No. 25-1439

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

GOLDMAN SACHS BANK USA, d/b/a/ Marcus by Goldman Sachs,
Appellant,

– v. –

REHA ANN BROWN; GREGORY KEVIN MAZE,
Appellees.

On Appeal from the United States District Court for the Western District of Virginia
No. 7:24-cv-00490-RSB-CKM (Hon. Robert S. Ballou)

BRIEF OF *AMICI CURIAE* THE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS AND THE NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER IN SUPPORT OF APPELLEES

Edward C. Boltz
The Law Offices of John T. Orcutt, P.C.
1738 Hillandale Road
Suite D
Durham, NC 27705
Telephone: (919) 286-1695
eboltz@lojto.com
Counsel for Amici Curiae National Association of Consumer Bankruptcy Attorneys, National Consumer Bankruptcy Rights Center

Allan L. Gropper, Of Counsel

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to 4th Cir. R. 26.1 Amici state as follows.

The National Association of Consumer Bankruptcy Attorneys is a nonprofit association. It has no parent corporation, and no publicly held company owns a 10% or more interest in NACBA.

The National Consumer Bankruptcy Rights Center is a nonprofit association. It has no parent corporation, and no publicly held company owns a 10% or more interest in NCBRC.

RULE 29(a)(2) STATEMENT

Both Appellant and Appellees have consented to the filing of this brief.

RULE 29(c)(5) STATEMENT

Pursuant to Fed. R. App. P. 29(c)(5), no counsel for any party authored this brief in whole or in part, and no person or entity other than NACBA and NCBRC, its members, and their counsel made any monetary contribution toward the preparation or submission of this brief.

TABLE OF CONTENTS

RULE 26.1 CORPORATE DISCLOSURE STATEMENT ii
RULE 29(a)(2) STATEMENT ii
RULE 29(c)(5) STATEMENT ii
TABLE OF AUTHORITIES iv
IDENTITY AND INTEREST OF *AMICI CURIAE* 1
SUMMARY OF ARGUMENT 3
ARGUMENT 5
Section 362(k) of the Bankruptcy Code is an integral and important part of Section 362 that should not be rendered ineffective by an arbitration clause in a private contract. 5
CONCLUSION 18
CERTIFICATE OF COMPLIANCE 19
CERTIFICATE OF SERVICE 19

TABLE OF AUTHORITIES

Federal Cases **Page(s)**

Anderson v. Credit One Bank, N.A. (*In re Anderson*),
884 F.3d 382 (2d Cir.) 12, 13, 14

Belton v. GE Capital Retail Bank (*In re Belton*),
961 F.3d 612 (2d Cir. 2020) 12-13

Cavanaugh v. Conseco Fin. Serv. Corp.,
271 B.R. 414 (Bankr. D. Mass. 2001) 10

Cohen v. Ernst & Young, L.L.P. (*In re Friedman's, Inc.*),
372 B.R. 530 (Bankr. S.D. Ga. 2007) 10

In re Crysen/Montenay Energy Co.,
902 F.2d 1098 (2d Cir. 1990) 6

Epic Sys. Corp. v. Lewis,
584 U.S. 497 (2018) 13

Gandy v. Gandy (*In re Gandy*),
299 F.3d 489 (5th Cir. 2002) 16, 17

Grant v. Cole (*In re Grant*),
281 B.R. 721 (Bankr. S.D. Ala. 2000) 9-10

Gruntz v. Cnty. of L.A. (*In re Gruntz*),
202 F.3d 1074 (9th Cir. 2000) 16

Gte Sylvania v. Consumers Union of U.S.,
445 U.S. 375, 100 S. Ct. 1194, 63 L. Ed. 2d 467 (1980) 13

Henry v. Educ. Fin. Serv. (*In re Henry*),
944 F.3d 587 (5th Cir. 2019) 13-14

Hooks v. Acceptance Loan Co.,
2011 WL 2746238 (M.D. Ala. July 14, 2011) 14

Houck v. Substitute Tr. Servs.,
791 F.3d 473 (4th Cir. 2015) 8, 9

Hurlburt v. Black,
2019 U.S. App. LEXIS 15603 (4th Cir. May 24, 2019) 2

Jalbert v. Zurich Am. Ins. Co. (*In re Payton Constr. Corp.*),
399 B.R. 352 (Bankr. D. Mass. 2009) 7

Jove Eng'g, Inc. v. IRS,
92 F.3d 1539 (11th Cir. 1996) 6

Lynch v. Jackson,
853 F.3d 116 (4th Cir. 2017) 2

Mar. Asbestosis Legal Clinic v. LTV Steel Co. (*In re Chateaugay Corp.*),
920 F.2d 183 (2d Cir. 1990) 6

Martin v. CitiFinancial (*In re Martin*),
387 B.R. 307 (Bankr. S.D. Ga. 2007) 7

MBNA Am. Bank, N.A. v. Hill,
436 F.3d 104 (2d Cir. 2006) 10, 11, 12

Moses v. CashCall, Inc.,
781 F.3d 63 (4th Cir. 2015) 5, 6, 7

In re Nat'l Gypsum Co.,
118 F.3d 1056 (5th Cir. 1997) 17

Phillips v. Congelton, L.L.C. (*In re White Mt. Mining Co.*),
403 F.3d 164 (4th Cir. 2005) 17

Richardson v. Priderock Capital Partners, L.L.C. (*In re Richardson*),
724 F. App'x 238 (4th Cir. 2018) 2

In re Stacy,
21 B.R. 49 (Bankr. W.D. Va. 1982) 8

Taggart v. Lorenzen,
587 U.S. 554 (2019) 15

Verizon Wireless Pers. Commc'ns, LP v. Bateman (*In re Bateman*),
2019 WL 4644385 (M.D. Fla. Sept. 24, 2019) 14

Videsh Sanchar Nigam Ltd. v. Startec Globel Commc'ns Corp. (*In re Startec Glob. Commc'ns Corp.*),

303 B.R. 605 (D. Md. 2004) 10

Federal Statutes

11 U.S.C. § 105 ..... 5, 6, 9, 10
11 U.S.C. § 301 12
11 U.S.C. § 362 ..... 3, 5, 6, 7, 8, 9, 10, 11, 12,16, 18
11 U.S.C. § 524 ..... 10, 12, 13
11 U.S.C. §1328.....11
11 U.S.C. § 1329.....11

State Statutes

N.C. Gen. Stat. § 75-50 6

IDENTITY AND INTEREST OF *AMICI CURIAE*

The National Consumer Bankruptcy Rights Center is a non-profit organization dedicated to protecting the integrity of the bankruptcy system and preserving the rights of consumer bankruptcy debtors. To those ends it provides assistance to consumer debtors and their counsel in cases likely to impact consumer bankruptcy law. It submits an amicus curiae brief when it believes resolution of a particular case may have wide effect on consumer debtors, so that the larger legal effects of courts' decisions will not depend solely on the parties directly involved in the case. The Center also strives to influence the national conversation on bankruptcy laws and debtors' rights by increasing public awareness of and media attention to the important issues involved in bankruptcy proceedings.

Incorporated in 1992, the National Association of Consumer Bankruptcy Attorneys ("NACBA") is a non-profit organization of more than 1,500 consumer bankruptcy attorneys nationwide. NACBA's corporate purposes include education of the bankruptcy bar and the community at large on the uses and misuses of the bankruptcy process.

NACBA and NCBRC regularly file[1] *amicus curiae* briefs in systemically important cases to ensure that courts have a full understanding of the applicable bankruptcy law, the case, and its implications for consumer debtors. *See Hurlburt v. Black*, No. 17-2449, 2019 U.S. App. LEXIS 15603 (4th Cir. May 24, 2019), *Richardson v. Priderock Capital Partners, LLC (In re Richardson)*, 724 F. App'x 238 (4th Cir. 2018), and *Lynch v. Jackson*, 853 F.3d 116 (4th Cir. 2017).

NACBA and its membership and NCBRC have a vital interest in the outcome of this case. The result in the cases at bar will affect the administration of many consumer cases in this Circuit. The Courts below both found, in carefully reasoned decisions and in the exercise of their discretion, that arbitration would turn over enforcement of the court's own injunctive powers to a private party, an abdication of judicial authority not required by applicable law. We submit that reversal would eviscerate a court's ability to interpret and enforce its own injunction,

[1] When referencing *amicus curiae* briefs that influence U.S. Supreme Court opinions in bankruptcy cases, it has been noted that, "The contribution of the NACBA briefs is not surprising. Aside from the Solicitor General, the NACBA is the most common single amicus to appear in these cases…" See, Ronald J. Mann, Bankruptcy and the U.S. Supreme Court, p. 213, n. 6 (2017).

whereas a finding that the courts below did not abuse their discretion, in denying Goldman Sachs' motion to compel arbitration, would guide and protect the administration of many of the thousands of consumer bankruptcy cases that are brought in this Circuit every year.

SUMMARY OF ARGUMENT

By providing for an automatic stay after a filing, Congress recognized the need for comprehensive protection of the debtor -- for the debtor's own sake and for the benefit of all other creditors of the estate. *See* 11 U.S.C. § 362, adopted in 1978. Finding the protection provided by the initial language of the statute insufficient, in 1984 it created an enhanced remedy for individuals in 11 U.S.C. § 362(h), now Section 362(k) of the Bankruptcy Code. Any remedy under Section 362(k) comes into effect only upon a bankruptcy filing and is contingent upon the filing. The Court having jurisdiction over the case giving rise to that order should not be divested of jurisdiction over any portion of the relief provided in Section 362 by being required to turn over to a private arbitrator a portion of the protection provided to the debtor and to creditors.

The record in this case demonstrates why a contemptuous creditor – or even a cynical creditor concerned only with its costs – should not be permitted to ignore a court order and rely on an arbitration clause to hobble a party's ability to protect the Court's jurisdiction as well as his or her rights. This case does not require a determination of the extent or scope of the duty to arbitrate in a bankruptcy case or whether this Court and the other Circuits have faithfully applied applicable Supreme Court authority to give effect to both the Federal Arbitration Act and the Bankruptcy Code. This case involves the power of a Federal court to enforce its own order, a right -- and indeed an obligation -- that should not, under the circumstances of this case, be turned over to an arbitrator even in part.

ARGUMENT

Section 362(k) of the Bankruptcy Code is an integral and important part of Section 362 that should not be rendered ineffective by an arbitration clause in a private contract.

The dispute in this appeal is narrow. Goldman appears to concede that the Federal courts retain power to punish violations of the automatic stay and that some of the relief sought by the plaintiffs is not arbitrable. It says, "Even if Section 362(k) claims go to arbitration, bankruptcy courts retain the authority, in appropriate cases, to punish violations of the automatic stay through their statutory contempt power, set forth in Section 105(a) of the Code." (Brief, p. 18)[2]

Goldman could hardly argue otherwise in the face of the opinion of this Court in *Moses v. CashCall, Inc.*, 781 F.3d 63 (4th Cir. 2015), where the majority agreed that "the district court did not abuse its discretion to retain in bankruptcy Moses' claim for a declaratory judgment." *Id.* at 67. Since the complaint in this case contains a request for relief

[2] Goldman does not state what it believes would constitute an "appropriate" case. We suggest that the instant cases would easily be found "appropriate," based as they are on plaintiffs' meticulous allegations of repeated and contemptuous violations of the automatic stay.

pursuant to Section 105(a) of the Bankruptcy Code [Complaint, para. 71] (JA026), as well as a request for a preliminary and permanent injunction [Complaint para. 74-85] (JA027-029) and declaratory relief [Complaint para. 72-73] (JA027), there should be no dispute that much of the relief sought by the plaintiffs is not arbitrable.[3]

We respectfully submit that plaintiffs' claims in this case pursuant to Section 362(k) of the Bankruptcy Code, 11 U.S.C. § 362(k), are also non-arbitrable. In *Moses v. CashCall,* two members of this Court held that plaintiff's claims for damages under the North Carolina Debt Collection Act, NC Gen. Stat. Sections 75-50 to 56 (2012), should be sent to arbitration. As the opinion of Judge Gregory stated, concurring in the majority opinion in part and concurring in the judgment, "Moses' non-core claim [under the N.C. Act] shares little overlap with the core claim, apart from the question whether the

[3] Contempt is often punished by the imposition of damages, and it has been found that Section 105(a) "grants courts independent statutory powers to award monetary and other forms of relief for automatic stay violations to the extent such awards are 'necessary or appropriate' to carry out the provisions of the Bankruptcy Code." *Jove Eng'g. Inc. v. Internal Revenue Service,* 92 F.3d 1539, 1539 (11th Cir. 1996). *See also In re Crysen/Montenay Energy Co.*, 902 F.2d 1098, 1104 (2d Cir. 1990); *In re Chateaugay Corp.,* 920 F.2d 183, 187 (2d Cir. 1990).

underlying loan was void in the first place." 781 F.3d at 85. (The overlapping claim was not sent to arbitration.) In any event, the claim in *Moses v. CashCall* sent to arbitration appears to be a State-law statutory claim similar to other statutory claims that courts have found to be arbitrable.

Claims under Section 362(k) are different. For one thing, they can be brought only after the filing of a bankruptcy petition and only in connection with that proceeding. The courts have repeatedly rejected contentions that causes of action that exist only because of and in connection with a bankruptcy filing should be sent to arbitration. *See, e.g., Jalbert v. Zurich Am. Ins. Co. (In re Payton Constr. Corp.)*, 399 B.R. 352 (Bankr. D. Mass. 2009) (avoidance, fraudulent transfer and equitable subordination claims are statutory causes of action arising exclusively under the Bankruptcy Code and not arbitrable); *In re Martin*, 387 B.R. 307 (Bankr. S.D. Ga. 2007) (arbitration clause not applicable to claim under sec. 544 of the Bankruptcy Code, which exists only because bankruptcy was filed). We submit that the contention that a claim under Section 362(k) should be sent to arbitration should also be rejected by this Court.

This Court's decision in *Houck v. Substitute Trustee Services,* 791 F.3d 473 (4th Cir. 2015), describes both the purpose and importance of the automatic stay as well as the reasons why Congress added Section 362(k) to the Bankruptcy Code in 1984. After taking note of the importance of the automatic stay,[4] this Court emphasized the significance of providing a private right of action to vindicate the stay. It said:

> Before 1984, when Congress enacted section 362(k) (designated section 362(h) when enacted), the automatic stay appeared to be merely proscriptive. Section 362(a) provided that the filing of a bankruptcy petition "operates as a stay," without prescribing any sanction for its violation. 11 U.S.C. section 362(a). The Bankruptcy Code simply gave the bankruptcy court authority to administer the proscription. For example, section 362(d) authorized the bankruptcy court to "grant relief from the stay," and section 362(e) and (f) otherwise authorized the bankruptcy court to regulate the stay's length, conditions, and termination. Thus, courts had held that the section 362(a) automatic-stay provision did not provide a party with an independent right of action for damages but rather with a procedural mechanism to be regulated and enforced by the bankruptcy court. *See, e.g., In re Stacy,* 21 B.R. 49 (W.D.Va. 1982)].

---

[4] "This automatic stay is 'one of the fundamental debtor protections provided by the bankruptcy laws.' S.Rep. No. 95-989, at 54 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5840. 'It gives the debtor a breathing spell from his creditors' and 'stops all collection efforts, all harassment, and all foreclosure actions.' *Id.*" *Houck,* 791 F.3d at 480-81.

> In 1984, however, with the enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub.L. No. 98353, 98 Stat. 333 (codified in scattered sections of 11 and 28 U.S.C.), Congress created a private cause of action for the willful violation of a stay, authorizing an individual injured by any such violation to recover damages. *See* 11 U.S.C. § 362(k).[5]

Goldman has conceded that in "appropriate cases" Section 105 is another means of obtaining damages for a violation of the Section 362 automatic stay. In any event, it cannot be contested that Congress found that Section 362(k) would vindicate rights created as an essential part of the Bankruptcy Code. For this reason, among others, bankruptcy court decisions, like the decisions of the District and Bankruptcy Courts below, have refused to compel arbitration of stay violation claims. *In re Grant,* 281 B.R. 721 (Bankr. S.D. Ala. 2000) ("Allowing arbitrators to resolve a contempt matter would present a conflict with the Code because it would allow an arbitrator to decide

[5] We discuss above (p. 6, n. 3) that other courts, including several Circuit courts, have found that a violation of Section 362 is compensable by damages awarded for contempt. Goldman errs when it argues (Brief, p. 10, n. 1) that *Houck* categorically rejected the proposition that prior to 1984 "Section 362's automatic-stay provision did not 'provide a party with an independent right of action for damages.'" *Houck* stated in *dictum* that some courts had so found, citing no Circuit-level authority.

whether or how to enforce a federal injunction under Sections 362 and 524."); *In re Startec Global Communications Corp.,* 300 B.R. 244 (D. Md. 2003), stay granted, 303 B.R. 605 (D. Md. 2004); *In re Cavanaugh,* 271 B.R. 414 (Bankr. D. Mass. 2001); *In re Friedman's Inc.,* 372 B.R. 530 (Bankr. S.D. Ga. 2007).[6]

Goldman relies on the Second Circuit's decision in *MBNA America Bank, N.A. v. Hill,* 436 F.3d 104, 110 (2d Cir. 2006), which sent a claim for damages under Section 362(k) to arbitration. There a panel of the Second Circuit sent a 362(k) claim for damages to arbitration because, in substance, (i) "Hill's bankruptcy case is now closed and she has been discharged;" (ii) "the fact that Hill filed her Section 362(k) claim as a putative class action further demonstrates that the claim is not integral to her individual bankruptcy proceeding"; and (iii) "we are not persuaded that a stay, which arises by operation of statutory law and not by any affirmative order of the bankruptcy court, is so closely related to an injunction that the bankruptcy court is uniquely able to

[6] In *Startec* and *Friedman's* the claims for stay violations were actually brought pursuant to Section 105(a), not Section 362(k). The debtors were corporations, and Section 362(k) is available only to individuals.

interpret and enforce its provisions." *MBNA Am. Bank, N.A.*, 436 F.3d at 110.

We submit that these reasons do not bear scrutiny under the facts of the cases now before the court. Plaintiff Brown's Chapter 13 case is still open, the automatic stay is still in effect, she will not obtain a discharge until her plan is fully performed, and her plan could still be amended to require additional payments to creditors. See 11 U.S.C. Sections 1328 and 1329. In any event, interference with case administration is only one reason courts have considered in determining whether a bankruptcy-related claim must be sent to arbitration. Goldman argues again and again in its brief that an award of damages here would have no effect on the administration of the plaintiffs' bankruptcy cases and that this fact supports its motion. But this is flatly wrong as to plaintiff Brown. In any event, the lower courts and counsel would be lost if we had one rule for a Section 362(k) action brought at the beginning of a Chapter 7 case and another for an action brought after discharge, or one rule for Chapter 7 cases and another rule for Chapter 13 cases. We also submit that the fact that a case is

filed as a putative class action should not affect its arbitrability, especially where a motion for class certification has not even been filed.

The third reason given by the Court in *MBNA America Bank v. Hill* for sending the case to arbitration is that the automatic stay injunction is different in substance from the discharge injunction, whose construction, earlier Circuit authority had found, was exclusively the province of the judiciary. But the discharge injunction comes into effect by statute (Section 524(a)(2) of the Bankruptcy Code) just like the automatic stay injunction (Section 362). The former comes into effect automatically upon the entry of a discharge and the latter comes into effect automatically upon the filing of a voluntary petition, which is an "order for relief" under Section 301(b).

Moreover, in cases subsequent to *Hill,* the Second Circuit issued two decisions in cases involving claims brought for violation of Section 524(a)(2) which look in a very different direction from the opinion in *Hill.* In *Anderson v. Credit One Bank, N.A.,* 884 F.3d 382 (2d Cir. 2018), *cert. denied,* 596 U.S. 823 (2018), the Second Circuit held that a claim for violation of the discharge injunction under Section 524(a)(2) of the Bankruptcy Code was not arbitrable. Even more recently, in *Belton*

v. GE Capital Retail Bank, 961 F.3d 612 (2d Cir. 2020), *cert. denied,* 141 S. Ct. 1513 (2021), the Second Circuit reaffirmed the holding in *Anderson* in a suit seeking damages for violation of the discharge injunction. The party demanding arbitration in that case argued, among other things, that *Anderson* was inconsistent with the Supreme Court's then most recent arbitration decision, *Epic Systems Corp. v. Lewis,* 584 U.S. 497 (2018). The Second Circuit rejected this contention and reaffirmed the conclusion in *Anderson* that claims for violation of the discharge injunction are by their nature not arbitrable.

As the Court said in *Anderson,*

> The power to enforce an injunction is complementary to the duty to obey the injunction, which the Supreme Court has described as a duty borne out of "respect for judicial process." *GTE Sylvania, Inc. v. Consumers Union of U.S., Inc.*, 445 U.S. 375, 387, 100 S. Ct. 1194, 63 L.Ed.2d 467 (1980) (internal quotation marks omitted). That same respect for judicial process requires us to hold that the bankruptcy court alone has the power to enforce the discharge injunction in Section 524. Arbitration of the claim would thus present an inherent conflict with the Bankruptcy Code.

Anderson, 884 F.3d at 391. *Anderson* is consistent with other decisions denying motions to send claims for violation of the discharge injunction to arbitration, including the decision of the Fifth Circuit in *Henry v.*

Educ. Fin. Serv. (*In re Henry*), 944 F.3d 587 (5th Cir. 2019). *See also Verizon Wireless Pers. Comm., L.P. v. Bateman (In re Bateman)*, 2019 WL 4644385 (M.D. Fla. Sept. 24, 2019); *Hooks v. Acceptance Loan Co.,* 2011 WL 2746238 (M.D. Ala. July 14, 2011).

The cases cited immediately above involved a violation of the discharge injunction. We recognize that in *Anderson* the Second Circuit attempted to distinguish violation of the automatic stay injunction from violation of the discharge injunction, finding that the latter was more critical to a debtor's opportunity for a fresh start. We suggest, assuming that the effect of the automatic stay on case administration is a critical factor in determining arbitrability, it is less appropriate to refer claims relating to breach of the automatic stay to arbitration than claims for violation of the discharge injunction. The discharge injunction is entered at the conclusion of a bankruptcy case when a violation is less likely to affect the administration of a case. The automatic stay that goes into effect on the initial filing of the case is much more likely to affect an individual's case and to require immediate action by the court – not referral to an arbitrator.

The Supreme Court took notice of the difference between the automatic stay and the discharge injunction in *Taggart v. Lorenzen*, 587 U.S. 554, 565 (2019), where the Court stated, "The purposes of automatic stays and discharge orders also differ: A stay aims to prevent damaging disruptions to the administration of a bankruptcy case in the short run, whereas a discharge is entered at the end of the case and seeks to bind creditors over a much longer period." The Supreme Court did not suggest that either statutory injunction was less important in terms of requiring judicial construction rather than referral to a private arbitrator.

Failure to affirm the decisions below would leave the lower courts and counsel in this Circuit in a quandary as to how to deal with claims of violation of the automatic stay, whether made at the beginning, the end, or the middle of a bankruptcy case. How could a bankruptcy court and counsel effectively deal with identical claims for violation of the automatic stay – try claims for violation of the automatic stay brought at the beginning of the case but send to arbitration claims brought after discharge? Try claims in chapter 13 cases where the discharge is not granted until the end of the (usual)

five-year repayment period, but send claims to arbitration in chapter 7 cases where discharge is usually granted earlier? More broadly, should the bankruptcy court try claims for declaratory or injunctive relief but refer claims for damages to a private arbitrator? Should the bankruptcy court try claims for damages under its contempt power and send the claims for damages for violation of Section 362(k) to arbitration?

Complex and unwieldy rules would only encourage creditors to continue a pattern and practice of stay violations and impair the Courts' and parties' ability to effectuate Congressional intent in adopting Section 362(k). Moreover, because Goldman has not admitted that it violated the stay, the Bankruptcy Court may also have to interpret the scope of the stay, a task for which it is uniquely qualified. *See Gruntz v. Cty. of L.A. (In re Gruntz*), 202 F.3d 1074 (9th Cir. 2000). As the Courts below found, in an appropriate exercise of their discretion, all the claims for damages for violation of a judicial injunction – the automatic stay – should remain in court and be enforceable there.

In *Gandy v. Gandy*, 299 F.3d 489, 495 (5th Cir. 2002), the Fifth Circuit Court of Appeals recognized that the Federal Arbitration Act

"directs courts to rigorously enforce arbitration agreements", *Gandy*, 299 F.3d at 494, but held nonetheless that a bankruptcy court possesses "discretion to refuse to enforce an otherwise applicable arbitration agreement when the underlying nature of a proceeding derives exclusively from the provisions of the Bankruptcy Code and the arbitration of the proceeding conflicts with the purpose of the Code." *Id.* at 495. And the *Gandy* Court continued:

> "Some of the purposes of the Code we mentioned in *National Gypsum* [its prior decision in *In re Nat'l Gypsum Co.*, 118 F.3d 1056 (5th Cir. 1997)] as potentially conflicting with the Arbitration Act include the goal of centralized resolution of purely bankruptcy issues, the need to protect creditors and reorganized debtors from piecemeal litigation and the undisputed power of a bankruptcy court to enforce the court's own orders." *Id.* at 500.

These were concerns that this Court found determinative in *In re White Mountain Mining Co.,* 403 F.3d 164, 169-70 (4th Cir. 2005), and the concerns that the Courts below found determinative in their exercise of discretion to deny Goldman's motion.

Goldman Sachs implies that multiple judges of the Federal Courts have over many years failed to faithfully follow Supreme Court authority in some of the cases cited above. We submit they have not. In any event, this Court need not determine the precise point at which

the mandate of the Federal Arbitration Act ends and title 11 prevails. There is nothing in the Federal Arbitration Act to suggest that a court must turn over to a private arbitrator any part of the question of the relief to be granted when its own order has been violated. The Bankruptcy Court carefully analyzed the allegations of the complaint before it and exercised its discretion to retain all the claims before it and not to split off the claims under 362(k). The District Court in an equally careful decision affirmed this exercise of discretion. Goldman Sachs has not shown that their exercise of discretion was improvident or contrary to law.

CONCLUSION

The order of the District Court should be affirmed.

Respectfully submitted, this the 24th day of July, 2025.

/s/ Edward C. Boltz
Edward C. Boltz
The Law Offices of John T. Orcutt, P.C.
1738 Hillandale Road
Suite D
Durham, NC 27705
Telephone: (919) 286-1695
eboltz@lojto.com
Counsel for Amici Curiae National Association of Consumer Bankruptcy Attorneys, National Consumer Bankruptcy Rights Center

Allan L. Gropper, Of Counsel

CERTIFICATE OF COMPLIANCE

I certify that the foregoing Brief complies with the type-volume limitation of Fed. R. App. P. Rule 29(a)(5) because this brief contains 3,357 words, excluding the portions thereof exempted by Fed. R. App. P. 32(f); and,

I certify that the foregoing Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman.

/s/ Edward C. Boltz

CERTIFICATE OF SERVICE

I certify that on July 24, 2025, the foregoing document was served on all parties or their counsel of record through the CM/ECF system.

/s/ Edward C. Boltz
Edward C. Boltz
The Law Offices of John T. Orcutt, P.C.
1738 Hillandale Road
Suite D
Durham, NC 27705
Telephone: (919) 286-1695
eboltz@lojto.com
Counsel for Amici Curiae National Association of Consumer Bankruptcy Attorneys, National Consumer Bankruptcy Rights Center