In The Supreme Court Of The United States

No. 24A706

THE HERTZ CORPORATION, ET AL., APPLICANTS

v.

WELLS FARGO BANK, N.A., AS INDENTURE TRUSTEE, ET AL.

RESPONSE IN OPPOSITION TO APPLICATION 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

Wells Fargo Bank, N.A., as Indenture Trustee (the Trustee) respectfully submits this response in opposition to the application for an extension of time within which to file a petition for a writ of certiorari. The application should be denied because the requested 30-day extension would lead to additional delay in applicants' payment of hundreds of millions of dollars owed pursuant to the decision of the court of appeals in this case. The Trustee acknowledges that extensions are routinely granted, but in the usual case an extension does not cause meaningful prejudice to a respondent because it does not lead to delay in implementation of the court of appeals' judgment. The facts are different here, and in light of the prejudice that would result from a 30-day extension, applicants have failed to demonstrate "good cause" for the requested relief. Sup. Ct. R. 13.5.

1. Applicants are the Hertz Corporation and affiliated companies, which emerged from Chapter 11 bankruptcy proceedings in June 2021. In the decision below, the court of appeals held that applicants are liable to pay to the Trustee more than a quarter of a billion dollars for the benefit of holders of four series of unsecured notes issued by Hertz prior to its bankruptcy. See Appl. Ex. 3, at 10. That amount represents (i) post-petition interest at the contractual rate specified in the indentures governing the notes and (ii) "make whole" redemption premiums referred to in the indentures as the Applicable Premiums, which Hertz refused to pay to the noteholders when it emerged from bankruptcy. *Id.* at 6-10.

Hertz's Chapter 11 plan deemed the noteholders to be unimpaired creditors, which meant that the plan was required to "leave[] unaltered" the noteholders' "legal, equitable, and contractual rights." 11 U.S.C. § 1124(1). Notwithstanding that rule, the bankruptcy court agreed with Hertz that the noteholders were not entitled to payment of contract-rate interest and the Applicable Premiums as provided in the governing indentures. Appl. Ex. 3, at 11-12. The bankruptcy court held that those amounts were disallowed by the Bankruptcy Code as claims for unmatured interest, see 11 U.S.C. § 502(b)(2), and further held that unimpairment under Section 1124(1) does not require payment of disallowed claims. See Appl. Ex. 3, at 11-12. Although Hertz was solvent at the time its plan was confirmed and had distributed more than $1.1 billion in value to its prepetition equityholders, the bankruptcy court held that the historic "solvent debtor" principle did not entitle the noteholders to full repayment. *Ibid.*

The court of appeals reversed in relevant part. Expressly agreeing with recent decisions of the Fifth and Ninth Circuits, see *In re Ultra Petroleum Corp.*, 51 F.4th 138 (5th Cir. 2022), cert. denied, 143 S. Ct. 2495 (2023); *In re PG&E Corp.*, 46 F.4th 1047 (9th Cir. 2022), cert. denied, 143 S. Ct. 2492 (2023), the court of appeals held that the noteholders "have a right to receive contract rate interest and the Applicable Premiums because Hertz was solvent." Appl. Ex. 3, at 9. The court of appeals explained that this result followed from "absolute priority, 'bankruptcy's most important and famous rule.'" *Id.* at 10 (quoting *Czyzewski* v. *Jevic Holding Corp.*, 580 U.S. 451, 465 (2017)). This foundational principle provides that, "in bankruptcy, equity comes after debt (unless the latter consents)." *Id.* at 28. Absolute priority thus "prevents business owners, 'the most junior claimants[,]' from recovering anything 'unless creditors . . . are paid in full' or consent." *Id.* at 31 (citation omitted). The court of appeals held that the noteholders' "right to treatment consistent with absolute priority must be honored to leave them unimpaired," *id.* at 35, and that Hertz therefore could not refuse to pay contract-rate interest and the Applicable Premiums to the noteholders after having distributed a massive recovery to equityholders, *id.* at 38-40.

2. The court of appeals denied applicants' petition for rehearing en banc on November 6, 2024. See Appl. Ex. 2. Applicants did not seek or obtain a stay of the court of appeals' mandate, which issued on November 14, 2024. In an ordinary case, the bankruptcy court would then presumably have proceeded to enter judgment in favor of the Trustee pursuant to the court of appeals' unstayed mandate, at which

point applicants would be required to post a bond to obtain a stay of enforcement pending their forthcoming petition for a writ of certiorari. See Fed. R. Civ. P. 62(b); Fed. R. Bankr. P. 7062.

That has not occurred, however, because of a provision of Hertz's Chapter 11 plan governing the payment of disputed claims. Under that provision, applicants are not required to pay a disputed claim until it is allowed by a "Final Order," which Hertz and the bankruptcy court have understood to require that the court of appeals' decision be no longer subject to review on certiorari by this Court. See *In re Rental Car Intermediate Holdings LLC*, No. 20-11247 (MFW), Adv. No. 21-50995 (MFW), 2025 WL 25389, at *3 (Bankr. D. Del. Jan. 2, 2025). Under that understanding, applicants will not be required to pay the hundreds of millions of dollars they owe under the court of appeals' decision until applicants' forthcoming petition is denied by this Court. *Ibid.*

On remand, the Trustee moved the bankruptcy court to require applicants to post a bond or other security for the amounts owed under the court of appeals' decision. The bankruptcy court denied that motion on January 2, 2025, concluding that the requested relief would be inconsistent with the terms of Hertz's Chapter 11 plan. See *In re Rental Car Intermediate Holdings LLC*, 2025 WL 25389, at *5. In the course of litigation on the Trustee's motion, applicants acknowledged that, as of December 6, 2024, they would owe $322.6 million under the court of appeals' decision in the event that certiorari is denied (with that figure to be updated to reflect additional prejudgment interest through the actual date of payment). The Trustee

contends that, in addition to that undisputed liability, applicants also owe further amounts primarily attributable to the calculation of prejudgment interest. The bankruptcy court has directed the parties to propose a scheduling order to govern litigation to resolve their remaining disputes. See *id.*

3. Under the unique circumstances of this case, applicants have failed to demonstrate "good cause" for the requested 30-day extension of time within which to file their petition for a writ of certiorari. Sup. Ct. R. 13.5. In particular, this case differs markedly from the mine-run situation, in which an extension does not meaningfully prejudice a respondent because (in the absence of a stay of the court of appeals' mandate) the court of appeals' judgment will be implemented during the pendency of a certiorari petition. Here, as explained above, applicants will not be required to pay the noteholders the hundreds of millions of dollars that applicants owe under the court of appeals' decision or to post a bond to secure payment until their forthcoming certiorari petition is denied. In the interim, the noteholders are effectively required to extend involuntary unsecured credit to Hertz, and the result of an extension of the certiorari deadline would be to prolong the period during which the noteholders must continue to do so.

Exposing the noteholders to incremental delay in receiving amounts that should have been paid more than three and a half years ago would be particularly inequitable given that Hertz's creditworthiness has deteriorated significantly since its emergence from bankruptcy in June 2021. Indeed, Hertz recently reported a net

loss of *$2.4 billion* for the nine months ended September 2024.[1] In response to that announcement, in November 2024, S&P Global Ratings revised Hertz's ratings outlook to negative and lowered its ratings for Hertz's senior secured credit facilities (from BB- to B+) and senior unsecured notes (from B- to CCC+).[2] Shortly thereafter, in December 2024, S&P downgraded Hertz's secured debt *again* (to B). Those recent actions are just the latest in a long string of ratings downgrades.[3]

In its November ratings action, S&P explained that it "expect[s] Hertz's profitability and credit metrics to remain weak through 2025," and emphasized that the company is "vulnerable to sudden declines in vehicle prices and more broadly to capital market conditions."[4] In other words, market participants understand that Hertz's ongoing poor performance poses a meaningful risk to its creditors. The same deterioration in Hertz's financial performance is reflected in Hertz's equity value,

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[1] Hertz Global Holdings, Inc, Form 10-Q For the quarterly period ended September 30, 2024, at 3, https://hertz.gcs-web.com/static-files/1d2410ed-7b90-4d77-97a4-0a6dc47565e1.

[2] See S&P Global Ratings, *Hertz Global Holdings Inc. Outlook Revised To Negative On Weak Credit Metrics; 'B' Rating Affirmed* (Nov. 19, 2024), https://tinyurl.com/HtzSPNov.

[3] See Fitch Ratings, *Fitch Places Hertz on Rating Watch Negative; Assigns Expected Rating to New Secured Debt* (June 20, 2024), https://tinyurl.com/FitchJune; S&P Global Ratings, *Hertz Global Holdings Inc. Downgraded To 'B' On Weaker Credit Metrics; Outlook Stable* (June 20, 2024), https://tinyurl.com/SPJuneAction; S&P Global Ratings, *Hertz Global Holdings Inc. Rating Lowered To 'B+' From 'BB-' On Weaker Operating Performance; Outlook Negative* (May 7, 2024), https://tinyurl.com/SPMayAction; Fitch Ratings, *Fitch Downgrades Hertz to 'B-'; Maintains Negative Outlook* (May 7, 2024), https://tinyurl.com/FitchMay; Fitch Ratings, *Fitch Assigns Final 'BB'/'RR1' Rating to Hertz's Secured Term Loan; Downgrades Unsecured Debt* (Nov. 17, 2023), https://tinyurl.com/FitchNov.

[4] *See* S&P Global Ratings, *Hertz Global Holdings Inc. Outlook Revised To Negative On Weak Credit Metrics; 'B' Rating Affirmed* (Nov. 19, 2024), https://tinyurl.com/HtzSPNov.

which has cratered in the years since Hertz emerged from bankruptcy. Hertz's stock, which traded at $26.99 per share on July 1, 2021, now trades at approximately $4 per share.

Although applicants' unpaid obligations to the noteholders continue to accrue prejudgment interest, that is insufficient to outweigh the prejudice resulting from incremental delay in payment. In December 2024, Hertz issued $500 million in additional secured notes with a contractual coupon rate of 12.625%.[5] That rate—for *secured* credit—dwarfs the contractual coupon rates that Hertz contends govern the noteholders' ongoing accrual of prejudgment interest (which range from 5.5% to 7.125%), and it significantly exceeds the 9% New York statutory rate that the Trustee contends governs the calculation of prejudgment interest. See N.Y. CPLR § 5004(a). In short, even on the most favorable set of assumptions, the noteholders are currently funding Hertz on an unsecured basis at an interest rate several hundred basis points below what Hertz must pay for secured borrowing. Each additional month of delay thus costs the noteholders at least hundreds of thousands of dollars in forgone interest compared to what Hertz would be required to pay to borrow on market terms (and potentially more than a million dollars each month, depending on the applicable rate of prejudgment interest).

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[5] *See* Hertz Global Holdings, Inc, *Hertz Announces Pricing of $500 Million of Additional First Lien Senior Secured Notes Offering* (Dec. 5, 2024), https://newsroom.hertz.com/news-releases/news-release-details/hertz-announces-pricing-500-million-additional-first-lien-senior.

Further delay is also unwarranted because this Court is unlikely to grant review. As the court of appeals observed, its decision is consistent with the two other courts of appeals that have resolved the same question regarding the rights of unimpaired creditors in a solvent bankruptcy case. See Appl. Ex. 3, at 26-28 (citing *In re Ultra Petroleum Corp.*, 51 F.4th 138; *In re PG&E Corp.*, 46 F.4th 1047). This Court denied certiorari petitions in both of those cases, and the argument for certiorari is even weaker now that a third court of appeals has agreed. Indeed, Hertz's petition for en banc rehearing did not even *assert* a circuit conflict. Rather, Hertz argued (unsuccessfully) that the court of appeals' decision in this case could not be reconciled with the court's own precedent in *In re PPI Enterprises (U.S.), Inc.*, 324 F.3d 197 (3d Cir. 2003). See Applicants' Pet. for Reh'g En Banc 8-11. To state the obvious, that sort of assertion of a purely *intra*-circuit conflict is not a basis for review by this Court. See Sup. Ct. R. 10.

Faced with all of these considerations counseling against further delay, applicants point only to the competing professional obligations of their lead counsel as a justification for the requested extension. See Appl. 7. As a matter of professional courtesy, undersigned counsel ordinarily seeks to accommodate the reasonable scheduling requests of opposing counsel. But in this case, where incremental delay would cause concrete real-world prejudice to the noteholders by exposing them to ongoing deterioration in Hertz's creditworthiness, see pp. 5-7, *supra*, the competing obligations of applicants' counsel do not constitute good cause for an extension of time. See Sup. Ct. R. 13.5. That is particularly true because the Court's default 90-day

deadline, see Sup. Ct. R. 13.1, already provides an ample period to prepare a certiorari petition, and because applicants' lead counsel is supported in this case by able co-counsel. The application for an extension of time should accordingly be denied.

Respectfully submitted.

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