

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

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Lyle W. Cayce
Clerk

No. 25-10947

IN THE MATTER OF WHITESTONE UPTOWN TOWER, L.L.C.,

Debtor,

WHITESTONE UPTOWN TOWER, L.L.C.,

Appellant,

versus

WHITESTONE REIT OPERATING PARTNERSHIP, L.P.,

Appellee,

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:24-CV-2699

Before SMITH, WILLETT, and RAMIREZ, *Circuit Judges*.

JERRY E. SMITH, *Circuit Judge*:*

Whitestone REIT Operating Partnership, L.P. (“WROP”), attempted to pay off a loan of Whitestone Uptown Tower, L.L.C. (“Uptown Tower”), for which it had issued a guaranty. As a result of WROP’s removal

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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as a member of Uptown Tower’s LLC, the payment was diverted, suspended during Uptown Tower’s bankruptcy proceedings, and then allowed as a subrogated—prioritized—claim.

WROP won statutory subrogation in the bankruptcy court, which decision the district court affirmed. Now on appeal, and following developments in an affiliated bankruptcy case involving related parties, WROP challenges whether Uptown Tower retains standing, contending that WROP will necessarily receive payment in full through the affiliated bankruptcy’s settlement agreement, which eliminates any financial dispute between these parties. After assuring ourselves that there is standing and therefore subject matter jurisdiction, we affirm the district court’s finding of subrogation on the merits.

I.

The facts are complicated, but once they are made clear, the law is somewhat easier.

There are five main entities:

First, the debtor Uptown Tower, which owns the commercial property in Dallas that is ultimately the object of this dispute. Uptown Tower took a loan from Morgan Stanley, which was later assigned to—

Second—Rialto as creditor. Rialto pursued foreclosure in this bankruptcy through a subsidiary special purpose vehicle (“SPV”) named RSS MSBAM2013-C13-TX WUT, LLC.

Third, WROP issued a guaranty on the loan from Morgan Stanley. At the time, Uptown Tower was WROP’s subsidiary and basically a special purpose vehicle owned by Whitestone’s top-level REIT to hold the commercial property.

Fourth, Pillarstone Capital REIT (“Pillarstone”) is the opposing

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party-in-interest and the main player in the affiliated bankruptcy. During the pendency of the loan, it joined with WROP to form—

Fifth—the Pillarstone Capital REIT Operating Partnership, LP (“POP”). WROP contributed fourteen properties to the POP partnership, including Uptown Tower. Initially, Pillarstone was general partner (“GP”) in POP with an 18% stake; WROP was the limited partner (“LP”) with an 82% stake. WROP later exited its majority stake in POP, holding onto a single residual special share and leaving Pillarstone and a few individual shareholders as the remaining partners. POP, under Pillarstone’s control, is also in the affiliated bankruptcy proceeding.

From all appearances, this dispute stems from Uptown Tower’s serving the interests of the remaining POP partners and trying to squeeze out WROP’s bankruptcy-impaired equity interest. We revisit this point in our discussion of bankruptcy standing, but first we unpack the facts and procedural history.

A.

One might call this a story of REITs and wrongs. A series of Real Estate Investment Trust (“REIT”) transactions, followed by a rise in interest rates and hiked lending standards, precipitated Uptown Tower’s bankruptcy and the affiliated bankruptcy.¹ Now these formerly happy business partners lock horns, Texas style, over both cases. Attention to this case’s Bankruptcy Plan, the affiliated bankruptcy’s Settlement Agreement, and the top-level Whitestone REIT’s public SEC filings helps us unpack what is

¹ Both Pillarstone Capital REIT (“Pillarstone,” *supra*), and the Pillarstone Capital REIT Operating Partnership, L.P. (“POP,” *supra*) separately and subsequently filed for bankruptcy. Their cases are jointly administered with additional debtors under No. 24-30653 in the U.S. Bankruptcy Court for the Northern District of Texas, Dallas Division.

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fundamentally a dispute over priority.²

There are two big episodes. First, Morgan Stanley issued a loan to Uptown Tower (an SPV owned by WROP, in turn controlled by Whitestone REIT). WROP issued a guaranty on that loan. Next, WROP and Pillarstone formed the POP partnership, WROP assigned Uptown Tower to POP, and Morgan Stanley assigned the note and the guaranty to Rialto as the new creditor. Following these assignments, WROP almost entirely exited POP, retaining a single special share.

Seven years later, Uptown Tower defaulted on its debt, Rialto noticed foreclosure, and a flurry of settlement negotiations ensued. WROP dutifully negotiated a payoff and issued the \$13 million guaranty payment but—for a twist—Uptown Tower *LLC*, with POP as *member* under Pillarstone’s control, removed WROP as *manager* of its formerly controlled LLC. The very next day, Uptown Tower declared bankruptcy. It then cut a new deal with Rialto for \$17 million. This switcheroo prompted WROP to bring a subrogation claim against Uptown Tower to get back its \$13 million.

* * * * *

For greater detail: On September 26, 2013, Uptown Tower executed a promissory note and loan agreement with Morgan Stanley Mortgage Capital Holdings to borrow approximately \$16.45 million (“the Loan”). The Loan was secured by debtor’s twelve-story, 253,000 square-foot office tower

² See EDGAR, *Whitestone REIT: Form 10-Q for the Quarterly Period ended September 30, 2024* (Oct. 31, 2024), *30 (<https://perma.cc/JX23-AC4D>). This EDGAR filing shows the original relationship between WROP and Uptown Tower, including how the property changed hands from Whitestone’s to Pillarstone’s control. For background, REITs tend to hold their properties in SPVs to cabin liability and tax attributes. *See generally, e.g.,* Justin R. Salon et al., MORRISON FOERSTER, *Frequently Asked Questions About Real Estate Investment Trusts* (May 30, 2024) (<https://perma.cc/2DKE-LHT9>).

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located in the Uptown area of Dallas (“the Property”). The same day the debtor executed the Loan, WROP executed an unconditional guaranty for the debtor’s obligations under the Loan, which was then assigned to Rialto’s SPV.

Shortly thereafter, WROP—controlled by the top-level Whitestone REIT—and Pillarstone REIT joined as partners in POP, *supra*. WROP contributed fourteen commercial properties to the partnership, including Uptown Tower. As part of that transaction, WROP was named as a non-member manager of Uptown Tower’s LLC, which was a condition imposed by the master servicer, Wells Fargo, to permit the Property transfer under the Loan documents. WROP served as the debtor’s non-member manager until it was removed at the end of 2023.

On August 3, 2023, Rialto delivered to WROP a notice of Uptown Tower’s default under the Loan. After the Loan matured and Uptown Tower was unable to pay, on October 24, Rialto noticed the Property for a foreclosure sale to take place on December 5. Seeking to avoid foreclosure and the destruction of both of their equity stakes, WROP’s CEO and an officer of Pillarstone attempted, in November, to negotiate a discounted payoff that WROP would fund as guarantor. On November 17, Rialto issued a payoff demand of \$18,807,792.01.

Following successful negotiations, Rialto, in a letter sent to WROP on December 1, consented to a dramatically reduced payoff amount, agreeing to cancel the foreclosure sale and release the deed of trust on the Property in exchange for \$13,632,764.25 by December 4 (the “December Settlement”). So on December 1, WROP’s CEO executed the December Settlement on behalf of itself and on behalf of debtor Uptown Tower as its manager.

Unbeknownst to WROP at the time, Uptown Tower had removed it as manager of the LLC on November 30. And making matters worse,

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Uptown Tower filed for bankruptcy on December 1, the *same day* the December Settlement was executed between WROP and Rialto. Uptown Tower did not inform WROP of these events until December 11.

Yet unaware of the removal or the bankruptcy, WROP wired the negotiated settlement payment of \$13,632,764.25 to Rialto on December 4. Even so, the December Settlement never fully went through—instead, Rialto held WROP’s payment in suspense on account of Uptown Tower’s intervening bankruptcy.³

Rather than ratify WROP’s December Settlement, Uptown Tower embarked on its own campaign of litigation against Rialto. That litigation ultimately resulted in a settlement among Uptown Tower, Rialto, and WROP for \$17 million on April 17, 2024 (the “April Settlement”). Obviously, the April Settlement was much worse for Uptown Tower and WROP than the December Settlement, but WROP still consented to the application of its suspended guaranty payment toward the satisfaction of Rialto’s claims against Uptown Tower. WROP then brought its proof of claim against Uptown Tower and its Pillarstone masters to win subrogation of its payment in Uptown Tower’s bankruptcy estate.

B.

For the procedural history, Uptown Tower, now appearing as debtor-appellant, challenges the bankruptcy court’s order overruling its objection to the proof of claim filed by guarantor-appellee WROP. The district court affirmed the order, allowing WROP’s proof of claim to go through. The dispute turns on whether WROP—after paying roughly \$13 million to discharge Uptown Tower’s debts—is entitled to subrogation that would prioritize its

³ Uptown Tower’s ‘intervening’ bankruptcy here is the focus of this case and is distinct from the subsequent affiliated bankruptcy of POP and Pillarstone, *supra*.

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recovery from Uptown Tower's bankruptcy estate.

At the beginning of this case, Uptown Tower filed a voluntary Chapter 11 petition in the U.S. Bankruptcy Court for the Northern District of Texas on December 1, 2023. The Debtor's Second Amended Plan of Reorganization (Uptown Tower's "Plan") was filed on May 16, 2024, and the bankruptcy court confirmed it on May 20, 2024.

On April 9, 2024, WROP filed proof of claim for a secured claim ("Proof of Claim No. 13") in the amount of the settlement payment against the debtor's estate, seeking to subrogate it to the secured claim rights of the lender and to the unsecured claims and equity interests. Uptown Tower objected, arguing that WROP was entitled to neither statutory nor equitable subrogation. Following an evidentiary hearing, the bankruptcy court found that WROP, as guarantor, was secondarily liable with the debtor for the Loan, that WROP had wired funds to pay part of Rialto's claims against the debtor, that the payment was involuntary, and that the equities supported WROP's claim. The bankruptcy court entered its *Order Overruling the Debtor's Objection to Claim of Whitestone REIT Operating Partnership, L.P. (Claim No. 13)* (memorialized on October 18, 2024), allowing WROP's claim in full. The court concluded WROP was entitled to statutory subrogation under 11 U.S.C. § 509(a). Uptown Tower filed its Notice of Appeal of the Order on October 21, 2024.

Acting in its appellate capacity, the district court affirmed the Order on August 12, 2025. The district court found no clear error in the bankruptcy court's factual findings, agreed that the guarantor was entitled to statutory subrogation, and deemed it unnecessary to reach equitable subrogation. The debtor immediately appealed.

After this appeal was filed, subsequent developments occurred in POP and Pillarstone's affiliated bankruptcy. *See* note 2, *supra*. On December 10, 2025, the bankruptcy court entered an order (the "Rule 9019 Order")

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approving a settlement between POP (which is the sole remaining member of Uptown Tower) and WROP. The Settlement Agreement foresees distributions from the partnership estate to Pillarstone and then distribution of all remaining funds to WROP.

WROP moved to supplement the appellate record with those affiliated bankruptcy records, which motion the clerk's office granted. In response, Uptown Tower sought reconsideration, arguing that supplementation was improper because the bankruptcy records were not before the lower courts. That motion was carried with the case and is now before us.

II.

This court reviews the decision of a district court, sitting in its appellate capacity, “by applying the same standards of review to the bankruptcy court’s finding[s] of fact and conclusions of law as applied by the district court.” *Highland Cap. Mgmt. Fund Advisors, L.P. v. Highland Cap. Mgmt., L.P. (In re Highland Cap. Mgmt., L.P.)*, 57 F.4th 494, 499 (5th Cir. 2023) (citation omitted). We review the bankruptcy court’s conclusions of law, as well as mixed questions of law and fact, *de novo* and the bankruptcy court’s findings of fact for clear error. *Id.* We review issues of standing *de novo*. *Id.* (citing *Dean v. Seidel (In re Dean)*, 18 F.4th 842, 844 (5th Cir. 2021)). We review the court’s ruling on a motion to supplement the record for abuse of discretion.⁴ As to findings of fact, this court will not “weigh the evidence anew” but only determines “whether the evidence supports the bankruptcy court’s findings” setting those findings aside if left with a “definite and firm conviction that a mistake has been committed.”⁵

⁴ *Ghali v. United States*, 455 F. App’x 472, 475 (5th Cir. 2011) (per curiam) (citing *Performance Autoplex II Ltd. v. Mid-Continent Cas. Co.*, 322 F.3d 847, 854 (5th Cir. 2003)).

⁵ *Bestrenewedoil, L.L.C. v. Pastrana (In re JPG Renewables, L.L.C.)*, 2026 WL

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A.

As threshold matters, we address Uptown Tower’s motion for reconsideration of the clerk’s order allowing WROP to supplement the appellate record with court filings from a related bankruptcy case and then turn to standing.

1.

The clerk’s order permitted supplemental materials from a related bankruptcy case. Uptown Tower seeks reconsideration, urging that Federal Rule of Appellate Procedure 10 disallows these supplemental materials—(1) a settlement agreement in the related bankruptcy case and (2) the Rule 9019 Order approving that settlement—because they were not filed in the bankruptcy or district court. WROP acknowledges that these documents were not before those courts but explains that these developments occurred after this appeal was filed and are highly relevant to this court’s assessment of its jurisdiction. WROP is correct.

Rule 10(a) establishes the contents of the appellate record.⁶ Where that record is incorrect, Rule 10(e) allows supplementation to ensure that the record accurately reflects proceedings below.⁷ But Rule 10(e) is not designed to “supply what might have been done [in the district court] but was not.”⁸ For that reason, “a court of appeals typically ‘will not consider matter that was filed with the district court . . . *after* the date of the judgment or order

75906, at *4 (5th Cir. Jan. 9, 2026) (unpublished) (quoting *Perry v. Dearing (In re Perry)*, 345 F.3d 303, 309 (5th Cir. 2003); *Robertson v. Dennis (In re Dennis)*, 330 F.3d 696, 701 (5th Cir. 2003)).

⁶ FED. R. APP. P. 10(a); *Craig v. Bisignano*, 157 F.4th 773, 774 (5th Cir. 2025).

⁷ FED. R. APP. P. 10(e); *United States v. Page*, 661 F.2d 1080, 1082 (5th Cir. Nov. 1981).

⁸ *Page*, 661 F.2d at 1082.

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that is challenged on appeal.’”⁹ Importantly, the court still “ha[s] discretion to take judicial notice of public documents outside the record.”¹⁰

While Uptown Tower correctly emphasizes the purpose of Rule 10, it fails to appreciate that the supplemental materials are not offered as new evidence pertaining to the merits. Rather, the public bankruptcy filings inform this court’s ongoing assessment of its own jurisdiction.¹¹ Thus, we have discretion to take judicial notice of those filings, particularly when they are relevant to jurisdiction.¹² After all, subject matter jurisdiction can never be pre-

⁹ *Craig*, 157 F.4th at 774 (quoting 16A WRIGHT & MILLER, FEDERAL PRACTICE & PROCEDURE § 3956.1 (5th ed.)).

¹⁰ *Id.* (citing *In re Deepwater Horizon*, 934 F.3d 434, 440 (5th Cir. 2019)); *see also Gray ex rel. Rudd v. Beverly Enters.-Miss., Inc.*, 390 F.3d 400, 407 n.7 (5th Cir. 2004) (We may take judicial notice of another courts judicial action [T]he fact that a judicial action was taken is indisputable and is therefore amendable to judicial notice.); *Gibson v. Blackburn*, 744 F.2d 403, 405 n.3 (5th Cir. 1984) (recognizing that, although a court of appeals will not ordinarily enlarge the record to include material not before the district court, it is clear that the authority to do so exists); *United States v. Brandon*, 965 F.3d 427, 430 n.1 (5th Cir. 2020) (“[W]e may take judicial notice of . . . matters of public record.” (cleaned up)).

¹¹ *See Moler v. Wells*, 18 F.4th 162, 166 (5th Cir. 2021) (“Because we may not proceed without [the] requisite jurisdiction, it is incumbent upon federal courts trial and appellate to constantly examine the basis of jurisdiction[.]”) (citation omitted).

¹² *See* 16A WRIGHT & MILLER, *supra* note 9, § 3956.4 (“[S]ome courts state that [Rule 10] constitutes an exercise of inherent power” and conclude that “[s]upplementation may be particularly likely . . . if the item goes to the court’s subject-matter jurisdiction[.]”). Various circuits have allowed supplementation when the post-judgment materials are relevant to jurisdiction. *E.g.*, *Purpose Built Families Found., Inc. v. United States*, 95 F.4th 1346, 1352 (11th Cir. 2024); *Fellowship of Christian Athletes v. San Jose Unified Sch. Dist. Bd. of Educ.*, 82 F.4th 664, 682 n.7 (9th Cir. 2023) (en banc); *Lowry v. Barnhart*, 329 F.3d 1019, 1024 (9th Cir. 2003); *Clark v. K-Mart Corp.*, 979 F.2d 965, 967 (3d Cir. 1992); *Cedar Coal Co. v. United Mine Workers of Am.*, 560 F.2d 1153, 1166 (4th Cir. 1977); *see also Rio Grande Silvery Minnow v. Bur. of Reclamation*, 601 F.3d 1096, 1110 n.11 (10th Cir. 2010) (distinguishing “cases in which appellate courts allowed post-judgment supplementation of the record to show that actions occurring subsequent to judgment mooted the case”).

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sumed or waived and can be challenged at any time (even for the first time on appeal).¹³ So, even if Rule 10 does not ordinarily permit supplementation of materials not before prior courts, this court has routinely taken judicial notice of public records to resolve jurisdictional questions.¹⁴

Therefore, we deny the motion to reconsider.

2.

Turning to standing, WROP posits that we lack subject matter jurisdiction because a related settlement divested debtor Uptown Tower of any pecuniary interest in the outcome of this appeal.¹⁵ This court has an “obligation to assure [itself] of jurisdiction.”¹⁶ In a bankruptcy appeal, the court

¹³ *Moler*, 18 F.4th at 166; *Settlement Funding, L.L.C. v. Rapid Settlements, Ltd.*, 851 F.3d 530, 534 (5th Cir. 2017).

¹⁴ *See, e.g., Reece v. Howmet Corp.*, 639 F. App’x 245, 245 n.1 (5th Cir. 2016) (taking judicial notice of facts available online to resolve a question of subject-matter jurisdiction and stating “[a]n appellate court may take judicial notice of facts, even if such facts were not noticed by the trial court”) (quoting *United States v. Herrera-Ochoa*, 245 F.3d 495, 501 (5th Cir. 2001)); *Gaddis v. United States*, 285 F. App’x 155, 155–56 n.1 (5th Cir. 2008) (taking judicial notice of facts from another litigation in a different jurisdiction and other public filings in order to resolve a question of subject-matter jurisdiction).

¹⁵ WROP frames its jurisdictional challenge in both standing and mootness terms. But because WROP argues that the relevant legal standard is the “person aggrieved” test, which arises in the standing context, its jurisdictional argument is best understood as challenging standing, not mootness. *See, e.g., Lejeune*, 880 F.3d at 751 (applying the “person aggrieved” test to evaluate standing, not mootness). Additionally, while WROP suggests a possible limited remand to the district court or bankruptcy court for consideration of subject matter jurisdiction, *see e.g., Johnson v. N.Y. St. Educ. Dep’t*, 409 U.S. 75, 75–76 (1972); *Molett v. Penrod Drilling Co.*, 872 F.2d 1221, 1229 (5th Cir. 1989); *Bluetarp Fin., Inc. v. Robertson Dev., L.L.C.*, 857 F. App’x 817, 819 (5th Cir. 2021), the sprawling nature of this proceeding and the strong interests of judicial economy counsel us to decide this issue. *See Gibson v. Blackburn*, 744 F.2d 403, 405 n.3 (5th Cir. 1984) (citing *Dickerson v. Alabama*, 667 F.2d 1364, 1367 (11th Cir. 1982)).

¹⁶ *United States v. Eli Lilly & Co.*, 4 F.4th 255, 261 (5th Cir. 2021).

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applies the “person aggrieved” test to assess standing.¹⁷ This test is stricter than for ordinary Article III purposes.¹⁸ It “demands a higher causal nexus between act and injury” such that a party must show it has been “directly and adversely affected pecuniarily” by the bankruptcy court’s order.¹⁹ The relevant question is thus whether the foreseeable outcome of the case would directly impact the party financially, rather than indirect or attenuated effects as through intermediaries.²⁰

After winning statutory subrogation before the bankruptcy court and district court—which elevated the priority of its claim—WROP pivots to contend that after the Rule 9019 Order confirmed the Settlement Agreement in the affiliated bankruptcy, Uptown Tower now lacks standing. WROP claims the Plan directs all residual funds to the sole equity holder POP. WROP adds that the Settlement Agreement then directs the distribution of all remaining funds in the partnership estate to WROP, showing that the funds will waterfall down to WROP regardless of the outcome of this appeal.

The Plan’s classification of claims states that, after the allowed secured and unsecured claims are paid, then remaining monies shall be paid out to the equity owners of the debtor. It suggests that these claims—even equity—will be paid in full, such that WROP will get its money whether its claim is subrogated or not. Meanwhile, the Settlement Agreement foresees

¹⁷ *Lejeune v. JFK Cap. Holdings, L.L.C. (In re JFK Cap. Holdings, L.L.C.)*, 880 F.3d 747, 751 (5th Cir. 2018).

¹⁸ *Gibbs & Bruns LLP v. Coho Energy, Inc. (In re Coho Energy, Inc.)*, 395 F.3d 198, 202 (5th Cir. 2004).

¹⁹ *Id.* at 203.

²⁰ *Cf. Azhar Chaudhary Law Firm, P.C. v. Ali (In re Riverstone Resort, L.L.C.)*, 122 F.4th 576, 582 (5th Cir. 2024) (emphasizing that merely “winning a favorable judgment” is not enough to qualify as “‘aggrieved’” (citation omitted)).

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distributions for taxes, administrative fees, and general unsecured claims, then distributions to Pillarstone's estate and finally distribution of all funds remaining in the partnership estate to WROP "as soon as reasonably practicable."

WROP therefore contends that there will be no ultimate difference in payouts or recoveries, eliminating any adverse pecuniary effect for Uptown Tower. WROP asserts that there is enough money in the estate—and while subrogation would matter where a co-debtor would otherwise lack any means of recovery—that here even the unsecured claimants will be paid in full, as there is a surplus running to equity interests.

This view may overstate the matter. While the Plan provides that all residual estate assets go to "equity," meaning the POP partnership, we are reminded that the partnership includes both Pillarstone and WROP (with one remaining special share). Importantly, Pillarstone is the GP in the driver's seat controlling further distributions, while WROP is in the passenger seat.

Uptown Tower counters that "Uptown [Tower] is not a party to the Settlement Agreement and thus has no obligation to distribute the proceeds of this lawsuit to WROP." It insists that "it will be Uptown [Tower] alone who will determine the manner in which these proceeds are to be Distributed." Implying that it has no obligation to honor—or perhaps even an intent to upend—the settlement's terms, Uptown Tower insists that it retains a pecuniary interest in the funds it seeks to recover in this appeal. Indeed, Uptown Tower's statements at oral argument suggest it may favor the Pillarstone-side GPs against WROP.²¹ The debtor could violate the Plan or

²¹ Uptown Tower adds that there are ongoing related adversary proceedings before the bankruptcy court over fiduciary duties and damages to the building, which could further affect the distributions.

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the Settlement Agreement in several ways: perhaps through shifts in equity ownership, refinancing, or changes in the value of assets—as in the losses of the “melting ice cube” from the fire sale of distressed assets—that could impair the lowest-tranche equity claims. Or perhaps they will relitigate the issues, provided that the distributions from Uptown Tower flow through POP rather than directly to WROP’s subrogated claims.²²

The flow-through from Uptown Tower to WROP is not strictly guaranteed by the Rule 9019 Order.²³ And subrogating or prioritizing WROP’s claims may make a difference to the ultimate payout between the Pillarstone

²² This possibility also explains why WROP wants to void this appeal—to bake in its victory on statutory subrogation and eliminate possible backtracking by POP.

²³ We acknowledge that contractual non-party status may not insulate the debtor from the constraints of the Rule 9019 Order if there is a “pre-existing substantive legal relationship between the person to be bound and a party to the judgment,” or because the person to be bound was “adequately represented by someone with the same interests who was a party to the suit.” *Taylor v. Sturgell*, 553 U.S. 880, 894 (2008) (cleaned up). That is why a court order can bind the nonparty officers of a party corporation when they act in their official capacities, as well as nonparty successor corporations. *See Walling v. James v. Reuter, Inc.*, 321 U.S. 671, 674 (1944). It is also why court orders sometimes bind nonparty individuals who manipulate corporate entities to thwart judicial commands. *See, e.g., Nat’l Spiritual Assembly of Baha’is of U.S. Under Hereditary Guardianship, Inc. v. Nat’l Spiritual Assembly of Baha’is of U.S., Inc.*, 628 F.3d 837, 847–48 (7th Cir. 2010); *Additive Controls & Measurement Sys., Inc. v. Flowdata, Inc.*, 154 F.3d 1345, 1351–52 (Fed. Cir. 1998).

Given that the POP partnership is the debtor’s sole member, there arguably is a “pre-existing substantive legal relationship between the person to be bound and a party to the judgment” and, as a result, the debtor may have been “adequately represented by someone with the same interests who was a party to the suit.” *See Taylor*, 553 U.S. at 894. But given the debtor’s repeated ominous claims that it intends to deviate from the Rule 9019 Order and the Settlement Agreement, the debtor apparently considers itself unbound or to have different interests from POP that undermine its virtual representation, so we consider it worth ruling on the merits of the subrogation, *infra*. And providing certainty to the parties in a bankruptcy can matter for the *expected value* of claims, given that further litigation to enforce the Settlement Agreement against the debtor would take time, eating up the time-value of money or influencing other financial arrangements like distressed debt assignments or low-grade collateralized loans.

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equity claimants and WROP. Pillarstone, at least, appears to think it will gain through this appeal. Otherwise, for a merely academic dispute making zero pecuniary difference, why would the parties be expending their blood and treasure? WROP insists it has the same interests, so why do these two not withdraw their appeal? Something else is afoot—and subrogation for WROP, whether through affirming the district court or tossing out this appeal for lack of standing, ensures that it gets the full \$13 million recovery.

We therefore find standing sufficient to support this appeal.

B.

Turning finally to the merits, we affirm the district court with respect to the statutory subrogation.

Title 11 U.S.C. § 509(a) sets out the prongs: “[A]n entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor, and that pays such claim, is subrogated to the rights of such creditor to the extent of such payment.” We read that as (1) an entity that is liable with the debtor on a claim of a creditor against the debtor, *or* an entity that has secured the claim of a creditor against the debtor, and (2) pays out on such a claim, is (3) subrogated to the rights of the creditor in the amount of that payment.

We agree with the bankruptcy court and district court that WROP was liable within the meaning of the code and that it was secondarily liable. It paid \$13 million to discharge that liability. Now it is subrogated to Rialto’s rights of recovery and “steps into its shoes” to the extent of the payment.²⁴

²⁴ See generally *Gonzales v. River N. Furr’s, LLC (In re Fresh Acquisitions, LLC)*, No. 21-30721, 2024 WL 2232432, at *16 (Bankr. N.D. Tex. May 16, 2024) (Section 509(a) allows guarantors “to step[] into the shoes of the creditor-beneficiary to assert the creditor-beneficiary’s claim against the debtor-applicant.”), *report and recommendation*

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Uptown Tower first contests whether WROP was liable in the relevant sense. It resists the bankruptcy court's finding, after evidentiary hearing, that WROP was secondarily liable, and asserts that this is in tension with Texas State law because WROP had executed an unconditional guaranty of payment. Uptown Tower suggests that such a guaranty created primary liability for the guarantor equivalent to the debtor's liability. It claims that subrogation was therefore unavailable where the creditor's claim was really against Uptown Tower and WROP as *co*-debtors and WROP discharged its own debt. Uptown Tower would characterize WROP's interaction with Rialto as a release rather than an assignment of the creditor's position.

The Bankruptcy Code is not synoptic but transforms instruments created by state law to effect Congress's legal and equitable goals.²⁵ The nature of primary versus secondary liability will therefore turn on the nature of loan and guaranty instruments in Texas.²⁶ Texas law recognizes the distinction between a guaranty of payment—which is unconditional following the default of the principal, and a guaranty of collection—which is a last-ditch remedy with further conditions requiring the creditor to exhaust the standard legal remedies of a lawsuit and seizing assets.²⁷ As explained,

adopted in part, rejected in part, No. 3:23-CV-00624-D, 2024 WL 4224949 (N.D. Tex. Sept. 18, 2024).

²⁵ See generally *Butner v. United States*, 440 U.S. 48, 54 (1979) (“Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law.”); U.S. CONST. art I, sec. 8, cl. 4.

²⁶ See generally 11 U.S.C. §§ 501–02 (filing of proof of claims; allowance of claims). Note, we also consider this a core example of a mixed question of law and fact supporting *de novo* review, *supra*.

²⁷ See *Bank of the W. v. PSMD Med. Assocs., P.A.*, No. 02-23-00376-CV, 2024 WL 1924603 *5 (Tex. App.—Fort Worth May 2, 2024, no pet.); see generally TEX. CIV. PRAC. & REMS. CODE, Chapter 43: *Principal and Surety*; TEX. BUS. ORGS. CODE § 2.104 (establishing a domestic entity's power to make guaranties).

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[A] note and a guaranty of payment are separate undertakings in the sense that the guarantor may be sued apart from the maker. This is true because a guarantor of payment is primarily liable; *he waives any requirement that the holder of the note take action against the maker as a condition precedent to his liability on the guaranty* However, a note and its absolute guaranty cannot be considered to be ‘separate and distinct’ when determining the extent of the guarantor’s liability. The terms of the note must be examined to ascertain the guarantor’s obligations under his unconditional guaranty, for by that guaranty he agrees to pay the instrument according to its terms *if it is not paid when due*.

Hopkins v. First Nat’l Bank at Brownsville, 551 S.W.2d 343, 345 (Tex. 1977) (per curiam) (emphasis added) (citations omitted). In other words, a guaranty of payment creates obligations (monetary) that correspond to the original note. But a guaranty of payment kicks in only after default on the note, creating immediate liability between guarantor and lender.

The *Bank of the West* court recently expanded upon this:

There are two types of guaranties: payment (or unconditional) guaranties and collection (or conditional) guaranties. The primary difference is whether the guaranty requires the creditor to pursue the principal debtor before it pursues the guarantor for collection of the debt. A guaranty of payment does not require the creditor to first pursue the principal debtor. Instead, a guarantor of payment is primarily liable; he waives any requirement that the holder of the note take action against the maker as a condition precedent to his liability on the guaranty.^[28]

²⁸ 2024 WL 1924603, at *5 (quoting *423 Colony, LTD. v. Indep. Ex’rs of Est. of Kern*, No. 02-18-00032-CV, 2019 WL 2223579, at *2 (Tex. App.—Fort Worth May 23, 2019, pet. denied) (mem. op.) (quoting *Hopkins*, 551 S.W.2d at 345)) (cleaned up).

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This distinction probes the point that, as among guaranties, a guaranty of collection requires the lender first to exhaust the other legal remedies, such as attaining a judgment against the obligor and trying but failing to enforce it. *Bank of the West* also involved a suit on a guaranty (lender on guarantor) rather than a subrogation (guarantor on borrower)—so it does nothing to eliminate the condition precedent of *default*, which must occur before liability attaches to either obligor. Therefore, the bankruptcy court’s view that WROP’s guarantor liability was secondary is fully consistent with *Hopkins* and *Bank of the West* (and on this view, hypothetically, a guaranty of collection would create ‘tertiary’ liability).

We affirm the bankruptcy court’s finding of secondary liability under *Stephenson v. Salisbury (In re Corland Corp.)*, 967 F.2d 1069 (5th Cir. 1992), which has a closely analogous fact pattern, where a guarantor had made a post-petition payment and sought setoff. The court affirmed a subrogation, reasoning that “the Bankruptcy Code defines ‘debt’ as a ‘liability on a claim,’” *id.* at 1078 (citing 11 U.S.C. § 101(12)), and “[w]hen [the guarantor] signed the guaranty on the Corland Note, he immediately incurred a contingent liability to the Bank and gained a contingent claim against Corland in the event he paid on the guaranty.” *Id.* Here, the bankruptcy court reasoned that the guarantor was only contingently liable with the debtor post-default. We fully agree.

The bankruptcy court also analyzed *Pandora Industries, Inc. v. Paramount Communications Inc. (In re Wingspread Corp.)*, 145 B.R. 784 (S.D.N.Y. 1992). There, the court subrogated a guarantor’s payment on the theory that the satisfaction of a guaranty entails satisfaction of another’s obligation, where the primary obligor would enjoy no right of recovery, on its own payments, against any secondary obligor. *Id.* at 789. *Pandora* set out a test to distinguish between primary and secondary obligors: “The question is . . . one of ‘ultimate’ liability—a question that can be answered by determining

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which of the liable parties received the consideration.” *Id.* at 790 (citations omitted). *Pandora* supported this view by distinction with § 509(b)(2), which prevents a co-obligor, whether co-debtor or guarantor, from recovering to the extent it received consideration for the claim held by the creditor.

Uptown Tower tries to invoke this distinction in the opposite direction—positing that WROP was primarily liable and therefore a co-debtor excluded from recovery—but § 509(b)(2) rebuts this notion by clarifying that an obligor who receives *consideration* from a creditor is not entitled to the extra benefit of subrogation. Logically, then, an obligor that does not receive consideration *may* be so entitled. Whether under traditional equitable remedies or their statutory extensions in § 509(a), it would work an inequity—or even an unjust enrichment—to grant additional benefits to an entity that had already enjoyed consideration.²⁹ We know that WROP did not receive the benefit of the bargain—as the titleholder to the purchased Property, only Uptown Tower enjoyed the consideration—rebutting Uptown Tower’s theory that WROP was a co-debtor. We concur with the district court’s analysis stating that § 509(b)(2) addresses consideration, and cuts against the idea that a guarantor has no possibility of subrogation under Texas law.³⁰

²⁹ See *Pandora*, 145 B.R. at 787 (comparing statutory and equitable subrogation). The parties also raise a wide range of authorities contesting the issue of whether the Fifth Circuit considers the § 509(a) statutory subrogation remedy to exclude state law equitable subrogation remedies. On the one hand, field or conflict preemption could apply; on the other hand at least two federal courts in Texas have analyzed equitable subrogation, see *In re Mirant Corp.*, No. 03-46590-DML-11, 2005 WL 2589162, at *4 (Bankr. N.D. Tex. July 21, 2005) (suggesting that state law may provide an alternative means of achieving equitable subrogation); *Berliner Handels-Und Frankfurter Bank v. E. Tex. Steel Facilities, Inc. (In re E. Tex. Steel Facilities, Inc.)*, 117 B.R. 235, 241 (Bankr. N.D. Tex. 1990) (applying both § 509 and equitable subrogation standards). As we rule only on statutory subrogation, there is no need to machete through the thicket of contending precedents.

³⁰ *Accord In re Fiesole Trading Corp.*, 315 B.R. 198, 205 (Bankr. D. Mass. 2004)

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Uptown Tower also cites *Grantham v. Cory (In re Flamingo 55, Inc.)*, 646 F.3d 1253 (9th Cir. 2011), for the proposition that joint borrowers with the debtor are not in the position of a surety or guarantor and cannot be so entitled to subrogation under § 509(a). But again, under the guaranty agreement, the opposite is true—unlike the joint partner co-venturers in *Grantham*, WROP was explicitly not the joint borrower but only the guarantor, supporting the bankruptcy court’s view that WROP was liable only after the primary obligor’s default, making it secondarily liable.

The guaranty in this case is also easily distinguished from the one in *In re Northstar Offshore Grp., LLC*, 628 B.R. 286 (Bankr. S.D. Tex. 2020). There, the court held that a co-owner that was jointly and severally liable with the debtor in paying for decommissioning costs of oil and gas leases was actually discharging its own liability and did not have access to the right of subrogation. The court reasoned that § 509(a) “looks to the relationship between the debtor and the co-obligor in terms of which one received the *consideration* giving rise to the *joint obligation*.” *Id.* at 306 (quoting 4 COLLIER ON BANKRUPTCY ¶ 509.02[2] (16th ed.)). *Northstar* makes the same point as *Pandora*—ultimate liability lays with the principal obligor.

For a second approach on the prongs of § 509(a), *supra*, Uptown Tower contends that a partial payment cannot support subrogation. Curiously, even though WROP had negotiated a full release to a lower value, Uptown Tower insists that the \$13 million payment was merely partial payment on the \$21 million total liability that, less offsets, mapped onto the net \$18 million later settled by Uptown Tower. First, this whole-versus-part-payment inquiry is more native to equitable subrogation.³¹ Second, we ob-

(identifying a guarantor as a traditional category entitled to subrogation under § 509 (a)).

³¹ See *Berliner Handels-Und Frankfurter Bank v. E. Tex. Steel Facilities, Inc. (In re E. Tex. Steel Facilities, Inc.)*, No. 3:90-CV-2042, 2000 WL 340281, at *3 (N.D. Tex. Mar. 31,

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serve both the statutory language of “to the extent of such payment” in § 509(a) and the structural inference from § 509(c), which provides for subordination of allowed subrogation claims to creditors’ claims “until such creditor’s claim is paid *in full*.”³²

* * * * *

We therefore credit the bankruptcy court’s findings. The motion for reconsideration is DENIED, and the judgment of the district court, affirming the bankruptcy court, is AFFIRMED.

2000) (adopting the equitable subrogation analysis of *In re Kaiser Steel Corp.*, 89 B.R. 150, 152 (Bankr. D. Colo. 1988)).

³² *Accord Stephenson*, 967 F.2d at 1077 (“[G]uarantors become subrogated to the rights of the creditors they pay to the extent of their payments.”); *Giuliano v. Ins. Co. of Pa. (In re LTC Holdings, Inc.)*, 10 F.4th 177, 186 (3d Cir. 2021) (“Section 509(a) provides that a surety is partially subrogated to the rights of a creditor to the extent that the surety has made any payments (i.e., short of payment in full).”).

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DON R. WILLETT, *Circuit Judge*, dissenting:

Bankruptcy standing is stricter than ordinary Article III standing. A bankruptcy appellant must satisfy the “person aggrieved” test, which requires that it be “directly and adversely affected pecuniarily” — a “higher causal nexus between act and injury” than Article III ordinarily demands.¹ Indirect, derivative, or contingent effects do not suffice.² What matters is whether this appeal will affect Appellant Whitestone Uptown Tower, L.L.C. (Debtor) directly.³

The governing documents show that it will not. Read together, the Debtor’s Second Amended Plan of Reorganization in this bankruptcy and the Settlement Agreement and the Rule 9019 Order in the related bankruptcy leave the Debtor without a direct pecuniary stake in its dispute with Appellee Whitestone REIT Operating Partnership, L.P. (WROP). I would dismiss for lack of jurisdiction and stop there.

I

Under the “person aggrieved” standard, the majority’s theory is too attenuated. Reversing the subrogation order would change WROP’s priority against the Debtor’s estate. Any effect on the Debtor depends on what reaches the Partnership, the size of that estate, and what’s left after prior claims are paid. Any benefit to Pillarstone or the Debtor’s equity comes later.

¹ *Gibbs & Bruns LLP v. Coho Energy, Inc. (In re Coho Energy)*, 395 F.3d 198, 202–03 (5th Cir. 2004) (quotation omitted); *see also Dean v. Seidel (In re Dean)*, 18 F.4th 842, 844 (5th Cir. 2021) (recognizing that “person aggrieved” “is an even more exacting standard than traditional constitutional standing” (quotation omitted))

² *See In re Coho Energy*, 395 F.3d at 202–03.

³ *Cf. Azhar Chaudhary Law Firm, P.C. v. Ali (In re Riverstone Resort, L.L.C.)*, 122 F.4th 576, 582 (5th Cir. 2024) (“A party is generally not ‘aggrieved’ when it wins a favorable judgment[.]” (citation omitted)).

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The majority's own account reflects that uncertainty. Distributions will move, we are told, "*perhaps* through shifts in equity ownership, refinancing, or changes in the value of assets." And "*perhaps* [the Debtor] will relitigate." Two "perhapses" in one paragraph do not establish a direct financial stake.

The majority also says the flow-through from the Debtor to WROP "is not strictly guaranteed by the Rule 9019 Order." True enough. But that only means the payments depend on the Partnership and Pillarstone complying with the Rule 9019 Order, not on anything the Debtor controls. The Order itself addresses noncompliance by directing the plan agent to seek relief from the bankruptcy court if there is a "fail[ure] to make payment as directed."

Of course, nothing is "strictly guaranteed" against a party's refusal to comply with a valid court order. That is not enough. A litigant can always say it "might" do something else. The Debtor still has to show a direct financial stake.

Even ordinary Article III standing rejects this kind of chain: "A highly attenuated chain of possibilities does . . . not satisfy the requirement that threatened injury must be certainly impending."⁴ The "person aggrieved" standard requires more.⁵ A chain of "mights," "perhapses" and a "not strictly guaranteed" does not get there.

⁴ *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013).

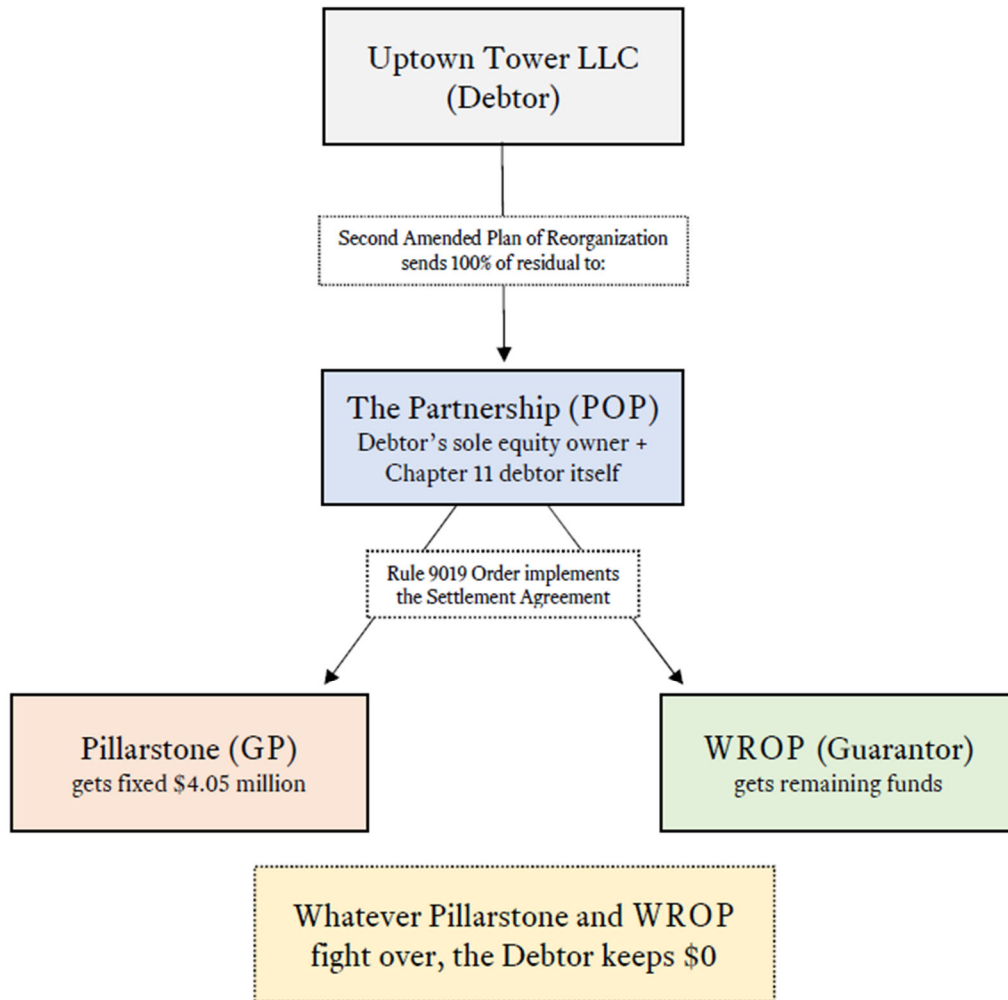
⁵ *In re Coho Energy*, 395 F.3d at 202–03; *see also In re Dean*, 18 F.4th at 844 (reflecting that the "person aggrieved" standard survives as a judge-made gloss carried over after statutory amendments and that courts have applied it because bankruptcy orders routinely touch numerous parties whose interests are affected only diffusely or indirectly, such that unrestricted appeals by every such party would multiply litigation and undermine the finality that reorganization proceedings require).

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II

The governing documents answer the question more directly. No money comes back to the Debtor. That is why it no longer has standing.

The picture is simple:



Under the Debtor's Second Amended Plan of Reorganization, once its creditors are paid, the residual funds pass to its sole equity owner, the Partnership. At that point, the Debtor no longer controls "these proceeds."

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The Partnership itself is also a Chapter 11 debtor, and its estate is administered by a court-appointed plan agent bound by the Rule 9019 Order implementing the Settlement Agreement in the related bankruptcy. Under the Order, the plan agent must send \$4.05 million to Pillarstone and the rest to WROP. What happens inside the Partnership when these distributions are made does not directly affect the Debtor, whose own Plan has already put the money beyond its control.

The majority nevertheless focuses on who controls the Partnership. Pillarstone, it says, sits “in the driver’s seat controlling further distributions, while WROP is in the passenger seat.” Perhaps Pillarstone’s control bears on something, but it does not directly bear on anything financial for *the Debtor*. Once the Plan sends the residual funds to the Partnership, the Debtor has no remaining stake. If it keeps money it was supposed to transfer, that may be a compliance problem, but it still doesn’t give the Debtor standing. And even if the Debtor refuses to comply, the bankruptcy court retained jurisdiction in both bankruptcies to deal with that problem.

The majority also acknowledges that ordinary preclusion principles may bind the Debtor to the settlement because the Partnership is its sole member and may have “adequately represented” the Debtor’s interests in negotiating it. If so, the Debtor is bound, no matter what it says it might do later. The majority sidesteps that question because the Debtor “apparently considers itself unbound” and reaches the merits just “to be sure.”

Jurisdiction cannot turn on what a litigant says it intends to do, much less on an intention to disregard a court order.⁶ Either the Settlement

⁶ See *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 94–101 (1998) (holding that a court may not assume “hypothetical jurisdiction” to reach the merits, however efficient that might be, because subject-matter jurisdiction is a threshold question that must be resolved first).

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Agreement binds the Debtor because the Partnership, as its sole member, adequately represented it in the negotiations, in which case the Debtor has no live financial stake; or it does not bind the Debtor, in which case the Debtor's own Second Amended Plan of Reorganization still sends every residual dollar to the Partnership. Either way, the Debtor has no claim to the money. That should end the standing inquiry.

The majority still asks why sophisticated parties would spend “blood and treasure” litigating an appeal that makes no financial difference. Fair question, but it doesn't establish standing. Parties litigate for plenty of reasons that don't involve a direct financial stake. If persistence alone were enough, “person aggrieved” would become “person aggravated.”

The Debtor's briefing reveals a final problem. Its argument is simply that it controls the money. But the Debtor bears the burden of establishing our jurisdiction;⁷ we need not supply additional arguments it didn't make.⁸ And once its assertion is measured against the governing documents, it does not hold up. It also merits mention that the Supreme Court recently—and summarily—reversed the Fourth Circuit for concocting its own jurisdictional theory.⁹

⁷ See *Nat'l Press Photographers Ass'n v. McCraw*, 90 F.4th 770, 781 (5th Cir. 2024) (recognizing that the party “invoking standing . . . ‘bear[s] the burden to demonstrate standing’” (quoting *Nat'l Fed'n of the Blind of Tex., Inc. v. Abbott*, 647 F.3d 202, 209 (5th Cir. 2011))).

⁸ See *Roake v. Brumley*, 170 F.4th 292, 299 n.3 (5th Cir. 2026) (en banc) (“[W]e are not required to consider ‘arguments in favor of jurisdiction’ that the parties have not raised[.]” (quoting *E.T. v. Paxton*, 41 F.4th 709, 717 (5th Cir. 2022))).

⁹ *Margolin v. Nat'l Ass'n of Immigr. Judges*, 146 S. Ct. 1285, 1287–88 (2026) (per curiam).

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III

This appeal has plenty of corporate spaghetti: five affiliated entities, two bankruptcies, a decade-old guaranty, and a settlement routing funds through several entities and operating partnerships. But the standing question is straightforward. Taken together, the Debtor’s Second Amended Plan of Reorganization in this bankruptcy and the Settlement Agreement and the Rule 9019 Order in the related bankruptcy leave the Debtor without a *direct* financial interest in this appeal.

A chain of “mights” and “perhapses” cannot satisfy a standard more exacting than ordinary standing.¹⁰ Nor can the possibility of future noncompliance. The Debtor must show a direct, non-speculative financial stake.¹¹ It has not. Because it is not a “person aggrieved,” I would dismiss for lack of subject-matter jurisdiction.¹²

I respectfully dissent.

¹⁰ See *In re Dean*, 18 F.4th at 844.

¹¹ *In re Coho Energy*, 395 F.3d at 202–03.

¹² See *Steel Co.*, 523 U.S. at 94–95, 98 (stressing “the necessity of determining jurisdiction *before* proceeding to the merits” (emphasis added)).