No. 25-490

IN THE

Supreme Court of the United States

LUJAN CLAIMANTS,

Petitioners,

v.

BOY SCOUTS OF AMERICA, *et al.*,

Respondents.

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

SETTLING INSURERS' BRIEF IN OPPOSITION

JONATHAN D. HACKER
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006

STEPHEN H. WARREN
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, CA 90071-2899

TANCRED SCHIAVONI
SAMANTHA M. INDELICATO
NICOLE MOLNER
O'MELVENY & MYERS LLP
1301 Avenue of the Americas
New York, NY 10019

Counsel for Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America and Indemnity Insurance Company of North America

PHILIP D. ANKER
Counsel of Record
WILMER CUTLER PICKERING HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8830
philip.anker@wilmerhale.com

JAMES P. RUGGERI
JOSHUA D. WEINBERG
RUGGERI PARKS WEINBERG LLP
1875 K Street NW
Washington, DC 20006-1251

JOEL MILLAR
WILMER CUTLER PICKERING HALE AND DORR LLP
2100 Pennsylvania Avenue NW
Washington, DC 20037

Counsel for Hartford Accident and Indemnity Company, First State Insurance Company, Twin City Fire Insurance Company, and Navigators Specialty Insurance Company

ADDITIONAL COUNSEL LISTED ON INSIDE COVER

HARRY LEE
JOHN F. O'CONNOR
STEPTOE LLP
1330 Connecticut Avenue NW
Washington, DC 20036

Counsel for Clarendon National Insurance Company, as successor in interest by merger to Clarendon America Insurance Company; River Thames Insurance Company Limited (as successor in interest to Unionamerica Insurance Company Limited, on its own behalf and in turn as successor to St. Katherine Insurance Company Limited); and Zurich American Insurance Company (as successor to Maryland Casualty Company, Zurich Insurance Company, and American General Fire & Casualty Company)

BRYCE L. FRIEDMAN
DAVID ELBAUM
SIMPSON THACHER & BARLETT LLP
425 Lexington Avenue
New York, NY 10017

Counsel for Federal Insurance Company and Westchester Fire Insurance Company

MARK D. PLEVIN
PLEVIN & TURNER LLP
580 California Street
Suite 1200
San Francisco, CA 94101

Counsel for American Zurich Insurance Company, American Guarantee and Liability Insurance Company, and Steadfast Insurance Company

CORPORATE DISCLOSURE STATEMENT

The Respondents collectively referred to as "Hartford" in this *Brief in Opposition* are Hartford Accident and Indemnity Company, First State Insurance Company, Twin City Fire Insurance Company, and Navigators Specialty Insurance Company. The corporate disclosure statements for the Hartford Respondents are as follows:

Hartford Accident and Indemnity Company. Hartford Accident and Indemnity Company, a Connecticut corporation, is wholly owned by Hartford Fire Insurance Company, a Connecticut corporation. Hartford Fire Insurance Company is a wholly owned subsidiary of The Hartford Insurance Group, Inc., a Delaware corporation. The Hartford Insurance Group, Inc. is a publicly traded corporation that has no parent corporation. To the best of our knowledge, no publicly held corporation currently owns 10% or more of its common stock. This statement is based solely on the absence of required filings with the SEC for investors acquiring an ownership interest of 10% or greater of HIG common stock and speaks solely as of today's date.

First State Insurance Company. First State Insurance Company, a Connecticut corporation, is wholly owned by Heritage Holdings, Inc., a Connecticut corporation. Heritage Holdings, Inc. is a wholly owned company of The Hartford Insurance Group, Inc., a Delaware corporation. The Hartford Insurance Group, Inc. is a publicly traded corporation that has no parent corporation. To the best of our knowledge, no publicly held corporation currently owns 10% or more of its common stock. This statement is based solely on the absence of required filings with the SEC for investors acquiring an

ownership interest of 10% or greater of HIG common stock and speaks solely as of today's date.

Twin City Fire Insurance Company. Twin City Fire Insurance Company, an Indiana corporation, is wholly owned by Hartford Fire Insurance Company, a Connecticut corporation. Hartford Fire Insurance Company is a wholly owned subsidiary of The Hartford Insurance Group, Inc., a Delaware corporation. The Hartford Insurance Group, Inc. is a publicly traded corporation that has no parent corporation. To the best of our knowledge, no publicly held corporation currently owns 10% or more of its common stock. This statement is based solely on the absence of required filings with the SEC for investors acquiring an ownership interest of 10% or greater of HIG common stock and speaks solely as of today's date.

Navigators Specialty Insurance Company. Navigators Specialty Insurance Company, a New York corporation, is wholly owned by Navigators Insurance Company, also a New York corporation. Navigators Insurance Company is wholly owned by The Navigators Group, Inc., a Delaware Corporation. The Navigators Group, Inc. is a wholly owned subsidiary of The Hartford Insurance Group, Inc., a Delaware corporation. The Hartford Insurance Group, Inc. is a publicly traded corporation that has no parent corporation. To the best of our knowledge, no publicly held corporation currently owns 10% or more of its common stock. This statement is based solely on the absence of required filings with the SEC for investors acquiring an ownership interest of 10% or greater of HIG common stock and speaks solely as of today's date.

The Respondents collectively referred to as "Century" in this *Brief in Opposition* are Century Indemnity

Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America and Indemnity Insurance Company of North America; Federal Insurance Company; and Westchester Fire Insurance Company. The corporate disclosure statements for the Century Respondents are as follows:

Century Indemnity Company. Century Indemnity Company is a wholly-owned subsidiary of Brandywine Holdings Corporation. Brandywine Holdings Corporation is a wholly-owned subsidiary of INA Financial Corporation, which is a wholly-owned subsidiary of INA Corporation. INA Corporation is a wholly-owned subsidiary of Chubb INA Holdings Inc., which is a wholly-owned subsidiary of Chubb Group Holdings Inc. Chubb Group Holdings Inc. is a wholly-owned subsidiary of Chubb Limited. Chubb Limited is a publicly held corporation, the shares of which are traded on the New York Stock Exchange.

Federal Insurance Company. Federal Insurance Company is a wholly owned subsidiary of Chubb INA Holdings LLC. Chubb INA Holdings LLC is owned by Chubb Group Holdings Inc. and Chubb Limited. Chubb Group Holdings Inc. is a wholly owned subsidiary of Chubb Limited. Chubb Limited (NYSE: CB) is the only publicly traded company holding more than a 10% ownership interest in Federal Insurance Company.

Westchester Fire Insurance Company. Westchester Fire Insurance Company is a wholly owned subsidiary of Chubb US Holdings Inc., which is a wholly owned subsidiary of Chubb Group Holdings Inc. Chubb Group Holdings Inc. is a wholly owned subsidiary of Chubb Limited. Chubb Limited (NYSE: CB) is the only publicly traded company holding more than a 10% ownership interest in Westchester Fire Insurance Company.

The Respondents collectively referred to as "Clarendon" in this *Brief in Opposition* are Clarendon National Insurance Company, River Thames Insurance Company Ltd., and Zurich American Insurance Company. The corporate disclosure statements for the Clarendon Respondents are as follows:

Clarendon National Insurance Company. Clarendon National Insurance Company is a wholly owned subsidiary of Enstar Holdings (US) LLC, all of whose stock is ultimately owned by Elk Topco, LLC. No publicly held corporation owns 10% or more of its stock.

River Thames Insurance Company Ltd. River Thames Insurance Company Ltd. is a wholly owned subsidiary of Cavello Bay Reinsurance Limited, all of whose stock is ultimately owned by Elk Topco, LLC. No publicly held corporation owns 10% or more of its stock.

Zurich American Insurance Company. Zurich American Insurance Company ("ZAIC") is the successor in interest to Zurich Insurance Company, U.S. Branch, and Maryland Insurance Company, formerly known as Maryland American General Insurance Company. ZAIC is a wholly owned subsidiary of Zurich Holding Company of America, Inc., a Delaware corporation. Zurich Holding Company of America, Inc. is wholly owned by Zurich Insurance Company Ltd, a Swiss corporation. Zurich Insurance Company Ltd is directly owned by Zurich Insurance Group Ltd, a Swiss corporation. Zurich Insurance Group Ltd is the only publicly traded parent company, with a listing on the Swiss stock exchange, and a further trading of American Depositary Receipts.

The Respondents collectively referred to as "Zurich" in this *Brief in Opposition* are American Guarantee and Liability Insurance Company, American Zurich Insurance Company, and Steadfast Insurance Company.

The corporate disclosure statements for the Zurich Respondents are as follows:

American Guarantee and Liability Insurance Company. American Guarantee and Liability Insurance Company is a wholly owned subsidiary of Zurich American Insurance Company, a New York corporation. Zurich American Insurance Company is a wholly owned subsidiary of Zurich Holding Company of America, Inc., a Delaware corporation. Zurich Holding Company of America, Inc. is wholly owned by Zurich Insurance Company Ltd, a Swiss corporation. Zurich Insurance Company Ltd is directly owned by Zurich Insurance Group Ltd, a Swiss corporation. Zurich Insurance Group Ltd is the only publicly traded parent company, with a listing on the Swiss stock exchange, and a further trading of American Depositary Receipts.

American Zurich Insurance Company. American Zurich Insurance Company is a wholly owned subsidiary of Steadfast Insurance Company, an Illinois corporation. Steadfast Insurance Company is a wholly owned subsidiary of Zurich American Insurance Company, a New York corporation. Zurich American Insurance Company is a wholly owned subsidiary of Zurich Holding Company of America, Inc., a Delaware corporation. Zurich Holding Company of America, Inc. is wholly owned by Zurich Insurance Company Ltd, a Swiss corporation. Zurich Insurance Company Ltd is directly owned by Zurich Insurance Group Ltd, a Swiss corporation. Zurich Insurance Group Ltd is the only publicly traded parent company, with a listing on the Swiss stock exchange, and a further trading of American Depositary Receipts.

Steadfast Insurance Company. Steadfast Insurance Company (hereinafter "Steadfast") is a wholly owned subsidiary of Zurich American Insurance

Company, a New York corporation. Zurich American Insurance Company is a wholly owned subsidiary of Zurich Holding Company of America, Inc., a Delaware corporation. Zurich Holding Company of America, Inc. is wholly owned by Zurich Insurance Company Ltd, a Swiss corporation. Zurich Insurance Company Ltd is directly owned by Zurich Insurance Group Ltd, a Swiss corporation. Zurich Insurance Group Ltd is the only publicly traded parent company, with a listing on the Swiss stock exchange, and a further trading of American Depositary Receipts.

TABLE OF CONTENTS

Page

CORPORATE DISCLOSURE STATEMENT.....i

TABLE OF AUTHORITIES ix

INTRODUCTION 1

REASONS FOR DENYING THE PETITION.....2

I. THE Question WHETHER SECTION 363(M) APPLIES TO A SALE UNDER A PLAN DOES NOT MERIT REVIEW 2

A. Petitioners Did Not Raise The Question In The Bankruptcy Court Or District Court.....2

B. There Is No Circuit Split 3

C. The Question Is Not Worthy Of Review 9

1. It does not raise an important question of law that should be decided by this Court 9

2. The Third Circuit's application of section 363(m) to the non-recurring facts of this pre-*Purdue* "free and clear" sale does not undermine the rule of law established in *Purdue*.....11

D. This Case Is A Poor Vehicle To Review The Question Because There May Be An Alternative Ground For Affirmance.....17

E. The Third Circuit's Decision Was Correct.....18

TABLE OF CONTENTS—Continued

Page

II. THE QUESTION WHETHER EQUITABLE MOOTNESS EXISTS DOES NOT MERIT REVIEW 23

CONCLUSION 24

TABLE OF AUTHORITIES

CASES

Page(s)

Adarand Constructors, Inc. v. *Mineta*,
534 U.S. 103 (2001) 23

Czyzewski v. *Jevic Holding Corporation*,
580 U.S. 451 (2017) 15, 16

Harrington v. *Purdue Pharma L.P.*,
603 U.S. 204 (2024) 1, 11, 14, 15, 18

Harrington v. *Purdue Pharma L.P.*,
144 S. Ct. 44 (2023) 13

In re Bardos, 2014 WL 3703923 (B.A.P. 9th Cir.
July 25, 2014).....5

In re Condec, Inc., 225 B.R. 800 (M.D. Fla.
1998) 5

In re Ditech Holding Corporation, 606 B.R. 544
(Bankr. S.D.N.Y. 2019).....5

In re Dow Corning Corporation, 198 B.R. 214
(Bankr. E.D. Mich. 1996).....12

In re Energy Future Holdings Corporation,
949 F.3d 806 (3d Cir. 2020).....3, 6, 9, 22

In re Fieldwood Energy LLC, 93 F.4th 817
(5th Cir. 2024).....3, 6, 8, 20, 22

In re Hope 7 Monroe Street Limited Partnership,
743 F.3d 867 (D.C. Cir. 2014) 7

In re Hopeman Brothers, Inc., 667 B.R. 101
(Bankr. E.D. Va. 2025).....16

In re Made in Detroit, Inc., 414 F.3d 576
(6th Cir. 2005).....3

TABLE OF AUTHORITIES—Continued

Page

In re Paige, 685 F.3d 1160 (10th Cir. 2012).....8

In re Servico, Inc., 161 B.R. 297 (S.D. Fla. 1993).....5

In re Sneed Shipbuilding, Inc., 916 F.3d 405 (5th Cir. 2019).....6, 20, 23

In re Stadium Management Corporation, 895 F.2d 845 (1st Cir. 1990).....6, 8, 20, 22

In re Texas Extrusion Corporation, 844 F.2d 1142 (5th Cir. 1988) 4

In re Trans World Airlines, Inc., 322 F.3d 283 (3d Cir. 2003) 12

In re Trism Inc., 328 F.3d 1003 (8th Cir. 2003).....6, 20, 23

In re WestPoint Stevens, Inc., 600 F.3d 231 (2d Cir. 2010) 6, 22

Klehr v. *A.O. Smith Corporation*, 521 U.S. 179 (1997) 8

MacArthur Company v. *Johns-Manville Corporation*, 837 F.2d 89 (2d Cir. 1988).....12

Miami Center Limited Partnership v. *Bank of New York*, 838 F.2d 1547 (11th Cir. 1988).....4, 5

MOAC Mall Holdings LLC v. *Transform Holdco LLC*, 598 U.S. 288 (2023) 21

RadLax Gateway Hotel, LLC v. *Amalgamated Bank*, 566 U.S. 639 (2012).....19

Trinity 83 Development LLC v. *Colfin Midwest Funding, LLC*, 917 F.3d 599 (7th Cir. 2019) 6

TABLE OF AUTHORITIES—Continued

Page

DOCKETED CASES

Harrington v. *Purdue Pharma L.P.*, No. 23-124 (U.S.) 14

Lujan Claimants v. *Boy Scouts of America*, No. 23A741 (U.S.) 13, 14

STATUTES AND RULES

11 U.S.C.
§ 103 ..... 18, 20
§ 105 12
§ 363 ..... 1-9, 11-22
§ 524 ..... 11, 12
§ 1123 ..... 10, 15, 19-21
§ 1125 9
§ 1126 9
§ 1129 ..... 9-11, 15, 18-20

Sup. Ct. Rule 10 8

INTRODUCTION

Petitioners' questions do not merit review.

Petitioners did not raise, in either the bankruptcy court or district court below, the question whether section 363(m) of the U.S. Bankruptcy Code applies to a sale under a plan of reorganization, thus forfeiting their argument that it does not.

In any event, the question does not present a circuit split. All circuits addressing the question agree that an appeal from an unstayed order authorizing a sale under a plan to a good-faith purchaser must be dismissed as moot if the requested relief would affect the validity of the sale, just as section 363(m) mandates. And the Third Circuit's straightforward application of that statutory command to dismiss appeals that sought to invalidate sales that closed before this Court issued its decision in *Harrington* v. *Purdue Pharma L.P.*, 603 U.S. 204 (2024), does not warrant review. As the Third Circuit stressed, parties today cannot obtain confirmation of a plan containing nonconsensual third-party releases that violate *Purdue*. Thus, application of section 363(m) to this case in no way undercuts the impact of *Purdue* on future plans.

This case also presents a poor vehicle to review the question because there may well be an alternative ground for affirmance. Judge Rendell concurred in the dismissal of Petitioners' appeals on grounds that they are equitably moot, a question the majority found unnecessary to reach given its dismissal of the appeals under section 363(m).

Finally, the question whether equitable mootness exists does not merit review. Petitioners acknowledge the question does not present a circuit split, and the

majority did not even address whether Petitioners' appeals are equitably moot.

REASONS FOR DENYING THE PETITION

I. THE QUESTION WHETHER SECTION 363(M) APPLIES TO A SALE UNDER A PLAN DOES NOT MERIT REVIEW

A. Petitioners Did Not Raise The Question In The Bankruptcy Court Or District Court

At the outset, Petitioners forfeited their argument that section 363(m) does not apply to a sale under a bankruptcy plan of reorganization. They failed to raise the issue below in the bankruptcy court or on appeal to the district court,[1] even though the Chapter 11 Plan in this case provided that it "shall constitute a motion … pursuant to section[] 363" for the sale of the insurance policies, and the Confirmation Order approved that sale "pursuant to section[] 363," ordered that the sale was "free and clear" of interests "pursuant to section[] 363," and found that the "Settling Insurers are each good faith purchasers … within the meaning of section 363(m)." C.A.J.A.-A00949-A00950 (Plan art. V.S.4); Pet. App. 312a, 319a-320a (Confirmation Order ¶¶ II.L, III.4). Petitioners argued on the merits that the insurance policy sales did not satisfy the requirements of sections 363(b) and (f), but they never objected that those provisions, and the bankruptcy court's section 363(m) good-faith purchaser finding, were inapplicable to plan sales in the

[1] *See* C.A.J.A.-A10664-A10710, A11930-A11944, A05419-A05726, A06042-A06234, A13234-A13249, A13250-A13254, A13369-A13484, A14058-A14128, A14844-A14932, A19673-A19718, A19782-A19952, A19953-A20117; Bankr. D. Del. Dkt. 9693, No. 20-10343.

first place.[2] This Court should not grant the petition to review a legal issue that Petitioners did not raise until they got to the Third Circuit, long after the Boy Scouts' Chapter 11 Plan had gone into effect and the sales of the insurance policies had closed.

B. There Is No Circuit Split

1. On the merits, the courts of appeal that have addressed the issue all agree on the correct rule of law: an appeal from an order authorizing a sale under a Chapter 11 plan of reorganization to a good-faith purchaser is moot and must be dismissed if the appellant (i) fails to obtain a stay pending appeal and (ii) seeks relief that would affect the validity of the sale. This rule follows from the express terms of Bankruptcy Code section 363(m). 11 U.S.C. § 363(m) ("The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale … of property does not affect the validity of a sale … under such authorization to an entity that purchased … such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale … were stayed pending appeal.").

As petitioners acknowledge (Pet. 21), the Sixth Circuit agrees with the Third Circuit that section 363(m) mandates this result. *See In re Made in Detroit, Inc.*, 414 F.3d 576, 581-583 (6th Cir. 2005) (holding appeal challenging sale under a plan was moot under section 363(m)); Pet. App. 37a-52a; *In re Energy Future Holdings Corp.*, 949 F.3d 806, 819-821 (3d Cir. 2020). So does the Fifth Circuit. *See In re Fieldwood Energy LLC*, 93

---

[2] *See* C.A.J.A.-A10698-A10702, A11940-A11942, A05558, A05568-A05570, A05575-A05578, A14900, A14903-A14912, A20044, A20063-A20064, A20067, A20074.

F.4th 817, 824-825 (5th Cir. 2024) (holding appeal challenging provisions integral to sale under a plan was moot under section 363(m)).[3]

The sole authority that Petitioners and their amici cite (Pet. 20; Professors' Br. 23) as purportedly conflicting with the Third, Fifth, and Sixth Circuit decisions—*Miami Center Limited Partnership* v. *Bank of New York*, 838 F.2d 1547 (11th Cir. 1988)—does no such thing. Though taking a slightly different doctrinal path, the Eleventh Circuit follows the same substantive rule of law as its sister circuits. To be sure, *Miami Center* suggested, in dicta, that section 363(m) applies only to sales by a trustee under section 363(b) or (c) outside of a plan. 838 F.2d at 1553. But "the Eleventh Circuit, like other circuits, has recognized the continuing viability and applicability of the mootness standard in situations other than transfers by a trustee under § 363(b) or (c)." *Id.* *Miami Center* thus held that an appeal from an unstayed order that authorized a sale of assets under a Chapter 11 plan to a good-faith purchaser was moot. *Id.* at 1554-1557 & n.7 (to "set aside the sale provision of the reorganization plan" would "st[an]d the law of mootness on its head," contrary to "the central principle that finality of judgments and certainty are to be protected where there have been sales to good faith purchasers").

In short, the Eleventh Circuit agrees with the Third, Fifth, and Sixth Circuits that an unstayed sale under a

---

[3] The Fifth Circuit decision cited by the concurrence below (Pet. App. 81a) and Petitioners' amici (Professors' Br. 23-24 n.47) did not reach the question whether section 363(m) applies to a sale under a Chapter 11 plan. *See In re Texas Extrusion Corp.*, 844 F.2d 1142, 1165 (5th Cir. 1988) ("We … decline … to rule on the propriety of the application of 11 U.S.C. § 363 to the sale of property pursuant to a plan of reorganization.").

plan to a good-faith purchaser cannot be reversed or modified on appeal, and thus an appeal challenging the validity of the sale must be dismissed as moot. *See, e.g.*, *In re Condec, Inc.*, 225 B.R. 800, 805-806 (M.D. Fla. 1998) (explaining that mootness rule under *Miami Center* protects sales under "reorganization plans" from reversal on appeal "'where there have been sales to good faith purchasers'" (quoting *Miami Ctr.*, 838 F.2d at 1555 n.7)); *In re Servico, Inc.*, 161 B.R. 297, 302 (S.D. Fla. 1993) ("It is well-settled that where no stay pending appeal is obtained and action is taken under the reorganization plan by good faith purchasers in reliance on the confirmation order, the appeal becomes moot," citing *Miami Center*, 838 F.2d at 1553-1555).[4]

2. The two other supposed circuit splits that Petitioners urge (Pet. 21-24) are not at issue.

a. The first supposed split is no split at all. Petitioners contend that the circuits are divided on whether section 363(m) protects "only" the sale, or also the integral terms of the sale. Pet. 21-23. But as petitioners acknowledge (Pet. 22), the First, Second, Third, Fifth, and Eighth Circuits all agree that an appeal seeking relief that would modify the integral terms of a sale on which the purchaser relied when it agreed to buy the assets would necessarily affect "the validity of the sale" in

[4] The two lower court decisions cited by Petitioners' amici (Professors' Br. 24) were decided by a bankruptcy court or by a panel of bankruptcy judges and do not present a split at all, let alone a Circuit split. *See In re Bardos*, 2014 WL 3703923, at *8-9 (B.A.P. 9th Cir. July 25, 2014) (noting that the bankruptcy court failed to make a finding that buyers were good-faith purchasers for purposes of section 363(m), but dismissing appeal seeking to undo sale under plan in any event as equitably moot); *In re Ditech Holding Corp.*, 606 B.R. 544, 595 (Bankr. S.D.N.Y. 2019) (denying confirmation of plan and not addressing section 363(m) at all).

contravention of section 363(m). *See In re Stadium Mgmt. Corp.*, 895 F.2d 845, 849 (1st Cir. 1990) ("It is axiomatic that one cannot challenge a central element of a purchase … without challenging the validity of the sale itself." (internal quotation marks omitted)); *accord In re WestPoint Stevens, Inc.*, 600 F.3d 231, 248-251 (2d Cir. 2010); Pet. App. 34a, 42a-43a (decision below); *Energy Future*, 949 F.3d at 821; *Fieldwood*, 93 F.4th at 824-825; *In re Sneed Shipbuilding, Inc.*, 916 F.3d 405, 410 (5th Cir. 2019); *In re Trism Inc.*, 328 F.3d 1003, 1006-1008 (8th Cir. 2003).

Petitioners' proffered split does not reflect disagreement among the circuits about this rule of law, but rather simply different outcomes resulting from the different facts involved.

Thus, in *Sneed Shipbuilding*, the Fifth Circuit held that an appeal challenging a term governing how the sale proceeds were disbursed was statutorily moot under section 363(m) because that term was "an essential feature of the sale" under the facts of that case: the buyer "likely would have walked away from the deal" if the sale proceeds had not been paid to settle a competing claim of ownership to the assets, so that the buyer could get a clean title. 916 F.3d at 408, 410; *accord WestPoint*, 600 F.3d at 251 n.11 (section 363(m) barred challenge to distribution of sale proceeds because the "distributions … were integral to the sale itself").

By contrast, in the Seventh and D.C. Circuit cases that petitioners cite (Pet. 22-23), the appeals were not statutorily moot under section 363(m) because, under the facts of those cases, there was no indication that the buyers cared what the bankruptcy estate would do with the sale proceeds after the buyers purchased the assets. *See Trinity 83 Dev. LLC* v. *Colfin Midwest Funding*,

LLC, 917 F.3d 599, 601-603 (7th Cir. 2019); *In re Hope 7 Monroe St. Ltd. P'ship*, 743 F.3d 867, 871-873 (D.C. Cir. 2014).

b. Petitioners' other supposed circuit split—whether section 363(m) requires not only an authorized sale, but a sale that has occurred—also raises an issue not presented in this case.

The sales of the insurance policies here were not merely authorized. They occurred. As both the Plan and Confirmation Order provided, the policies were sold back to the Settling Insurers when the Plan went effective in April 2023. Pet. App. 316a (Confirmation Order ¶ II.P) ("the Abuse Insurance Policies shall be sold by the Debtors to the applicable Settling Insurance Companies … on the Effective Date"); C.A.J.A.-A00975 (Plan art. IX.A.4) (same); Pet. App. 25a (Plan's Effective Date was April 19, 2023).

The Third Circuit so held. The concurring opinion asserted that the sales had not yet all occurred, but the majority correctly rejected that assertion as "mistaken" because "as is borne out in the Plan, the Insurance Policy Buyback was completed on the Effective Date, meaning 'the policies have been sold.'" Pet. App. 37a.[5]

---

[5] Contemporaneously with the sales of the policies on the Plan's Effective Date in April 2023, the Settling Insurers paid nearly $200 million directly to the Settlement Trust, which has since been paying distributions to holders of abuse claims, and the full balance of their $1.6 billion contribution into escrow. Pet. App. 58a; Pet. App. 316a, 401a-402a (Confirmation Order ¶¶ II.P, 73); C.A. Dkt. 112-1 at p.9 ¶ 14 (declaration of BSA restructuring advisor that, since the Effective Date, BSA had sold the policies to the Settling Insurers in exchange for such contributions). In rejecting the assertion in the concurring opinion that the sales had not yet all occurred, the majority added that "even if that were not the case," section 363(m) does not require that a sale be entirely

Nor do Petitioners identify an actual conflict in authority. As in this case, the First, Fifth, and Tenth Circuit cases that Petitioners cite (Pet. 24) involved sales that had occurred. *Stadium*, 895 F.2d at 846-847; *Fieldwood*, 93 F.4th at 821, 824-825; *In re Paige*, 685 F.3d 1160, 1165, 1169, 1173-1175, 1190-1191 (10th Cir. 2012). The Fifth and Tenth Circuit cases merely held that section 363(m) did not moot the appeals at issue because those sales expressly reserved for post-sale determination the issues raised in the appeals. *Paige*, 685 F.3d at 1190-1191 (sale order provided that buyer bought assets subject to defenses of third party claiming title to the assets); *Fieldwood*, 93 F.4th at 824-825 (discussing precedent in which bankruptcy court reserved for later determination whether sale would be free and clear of appealing creditor's claim). Here, by contrast, the Plan and Confirmation Order provided that the sales of the insurance policies to the Settling Insurers on the Plan's effective date were free and clear of all claims and interests, without any reservation for post-sale determination of the challenges raised by Petitioners. Pet. App. 316a, 319a-321a (Confirmation Order ¶¶ II.P, III.4); C.A.J.A.-A00975 (Plan art. IX.A.4).

---

consummated; "the fact that every last cent has not been handed over does not mean a sale has not occurred." Pet. App. 38a-39a. Petitioners urge the Court to adopt the concurring opinion's contrary view that the sales had not yet occurred. Pet. 23. But this Court does not ordinarily review such fact-bound determinations. Sup. Ct. Rule 10; *Klehr* v. *A.O. Smith Corp.*, 521 U.S. 179, 193 (1997) (declining to consider "fact-based rule-application issue" pursuant to writ of certiorari where there is "no reason to believe that there is any very obvious or exceptional error below").

C. The Question Is Not Worthy Of Review

1. It does not raise an important question of law that should be decided by this Court

Even beyond the absence of any division of authority, the question whether section 363(m) applies only to sales outside a plan is not cert-worthy on its own terms. If section 363(m)'s protections were held to apply solely to sales approved as standalone orders, but not to sales approved as part of an order confirming a Chapter 11 plan of reorganization, parties seeking to maximize the value of estate assets by affording buyers the protections of section 363(m) could simply file both a motion for approval of a sale and a reorganization plan and provide that each (the sale and the plan) is dependent on the other. *Cf. Energy Future*, 949 F.3d at 813-815, 819-820 (order approving sale and merger was conditioned on confirmation of plan, which was confirmed by order authorizing consummation of the sale and recognizing the buyer as a good-faith purchaser within the meaning of § 363(m)). The result would simply be two orders, rather than one, but nothing meaningful would change.

Nor would a rule limiting section 363(m) to standalone orders promote greater scrutiny of sales. As the Third Circuit observed below, if anything, "the opposite is true." Pet. App. 50a n.18. A sale of assets under section 363(b) outside a plan is not subject to a creditor vote, and "courts require only that the debtor exact its sound business judgment in good faith." *Id.*; 11 U.S.C. § 363(b). By contrast, a sale under a plan cannot be approved unless (i) the plan is approved by the vote of a requisite majority of creditors solicited after receipt of a court-approved disclosure statement, 11 U.S.C. §§ 1125, 1126, and (ii) the court determines that the debtor has "carr[ied] its burden of satisfying § 1129(a)'s sixteen

statutory requirements" for confirming a plan, plus additional statutory requirements if the debtor "seeks to 'cram down' a plan over the objection of a nonconsenting impaired class" of creditors. Pet. App. 50a n.18; 11 U.S.C. §§ 1123, 1129(a)-(b).

This case illustrates the point. By providing for a sale of the insurance policies under the Plan, the Debtors and Settling Insurers did not "skirt [the Code's] protections" but rather "faced them head-on and subjected the Insurance Policy Buyback to the Code's stringent confirmation requirements," which "draws greater scrutiny" and "a more exacting standard to gain approval." Pet. App. 51a & n.18. In addition, the Plan provided that it could not go into effect unless and until the district court affirmed the bankruptcy court's plan-confirmation order, requiring a second level of judicial review of plan confirmation that would not typically be available in connection with a stand-alone sale motion. C.A.J.A.-A00975 (Plan art. IX.B.1).

As the Third Circuit explained, the "Insurance Policy Buyback was included in the Debtors' solicitation and supplemental disclosure statements and subject to objection at the confirmation hearing." Pet. App. 49a. "All creditors entitled to vote on the Plan—including … abuse claimants—had adequate notice that the Plan, if confirmed, would authorize the Insurance Policy Buyback." *Id.* Yet, the "creditors chose to vote in favor of the Plan," "including the class of creditors to which [Petitioners] … belong," which approved the Plan with a super-majority of 85% of abuse claimants who voted. Pet. App. 49a & n.17. After Petitioners and various other parties objected to the Plan, the bankruptcy court "held a twenty-two-day-long confirmation hearing," receiving "testimony from twenty-six witnesses and over 1,000 exhibits," "before issuing a 269-page confirmation opinion,

diligently stepping through § 1129's confirmation requirements." Pet. App. 49a-50a. It further held "two more hearings before issuing supplemental findings of fact and conclusions of law and the Confirmation Order." *Id.* The district court, in turn, held two days of oral argument and issued its own 155-page opinion affirming the Confirmation Order on the merits. Pet. App. 25a, 94a. A stand-alone sale motion would not have been subject to greater scrutiny than the Plan was.

2. The Third Circuit's application of section 363(m) to the non-recurring facts of this pre-*Purdue* "free and clear" sale does not undermine the rule of law established in *Purdue*

Contrary to Petitioners' and their amici's contentions (Pet. 27-29; Professors' Br. 11-18), the decision below does not permit parties to flout *Purdue* in future cases by purportedly repackaging *Purdue*-violating third-party releases (or any other unlawful terms) as part of a sale under a plan. That is true for two reasons.

1. To the extent that the decisions below simply approved a sale of the insurance policies back to the Settling Insurers "free and clear" of third-party interests in the policies under Bankruptcy Code section 363(f), nothing in *Purdue* calls that approval into question.

Purdue did not address a free and clear sale under section 363(f). It instead addressed nonconsensual releases and injunctions that effectively discharged creditors' claims against Purdue's non-debtor owners, the Sacklers. And it invalidated those releases because it found nothing in the text of the Bankruptcy Code, outside of section 524(g) in asbestos cases, that authorized such relief. *Purdue*, 603 U.S. 214-227.

By contrast, "free and clear" sales have an explicit statutory basis in the Bankruptcy Code. Section 363(f) authorizes the sale of estate assets "free and clear" of "any" third-party "interest" in the sold assets. *See* 11 U.S.C. § 363(f); *see also id.* § 105(a) (authorizing any "order … necessary or appropriate to carry out the provisions of this title"). Like section 524(g) in asbestos cases, section 363(f) authorizes the nonconsensual termination of creditors' interests in property sold to non-debtors, i.e., the purchasers of estate assets. *See id.* § 363(f); *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-291 (3d Cir. 2003); *MacArthur Co.* v. *Johns-Manville Corp.*, 837 F.2d 89, 91-94 (2d Cir. 1988). The Code protects such creditors, in turn, through court-fashioned "adequate protection," typically relief channeling the affected creditors' interests in the sold property to the sale proceeds. *See* 11 U.S.C. § 363(e); *Johns-Manville*, 837 F.2d at 91-94. Courts have thus long recognized that a debtor may sell its insurance policies back to the issuing insurer free and clear of any alleged rights of third parties, including additional insureds or the debtor's tort claimants who—like Petitioners here—assert rights to bring a "direct action" against the debtor's liability insurer for coverage under the policies. *See Johns-Manville*, 837 F.2d at 91-94; *In re Dow Corning Corp.*, 198 B.R. 214, 233-238, 244-245 & n.24 (Bankr. E.D. Mich. 1996); Pet. App. 523a-524a (bankruptcy court opinion below).

Nothing in *Purdue* calls any of this authority into question.

2. To the extent that the bankruptcy and district courts approved non-consensual, third-party releases beyond the ambit of section 363(f), the courts acted in accordance with the then-prevailing law of the Third Circuit, before this Court decided *Purdue*. But as the Third Circuit made clear, its application of section

363(m) to a sale completed before *Purdue* does not permit parties in future cases to obtain confirmation of plans that include, as part of a sale under the plan, third-party releases that violate *Purdue*.

"At the time the Bankruptcy and District Courts reviewed the legality of the Plan, nonconsensual third-party releases were permissible in this Circuit." Pet. App. 52a n.19. "Only during the pendency of these appeals did the Supreme Court decide *Purdue* and abrogate our precedent on that issue." *Id.*

Indeed, the Boy Scouts Plan had gone effective and the insurance policies had already been sold back to the Settling Insurers (in April 2023) before this Court even granted certiorari in *Purdue* (in August 2023). *See Harrington* v. *Purdue Pharma L.P.*, 144 S. Ct. 44 (2023) (Mem.). Thereafter, Petitioners unsuccessfully sought a stay pending appeal from the lower courts and then, in February 2024, from this Court, based on the possibility that the Court would hold in *Purdue* that nonconsensual, third-party releases are unauthorized by the Bankruptcy Code.[6] Petitioners made that request two months after this Court had heard argument in *Purdue* on December 4, 2023. BSA and the Settling Insurers filed oppositions to Petitioners' stay application, explaining that BSA's Plan had already gone into effect and that Petitioners' appeals were statutorily moot under section 363(m).[7] This Court then denied Petitioners' application

---

[6] Application for a Stay, submitted to Justice Alito, *Lujan Claimants* v. *Boy Scouts of Am.*, No. 23A741 (U.S. Feb. 5, 2024).

[7] *See* Respondent Settling Insurers' Response to Application for Stay by the Dumas & Vaughn and Lujan Claimants 4-7, *Lujan Claimants* v. *Boy Scouts of Am.*, No. 23A741 (U.S. Feb. 15, 2024); Response in Opposition to Application for a Stay from the Debtor Boy Scouts of America and Other Scouting-Related Entities 10-12,

for a stay.[8] And when the Court issued its decision in *Purdue*, it stated that it was not "address[ing] whether [its] reading of the bankruptcy code would justify unwinding reorganization plans that have already become effective and been substantially consummated." 603 U.S. at 226.

Given this "temporal happenstance," the Third Circuit concluded that section 363(m) of the "Bankruptcy Code prevents us from disrupting the nonconsensual third-party releases in BSA's Plan at this late stage," because those releases were integral to the sales of the insurance policies that were at the heart of the Plan, and those sales had already been consummated. Pet. App. 76a.

Simply put, this case turned on the unique timing of the relevant events in which the bankruptcy court had confirmed the Plan and it had gone effective, all before this Court issued its decision in *Purdue*. And as noted, this Court stressed what *Purdue* "[i]mportant[ly] … d[id] not" decide: *Purdue* neither addressed plans that had already gone effective, "[n]or do we have occasion to express a view on … a plan that provides for the full satisfaction of claims against a third-party nondebtor." 603 U.S. at 226. Here, the bankruptcy court made findings

---

22-26, *Lujan Claimants* v. *Boy Scouts of Am.*, No. 23A741 (U.S. Feb. 15, 2024); *see also* Brief for the Boy Scouts of America as Amicus Curiae in Support of Respondent 23-29, *Harrington* v. *Purdue Pharma L.P.*, No. 23-124 (U.S. Oct. 27, 2023).

[8] *Lujan Claimants* v. *Boy Scouts of Am.*, No. 23A741 (U.S. Feb. 22, 2024).

of fact, affirmed by the district court, that the Plan would pay all abuse claims in full. Pet. App. 139a, 503a-506a.[9]

Accordingly, this case does not present a recurring legal issue worthy of review. In the future, if parties propose a plan that contains third party releases that violate *Purdue*, the Bankruptcy Code and this Court's decision in *Purdue* will require the bankruptcy court to deny confirmation of the plan. *See* 11 U.S.C. §§ 1123, 1129; *Purdue*, 603 U.S. at 214-226. The plan will not be confirmed, there will be no resulting appeal, and section 363(m) will never come into play. (And if a plan contravening *Purdue* were nonetheless to be confirmed, the district courts and courts of appeal can grant a stay pending appeal, rendering section 363(m) inapplicable once more.) The same is true of any other unlawful term that parties might propose as a condition of a sale under a plan. *See* 11 U.S.C. § 1129(a)(1), (3) (court may confirm plan "only" if the plan "complies with the applicable provisions" of the Bankruptcy Code and "has been proposed in good faith and not by any means forbidden by law"). The decision below accordingly does not undermine *Purdue* or enable parties to use plan sales to make an "end run" (Pet. 27) around it.

For much the same reasons, the decision below does not contravene this Court's decision in *Czyzewski* v. *Jevic Holding Corporation*, 580 U.S. 451 (2017), as

---

[9] Although the *amicus* brief submitted by the Joy and Garrison Claimants disputes those findings and urges the Court to grant review to void the Plan, those Claimants did not present any contrary evidence at the plan-confirmation hearing or file an appeal from the plan-confirmation order, and *amici* fail to identify any cert-worthy legal question that the Court should decide. As noted, the Court does not ordinarily grant certiorari to review assertedly erroneous factual findings. *Supra* note 5.

Petitioners' amici (but not Petitioners themselves) contend. Professors' Br. 18-20. *Jevic* did not address section 363(m) or a sale under a plan. It held that an order dismissing a Chapter 11 case could not distribute assets to creditors contrary to the priority rules that would apply to a Chapter 11 plan. 580 U.S. at 464-471. Nothing in the decision below permits that or allows parties to use a sale under a plan to flout Chapter 11's plan-confirmation requirements or *Purdue*.

Finally, review is not warranted because, according to Petitioners, a few bankruptcy decisions have purportedly misapplied *Purdue*. Pet. 7, 27. As an initial matter, Petitioners' charge appears to be overblown. The bankruptcy court's decision in *Hopeman*, for example, did not involve third-party releases under a plan, but a standalone sale of insurance policies back to settling insurers "free and clear" of creditors' claims under section 363(b) and (f). *In re Hopeman Bros., Inc.*, 667 B.R. 101, 108 (Bankr. E.D. Va. 2025). *Hopeman* rejected an argument that *Purdue* bars free-and-clear sales under section 363(f). *Id.* at 106-108. But as discussed, nothing in *Purdue* suggests otherwise.

In any event, even if Petitioners were correct that a few bankruptcy decisions may have misapplied *Purdue*, that does not provide a compelling reason to grant review in this case. The Court issued its decision in *Purdue* only last year, in June 2024. The lower courts are only beginning to grapple with whether and how *Purdue*'s holding applies to varying circumstances. Even if a major disagreement were to emerge among the lower courts in the wake of *Purdue* on an important question of law warranting this Court's review, the Court would benefit from further percolation of the issues, including in the courts of appeals.

D. This Case Is A Poor Vehicle To Review The Question Because There May Be An Alternative Ground For Affirmance

Review in this case of the question whether section 363(m) applies to a sale under a bankruptcy plan is also not warranted because its resolution may well not alter the outcome here. Judge Rendell concurred in the decision below on grounds that there is an alternative ground for affirmance, independent of statutory mootness: namely, that Petitioners' appeals should be dismissed as equitably moot. Pet. App. 77a-78a & n.1, 91a. The majority found it unnecessary to resolve that question, given its dismissal of the appeals under section 363(m). Pet. App. 63a n.24 ("[H]aving concluded the Lujan and D&V Claimants' appeals are statutorily moot, we need not resolve whether they are equitably moot."). But were this Court to grant review and reverse on the question of statutory mootness, the majority would presumably then reach that question on remand.

Indeed, the majority *did* reach equitable mootness with respect to the separate appeals brought by certain non-settling insurers, after concluding that those appeals were not statutorily moot. Pet. App. 52a. In addressing that issue, the majority agreed with Judge Rendell that the Plan had been substantially consummated, satisfying the first requirement for equitable mootness. Pet. App. 56a-61a. But the majority concluded that the second (and final) requirement for equitable mootness was not met because the "minor changes" the non-settling insurers sought would not "knock[] the props out from under the Plan," since those appeals would not "disrupt[] the funding to the Settlement Trust or the bargain struck between BSA and the Settling Insurers." Pet. App. 62a (internal quotation marks omitted). Petitioners' appeals, by contrast, seek

relief that would strike at the heart of the bargain between BSA and the Settling Insurers and the consummated sales of the insurance policies that provide the majority of the Settlement Trust's committed funding.

Accordingly, this is not a good case in which to review the statutory mootness question because this Court's intervention would not alter the outcome of this case if either or both of the Judges in the majority were to agree with Judge Rendell that Petitioners' appeals are equitably moot. And even beyond that issue, the question presented would not be outcome-determinative if the Third Circuit were to reach the question left open by *Purdue* and affirm the confirmation order on grounds that the third-party releases were valid in light of the bankruptcy court's factual findings that the Plan would provide full satisfaction of the affected abuse claims. 603 U.S. at 226-227; Pet. App. 139a, 503a-506a.

E. The Third Circuit's Decision Was Correct

If all of that were not enough to deny the petition, the Third Circuit's decision below was right.

1. The Third Circuit correctly held that section 363(m) applies to sales under a plan of reorganization. Pet. App. 39a-41a. Nothing in section 363(m) says that its rule of mootness applies only to sales outside of a plan, not those in a plan. To the contrary, the Bankruptcy Code provides that the provisions of Chapter 3 of the Code—including sections 363(b), (f), and (m)—apply in a Chapter 11 case and that a Chapter 11 plan must "compl[y] with the applicable provisions of this title." 11 U.S.C. §§ 103(a), 1129(a)(1). Section 1129's text demonstrates that Congress contemplated that these provisions would work together—it provides that a sale under a plan of a secured creditor's collateral is "subject to section 363(k)," a provision that, like section 363(m), applies

by its terms to sales authorized under section 363(b). *Id.* §§ 363(k), 1129(b)(2)(A)(ii); *RadLax Gateway Hotel, LLC* v. *Amalgamated Bank*, 566 U.S. 639, 644-647 (2012) (holding that plan sale of collateral is subject to credit bidding under § 363(k)).

Petitioners and their amici attempt to make much of section 363(*l*), which provides that sales of property under subsections (b) and (c) and under a plan may be approved notwithstanding contractual restrictions that terminate the debtor's interest in such property if the debtor becomes insolvent or files for bankruptcy. *See* 11 U.S.C. § 363(*l*). From that innocuous subsection, which specifically mentions a sale under a plan, Petitioners and their amici suggest that section 363's other provisions, including section 363(m), do not apply to a plan sale unless the provision specifically mentions the term "plan" as distinguished from section 363(b) or (c). On the contrary, the import of subsection (*l*) is that sales may be effectuated through a motion prior to plan confirmation under subsection (b) or (c) alone, or through a plan to which those two provisions apply together with the other applicable provisions of the Bankruptcy Code that govern the terms permissible in a plan.

At most, the Code contemplates that a plan of reorganization need not invoke section 363 to permit the sale of the debtor's property. *See* 11 U.S.C. §§ 363(*l*), 1123(a)(5)(D), 1123(b)(4). But here, the Plan expressly included a motion to sell the insurance policies under section 363, subject to section 363(m). C.A.J.A.-A00949-A00950 (Plan art. V.S.4); Pet. App. 312a, 319a-320a (Confirmation Order ¶¶ II.L, III.4). That process satisfied any formal requirement that the sales be effectuated under section 363(b) or (c). The notion that the sales may nonetheless now be attacked, long after the policies were sold, simply because that motion under section 363 was

filed together with a plan (as opposed to being in a separate piece of paper) has no basis in the Code's text. Nothing in section 363(*l*) (or in sections 1123(a)(5)(D) and 1123(b)(4)) prohibits—and the Code's other provisions plainly permit—a plan, like the one at issue in this case, that provides for a sale of estate assets pursuant to section 363(b), subject to section 363(m)'s protections. 11 U.S.C. §§ 103(a), 1123(b)(6), 1129(a)(1).

There is no reason to think that Congress intended section 363's protections for buyers to apply only outside a plan, but not in a plan. Section 363(m) reflects an important congressional policy "to promote the … finality" of sales, which "serves Congress's goals of attracting investors and helping effectuate debtor rehabilitation." Pet. App. 33a-34a (internal quotation marks and alterations omitted); *Sneed Shipbuilding*, 916 F.3d at 409-410; *Trism*, 328 F.3d at 1006. By assuring good-faith purchasers that they may purchase assets out of bankruptcy without fear that their purchase will later be reversed or modified on appeal, section 363(m) "encourage[s] bidding for estate property," *Fieldwood*, 93 F.4th at 822, and "enhances the value of the debtor's assets sold in bankruptcy." *Trism*, 328 F.3d at 1006; *Stadium*, 895 F.2d at 847-848. Those same policies are also embodied in section 363(f), which encourages buyers to pay full value for estate assets by assuring buyers they will acquire title to the assets "free and clear" of creditors' interests in the assets. 11 U.S.C. § 363(f). Nothing in the Code suggests that Congress intended these statutory protections for buyers to promote value-maximizing sales only outside a plan, but not in a Chapter 11 plan of reorganization, the primary way that Congress contemplated debtors would reorganize in Chapter 11.

2. The Third Circuit correctly held that Petitioners' appeals were statutorily moot under section 363(m).

Under the statute's express terms, section 363(m) precludes an appellate court from fashioning any relief that would "affect the validity of a sale" to a good-faith purchaser. *See* 11 U.S.C. § 363(m); *MOAC Mall Holdings LLC* v. *Transform Holdco LLC*, 598 U.S. 288, 299 (2023). The Third Circuit affirmed the bankruptcy and district court's findings that the releases were integral to the insurance sales and correctly held that Petitioners' appeals would unquestionably "affect the validity" of those long-completed sales here.

Contrary to Petitioners' and their amici's contentions, the Third Circuit did not hold that section 363(m) precludes any appellate review of any plan's terms whenever a plan includes a section 363(b) sale of assets. Pet. 32-33; Professors' Br. 21-25. To the contrary, the court emphasized "the narrowness" of its decision under "the limited scope of § 363(m)": "the statute prohibits the reversal or modification of § 363(b) *sales*; it does not moot appellate review of … entire reorganization *plans*." Pet. App. 44a-45a. Appeals that "would not … 'affect the validity of the sale' fall[] outside the ambit of § 363(m)," and "given the breadth of issues a reorganization plan may resolve that do not necessarily implicate the terms of a § 363(b) sale, *see* 11 U.S.C. § 1123(a)-(b), the vast majority of challenges, no doubt, will fall into this category." Pet. App. 45a; Pet. App. 32a-34a. The Third Circuit thus held that the separate appeals by the non-settling insurers in this case were *not* statutorily moot, because those appeals challenged aspects of the Debtors' Plan that would not affect the insurance policy sales. Pet. App. 35a-36a. And it reversed the Confirmation Order in part because one provision effectuated a nonconsensual release of claims by certain of the appealing insurers against non-debtors without full satisfaction

of the released claims, in violation of *Purdue*. Pet. App. 69a-75a.

But Petitioners' appeals, by contrast, sought relief that would directly affect the validity of the insurance sales. "[T]he nonconsensual third-party releases challenged by the Lujan and D&V Claimants go to the heart of the Bankruptcy Court's § 363(b) authorization." Pet. App. 45a n.12. As the bankruptcy court found, the insurance sales were at the core of the Debtors' Plan: "[T]he premise of this Plan … is based on the buyback of the policies, bringing almost $1.6 billion into the estate." Pet. App. 534a. Those sales provided the majority of the Settlement Trust's committed funding, which was critical to the bankruptcy court's finding that the Plan was likely to pay the aggregate abuse claims in full. Pet. App. 503a-506a. And the releases and injunctions protecting the Settling Insurers and their insureds were the "cornerstone of the Plan." Pet. App. 617a. "The undisputed evidence is that without the Scouting-Related Releases, the Settling Insurers would not settle their liability" and buy back the policies. Pet. App. 630a. And "[w]ithout these settlements, there is no Plan." Pet. App. 507a.

Accordingly, because the releases and injunctions were integral to the Settling Insurers' agreement to purchase the policies, the Third Circuit correctly held that it would be impossible to invalidate those releases and injunctions without fundamentally "affect[ing] the validity of [the] sale[s]" in contravention of section 363(m). Pet. App. 33a-34a, 42a-43a (appeals challenging "a central or integral element of a sale" necessarily "affect the validity" of the sale); *accord Stadium*, 895 F.2d at 848-849; *WestPoint*, 600 F.3d at 248-251; *Energy Future*, 949 F.3d at 821; *Fieldwood*, 93 F.4th at 822, 825;

Sneed Shipbuilding, 916 F.3d at 410; *Trism*, 328 F.3d at 1006-1008.

II. THE QUESTION WHETHER EQUITABLE MOOTNESS EXISTS DOES NOT MERIT REVIEW

1. Finally, this case does not present a good basis to review equitable mootness. As noted, only the concurrence reached the question; the majority did not. Pet. App. 63a n.24. This Court "ordinarily 'do[es] not decide in the first instance issues not decided below.'" *Adarand Constructors, Inc.* v. *Mineta*, 534 U.S. 103, 109 (2001) (per curiam).

2. What is more, there is no circuit split. As petitioners acknowledge, equitable mootness has been "unanimously adopted by the circuits." Pet. 10, 25 & n.13. This case presents no occasion to review any supposed differences among the circuits over the details like "nomenclature" and the like, Pet. 25.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

JONATHAN D. HACKER
O'MELVENY & MYERS LLP
1625 Eye Street NW
Washington, DC 20006

STEPHEN H. WARREN
O'MELVENY & MYERS LLP
400 South Hope Street
Los Angeles, CA 90071-2899

TANCRED SCHIAVONI
SAMANTHA M. INDELICATO
NICOLE MOLNER
O'MELVENY & MYERS LLP
1301 Avenue of the Americas
New York, NY 10019

Counsel for Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America and Indemnity Insurance Company of North America

PHILIP D. ANKER
Counsel of Record
WILMER CUTLER PICKERING
HALE AND DORR LLP
7 World Trade Center
250 Greenwich Street
New York, NY 10007
(212) 230-8830
philip.anker@wilmerhale.com

JAMES P. RUGGERI
JOSHUA D. WEINBERG
RUGGERI PARKS WEINBERG LLP
1875 K Street NW
Washington, DC 20006-1251

JOEL MILLAR
WILMER CUTLER PICKERING
HALE AND DORR LLP
2100 Pennsylvania Avenue NW
Washington, DC 20037

Counsel for Hartford Accident and Indemnity Company, First State Insurance Company, Twin City Fire Insurance Company, and Navigators Specialty Insurance Company

HARRY LEE
JOHN F. O'CONNOR
STEPTOE LLP
1330 Connecticut Avenue NW
Washington, DC 20036

Counsel for Clarendon National Insurance Company, as successor in interest by merger to Clarendon America Insurance Company; River Thames Insurance Company Limited (as successor in interest to Unionamerica Insurance Company Limited, on its own behalf and in turn as successor to St. Katherine Insurance Company Limited); and Zurich American Insurance Company (as successor to Maryland Casualty Company, Zurich Insurance Company, and American General Fire & Casualty Company)

BRYCE L. FRIEDMAN
DAVID ELBAUM
SIMPSON THACHER & BARLETT LLP
425 Lexington Avenue
New York, NY 10017

Counsel for Federal Insurance Company and Westchester Fire Insurance Company

MARK D. PLEVIN
PLEVIN & TURNER LLP
580 California Street
Suite 1200
San Francisco, CA 94101

Counsel for American Zurich Insurance Company, American Guarantee and Liability Insurance Company, and Steadfast Insurance Company

DECEMBER 2025