No. 18-974

IN THE

Supreme Court of the United States

MAR-BOW VALUE PARTNERS, LLC,
Petitioner,

v.

MCKINSEY RECOVERY & TRANSFORMATION SERVICES US LLC, ET AL.,
Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

May a person who is not aggrieved by an order of the bankruptcy court appeal that order, contrary to the view of every Article III judge who has addressed the issue since the Bankruptcy Code took effect 40 years ago?

RULE 29.6 STATEMENT

McKinsey Recovery & Transformation Services U.S., LLC ("RTS"), is a direct wholly owned subsidiary of McKinsey & Company, Inc. United States, which, in turn, is a direct wholly owned subsidiary of McKinsey Holdings, Inc., which, in turn, is a direct wholly owned subsidiary of McKinsey & Company, Inc. No publicly held corporation owns 10% or more of the stock of either McKinsey RTS or McKinsey & Company, Inc.

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BRIEF IN OPPOSITION

It is hornbook law that, "in order for a person to be a proper party to take an appeal" in a bankruptcy case, that party "must be a 'person aggrieved' by the outcome" of a particular proceeding. "Consistent with the basic purpose of section 1109(b) [of the Bankruptcy Code, 11 U.S.C. § 1109(b)], a party qualifies as a 'person aggrieved' if the decision in question adversely affects the party's pecuniary interest." 7 COLLIER ON BANKRUPTCY ¶ 1109.08 (Alan N. Resnick & Henry J. Sommer eds.,16th ed.)

Petitioner quixotically attacks that well-established standard—which has been adopted by the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Circuits—by making the same shopworn argument that has been rejected by every court to consider it. Specifically, Petitioner contends that the presence of the words "person aggrieved" in a prior bankruptcy statute and the absence of those exact words in the Bankruptcy Code preclude courts from requiring that a "person" be "aggrieved" before taking an appeal.

As then-Judge Gorsuch explained, however, "the 'person aggrieved' phrase no longer appears [in the Code], [but] many courts, including this one, have continued for decades to enforce the person aggrieved requirement as a matter of prudential standing." *In re Krause*, 637 F.3d 1160, 1168 (10th Cir. 2011). "They have done so because, without such a requirement, bankruptcy litigation could easily 'become mired in endless appeals brought by a myriad of parties who are indirectly affected by every bankruptcy court order.'" *Ibid.* (quoting *Holmes* v. *Silver Wings*

Aviation, Inc., 881 F.2d 939, 940 (10th Cir. 1989)); accord *Kane* v. *Johns-Manville Corp.*, 843 F.2d 636, 644 (2d Cir. 1988) ("In this context, the courts have been understandably skeptical of the litigant's motives and have often denied standing as to any claim that asserts only third-party rights."), *quoted in Krause*, 637 F.3d at 1168.

Petitioner does not claim to have the pecuniary interest that courts uniformly require for appellate standing and for standing to "be heard" in the bankruptcy court itself under 11 U.S.C. § 1109(b).[1] Instead, Petitioner urged the district court (on appeal from the bankruptcy court) and the Fourth Circuit (on appeal from the district court) to jettison or make an exception to the established standard. Unsurprisingly, the district court rejected that invitation and the Fourth Circuit summarily affirmed in an unpublished opinion, without oral argument. Petitioner did not seek rehearing en banc.

There is no reason for this Court to review the unpublished decision below, which correctly applies a well-established standard, uncontroversial among the

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[1] Petitioner's assertion that "Congress provided that creditors *such as Mar-Bow* 'may raise and may appear and be heard on any issue' in a Chapter 11 case" is false. Pet. 3 (emphasis added) (quoting 11 U.S.C. § 1109(b)). Congress actually provided that a "*party in interest*" may be so heard. 11 U.S.C. § 1109(b) (emphasis added). As Mar-Bow well knows, it was deemed a "party in interest" *before* a plan of reorganization was confirmed but *ceased* to be a party in interest on plan confirmation. The bankruptcy court so held explicitly. Pet. App. 139-143 & n.18. Petitioner's pretense that it had standing under Section 1109(b)—the foundation on which *all* of Petitioner's arguments depend—is thus directly contrary to the decisions below, and not encompassed by the Question Presented.

circuits, to the facts. In the exceedingly unlikely event that some court ever finds persuasive any of the arguments Petitioner now makes, there will be ample opportunity for this Court to review the issues then.

STATEMENT

McKinsey Recovery & Transformation Services U.S., LLC ("RTS"), is an indirect, wholly owned subsidiary of McKinsey & Company, Inc ("McKinsey"). Since 2011, RTS has provided advisory services to Chapter 11 debtors to help them turn around their businesses and emerge from bankruptcy. See Pet. App. 9.

Alpha Natural Resources, Inc. ("ANR"), is one of the largest coal suppliers in the United States. On August 3, 2015, ANR and many of its subsidiaries (collectively, "Debtors") filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. Shortly thereafter, the Debtors filed a retention application to employ RTS as an advisor to assist with the "development and refinement of their strategic business plan." Pet. App. 13.

The retention of qualified and disinterested professionals in Chapter 11 cases is overseen by the bankruptcy court. Section 327 of the Bankruptcy Code, which governs such retentions, requires professionals to submit a "verified statement" under Bankruptcy Rule 2014(a) "setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee." Fed. R. Bankr. P. 2014(a). As the district court noted below, "Rule 2014 contains no definition of 'connec-

tions,' nor does it explain . . . the level of detail required in a professional's Rule 2014 disclosures." Pet. App. 20.

To fulfill its Rule 2014(a) obligations, RTS disclosed its connections "by category, number of connections, and general nature of work performed for the connection, rather than identifying connections with the interested parties by name." Pet. App. 17. RTS explained that it was disclosing by category because of McKinsey's commitments to several clients to keep their engagements confidential. With narrow exceptions, McKinsey's consulting contracts typically include provisions limiting McKinsey's ability to disclose the identity of the client without consent.

RTS also provided a declaration explaining the process it undertook to identify connections with interested parties. The bankruptcy court examined RTS's disclosures, determined that the disclosures were adequate, and granted RTS's unopposed retention application. Pet. App. 18.

More than six months later, and only a month before the confirmation hearing, Petitioner Mar-Bow Value Partners, LLC ("Mar-Bow"), made its first appearance in the bankruptcy case by filing a proof of claim as an unsecured creditor. Pet. App. 11. Though "[t]he record lacks clarity about the precise nature of Mar-Bow's business," Mar-Bow is "beneficially owned and funded" by Jay Alix. Pet. App. 9-10. Jay Alix, in turn, is the founder of AlixPartners, a company that competes with RTS in the bankruptcy restructuring space. Pet. App. 10. Since its initial appearance in the case, Mar-Bow has "objected strenuously and continually to the sufficiency of [RTS's] disclosures." Pet. App. 8. "Indeed," as the district court noted, "*all* of Mar-

Bow's actions [in this case] pertained to this one issue: the sufficiency of [RTS's] Rule 2014 disclosures." Pet. App. 8 n.5.

Two days after Mar-Bow's appearance and at Mar-Bow's urging, the U.S. Trustee filed a motion to compel RTS to make additional disclosures of RTS's connections to interested parties. See Pet. App. 20 n.19. After "extensive discussions," RTS entered a stipulation with the U.S. Trustee resolving the motion to compel. Pet. App. 22. McKinsey obtained the consent of several clients to disclose their identities and did so in a supplemental declaration. Pet. App. 22-23. As to clients for which it was unable to obtain such consent, RTS provided a sworn declaration that McKinsey had served them only on "matters unrelated to the Debtors and their chapter 11 cases." Pet. App. 22-23. The U.S. Trustee's Office declared that it was "satisfied" that RTS's disclosures "complied with Rule 2014." Pet. App. 23.

Mar-Bow, however, was not satisfied. Mar-Bow filed its own motion to compel additional disclosures and also asked the bankruptcy court to suspend payment of RTS's fees—and disgorge all of RTS's previously paid fees—if RTS did not make the disclosures Mar-Bow sought. Pet. App. 23-25. The bankruptcy court held a hearing on Mar-Bow's motion, after which, at the U.S. Trustee's suggestion, it ordered RTS to provide information regarding its confidential clients, including their identity and the nature of RTS's work for them, to the court for *in camera* review. Pet. App. 27-29. The court also ordered RTS to provide information on connections related to MIO Partners ("MIO")—an indirect McKinsey subsidiary that manages assets for pension plans in which

current and former McKinsey employees participate. Pet. App. 29. MIO is legally and functionally separate from RTS. RTS personnel have no influence over MIO's investment decisions—the vast majority of which are made by many third-party investment managers—and do not know where those investments are made. See Declaration of Casey Lipscomb, *In re Alpha Nat. Res., Inc.*, No. 15-BR-33896-KRH, Dkt. No. 4152 (Bankr. E.D. Va. Sept. 12, 2018).

RTS promptly complied and submitted the additional information for *in camera* review. The court reviewed the information *in camera* and declared itself "completely satisfied that there is not any type of disinterested[ness] problem with [RTS] going forward." Pet. App. 31.

But Mar-Bow was still unsatisfied. It continued to object to RTS's Rule 2014(a) disclosures through other means. First, Mar-Bow filed a motion to "clarify" the bankruptcy court's order compelling compliance. Pet. App. 97. Specifically, Mar-Bow claimed that it should be allowed to review RTS's *in camera* disclosures, a request the court denied. Pet. App. 98-99.

Mar-Bow then objected to RTS's fee applications on the basis that RTS had not adequately disclosed its connections. Pet App. 109. The bankruptcy court overruled those objections, holding that Mar-Bow lacked Article III standing to object to RTS's fees because, under the already-confirmed reorganization plan, "[a]ny excess cash, including cash that might be made available from not paying" RTS's fees, would flow to secured first-lien lenders, not unsecured creditors like Mar-Bow. Pet. App. 142. Mar-Bow then objected to the reorganization plan itself, arguing that it improperly

released RTS from fraud claims against it. The bankruptcy court disagreed. Pet. App. 36-38.

On appeal, the district court consolidated Mar-Bow's several appeals into two different cases. In the first (see Pet. App. 5-72), the district court dismissed Mar-Bow's appeals challenging the *in camera* review of RTS's disclosures and the bankruptcy's court confirmation of the reorganization plan. Pet. App. 46. As to the first set of issues, the court held that Mar-Bow could not satisfy the person-aggrieved standard to appeal a bankruptcy court's order and therefore "lack[ed] standing to appeal those rulings." Pet. App. 71. It then dismissed Mar-Bow's appeal of the plan's confirmation as "equitably moot" (a holding Mar-Bow did not challenge further and does not raise here). Pet. App. 65.

In the second case (see Pet. App. 73-128), the district court again held that Mar-Bow lacked standing, this time with respect to its appeal of the bankruptcy court's fee application rulings. Pet. App. 127. The court held that Mar-Bow did not satisfy the person-aggrieved standard and "likely" failed to meet even the minimum requirements of Article III. Pet. App. 123-124.

The Fourth Circuit affirmed in an unpublished *per curiam* opinion "for the reasons stated by the district court." Pet. App. 3.

While it pursued appellate relief, Mar-Bow returned to bankruptcy court, now alleging that RTS had intentionally concealed disqualifying connections. Without any kind of ruling on the merits, the bankruptcy court re-opened proceedings to consider this new allegation. See *In re Alpha Nat. Res., Inc.*,

No. 15-BR-33896-KRH, Dkt. No. 4194 (Bankr. E.D. Va. Jan. 16, 2019). That re-opened proceeding remains ongoing.[2]

ARGUMENT

1. Petitioner's primary argument is that this Court should jettison the decades-old person-aggrieved standard because it supposedly is a prudential doctrine, and this Court has "questioned" such prudential doctrines. Pet. 13; see Pet. 13-21.

No judge on any court has ever accepted that argument. The principal case on which Petitioner relies—*Lexmark International, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118 (2014)—shows why it is flawed. In *Lexmark*, this Court held that the label "prudential standing" was a "misnomer" as applied to the zone-of-interests analysis. *Id.* at 127 (internal quotation marks omitted). That analysis, the Court explained, was not rooted in courts' "independent policy judgment" about what is prudent, but instead in Congress's own judgments, as determined by "traditional tools of statutory interpretation." *Ibid.* The Court did not jettison, but *applied*, the zone-of-

[2] Mar-Bow has also sought similar relief in two additional bankruptcy cases in which RTS was employed as a professional, see *In re SunEdison, Inc.*, No. 16-10992, Dkt. No. 5751 (Bankr. S.D.N.Y. Jan. 22, 2019); *In re SRC Liquidation, LLC*, No. 15-10541 (BLS), Dkt. No. 2392 (Bankr. D. Del. Mar. 6, 2019), and has objected to RTS's retention in another, see *In re Westmoreland Coal Co.*, No. 18-35672, Dkt. No. 669 (Bankr. S.D. Tex. Dec. 3, 2018). Alix has also filed a RICO action against RTS, McKinsey, and several of their professionals premised on the alleged Rule 2014(a) violations. See *Alix* v. *McKinsey & Co., Inc.*, No. 1:18-cv-04141, Dkt. No. 1 (JMF) (S.D.N.Y. June 9, 2018).

interests test, despite "admittedly hav[ing] placed [it] under the 'prudential' rubric in the past." *Ibid*; *see id.* at 129-131.

It is no surprise, therefore, that after *Lexmark* lower courts have—without exception—continued to apply the person-aggrieved standard in bankruptcy appeals.[3] Most courts have not seen *Lexmark* as having any relevance to bankruptcy appellate standing at all. The *sole court* to have thought the matter worth addressing simply suggested that its own previous labeling of the person-aggrieved standard as a "prudential" doctrine may have been erroneous—and then proceeded apace to apply the standard. *In re Ernie Haire Ford, Inc.*, 764 F.3d 1321, 1325 n.3 (11th Cir. 2014).[4] No one has taken up Petitioner's curious

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[3] See, *e.g.*, *In re Cousins Int'l Food,* 565 B.R. 450, 458-459 (B.A.P. 1st Cir. 2017); *In re Congregation Birchos Yosef*, 699 Fed. Appx. 91, 92 (2d Cir. 2017); *In re Revstone Indus. LLC*, 690 Fed. Appx. 88, 89 (3d Cir. 2017); *In re Technicool Sys., Inc.*, 896 F.3d 382, 385-386 & n.5 (5th Cir. 2018); *In re Cotter*, No. 16-1449, 2017 WL 8236168, at *1 (6th Cir. Mar. 1, 2017); *Spitz* v. *Nitschke*, 528 B.R. 874, 881 (E.D. Wis. 2015); *In re O&S Trucking, Inc.*, 811 F.3d 1020, 1023-1024 (8th Cir. 2016); *In re Point Ctr. Fin., Inc.*, 890 F.3d 1188, 1191 (9th Cir. 2018); *In re Bryan*, 857 F.3d 1078, 1099 (B.A.P. 10th Cir. 2017); *In re Ernie Haire Ford, Inc.*, 764 F.3d 1321, 1325 (11th Cir. 2014).

[4] Citing a single, *non-bankruptcy* Sixth Circuit case, Petitioner claims that "[s]ome circuits" have recognized *Lexmark*'s "implications." Pet. 15 (citing *Miller* v. *City of Wickliffe*, 852 F.3d 497, 503 n.2 (6th Cir. 2017)). In *bankruptcy* cases, however, the Sixth Circuit continues to hold that an "appellant must be a 'person aggrieved'" to have standing. *In re Cotter*, 2017 WL 8236168, at *1. Petitioner makes similarly overenthusiastic use of the plural in claiming that "[c]ommentators" have criticized

suggestion that courts should instead keep the mistaken label and discard the established doctrine.[5]

This is just as it should be: as lower courts have recognized, the purpose of the person-aggrieved standard is "to exclude appeals from those parties who do not suffer a direct harm to *interests the Bankruptcy Code seeks to protect or regulate*." *Ernie Haire Ford*, 764 F.3d at 1326 (emphasis added) (discussing decisions of the Second, Sixth, and Seventh Circuits). The standard, in other words, is not the product of untethered judicial policy judgments, but "is in reality tied to a particular statute"—the Bankruptcy Code. *Bank of Am. Corp.* v. *City of Miami*, 137 S. Ct. 1296, 1302 (2017). Indeed, the Code expressly limits the right to be heard *in bankruptcy court* to "part[ies] in interest," 11 U.S.C. § 1109(b), which "is generally understood" to mean persons "whose pecuniary interests are . . . directly affected by the bankruptcy proceedings." *In re Alpex Comput. Corp.*, 71 F.3d 353, 356 (10th Cir. 1995); see also *In re C.P. Hall Co.*, 750 F.3d 659, 663 (7th Cir. 2014) ("[p]ecuniary interest is a

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the person-aggrieved standard. See Pet. 21 (citing articles of one commentator, S. Todd Brown).

[5] Petitioner invokes other decisions of this Court with even less relevance than *Lexmark*; they stand only for the established principle that "a federal court's obligation to hear and decide cases within its jurisdiction 'is virtually unflagging.'" *Susan B. Anthony List* v. *Driehaus*, 573 U.S. 149, 167 (2014) (quoting *Lexmark*, 572 U.S. at 126, quoting in turn *Sprint Commc'ns, Inc.* v. *Jacobs,* 571 U.S. 69, 77 (2013) (some internal quotation marks omitted)); cf. *Zivotofsky ex rel. Zivotofsky* v. *Clinton*, 566 U.S. 189, 194 (2012) (observing only that the political question doctrine is an exception to the rule that courts must decide cases properly before them).

necessary rather than a sufficient condition" under Section 1109(b)). In applying the person-aggrieved standard, courts therefore simply (and properly) have assumed that Congress did not intend for parties to have standing to appeal where Congress did not grant them standing to be heard in the first instance. And Congress did not grant Mar-Bow such standing. Pet. App. 139-143 & n.18; see note 1, *supra*.

All then that is left of Petitioner's argument is that the pre-1978 Bankruptcy Act used the words "person aggrieved," but those exact words do not appear in the current Bankruptcy Code. That tired argument has been rejected time and time again.[6] *Some* standing requirement—beyond Article III—must exist for bankruptcy appeals, or else, as then-Judge Gorsuch explained, bankruptcy cases will "'become mired in endless appeals brought by a myriad of parties who are indirectly affected by every bankruptcy court order.'" *In re Krause*, 637 F.3d 1160, 1168 (10th Cir. 2011) (quoting *Holmes* v. *Silver Wings Aviation, Inc.*, 881 F.2d 939, 940 (10th Cir. 1989)). Congress may not have explicitly codified the person-aggrieved standard in the Bankruptcy Code, but it has

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[6] See, *e.g.*, *In re Westwood Cmty. Two Ass'n, Inc.*, 293 F.3d 1332, 1334-1335 (11th Cir. 2002) (collecting decisions of the First, Second, Third, Sixth, Seventh, Ninth, and Tenth Circuits applying the person-aggrieved standard after the 1978 amendments to the Bankruptcy Code removed explicit references to the standard); *In re O&S Trucking, Inc.*, 811 F.3d at 1023 ("Although the modern Bankruptcy Code does not articulate a standard for appellate standing, our circuit consistently has applied a 'person aggrieved' standard derived from the Bankruptcy Act of 1898.").

given no indication that it wants some other standard to apply.

2. Petitioner falls back to manufacturing a constitutional issue that no court or commentator has ever noticed (and that Petitioner failed to raise in its briefs below). There is no merit to Petitioner's grandiose suggestion that the person-aggrieved standard "threatens" Article III and "undermines public confidence in the independence . . . of the federal judicial process." Pet. 22-23. If that argument ever appears to someone—anyone—to be meritorious, however, then presumably suitable case law will develop debating that grand constitutional question, and this Court can address it if necessary. But no one other than an advocate has yet noticed this supposed threat to the Republic resulting from decades of application of a universally accepted standard.

Petitioner's constitutional argument is flimsy, in any event. Standing concerns "*who* may invoke the courts' decisional and remedial powers." *Warth* v. *Seldin*, 422 U.S. 490, 499 (1975) (emphasis added). Thus, limiting bankruptcy appellate standing to persons aggrieved does not—as Petitioner claims—deprive Article III courts of "jurisdiction to review the decisions of Article I tribunals." Pet. 21. Instead, it regulates *who* may ask Article III courts to exercise that jurisdiction. Petitioner does not cite a single case expressing constitutional concern about that *who* question. Petitioner instead (at 22-24) relies extensively on Judge Krause's concurrence in *In re One2One Communications, LLC*, 805 F.3d 428 (3d Cir. 2015). That case, however, concerned equitable mootness, a doctrine that, unlike appellate standing, "prevents appellate review of a non-Article III judge's

decision" regardless of who asks for it. *Id.* at 445 (Krause, J. concurring).

What is more, Congress has preserved the possibility of Article III review even in cases where no private litigant is aggrieved by making the United States trustees "responsible for 'protecting the public interest and ensuring that bankruptcy cases are conducted according to law.'" *In re Revco D.S., Inc.*, 898 F.2d 498, 500 (6th Cir. 1990). Such trustees have standing to appeal, even when no private party is aggrieved. See, *e.g.*, *In re Clark*, 927 F.2d 793, 795 (4th Cir. 1991) ("there are other standards [than 'person aggrieved'] applicable to parties such as these trustees").

Petitioner's newfound constitutional concerns are no basis for this Court to grant review.

3. "All circuits . . . limit standing to appeal a bankruptcy court order to 'persons aggrieved' by the order." *In re Point Ctr. Fin., Inc.*, 890 F.3d 1188, 1191 (9th Cir. 2018). Trying nonetheless to conjure up a circuit split, Petitioner claims that four circuits endorse a public-interest exception to the person-aggrieved standard. Pet. 24-31. Notably, even Petitioner does not claim that its circuit split concerns the merits issue that its petition raises: the cases in the supposed split do not discuss the viability of prudential standing doctrines or Article III courts' role in supervising non-Article III courts—issues far afield from whether there is a public-interest exception to the person-aggrieved standard. In any event, there is no split as to the public-interest exception either: no court recognizes such an exception.

Petitioner leads off its effort to show otherwise by citing cases concerning the appellate standing of

United States trustees. See Pet. 26-27 (citing *In re Zarnel*, 619 F.3d 156, 162 (2d Cir. 2010); *Revco*, 898 F.2d at, 499). But no circuit—and certainly not the court below—has ever suggested that "United States trustees, who never have pecuniary interests in cases," are subject to the person-aggrieved standard. *In re Clark*, 927 F.2d at 795. They are subject to "other standards." *Ibid.* (citing *Revco*, 898 F.2d at 499). The question is, instead, whether *private litigants* like Petitioner may escape the person-aggrieved standard by anointing themselves guardians of the public interest.[7]

On that issue, too, the courts are unanimous: no courts accord private parties standing based on their supposed pursuit of the public's interest. Petitioner's main authority—the Third Circuit's decision in *In re Congoleum Corp.*, 426 F.3d 675 (2005)—in fact reaffirmed that appellate standing in bankruptcy is restricted to "persons or entities that are aggrieved by an order which diminishes their property, increases their burdens, or detrimentally affects their rights." *Id.* at 685. It then held that a group of insurers had standing "even under [that] restrictive standard" to appeal an order approving the debtor's retention of a "special insurance counsel." *Ibid.* The law firm that the debtor wished to retain had also represented the debtor's tort creditors and was entitled to a percentage of all funds paid to those creditors by the debtor's insurers. *Id.* at 690. Thus, the law firm was

[7] Mar-Bow's multi-front vendetta against its competitor RTS, see note 2, *supra*, has nothing to do with the public interest. The reason Mar-Bow is spending tens of millions of dollars on lawyers' fees over Rule 2014 disclosures is to try to gain a competitive advantage, if not as an (even more ignoble) outlet of personal spite.

economically incentivized to approve claims against the debtor, which would be paid out by the insurers. *Ibid.* Obviously, such an arrangement directly affected the insurers' pecuniary interests. *Ibid.*

The Second Circuit's decision in *In re DBSD North America, Inc.*, 634 F.3d 79 (2011), does not provide support for Petitioner's claimed split either. In that case, the Second Circuit reaffirmed that, to have appellate standing, a party "must be 'a person aggrieved'—a person 'directly and adversely affected pecuniarily' by the challenged order of the bankruptcy court." *Id.* at 89. It then held that, under that standard, Sprint had standing to object to the confirmation of a plan that would reduce its $2 million claim to "property worth less than half (between 4% and 46%) of that amount." *Ibid.* It did not matter that Sprint's claim was assertedly "worthless" in light of the debtor's insolvency. *Id.* at 90. Sprint had standing because the order it sought to appeal "affected Sprint directly and financially." *Id.* at 89 (internal quotation marks omitted). There is simply no way to read *In re DBSD* as endorsing a public-interest exception to the person-aggrieved standard.

The same goes for *In re Colony Hill Associates*, 111 F.3d 269 (2d Cir. 1997), which held that a bidder excluded from an auction—at which he had been the highest bidder—had standing to challenge the auction as tainted by fraud. *Id.* at 273-274. Such an auction affected not only the bidder's pecuniary interests, but the estate's as well. No one claimed to be vindicating an abstract public interest as Mar-Bow does here. And the Eleventh Circuit's footnote citation to *Colony Hill*—in an appeal it dismissed for failure to satisfy the person-aggrieved standard—certainly did not

endorse a public-interest exception either. See *In re Ernie Haire Ford,* 764 F.3d at 1327 n.4. Nor did the Sixth Circuit endorse such an exception by simply mentioning *Colony Hill* on the way to dismissing an appeal by another unsuccessful bidder for lack of standing. See *In re Moran*, 566 F.3d 676, 682 (2009).

To sum up: in all circuits, the United States trustees have appellate standing to vindicate the public interest. Private litigants like Mar-Bow do not. There is no split for this Court to resolve.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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