Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

BANK OF AMERICA NATIONAL TRUST AND SAVINGS ASSOCIATION *v.* 203 NORTH LASALLE STREET PARTNERSHIP

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 97–1418. Argued November 2, 1998– Decided May 3, 1999

A loan by petitioner Bank of America National Trust and Savings Association (Bank) to respondent 203 North LaSalle Street Partnership (Debtor) was secured by a mortgage on the Debtor's interest in a Chicago office building, the value of which was less than the balance due the Bank. After the Debtor defaulted and the Bank began state-court foreclosure, the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, 11 U. S. C. §1101 *et seq.* The Debtor proposed a reorganization plan under which, *inter alia,* certain of its former partners would contribute new capital in exchange for the Debtor's entire ownership of the reorganized entity. That condition was an exclusive eligibility provision: the old equity holders were the only ones who could contribute new capital. The Bank objected and, as sole member of an impaired class of creditors, thereby blocked confirmation of the plan on a consensual basis. See §1129(a)(8). The Debtor, however, resorted to the alternate, judicial "cramdown" process for imposing a plan on a dissenting class. §1129(b). Among the conditions for a cramdown is the requirement that the plan be "fair and equitable" with respect to each class of impaired unsecured claims that has not accepted it. §1129(b)(1). A plan may be found to be fair and equitable if "the holder of any claim . . . junior to the claims of such class will not receive or retain under the plan on account of such junior claim . . . any property." §1129(b)(2)(B)(ii). Under this "absolute priority rule," the Bank argued, the plan could not be confirmed as a cramdown because the Debtor's old equity holders would receive property even though the Bank's unsecured deficiency claim would not be paid in full. The

Bankruptcy Court approved the plan nonetheless, and the District Court and the Court of Appeals affirmed. The Seventh Circuit found ambiguity in the absolute priority rule's language, and interpreted the phrase "on account of" to permit recognition of a "new value corollary" to the rule, under which the objection of an impaired senior class does not bar junior claim holders from receiving or retaining property interests in the debtor after reorganization, if they contribute new capital in money or money's worth, reasonably equivalent to the property's value, and necessary for successful reorganization of the restructured enterprise. The court held that when an old equity holder retains an equity interest in the reorganized debtor by meeting the corollary's requirements, he is not receiving or retaining that interest "on account of" his prior equitable ownership, but, rather, "on account of" a new, substantial, necessary, and fair infusion of capital.

Held: A debtor's prebankruptcy equity holders may not, over the objection of a senior class of impaired creditors, contribute new capital and receive ownership interests in the reorganized entity, when that opportunity is given exclusively to the old equity holders under a plan adopted without consideration of alternatives. The old equity holders are disqualified from participating in such a "new value" transaction by §1129(b)(2)(B)(ii), which in these circumstances bars a junior interest holder's receipt of any property on account of his prior interest. Pp. 8–22.

(a) The Court does not decide whether the statute includes a new value corollary or exception. The drafting history is equivocal, but does nothing to disparage the possibility apparent in the statutory text, that §1129(b)(2)(B)(ii) may carry such a corollary. Although there is no literal reference to "new value" in the phrase "on account of such junior claim," the phrase could arguably carry such an implication in modifying the prohibition against receipt by junior claimants of any interest under a plan while a senior class of unconsenting creditors goes less than fully paid. Pp. 8–13.

(b) The Court adopts as the better reading of the "on account of" modifier the more common understanding that the phrase means "because of," since this is the usage meant for the phrase at other places in the statute, see *Cohen* v. *de la Cruz,* 523 U. S. 213, 219–220. Thus, a causal relationship between holding the prior claim or interest and receiving or retaining property is what activates the absolute priority rule. As to the degree of causation that will disqualify a plan, the Government argues not only that any degree of causation between earlier interests and retained property will activate the bar to a plan providing for later property, but also that whenever the holders of equity in the Debtor end up with some property there will be some causation. A less absolute statutory prohibition would follow

from reading the "on account of" language as intended to reconcile the two recognized policies underlying Chapter 11, of preserving going concerns and maximizing property available to satisfy creditors, see *Toibb* v. *Radloff,* 501 U. S. 157, 163. Causation between the old equity's holdings and subsequent property substantial enough to disqualify a plan would presumably occur on this view whenever old equity's later property would come at a price that failed to provide the greatest possible addition to the bankruptcy estate, *i.e.,* whenever the equity holders obtained or preserved an ownership interest for less than someone else would have paid. Pp. 13–18.

(c) Assuming a new value corollary, plans providing junior interest holders with exclusive opportunities free from competition and without benefit of market valuation fall within §1129(b)(2)(B)(ii)'s prohibition. In this case, the proposed plan is doomed by its provision for vesting equity in the reorganized business in the Debtor's partners without extending an opportunity to anyone else either to compete for that equity or to propose a competing reorganization plan. The exclusiveness of the opportunity, with its protection against the market's scrutiny of the stated purchase price, renders the partners' right a property interest extended "on account of" the old equity position and therefore subject to an unpaid senior creditor class's objection. Under a plan granting old equity on exclusive right, any determination that the purchase price was top dollar would necessarily be made by the bankruptcy judge, whereas the best way to determine value is exposure to a market. In the interest of statutory coherence, the Bankruptcy Code's disfavor for decisions untested by competitive choice ought to extend to valuations in administering §1129(b)(2)(B)(ii) when some form of market valuation may be available to test the adequacy of an old equity holder's proposed contribution. Pp. 18–23.

126 F. 3d 955, reversed and remanded.

SOUTER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, KENNEDY, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed an opinion concurring in the judgment, in which SCALIA, J., joined. STEVENS, J., filed a dissenting opinion.