NO. 22-1079

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

## BRIEF IN OPPOSITION BY RESPONDENTS THE OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS AND FUTURE CLAIMANTS' REPRESENTATIVE

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## COUNTERSTATEMENT OF QUESTION PRESENTED

Whether an insurer whose legal rights are not affected by confirmation of a Chapter 11 plan of reorganization has standing to object to confirmation.

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## INTRODUCTION

Respondents, the Official Committee of Asbestos Personal Injury Claimants and Future Claimants' Representative ("**FCR**"), respectfully request that the Court deny certiorari to Petitioner, Truck Insurance Exchange, because it fails to present any compelling reason for the Court's review. Instead, the Petition is simply the attempt of an insurance company to limit its obligation to pay claims under the policies that it sold to Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc. (the "**Debtors**"). Petitioner attempts to justify intervention by this Court by manufacturing a circuit split where none exists and misstating the Fourth Circuit's decision below. However, the Fourth Circuit properly applied principles adopted by all circuit courts to consider the issue, and concluded that Petitioner did not have standing to raise its objections to the Debtors' bankruptcy plan (the "**Plan**") under Article III of the Constitution and the Bankruptcy Code. *See* Pet. App. 26a.

Petitioner failed to convince either the bankruptcy court or the district court that it had standing to object to the Plan, or of the merits of those objections. *See id.* at 10a-11a. Petitioner also failed to convince the Fourth Circuit that it held a legally protected interest that was harmed by the Plan. *See id.* at 3a, 15a-16a. The unremarkable findings of the courts below rested on well-established principles of law and were grounded in the facts of this case. *See id.* at 25a-26a. Moreover, to reach its conclusion, the Fourth Circuit found it necessary to interpret Petitioner's insurance contracts under California law, the governing law applicable to the contracts. *Id.* at

17a-22a. The Fourth Circuit's reasoning was tied to the specific fact that, pre-bankruptcy, Petitioner held a judicially-determined, nearly unlimited obligation to defend and indemnify the Debtors' asbestos liabilities. *Id.* at 6a. The issues presented in this case are thus fact-specific and unlikely to arise again. Accordingly, this case does not hold the larger implications for the status of insurers' roles in their insureds' bankruptcies that Petitioner claims.

Petitioner's repeated references to "collusion" and "fraud" are mere allegations that Petitioner was unable to prove in the courts below. As the Fourth Circuit noted, "the bankruptcy court dismissed as purely speculative Truck's claim that unchecked rampant fraud would define the resolution of insured claims in the tort system absent the proposed anti-fraud measures. . . . [T]he district court adopted the bankruptcy court's findings of fact and conclusions of law in all material respects . . . ." *Id.* at 11a. The bankruptcy court stated, "[t]he evidence that [Petitioner] presents for the potential of, of fraud in this case is not particularly strong . . . . There's a lot of conjecture and assumption and just assuming that everybody is in cahoots . . . ." C.A. J.A. 6207:7-12. The bankruptcy court made this statement after a full review of the record, which included testimony from Petitioner's representative that he could not identify a single false or fraudulent claim ever brought against the Debtors. *Id.* at 907. The Debtors' representative offered the same testimony. *Id.* at 5903:12-14.

Because Petitioner was unable to establish evidence of fraud or collusion below, it cites a subsequently mooted bankruptcy court decision, *In re Garlock Sealing Techs., LLC*, 504 B.R. 71 (Bankr.

W.D.N.C. 2014). Pet. 7-8. But the bankruptcy court in the case below, the same court that handled the *Garlock* case, cautioned against overreading *Garlock* in the way the Petitioner repeatedly does. C.A. J.A. 3637:14-17 (*Garlock* "was written narrowly, but has been read broadly"); *Id.* at 6207:15-21 ("I don't read *Garlock* as a[n] indictment of the tort system . . . . I'm not inclined to indict my colleagues on the state benches and have the arrogance to believe that a bankruptcy court in North Carolina is necessary to protect all of them from fraud."). The district court agreed. Pet. App. 64a ("[T]his [c]ourt does not read Garlock as an indictment of the tort system or a ruling that a party cannot get a fair trial in state and federal courts. [Petitioner]'s arguments also hinged on speculation . . . and are unsupported.").

## STATEMENT OF THE CASE

### A. FACTUAL BACKGROUND

Kaiser Gypsum, a wallboard manufacturer, sold joint compounds, texture paints and similar products that contained asbestos. Pet. App. 41a. Kaiser Gypsum also manufactured mineral fiberboard products that contained asbestos. *Id.* Hanson Permanente's primary business was the manufacture and sale of cement products. *Id.* Hanson Permanente made masonry and plastic cements that contained asbestos. *Id.* Before filing for bankruptcy in 2016, the Debtors were named as defendants in approximately 14,000 pending asbestos-related bodily injury lawsuits in courts across the country. Pet. App. 42a.

Petitioner sold primary commercial general liability policies to the Debtors in the 1960s, 70s and 80s, and is a significant insurer of the Debtors' asbestos liabilities. C.A. J.A. 5448-49. Prior to the Debtors' bankruptcy, Petitioner spent nearly two decades seeking to avoid its policy obligations through coverage litigation in California state courts. *Id.* Those cases conclusively determined the scope of Petitioner's contractual obligation to defend and indemnify the Debtors against asbestos claims. *Id.* The scope of that obligation is substantial. The principal policies at issue do not include any aggregate limits and will never exhaust. Petitioner itself acknowledges this reality. *Id.* at 2270:14-16 ("[T]he Truck primary policies and the excess above them for all of the years selected by the debtors to respond to these claims have no aggregate limits. They will never exhaust.").

Its attempt to avoid its policy obligations in state court having failed, Petitioner next sought to limit its contractual obligations through its insureds' bankruptcy. *See id.* at 5394. Petitioner first proposed its own bankruptcy plan without the support of the Debtors or the asbestos creditors. The bankruptcy court ultimately rejected Petitioner's proposed plan as "patently unconfirmable," "not proposed in good faith," and clearly "aimed at serving [Petitioner]'s interest as an insurer and trying to reduce the magnitude of its obligations." *Id.* at 3619:10-12; 3679:19-20.

To preserve the Debtors' effectively unlimited insurance for asbestos personal injury claimants, the Debtors and the court-appointed representatives of present and future asbestos creditors negotiated the

Plan. Pet. App. 5a. Additionally, state and federal government agencies engaged in extensive negotiations over the Plan to resolve significant environmental liabilities. *Id.* The Plan provides that, with respect to the Debtors' insured asbestos liabilities, asbestos claimants may continue to file lawsuits in state and federal courts naming the Reorganized Debtors, as they have done for decades. C.A. J.A. 6376. To satisfy any claims that fall entirely outside of the available insurance coverage, as well as uninsured portions of claims such as deductibles, the Plan also creates a trust pursuant to 11 U.S.C. § 524(g). Pet. App. 5a-6a.

Petitioner then demanded that the Plan constrain Petitioner's exposure to litigation in state and federal courts by imposing pre-litigation discovery requirements on claimants beyond what those jurisdictions have deemed appropriate. *Id.* at 8a-9a, 145a. As the courts below found, the relief sought by Petitioner would improperly require the bankruptcy court to "mandate to state courts and other federal courts what kind of discovery is required in asbestos cases," a remedy that "is essentially legislative in nature, and is inappropriate." *Id.* at 64a-65a.

The Plan received overwhelming support, with 100% of current asbestos claimants voting to accept the Plan, and "unanimous support from all the other parties involved in the bankruptcy, save one—[Petitioner]." *Id.* at 8a. None of the 16 other insurers in the case objected to the Plan at confirmation. *Id.* at 126a, 197a.

## B. PROCEEDINGS BELOW

On September 28, 2020, after months of discovery, briefing and an evidentiary hearing, the bankruptcy court lodged with the district court a detailed Order Recommending Entry of Proposed Findings of Fact and Conclusions of Law and Order Confirming Joint Plan of Reorganization. C.A. J.A. 6605-7087.

The district court set a briefing schedule for Petitioner, the sole party opposing the Plan, to file its brief in opposition to the Proposed Findings of Fact and for the responses. *Id.* at 6. After lengthy additional briefing from Petitioner, the Debtors, and the Respondents, the district court held a hearing on the Proposed Findings of Fact on June 25, 2021, C.A. J.A. 8, and on July 28, 2021, the district court entered the Confirmation Order. Pet. App. 118a. The district court's ruling adopted the findings of the bankruptcy court and rejected Petitioner's objections to the Plan. *Id.* at 11a.

The Fourth Circuit affirmed that Petitioner lacked standing to object to the Plan. *Id.* at 3a. The Fourth Circuit found, as did the courts below, that Petitioner was no better or worse off under the Plan and was left in its pre-bankruptcy position. *Id.* at 16a, 22a-23a. Because the Fourth Circuit affirmed the case on standing grounds, it did not consider the alternative grounds for affirmance adopted by the bankruptcy court and the district court that also overruled Petitioner's objections on the merits. *Id.* at 10a-11a.

## REASONS FOR DENYING THE PETITION

### I. NO CIRCUIT CONFLICT JUSTIFIES A GRANT OF CERTIORARI

#### A. No Circuit Split Exists

Petitioner attempts to manufacture a circuit split where none exists. The purported split that Petitioner identifies involves the interplay between standing under 11 U.S.C. § 1109(b), which provides that "[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 [of the Bankruptcy Code]," and Article III standing under the Constitution. Petitioner claims that the Fourth and Seventh Circuits have disagreed with the Third Circuit on the proper scope of standing under § 1109(b), while the Ninth Circuit has cases that go in both directions. Pet. 12-15.

The standing tests applied by these various circuits are, however, functionally identical. Each circuit the Petitioner identifies requires that an insurer show that it has a sufficient legal right or interest that would be affected by the dispute in which it seeks to participate. The Fourth Circuit applied this requirement below. Pet. App. 15a-16a. The Third Circuit also applies it. *In re Global Indus. Techs., Inc.* (*GIT*), 645 F.3d 201, 211-212 (3d Cir. 2011) ("[T]he question is simply whether . . . [parties] have legally protected interests that could be affected."). The Seventh and Ninth Circuits have the same requirement. *In re C.P. Hall Co.*, 750 F.3d 659,

661 (7th Cir. 2014) (requiring a "legally recognized interest"); *In re Thorpe Insulation Co.*, 677 F.3d 869, 883-84 (9th Cir. 2012) (requiring a "legally protected interest").

That the tests are indistinguishable is evidenced by the fact that the circuits, on both sides of the alleged circuit split, cite each other with approval. In the case below, the Fourth Circuit expressly cites the Third Circuit's decision in *GIT* multiple times, despite the Petitioner's claim that *GIT* represents the other side of a circuit split. Pet. 12-13; *see also* Pet. App. 13a, 15a-16a, 23a, 25a. The Fourth Circuit agreed with both the Seventh and Third Circuits that "a 'party in interest' includes 'anyone who has a legally protected interest that could be affected by a bankruptcy proceeding.'" Pet. App. 15a (citing *In re James Wilson Assocs.*, 965 F.2d 160, 169 (7th Cir. 1992) and *GIT*, 645 F.3d at 210).

The other circuits involved in this alleged split cite each other favorably as well. The Seventh Circuit has described the test for standing under § 1109(b) as whether the party "has a legally protected interest that could be affected by a bankruptcy proceeding." *James Wilson Assocs.*, 965 F.2d at 169. The Third Circuit agreed with this test, stating that the Seventh Circuit's "'party in interest' test comports with our own definition of a 'party in interest' as one who 'has a sufficient stake in the proceeding so as to require representation.'" *GIT*, 645 F.3d at 210 (quoting *In re Amatex Corp.*, 755 F.2d 1034, 1042 (3d Cir. 1985)). The Third Circuit added "[w]e thus adopt the test set forth by the Seventh Circuit in *James Wilson* as a helpful amplification of our definition [of a party in interest]." *Id.* at 210-11.

For its part, the Ninth Circuit has expressed broad agreement with the Seventh Circuit and Third Circuit that bankruptcy standing encompasses "one who has a '*legally protected interest* that could be affected by a bankruptcy proceeding.'" *In re Tower Park Props., LLC*, 803 F.3d 450, 457 (9th Cir. 2015) (citing *James Wilson Assocs.*, 965 F.2d at 169 and *GIT*, 645 F.3d at 210).

The Fourth Circuit also adopted the Third Circuit's approach to "insurance neutrality," the application of this standing test in the insurance context. *Id.* at 16a ("[A] plan is insurance neutral if it 'does not materially alter the quantum of liability that the insurer[ ] would be called to absorb.'" (alteration in original) (quoting *GIT*, 645 F.3d at 212)). Petitioner's claim that the Fourth Circuit sided with the Seventh Circuit and against the Third Circuit contradicts the text of the Fourth Circuit's opinion below. *See* Pet. 14.

Each of these Circuits requires standing on an issue-by-issue basis, by requiring the party asserting standing to have a specific interest in the issue about which it seeks to litigate. *GIT*, 645 F.3d at 211-12; *James Wilson Assocs.*, 965 F.2d at 169; *Tower Park Props.*, 803 F.3d at 457. These courts recognize that in the context of bankruptcy proceedings encompassing multiple parties, such a rule is necessary to avoid third parties interfering in disputes that are "really no one else's business," and in this context "the concept of standing rather than blocking access to the merits screens out a set of inherently meritless claims." *James Wilson Assocs.*, 965 F.2d at 169.

Although Petitioner has identified differences in results upon application of the test, this does not constitute a split. *Compare* Pet. App. 26a (insurer lacked standing), *and James Wilson Assocs.*, 965 F.2d at 169 (insurance company acting as mortgagee lacked standing), *with Thorpe Insulation Co.*, 677 F.3d at 885 (insurers had standing), *and GIT*, 645 F.3d at 214 (insurers had standing). In doing so, Petitioner mistakes different outcomes under the same test for different tests. Pet. 12-15. But the results in those cases turned on the facts and circumstances of each case and not the test used to evaluate standing. *See, e.g.*, Pet. App. 17a-22a (finding that under California law, Petitioner's insurance contract was unimpaired by the Plan); *C.P. Hall Co.*, 750 F.3d at 662 (harmonizing *James Wilson*, *GIT*, and *Thorpe* and explaining the factual and procedural differences that resulted in different outcomes); *Tower Park Props.*, 803 F.3d at 457 (Under § 1109(b), "[c]ourts must determine on a case by case basis whether the prospective party has a sufficient stake in the proceedings so as to require representation." (alteration in original) (internal citations omitted)). Indeed, the Third Circuit later noted that the standing result in *GIT* turned on the specific facts of that case. *In re Federal-Mogul Glob. Inc.*, 684 F.3d 355, 379 n.37 (3d Cir. 2012).

Accordingly, no actual circuit split exists that warrants the grant of certiorari. *See Bunting v. Mellen*, 541 U.S. 1019, 1021 (2004) ("[A]bsence of a direct conflict among the Circuits" justifies "a denial of certiorari.").

### B. Any Variation Among Circuits Is Underdeveloped and Improper for the Court's Consideration

At most, the circuit court cases cited by Petitioner vary in their discussions of the provenance of the test they apply—whether it is a function of Article III, of § 1109(b), or some combination thereof. Such discussions of legal theory do not create a circuit split.

The Fourth Circuit expressly avoided this question in its opinion, stating that the court "need not choose a side here. Whether or not Article III standing is coextensive with § 1109(b) standing, Article III standing is still required in every case." Pet. App. 25a n.10.

The Ninth Circuit's statement in a footnote in *Tower Park Properties* that it disagreed with the suggestion that Article III standing requirements and the requirements of § 1109(b) "are 'effectively coextensive'" did not have a bearing on the outcome of the case. *Tower Park Props.*, 803 F.3d at 457 n.6. Instead, the Ninth Circuit relied on general principles of trust law to determine that a "trust beneficiary does not have party-in-interest standing . . . to object to [a] settlement [in a bankruptcy proceeding], at least where his interests are adequately represented by a party-in-interest trustee." *Id.* at 452, 459-60. The district court determined that the beneficiary had neither Article III standing nor party-in-interest standing under § 1109(b); however, the Ninth Circuit declined to consider whether the beneficiary had Article III standing because it determined that the beneficiary lacked standing under § 1109(b). *Id.* at

456. Thus, it is not clear that a different understanding of the source of bankruptcy standing would have led to a different outcome.

For these reasons, the relationship between § 1109(b) and Article III standing remains a theoretical question that the circuit court cases cited by Petitioner largely avoid, including this case. Even if a circuit split did exist on this question, this Court would benefit from greater development of the issue in the circuit courts. *See Monrosa v. Carbon Black Export, Inc.*, 359 U.S. 180, 184 (1959) (noting this Court "decides . . . [questions] in the context of meaningful litigation. Its function in resolving conflicts among the Courts of Appeals is judicial, not simply administrative or managerial. Resolution here . . . can await a day when the issue is posed less abstractly.").

## II. THE FOURTH CIRCUIT CORRECTLY HELD THAT PETITIONER LACKS STANDING

### A. The Decision Below Correctly Held Petitioner Does Not Have Standing Because It Is Unaffected by the Plan

As discussed in Section I above, only an entity with a legally protected interest that could be affected by a bankruptcy proceeding has standing to object to a bankruptcy plan. Pet. App. 15a; *GIT*, 645 F.3d at 212; *James Wilson Assocs.*, 965 F.2d at 169; *Thorpe Insulation Co.*, 677 F.3d at 884. Here, the Fourth Circuit dismissed Petitioner's objections, correctly holding Petitioner did not have standing because the

Plan preserves the status quo with respect to Petitioner. Pet. App. 24a. Post-bankruptcy, Petitioner will defend and indemnify the same types of asbestos claims against the Debtors Petitioner defended and indemnified pre-bankruptcy, wielding the same defenses in the same state and federal courts. In other words, Petitioner is no better or worse off with the Plan than if the Debtors never declared bankruptcy in the first place. Petitioner is therefore not a party in interest and lacks standing to object to the Plan.

Contrary to Petitioner's claim, insurance neutrality is not some additional, judge-made rule. Pet. 20. Rather, it is simply an application of the extant standing framework in the context of determining whether an insurer qualifies as a party in interest in a bankruptcy case. Pet. App. 16a ("In determining whether a particular reorganization plan sufficiently affects an insurer's legal rights to render that insurer a party in interest, courts typically look to see whether the plan is 'insurance neutral.'" (quoting *GIT*, 645 F.3d at 212)).

The Fourth Circuit aptly rejected Petitioner's unsupported claim that it will be prospectively injured by the Plan if it is required to return to state courts because it will have to defend what it alleges are fraudulently inflated tort claims. Petitioner faults the Plan as collusive for not including additional protective measures with respect to future claims it must defend, such as pre-litigation claimant disclosures, that do not and did not exist under state law and in state and federal courts pre-bankruptcy. In essence, Petitioner's argument amounts to a demand that the Plan should create new constraints

on Petitioner's potential future exposure in the tort system. Aside from Petitioner's disregard for basic principles of federalism, the Plan's failure to enact Petitioner's desired changes to future litigation in state and federal courts does not mean Petitioner will be worse off in future litigation than it was before the bankruptcy.

The Fourth Circuit also correctly rejected Petitioner's attempt to manufacture a "contractual" injury from confirmation. Petitioner argues that the Plan Finding[1] impaired its alleged rights under its policy to control the Debtors' bankruptcy negotiations with their creditors. The Fourth Circuit, however, found those rights non-existent as a matter of California contract law, concluding that Petitioner's insurance contract granted it no such right. Pet. App. 18a-22a. The Petition does not address this state law basis for the Fourth Circuit's ruling.

Petitioner is not injured by Plan confirmation. While Petitioner professes it will suffer injury if the Plan is not rejected, Petitioner is in fact made no better or worse off by the Plan. The Plan Finding does not affect any of Petitioner's policy rights, and nothing in the Plan alters how claims are litigated in state or federal courts. *Id.* at 21a-22a. Rather, Petitioner's true complaint is that it was not able to improve its

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[1] In response to arguments made by Petitioner, the Debtors sought, in conjunction with confirmation of the Plan, a judicial determination that their conduct in negotiating and drafting the Plan did not contravene their assistance-and-cooperation obligations under the Truck policies or breach the implied covenant of good faith and fair dealing—a proposed finding termed the "**Plan Finding**." Pet. App. 9a.

position through the Debtors' bankruptcy. *See* Pet. App. 64a ("Bankruptcy is not intended to relieve insurers of their contractual liabilities, or to improve their position under their insurance contracts in the tort system."). Accordingly, Petitioner is not a party in interest to the bankruptcy and its objections were properly dismissed for lack of standing.

### B. Petitioner Cannot Assert the Rights of Third-Party Creditors to Manufacture Standing

At minimum, Petitioner must demonstrate Article III standing to press its objections. *Id.* at 25a. The Fourth Circuit correctly concluded that Petitioner did not establish Article III standing as a creditor because Petitioner did not assert any objections that relate to its status as a creditor. *Id.*

This Court has long adhered to the rule that parties cannot rely solely on the legal rights or interests of third parties to establish standing. *Warth v. Seldin*, 422 U.S. 490, 499 (1975) ("The Art. III judicial power exists only to redress or otherwise to protect against injury to the complaining party . . . ."); *Sessions v. Morales-Santana*, 582 U.S. 47, 57 (2017) ("Ordinarily, a party 'must assert his own legal rights' and 'cannot rest his claim to relief on the legal rights . . . of third parties.'" (internal citations omitted)); *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1586 (2020) (Thomas, J., concurring) ("This Court has long adhered to the rule that 'a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties.'" (quoting *Powers v. Ohio*, 499 U.S. 400, 410 (1991))).

As the Fourth Circuit correctly recognized, Petitioner's objections regarding the Plan's good-faith basis and whether the trust complies with § 524(g) do not implicate Petitioner's interests. Pet. App. 25a. Rather, Petitioner's objections raise the rights of Debtors' asbestos personal injury creditors, who all support the Plan. Because Petitioner failed to allege a credible injury, much less one implicated by whether the Plan has a good faith basis or whether the trust complies with § 524(g), the Fourth Circuit properly concluded that Petitioner does not have Article III standing to raise these objections.

Petitioner's arguments to the contrary misstate this Court's precedent. Petitioner first implies that this Court's long-standing rule that parties cannot rely solely on the legal rights or interests of third parties to establish standing was later "clarified" to be better addressed through procedural rules, like Rule 17's joinder rules. Pet. 21 (citing *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 90 (2005) (recognizing that federal civil joinder rules are not requirements and do not address subject-matter jurisdiction)). However, *Lincoln Property* neither addresses Article III standing nor this Court's long-standing precedent as set forth in *Warth v. Seldin* and therefore offers no relevant clarity.

Petitioner then claims that because it was an unsecured creditor and seeks the same remedy for each of its objections to the Plan, it does not matter if some of its objections solely assert the rights of third parties. Pet. 22 (citing *Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008)). However, the holding in *Davis* contradicts Petitioner's claim.

In *Davis*, this Court held that a claimant's standing to challenge disclosure requirements under subsection (b) of a statute did not mean the claimant automatically had standing to challenge the scheme of contribution limitations under subsection (a) of the same statute. *Davis*, 554 U.S. at 733-34. In so holding, this Court recognized that "standing is not dispensed in gross." *Id.* at 734 (quoting *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996)). "Rather, 'a plaintiff must demonstrate standing for each claim he seeks to press' *and* 'for each form of relief' that is sought." *Id.* (emphasis added) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352 (2005)).

That Petitioner seeks to undo the Plan and impose additional provisions for its own benefit as a remedy to each of its objections does not mean that Petitioner, as a creditor, has standing to advance any, much less all, of its objections to the Plan. Petitioner does not identify any injury resulting from Plan confirmation affecting its interests as an insurer or a creditor. Accordingly, the Fourth Circuit correctly held that Petitioner lacks standing to raise its confirmation objections.

## III. THIS CASE IS NOT A PROPER VEHICLE FOR REVIEW OF THE QUESTION PRESENTED

### A. Petitioner Cannot Satisfy Constitutional Standing Requirements

This case is a poor vehicle for review because the opinion below, while focusing on statutory

standing, also demonstrates that Petitioner lacks Article III standing.

Basic Article III standing principles require a party to demonstrate they have suffered an injury in fact. *See Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), *as revised* (May 24, 2016) ("[T]he 'irreducible constitutional minimum' of standing consists of three elements. . . . The plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." (internal citations omitted)). After examining the facts of the case, and the relevant contracts under California law, the Fourth Circuit determined that not only did the Plan not alter Petitioner's rights under the insurance contracts, but also that the "alleged rights never existed under the policies." Pet. App. 17a-22a. Without a contract right that could be altered by the Plan, Petitioner cannot assert any injury in fact and therefore does not have standing.

The Fourth Circuit similarly rejected Petitioner's argument that the Plan was not insurance neutral because it declined to institute Petitioner's desired tort system disclosure requirements. *Id.* at 23a. The court found that Petitioner was not entitled to such disclosures prior to the bankruptcy and therefore the Plan did not alter Petitioner's pre-bankruptcy quantum of liability. *Id.* Petitioner cannot establish that the Plan alters its quantum of liability in any way and therefore cannot

establish an injury in fact sufficient to grant Petitioner standing.[2]

To the extent Petitioner's argument rests on the Fourth Circuit's alleged misapplication of general standing principles, certiorari is inappropriate. *See* S. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law."). Moreover, much of the insurance neutrality decision relied on the interpretation of Petitioner's insurance policies under California law, and interpretations of state law are rarely appropriate for certiorari. Stephen M. Shapiro et al., *Supreme Court Practice* § 4.10 (11th ed. 2019) (noting that since the revision of the Supreme Court Rules in 1980, the Court has not recognized the interpretation of state law among the list of factors motivating the exercise of its certiorari jurisdiction).

### B. Resolution of the Question Presented Would Not Alter the Outcome of the Case

This case is also inappropriate for certiorari because, even if Petitioner did have standing to raise its objections, the outcome of this case would remain the same because those objections have already been found to be meritless. This Court does not grant

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[2] The remainder of the Fourth Circuit's opinion below applied Article III principles to address Petitioner's standing to bring its objections based on its status as an unsecured creditor. As laid out in Section II.B., *supra*, the Fourth Circuit correctly applied these principles and Petitioner's arguments to the contrary are unavailing.

certiorari to resolve legal questions that would not change the result below. *See* Shapiro et al., *supra* § 4.4(f); *see also Klehr v. A.O. Smith Corp.*, 521 U.S. 179, 192 (1997) (declining to consider split among circuits where doing so would not affect the outcome of the case). Here, even if Petitioner had standing, the Plan would still be confirmable.

Petitioner complains that the Fourth Circuit did not consider its objections to confirmation. Pet. 11. First, the Fourth Circuit did consider Petitioner's objection that the Plan Finding was improper, as assessing whether the Plan Finding was insurance neutral "necessarily require[d] determining whether the district court correctly held that the Debtors didn't breach their assistance-and-cooperation obligations or the implied covenant of good faith and fair dealing by agreeing to a plan that lacked [Petitioner]'s desired anti-fraud measures." Pet. App. 17a. The court correctly concluded that, as a matter of California insurance law, Petitioner's alleged policy rights did not exist under the policies. *Id.* at 22a. Accordingly, the Fourth Circuit rejected on the merits Petitioner's objection that the Plan Finding was an improper impingement of Petitioner's contract rights. *Id.*

Further, the fact-finding courts considered Petitioner's additional objections and found them baseless. The district court's findings of fact and conclusions of law determined that the Plan and resulting Trust complied with all statutory requirements of § 524(g). Pet. App. 71a-87a.

The district court also determined that the Plan complied with section 1129's good faith

requirement, as demonstrated by the Debtors' ability to negotiate agreement regarding the Plan with many parties and the Plan's unanimous support from the only creditor class entitled to vote on the Plan. Pet. App. 62a-63a. Petitioner's arguments that the Plan is collusive and improper were rejected. *Id.* at 63a.

Finally, the ultimate relief Petitioner sought below was found to be both unsupported and inconsistent with fundamental legal principles. Petitioner not only sought rejection of Plan confirmation, but also requested that every court below condition Plan confirmation on the inclusion of a "requirement that before an asbestos claimant can sue in state court they must provide pre-suit discovery that is not mandated in other forums and not for the benefit of the Asbestos Personal Injury Trust." Pet. App. 65a.

The fact-finding courts properly rejected Petitioner's request, finding it speculative and unsupported. *Id.* at 64a. The district court further noted that Petitioner's requested pre-suit discovery would require the district court to "mandate to state courts and other federal courts what kind of discovery is required in asbestos cases," a remedy the court properly concluded was "legislative in nature." *Id.* at 64a-65a. That is, the relief Petitioner sought from the courts below would have impinged on states' rights to govern their own court systems and conflicted with fundamental principles of federalism.

Thus, resolution of Petitioner's question presented would not alter the outcome in this case because, even if Petitioner has standing to raise its

objections to Plan confirmation, they are baseless and seek relief no bankruptcy court could grant.

### C. The Case Presents No Issues of Consequence to Mass Tort Bankruptcies

Despite the lack of a circuit split, the Fourth Circuit's dismissal of its objections for lack of standing, and the rejection of Petitioner's objections on the merits, Petitioner asks this Court to grant certiorari, claiming that this case has some greater significance. Petitioner claims it is particularly important to hear insurers' objections because they are the only party with an incentive to object to "collusive" plans. Pet. 4. As noted above, however, the lower courts considered and rejected these claims of collusion because Petitioner could not prove them. Petitioner's claim also ignores the fact the Debtors' numerous other insurers did not object at Plan confirmation. Pet. App. 38a n.5. Petitioner was the sole objector to the Plan.

In fact, because the Plan returns most cases to the state and federal courts where they had been litigated for decades, the Plan changes very little, and presents no noteworthy issues. That Petitioner would have preferred a different plan that reduced its insurance obligations is not an adequate basis for seeking certiorari, nor does it represent some wider question relating to mass torts.

For the same reasons, the claim by *amici curiae* that this case involves issues of importance regarding mass tort bankruptcies is overstated. While the case does arise from an asbestos bankruptcy, no issues

beyond the application of settled standing principles are implicated.

## CONCLUSION

Petitioner has failed to satisfy the criteria for the issuance of a writ of certiorari. Wherefore, Respondents respectfully request that the Petition be denied.

Respectfully submitted,

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