No.

IN THE

Supreme Court of the United States

TRUCK INSURANCE EXCHANGE,

Petitioner,

v.

KAISER GYPSUM COMPANY, INC., ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Asbestos claims in state court have been plagued by rampant fraud, with claimants seeking inflated recoveries against some asbestos defendants by suppressing evidence of claims against other asbestos defendants. For nearly a decade, bankruptcy courts have sought to protect debtors and their insurers by requiring fraud-prevention measures—like ensuring access to claims information—before channeling the asbestos claims against the debtor to a trust. See 11 U.S.C. § 524(g).

In this case, a Chapter 11 debtor colluded with representatives for asbestos claimants to propose and confirm a plan that includes these fraud-prevention measures only for *uninsured* asbestos claims—not *insured* asbestos claims. Petitioner is the insurer who bears the financial burden of those 14,000 insured claims.

The Bankruptcy Code's plain text empowers any "party in interest" to "raise" and "be heard on any issue" in a Chapter 11 proceeding. 11 U.S.C. § 1109(b). But the court of appeals refused to adjudicate petitioner's objections to the fraud and collusion, relying on judge-made limitations engrafted onto the Code.

The question presented is:

Whether an insurer with financial responsibility for a bankruptcy claim is a "party in interest" that may object to a Chapter 11 plan of reorganization.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

1. Petitioner Truck Insurance Exchange is the primary insurer of debtors Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc., was a party in interest in the bankruptcy court and district court, and was the appellant before the court of appeals.

Respondents Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc. were debtors in the bankruptcy court and the district court and appellees before the court of appeals.

Respondent Lehigh Hanson, Inc. is the parent company of debtors Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc., was a party in interest in the bankruptcy court and the district court, and was an appellee before the court of appeals.

Respondents Official Committee of Asbestos Personal Injury Claimants and Future Claimants' Representative represent the asbestos claimants, were parties in interest in the bankruptcy and district courts, and were appellees before the court of appeals.

2. Petitioner Truck Insurance Exchange is not a publicly held corporation and has no parent corporations. No publicly held corporation owns 10% or more of its stock.

STATEMENT OF RELATED PROCEEDINGS

Pursuant to this Court's Rule 14.1(b)(iii), the following proceedings are directly related to this case:

- *In re Kaiser Gypsum Co.*, No. 21-1858 (4th Cir.) (judgment entered Feb. 14, 2023);
- *In re Kaiser Gypsum Co.*, No. 20-cv-537 (W.D.N.C.) (order entered July 28, 2021); and
- *In re Kaiser Gypsum Co.*, No. 16-bk-31602 (Bankr. W.D.N.C.) (recommendation entered Sept. 28, 2020).

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Truck Insurance Exchange respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the court of appeals is reported at 60 F.4th 73. App. 1a. The district court's findings of fact and conclusions of law and its order confirming the plan are unreported but are available at 2021 WL 3215102 and 2021 WL 3239513, respectively. App. 27a, 118a.

JURISDICTION

The court of appeals entered judgment on February 14, 2023. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 1109 of Chapter 11 of the U.S. Bankruptcy Code provides:

> (a) The Securities and Exchange Commission may raise and may appear and be heard on any issue in a case under this chapter, but the Securities and Exchange Commission may not appeal from any judgment, order, or decree entered in the case.
>
> (b) A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.

All other relevant statutory provisions are reproduced in the appendix at 329a.

STATEMENT

The plain text of the Bankruptcy Code allows a "party in interest" to "appear and be heard on any issue" in a Chapter 11 proceeding. 11 U.S.C. § 1109(b). But some courts, including the court below, have engrafted judge-made limitations onto that capacious statutory text. At issue here is the "bankruptcy standing" doctrine, which, along with its sidekick, the "insurance neutrality" rule, bars an insurer from participating in the bankruptcy unless the insurer can show that the plan formally alters the "quantum of liability" under the insurer's contracts. App. 16a. The insurance neutrality rule blocks the insurer from objecting to a plan of reorganization even when, as here, the insurer bears near-exclusive financial responsibility for the claims under that plan.

Neither statutory text nor statutory history supports these judge-made limitations. Instead, Section 1109(b) affords a "party in interest" the right to "appear and be heard on any issue." 11 U.S.C. § 1109(b). Indeed, Congress amended the language of Section 1109(b) (and its predecessor) specifically to *expand* the issues on which interested parties could be heard in bankruptcy so that all stakeholders can have a say in allocating a fixed pool of assets.

Ignoring statutory text and history, the decision below exacerbates an acknowledged, entrenched circuit split. While the Third Circuit correctly construes Section 1109(b) as the broad grant of participatory rights that it is—allowing participation wherever a party satisfies Article III—the Fourth Circuit has now

joined the Seventh Circuit in rejecting that view and imposing judge-made, prudential limitations on who can be heard and what they can argue in bankruptcy proceedings. Compare *In re Global Industrial Technologies, Inc.*, 645 F.3d 201, 211 (3d Cir. 2011) (en banc) (holding that Section 1109(b) and Article III are "effectively coextensive"), with *In re C.P. Hall Co.*, 750 F.3d 659, 662–63 (7th Cir. 2014) (reaffirming prudential limitations on standing after acknowledging potential "split" with other circuits), and App. 16a (requiring insurer to show in addition that the plan "increase[s] the insurer's pre-petition obligations or impair[s] the insurer's pre-petition policy rights"). The Ninth Circuit has a foot in both camps. See, *e.g.*, *In re Tower Park Properties, LLC*, 803 F.3d 450, 457 n.6 (9th Cir. 2015) (Article III and Section 1109(b) aren't "coextensive"); *In re Thorpe Insulation Co.*, 677 F.3d 869, 885 (9th Cir. 2012) (an insurer would have standing as long as there was "a substantial economic impact on [it]").

Demanding more than Article III "merely because 'prudence' dictates" also conflicts with this Court's precedent. *E.g.*, *Lexmark International, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 128 (2014). Under that precedent, insurers have a pecuniary stake in the confirmation of a reorganization plan fixing claims against the debtor and suffer an injury-in-fact when they miss out on "a chance to obtain" a settlement, reduction, or alteration of those claims. *Czyzewski* v. *Jevic Holding Corp.*, 580 U.S. 451, 464 (2017). Where, as here, a plan is collusively designed to facilitate fraudulent claims, the injury is all the more pronounced. And the practical consequences of

shutting out insurers in this context are profound, because they are the *only* ones with any incentive to object to such collusive plans. Nothing less than the integrity of bankruptcy proceedings is at stake.

This case is an ideal vehicle for resolving the conflict and dispelling the confusion on an important, recurring issue of bankruptcy law, where uniformity is imperative. See *McKenzie* v. *Irving Trust Co.*, 323 U.S. 365, 369–70 (1945) (bankruptcy laws are "intended to have uniform application throughout the United States"); U.S. Const. art. I, § 8, cl. 4 (empowering Congress to enact "uniform Laws on the subject of Bankruptcies throughout the United States").

1. Chapter 11 of the Bankruptcy Code provides a path for a debtor to obtain a comprehensive reorganization of its liabilities through negotiated resolution. See *Czyzewski*, 580 U.S. at 454–55. Upon filing a Chapter 11 petition, the debtor must work with interested parties to "negotiate a plan that will govern the distribution of valuable assets from the debtor's estate" to satisfy creditors' claims while "keep[ing] the business operating as a going concern." *Id.* at 455–56. The Code provides for a collaborative process, empowering "creditors and equity holders to engage in negotiations toward resolution of their interests" because they are "very often better judges of * * * their own economic self-interest than courts." *Bank of America National Trust & Savings Ass'n* v. *203 N. LaSalle St. Partnership*, 526 U.S. 434, 458 n.28 (1999) (citation omitted).

Section 1109(b) governs which parties have a say in the negotiating process. It prescribes: "A party in interest, *including* the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture

trustee, *may raise* and may appear and *be heard* on *any issue* in" a Chapter 11 case. 11 U.S.C. § 1109(b) (emphases added). The right to "raise" and "be heard" expressly includes the right to "object to confirmation of a plan" of reorganization. *Id.* § 1128(b).

Congress's use of the term "including" demonstrates that the list of persons qualifying as a "party in interest" isn't exhaustive, but illustrative. 11 U.S.C. § 102(3) ("'including' [is] not limiting"); *Federal Land Bank of St. Paul* v. *Bismarck Lumber Co.*, 314 U.S. 95, 100 (1941) ("the term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle"). As a result, courts have uniformly interpreted the use of "including" to broadly encompass "anyone holding a direct financial stake in the outcome of the case." 7 Collier on Bankruptcy ¶ 1109.01[1] (2022); *Thorpe*, 677 F.3d at 884 (collecting cases); *In re Combustion Engineering, Inc.*, 391 F.3d 190, 214 n.21 (3d Cir. 2004) (same).

The statutory history confirms what the statutory text makes plain. Although an earlier version of the statute limited the rights of creditors to be heard only on certain issues, Congress later expanded "the right to be heard" to "all matters arising in a proceeding under this chapter." *In re Keystone Realty Holding Co.*, 117 F.2d 1003, 1005 (3d Cir. 1941) (discussing predecessor statute). Congress thus aligned this provision with Chapter 11's overarching purpose of bringing all parties to the table with "fair representation" and "the absolute right to be heard." *In re Amatex Corp.*, 755 F.2d 1034, 1042 (3d Cir. 1985).

2. Chapter 11 reorganizations of debtors with significant asbestos liabilities have long presented vex-

ing challenges. Because the effects of asbestos exposure can take years to manifest, claimants may be unaware of their injuries (and claims) when an asbestos debtor goes through bankruptcy. As a result, the reorganization must confront the challenge of balancing known existing claims with unknown future claims.

As asbestos bankruptcies proliferated in the 1990s, Congress responded by enacting Section 524(g) of the Code. Section 524(g) has two key features to balance the needs of the debtor to emerge from bankruptcy with the needs of claimants to receive payments over a long period of time: (1) an injunction, and (2) a trust.

The injunction bars all past and future asbestos lawsuits against the reorganized debtor. 11 U.S.C. § 524(g). Instead, those claims are channeled to a trust. *Ibid.* The trust offers the claimant a settlement (subject to judicial review) based on individualized factors. *Id.* § 524(g)(2)(B)(ii)(V); see *In re Federal-Mogul Global Inc.*, 684 F.3d 355, 360 & n.12 (3d Cir. 2012).

Although Section 524(g) trusts provide an efficient way to resolve asbestos claims, some provisions drafted into the procedures for administering 524(g) trust claims enabled a scheme to inflate recoveries by claimants. To explain, asbestos claimants often suffer exposure to numerous companies' asbestos-containing products. But given the passage of time between the exposure to asbestos and the manifestation of injury, it's virtually impossible to trace the asbestos injury to any single exposure. In the tort system, courts can handle the problem by apportioning liability across defendants to ensure that the claimant is compensated in whole—but not more than that—for the asbestos injury. But this apportionment fails if the trial

court lacks access to the full scope of claims asserted by the plaintiff.

But Section 524(g) trust claims resolution procedures didn't require claimants to disclose either other exposures or other recoveries from other trusts. Lester Brickman, *Fraud and Abuse in Mesothelioma Litigation*, 88 Tul. L. Rev. 1071, 1104 (2014); C.A. J.A. 5261–5263.[1] Moreover, trusts were often required to keep information about claims against the trusts confidential and to resist subpoenas seeking that information. U.S. Gov't Accountability Off., GAO-11-819, Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts 26–28 (2011); C.A. J.A. 5262. These provisions—combined with extended claims periods and tolling provisions allowing claimants to delay filing trust claims against insolvent defendants until after tort claims against solvent defendants have been resolved—facilitated hundreds of millions of dollars in inflated recoveries, if not more. *In re Garlock Sealing Technologies, LLC*, 504 B.R. 71, 84–87 (Bankr. W.D.N.C. 2014); C.A. J.A. 5263.

In 2014, a watershed moment occurred when a bankruptcy court uncovered this scheme and the financial impact it had on asbestos debtors and trusts. *Garlock Sealing Technologies*, 504 B.R. at 84–87. To safeguard the trust in that case, the plan ultimately confirmed by the court imposed fraud-prevention measures requiring claimants, when submitting claims to the trust, to:

- Disclose all other claims that relate in any way to the alleged asbestos injuries;

[1] "C.A. J.A." refers to the joint appendix filed in the court of appeals.

- Allow the trust to obtain a claimant's submissions to other asbestos trusts; and
- Authorize audits to ensure the accuracy of information provided and claims paid by the trust.

Garlock Claims Resolution Procedures § 6.8, C.A. J.A. 1084–1086.

Since *Garlock*, every Section 524(g) trust has included similar anti-fraud requirements to protect debtors and their insurers (who fund the trusts) alike. Asbestos claimants receive the recovery to which they are entitled, while the trusts (and the debtors and debtors' insurers that fund them) are protected from fraudulent and duplicative recoveries.

3. Respondents Kaiser Gypsum Company and Hanson Permanente Cement, Inc. (together, "Kaiser") manufactured construction materials containing asbestos, and petitioner Truck Insurance Exchange is their primary insurer. App. 6a. Kaiser's policy with Truck requires Truck to defend and pay asbestos-related claims with no aggregate limit. *Ibid*. That means Truck is financially responsible for virtually every dollar owed to Kaiser's asbestos claimants up to a liability limit of $500,000 per claim (minus a small, fixed deductible per claim, typically $5,000). *E.g.*, C.A. J.A. 790, 839, 4507.[2]

In 2016, faced with significant asbestos-related liabilities, Kaiser filed for Chapter 11 bankruptcy. App. 5a. Yet because Truck bears primary responsibility for all 14,000 known claims, Kaiser had little incen-

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[2] Kaiser's excess insurers bear the remaining responsibility for any recoveries over $500,000.

tive during its negotiations with claimants' representatives to ensure that the resolved claims aren't fraudulently inflated.

So, in coordination with the asbestos claimants' representatives, Kaiser initially proposed a 524(g) reorganization plan containing none of the now-standard anti-fraud protections for the resolution of claims. App. 5a. When Truck first objected that this bargain would leave it exposed to fraudulent, inflated recoveries, Kaiser didn't disagree. It admitted that it wasn't "treated fairly" in the tort system and "a lot can be said about fraud," but all "that mattered" was that the deal protected Kaiser. C.A. J.A. 2420.

In light of Truck's objections, however, the bankruptcy court questioned whether a 524(g) plan that lacked standard fraud-prevention measures was confirmable. C.A. J.A. 3650–3652. Kaiser and the claimants' representatives went back to the drawing board, but what emerged was little more than a fig leaf.

Kaiser amended its proposed reorganization plan, adding the now-standard *Garlock* fraud protections—but only for the *uninsured* claims that are to be paid by the trust. No such measures were added for the *insured* claims—for which Truck is financially responsible and which the plan sends back into the tort system. App. 226a–227a.

Given that all 14,000 known claims are insured, the anti-fraud measures are illusory. C.A. J.A. 5776, 5844–5846. Kaiser admitted as much—revealing that the claimants' representatives refused to agree to any plan that provided protections for those thousands of claims. C.A. J.A. 5907.

Truck then reminded Kaiser of its duty under its insurance policy to cooperate and assist Truck in the

defense of claims and cautioned Kaiser that failing to propose a plan that extends the fraud-prevention measures to insured claims risked voiding Kaiser's coverage. C.A. J.A. 863–865. Kaiser submitted the plan for confirmation anyway—and for good measure, amended the plan to include an express finding in the confirmation order that Kaiser hadn't violated its duties to Truck.

Truck attempted to object to the plan's confirmation and to the purported resolution of the separate coverage defense. App. 143a–146a. As to the plan itself, Truck identified two fundamental ways in which it violated the express terms of Chapter 11. First, by returning 14,000 claims against Kaiser to the tort system, the trust didn't "assume the liabilities of [the] debtor." 11 U.S.C. § 524(g)(2)(B)(i)(I); App. 144a. Second, by returning the 14,000 claims to the tort system to evade fraud protections and facilitate inflated recoveries, the plan wasn't "proposed in good faith." 11 U.S.C. § 1129(a)(3).

The bankruptcy court nonetheless recommended that the district court confirm the plan. D. Ct. Dkt. 1, at 2–3. And the district court accepted the bankruptcy court's findings and confirmed the plan, all without addressing any of Truck's objections to the recommendations. Instead, the district court concluded Kaiser hadn't violated its duty of cooperation—which the court curiously concluded applies only to individual claims resolved in litigation, not multiple claims resolved at once in bankruptcy—and that Truck wasn't a "party in interest" because it lacked "bankruptcy standing" and therefore couldn't object to the plan. App. 94a–97a; see 11 U.S.C. § 1109(b). The court reasoned that Truck had nothing to complain about because the plan is "neutral" as to Truck—all of its

rights and liabilities before the bankruptcy "remain intact." App. 95a. In reaching this conclusion, the court discounted that the plan's return of claims to the tort system without fraud-prevention measures would render Truck responsible for fraudulently inflated claims. App. 98a–101a.

4. The Fourth Circuit affirmed, agreeing that Truck couldn't object to the plan because it wasn't a "party in interest" under Section 1109(b). App. 24a. The court recognized that an insurer is a party whose interest "*could* be affected" by proceedings. *Ibid*. (emphasis added). But it imposed an additional requirement that insurers' interests be "sufficiently affect[ed]." App. 16a. Because, in the court's view, Truck had the same exposure to fraud before and after the plan, confirmation didn't "sufficiently affect" Truck. Even the district court's (likely preclusive) finding that Kaiser didn't violate its cooperation obligations left Truck's contractual rights unaltered, according to the court.

As a result, Truck wasn't a "party in interest" and couldn't object to confirmation. The court declined to consider any of Truck's substantive objections to confirmation, so it didn't address whether the plan complies with Section 524(g) or Section 1129's good-faith requirement.

The court went on to hold that Truck couldn't object to the plan in its capacity as a creditor, either. App. 24a–26a. The court recognized that the plain text of Section 1109(b) states that a "creditor" may be heard on "any issue." 11 U.S.C. § 1109(b); App. 24a. But the court determined that the objection must "relate to its status as a creditor," and purported to ground this atextual requirement in Article III. App.

25a (emphasis omitted). The court expressly acknowledged that "courts are split on the interplay of Article III and § 1109(b)" but professed that it "need not choose a side here"—even though it relied on the purely prudential insurance neutrality rule as its *only* basis for concluding that Truck's capacity as an insurer didn't render it a party in interest. App. 25a n.10.

REASONS FOR GRANTING THE PETITION

I. The Circuits Are Split On Whether Section 1109(b) Imposes Barriers To Standing Beyond Article III.

As the Fourth Circuit recognized, "courts are split on the interplay of Article III and § 1109(b)." App. 25a n.10; see also *Tower Park Properties*, 803 F.3d at 457 n.6 (acknowledging split); *In re Capital Contracting Co.*, 924 F.3d 890, 895 (6th Cir. 2019) (same). The Third Circuit holds that they're coextensive, while the Fourth and Seventh hold that prudential considerations not grounded in Section 1109(b)'s text impose additional barriers. The Ninth Circuit has cases going both ways. That conflict and confusion on this important, recurring issue of bankruptcy law has led to irreconcilable and untenable results—including the Fourth Circuit's counterintuitive holding here that an insurer financially responsible for millions in liabilities on thousands of bankruptcy claims somehow isn't a party in interest in that bankruptcy.

At one end of the split, the Third Circuit has held that Section 1109(b), by its plain text, simply codifies the right of any party with Article III standing to appear and be heard in Chapter 11 proceedings. *Global Industrial Technologies*, 645 F.3d at 211. In this read-

ing, which comports with the text's expansive language, Section 1109(b) was needed to broaden and displace earlier bankruptcy provisions limiting the right to be heard. See p. 5, *supra*. Interpreting the Code's "party in interest" requirement as an additional obstacle to standing, the Third Circuit has explained, would not only run counter to the plain text but also "frustrate the purpose of § 1109(b)," which was intended to "confer[] broad standing at the trial level" and to "promot[e] greater participation." *Global Industrial Technologies*, 645 F.3d at 211 (internal quotation marks omitted).

On the Third Circuit's Article III-based reading, any party with a cognizable, traceable, and redressable stake in the resolution of the bankruptcy petition would be a party in interest. *Global Industrial Technologies*, 645 F.3d at 210 (citing *Whitmore* v. *Arkansas*, 495 U.S. 149, 155 (1990)). That is, parties have the requisite "personal stake" in the bankruptcy if they can "sufficiently answer the question: 'What's it to you?'" *TransUnion LLC* v. *Ramirez*, 141 S. Ct. 2190, 2203 (2021) (quoting Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 882 (1983)). The answer to that question is obvious for an insurer objecting to a plan that conclusively determines when, how, and how much the insurer will pay. *FEC* v. *Cruz*, 142 S. Ct. 1638, 1646 (2022) (a "pocketbook harm" is sufficient).

So the Third Circuit has held that a debtor's insurers, who claimed collusion between the debtor and its creditors, were parties in interest with "bankruptcy standing" to object to a plan's confirmation. *Global Industrial Technologies*, 645 F.3d at 213–15.

The court agreed that the insurers were the "funding sources who will have to address the liabilities" of the debtor, giving them an "injury-in-fact" based on their "personal stake in whether the Plan is approved." *Id.* at 210–12; see also *In re Woide*, 730 F. App'x 731, 734–35 (11th Cir. 2018) (per curiam) (concluding with "no trouble" that a right to payment grants "both statutory and constitutional standing" in bankruptcy).

The Fourth and Seventh Circuits have taken the opposite view. Departing from what it acknowledged to be the "literal reading of section 1109(b)," the Seventh Circuit held that Section 1109(b) silently preserved certain "other" pre-Code "limitations on standing, such as that the claimant be within the class of intended beneficiaries of the statute that he is relying on for his claim." *In re James Wilson Associates*, 965 F.2d 160, 169 (7th Cir. 1992).

Applying that interpretation of Section 1109(b), the Seventh Circuit refused to allow a creditor to object to plan confirmation. *James Wilson*, 965 F.2d at 169. The court acknowledged that the creditor satisfied Article III. *Ibid.* But the court denied "bankruptcy standing" because the creditor objected to the assumption of a lease in which it didn't have a specific interest. *Ibid*; see also *Hall*, 750 F.3d at 662–63 (reaffirming *James Wilson* and acknowledging potential "split" with other circuits).

The Fourth Circuit below took a similar detour from the statutory text. App. 15a–17a. The court recognized that "a party in interest" could include a debtor's insurer and that Section 1109(b) expressly includes a debtor's "creditor" as a party in interest. App. 16a. But it too required Truck to assert "objections

relating to its interests as a creditor" or assert that its rights under its insurance policies were, in fact, harmed by the proposed plan in specific ways—*i.e.*, "that the Plan isn't insurance neutral." App. 23a–25a. The court ignored the enormous real-world, concrete costs Truck would face as a result of a scheme designed to inflate its liability.

The Ninth Circuit has a foot in each camp. Although it has held that Article III and Section 1109(b) aren't "coextensive," *Tower Park Properties*, 803 F.3d at 457 n.6, it has also "look[ed] to the real-world impacts of the plan to see if it increases insurance exposure and likely liabilities of [the insurers]," *Thorpe*, 677 F.3d at 885. An insurer would have standing as long as there was "a substantial economic impact on [it]." *Ibid.*

Under this reading of Section 1109(b), the Ninth Circuit held that an insurer of asbestos claims could object to a plan that would "have a preclusive effect in asbestos suits"—even though the plan purported to be "insurance neutral" and didn't alter the quantum of its liability under the pre-bankruptcy contracts—because the plan would expose the insurer to "real-world" liability. *Thorpe*, 677 F.3d at 885.

This consideration of "real-world" impacts, including the potential preclusive effect of the confirmation proceeding in nonbankruptcy claims litigation, distinguishes the Ninth Circuit from the approach taken by the Fourth Circuit in this case, which blinds itself to such consequences. And it is truer to the text of Section 1109(b) as it relates to an insurer's right to object to plan confirmation. See *TransUnion*, 141 S. Ct. at 2205 (injury-in-fact includes "harms that 'exist' in the

real world") (citation omitted). Still, the requirement that the economic impact be "substantial" departs from Article III standing analysis, under which even "a single dollar" is sufficient. *Uzuegbunam* v. *Preczewski*, 141 S. Ct. 792, 801 (2021).

The results of these "bankruptcy standing" cases vary so much on a case-by-case and circuit-by-circuit basis precisely because these courts have strayed from the plain statutory text. This is especially apparent in the insurance context, where courts have landed all over the map in applying the judge-made "insurance neutrality" doctrine.

For example, the Seventh Circuit suggested agreement with the Third Circuit's decision in *Global Industrial Technologies* that an insurer can object if it "alleg[ed] that [it was the] target[ ] of a scheme between the debtor and its creditor[ ]." *Hall*, 750 F.3d at 661–62. That was the crux of Truck's plan objection: that Kaiser, the debtor, colluded with the creditors' attorneys—something Kaiser has never disavowed. But in contrast to the Seventh Circuit, the Fourth Circuit held that the same injury didn't allow Truck to object to the plan because, on its face, the plan didn't alter Truck's "quantum of liability" under its contracts, App. 24a. So Truck was prohibited from lodging an objection that the Third Circuit definitely—and the Seventh Circuit probably—would have allowed.

This disuniformity—particularly in the bankruptcy context, where the need for uniformity is at its zenith—is untenable. This Court's review is needed to resolve the conflict, dispel the confusion, and make clear that Section 1109(b)'s plain text means what it says—and that courts have no license to effectively

amend the statute to impose barriers to standing that have no statutory or constitutional basis.

II. "Insurance Neutrality" Is A Judge-Made Doctrine That Conflicts With The Bankruptcy Code And This Court's Precedent.

The Fourth Circuit's endorsement of the "insurance neutrality" rule also lands on the wrong side of the split. That rule engrafts judge-made requirements onto Section 1109(b)'s unambiguous statement that any "party in interest" may be heard on "any issue." Here, that maneuver resulted in the confirmation of an asbestos debtor's Chapter 11 plan without permitting the insurer—which must defend and indemnify *all* of the debtor's 14,000 known asbestos claims—to raise any objection to the plan. Truck's financial stake in the confirmation of Kaiser's reorganization plan was more than enough to create standing, but the Fourth Circuit applied a wooden before-and-after comparison of the quantum of liability instead of Article III's "real" and "concrete" injury requirement. See *Spokeo, Inc.* v. *Robins*, 578 U.S. 330, 340 (2016).

What's more, the Fourth Circuit held that even though Truck was also a creditor—a party expressly named as a "party in interest" in Section 1109(b)—it couldn't object to the plan because its objection didn't relate to its position *as a creditor*. App. 25a. This holding—which is directly contrary to Section 1109(b)'s plain text that a "creditor" may object as to "any issue"—further highlights the confusion stemming from courts straying from Section 1109(b)'s text. That confusion can easily be dispelled by making clear that where, as here, Congress imposes no additional barriers to Article III standing, there are none.

A. An Insurer With Financial Responsibility For Claims Against The Debtor Is A Party In Interest.

The Fourth Circuit's decision to foreclose judicial review in this case is based on a policy choice—not statutory text—that prioritizes the efficiency of bankruptcy proceedings over the requirements of the Bankruptcy Code. Courts imposing similar standing barriers have candidly admitted that their approach departs from a "literal reading of section 1109(b)" by engrafting onto the statute "other limitations on standing." *James Wilson*, 965 F.2d at 169; *In re Quigley Co.*, 391 B.R. 695, 702 (Bankr. S.D.N.Y. 2008) (observing that while the text of "Section 1109(b) grants a broad right to all parties in interest to participate in the case," courts haven't "read" the statute "so broadly").

But courts have no authority to overrule the "policy choice[s]" that Congress enshrined in the Code. *United States* v. *Noland*, 517 U.S. 535, 543 (1996). They instead "must interpret what Congress *wrote*." *Facebook, Inc.* v. *Duguid*, 141 S. Ct. 1163, 1173 (2021) (emphasis added). When Congress has spoken, courts aren't free to impose additional limitations on standing "merely because 'prudence' dictates." *Lexmark*, 572 U.S. at 128.

Congress conferred a broad participatory right to any party with a stake in the reorganization, *Amatex*, 755 F.2d at 1042, that is "effectively coextensive" with Article III standing, *Global Industrial Technologies*, 645 F.3d at 211. When Congress wants to narrow participation to specific groups or parties, it knows how to do so—and it does so expressly. See, *e.g.*, 15 U.S.C. § 77*l*(a)(2) (allowing only direct purchaser of security

to bring claim); 18 U.S.C. § 1964(c) (allowing only person "injured in his business or property" to bring claim). In Section 1109(b), Congress has not.

Quite simply, Truck has Article III standing—and is a "party in interest" that can object to the plan—because its responsibility to pay claims against the debtor makes confirmation of the plan a concrete, traceable, and redressable injury. *TransUnion LLC*, 141 S. Ct. at 2203; see also *Spokeo*, 578 U.S. at 340. Confirmation inevitably "will have the effect of channeling the estate's limited resources in one direction or another"—either to an insurer's benefit or detriment. 7 Collier ¶ 1109.04[2][b][i].

The insurer's stake in the plan's distribution of those resources plainly qualifies it for a seat at the table to object that the plan isn't in its "economic self-interest." *Bank of America National Trust & Savings Ass'n*, 526 U.S. at 458 n.28. Simply put, "when a federal court gives its approval to a [bankruptcy] plan that allows a party to put its hands into other people's pockets, the ones with the pockets are entitled to be fully heard and to have their legitimate objections addressed." *Global Industrial Technologies*, 645 F.3d at 204.

For this reason, the Code simply instructs that courts must analyze whether a party's rights will be affected by the plan's confirmation. See *Thorpe*, 677 F.3d at 884 ("'courts must determine on a case by case basis whether the prospective party has a sufficient stake in the proceedings'") (brackets omitted) (quoting *Amatex*, 755 F.2d at 1042). The Code gives courts no authority to apply special rules with extra hurdles for discrete categories of objectors, like insurers.

But the judge-made "insurance neutrality" rule—applied on a categorical basis to any issue raised by an insurer—does just that by requiring insurers to show not just that they have a stake in the confirmation of the plan, but *also* that the plan *specifically* alters its contractual rights or obligations. That forces insurers to litigate both in the real world—under the plan—and in an entirely hypothetical world in which there is no plan and no bankruptcy. And it silences the only party with any incentive to object to collusive plans.

Excluding these objections unless insurers can show that a plan formally and definitively reallocates their contractual liability demands much more than Article III requires. That's because "Article III's strictures are met not only when a plaintiff complains of being deprived of some benefit," like the anti-fraud protections here, "but also when a plaintiff complains that she was deprived of a chance to obtain a benefit." *Robertson* v. *Allied Solutions, LLC*, 902 F.3d 690, 697 (7th Cir. 2018); *Teton Historic Aviation Foundation* v. *U.S. Department of Defense*, 785 F.3d 719, 724 (D.C. Cir. 2015) (per curiam) ("a plaintiff suffers a constitutionally cognizable injury by the loss of an *opportunity to pursue a benefit* * * * even though the plaintiff may not be able to show that it was *certain to receive* that benefit had it been accorded the lost opportunity") (citation omitted). Confirming the plan without taking Truck's objections into account thus injured Truck by depriving it of "a chance to obtain" the benefit of anti-fraud protections against claim inflation. *Czyzewski*, 580 U.S. at 464.

In this way, the plan exposes Truck to massive, duplicative, and fraudulent claims—a clear and tangible "pocketbook" injury. *Cruz*, 142 S. Ct. at 1646.

This was the entirely foreseeable consequence of excluding the *only* party with a financial incentive to object to the plan's collusive arrangement. The Fourth Circuit's prudential gloss on Section 1109(b) prevented Truck from even making that objection, much less obtaining any redress.

B. The Fourth Circuit's Misreading Of Section 1109(b) Infected Its Article III Standing Analysis.

The Fourth Circuit's misreading of Section 1109(b) infected its holding that Truck lacks Article III standing as a creditor to raise objections other than those "relating to its interests *as a creditor*." App. 25a (emphasis added). The court cited no authority for that proposition, and didn't attempt to reconcile it with the plain language of Section 1109(b), which provides that a creditor may be heard on "any issue." 11 U.S.C. § 1109(b).

Instead, the court attempted to ground its holding in Article III, invoking *Warth* v. *Seldin*, 422 U.S. 490 (1975), which holds that a litigant may not assert the interests of a third party as the basis for standing. *Id.* at 508. Truck, however, isn't asserting third-party interests, but its own, as Truck will be writing the checks that pay fraudulent claims under the plan. And this Court has since clarified that concerns about the directness of an injury are better addressed in other ways, such as Rule 17's "real party in interest" requirement, that go to the procedure of "party joinder, not federal-court subject-matter jurisdiction." *Lincoln Property Co.* v. *Roche*, 546 U.S. 81, 90 (2005) (discussing Federal Rule of Civil Procedure 17(a)'s "real party in interest" requirement). So a party "may have standing in the Article III sense but not be the

real party in interest." *Cranpark, Inc.* v. *Rogers Group, Inc.*, 821 F.3d 723, 732 (6th Cir. 2016). And Section 1109(b)'s reference to any "party in interest" refutes the notion that such concerns should be imported here through judge-made restrictions.

What's more, Article III standing analysis focuses on each "*claim*" a litigant seeks to press and the "form of *relief* that is sought" for each claim—not on the *arguments* advanced in support of that claim for relief. *Davis* v. *FEC*, 554 U.S. 724, 734 (2008) (emphases added; internal quotation marks omitted). Truck sought one form of "relief"—an order refusing confirmation of the proposed plan. All of Truck's arguments sought that same relief, which would have blocked the plan and saved Truck from facing thousands of fraudulent tort claims. App. 143a. The Fourth Circuit's conclusion that Truck could only seek that remedy in its position as a creditor using *arguments* that applied specifically to its claims against Kaiser cannot be squared either with the plain text of Section 1109(b) or this Court's precedents. See *Davis*, 554 U.S. at 734; *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 353 (2006) (relevant Article III question is whether "th[e] injury * * * entitle[s] [the plaintiff] to seek a remedy").

III. The Question Presented Is Recurring And Important, And This Case Is An Ideal Vehicle For Resolving It.

As the court below acknowledged, "courts are split on the interplay of Article III and § 1109(b)." App. 25a n.10. There is no good reason to let this recognized split fester. Uniformity is particularly important where the Bankruptcy Code is concerned, because the Code was not only "intended to have uniform applica-

tion throughout the United States," but "must be uniform." *McKenzie*, 323 U.S. at 369–70 (first quotation); *Railway Labor Executives' Ass'n* v. *Gibbons*, 455 U.S. 457, 468 (1982) (second quotation). The Constitution demands it. See U.S. Const. art. I, § 8, cl. 4 (Congress may pass "uniform Laws on the subject of Bankruptcies").

That's why this Court regularly intercedes to maintain uniformity where the bankruptcy code is concerned. *E.g.*, *Mission Product Holdings, Inc.* v. *Tempnology*, *LLC*, 139 S. Ct. 1652 (2019) (resolving split over interplay between 11 U.S.C. § 365(a) and trademark law); *Bartenwerfer* v. *Buckley*, 143 S. Ct. 665 (2023) (same over discharge of debts obtained by fraud under 11 U.S.C. § 523(a)); *City of Chicago* v. *Fulton*, 141 S. Ct. 585 (2021) (same over whether retaining property of a bankruptcy estate violates 11 U.S.C. § 362(a)(3)). It has done so to resolve a split between just two circuits. *Harris* v. *Viegelahn*, 575 U.S. 510 (2015) (granting petition to resolve a 1-1 circuit split); *Clark* v. *Rameker*, 573 U.S. 122 (2014) (same); see also *Hall* v. *United States*, 566 U.S. 506 (2012) (same). The need for review in this case—which involves at least four circuits, plus the interplay between the Code and Article III—is even more compelling.

This case is a particularly good vehicle for resolving the split and restoring uniformity because no factual disputes remain to be decided, and the Fourth Circuit's published decision rests entirely on errors of law.

Moreover, while these issues are frequently litigated in bankruptcy courts across the Nation, this

case presents the Court with a rare opportunity to resolve the split. That's because other judge-made, extra-textual hurdles—such as "bankruptcy appellate standing" and "equitable mootness"—often conspire to block appellate review altogether.[3] This lack of appellate review, in turn, impairs the "accuracy and uniformity in the law of bankruptcy." *In re One2One Communications, LLC*, 805 F.3d 428, 451 (3d Cir. 2015) (Krause, J., concurring); see also Troy A. McKenzie, *Judicial Independence, Autonomy, and the Bankruptcy Courts*, 62 Stan. L. Rev. 747, 782–83 (2010) (only 1 out of every 1,580 bankruptcy cases reaches the courts of appeals).

This Court's review is needed not just to resolve a circuit split and restore uniformity, but also to maintain the integrity of bankruptcy proceedings. As this case starkly illustrates, the practical consequence of denying insurers like Truck their right to be heard on fundamental issues like the good faith of a plan is the exclusion of the *only* party who has any incentive to object to collusion, fraud, and multiple recoveries. The practical implications of that exclusion are profound.

In the *Garlock* bankruptcy alone, for example, the extent of the asbestos-exposure evidence withheld by claimants led the bankruptcy court to reduce by about $1.175 *billion* the amount needed to fund the asbestos trust in that case. 504 B.R. at 74, 97 (trust funded

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[3] See *In re GT Automation Group, Inc.*, 828 F.3d 602, 605 n.1 (7th Cir. 2016) (acknowledging that *Lexmark* calls into doubt "bankruptcy standing"); *In re City of Detroit*, 838 F.3d 792, 810 (6th Cir. 2016) (Moore, J., dissenting) ("Divorced as it is from any statutory basis, equitable mootness is nothing but a prudential doctrine of 'judicially self-imposed limits.' ").

with $125 million sufficed rather than $1–1.3 billion sought by claimants' representatives). Indeed, fraud in asbestos claims has been called "one of the longest-running and most lucrative schemes in the American litigation business." Daniel Fisher, *A Stubborn Manufacturer Exposes the Asbestos Blame Game*, Forbes (Mar. 25, 2015).[4] That's why every asbestos trust since *Garlock* has included anti-fraud protections. See, *e.g.*, *In re Maremont Corp.*, 601 B.R. 1, 181–83 (Bankr. D. Del. 2019) (listing protections).

But the serious practical problems caused by the judge-made doctrines of "bankruptcy standing" and "insurance neutrality" are hardly limited to the asbestos context. The Seventh Circuit applied bankruptcy standing to bar a creditor from challenging the assumption of a lease even though "no objection [could be] founded on Article III." *James Wilson*, 965 F.2d at 169–70. The Ninth Circuit barred a trust beneficiary from objecting to a settlement between the trust and a debtor. *Tower Park Properties*, 803 F.3d at 456. And insurers raise important issues in all manner of mass tort bankruptcies. *E.g.*, *In re Boy Scouts of America*, __ B.R. __, 2023 WL 2662992, at *73 (D. Del. Mar. 28, 2023) (abuse mass tort reorganization); *Global Industrial Technologies*, 645 F.3d at 212–13 (silica mass tort reorganization); *In re Purdue Pharma L.P.*, 633 B.R. 53, 63 (Bankr. S.D.N.Y. 2021) (opioid mass tort reorganization).

No one disputes the need to resolve bankruptcy proceedings as expeditiously as possible. But that is

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[4] Available at https://www.forbes.com/sites/danielfisher/2015/03/25/a-stubborn-manufacturer-exposes-the-asbestos-blame-game/?sh=7103ef7911a1.

hardly the only consideration. Ultimately, the appropriate balance is a policy call for Congress to make—not the courts, whose "task" it is "to apply the text, not to improve upon it." *Pavelic & LeFlore* v. *Marvel Entertainment Group*, 493 U.S. 120, 126 (1989). The Court should grant the petition, resolve the conflict, and ensure that courts apply the plain text of the Bankruptcy Code and not their own judge-made gloss.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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