconsensually subordinate) the Secured Creditors' liens, a challenging and risky process. *Id.*

Rather than trigger this priming fight, Sanchez opted to obtain financing from the Secured Creditors (the "DIP Lenders"). Pet.App.3a. All parties eventually agreed to this outcome in the Final DIP Order, which the bankruptcy court approved as "fair and reasonable and essential for the continued operation of [Sanchez's] businesses." Pet.App.4a, 37a-38a, 294a. The DIP Lenders then loaned \$100 million of fresh cash, secured by new, post-petition, first-priority liens on Sanchez's assets. Pet.App.5a, 38a.

3. At this stage, three creditor classes were positioned for possible recovery: the DIP Lenders (Respondents), who were entitled to the first \$100 million of assets; the Secured Creditors (a subset of whom are Respondents), who were entitled to the next \$500 million; and the Unsecured Creditors (represented by Petitioner), who were entitled to what was left. In March 2020, however, two developments threatened to upend this sequencing.

First, Sanchez—at the prompting of the Unsecured Creditors—filed an adversary proceeding under 11 U.S.C. § 547(b)(4). Under that provision, a “transfer” made within 90 days of the bankruptcy petition is a “preference” that the debtor can “avoid” (*i.e.*, undo) under certain circumstances. Sanchez alleged that some of the Secured Creditors’ pre-petition liens were avoidable under this rule because, in its view, the liens were not properly perfected until the filing of the Correction Affidavits, which occurred within 90 days of the bankruptcy. Pet.App.4a, 39a. If Sanchez were to prevail on that argument, the Secured Creditors would lose their priority claim over any assets subject to the pre-petition liens, making those assets available (after repayment of the DIP loan) to satisfy Sanchez’s debts to the Unsecured Creditors.

Soon thereafter, however, the Covid-19 pandemic sparked unprecedented turmoil in the energy markets. Pet.App.4a, 39a. Even after that volatility moderated, Sanchez’s value had crashed to \$85 million, and Sanchez defaulted on its DIP obligations. Pet.App.4a, 14a. The adversary proceeding was put on pause, as the second-priority liens were worthless at this point.

4. As a result of this “catastrophic downturn,” the bankruptcy court “approve[d] in April 2020 a reorganization plan designed to compensate creditors with equity in a new entity” called “Mesquite Energy, Inc.” Pet.App.1a-2a, 4a. Central to the Plan was the agreement of all lienholders to release their liens on Sanchez’s assets, which “allowed Mesquite to be reorganized with a clean balance sheet and no overhanging encumbrances.” Pet.App.5a. Notably, however, the Plan did not fully determine the amount

of equity shares in Mesquite that the creditors would receive—a feature both the bankruptcy court and the Fifth Circuit described as “unusual.” Pet.App.9a, 40a.

The equity distribution should have been simple: the DIP Lenders had a first-priority lien on \$100 million of the estate’s assets, and the Plan—agreed to by all relevant parties—provided that Mesquite was worth only \$85 million, Pet.App.5a. That meant the DIP Lenders should have received essentially all the equity. After all, had the DIP Lenders foreclosed during bankruptcy, they would have obtained all of Sanchez’s assets. Pet.App.9a-10a.

The wrinkle, however, was that while Sanchez’s reorganization proposal was pending before the bankruptcy court, the Unsecured Creditors objected to the validity of the *DIP liens*. Specifically, they claimed that the DIP liens were coextensive with the Secured Creditors’ pre-petition liens, such that if the pre-petition liens were defective, the DIP liens were too. But because Sanchez’s dire financial position required the Plan to be approved “on an emergency basis,” the Plan adopted the “unusual arrangement” of “deferr[ing] resolution” of ownership disputes “until after Plan confirmation.” Pet.App.40a.

As an initial matter, the Plan guaranteed the DIP Lenders at least 20% of Mesquite’s stock in exchange for releasing the DIP liens. Pet.App.5a, 44a, 154a, 183a. Per Article IV.D of the Plan, the remaining 80% would be distributed based on the validity of the liens on estate property, which would be adjudicated in three cascading phases. Pet.App.5a, 44a. As the Fifth Circuit explained, “[i]n Phase One, the bankruptcy court would decide whether the DIP Liens were valid.” Pet.App.5a. “If the court held for the DIP Lenders,

their outstanding \$100 million loan would swallow the entire remaining equity of Mesquite.” *Id.* “However, if the unsecured creditors ... prevailed, then the court in Phase Two had to determine the validity and enforceability of the secured creditors’ pre-petition liens.” *Id.* After all, if the Secured Creditors’ pre-petition liens were invalid, then they would be in the same position as the Unsecured Creditors, both second-in-line behind the DIP Lenders. So if the Unsecured Creditors “succeeded in avoiding the secured creditors’ liens,” the court would then proceed to Phase Three and “assess the additional ‘value’ to the debtors’ estate” of any causes of action held by the estate and “allocate the equity proportionally.” *Id.*

5. At first, the Unsecured Creditors—represented by Petitioner—ran the table. In Phase One, the bankruptcy court initially agreed with Petitioner that certain key DIP liens were unenforceable. Pet.App.6a. Then at Phase Two, the court held that some of the challenged pre-petition liens held by the Secured Creditors were not timely perfected, making them potentially avoidable. *Id.*; see 11 U.S.C. § 547(b). If those rulings had held, then, for the most part, all three groups would have been unsecured creditors, and the equity would have been distributed amongst them in proportion to the size of their unsecured claims. During Phase Three, however, the bankruptcy court realized it had made a mistake at Phase One, ultimately concluding that all the DIP liens were valid and enforceable. Pet.App.6a, 47a-48a.

Though Petitioner conspicuously avoids mention of it,¹ this was a watershed moment in the case, and it should have ended the litigation (as the Fifth Circuit would ultimately hold). Pet.App.20a. Again, because the DIP Lenders were owed \$100 million when Sanchez's assets were worth only \$85 million, basic math dictated that they were entitled to essentially all shares. Pet.App.14a.

But the bankruptcy court returned to Phase Three nevertheless. It ruled that the value of the estate was not the \$85 million that was stipulated in the Plan, but rather could be augmented by the "hypothetical" value of the debtor's long-abandoned claims against some of the pre-petition liens. Pet.App.6a-7a, 48a. To ignore the value of these claims, the court stated, "would render the main point of the Plan, and the last few years of litigation, meaningless." Pet.App.67a.

The court thus "charted its own approach" and determined the estate could have hypothetically recovered about \$200 million from the Secured Creditors in these actions, making the estate theoretically worth about \$285 million. Pet.App.7a, 85a. The court's artificial inflation of the value of Sanchez's estate was wholly theoretical: no actual funds had been—or ever would be—brought into the estate on account of the preference claims. The court's ruling also made no sense: it implied that the same

¹ Petitioner observes only that at Phase One, "the court reaffirmed that the DIP liens did not encumber the actions to avoid respondents' pre-petition liens." Pet.9. Phase One resolved far more than that. See Pet.App.6a ("Ultimately, the court held [at Phase One] that the DIP Lenders possessed valid liens encompassing the HHK Leases."); Pet.App.47a (same).

pre-petition liens—indisputably worthless to the lienholders at confirmation, Pet.10—were somehow worth hundreds of millions of dollars to the estate. Nevertheless, the court awarded the DIP Lenders approximately 30% of Mesquite’s equity, which roughly constituted the ratio of their stipulated \$85 million enterprise value to the estate’s hypothetical \$285 million enterprise value. Pet.App.7a, 86a. The Unsecured Creditors received the remaining 70%. *Id.*

That was an extraordinary windfall to the Unsecured Creditors. Post-bankruptcy, the DIP Lenders—who had already contributed to Mesquite’s recovery through the DIP loans—took even more risk on Mesquite by pumping two more successful investments into the company while it was still fragile. Yet under the bankruptcy court’s order, the Unsecured Creditors were poised to seize a supermajority of Mesquite, even though they had not invested another dime into the company.

6. Respondents appealed to the Fifth Circuit. In an opinion by Judge Jones—a former bankruptcy practitioner and member of the National Bankruptcy Review Commission—the panel unanimously reversed on two distinct grounds. Pet.App.1a-20a.

Part I of the opinion (Pet.App.9a-14a) held as a matter of “plan interpretation” that the bankruptcy court could not augment the estate beyond \$85 million with hypothetical awards. Pet.App.10a, 14a. The meaning of the Plan, the court explained, is governed by “Texas law” and “requires the court to apply ordinary principles of contract interpretation.” Pet.App.10a. The court walked through Article IV of the Plan and explained its “three-step process” for dividing equity. Pet.App.12a. “Each step,” the court

explained, “is contingent on the outcome of the preceding step and hardly preordains the necessity of ‘valuation’ at Phase Three irrespective of preceding phases’ outcomes.” *Id.* Thus—and this is key—the court found that a “necessary consequence of the Plan is that, when the bankruptcy court reversed course and upheld the DIP liens” at Phase One, the DIP Lenders “should have been entitled to one hundred percent [of the equity] according to their superpriority liens that covered all of Sanchez’s assets. This was ordained by the facts and the Plan.” Pet.App.14a.²

Although “subsequent stages of litigation ... were unnecessary” in light of the bankruptcy court’s Phase One holding, the Fifth Circuit held in Part II of its opinion (Pet.App.14a-20a) that the bankruptcy court “also erred” in its valuation of the pre-petition liens at Phase Three. Pet.App.20a. Assuming without deciding that the pre-petition liens were avoidable, the court held that under § 550(a), “a value award cannot lie for avoiding a nonpossessory lien when, as in this case, the liens are returned to the estate.” Pet.App.19a. As a result, the estate may obtain “the

² After the Plan was confirmed, the estate actually gained an additional \$2 million through a settlement with the Sanchez family—which, after subtracting legal fees, netted to \$749,000. Under the Final DIP Order, the Unsecured Creditors have a claim to a portion of those funds. Pet.App.311a-312a. The result is that the DIP Lenders are actually entitled to 99.56% of the equity in Mesquite and the Unsecured Creditors are entitled to 0.44%. The Fifth Circuit acknowledged this issue, Pet.App.6a n.2, but did not address it further as it was outside the scope of the appeal; it will, instead, be addressed by the bankruptcy court on remand.

property transferred’ or ‘the value of such property’”—but not both. *Id.*

Petitioner sought panel rehearing and rehearing en banc. The court denied both requests without taking a poll. Pet.App.21a-22a.

REASONS FOR DENYING THE PETITION

I. PETITIONER DOES NOT CHALLENGE THE FIFTH CIRCUIT’S INTERPRETATION OF THE PLAN.

The Fifth Circuit ruled against Petitioner on two distinct grounds. Petitioner seeks review of Part II but not Part I—indeed, the petition does not even *cite* Part I. Yet Part I is sufficient to support the judgment. So to avoid an advisory opinion on Part II, this Court would first have to reverse Part I—which would require sifting through an immensely complicated bankruptcy plan and deciding state-law interpretive issues on which Petitioner has not sought certiorari.

To recap, Part I involved a “question of Plan interpretation” that “require[d] the court to apply ordinary principles of contract interpretation” under “Texas law.” Pet.App.10a. Reviewing Article IV.D of the Plan, the court explained:

[T]he three-step process for Lien-Related Litigation ... proceeds from the Phase One determination of issues surrounding the DIP liens to Phase Two, “if the Bankruptcy Court determines that any additional Lien-Related litigation is necessary”, and to Phase Three, “if the Bankruptcy Court determines that the valuation of any Causes of Action are necessary.” Each step is contingent on the outcome of the preceding step and hardly preordains the

necessity of “valuation” at Phase Three irrespective of preceding phases’ outcomes.

Pet.App.12a (quoting Art. IV.D) (brackets omitted). Because the DIP Lenders prevailed at Phase One, *the Plan itself* precluded the bankruptcy court from advancing to Phase Three and hypothetically valuing causes of action that were never pursued. Pet.App.20a.

The Fifth Circuit left no doubt that its interpretation of the Plan—that the outcome of Phase One inevitably meant complete victory for the DIP Lenders—was sufficient to support the outcome. It held that a “*necessary* consequence of the Plan is that, when the bankruptcy court reversed course and upheld the DIP liens ... they should have been entitled to one hundred percent according to their superpriority liens that covered all of Sanchez’s assets. This was ordained by the facts and the Plan.” Pet.App.14a (emphasis added). Likewise, the court held that “[t]he Plan provided an opportunity for the unsecured creditors to recover some equity *only if* they were able to defeat the DIP liens, followed by the [pre-petition] liens.” *Id.* (emphasis in original); *see also*, e.g., Pet.App.20a (“subsequent stages of litigation” beyond Phase One “were unnecessary” given the validity of the DIP liens); Pet.App.5a (“In Phase One, the bankruptcy court would decide whether the DIP liens were valid. If the court held for the DIP Lenders, their outstanding \$100 million loan would swallow the entire remaining equity of Mesquite.”); Pet.App.18a (“[T]he Plan did not *require* three successive phases of litigation unless the contingencies in each were met.”).

To be sure, Part II of the court’s opinion concluded that at Phase Three, the bankruptcy court violated § 550 by holding the estate could have recovered damages notwithstanding the return of the nonpossessory liens. But that was clearly a backup holding. In fact, the Fifth Circuit said as much, explaining that “*in any event*, ... the [bankruptcy] court *also erred* in authorizing recovery of the ‘value’ of the pre-petition liens *in addition to* the return of the liens to the debtors’ estate pursuant to the Plan.” Pet.App.20a (first and second emphases added).

Petitioner itself displayed that understanding of the Plan before the bankruptcy court. As the Fifth Circuit put it, Petitioner once “maintained that a decision in favor of the DIP Lenders at Phase One would leave little to litigate” and did not “raise[] the possibility of recovering a hypothetical value award” until “more than two years after the Plan became effective.” Pet.App.13a-14a. Indeed, that is why, once Petitioner raised this newfound argument, the bankruptcy court first ordered briefing on whether Petitioner had waived it. Pet.App.14a.

Petitioner’s post-decision filings likewise recognized the centrality of the Fifth Circuit’s Plan-related holding to its decision. In its petition for panel rehearing, Petitioner did not even argue that the court should reconsider its § 550 alternative holding; it instead maintained that “the panel did not apply the correct standard of review to *the plan-interpretation question*” resolved in Part I, as it supposedly should have deferred to the bankruptcy court’s interpretation of the Plan. See CA5 Panel Reh’g Pet’n at 6 (capitalization omitted, emphasis added). Petitioner also moved for rehearing en banc, where it thrice

described the Fifth Circuit’s interpretation of the Plan in Part I as an “outcome-determinative” error. *See* CA5 En Banc Pet’n at xvi, 6, 8. And it expressly acknowledged that, under the panel opinion, “the Plan contemplated that the Phase 1 and Phase 2 litigation might have rendered the valuation unnecessary.” Pet.9.

Before this Court, however, Petitioner has abandoned any challenge to Part I. Everyone knows why: Part I’s interpretation of the Plan is governed by Texas law, not federal law. Pet.App.10a; *see* S. Shapiro, et al., SUPREME COURT PRACTICE § 4.4(e) (11th ed.) (certiorari is inappropriate “where there [is] an alternate, exclusively state-law ground for affirming the court of appeals”). The Plan’s terms, moreover, are “unusual” (as both courts below put it), Pet.App.9a, and “bespoke” (as Petitioner put it), En Banc Pet’n at 9-10. Needless to say, this Court does not intervene to apply state law to idiosyncratic contractual language.

In short, the Court can address Petitioner’s question presented only if it first wades through a complex, *sui generis* bankruptcy plan to decide a threshold state-law issue on which Petitioner has not sought certiorari. The Court should deny the petition on this ground alone.

II. THERE IS NO CIRCUIT CONFLICT REQUIRING THIS COURT’S REVIEW.

In any event, even if the Fifth Circuit’s interpretation of the Plan under state law did not itself foreclose certiorari, Petitioner’s question presented would not warrant this Court’s review. Petitioner contends that the decision below creates a

3-1 conflict with the Second, Ninth, and Tenth Circuits. That is wrong, for two reasons. One, the purported split Petitioner describes does not exist. And two, the courts of appeals have been uniform on how § 550(a) applies to nonpossessory liens, which is the only question presented by this case.

1. Petitioner first cites the Tenth Circuit’s decision in *In re Trout*, 609 F.3d 1106 (10th Cir. 2010). This is odd; *Trout*—the only case cited by Petitioner that involves a nonpossessory lien—*supports* the outcome here, which is why the Fifth Circuit repeatedly *relied upon* it. See Pet.App.17a-19a.

In *Trout*, debtors took out a loan to purchase a car, using the car as collateral. 609 F.3d at 1109. The lender failed to perfect its nonpossessory lien within the relevant timeframe, so it was deemed an avoidable transfer in bankruptcy. *Id.* The trustee sought the pre-transfer value of the liens rather than their return, as the car had depreciated. *Id.* at 1112. The Tenth Circuit rejected that request. “[T]he language of § 550(a),” the court explained, “suggests that the default rule is the return of the property itself, whereas a monetary recovery is a more unusual remedy to be used only in the court’s discretion.” *Id.* at 1113. On the facts before it, the Tenth Circuit found “no compelling reason to deviate from the default rule of returning the transferred property itself.” *Id.*

Petitioner somehow extrapolates from *Trout* a rule that “there could be circumstances in which a value award would be appropriate even where a lien was returned to the estate.” Pet.25. But *Trout* said no such thing—to the contrary, it expressly disclaimed that possibility:

Although in the complaint the Trustee appears to seek *both* the lien *and* a monetary award of the value of the lien, the Trustee acknowledges on appeal that under § 550(d)—which permits only a single recovery—it cannot receive both and acknowledges it would have to abandon the § 551 preserved lien if it obtained a monetary award for the value of that lien under § 550.

Trout, 609 F.3d at 1108 n.2 (emphasis in original). The Fifth Circuit, reciting this quotation, likewise held that “a value award cannot lie for avoiding a nonpossessory lien when, as in this case, the liens are returned to the estate.” Pet.App.19a.

Petitioner nonetheless claims that the Fifth Circuit misinterpreted this quotation from *Trout*. The Tenth Circuit’s rejection of a property-plus-value award, Petitioner contends, was specific to “the facts of the case”: “The liens still had some value because the underlying collateral had not become worthless, and the trustee was seeking their entire pre-transfer value, so of course it could not also receive the liens back.” Pet.26. But the Tenth Circuit nowhere suggested that a value award of *any* amount was permissible once the liens had been returned. Rather, it recognized a default rule that the return of the lien is sufficient, but when that remedy is inadequate, monetary “recovery under § 550 [may be] needed *instead*.” 609 F.3d at 1111 (emphasis added). Tellingly, Petitioner excises that crucial final word when quoting *Trout*. Pet.24.

The Fifth Circuit thus correctly found that *Trout*—the only nonpossessory-lien case in Petitioner’s purported split—supports its holding. Moreover, in a

decision not cited by Petitioner, the Fourth Circuit likewise held that a value award is not an appropriate remedy when a nonpossessory lien is avoided. *In re Broumas*, 135 F.3d 769, at *6 (4th Cir. Feb. 24, 1998) (per curiam). As the Fourth Circuit explained, “allow[ing] the Trustee to recover the value” of a nonpossessory lien that was “never invoked” would “mean a windfall to the bankruptcy estate” because the creditor “merely held a contingent interest in the [collateral] from which it never benefited.” *Id.* So among circuit courts to apply § 550 to nonpossessory liens, Petitioner is 0-for-3.

2. Petitioner also imagines a conflict with the Ninth Circuit’s decision in *In re Straightline Investments, Inc.*, 525 F.3d 870 (9th Cir. 2008). In that case, the debtor improperly transferred accounts receivable to a third party, who proceeded to collect on some, but not all, of the accounts. *Id.* at 883. After holding that the transfer was avoidable, the Ninth Circuit upheld the bankruptcy court’s remedy: a “judgment against [the third party] in the amount of \$163,007—the amount he collected from the accounts receivable—plus interest, costs, and the return of the remainder of the uncollected accounts.” *Id.*

It is unclear what any of this has to do with the Fifth Circuit’s decision. The Fifth Circuit’s rule prohibits the recovery of both transferred property and the value of that same property as a “single satisfaction.” Pet.App.16a. But that is not what happened in *Straightline*. While the *Straightline* judgment had a value component and a property component, the trustee did not receive value and property with respect to the *same collateral*. Rather, the court awarded value for certain collateral (the

collected accounts receivable) and the return of other collateral (the uncollected accounts). That makes sense. Imagine that a debtor preferentially transferred 20 widgets to a creditor, who then sold 10 for cash and kept the rest. Under both *Straightline* and the decision below, a court could order the creditor to return the 10 he still possessed while awarding the cash proceeds for the 10 he hawked. There is no conflict.

Petitioner also leans heavily into *Straightline*'s footnoted observation that "one court has held that the remedies of the value of the property or the property itself are not mutually exclusive." 525 F.3d at 883 n.3. But the Ninth Circuit did not endorse that holding, and its vanilla description of an out-of-circuit bankruptcy-court case—viewed by many as a "rogue outlier," Pet.App.19a n.9—hardly makes binding precedent. To the contrary, in a post-*Straightline* decision, the Ninth Circuit repeatedly referred to § 550 remedies as "alternative." *In re Taylor*, 599 F.3d 880, 890 (9th Cir. 2010).

3. Nor, finally, is there any conflict with the Second Circuit's decision in *In re TransCare Corp.*, 81 F.4th 37 (2d Cir. 2023)—just as the Fifth Circuit said. Pet.App.17a n.8.

The facts of *TransCare* could not be more different. TransCare provided ambulance and paratransit services, and it had a line of credit with several lenders. When TransCare came to the brink of bankruptcy, its director concocted a scheme to "salvage the profitable parts of the business and spin them off into a new company." 81 F.4th at 43. She used her control of a company called PPAS—the lenders' administrative agent—to authorize

foreclosure on “Subject Collateral,” “which included all of TransCare’s personal property (including servers and related data), three contracts, and the stock of three subsidiaries.” *Id.* at 46. The Subject Collateral was transferred from TransCare to a new company called Transcendence. *Id.* at 47. TransCare, stripped of its significant assets, then filed for bankruptcy. *Id.* But Transcendence quickly collapsed, so the trustee accepted the return of collateral and liquidated what it could for \$1.2 million. *Id.*

The trustee sued PPAS and Transcendence for fraudulently transferring the property. *Id.* After ruling for the trustee on the merits and finding that the director had committed actual fraud and breaches of fiduciary duty, the bankruptcy court found damages of \$40.4 million, which reflected “the lost going-concern value of the divisions that were part of the Subject Collateral.” *Id.* at 47-48. The court reduced that award by the returned collateral’s liquidation value (\$1.2 million) to arrive at a \$39.2 million damages award. *Id.* at 48.

The Second Circuit affirmed, *id.* at 58, dedicating the bulk of its analysis to case-specific details that are irrelevant here.³ As for whether § 550 allowed simultaneous value and property awards, the panel’s analysis of the exceedingly complex facts before it is unclear.

³ The panel analyzed whether the bankruptcy court correctly calculated the \$40.4 million value award, 81 F.4th at 56-58, and whether the bankruptcy court had double-counted the value of the certificates of need required to operate ambulances, *id.* at 58-59; *see also id.* at 59-63 (Menashi, J., dissenting).

On the one hand, the panel explained that “when property declines in value after the [fraudulent] transfer, a trustee may recover the value of the property *at the time of the transfer rather than* the property.” 81 F.4th at 57 (underlined emphasis added) (quoting 5 COLLIER ON BANKRUPTCY ¶ 550.02[3][a] (16th ed. 2022)). Indeed, Judge Menashi in dissent agreed with what he saw as the “uncontroversial” “principle” endorsed by the majority—that “the trustee may recover for the benefit of the estate *either* ‘the property transferred, *or*, if the court so orders, the value of such property.” *Id.* at 59 (Menashi, J., dissenting) (emphasis added)). This “rather than”—or, in Judge Menashi’s words, “either”/“or”—understanding of § 550(a) comports with the holding below. It also aligns with the bankruptcy treatise that the Second Circuit relied upon, which—in the same paragraph cited by the panel—contrasted “[w]hen the value of property is recovered, *as opposed to* the property itself” 5 COLLIER, *supra*, ¶ 550.02[3][a] (emphasis added).

Yet in two brief sentences, the panel majority also explained that it was not “legal error” for the bankruptcy court to “award[] any damages once the Subject Collateral was returned,” because “the bankruptcy court subtracted the liquidation value of the Subject Collateral from the going concern value to ensure that there was only a single recovery.” 81 F.4th at 58. That issue was not the focus of the appeal and received scant attention from the parties or the court. Yet Petitioner latches onto this language, claiming that it shows the Second Circuit “squarely rejected” the Fifth Circuit’s reasoning. Pet.20.

Nothing could be further from the truth. *TransCare*'s short mention of § 550 does not conflict with the decision below. Most notably, the Fifth Circuit itself saw no conflict, as it expressly considered *TransCare* and found it “not to the contrary.” Pet.App.17a n.8. Rather, the Fifth Circuit explained, the *TransCare* panel “unanimously agreed that Section 550(a) permits recovery of ‘either’ the transferred property or its value, and the dissent parted ways on a question of double-counting.”⁴ *Id.* Indeed, the district court on remand from the Second Circuit acknowledged the same either/or view of § 550. See *In re TransCare Corp.*, 2025 WL 1467075, at *1 n.1 (S.D.N.Y. May 22, 2025) (“When a bankruptcy court avoids a fraudulent transfer, the trustee may recover for the benefit of the estate *either* ‘the property transferred, *or*, if the court so orders, the value of such property.’” (emphases added)).

It is also unclear whether the value award in *TransCare* was designed to compensate the estate for the same property that was recovered and liquidated, or instead whether (as in *Straightline*) the value award was for distinct items of collateral. Recall that the fraudulently transferred “Subject Collateral” included not just *TransCare*'s physical assets, but also the stock of three *TransCare* subsidiaries. 81 F.4th at

⁴ Petitioner faults the Fifth Circuit's Bluebooking, as the court “put the word ‘either’ in quotes” but “did not cite any page of the *TransCare* majority opinion.” Pet.21. The quote comes from Judge Menashi's dissent, who explained that this was “uncontroversial” common ground with the majority. 81 F.4th at 59. And as noted above, the panel majority expressly embraced a “rather than” understanding of § 550, *id.* at 57, which is the same as an “either”/“or” understanding.

46. The property liquidated by the estate appears to have been limited to physical assets. *See id.* at 60 (Menashi, J., dissenting) (“The bankruptcy court ... reduc[ed] the awards by the liquidation value of the physical assets that would have enabled Transcendence to operate.”); *see also In re TransCare Corp.*, 2021 WL 4459733, at *15 n.132 (S.D.N.Y. Sep. 29, 2021) (explaining that the \$1.2 million liquidation value related “to the sale of physical assets”). But the damages award *also* compensated the estate for the value of the subsidiaries’ stock, which had significant intangible value beyond the physical assets that were returned and liquidated. *See* 81 F.4th at 48 (damages award calculated based on profit projections of subsidiaries). Viewed in that light, the upshot of *TransCare* is that a value award is appropriate even where a subset of the collateral has been recovered. *Cf. TransCare*, 81 F.4th at 61 (Menashi, J., dissenting) (citing *Straightline* for the proposition that “[t]here is no rule that precludes [a court] from awarding the value of the transferred property when *some of that property* has been liquidated” (emphasis added)). The decision below is fully consistent with that result. *Supra* 18-19.

Finally, even if *TransCare* could be construed as permitting simultaneous value and property awards for the same collateral, the Second Circuit gave no indication that nonpossessory-lien cases would qualify. *TransCare* involved a situation where the creditor fraudulently acquired possession of the collateral, significantly depleted its value, and then returned it. So a value award was appropriate to “restore the estate to the condition it would have been in if the transfer had never occurred.” 81 F.4th at 56.

By contrast, nonpossessory lienholders *never possess* the collateral, so recovery of the lien generally returns the estate to “the same place as if the transfer had not occurred.” *Trout*, 609 F.3d at 1112. Indeed, the Second Circuit has elsewhere distinguished nonpossessory-lien cases as situations “in which avoidance and preservation of a lien were deemed enough to make the estate whole.” *In re Belmonte*, 931 F.3d 147, 155 n.4 (2d Cir. 2019) (citing *Trout*). So this case would have come out the same in the Second Circuit even under Petitioner’s erroneous interpretation of *TransCare*.

* * *

Only three circuits have addressed whether a simultaneous award of property and value is permitted for nonpossessory liens. Unanimously, they have answered “no.” And the possessory-interest cases cited by Petitioner are not to the contrary. There is no conflict worthy of this Court’s intervention.⁵

III. THE DECISION BELOW IS CORRECT.

The bankruptcy court held that it could have ordered the Secured Creditors to pay \$200 million to the estate due to a purported recording defect on some of the pre-petition liens—even though the Secured Creditors *loaned* Sanchez \$500 million, never foreclosed on the assets, received \$0 in bankruptcy, and returned their pre-petition liens to the estate

⁵ For this reason, Petitioner’s claim that there will “inevitably” be forum shopping is wrong. Pet.28. Even under Petitioner’s erroneous interpretation of *TransCare*, Second Circuit precedent is consistent with the decision below, and no rational debtor would intentionally opt into or out of that jurisdiction in the context of nonpossessory liens.

under court order and with the agreement of all parties. That result made no sense on several levels, and there is no reason for this Court to reinstate it.

1. Section 550(a) provides: “[T]o the extent that a transfer is avoided under [various Bankruptcy Code provisions], the trustee may recover, for the benefit of the estate, the property transferred, *or*, if the court so orders, the value of such property” 11 U.S.C. § 550(a) (emphasis added). Judges Jones, Engelhardt, and Oldham—no slouches when it comes to textual analysis—examined the statute and reached an unsurprising conclusion: “or” means “or.” Pet.App.15a-16a. Specifically, “the provision enables a court in its discretion to select, as *alternative* preference recoveries, ‘the property transferred’ or ‘the value of such property.’” Pet.App.19a (emphasis added). “But a value award cannot lie for avoiding a nonpossessory lien when, as in this case, the liens are returned to the estate.” *Id.*

Petitioner offers just one textual counterargument: The Bankruptcy Code’s Rule of Construction, which states that “‘or’ is not exclusive.”⁶ 11 U.S.C. § 102(5); *see* Pet.14. The Fifth Circuit considered this point but sensibly reasoned that “the Bankruptcy Code, like other statutes, does not apply the background Rule of Construction when surrounding context makes ‘A and B’ logically impossible or dictates otherwise.”

⁶ Petitioner also makes passing reference to legal dictionaries (Pet.16), but those sources recognize that “or” can have an exclusive meaning. *See* Bryan A. Garner, *DICTIONARY OF LEGAL USAGE* 639 (3d ed. 2011) (“*or* has an inclusive sense as well as an exclusive sense”); Antonin Scalia & Bryan A. Garner, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 116 (2012) (“*or* creates alternatives”).

Pet.App.15a-16a. Citing an opinion by Judge Ambro—another leading light in bankruptcy law—the court observed that there are numerous “examples of the Bankruptcy Code using a disjunctive ‘or’ despite its conjunctive decree.” Pet.App.16a.

Section 550’s use of “or,” the Fifth Circuit concluded, is another such example. The key “context” for the court was § 550(d), *id.*, which limits a trustee “to only a single satisfaction under subsection (a) of this section,” 11 U.S.C. § 550(d). That provision “compels the conclusion that Section 550(a) uses ‘or’ in its disjunctive form,” as “it is logically impossible to ‘recover’ both transferred property and the ‘value’ of that property as a ‘single satisfaction.’” Pet.App.16a; *see also* 2 COLLIER, *supra*, ¶ 102.06 n.1 (“While the canon of construction of section 102(5) might, in isolation, be read to allow the trustee to recover both the property and its value, such a result is absolutely prohibited by section 550(d)”).⁷

⁷ *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382 (2023), is not to the contrary. There, the Court held that § 101(27) of the Bankruptcy Code—which defines “governmental unit” to include “foreign or domestic government[s]”—covers Indian tribes, even though tribes have foreign and domestic attributes. 599 U.S. at 387 (quoting 11 U.S.C. § 101(27)). Although § 102(5) supported that result, *id.* at 395, the Court primarily reasoned “the definition of ‘governmental unit’ exudes comprehensiveness from beginning to end” and has an “all-encompassing scope,” *id.* at 388-89. In other words, § 102(5) “reinforce[s]” what “§ 101(27)’s plain text conveys.” *Id.* at 390. Section 550’s plain text, by contrast, is not compatible with a conjunctive interpretation of “or,” and certainly not in the context of nonpossessory liens. Pet.App.15a-16a (citing *Lac du Flambeau*, 599 U.S. at 395-96).

Nonpossessory liens provide the perfect example because—as every court to confront the issue has held—the return of an unenforced lien restores the status quo, thereby providing full satisfaction. As the Fourth Circuit has explained, a nonpossessory lienholder that “never invokes its rights” is “never enriched” by the lien; it simply holds “a contingent interest in the [collateral] from which it never benefit[s].” *Broumas*, 135 F.3d 769, at *6. And once the lien is returned, the estate is “no worse off” for having granted it in the first place. *Id.* Here, for example, before the transfer of the pre-petition liens, Sanchez possessed the underlying assets—“oil and gas in the ground”—free and clear. Pet.App.18a. That status quo was fully restored once the Secured Creditors returned the liens: Sanchez possessed the oil and gas assets, free and clear. (Indeed, Sanchez *always* possessed the oil and gas assets, and it collected and spent all the proceeds from those assets.) To award value on top of property would allow the estate to “have [its] cake and eat it too,” Pet.App.20a, which violates § 550(d)’s single-satisfaction rule.

Unable to overcome either the text or logic of § 550(a), Petitioner falls back on reasoning that, in Judge Jones’s words, is “unapologetically purposive.” Pet.App.17a. It claims that “Section 550’s remedial scheme is designed to make the estate whole,” and thus, “a value award in addition to the property” is appropriate when “necessary to put the estate back in its pre-transfer position.” Pet.16-17. But “[i]t is quite mistaken to assume” that “any interpretation of a law that does more to advance a statute’s putative goal must be the law.” *Luna Perez v. Sturgis Pub. Sch.*, 598 U.S. 142, 150 (2023) (internal quotation marks

omitted). Here, the text allows a court to “make the estate whole” by awarding value *or* by awarding property, but it does not allow a court to make the estate whole by awarding both. 11 U.S.C. § 550(a), (d). And that is particularly true where, as with the nonpossessory liens here, awarding both actually puts the estate in a *better* position than it would have been had the transfer never occurred.

2. Apart from the “either/or” issue raised by the question presented, it is also settled law that *no* value award under § 550 is available when the avoided transfer does not cause any loss to the estate. That is plain from the text: Section 550 allows “recover[y]” by the estate, and there cannot be a “recovery” unless it has lost something. *See, e.g., In re Integra Realty Res., Inc.*, 354 F.3d 1246, 1267 (10th Cir. 2004) (“[T]he proper focus in [§ 550(a)] actions is ... on what the bankruptcy estate lost as a result of the transfer.”); *Broumas*, 135 F.3d 769, at *6 (vacating a value award where the estate was “no worse off” than it would have been “if the transfer had never occurred”).

As the Fifth Circuit recognized, Petitioner has offered no “valid basis for finding ‘harm’ to the estate” here.⁸ Pet.App.18a; *contra TransCare*, 81 F.4th at 57 (finding that “harm flowed to the estate” as a result of the fraudulent conveyance). Again, Sanchez granted

⁸ Petitioner argued that the pre-petition liens enabled the Secured Creditors to become DIP Lenders on “favorable funding terms.” Pet.App.18a. The Fifth Circuit rejected that argument, not least “because no party objected to the Final DIP Order” that gave the DIP Lenders priority. *Id.* Petitioner remains upset with that finding, Pet.26, but does not ask this Court to overturn it.

the Secured Creditors nonpossessory liens on “oil and gas in the ground,” but those liens were never enforced—and, at the end of the day, the estate got the liens back. Pet.App.17a-18a. The estate thus suffered no harm from granting the liens in the first place. To award damages under those circumstances would give the estate an undeserved windfall: a huge cash award based on the fact that the assets’ “market value rebounded,” even though this had nothing to do with the transfer. Pet.App.18a. The Bankruptcy Code does not support that counterintuitive result, *especially* not in a case like this one—where certain lienholders have infused millions of additional dollars into the reorganized debtor at great risk for the benefit of the company and all stakeholders, whilst the Unsecured Creditors have done nothing but watch from the sidelines. *Broumas*, 135 F.3d 769, at *6 (holding that, where the creditor “never invoked its rights” under a lien, “allow[ing] the Trustee to recover the value at the time of transfer would mean a windfall to the bankruptcy estate”).

3. Finally, Petitioner returns again and again to a “vehicle hypothetical” to support its position, but the disparity between that fact pattern and this one only reinforces that the Fifth Circuit got it right. Petitioner imagines a debtor who takes out a \$50,000 loan for a new car, which is secured by a preferential lien. The creditor then fraudulently obtains the car, crashes it, and returns the wreckage, now worth only \$5,000. Pet.14, 17. According to Petitioner, the return of the wreckage would, under the Fifth Circuit’s rule, handicap the bankruptcy court’s ability to award “even a fraction of the value of a new vehicle.” Pet.14.

That hypothetical looks nothing like this case. For starters, it assumes that the transfer enabled the *creditor* to obtain the car and crash it. Clearly, such a transfer would harm the debtor's estate (by depriving it of the use of the car and destroying its value), and it is appropriate to award the full pre-wreck value of the car in order to restore the debtor's estate to its pre-transfer position. *Supra* 28-29.

But where *nonpossessory* liens are at issue, only *the debtor* possesses and uses the property. The better analogy is thus one where a debtor takes out a \$50,000 car loan from a bank, which is secured by a defective lien. The *debtor* then drives the car and the *debtor* crashes it, leaving the wreckage worth only \$5,000. It would make no sense to make *the bank* pay the lost \$45,000 to the debtor, merely because the car happened to be subject to a defective lien when the debtor crashed it.

Yet that is exactly the outcome the Unsecured Creditors are seeking here. As explained, the Secured Creditors never possessed the property secured by the pre-petition liens, and so there was no "valid basis for finding 'harm' to the estate" as a result of the transfer. Pet.App.18a. To be sure, the property did decline in value, but not because of the pre-petition liens or anything Respondents did. *See Trout*, 609 F.3d at 1112 ("[T]he Code 'does not guarantee that assets recovered will be worth what they were at any relevant valuation date;' it only ensures that the estate will be back in the same place as if the transfer had not occurred."). Rather, it was the result of "the COVID pandemic's effect on the oil and gas market"—which, like other acts of God, would have occurred whether or not the property had a lien on it.

Pet.App.17a n.6. It was the debtor—and only the debtor—that had the ability to prevent that decline in value, for example, by selling the property or buying hedges against a decline in the value of the oil and gas expected to be produced.

Regardless, Petitioner misreads the decision below. Under the Fifth Circuit’s rule, a court has discretion to *either* (1) award the vehicle’s value and restore the property to the creditor, *or* (2) award the wrecked vehicle and no value. Pet.App.19a (“Of course, [Section 550] enables a court in its discretion to select, as alternative preference recoveries, ‘the property transferred’ or ‘the value of such property.’”). So while a court cannot award both value and property, it could give the estate \$50,000 and make it whole.

IV. THIS CASE IS A POOR VEHICLE TO CONSIDER A QUESTION THAT, IN ALL EVENTS, LACKS NATIONAL IMPORTANCE.

Finally, even if the Fifth Circuit’s unchallenged interpretation of the Plan under Texas law were inadequate to sustain its judgment, and even if there were an actual split implicated by the decision below, this still would be a poor vehicle to consider a question with little significance beyond this case.

1. This case arises against the backdrop of a reorganization plan whose terms “were ‘unusual’ in several ways.” Pet.App.9a; *see also* Pet.App.40a (“The Plan is unusual. ... All major parties consented to this unusual arrangement.”). Indeed, before the Fifth Circuit, Petitioner repeatedly emphasized the unique posture of this case and the Plan. The first paragraph of its brief explained that the case “presented special challenges” and that the Plan was “unique.” CA5 Br.

of Appellee at 2. Petitioner even claimed that oral argument was unnecessary because “[t]he appeal principally involves the bankruptcy court’s application of a heavily negotiated plan to the unique facts of this case.” *Id.* at xvi. Then in its en banc petition, Petitioner explained that its argument was contingent on “the Plan’s heavily negotiated, bespoke valuation process.” En Banc Pet’n at 9–10. Given these representations, it is hard to take seriously Petitioner’s assertion to this Court that this case “presents an issue of exceptional importance to the administration of the Bankruptcy Code.” Pet.13.

2. This case is also unusual because it centers on nonpossessory liens. Courts rarely apply § 550 to nonpossessory liens because another provision—§ 551—provides an automatic remedy for avoided liens, permitting the estate to “step[] into the shoes” of the lienholder and assume its rights. *In re Haberman*, 516 F.3d 1207, 1210 (10th Cir. 2008) (Gorsuch, J.). In the mine run of cases, preserving liens for the benefit of an estate under § 551 is adequate satisfaction, so § 550 never comes into play. *See Trout*, 609 F.3d at 1110 (explaining that “avoidance of the lien and its preservation for the estate [can be] sufficient to make the estate whole,” in which case “relief under § 550 ... might be simply duplicative of what the trustee has already received through ... § 551”); 5 COLLIER, *supra*, § 550.02 n.20 (similar). This likely explains why Petitioner can scrounge up only one other § 550 case involving a nonpossessory lien (*Trout*), even though § 550 has been on the books for nearly half a century. It may also explain why there is not a single amicus brief supporting certiorari.

Perhaps attuned to this reality, Petitioner tries to characterize the decision below as “ensnar[ing] a wide range of preferential, fraudulent, and post-petition transfers of property far beyond liens.” Pet.18. And indeed, its parade of horrors is entirely dedicated to transfers of non-lien property: “a wrecked car, perishable inventory, or a machine that has reached the end of its useful life.” Pet.1. But in those scenarios, “the trustee will generally have to pursue recovery [under § 550], because mere avoidance would not bring the property back into the estate’s possession.” *In re Burns*, 322 F.3d 421, 428 (6th Cir. 2003); *see id.* (distinguishing that scenario “[i]n contrast” to “cases involving creditors ... who have nonpossessory interests in the debtor’s property”). So to the extent the Court wishes to consider the (splitless) application of § 550 outside the lien context, it should wait for a case actually raising that fact pattern, where there is no § 551 overlay and where there is a plausible case that the return of the property itself might be inadequate.

3. Petitioner finally claims that the high financial stakes in this case alone warrant certiorari. Pet.29. But this Court routinely denies review when high-dollar judgments are involved. *E.g.*, *Apple Inc. v. Cal. Inst. of Tech.*, 143 S. Ct. 2658 (2023) (No. 22-203) (cert denied despite verdict exceeding \$1 billion). Bankruptcy cases are no exception. *Gettinger v. Picard*, 141 S. Ct. 2603 (2021) (No. 20-1382) (cert denied in context of multi-billion dollar Bernard Madoff Ponzi scheme). Nor could the outcome of this case actually benefit Unsecured Creditors, as Petitioner has agreed to give 90% of any proceeds to third-party litigation funders.

Petitioner's thinly veiled request for factbound error correction is especially inappropriate here, because even if this Court were to grant certiorari and reverse on the narrow question presented, that victory would be Pyrrhic. For one, the Fifth Circuit's Part I holding would remain undisturbed. *Supra* 12-15. In addition, were this case remanded to the Fifth Circuit, Petitioner would have to establish that the Correction Affidavits constituted "transfers" at all and that said "transfers" were avoidable—neither of which is true. And the Fifth Circuit has *already* rejected the key factual predicate for Petitioner's § 550 argument—*viz.* that returning the liens left some harm to the estate unremedied—by holding that there was "not a valid basis for finding 'harm' to the estate" here. Pet.App.18a. For these (and other) reasons, any victory that this Court could give Petitioner will inevitably be erased on remand. There is no reason to waste this Court's time on a splitless, rarely arising question whose answer will not even affect the judgment below.

CONCLUSION

The petition for a writ of certiorari should be denied.

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Respectfully submitted,

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