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

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QUESTION PRESENTED

In the Chapter 11 bankruptcy below, the debtors proposed a plan of reorganization that the Bankruptcy Court, District Court, and unanimous Fourth Circuit all found "insurance neutral"—meaning that it would not increase the obligations or impair the rights of the debtors' insurer. Nonetheless, the insurer sought to object that the plan did not *increase* its *rights*, demanding a provision that would mandate novel special disclosure requirements for asbestos claimants in post-bankruptcy tort litigation. The courts each determined that the insurer lacked statutory standing to object under 11 U.S.C. § 1109(b): As an insurer challenging an insurance-neutral plan, its interests were not cognizably affected, and so it was not a "party in interest" authorized to object to the plan.

Properly framed, the question presented is:

Whether, in a Chapter 11 bankruptcy case, a debtor's insurer seeking to object to confirmation of a plan of reorganization must have a legally protected interest affected by the plan.

RULE 29.6 STATEMENT

Kaiser Gypsum Company, Inc., Hanson Permanente Cement, Inc., and Lehigh Hanson, Inc. (now known as Heidelberg Materials US, Inc.), are all indirect, wholly owned subsidiaries of publicly traded Heidelberg Materials AG, a German company.

Heidelberg Materials AG owns HeidelbergCement International Holding GmbH, which owns Heidelberg Materials Holding S.à.r.l., which owns Heidelberg Materials UK Holding Limited, which owns Lehigh UK Limited, which owns Hanson Limited, which owns HeidelbergCement UK Holding II Limited, which owns Lehigh B.V., which owns Heidelberg Materials US, Inc. (f/k/a Lehigh Hanson, Inc.), which owns Hanson Devon Designated Activity Company ("Hanson Devon"). Hanson Devon owns Essex NA Holdings LLC, which as the general partner, holds a 1% partnership share, of HNA Investments. Hanson Devon is also a limited partner, and owns the remaining 99% partnership share, of HNA Investments. HNA Investments owns HBMA Holdings LLC, which owns KH 1 Inc., which owns Hanson Permanente Cement, Inc., which owns Kaiser Gypsum Company, Inc.

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INTRODUCTION

The Fourth Circuit applied established law to affirm the District Court's finding that, because Truck Insurance Exchange's interests were not altered by a Chapter 11 plan of reorganization, Truck could not challenge the plan. Although Truck asserts an "entrenched" circuit split, the truth is the opposite. The Fourth Circuit joined a consensus on the scope of 11 U.S.C. § 1109(b), which authorizes a "party in interest" to object: A party qualifies only if its legally protected interests are affected. The Seventh Circuit recognized this 30 years ago, and each circuit to have weighed in since has agreed, in decisions citing the Seventh and each other.

Truck nevertheless seeks review based on a supposed split it did not raise below, to pursue a holding at odds with its position below. It would distend two circuits' quibbles over whether their shared statutory test reflects just Article III standing (as Truck now asserts) or something more. Yet Truck told the Fourth Circuit that Section 1109(b) was "completely distinct" from Article III, and that court expressly avoided the apparent disagreement.

The Fourth Circuit also correctly applied the Section 1109(b) test to deny Truck a gratuitous right to object to a plan that left its position *unchanged*. Thus, Truck could not pursue a windfall from another's bankruptcy—a mandate for novel special procedures in asbestos litigation. This posture makes the merits of Truck's grievances against the tort system quite beside the point. And several additional flaws in Truck's case would make this a poor vehicle. The Court should deny the petition.

STATEMENT OF THE CASE

A. Legal Background

Chapter 11 of the Bankruptcy Code provides a vehicle for a "debtor and [its] creditors [to] try to negotiate a plan that will govern the distribution of valuable assets from the debtor's estate and often keep the [debtor's] business operating as a going concern." *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 455 (2017). It "strikes a balance between a debtor's interest in reorganizing and restructuring its debts and the creditors' interest in maximizing the value of the bankruptcy estate." *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 51 (2008).

Section 524(g) of the Code (11 U.S.C.) authorizes a special Chapter 11 plan for a debtor facing asbestos liabilities, particularly the prospect of future liabilities (given the latency period of asbestos-caused diseases). Such a debtor may "obtain a channeling injunction that diverts all asbestos claims, current and future, to a trust established by the debtor's reorganization plan and funded by the debtor." Pet.App.4a. This option "enable[s] the debtor, who would otherwise face an unknown but potentially large number of future claims, to emerge from bankruptcy as an economically viable entity," while safeguarding the interests of claimants, particularly future ones (who have not yet developed asbestos-related illnesses). Pet.App.4a. Accordingly, a debtor must satisfy a litany of requirements in addition to those for any Chapter 11 reorganization. These requirements include 75% supermajority approval by current claimants, court appointment of

a representative for future claimants, and plan approval from the district court (not just the bankruptcy court). 11 U.S.C. § 524(g)(2), (4).

Section 1109(b) of the Code addresses participation in a Chapter 11 case. It 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." Among other things, a party-in-interest may "object to confirmation of a plan." *Id.* § 1128(b).

B. Procedural History

1. Respondents Kaiser Gypsum Company, Inc., and Hanson Permanente Cement, Inc., faced substantial asbestos-related liabilities from their historical manufacture and sale of asbestos-containing products through the mid-1970s, and by filing voluntary bankruptcy petitions, became the Debtors here. Both are subsidiaries of Respondent Lehigh Hanson, Inc. ("Lehigh"),[1] a leading supplier of construction-related products.

Petitioner Truck was the Debtors' primary insurer from the 1960s into the 1980s. Pet.App.6a. Truck's policies obligate it to defend and indemnify the policyholders in all asbestos-related personal-injury cases arising from this period, even ones that are "groundless, false or fraudulent." Pet.App.6a, 42a. The policies expressly continue regardless of the

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[1] Effective January 1, 2023, Lehigh Hanson, Inc., changed its name to Heidelberg Materials US, Inc.

policyholders' bankruptcy or insolvency. Pet.App.6a. Coverage is generally capped at $500,000 per claim, after a deductible, and excludes punitive damages. Pet.App.6a. (For amounts exceeding $500,000, the Debtors had excess-insurance policies. Pet.App.6a, n.2; Pet. 8 n.2.) But the Truck policies lack *aggregate* limits. Pet.App.6a. As a result, Truck obligated itself to defend and indemnify the Debtors against *every* covered asbestos claim. Pet.App.6a. It took 20 years of coverage litigation to confirm these terms, and the Truck policies have proved a valuable asset for the Debtors. Pet.App.42a-43a; *see* Pet.App.6a-7a.

The policies also contain a standard "Assistance and Cooperation Clause." It requires the companies to "cooperate" with Truck and, on request, "attend hearings and trials and … assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits." Pet.App.18a.

2. Since 1978, the Debtors have been sued in over 38,000 asbestos-related lawsuits. Pet.App.5a. By 2016, they owed Truck millions in insurance deductibles; risked outsized liability through punitive-damage judgments and other uninsured claims; and bore additional liability from environmental claims involving multiple sites, including from federal, state, and private plaintiffs. Pet.App.43a-45a. The companies were then defendants in 14,000 asbestos personal-injury suits alone. Pet.App.42a. And given the latency period, they faced untold future lawsuits. Pet.App.4a.

That year, the Debtors filed for relief under Chapter 11, including to employ Section 524(g).

Pet.App.5a. After negotiations with key stakeholders—including Truck; other insurers; Lehigh; governments; and the court-appointed fiduciaries for current and future asbestos claimants ("the Claimant Representatives")—the Debtors filed their proposed Plan of Reorganization. Pet.App.5a. The Plan would settle all non-asbestos-related liabilities, such as the environmental claims (for about $70 million), and fully pay all general unsecured creditors, including Truck. Pet.App.8a. The only impaired class would be asbestos claimants.

For them, the Plan would create a $50 million Section 524(g) trust, funded by Lehigh and the Debtors. Pet.App.6a. In addition, and critically, the Debtors would assign to the trust their rights under their Truck policies. Pet.App.6a. For insured claims, while the trust would pay any deductible, claimants would continue to sue through the tort system to collect available insurance. Pet.App.7a, 234a. Insured claims would remain subject to all pre-petition insurer-coverage defenses, and the Debtors would remain subject to their duties under the policies, particularly the Assistance and Cooperation Clause. Pet.App.16a-17a, 95a. For any uninsured claims, the trust would pay subject to certain trust distribution procedures. Pet.App.7a. Each uninsured claimant would need to submit to the trust certain disclosures and authorizations, which may include information about their claims against other asbestos trusts. Pet.App.7a. The trust could then propose a settlement. Pet.App.7a. A channeling injunction would protect the Debtors from further asbestos claims, including any effort to collect on a tort-system award of punitive damages.

The Plan won approval from "100 percent of the asbestos personal-injury claimants" (the only creditors entitled to vote) and "unanimous support from all the other parties involved in the bankruptcy" (including the excess insurers) "save one—Truck." Pet.App.8a.

3. During the bankruptcy, Truck proposed its own plan, which no one else supported. C.A.App.2323-78. It included such provisions as a channeling injunction only for Truck and new annual caps on Truck's payments. C.A.App.2342, 2351-53. The Bankruptcy Court rejected this plan as "patently unconfirmable," "not proposed in good faith," and inconsistent with "the 524(g) standards." C.A.App.3619.

Pressing its alternative, Truck in 2019 sent the Debtors a reservation-of-rights letter asserting that the Debtors' Plan violated the Truck policies. Pet.App.8a-9a. The letter charged that the Plan "appeared to be collusive" between the Debtors and the Claimant Representatives and "in violation of the Debtors' duty to cooperate and assist." Pet.App.9a (cleaned up). In particular, Truck took issue with the Plan's lack of a requirement for "holders of *insured* claims, who would continue to pursue their claims in the tort system, to provide" alternative-exposure disclosures and authorizations to obtain information submitted to trusts. Pet.App.8a. Asserting that this absence was an invitation to defraud it in the resumed tort-system litigation, Truck threatened to refuse coverage if the final Plan did not extend such requirements used in trust procedures to claims pursued in litigation. *See* C.A.App.864.

Because Truck's threat would subvert confirmation of the Plan by sabotaging a key asset of the trust, the Debtors amended the Plan to include a finding that their conduct in bankruptcy did not violate their Truck policies. Pet.App.9a. Once the District Court confirmed the Plan, this "Plan Finding" would be preclusive, so Truck could not re-litigate the Debtors' bankruptcy conduct in each of the myriad post-bankruptcy tort lawsuits. *See* Pet.App.22a n.9. (The Debtors' litigation conduct would of course continue to be subject to, for example, the Assistance and Cooperation Clause.)

4. When the Bankruptcy Court held a hearing on confirmation, Truck, which had filed an opposing brief, appeared. It raised three primary objections: (1) the Plan Finding would impermissibly alter Truck's rights under the policies; (2) the Plan was not filed in good faith as 11 U.S.C. § 1129(a)(3) requires, including for the reasons Truck had alleged in its letter; and (3) the trust did not comply with Section 524(g)'s requirements. Pet.App.9a-10a.

The Bankruptcy Court nevertheless recommended that the District Court confirm the final Plan. Pet.App.10a-11a. It found that Truck was not a party-in-interest and so lacked statutory standing under Section 1109(b) to object. Pet.App.11a. The court explained that the Plan was insurance neutral: Truck "gains no advantages under this plan, but it also loses nothing. It returns to state court to defend these claims with all its rights and defenses intact." C.A.App.6211. Truck's contrary view was "based on a false premise" that the policies gave it control over the insured's conduct in bankruptcy. C.A.App.6196-97. In truth, Truck was seeking "to improve" on those

policies and "use this case to limit its financial exposure." C.A.App.6210. And while Truck had been a creditor too, that status provided no basis for standing either, because the Plan fully satisfied its claim. Pet.App.10a.

The court found in the alternative that Truck's objections failed on the merits. C.A.App.6203-08. For example, Truck's argument about bad faith due to alleged facilitation of fraud was a mixture of "conjecture," "assumption," and "speculat[ion] as to future events." C.A.App.6207. And Truck's desired disclosure mandates for claims in the tort system were untenable in any event: Not only would they be "unprecedented" in the context of tort suits rather than trust procedures, but they would usurp the authority of state and federal courts to regulate discovery. C.A.App.6209-11; Pet.App.11a.

5. Considering the matter *de novo* after further briefing and argument, including from Truck, the District Court agreed. It confirmed the Plan and incorporated into its rulings the Bankruptcy Court's findings and conclusions. Pet.App.11a.

In particular, the District Court agreed that Truck lacked statutory standing once the Plan was found insurance neutral. Pet.App.96a. And it *was* insurance neutral because it "neither increases Truck's obligations nor impairs its prepetition contractual rights under the Truck Policies." Pet.App.95a. Rather, the Plan "simply restores Truck to its position immediately prior to the Petition Date … as if the Debtors' bankruptcy had never occurred." Pet.App.95a.

The District Court likewise also considered and

rejected Truck's objections on the merits. *Contra* Pet. 10. It concluded that the objections, even if permitted, "lack[ed] merit and should be overruled in their entirety." Pet.App.96a. It also denied Truck's request to stay its confirmation order pending appeal. Pet.App.11a.

6. Truck appealed. The Fourth Circuit denied a stay as well and then affirmed. Pet.App.11a, 26a. It held that Truck's objections failed on standing grounds, while sidestepping other problems the Debtors and Lehigh identified. Pet.App.12a-26a.

The Fourth Circuit agreed with the lower courts that Truck's status as the Debtors' insurer did not make it a "party in interest" under Section 1109(b). Pet.App.14a-15a. That term, it explained, is informed by the categories of parties-in-interest that Section 1109(b) non-exclusively lists (such as "debtor" and "creditor"), and so encompasses only those who have "a legally protected interest that could be affected by a bankruptcy proceeding." Pet.App.15a (quoting *In re James Wilson Assocs.*, 965 F.2d 160, 169 (7th Cir. 1992), and citing *In re Global Indus. Techs., Inc.*, 645 F.3d 201, 210 (3d Cir. 2011) (en banc)).

To apply that test here, the Fourth Circuit, like the lower courts, asked "whether the plan is 'insurance neutral.'" Pet.App.16a (citing *Global*, 645 F.3d at 212). The court explained that a "Plan is insurance neutral if it doesn't increase the insurer's pre-petition obligations or impair the insurer's pre-petition policy rights"; put "another way," it does not "'materially alter the quantum of liability that the insurer[] would be called to absorb.'" Pet.App.16a

(citing and quoting *Global*, 645 F.3d at 212). Given this lack of injury to the insurer from such a plan, the court concluded, "[i]f a plan is insurance neutral, the objecting insurer ordinarily is not a party in interest under § 1109(b) and thus lacks standing to challenge the substance of the Plan." Pet.App.16a.

The Fourth Circuit was unpersuaded by Truck's asserted reasons why the Plan was not insurance neutral. *First*, the Plan Finding did not alter Truck's contract rights by barring it from asserting future coverage defenses in the tort system based on the Debtors' past conduct in bankruptcy. Pet.App.17a-22a. Truck was attempting to protect coverage defenses that "never existed": Although it argued that the Assistance and Cooperation Clause required the Debtors to assist it in trying via bankruptcy to overlay trust disclosure and authorization requirements onto court discovery regimes, that Clause, by its terms and under state contract law, referred only to the obligation to assist with individual suits. Pet.App.18a-22a.

Second, and similarly, the Plan's lack of Truck's desired tort-system regulations reflected no scheme by the Debtors and Claimant Representatives to "expose" Truck to or "facilitate[]" fraudulent claims in the tort system. Pet.App.17a, 23a-24a. Again, Truck "was not entitled to those measures before the bankruptcy proceeding." Pet.App.23a. Indeed, as the policies require Truck to investigate and defend even fraudulent claims, the lack of Truck's desired provisions "in no way alter[ed] Truck's pre-bankruptcy 'quantum of liability'"; it just continued the decades-old status quo ante. Pet.App.23a (quoting *Global*, 645 F.3d at 212).

Thus, the Fourth Circuit recognized, as had the lower courts, that the gravamen of Truck's objection was not that the Plan *harmed* it, but that the Plan did not *help* it. That the Plan did not seek to newly "limit Truck's potential liability exposure in the tort system," however, "provide[d] no basis to conclude that the Plan [was not] insurance neutral." Pet.App.23a. Allowing Truck to rest standing on the thin reed of its desire for a gratuitous benefit "would expand the Debtors' obligations under the policies and grant Truck broad license to dictate the terms of the Debtors' own bankruptcy reorganization." Pet.App.23a.

The Fourth Circuit also refused to allow Truck to fall back on its status as an unimpaired creditor. Pet.App.24a-26a. On this, it analyzed Truck's Article III standing rather than statutory standing under Section 1109(b), explicitly sidestepping a seeming two-circuit "split" on whether that provision is coextensive with or narrower than what Article III standing allows. Pet.App.25a n.10. Whatever the answer, Truck could not rest its right to object on its status as a creditor, because Truck had not established the injury-in-fact that Article III requires. Pet.App.25a & n.10. Truck had not asserted *any* objections relating to its status as a (fully paid) creditor, only ones based on "its interests as an *insurer* or [on reasons that] don't implicate its interests at all." Pet.App.25a. Because Truck as a creditor therefore had no right to object *at all*, it did not have an "unrestricted right" to object, "regardless of whether that issue impacts it in any way." Pet.App.24a.

REASONS FOR DENYING THE PETITION

I. NO REAL CIRCUIT SPLIT EXISTS.

For Supreme Court review based on a circuit split to be necessary, "there must be a real or 'intolerable' conflict on the same matter of law or fact, not merely an inconsistency in dicta or in the general principles utilized." Stephen M. Shapiro *et al.*, *Supreme Court Practice* § 4.3 (11th ed. 2019). But Truck's newfound contentions notwithstanding, there is no "genuine conflict" about the scope of a party's right to object to a Chapter 11 plan. *Id.* There is, rather, a consensus among the circuits, as the decisions Truck itself invokes demonstrate. In arguing otherwise, Truck points only to academic differences in how two circuits have labeled this consensus.

A. The Fourth Circuit ruled amid a circuit consensus on who can be a party-in-interest.

Truck's position—that this case "exacerbates an acknowledged, entrenched circuit split," with the Fourth Circuit joining the Seventh against the Third, and the Ninth having "a foot in both camps"—cannot be squared with a plain reading of those circuits' decisions. Pet. 2-3. These cases show that, since the Seventh Circuit first addressed a party's right to object under Section 1109(b) over 30 years ago, every circuit has followed its lead, and the Seventh Circuit in turn has drawn on those other circuits' elaborations. Truck points to no case contradicting or undermining this consensus. So no circuit split existed when the Fourth Circuit ruled here.

1. Starting with the Seventh Circuit's decision in *James Wilson*, every circuit to weigh in has agreed

that a party's right to object to a Chapter 11 plan of reorganization turns on whether it has a legally protected interest at stake. As that court established, "anyone who has a legally protected interest that could be affected by a bankruptcy proceeding is entitled to assert that interest with respect to any issue to which it pertains." 965 F.2d at 169. But a person with "no legally protected interest" may not "make an issue" for the proceeding. *Id.*

The next two circuits to weigh in—the Third and Ninth—followed suit, adopting the "legally protected interest" test and drawing on each other's decisions. To start, far from splitting from the Seventh Circuit as Truck asserts, the Third Circuit expressly "*adopt[ed]* the test set forth by the Seventh Circuit in *James Wilson*." *Global*, 645 F.3d at 210 (emphasis added). And the Ninth Circuit likewise agreed that parties could object under Section 1109(b) only if they had a "legally protected interest" at stake. *In re Thorpe Insulation Co.*, 677 F.3d 869, 887 (9th Cir. 2012).

In turn, when the Seventh Circuit compared *James Wilson* to these subsequent decisions, it rejected any suggestion of material "inconsisten[cy]." *In re C.P. Hall Co.*, 750 F.3d 659, 662 (7th Cir. 2014). *Global*, the Seventh Circuit pointed out, explicitly "adopted our construal of 'party in interest' in the *James Wilson* case"; *Thorpe* similarly "cites our opinion in *James Wilson* with approval"; and any differences between *James Wilson* and these decisions just reflected their different facts. *Id.*

Hall thus synthesized the cases: A party that simply "may suffer collateral damage" from a

reorganization plan has "too remote" an interest to be a party-in-interest. 750 F.3d at 661. For example, in *Hall* itself, the Seventh Circuit held that an excess insurer lacked statutory standing under Section 1109(b) to challenge the debtor's settlement with another insurer, where the theory was only that the settlement might have the second-order effect of increasing the likelihood that the excess insurer's obligations would kick in. *Id.* at 660. Conversely, the Seventh Circuit recognized, a party is a party-in-interest where the plan presents a "threat to [its] rights"—such as where an insurer has been a "target[] of a scheme between the debtor and its creditors" to substantially increase the number of claims (as in *Global*) or where the plan would "tak[e] away" the insurer's "contractual rights" (as in *Thorpe*). *Id.* at 662 (discussing *Global*, 645 F.3d at 214-15, and *Thorpe*, 677 F.3d at 884-87, respectively).

Most recently, the Ninth Circuit in *In re Tower Park Properties* confirmed its "holding" in *Thorpe* that "the party asserting standing to object in a bankruptcy proceeding must have a 'legally protected interest'"; interpreted *James Wilson*, *Global*, and *Hall* to be of a piece on this issue; and pointed to *Hall*'s synthesis. 803 F.3d 450, 457 & n.6 (9th Cir. 2015) (quoting *Thorpe*, 677 F.3d at 884). And following *Hall*'s lead, *Tower* denied party-in-interest status to the would-be objector because, unlike the insurer in *Thorpe*, he did not show that "the proposed plan directly interfered with [his] legal rights and financial liabilities." *Id.* at 460.

2. Truck points to no decision rejecting this "legally protected interest" test or *Hall*'s synthesis of

the circuits' consensus on its import, or otherwise undermining it.

Truck does invoke this Court's decision in *Lexmark International, Inc. v. Static Control Components, Inc.*, to suggest that the cases unfavorable to it "conflict[] with this Court's precedent." Pet. 3 (citing 572 U.S. 118, 128 (2014)). But while *Lexmark* suggested that "prudential" exceptions to standing are inconsistent with the courts' "virtually unflagging" obligation to hear cases over which it has jurisdiction, it reaffirmed the legitimacy of rules requiring litigants to fall within the "zone of interests protected by the law invoked," in accordance with the principle that any plaintiff must show "a right to sue under th[e] substantive statute." 572 U.S. at 125-27 (quotation marks omitted).

Lexmark is thus entirely consistent with the *James Wilson* line of cases, as both pre- and post-*Lexmark* decisions show. *James Wilson* itself anticipated *Lexmark*'s concern by framing its "legally protected interest" test as an inquiry into whether "the claimant [is] within the class of intended beneficiaries of the statute that he is relying on for his claim." 965 F.2d at 169. And the more recent decisions—such as *Hall* and *Tower*—postdated *Lexmark*, without any suggestion that *Lexmark* undermined the test. Indeed, *Hall* twice cited *Lexmark*, including to confirm that the "legally protected interest" test addresses whether "'a legislatively conferred cause of action encompasses' [a] claim." 750 F.3d at 661 (quoting *Lexmark*, 572 U.S. at 127); *see id.* at 660.

3. Truck similarly points to no case supporting the breadth of its interpretation of Section 1109(b)—much less suggesting a split on the issue. According to Truck, it is a party-in-interest because the Plan "deprived [it] of a chance to obtain a benefit" and, as a party-in-interest, it should receive the plenary right to object to any piece of the Plan. Pet. 20-22 (quoting *Robertson v. Allied Solutions, LLC*, 902 F.3d 690, 697 (7th Cir. 2018)). Truck's position cannot be squared with the "legally protected interest" test as it has been uniformly adopted.

For one, Truck identifies no case in which a bankruptcy litigant was allowed to proclaim itself a party-in-interest based on its view that a different reorganization plan could have given it a windfall. As discussed above, the circuits have consistently rejected claims to party-in-interest status based on assertions of indirect harm. *See, e.g.*, *Tower*, 803 F.3d at 460; *Hall*, 750 F.3d at 661. Indeed, they have warned that allowing such attenuated claims would bring "madness," with "settlements made impossible by crowds of objectors."[2] *Hall*, 750 F.3d at 661. In *Hall*, for example, the Seventh Circuit warned that there was no logical difference between allowing an insurer to object to a settlement because it might have the side-effect of increasing its liability and allowing the insurer's *employee* to object because the cost of the settlement might endanger his job

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[2] This belies *amici*'s suggestion that global settlements depend on the broadest possible involvement of parties. *Amicus* Br. 10-13. The facts here, in which Truck alone, as a non-creditor, held out to attempt to extract special benefits, confirm *Hall*'s point. *See supra*, Stmt. B.3-5.

security. *Id.* at 661-62. Truck's argument sweeps beyond even that fanciful hypothetical, as Truck is seeking not to avoid some new harm or to secure some existing entitlement (*see*, *e.g.*, *Robertson*, 902 F.3d at 696-97) but rather to obtain a windfall. If such a collateral pursuit could support standing under Section 1109(b), then it is hard to see what could not.

Likewise, Truck offers no case to support its position that a party-in-interest's claimed injury from a plan is irrelevant to the range of objections it may make. It is blackletter Article III doctrine that standing is not "dispensed in gross." *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996); *see Warth v. Seldin*, 422 U.S. 490, 499 (1975) (party "must assert his own legal rights and interests"). And bankruptcy-specific caselaw underscores this point. For example, in *Kane v. Johns-Manville Corp.*, a foundational asbestos-bankruptcy case, the Second Circuit recognized that the creditor-appellant was a party-in-interest but permitted him to raise only "those contentions that assert a deprivation of his own rights." 843 F.2d 636, 641, 645 (2d Cir. 1988). Thus, a *current* asbestos claimant could not press objections that did not pertain to its interests but rather only to those of *future* asbestos claimants. *See id.* And in *Hartford Underwriters Insurance Co. v. Union Planters Bank, N.A.*, this Court made clear that Section 1109(b) did not "allow[] a creditor to pursue substantive remedies that other Code provisions make available only to other specific parties." 530 U.S. 1, 8 (2000). So Truck too faces boundaries on its ability to object even supposing it could be considered a party-in-interest: Just as those with *environmental* claims

resolved by the Plan could not challenge the Section 524(g) *asbestos* trust as insufficiently friendly to the asbestos claimants, the prevailing rule would not allow Truck a plenary right either.

B. The decision below stated and applied the consensus test of the circuits.

Against this backdrop, the Fourth Circuit neither perceived nor considered any split as to the scope of party-in-interest status under Section 1109(b). Instead—relying on *both* the Seventh Circuit's decision in *James Wilson* and the Third's in *Global*, among others—it recognized that the "other courts" to have addressed the issue have resolved it through the "legally protected interest" test. Pet.App.15a (quoting *James Wilson*, 965 F.2d at 169, and citing *Global* as in "*accord*"). And after recognizing this consensus, the Fourth Circuit followed suit, finding that Truck could not satisfy the test because the Plan did not "materially alter the quantum of liability that [it] would be called to absorb." Pet.App.15a-16a (quoting *Global*, 645 F.3d at 212). So the decision below did not create—much less "exacerbate[]"—any circuit split. *Contra* Pet. 2.

Truck's assertions of a circuit split especially strain credulity given that the Fourth Circuit heavily relied on the Third Circuit's analysis in *Global*—notwithstanding Truck's claim that the Fourth Circuit squarely split from that case. Pet. 2-3. The Fourth Circuit followed the Third's lead both in adopting the "legally protected interest" test generally and in recognizing "insurance neutrality" as the bar more particularly for whether an insurer like Truck could show a legally protected interest.

Pet.App.15a-16a, 23a (quoting *Global*, 645 F.3d at 212). This is not the stuff of any meaningful circuit split.

C. Any disagreement between other circuits on the relationship between Section 1109(b) and Article III standing is illusory.

Ultimately, Truck's purported circuit split rests not on any real-world difference in how courts have approached Section 1109(b)'s bounds but on a narrow and at-most academic "split" as to how one should label the "legally protected interest" test. Even on this illusory question, there is at most a 1:1 disagreement—which does not affect the specific dispute in this case and on which the decision below understandably declined to opine. Accordingly, even on Truck's framing, there is no real split calling for review here.

1. Truck seizes on a footnote in the decision below "recogniz[ing] 'courts are split on the interplay of Article III and § 1109(b).'" Pet. 12 (quoting Pet.App.25a n.10). The Fourth Circuit noted a divide between the Third and Ninth on how to describe what the "legally protected interest" test measures: Does the existence of an affected legally protected interest (and, as a result, party-in-interest status) mean merely that the party has Article III standing, or something more? The Third Circuit in *Global* indicated the former, 645 F.3d at 211; the Ninth Circuit in *Tower*, the latter, 803 F.3d at 457 n.6.

Truck ignores, however, that the circuits' agreement on the controlling nature of the statutory test means that a dispute over its theoretical basis

lacks true stakes. As discussed, *Global* and *Tower* are both part of the consensus of decisions adopting the "legally protected interest" test as the barometer for Section 1109(b)'s scope. *See Global*, 645 F.3d at 212 (after discussing Article III, stating: "To put it in 'party in interest' terms, the question is simply whether Hartford and Century have legally protected interests that could be affected by the GIT Plan."). And to the extent this test has produced different answers in different cases, the circuits have likewise been uniform in attributing the variation to differences in facts, not in how they view the law. *See, e.g.*, *Hall*, 750 F.3d at 662 (distinguishing *Global* and *Thorpe*); *Tower*, 803 F.3d at 458 n.7, 460 (citing *Hall* and distinguishing *Thorpe*); *Thorpe*, 677 F.3d at 886 (distinguishing the pre-*Global* decision *In re Combustion Eng'g*, 391 F.3d 190, 209 (3d Cir. 2004)). Nor does Truck show otherwise. Thus, Truck identifies no reason why this Court needs to promptly settle the proper jurisprudential heading for the circuits' shared test.

2. To the extent this academic split even exists, Truck vastly overestimates its sweep. *See* Pet. 2-3; *supra* pt. I.A.1. Any nominal split involves at most two circuits. *See* Pet.App.25a n.10 (merely citing *Global* and *Tower*); *In re Capital Constr. Co.*, 924 F.3d 890, 895 (6th Cir. 2019) (same). Neither of those circuits is the one below, and neither identifies any practical import for its view.

As the Fourth and Sixth Circuits have recognized, Truck's "split" rests, at most, on the Ninth Circuit's decision in *Tower* and the Third's in *Global*. But even *Tower* was not sure there was actual disagreement, viewing *Global*'s discussion as perhaps just a

"suggest[ion]." 803 F.3d at 457 n.6. That is understandable given that *Global* deemed Section 1109(b)'s scope "effectively coextensive" with Article III standing in the same breath that it "adopt[ed]" *James Wilson*'s test, suggesting that the Third Circuit did not view itself as breaking new ground. 645 F.3d at 210-11. And *Tower* "decline[d] to address Article III … standing requirements," giving it no occasion to consider any delta between Article III and statutory standing under Section 1109(b). 803 F.3d at 456, 457 n.6.

In contrast, a proper count of any split excludes the Fourth Circuit. The decision expressly refused to "choose a side here." Pet.App.25a n.10.

A proper count also excludes the Seventh Circuit, which likewise has not specifically analyzed the relationship between Article III standing and the "legally protected interest" test. *James Wilson* did glancingly find that a secured creditor had basic Article III standing before discussing the test in the context of Section 1109(b). 965 F.2d at 168-69. But that case predated this Court's modern standing jurisprudence in cases like *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), and even then drew on the ordinary principle that parties may not "cavil[] about formalities intended for the protection of other people," 965 F.2d at 169; *see id.* at 168 ("To have standing to invoke a statute, you must be one of the persons whom the statute is intended to protect."). Nor did *Hall* (post-*Global*) squarely consider the question Truck presents. *See* 750 F.3d at 660-61. And neither *Global* nor *Tower* cited the Seventh Circuit in discussing that issue, even while citing it for other purposes. *Global*, 645 F.3d at 210-11; *Tower*, 803

F.3d at 457 & n.6. It is thus not clear what if anything the Seventh would think today about Section 1109(b)'s theoretical grounding.

Nor is there an intra-circuit conflict in the Ninth: Its earlier decision in *Thorpe* simply noted but declined to opine on the Third Circuit's apparent view. *See* 677 F.3d at 884. Just like the Fourth Circuit below.

Truck is thus asking this Court to weigh in on an infrequently presented question, in a case where the issue was not joined, before any circuits have defined the contours of the supposed split, much less its implications (if any).

3. This Court's review would be especially premature because—whatever the contours of the Third and Ninth Circuits' possible disagreement—they *agree* on the specific dispute that Truck raises: An insurer seeking to challenge an insurance-neutral reorganization plan lacks a legally protected interest entitling it to do so. The Third Circuit endorsed this rule in *Global* itself, where it asked whether a plan would "materially alter the quantum of liability that the insurers would be called to absorb." 645 F.3d at 211-12. And courts in the Third Circuit have continued to apply it since, including to hold that an insurer could not challenge an insurance-neutral plan. *E.g.*, *Mt. McKinley Ins. Co. v. Pittsburgh Corning Corp.*, 518 B.R. 307, 321-29 (W.D. Pa. 2014). The Ninth Circuit followed suit in *Thorpe*. 645 F.3d at 885-87. And Truck fails to identify any case creating a "split" on insurance neutrality. So, contra Truck, the Fourth Circuit's endorsement of the insurance-neutrality rule *follows* its sister circuits'

example, rather than landing it on the "wrong side" (or any side) of a split. *Contra* Pet. 17.

II. THE DECISION BELOW IS CORRECT.

Not only is there no *bona fide* circuit split, but the decision below is also plainly correct, another reason to deny review. *E.g.*, *Grzegorczyk v. United States*, 142 S. Ct. 2580, 2580 (2022) (Kavanaugh, J., respecting the denial of certiorari). Truck does not actually dispute that the "legally protected interest" test correctly interprets Section 1109(b), as the Third Circuit (which Truck asserts "correctly construe[d]" that provision) has recognized. Pet. 2. Indeed, Truck's petition fails even to address the "legally protected interest" test, which Truck conceded below to be the relevant standard. C.A. Opening Br. 28. Nor could there be any real dispute as to the test's correctness: It properly measures whether a would-be objector "has a sufficient stake in the proceeding so as to require representation," which is a question that Truck's preferred benchmark of Article III standing itself requires. *Global*, 645 F.3d at 210 (quoting *In re Amatex Corp.*, 755 F.2d 1034, 1042 (3d Cir. 1985)); *see Hall*, 750 F.3d at 661 (explaining test based on text of § 1109(b) and background bankruptcy principles); *see also Tower*, 803 F.3d at 456-57 (similar).

In any event, the Fourth Circuit correctly applied the test. Truck lacks any cognizable interest as an insurer challenging an *insurance-neutral* plan, and the Fourth Circuit rightly rejected Truck's argument that its status as a *fully satisfied* creditor confers standing to object to the Plan.

A. The Plan of Reorganization does not alter Truck's position under its insurance contracts.

The Fourth Circuit correctly rejected Truck's primary claimed interest—that the Plan would affect its legally protected interest in its insurance contracts with the Debtors. The court properly looked to the "insurance neutrality" test, and its application of that test to the facts as found by the District Court on the recommendation of the Bankruptcy Court was correct.

1. Whatever the proper jurisprudential heading for the "legally protected interest" test, the Third, Ninth, and now the Fourth Circuits are correct that it means an insurer cannot object to an insurance-neutral reorganization plan. *See supra* pts. I.A.1-2, I.B, & I.C.3. Insurance neutrality means simply that the plan "doesn't *increase* the insurer's pre-petition obligations or *impair* the insurer's pre-petition policy rights." Pet.App.16a (emphases added; citing *Global*, 645 F.3d at 212). "Stated another way," as the Fourth Circuit put it, the plan "does not *materially alter* the quantum of liability that the insurer[] would be called to absorb." Pet.App.16a (emphasis added; quoting *Global*, 645 F.3d at 212). Because an insurer is not injured by a plan that does not make it worse off, it cannot object to the plan.

That reasoning is a straightforward application of and corollary to the "legally protected interest" test. It further accords with the central principle of standing: No injury, no standing. As this Court has explained, an injury-in-fact is the "first and foremost" prerequisite. *Spokeo, Inc. v. Robbins*, 578

U.S. 330, 338 (2016) (cleaned up). Yet if a plan is insurance neutral, it imposes no "real" or "actual[]" insurance-related injury. *Id.* at 340. Because parties cannot use the courts to pursue windfalls, *see, e.g.*, *Wendt v. 24 Hour Fitness USA, Inc.*, 821 F.3d 547, 551 (5th Cir. 2016), a party made "no worse off" by a development has no right to object to it, *see, e.g.*, *Hunstein v. Preferred Collection & Mgmt. Servs., Inc.*, 48 F.4th 1236, 1250 (11th Cir. 2022) (en banc); *Smith v. GC Servs. L.P.*, 986 F.3d 708, 711 (7th Cir. 2021). The rule of insurance neutrality works out this principle under Section 1109(b) in the context of a Chapter 11 debtor's insurer objecting to a plan.

2. The Fourth Circuit was also correct in applying this "insurance neutrality" test to Truck's facts. Truck has claimed two inter-related injuries to its position as an insurer: It asserts that the Plan abrogates its contractual rights while also *de facto* increasing its contractual responsibilities by inviting an onslaught of fraudulent tort claims. Neither argument holds water on the record and findings below.

First, the Fourth Circuit was correct to find that the Plan in no way impaired Truck's contractual rights. It "includes an 'Insurance Neutrality' section expressly preserving Truck's pre-petition coverage defenses" and the Debtors' obligations. Pet.App.16a. The Fourth Circuit also properly rejected under state contract law Truck's argument that the Plan's omission of its desired disclosure requirements for tort suits breached the Debtors' obligations under the Assistance and Cooperation Clause. Pet.App.18a-22a. Among other problems, the part of the clause that Truck highlights—requiring the Debtors to

assist it in "securing and giving evidence"—comes in the context of addressing individual "occurrence[s]" and the claims arising from them, alongside other directives that the Debtors cooperate by "attend[ing] hearings and trials" and "obtaining the attendance of witnesses." Pet.App.19a-20a (quoting C.A.App.803). Thus, it concerns duties in tort litigation, rather than inviting Truck to dictate a policyholder's bankruptcy plan. Pet.App.18a-21a. Indeed, Truck was unable below to identify "a single decision by *any* court" adopting its broad reading of such a clause, and it has essentially abandoned the argument here. Pet.App.20a-21a.

Second, the Fourth Circuit was likewise correct to discount Truck's assertions about collusion and invited fraud. Truck argued that the Plan "reflect[ed] a scheme between the Debtors and the claimant representatives to expose Truck to fraudulent claims in the tort system." Pet.App.17a. But the assertion of attempted "expos[ure]" depends on the Plan's effecting a *change* from the pre-bankruptcy scenario, which Truck never established. As the lower courts found and the Fourth Circuit did not question, Truck's accusations were "purely speculative." Pet.App.11a. A "speculative chain of possibilities" does not establish injury. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410-14 (2013). So the Fourth Circuit had no obligation to discuss Truck's evidence-free theory about fraud. *See Malbon v. Pa. Millers Mut. Ins. Co.*, 636 F.2d 936, 939 n.8 (4th Cir. 1980).

Moreover, the Fourth Circuit properly denied Truck's attempt to obtain a windfall from the bankruptcy by claiming to be *injured* by simply being *held to* its contractual promise to defend against

even fraudulent claims *post*-bankruptcy just as it had *pre*-bankruptcy. Pet.App.23a. Whatever the continuing condition of the tort system, this mere retention of the status quo ante "in no way alter[ed] Truck's pre-bankruptcy 'quantum of liability.'" Pet.App.23a (quoting *Global*, 645 F.3d at 212); *see also Hall*, 750 F.3d at 662 (citing absence of any "agree[ment]" for "increasing the number of claims"). And as Truck itself recognized below, a bankruptcy court may not "create substantive rights that are otherwise unavailable under the Code." C.A. Opening Br. 24 (quotation marks omitted).

Were there any doubt, other circuits' decisions confirm the Fourth Circuit's correctness. The circuits are consistent in permitting insurers to claim injury only based on a *change* to "their legal rights and financial liabilities." *Tower*, 803 F.3d at 460; *see also Hall*, 750 F.3d at 662 (distinguishing *Thorpe*, 677 F.3d at 884). And while Truck claims support from *Global* and *Hall*, those cases cut against it. In *Global*, the Third Circuit found that "*nonfrivolous* allegations of collusion" targeting the insurer, so as to *materially* increase the number of claims it would face, could make it a party in interest. 645 F.3d at 214 (emphasis added). In contrast, while *Hall* accepted this premise, it found allegations of collusion insufficient if unsupported, rejecting an insurer's "dark hints" of "hanky-panky." 750 F.3d at 662. Likewise, the Third Circuit itself, the year after *Global*, refused to countenance arguments of collusion where insurers offered only "bare assertions" without "record evidence," which the court contrasted with the "exceptional and well-documented increase in risk" in *Global*. *In re*

Federal-Mogul Global Inc., 684 F.3d 355, 379 n.37 (3d Cir. 2012). Truck's charges are "dark hints" and "bare assertions," falling far short of "exceptional and well-documented." The Bankruptcy Court and District Court rightly rejected them.

B. Truck's status as a fully satisfied creditor is irrelevant.

The Fourth Circuit was also correct to conclude that, whatever the scope of Section 1109(b), Truck has not established Article III standing to raise objections based on its status as a (fully satisfied) creditor. And that decision in any event falls outside the scope of Truck's question presented.

Truck's alternative argument is that, because Section 1109(b) lists a "creditor" as a "party in interest," and Truck was a creditor, it should have been entitled to argue against confirming the Plan, raising any and all arguments it wished. Pet. 22. As discussed above in Part I.A, the uniform caselaw rejects this capacious view of a party's right to object in Chapter 11 proceedings. And the Fourth Circuit was correct to follow suit: Notwithstanding Truck's status as a creditor, its right to object still depends on satisfying Article III standing requirements. *Accord* Pet. 2.

The Fourth Circuit correctly found that Truck had not "alleged any injury in fact as a creditor—and an unimpaired one at that—giving it Article III standing" to raise any objections. Pet.App.25a. Indeed, Truck has never alleged any injury-in-fact as a creditor at all. So it has forfeited any claim to Article III standing on this ground. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2210 n.6 (2021).

Nor could Truck have alleged a cognizable injury anyway, as it is an "unimpaired" creditor—whose "only claim," for unpaid deductibles, "is fully satisfied under the Plan." Pet.App.25a-26a; *id.* at 8a.

In arguing otherwise, Truck reverts to its supposed injury *as insurer*—its asserted exposure to fraudulent tort claims. Pet. 21. This pivot underscores why Truck's status as a creditor is beside the point. Truck cannot mix-and-match its way to justiciability, combining a statutory hook based on creditor status with its purported Article III injuries as an insurer. *Cf. Mountain States Legal Found. v. Glickman*, 92 F.3d 1228, 1232 (D.C. Cir. 1996) ("on any given claim the injury that supplies constitutional standing must be the same as the injury within the requisite 'zone of interests'"). Given the absence of any allegation that Truck has been injured *as a creditor*, Article III bars it from citing that status to support its right to object, at all. So Truck cannot use its creditor status as a backdoor to relitigate its complaints *as insurer*, which fail on their own terms as explained above in Part II.A.

This analysis also shows why the creditor issue is in any event irrelevant to the question Truck has presented to the Court, about the proper interpretation of the term "party in interest" in Section 1109(b). An *uninjured* creditor's inability to claim Article III standing to raise arguments about its insurance interests (or anything else) has no bearing on whether the "legally protected interest" test tracks Article III standing or requires something more. Truck claims otherwise only by asserting, without explanation, that "[t]he Fourth Circuit's misreading of Section 1109(b) infected its [Article III]

holding." Pet. 21. But this *ipse dixit* cannot be squared with the Fourth Circuit's analysis—which applied well-trod standing principles—and would not bring the creditor issue within the question presented regardless.

III. THE QUESTION PRESENTED IS NOT IMPORTANT, AND THIS CASE IS A POOR VEHICLE FOR REVIEWING IT IN ANY EVENT.

Finally, the question presented is not important, and a host of issues would hamper review.

A. Truck seeks review of an abstract question.

This Court need not consider Section 1109(b)'s scope because it presents no "genuine conflict" to resolve, much less the "well-developed conflict" that this Court ordinarily requires. Shapiro, *supra*, §§ 4.3, 4.4(B). As explained above in Part I.A-B, the circuits agree on the threshold for party-in-interest status under Section 1109(b). And while Truck attempts to seize on the Third and Ninth Circuits' suggestion of different jurisprudential headings for the "legally protected interest" test, neither court has elaborated on the consequence of that choice, if any. *Supra* pt. I.C. Thus, granting certiorari would only entangle this Court in a theoretical conversation without any apparent, much less pressing, real-world stakes.

Even if there could one day be stakes, the question still "would benefit from further percolation in the lower courts prior to this Court granting review." *Calvert v. Texas*, 141 S. Ct. 1605, 1606 (2021) (Sotomayor, J., respecting the denial of certiorari). Because no court has yet considered the issue with any depth, review now would require this Court to

intervene without the benefit of *any* lower court "insights" or identification of "pitfalls." *Maslenjak v. United States*, 582 U.S. 335, 354 (2017) (Gorsuch, J., concurring in part and concurring in the judgment).

Percolation is important in the bankruptcy context as elsewhere. This Court routinely denies review in bankruptcy cases presenting seemingly important and entrenched circuit splits. *See, e.g.*, *Cuker Interactive, LLC v. Pillsbury Winthrop Shaw Pittman LLP*, No. 22-18, *cert. denied*, 143 S. Ct. 1054 (2023); *Deutsche Bank Trust Co. Ams. v. Robert R. McCormick Found.*, No. 20-8, *cert. denied*, 141 S. Ct. 2552 (2021). So the general importance of uniformity in the bankruptcy context provides no reason to hastily intervene, particularly where, as shown above in Part I, Section 1109(b) is already being applied uniformly. *See* Pet. 22-23.

B. The alleged split was not addressed below.

Worse, Truck did not raise below the "split" it now contends necessitates immediate review. In fact, Truck told the Fourth Circuit that statutory standing under Section 1109(b) is a "completely distinct concept" from Article III, whose principles should not be "import[ed]" into the statutory analysis. C.A. Reply Br. 8-9. Consistent with that suggestion, the Fourth Circuit declined to "choose a side" on how to label the "legally protected interest" test—the test that Truck had urged it to adopt. Pet.App.25a n.10; C.A. Opening Br. 28. In other words, Truck is seeking review based on an issue that it did not raise and that the Fourth Circuit did not address.

These defects make this case an especially bad candidate for certiorari. This Court is one "of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005). Accordingly, a party who fails to present an issue below forfeits it before the Court, which almost never addresses "claims that were neither raised nor addressed below." *Travelers Cas. & Sur. Co. of Am. v. PG&E*, 549 U.S. 443, 455 (2007); *see United States v. Jones*, 565 U.S. 400, 413 (2012). The abstract question here presents no reason to deviate from that practice. Were the question worthy of review, review should at minimum be done "with[] the benefit of thorough lower court opinions to guide [the Court's] analysis of the merits." *Zivotofsky v. Clinton*, 566 U.S. 189, 201 (2012).

C. Several additional defects would impede review.

Finally, this case would not present a clean vehicle for review even if this Court wanted to promptly resolve Truck's question presented.

1. As a threshold matter, Truck lacks Article III standing. As explained above in Part II.B, the Fourth Circuit was correct to find that Truck's status as a fully satisfied creditor could not support Article III standing. In addition, the Fourth Circuit's insurance-neutrality ruling—that the Plan does not "alter[]" Truck's policy rights at all and "merely retains" Truck's "decades-old pre-petition coverage obligations (and defenses)," Pet.App.17a & 23a—also means that Truck *as an insurer* failed to meet its burden on Article III standing. As the Third Circuit has recognized, in language the Fourth Circuit invoked, insurance neutrality precludes Article III

standing because an insurer whose "quantum of liability" does not change lacks a cognizable injury-in-fact. *Global*, 645 F.3d at 211-12; *see* Pet.App.23a.

So Article III limitations would require this Court to reject Truck's appeal regardless of the answer to its question presented. Because this Court regularly denies certiorari when there are even possible jurisdictional obstacles, denial is all the more appropriate here. *See, e.g.*, *Schock v. United States*, 139 S. Ct. 674, 674-75 (2019) (Sotomayor, J., respecting the denial of certiorari); *Cal. Bldg. Indus. Ass'n v. City of San Jose*, 577 U.S. 1179, 1181 (2016) (Thomas, J., concurring in the denial of certiorari).

2. Truck's problems would not stop with jurisdiction. This Court's "power is to correct wrong judgments." *Herb v. Pitcairn*, 324 U.S. 117, 126 (1945). So a case is a "poor vehicle" when there are "other legal grounds for affirmance that demonstrate that the decision below is correct regardless of how the Court resolves the question presented." Shapiro, *supra*, § 6.37(*l*)(2). This is true whether or not the court of appeals "relied upon, rejected, or even considered" the alternative grounds, as the Debtors would be entitled to raise all these arguments at the merits stage. *14 Penn Plaza LLC v. Pyett*, 556 U.S. 247, 273 (2009) (quotation marks omitted). Here, there are at least three such alternative grounds.

First, Truck lacks bankruptcy appellate standing. From the earliest days under the Bankruptcy Code, the circuits have widely recognized that (as under its predecessor, the Bankruptcy Act) the Code permits only a "person aggrieved" by a bankruptcy-court order to appeal. *E.g., In re Troutman Enters., Inc.*,

286 F.3d 359, 364 (6th Cir. 2002). And that recognition continues post-*Lexmark*, with the circuits also continuing to recognize that the "person aggrieved" test is more demanding than Section 1109(b). It requires a "direct, adverse, pecuniary hit." *In re Highland Cap. Mgmt., L.P.*, 74 F.4th 361, 367, 370 (5th Cir. 2023) (quotation marks omitted); Pet.App.12a (same in Fourth Circuit).

As Truck cannot meet even the lower threshold of Section 1109(b), it certainly misses the higher threshold of appellate standing. In nevertheless allowing Truck to proceed on appeal, the Fourth Circuit did not dispute this conclusion. Instead, it devised a distinction between appeals from the "substance" of an order and from denial of statutory standing to challenge the order. That distinction—which Truck had not raised and for which the Fourth Circuit cited only one court's *dicta* (Pet.App.13a; *Global*, 645 F.3d at 209 n.23 ("we decline to address" appellate standing))—ignores that the "person aggrieved" rule has always applied to *any* "appeal from an order of the bankruptcy court." *In re Ernie Haire Ford, Inc.*, 764 F.3d 1321, 1325 (11th Cir. 2014); *see also Mar-Bow Value Partners, LLC v. McKinsey Recovery & Transformation Servs.*, 469 F. Supp. 3d 505, 529-32 (E.D. Va. 2020).

Second, Truck's appeal is equitably moot. Equitable mootness, a doctrine that "[e]very circuit has adopted [in] some form," precludes review of bankruptcy appeals when a reorganization plan has been substantially consummated such that it would be inequitable to grant relief. *In re Fin. Oversight & Mgmt. Bd. for P.R.*, 987 F.3d 173, 180 (1st Cir. 2021). While the Fourth Circuit avoided ruling on this

issue, the Debtors briefed it (Pet.App.14a n.6), and the case for equitable mootness has only grown since. Both the District Court and the Fourth Circuit declined to stay consummation of the Plan, which occurred over two years ago, and on which numerous third parties have relied.[3] "[A]t this late date," Truck's attempt to unwind the Plan is "not amenable to judicial resolution." *Mac Panel Co. v. Va. Panel Corp.*, 283 F.3d 622, 625 (4th Cir. 2002) (quotation marks omitted).

Finally, Truck's challenges to confirmation fail on the merits, as both the Bankruptcy Court and District Court found. *See* Pet.App.9a-11a, 143a-146a. As their opinions—each produced after an evidentiary hearing, extensive briefing, and argument (including from Truck)—explain, not only does the Plan not alter Truck's rights, but it also was proposed in good faith and satisfies Section 524(g). *E.g.*, Pet.App.17a-22a, 60a-65a, 71a-87a.

For each of these independent reasons, even if Truck had a statutory right to object to the Plan, it would obtain no relief.

CONCLUSION

The petition for a writ of certiorari should be denied.

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[3] When the Debtors filed their most recent update with the Bankruptcy Court, a $1 million note to the trust remained outstanding. *See* Bankr. D.I. 2882, at 7; Pet.App.72a-73a. The Debtors have since fully paid.

September 5, 2023

Respectfully submitted,

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