Supreme Court of the United States

2024 BANKRUPTCY CASE REVIEW

LOU JONES

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CASES DECIDED IN THE LAST TERM

I. *Harrington v. Purdue Pharma L.P.,* 603 U.S. ___ (2024), No. 23-124.

A. Whether the Bankruptcy Code authorizes a court to approve, as part of a plan of reorganization under Chapter 11, a release that extinguishes claims held by non-debtors against non-debtor third parties, without the claimants' consent.

11 U.S.C. § 1123(b) states that a plan "may":

(1) Impair or leave unimpaired any class of claims, secured or unsecured, or of interests;

(2) . . . provide for the assumption, rejection, or assignment of any executory contract or unexpired lease of the debtor not previously rejected under [§ 365];

(3) Provide for—

A. the settlement or adjustment of any claim or interest belonging to the debtor or to the estate; or

B. the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest;

(4) provide for the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests;

(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims; and

(6) include any other appropriate provision not inconsistent with the applicable provisions of this title.

B. Factual Background:

1. The case concerns the reorganization of Purdue Pharma and its affiliates, stemming from their role in allegedly fueling the opioid epidemic in the United States. In approving the debtors' plan, the court of appeals relied on residual provisions of the Code to validate a sweeping non-consensual release of non-debtors' claims against other non-debtors, namely the Sackler family and other associated individuals and entities.

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2. The release extends to claims based on fraud and other willful misconduct that likely would not have been dischargeable even if the Sacklers themselves had filed for bankruptcy protection.

3. Purdue Pharma manufactured, sold and distributed OxyContin and other medications that contributed to the opioid epidemic. Until 2018, Purdue was controlled by members of the Raymond and Mortimer Sackler families. Members of those families also held various director and officer positions throughout the company.

4. The opioid epidemic spawned extensive litigation against Purdue and the Sacklers. The U.S. Trustee alleges that the Sackler family, between 2008 and 2016, began distributing to the Sackler family a significant proportion of the company's revenue—approximately $11 billion in total—to Sackler family trusts and holding companies. The U.S. Trustee alleges that many of these assets were placed in spendthrift trusts, sometimes in offshore trusts, in an effort to insulate them from creditors.

5. Purdue sought bankruptcy protection in 2019, but the Sacklers did not. The bankruptcy court immediately enjoined almost 3,000 actions against the debtors and over 400 actions against the Sacklers, comprised of demands exceeding $40 trillion.

6. Under the Purdue plan, Purdue would become a public-benefit company dedicated to opioid abatement. The estate's remaining funds would be used to pay administrative expenses before being distributed to various creditor trusts, with the bulk of the distributions going into abatement.

7. To obtain payment, personal-injury claimants are required to submit records establishing the use of Purdue-branded opioids, and if the claim is allowed, a victim might receive between $3,500 and $48,000, minus yet-to-be-determined deductions and holdbacks, including payments for attorneys' fees and costs for operation of the personal-injury trust, for committees and other groups.

8. The Sacklers agreed to fund the plan by contributing $4.325 billion through payments spread over nearly a decade. In exchange, the plan includes a series of provisions that would extinguish virtually all Purdue-related opioid claims against the Sacklers and associated non-debtors without the consent of all affected claimants (the "Sackler Release"). The released parties include hundreds and potentially thousands of non-debtors, including many members of

the Sackler family such as spouses, children and grandchildren of several listed individuals.

9. The release covers any civil claim of any kind or character, and expressly includes claims for fraud and willful misconduct. It does not require affirmative consent through an opt-in requirement, and applies even to claimants who objected to it.

10. The U.S. Trustee, eight States, the District of Columbia, a group of Canadian creditors, and some individual claimants specifically objected to the Sackler Release. The bankruptcy court confirmed the plan and the Sackler Release.

11. The district court vacated the confirmation order containing the release, concluding that the Bankruptcy Code does not authorize courts to extinguish, without consent, direct claims held by non-debtors against other non-debtors. The court rejected Purdue's reliance on general Code provisions affording bankruptcy courts residual equitable authority over bankruptcy proceedings, such as 11 U.S.C. §§ 105(a) and 1123(b)(6).

12. While the appeals were pending before the court of appeals, the eight objecting States and the District of Columbia reached an additional deal with debtors and the Sacklers, requiring the Sacklers to increase their contribution to the bankruptcy estate by an additional $1.75 billion in guaranteed payments and up to $500 million in contingent payments. The States and the District did not oppose Purdue's appeal and agreed not to file a brief before the Supreme Court if the case reached there.

13. A divided panel of the Court of Appeals for the 2nd Circuit reversed the district court's order, holding that the bankruptcy court had subject-matter jurisdiction over third-party direct claims against non-debtors because it was "likely" that the resolution of the released claims would directly impact the *res*. Notably, the third-party claims were similar to the estate's claims against the Sacklers, and it was possible that some of the released parties could seek indemnification from the debtors based on the released claims. The court of appeals also held that the claims encompassed by the Sackler Release are non-core under *Stern v. Marshall*, meaning that the district court, rather than the bankruptcy court, would need to exercise *de novo* review before approving the release.

14. On the merits, the court of appeals held that two provisions of the Bankruptcy Code, read together, authorize courts sitting in bankruptcy to approve non-consensual third-party releases: § 105(a) and § 1123(b)(6). The majority interpreted § 1123(b)(6) to permit a bankruptcy court to take any action not expressly forbidden by the Code, and because the Code does not expressly prohibit the approval of non-consensual third-party releases, such releases are authorized.

15. The majority also held that the affected claimants had been afforded constitutionally sufficient notice, and that the lack of an opt-out clause did not violate due process.

16. Lastly, the court of appeals adopted a seven-factor balancing test to govern approval of third-party releases, and concluded that the Sackler Release satisfies the test:

    a) there is an identity of interests between debtors and released parties;

    b) the released claims are factually and legally intertwined with claims against the debtor;

    c) the breadth of the release is necessary to the plan;

    d) the release is essential to the reorganization;

    e) the released non-debtors contributed substantial assets to the reorganization;

    f) the affected claimants expressed overwhelming support for the plan; and

    g) the plan provides for the fair payment of enjoined claims.

17. Judge Wesley concurred in the judgment, "reluctantly" agreeing that, under "binding" Second Circuit precedent, a bankruptcy court has authority to approve non-consensual third-party releases. But he expressed considerable skepticism of the reasoning in those earlier cases, which he viewed as being "without any basis in the Code."

18. Judge Wesley also concluded that the majority erred by inferring "a power that is nothing short of extraordinary" from what is effectively "silence" in § 1123(b)(6). He believes that the residual

equitable authority granted by that provision is authority to "modify creditor-debtor relationships."

19. The Court of Appeals declined to issue a stay, but the Supreme Court did so in August 2023, putting Purdue's plan on hold.

C. Petitioner's Argument (incl. Respondents in support of Petitioner):

1. The Court need not consider the U.S. Trustee's standing because at least one other party with standing is seeking the same relief. But, in any event, the U.S. Trustee has standing under Article III and by statute. Six courts of appeal have held that U.S. Trustees have statutory authority to "raise" and "be heard" on any issue, and therefore have the right to appeal.

2. The Sackler Release is not authorized by the Bankruptcy Code. First, the Code provides no express authority to release non-debtors from personal liability to other non-debtors. Second, there is no basis to infer a vast power from the residual provisions in §§ 105 and 1123(b)(6). The power to "approve appropriate provisions" would swallow the Code's more limited, specific authorizations.

3. Third, the broader statutory context demonstrates that the Sackler Release is not authorized:

   a) it grants the functional equivalent of a discharge to a non-debtor;

   b) provides a full release to the Sacklers without requiring them to use substantially all their assets to compensate their creditors;

   c) releases the Sacklers from fraud claims that could not otherwise be discharged by them; and

   d) extinguishes jury trial rights against the Sacklers.

4. The Supreme Court has specifically held under the Bankruptcy Act of 1898 that courts lack power to enjoying non-debtors from pursuing state-law claims against other non-debtors.

5. Congress' narrow allowance for asbestos trusts in § 524(g) demonstrates that the Sackler Release is impermissibly broad. Section 524(g) provides substantive protection for the value of released claims as well as procedural protections.

6. The residual authority to modify creditor-debtor relationships provides no license to transform the relationship between non-debtors.
7. The court of appeals' decision raises serious constitutional questions:
    a) The Sackler Release allows federal courts to wield great power over state-law causes of action, a form of private property;
    b) The Sackler Release extinguishes non-parties' causes of action, with res judicata effect, without providing an opportunity to opt out; and
    c) Neither § 105(a) nor § 1123(b)(6) contains the exceedingly clear language needed to overcome the canon of constitutional avoidance.
8. Appeals to policy cannot replace statutory authorization, and the public interest strongly supports holding third-party releases unlawful because they enable tortfeasors to obtain legal immunity from the claims of their victims without assuming the obligations required by the Bankruptcy Code.
9. Third-party releases violate Section 524(e)'s prohibition against non-debtor discharges.

D. Respondents' Arguments (Debtors, Committee, etc.):

1. Bankruptcy law has always granted courts the authority and flexibility needed to safeguard the bankruptcy estate. Section 1123(b)(6) reflects this tradition as it unambiguously covers third-party releases as long as they are "appropriate" and "not inconsistent with" other provisions of the Code.
2. Such releases have limits; they must at least be necessary to the reorganization, necessary to protect the *res*, supported by creditors, and must be approved by both the bankruptcy court and an Article III court.
3. The catchall sweeps in matters that Congress did not specify, and there is no conflict with other provisions of the Code. The constitutional avoidance canon does not apply because § 1123(b)(6) is unambiguous and there is no constitutional problem to avoid.

4. Neither § 307 nor Article III confers standing on the U.S. Trustee to appeal. Only "injury" is trustee's view that the law should prohibit third-party releases. The U.S. Trustee is an "interloper" who has no standing and no right to destroy a plan that the actual victims crafted and overwhelmingly support. Therefore, the Court should dismiss the writ of certiorari as improvidently granted.

5. The U.S. Trustee cannot simultaneously condemn third-party releases and support consensual releases. Victims of the opioid crises are being spared years of difficult litigation and ensured a fair, equitable and timely distribution. The litigation alternative would be far worse; creditors would receive materially less. No creditor has been identified that is *harmed* by the third-party release.

6. Reversing the court of appeals would open the floodgates of litigation, and would invite a "race to the courthouse."

E. Amici Arguments (more than 20 of them):

1. Courts have no power to approve such releases, which contravene the separation of powers limitation embedded in the Bankruptcy Clause, which gives Congress the exclusive power to authorize discharge of indebtedness. It is also an unconstitutional exercise of substantive federal common lawmaking, in violation of the federalism and separation of powers constraints established by *Erie R.R. Co. v. Tompkins*. And lastly, the process by which the Sackler Release was negotiated, proposed and approved violates non-consenting claimants' constitutional due-process rights and jury-trial rights. (Professors Ralph Brubaker, et al.)

2. Portions of the Sackler Release fall outside the subject matter jurisdiction of federal courts because the release captures claims that have not ripened into actual litigation and therefore do not satisfy Article III's requirement of a "case" or "controversy." (Adam Levitin)

3. *Purdue* represents the quintessential case of Chapter 11 forum shopping and judge picking. Debtor's headquarters are in Stamford, CT, but Purdue chose White Plains, NY, where Judge Robert Drain was the only sitting judge. Judge Drain had previously opined on third-party releases in two separate cases. The Court should ensure that its ruling does not exacerbate the

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problem of venue shopping in bankruptcy cases. (Commercial Law League of America and Nat'l. Bankruptcy Venue Reform Committee)

4. Third party releases are crucial to achieving fair compensation for claimants, particularly in mass tort cases. Particularly given the stringent requirements for class treatment under FRCP 23, the alternative will usually be resource-depleting marathons of litigation. The necessity of such releases has been recognized by bankruptcy courts for decades. (Ad Hoc Group of Local Councils of the Boy Scouts of America)

5. Whatever the Court's ruling, it must make clear that its ruling in this case does not affect other chapter 11 plans that have already become effective like the Boy Scouts' plan. (Boy Scouts of America)

F. Opinion of the Court by Justice Gorsuch:

1. Majority opinion (19 pages) joined by Thomas, Alito, Barrett and Jackson, JJ.

2. Court emphasizes the Sackler family's apparent "milking program": in the years before a 2007 plea agreement (where a Purdue affiliate pleaded guilty to a federal felony for misbranding OxyContin as "less addictive" and "less subject to abuse . . . than other pain medications"), distributions to the Sackler family represented less than 15% of Purdue's annual revenue; after the plea agreement, the Sacklers began taking as much as 70% of the company's revenue each year. Between 2008 and 2016, the family's distributions totaled approximately $11 billion, draining Purdue's total assets by 75%.

3. Purdue plan then proposed to return to the estate only $4.325 billion of the $11 billion withdrawn in recent years, and then only spread out over years.

4. A confirmation order discharges the debtor from any debt that arose before the confirmation date, except as provided in the plan. 11 U.S.C. § 1141(a). But a discharge "does not affect the liability of any other entity." 11 U.S.C. § 524(e).

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5. First five paragraphs of § 1123(b) only permit a plan to address claims and property belonging to a debtor or its estate. Nothing in these paragraphs authorizes a plan to extinguish claims against third parties without the consent of the affected claimants.

6. Footnote 2: Section 105(a), by itself, is not enough: it serves only to carry out authorities expressly conferred elsewhere in the Code.

7. Paragraph (6) is a catchall phrase tacked on at the end of a long and detailed list of specific directions. Courts do not necessarily afford catchall phrases the broadest possible construction they can bear. Rather, a catchall phrase "must be interpreted in light of its surrounding context and read to embrace only objects similar in nature to the specific examples preceding it." Op. at 10.

8. Here, when Congress authorized "appropriate" plan provisions in paragraph (6), it did so only after enumerating five specific sorts of provisions, all of which concern the debtor—its rights and responsibilities, and its relationship with its creditors. The power to discharge the debts of a nondebtor without consent is "radically different" from the other powers listed in § 1123(b).

9. Dissent notes that plans may administer derivative claims against nondebtors, but this is only because derivative claims belong to the estate. Nor is it persuasive to point to the "purpose of bankruptcy law." "No statute pursues a single policy at all costs." Op. at 13. "No one (save perhaps the dissent) thinks [bankruptcy law] provides a bankruptcy court with a roving commission to resolve all [collective-action] problems that happen its way . . . ." *Id.* "[A] bankruptcy court's powers are not limitless and do not endow it with the power to extinguish without their consent claims held by nondebtors . . . ." *Id.*

10. Related provisions prove that § 1123(b) cannot be interpreted this way:
    a) Discharges are reserved only for debtors (§ 524(e));

b) Code constrains the debtor—it must come forward with virtually all its assets, and a discharge does not extend to claims based on fraud (§§ 541, 548, 523(a));

c) The one provision addressing third-party releases, § 524(g), addresses only asbestos-related releases. That Congress has authorized such releases in only one context makes it unlikely that § 1123(b)(6) provides that authority in every context.

11. Dissent claims that "releases" are different from "discharges," but these are "word games." Op. at 15-16.

12. History supports the result too. Every bankruptcy law, from 1800 to 1978, generally reserved the benefits of a discharge to a debtor who offered a "fair and full surrender of [its] property." Op. at 16. No statute or case suggests American courts are able to discharge claims brought by nondebtors against other nondebtors, without consent of those affected.

13. Sacklers may be able to negotiate consensual releases by putting more money on the table. In any event, policy debates are best left to the legislature.

14. Court does NOT decide:

a) Whether consensual third-party releases are acceptable;

b) What qualifies as a consensual release;

d) Whether the Court's reading of the Code would justify unwinding reorganization plans that have already become effective and been substantially consummated (e.g. Boy Scouts, archdiocese cases).

G. Dissenting Opinion by Justice Kavanaugh:

1. Justice Kavanaugh "respectfully but emphatically" dissents, and the 54-page dissent proves the point. He is joined by Roberts, C.J., and Sotomayor and Kagan, JJ.

2. "The plan was a shining example of the bankruptcy system at work." D. Op. at 2. Virtually all of the opioid victims and creditors "fervently" support approval of the plan; all 50 state Attorneys General support it; the only relevant exceptions are a small group of Canadian creditors and one lone individual.

3. Third-party releases "have long been a critical tool for bankruptcy courts to manage mass-tort bankruptcies like this one." D. Op. at 2. Consider asbestos cases, Dalkon Shield, Dow Corning breast implants, archdiocese cases and Boy Scouts. The majority opinion has a debilitating effect on the opioid victims (who are deprived of their "hard-won relief") and the "bankruptcy system at large." *Id.*

4. Keep in mind "the goal of bankruptcy": fair and equitable recovery for victims and creditors. Non-debtor releases can be "absolutely critical" to achieving this goal.

5. Section 1123(b)(6) allows any other "appropriate" provision, which allows the court to exercise reasonable discretion in addressing the "collective-action problems" that mass tort bankruptcies present.

6. Court-developed "factors" require a holistic inquiry, and serve to confine the use of non-debtor releases to well-defined and narrow circumstances.

    a) For example, here there was an indemnification agreement that required the company to indemnify the Sacklers, so claims against the Sacklers were effectively claims against the company. Releasing claims against the Sacklers is not meaningfully different from releasing claims against the company.

    b) Plan had 95% support from voting victims and creditors (though the majority observed that fewer than 20% of eligible creditors actually participated).

c) Bankruptcy court found that, without the releases and settlement payment, the most likely result was liquidation of a much smaller $1.8 billion estate. Thus, releases were essential to the reorganization effort.

d) Majority decision "deprives the bankruptcy system of a longstanding and critical tool that has been used repeatedly to ensure fair and sizable recovery for victims." D. Op. at 31.

e) § 524(g) says that nothing in the statute should be construed to modify, impair or supersede any other authority the court has to issue injunctions in connection with an order confirming a plan. Non-debtor releases were being approved in other contexts, even at the time § 524(g) was enacted.

f) By its terms, § 524(e) does not preclude releases against non-debtors.

g) Non-debtor releases are part of a negotiated settlement of potential tort claims. They are not a discharge.

h) For decades, non-debtor releases have been approved by the bankruptcy courts. History supports the use of such releases.

i) "Opioid victims and other future victims of mass torts will suffer greatly in the wake of today's unfortunate and destabilizing decision. Only Congress can fix the chaos that will now ensue. The Court's decision will lead to too much harm for too many people for Congress to sit by idly without at least carefully studying the issue. I respectfully dissent."

II. *U.S. Trustee v. John Q. Hammons Fall 2006, LLC*, No. 22-1238 (Argued January 9, 2024; Decided June 14, 2024)

A. Issue:

Whether the appropriate remedy for the constitutional uniformity violation found by this Court in *Siegel v. Fitzgerald* is to require the United States Trustee to grant retrospective refunds of the increased fees paid by debtors in U.S. Trustee districts during the period lacking uniformity, or is instead either to deem sufficient the prospective remedy adopted by Congress or to require the collection of additional fees from a much smaller number of debtors in the Bankruptcy Administrator districts.

B. Factual Background:

1. In 2016, a group of companies affiliated with John Q. Hammons Hotels and Resorts filed for bankruptcy protection. Because the proceedings took place in Kansas, the companies paid the regular administrative fees for the trustee program.

2. In 2020, they asked the court for a partial refund, on grounds that the discrepancy between the fees for the trustee program and the administrator program violated the Constitution.

3. The bankruptcy court rejected the request, but the Court of Appeals for the 10th Circuit reversed, holding that the higher fees in trustee districts were unconstitutional, and because it could not issue a ruling that increased the fees in Alabama and North Carolina, the solution was for the government to refund the difference between the fees they paid and what they would have paid under the administrator program.

4. The Court's decision in *Seigel* did not address the remedy for the constitutional violation.

5. The government estimated that it would cost approximately $326 million to issue all refunds. Here, Hammons sought a refund of $2.5 million.

6. The government further estimated that 85% of the large chapter 11 cases subject to higher fees between January 2018 and April 2021 had closed, and some of those debtors had been liquidated or otherwise ceased to exist. For debtors that paid lower fees, only 10 of the roughly 50 cases were still open.

C. Government's Position:

1. The Court rarely grants requests for retroactive relief, and should not do so here.

2. This is especially so when Congress made clear that it only intended to provide a remedy going forward by amending the law to require administrator districts to charge debtors the same fees as those levied in trustee districts, with no mention of providing a refund to debtors in trustee districts who had paid higher fees in the past.

D. Respondent's Argument:

1. Prospective-only relief cannot redress a past constitutional monetary injury.

2. There is no viable option for imposing retroactive fees in BA districts.

3. Due process requires meaningful backward-looking relief unless an exclusive predeprivation remedy is both clear and certain.

E. Amici Arguments:

1. Congress mandated refunds in appropriations acts, and the US Trustee admitted that the refund mandate applies (*Plaintiffs/ former chapter 11 debtors*)

2. The prospective remedy should not permit the government to prospectively enforce payment of invalid fees; many debtors already withheld the unconstitutional fees (*MF Global Holdings*)

F. Opinion of the Court by Justice Jackson:

1. The appropriate remedy is prospective parity. Requiring equal fees for otherwise identical chapter 11 debtors going forward comports with congressional intent, corrects the constitutional wrong, and complies with due process.

2. The US Trustee program is supposed to be self-funding, and requiring a refund would impose a $326 million bill for taxpayers.

3. We are not concerned with high fees, but only nonuniformity. Here, the fee disparity was short-lived (October 2018 to April 2021), and the disparity was small (only 2% of cases involving large chapter 11 debtors were filed in BA districts).

4. Congress' intention was unmistakable; it would have wanted to impose equal fees in all districts going forward. It was raising fees in the UST program to keep it self-funded.

5. Congress did not retroactively impose higher fees in BA districts.

6. No due process violation because there was an opportunity to challenge fees before they were paid.

7. It would be difficult and expensive to issue refunds.

G. Dissenting Opinion by Justice Gorsuch (joined by Thomas and Barrett, JJ.):

1. The US Trustee promised that if Hammons succeeded on its claim that the fee disparity is unconstitutional, the government would refund fees to the extent they were overpaid. The UST even stressed that Congress had authorized payments of refunds in its most recent annual appropriation law.

2. Traditional remedial principles require refunds.

3. "In what world does [the] promise of a *prospective-only* remedy do anything to redress your *past* injuries?" A promise of fee uniformity going forward may prevent future discrimination between debtors, but does nothing to remedy fees unlawfully exacted in the past.

4. It is not sensible to ask what remedy the government might prefer. Plaintiffs, not defendants, have the right to choose the relief they seek.

5. Due process prevents a "bait and switch" by the government: refusing to honor a remedial path it previously held open to the plaintiff. "We should not be in the business of tolerating such 'contrived and self-serving' changes in position."

6. "[T]he majority sends a clear message to lower courts and litigants: Next time the government asks you to hold off on pursuing a remedy on the promise you can always pursue it later, its

representations are worth no more than the relief the Court awards Hammons today."

III. *Truck Ins. Exchange v. Kaiser Gypsum Co.*, No. 22-1079 (Argued March 19, 2024; Decided June 6, 2024)

A. Issue:

Whether an insurer with financial responsibility for a bankruptcy claim is a "party in interest" that may object to a plan of reorganization under Chapter 11 of the Bankruptcy Code.

11 U.S.C. § 1109(b) provides:

"A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter."

B. Factual Background:

1. The case involves an insurance company's attempt to block its insured's Chapter 11 reorganization plan, which establishes a trust for certain current and future asbestos personal-injury liabilities.

2. The plan treats holders of insured and uninsured asbestos personal injury claims differently. Insured claims would be brought against the insurance company subject to the insurer's pre-existing rights, but uninsured claims would be submitted directly to the trust.

3. Importantly, only the persons bringing uninsured claims would be required to provide disclosures to ensure the trust paid only valid, non-duplicative claims. For insured claims, that insurer would have to seek the same information in litigation on a case-by-case basis.

4. Petitioner Truck Insurance Exchange says it is a "party-in-interest" and is entitled to "raise" and "be heard on any issue" in a Chapter

11 proceeding, and should be permitted to intervene and argue that it is entitled to similar protections.

5. The bankruptcy court found that the insurer was not a party-in-interest because the plan left its rights under the insurance contracts where it found them; that is, the plan was "insurance-neutral." (It neither increased its prepetition obligations nor impaired its rights under the insurance contracts.) The district court affirmed.

6. The Court of Appeals for the 4th Circuit affirmed, because the plan did not alter the insurer's policy rights, and the rights the insurer was asserting never existed under the policies.

C. Petitioners' Argument:

1. Section 1109(b) grants a right to be heard to a party with Article III standing. The scope of 1109(b) is coextensive with Article III.

2. Petitioner is a party in interest because it is responsible for paying the bankruptcy claims and because it is a creditor.

3. The insurance neutrality doctrine has no basis in Article III or the Bankruptcy Code.

D. Debtor-side Respondent's Argument:

1. Section 1109(b) grants a right to object to a plan only to those whose rights or obligations are directly affected by the plan. Article III standing is not enough, nor is an executory contract.

2. Petitioner's alleged injuries as an insurer are insufficient. Its status as a fully satisfied creditor is irrelevant.

E. Asbestos Claimants / Respondents' Argument:

1. An insurer is not a party-in-interest unless the plan alters its legally protected interests.

2. Petitioner can establish no injury.

F. Amici Arguments:

1. Petitioner's claim of injury is premised upon the false notion that courts, the parties and their counsel will engage in fraud. That alleged injury is speculative. An insurer obligated by contract to pay a future liability does not suffer injury even when it makes that payment (*American Assoc. for Justice*)

G. Opinion of the Court by Justice Sotomayor (Alito, J., did not participate):

1. The insurance neutrality doctrine conflates the merits of an insurer's objection with the threshold § 1109(b) question of who qualifies as a "party in interest." Section 1109(b) asks whether the reorganization proceedings might directly affect a prospective party, not how a particular plan actually affects that party.

2. An insurer with financial responsibility for a bankruptcy claim is sufficiently concerned with, or affected by, the proceedings to be a "party in interest" that can raise objections to a plan.

3. The plain meaning of "party in interest" refers to entities that are potentially concerned with or affected by a proceeding.

4. Congress has consistently acted to promote greater participation in reorganization proceedings. Broad participation promotes a fair and equitable reorganization process.

5. An insurer's interests can be affected by a plan in many ways: the plan could impair the contractual right to control settlement or defend claims; it could abrogate an insurer's right to contribution from other insurance carriers; it could be collusive, in violation of the debtor's duty to cooperate and assist, and invite fraudulent claims.

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6. Petitioner was the only one to object to the plan, and it may be the only one with an incentive to do so. Participation of the party who will ultimately foot the bill is critical.

7. "There may be difficult cases that require courts to evaluate whether truly peripheral parties have a sufficiently direct interest. This case is not one of them."

CASE SET FOR ARGUMENT IN THIS TERM

I. *United States v. Miller*, No. 23-824 (Petition granted June 24, 2024; Oral Argument TBD)

A. Issue:

Whether a bankruptcy trustee may avoid a debtor's tax payment to the United States under 11 U.S.C. § 544(b) when no actual creditor could have obtained relief under the applicable state fraudulent-transfer law outside of bankruptcy.

11 U.S.C. § 544(b)(1) provides:

Except as provided in paragraph (2), the trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

11 U.S.C. § 106(a) provides that *"sovereign immunity is abrogated as to a governmental unit to the extent set forth in this section with respect to" 59 enumerated sections of the Code, including § 544.*

B. Factual Background:

1. The case arises out of bankruptcy proceedings commenced by All Resort Group, Inc. (ARG) in 2017. In 2014, before it filed for bankruptcy protection, ARG paid approximately $145,000 to the IRS to be applied to the personal tax obligations of two of its

principals, both of whom were ARG shareholders, officers and directors.

2. An analysis prepared during the subsequent bankruptcy proceedings showed that ARG was insolvent when it made the IRS payments. Among ARG's debts when it filed for bankruptcy was an unpaid judgment resulting from a discrimination lawsuit brought by a former employee.

3. The case was converted from chapter 11 to chapter 7, and the trustee brought an adversary proceeding against the United States under sections 544(b) and 548(a), seeking to avoid and recover the IRS payments.

4. The bankruptcy court held that because the payments were made more than two years before the bankruptcy filing, the trustee could not avoid the IRS payments under section 548. But the bankruptcy court granted summary judgment to the trustee on his § 544(b) claim, which relied on the Utah Uniform Fraudulent Transfer Act and a four-year statute of limitations period.

5. The trustee argued that there existed an actual creditor (the former employee) who could bring a lawsuit under Utah law. The government did not dispute that the tax payments satisfied the Utah law's fraudulent transfer definition because the company paid its principals' taxes, not its own.

6. But as the trustee conceded, sovereign immunity would bar the former employee's suit against the United States. So the government argued that the challenged payments were not voidable under applicable law by a creditor holding an unsecured claim.

7. The bankruptcy court held that 11 U.S.C. § 106(a) abrogates that sovereign immunity in the bankruptcy context, not just within the bankruptcy proceeding, but also for purposes of interposing immunity as a defense to the underlying state cause of action.

8. The bankruptcy court also rejected the government's argument that the Internal Revenue Code would preempt a suit of this kind because it implicates the field of federal tax collection.

9. The bankruptcy court awarded judgment against the United States, and the district court affirmed, adopting the bankruptcy court's reasoning in full.

10. The court of appeals also affirmed, holding that § 106(a) "reaches the underlying state law cause of action that § 544(b)(1) authorizes the trustee to rely on in seeking to avoid the transfers." Section 106(a) waives sovereign immunity "with respect to" § 544, which "generally has a broadening effect," reflecting Congress' intent that the waiver "reach any subject that has a connection with . . . the topics the statute enumerates."

11. The court of appeals' decision is consistent with the Ninth Circuit's decision in *Zazzali v. United States (In re DBSI, Inc.)*, 869 F.3d 1004, 1009 (9th Cir. 2017), but conflicts with the Seventh Circuit's holding in *In re Equipment Acquisition Res., Inc.*, 742 F.3d 743 (7th Cir. 2014).

12. The court of appeals rejected the government's argument that the Internal Revenue Code preempted the field, holding that if Congress thought that another federal statute posed an obstacle to its objectives, it surely would have added an express preemption provision.

C. Petitioner's Argument:

1. The trustee invoking § 544(b) is subject to the same limitations that would have applied to the existing creditor who could have sought relief outside of bankruptcy. If the actual creditor could not have succeeded for any reason (statute of limitations, estoppel, res judicata, waiver, etc.), the trustee is similarly barred.

2. It is undisputed that no actual creditor could have brought a successful suit against the IRS to avoid the tax payments at issue,

so the trustee cannot accomplish more by stepping into such a creditor's shoes.

3. The waiver in § 106(a) relating to § 544 allows a trustee to bring a § 544(b) claim against the government, but the bankruptcy court must actually adjudicate the merits of the trustee's claim, just as it would under the other enumerated sections of the Code. In doing so, the court must determine whether the source of the substantive law upon which the trustee relies provides an avenue for relief. The latter question is "analytically distinct" from the inquiry whether there has been a waiver of sovereign immunity.

4. Section 106(a)(5) instructs that nothing in § 106 creates a substantive claim for relief or cause of action not otherwise existing under this title, the FRBP or non-bankruptcy law. Section 544(b) does not ordinarily subject a transferee of estate property to an avoidance claim to which the transferee was not already vulnerable.

5. Section 106(a) may be broad, but there is no evidence that Congress intended it to alter § 544(b)'s substantive requirements. The "clear statement" rule removes any doubt: there is nothing in § 106(a) to suggest that the waiver extends to the underlying state-law suit on which § 544(b) is predicated.

6. Federal tax collection is a matter of federal constitutional law, to which any contrary state law must yield under the Supremacy Clause. A state-law fraudulent transfer action brought by a creditor against the government would be preempted, regardless of how § 106(a) is interpreted.

7. Respondent waived its argument that a creditor avoids sovereign immunity if it can avoid a transfer against another defendant, like the principals, and then recover the payment from the IRS under § 550. The argument was neither pressed nor passed upon below.

D. Respondent's Argument:

1. Section 106(a)'s clear waiver of sovereign immunity "with respect to" § 544 covers all aspects of § 544(b) claims, including the "applicable law" that forms the basis of the trustee's cause of action. Congress waived immunity for any subject with a direct relation to or impact on section 544. Because the elements of § 544(b) claims relate to § 544, the waiver extends to such claims.

2. Congress instructed courts to proceed "notwithstanding an assertion of sovereign immunity" and told them to "hear and determine any issue arising with respect to the application of" § 544 to governments. This means that courts must adjudicate § 544(b) claims without regard to sovereign immunity.

3. In the government's world, no § 544(b) claims against governments can ever succeed. Nor could trustees invoke against governments any of the other bankruptcy provisions that incorporate state law. Congress could not have intended these results.

4. The government argues that Congress must pass two waivers of sovereign immunity: one for the federal claim in § 544(b) and another for the applicable law that supplies the elements of that cause of action. This "two-waiver" argument was rejected last term in *Dep't. Agriculture Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42 (2024).

5. Section 544(b) only asks whether a transfer is "voidable under applicable law by a creditor," not whether the creditor could sue the § 544(b) defendant. Here, all Utah-law requirements for fraud and avoidance are undisputedly met. The creditor never needed to sue the United States to avoid the transfers; she could have instead sued the principals for a money judgment or the debtor for an injunction, and then sought to collect from the government under § 550. The government itself raised this issue in district court, and respondent engaged on the merits.

6. The government is elevating itself to super-creditor status by allowing it, and it alone, to keep ill-gotten windfalls. Reversal

would create a playbook for fraud: pay personal tax debts with corporate funds first, and let the IRS hide behind sovereign immunity later.

7. Congress did not plausibly preempt the elements of a federal claim. This Court has never applied field preemption to the Internal Revenue Code.

E. Amici Arguments:

1. A ruling against the United States likely means that such claims may also proceed over the sovereign immunity of individual states. But when the states ratified the Constitution, they agreed that their sovereign immunity could be abrogated by laws enacted under the Bankruptcy Clause only when such laws are uniform. Here, § 544(b) is not uniform with respect to the statute of limitations for bringing such actions. This Court should, under the doctrine of constitutional avoidance, reverse the court of appeals (*23 States and the District of Columbia*).

2. The government's position violates the long-standing presumption against ineffectiveness: a textually permissible interpretation that furthers rather than obstructs the document's purpose should be favored. The government's position would render § 106(a) unenforceable as it pertains to § 544(b). Further, the government's position is inconsistent with the long-standing bankruptcy axiom of "equality of distribution" because if only the government is immune from avoidance, the bankruptcy distribution system becomes unequal (*Wedoff and Law Professors*).

3. Section 106(b) provides that when a governmental unit files a proof of claim in a bankruptcy proceeding, it has waived any defense of sovereign immunity in compulsory counterclaims. By filing a proof of claim, the IRS waived any claim of sovereign immunity. Further, avoidance actions are merely declaratory, *in rem* actions; they do not seek the recovery of property, which is governed by § 550. An *in rem* declaratory action has no bearing on federal tax collection and assessment (*Nat'l. Assoc. Bankruptcy Trustees*).