IN THE
SUPREME COURT OF THE UNITED STATES

No. 24A706

THE HERTZ CORPORATION; DOLLAR RENT A CAR, INC.; DOLLAR THRIFTY AUTOMOTIVE GROUP, INC.; DONLEN CORPORATION; DTG OPERATIONS, INC.; DTG SUPPLY, LLC; FIREFLY RENT A CAR LLC; HERTZ CAR SALES LLC; HERTZ GLOBAL SERVICES CORPORATION; HERTZ LOCAL EDITION CORP.; HERTZ LOCAL EDITION TRANSPORTING, INC.; HERTZ SYSTEM, INC.; HERTZ TECHNOLOGIES, INC.; HERTZ TRANSPORTING, INC.; RENTAL CAR GROUP COMPANY, LLC; SMARTZ VEHICLE RENTAL CORPORATION; THRIFTY CAR SALES, INC.; THRIFTY, LLC; THRIFTY INSURANCE AGENCY, INC.; THRIFTY RENT A CAR SYSTEM, LLC; AND TRAC ASIA PACIFIC, INC.,

Applicants,

v.

WELLS FARGO BANK, N.A., AS INDENTURE TRUSTEE; U.S. BANK NATIONAL ASSOCIATION, AS INDENTURE TRUSTEE,

Respondents.

APPLICATION TO THE HON. SAMUEL A. ALITO, JR.
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Pursuant to Supreme Court Rule 13(5), Applicants The Hertz Corporation; Dollar Rent A Car, Inc.; Dollar Thrifty Automotive Group, Inc.; Donlen Corporation; DTG Operations, Inc.; DTG Supply, LLC; Firefly Rent A Car LLC; Hertz Car Sales LLC; Hertz Global Services Corporation; Hertz Local Edition Corp.; Hertz Local Edition Transporting, Inc.; Hertz System, Inc.; Hertz Technologies, Inc.; Hertz Transporting, Inc.; Rental Car Group Company, LLC; Smartz Vehicle Rental Corporation; Thrifty Car Sales, Inc.; Thrifty, LLC; Thrifty Insurance Agency, Inc.; Thrifty Rent A Car System, LLC; and TRAC Asia Pacific, Inc. (together, "Hertz")

hereby move for an extension of time of 30 days, to and including March 6, 2025, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be February 4, 2025.

In support of this request, Hertz states as follows:

1. The United States Court of Appeals for the Third Circuit rendered its decision on September 10, 2024 (Exhibit 1), denied a timely petition for rehearing *en banc* on November 6, 2024 (Exhibit 2), and issued an amended opinion on the same day (Exhibit 3). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case presents the question of whether the pre-Bankruptcy Code absolute priority rule supersedes the unambiguous text of the Bankruptcy Code and requires a solvent debtor to pay its creditors unmatured interest that the Code explicitly disallows. Hertz is a global vehicle rental company. When the COVID-19 pandemic struck, global travel came to a halt, and Hertz became insolvent and filed for bankruptcy. During the bankruptcy process, however, travel rebounded and Hertz became solvent again. Hertz therefore proposed a plan that would pay all allowed claims against it in full and in cash—including claims under five series of unsecured notes held by Respondents ("the Noteholders"). Under the plan, the Noteholders would receive full repayment of their principal and all accrued and unpaid pre-petition interest, as well as post-petition interest at the federal judgment rate—over $2.8 billion in total. Because the Noteholders' allowed claims were paid in full, the plan classified them as unimpaired, meaning that they were "conclusively

presumed to have accepted the plan" and were not entitled to vote on it. 11 U.S.C. §1126(f).

3. The Noteholders objected, claiming that they were entitled to be paid hundreds of millions of dollars more. In their view, to treat their claims as unimpaired, Hertz had to pay them not only their remaining principal and accrued interest, but also contractual redemption premiums ("Applicable Premiums") designed to compensate them for future interest that they would not receive if the Notes were repaid early—an additional $147 million. The Noteholders further asserted that they were entitled to post-petition interest at their contract rates under their notes rather than at the federal judgment rate—another $125 million.

4. Hertz disagreed. It explained that Noteholders' claims for the Applicable Premiums were barred by 11 U.S.C. §502(b)(2), which disallows any "claim … for unmatured interest" (i.e., interest maturing after the bankruptcy petition is filed). Hertz further explained that §502(b)(2) likewise disallowed Noteholders' contract-based claims to post-petition interest, leaving them entitled at most to post-petition interest on their allowed claims at the federal judgment rate—the rate that the Code contemplates for solvent-debtor cases. *See* 11 U.S.C. §726(a)(5). The bankruptcy court agreed and entered summary judgment for Hertz.

5. The Third Circuit affirmed in part and reversed in part. The panel unanimously concluded that the Applicable Premiums were unmatured interest both under "dictionary and caselaw definitions of interest" and as "the economic equivalent of interest," and so claims for those amounts "must be disallowed under §502(b)(2)."

Ex.3 at 20-25. But at that point, the panel fractured: Despite agreeing that §502(b)(2) disallowed the Noteholders' claims for the Applicable Premiums and post-petition interest at their contract rates, the panel's two-judge majority held that the Noteholders were nonetheless entitled to those exact same amounts by virtue of "the pre-Code absolute priority rule"—an argument that the Noteholders had never raised. *Id.* at 28. According to the majority, that pre-Code common-law rule was "adopted" as an "enacted part of" the Code via §1129(b), which provides only that a plan must be "fair and equitable" to impaired creditors that reject the plan. *Id.* at 28, 31; *see* 11 U.S.C. §1129(b)(1). And under that rule, the majority asserted, creditors must "be paid in full before owners, with junior rights to the business, take anything at all." Ex.3 at 38. As such, in the majority's view, a creditor "is impaired if its treatment violates the absolute priority rule"—that is, a creditor is impaired if it receives anything less than its full contractual entitlements, *including entitlements explicitly disallowed by the Code*, while a lower-priority claimant receives a distribution. *Id.* at 32.

6. Judge Porter dissented in relevant part, explaining that the Code "plainly disallows claims 'for unmatured interest' like the Noteholders' claims for the Applicable Premiums and post-petition interest," and so Hertz's plan did not impair Noteholders by refusing to pay those same amounts. *Id.* at 45. Judge Porter rejected the majority's novel absolute-priority theory, explaining that the absolute priority rule is a "procedural protection," rather than a substantive right conferred by Noteholders' claims, and so "is irrelevant to impairment." *Id.* at 46-47. Regardless,

even if Noteholders' claims somehow implied a substantive "right to treatment consistent with absolute priority," those claims "are nevertheless unimpaired because it is the Code that alters the Noteholders' right, not the Plan." *Id.* at 48. And "[b]ecause the Code's disallowance of the Noteholders' claims is clear and unambiguous," the pre-Code common-law absolute priority rule cannot serve as "an 'extratextual supplement' to supplant §502(b)(2)." *Id.* at 51 (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 10 (2000)).

7. As Judge Porter recognized, the Third Circuit panel majority's reasoning cannot be reconciled with the statutory text or this Court's precedents. The text of the Code is "unmistakably clear": Claims "for unmatured interest" are not allowed. 11 U.S.C. §502(b)(2). As this Court has often held, that kind of unambiguous statutory text cannot be altered or superseded by pre-Code practice. *See, e.g.*, *Hartford*, 530 U.S. at 10 (pre-Code practice "is a tool of construction, not an extratextual supplement" and "cannot overcome" unambiguous statutory language); *see also RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 649 (2012) (pre-Code practice is irrelevant where there is "no textual ambiguity"); *BFP v. Resolution Tr. Corp.*, 511 U.S. 531, 546 (1994) (similar); *Dewsnup v. Timm*, 502 U.S. 410, 419-20 (1992) (similar). Under that controlling precedent, the panel majority seriously erred by *sua sponte* relying on a pre-Code common law rule to depart from the unambiguous language of §502(b)(2). And the panel majority's attempt to read the pre-Code absolute priority rule into the Code through §1129(b) only compounds its error, as the plain text of that provision makes clear it has no application here—

which is why the Noteholders barely mentioned it in their briefing below, and never suggested that it embodies any controlling pre-Code absolute priority rule.

8. The Third Circuit's decision contributes to ongoing confusion in the lower courts on this issue. In two other circuits, two-judge panel majorities have recently held—over vigorous and persuasive dissents—that creditors in solvent-debtor cases are impaired unless they receive post-petition interest at their contract rates, perhaps (according to one panel) subject to equitable exceptions. *In re Ultra Petroleum Corp.*, 51 F.4th 138, 150-56 (5th Cir. 2022); *id.* at 160-64 (Oldham, J., dissenting); *In re PG&E Corp.*, 46 F.4th 1047, 1052-65 (9th Cir. 2022); *id.* at 1065-75 (Ikuta, J., dissenting). But *neither* of those divided decisions relied on §1129(b) or the unprecedented absolute-priority-rule theory that the panel majority adopted here; instead, they relied on a purported "solvent-debtor exception" to the plain language of §502(b)(2), which the panel majority here pointedly refrained from endorsing. *Compare Ultra*, 51 F.4th at 150-56, *and PG&E*, 46 F.4th at 1052-65, *with* Ex.3 at 26-42. The panel majority's reasoning also cannot be squared with the Second Circuit's recent decision in *In re LATAM Airlines Grp. S.A.*, 55 F.4th 377 (2d Cir. 2022), which explicitly rejects the view that the pre-Code common law absolute priority rule was incorporated wholesale into the Code. *Id.* at 388-89. The panel majority's novel effort to overcome the plain text of the Code by relying on a theory that no other court has adopted only underscores the ongoing confusion in the federal courts of appeals, and the need for this Court's guidance on a recurring issue that has significant consequences for bankruptcy practice and that routinely implicates the distribution

of hundreds of millions of dollars. *See* Ex.3 at 7-8; *Ultra*, 51 F.4th at 144 ("some $387 million"); *PG&E*, 46 F.4th at 1052 ("roughly $200 million").

9. Hertz's lead counsel, Paul D. Clement, has substantial briefing and argument obligations between now and the current due date of the petition, including a response brief in *LSP Transmission Holdings II, LLC v. Huston*, Nos. 24-3248 & 24-3249 (7th Cir.) (due Jan. 17); oral argument in *Chappell v. Corp. of the President of the Church of Jesus Christ of Latter-Day Saints*, No. 2:24-md-03102 (D. Utah) (Jan. 17); a response brief in *United States ex. rel. Moore v. Regeneron Pharms., Inc.*, No. 24-5569 (9th Cir.) (due Jan. 22); and a response brief in *In re East Palestine Train Derailment*, Nos. 28-3852 & 24-3880 (6th Cir.) (due Feb. 3). Hertz accordingly requests a modest extension of time to permit its counsel to prepare a petition that will fully address the important and far-reaching issues raised by the decision below.

WHEREFORE, for the foregoing reasons, Hertz requests that an extension of time to and including March 6, 2025, be granted within which Hertz may file a petition for a writ of certiorari.

Respectfully submitted,

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January 15, 2025

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Respondents.

CORPORATE DISCLOSURE STATEMENT

Pursuant to this Court's Rule 29.6, Applicants state as follows:

1. Hertz Global Holdings, Inc. owns one hundred percent of the equity interests of Rental Car Intermediate Holdings, LLC, which in turn owns one hundred percent of the equity interests of The Hertz Corporation.

2. The Hertz Corporation owns one hundred percent of the equity interests of the following entities: (1) Hertz Transporting, Inc.; (2) Firefly Rent A Car, LLC; (3) SellerCo Corporation (f/k/a Donlen Corporation); (4) Hertz Technologies, Inc; (5) Hertz Car Sales, LLC; (6) Hertz System, Inc; (7) Smartz Vehicle Rental Corporation; (8) Hertz Global Services Corporation; (9) Hertz Local Edition Corporation; and (10) Rental Car Group Company, LLC.

3. Rental Car Group Company, LLC owns one hundred percent of the equity interests in Dollar Thrifty Automotive Group, Inc.

4. Dollar Thrifty Automotive Group, Inc. owns one hundred percent of the equity interests of the following entities: (1) Thrifty, LLC; (2) Dollar Rent A Car, Inc.; and (3) DTG Operations, Inc.

DTG Operations, Inc. owns one hundred percent of the equity interests of DTG Supply, LLC.

5. Hertz Local Edition Corporation owns one hundred percent of the equity interests of Hertz Local Edition Transporting, Inc.

6. Thrifty, LLC owns one hundred percent of the equity interests of the following entities: (1) Thrifty Car Sales, Inc.; (2) Thrifty Insurance Agency, Inc.; and (3) Thrifty Rent-A-Car System, LLC.

7. No other publicly held company holds 10% or more of any Applicant's stock.

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CERTIFICATE OF SERVICE

I, Paul D. Clement, a member of the Supreme Court Bar, hereby certify that three copies of the attached Application to Honorable Samuel A. Alito, Jr. for an Extension of Time to File a Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit were served on:

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Service was made by first-class mail on January 15, 2025.

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