No. 22-1079

IN THE

Supreme Court of the United States

TRUCK INSURANCE EXCHANGE,

Petitioner,

v.

KAISER GYPSUM COMPANY, INC., ET AL.,

Respondents.

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

BRIEF FOR PETITIONER

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QUESTION PRESENTED

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

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

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

The question presented is:

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

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

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

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

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

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

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

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BRIEF FOR PETITIONER

OPINIONS BELOW

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

JURISDICTION

The court of appeals entered judgment on February 14, 2023. Pet. App. 2a. A petition for a writ of certiorari was timely filed on May 3, 2023, which this Court granted on October 13, 2023. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the Bankruptcy Code (11 U.S.C. §§ 101, 524, 1109) are reproduced at Pet. App. 329a.

STATEMENT

The Bankruptcy Code empowers a "party in interest, including the debtor, the trustee * * * [or] a creditor" to "raise" and "appear and be heard on any issue" in a Chapter 11 reorganization. 11 U.S.C. § 1109(b).

Truck Insurance Exchange is the liability insurer of the debtors in this case—manufacturers of asbestos products who face 14,000 pending asbestos-liability claims. Because of its insurance obligations, Truck has the financial responsibility to pay the overwhelming majority of the claims subject to the district court's bankruptcy jurisdiction. Truck objected to the Chap-

ter 11 plan jointly proposed by the debtors and the asbestos claimants. Echoing the United States Trustee in similar cases, Truck contended that the plan improperly facilitates fraudulent claims and in so doing greatly expands Truck's financial exposure in violation of multiple provisions of the Code.

Despite Truck's financial exposure and the broad participatory rights enshrined in Section 1109(b), the Fourth Circuit refused to consider Truck's objections on the merits, concluding that Truck isn't a party in interest and can't participate in the bankruptcy at all. Applying the so-called insurance-neutrality doctrine—a "judicially self-imposed limit on the exercise of federal jurisdiction" that courts have engrafted onto Section 1109(b), *In re Thorpe Insulation Co.*, 677 F.3d 869, 888 (9th Cir. 2012) (cleaned up)—the Fourth Circuit held that Truck had no interest in the proceeding because the plan purported to be "insurance neutral."

That conclusion is wrong and should be reversed. The insurance-neutrality doctrine has no basis in the text of the Code, and the courts that developed it concede it's inconsistent with "a literal reading of section 1109(b)." *In re James Wilson Associates*, 965 F.2d 160, 169 (7th Cir. 1992). The Court should reject that judicially imposed prudential limitation. It should instead reaffirm that courts "cannot limit a cause of action that Congress has created merely because 'prudence' dictates." *Lexmark International, Inc*. v. *Static Control Components, Inc*., 572 U.S. 118, 128 (2014). Applying that principle, the Court should make clear that the standard set by Congress in the text of Section 1109(b) is coextensive with Article III such that, once Article III standing is satisfied, no further barrier to participation exists.

I. Chapter 11 Framework.

1. Chapter 11 of the Bankruptcy Code provides a path for a debtor to obtain a comprehensive reorganization of its liabilities through negotiated resolution with its creditors. See *Czyzewski* v. *Jevic Holding Corp.*, 580 U.S. 451, 454-55 (2017). Congress "str[uck] 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." *Florida Department of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 51 (2008). In this way, Chapter 11 helps "solve the incomplete contracting problem that accompanies financial distress" by "implement[ing] a renegotiation framework to facilitate ex post bargaining." Anthony J. Casey, *Chapter 11's Renegotiation Framework and the Purpose of Corporate Bankruptcy*, 120 Colum. L. Rev. 1709, 1711, 1716 (2020).

Upon filing a Chapter 11 petition, the debtor obtains an "automatic stay of all collection proceedings" while it works with interested parties to "negotiate a plan that will govern the distribution of valuable assets from the debtor's estate" to satisfy creditors' claims while "keep[ing] the business operating as a going concern." *Czyzewski*, 580 U.S. at 455-56 (citation omitted). The Code provides for a collaborative process, empowering "creditors and equity holders to engage in negotiations toward resolution of their interests" because they are "very often better judges of * * * their own economic self-interest than courts." *Bank of America National Trust & Savings Ass'n* v. *203 North LaSalle Street Partnership*, 526 U.S. 434, 458 n.28 (1999) (citation omitted). The process concludes with

a plan of reorganization, which must meet a variety of statutory requirements. 11 U.S.C. § 1129.

2. The Bankruptcy Code broadly invites participation in the proceeding before the court by providing:

> 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.

11 U.S.C. § 1109(b). Other Code provisions specifically invite participation by a party in interest in particular settings. For example, a party in interest may propose a plan for confirmation, object to confirmation of a plan, and object to claims. 11 U.S.C. §§ 502(a), 1121(c), 1128(b). Various provisions of Chapter 11 also direct the bankruptcy court to take certain actions "on request of a party in interest," including appointing or removing a trustee, *id.* §§ 1104, 1105, 1183, removing a debtor in possession, *id*. § 1185, or converting a reorganization into a liquidation, *id.* § 1174.

Through each iteration of the bankruptcy laws, Congress has broadened rights of participation. See *infra* § I. Section 1109(b) is the culmination of that process—it "continues the pattern" and "tradition" of "permitting interested parties in bankruptcy cases the absolute right to be heard and to insure their fair representation." *In re Amatex Corp.*, 755 F.2d 1034, 1042 (3d Cir. 1985).

II. Procedural Safeguards In Asbestos-Related Bankruptcies.

1. In the late 1970s, asbestos litigation began to overwhelm the tort system, engendering "the longest-running mass-tort litigation in the United States." Stephen J. Carroll et al., RAND Inst. for Civil Justice, *Asbestos Litigation* 21-24 (2005). Yet "a just and efficient resolution of asbestos claims has often eluded [the] standard legal process." *In re Combustion Engineering, Inc.*, 391 F.3d 190, 200 (3d Cir. 2004). That's in part because asbestos litigation spawned "grow[ing]" dockets, "long delays" in trials, "litigat[ion] over and over" of the "same issues," transaction costs "exceed[ing] victims' recovery," and the "exhaustion of assets." *Amchem Products, Inc.* v. *Windsor*, 521 U.S. 591, 598 (1997) (citation omitted). These difficulties were exacerbated by "a segment of the plaintiffs' bar" trying "to capitalize on the asbestos-litigation boom by seeking settlements for plaintiffs with no known diseases." Lloyd Dixon et al., RAND Inst. for Civil Justice, *Asbestos Bankruptcy Trusts: An Overview of Trust Structure and Activity with Detailed Reports on the Largest Trusts* 2 (2010).

Attempts to resolve asbestos liability through class actions proved inadequate. Class actions were ill equipped to resolve the tension between compensating known tort claimants, on one hand, with the uncertain prospect of "future claimants" whose "disease had not yet manifested," on the other. H.R. Rep. No. 103-835, at 40 (1994), *as reprinted in* 1994 U.S.C.C.A.N. 3340, 3348; accord Anthony J. Casey & Joshua C. Macey, *In Defense of Chapter 11 for Mass Torts*, 90 U. Chi. L. Rev. 973, 977, 998-99 (2023); see generally *Amchem*, 521 U.S. 591; *Ortiz* v. *Fibreboard Corp.*, 527 U.S. 815, 821 (1999).

Instead, Chapter 11 became "a viable alternative" for mass tort resolution. S. Elizabeth Gibson, Fed. Judicial Ctr., *Judicial Management of Mass Tort Bankruptcy Cases* 1-2 (2005). Chapter 11 offered companies the ability to "bring a halt to lawsuits," "facilitate a global resolution of [their] liabilities, and free [themselves] from further responsibility." *Id.* at 1. It became "the only generally recognized legal vehicle" for obtaining "finality" for asbestos liability. Dixon, *supra*, at 5 (citation omitted).

2. In 1986, a federal district court in New York "pioneered" a new model for asbestos bankruptcies that became the basis for the current Code. H.R. Rep. No. 103-835, at 40. The court approved a reorganization plan that allowed Johns Manville—a large asbestos insulation manufacturer—to emerge from bankruptcy through the creation of a novel trust to which all asbestos liabilities (present and future) were channeled. Dixon, *supra*, at 3, 5-7. The trust "arrangement was straightforward:" Johns Manville's financial assets (like cash, stock, and insurance rights) were "transferred to the trust," the trust took on the responsibility of "processing and paying" claims, and claimants were barred from suing Johns Manville. *Id.* at 5-6; see also H.R. Rep. No. 103-835, at 40.

The Johns Manville trust inspired the procedures now codified at Section 524(g), which strives to balance the need to "protect the future asbestos claimants" with the need to allow defendants to shed liabilities "to generate stock value and profits * * * to satisfy claims." H.R. Rep. No. 103-835, at 40-41. Congress designed Section 524(g) to treat present and future claims equitably and give companies a "fresh start." *Id.* at 40; Pet. App. 4a.

Congress adopted a twin "trust" and "injunction" procedure akin to the Johns Manville arrangement. Under Section 524(g), all asbestos claims—present and future—are channeled to the trust, which offers claimants a settlement (subject to judicial review) based on individualized factors. See 11 U.S.C. § 524(g)(2)(B)(ii)(V); *In re Federal-Mogul Global Inc.*, 684 F.3d 355, 360 & n.12 (3d Cir. 2012). In turn, the reorganized company obtains an injunction barring all past and future lawsuits against it (and often its affiliates and insurers). See 11 U.S.C. § 524(g)(1); Dixon, *supra*, at 3, 5-7.

Beyond the basic structure of the Johns Manville trust, Congress also set out strict requirements a 524(g) trust must meet. In addition to the requirements that apply to all Chapter 11 plans, a Section 524(g) trust must:

- Assume the debtors' past and future asbestos liabilities, 11 U.S.C. § 524(g)(2)(B)(i)(I);
- Be funded by the reorganized debtors' securities or debt, *id.* § 524(g)(2)(B)(i)(II);
- Control the reorganized debtors, *id.* § 524(g)(2)(B)(i)(III); and
- Pay present and future claims equitably, *id.* § 524(g)(2)(B)(i)(IV), (ii)(V), (4)(B).

See also Pet. App. 4a-5a. Finally, any Section 524(g) trust must be approved by three-quarters of the asbestos creditors, 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb)—a supermajority requirement that exceeds the normal threshold for creditor voting, see, e.g., *id.* § 1126(c), giving asbestos creditors unusual influence over the plan. As with any Chapter 11 reorganization, a Section 524(g) plan must be "proposed in good faith." *Id.* § 1129(a)(3).

3. Although Section 524(g) trusts proved effective in resolving asbestos claims, early plans were drafted in ways that facilitated fraudulent recoveries. That's because asbestos claimants suffered exposure to asbestos-containing products from many companies (often dozens). Given the intervening years between exposure to asbestos and manifestation of injury, it's virtually impossible to trace the asbestos injury to any single exposure. The tort system can solve this problem through liability apportionment, but only if the full scope of plaintiffs' exposures is known and factored into the apportionment. If a claimant's exposures from other defendants' products aren't identified, his claim against a particular defendant is likely to be inflated if the harmful effects of the claimant's aggregate exposure are attributed to that defendant.

Early Section 524(g) trusts, however, had no requirement that claimants disclose other exposures or recoveries. See Lester Brickman, *Fraud and Abuse in Mesothelioma Litigation*, 88 Tul. L. Rev. 1071, 1099-1101 (2014); J.A.215-19. Trustees couldn't independently obtain such information because claimants' counsel often negotiated requirements that trusts keep that information confidential and resist subpoenas. See U.S. Gov't Accountability Off., GAO-11-819, *Asbestos Injury Compensation: The Role and Administration of Asbestos Trusts* 26-28 (2011); J.A.216-17. So plaintiffs could "double-di[p]" their recoveries by delaying filing against any trust until their tort claims against solvent companies were resolved—"suppress[ing] evidence of trust-related exposures" in the meantime—and then filing separate claims against "multiple" trusts (without disclosing the multiple submissions) to receive "multiple" payments. Mark A. Behrens & William F. Northrip, *Department of Justice Combats Asbestos Trust Abuse*, 86 Def. Couns. J. 1, 4-

5 (2019). This scheme facilitated hundreds of millions of dollars in inflated recoveries, if not more. See *In re Garlock Sealing Technologies, LLC*, 504 B.R. 71, 84-87 (Bankr. W.D.N.C. 2014); J.A.219. This fraud was difficult to police because, in Chapter 11 bankruptcies, "dominant stakeholders are able to essentially operate as a cartel, colluding to restrict access to, and raise the price of, restructuring outcomes." Diane Lourdes Dick, *The Chapter 11 Efficiency Fallacy*, 2013 B.Y.U. L. Rev. 759, 816.

4. In 2014, a watershed bankruptcy proceeding revealed this scheme and the financial toll it took on asbestos debtors and trusts. *Garlock*, 504 B.R. at 84-87. In *Garlock*, a bankruptcy court ordered targeted discovery into select cases against the debtor and found that, in their tort suits, plaintiffs on average disclosed just two exposures; post-settlement, those same plaintiffs filed an average of nineteen claims against Section 524(g) trusts. *Ibid.* Limited discovery into a larger sample of cases confirmed that these initial results weren't aberrations—nearly half of the debtor's high-dollar settlements involved plaintiffs who misrepresented their exposures. *Id.* at 85-86.

Such "manipulation of exposure evidence," the court concluded, "had a profound impact" by "inflat[ing]" plaintiffs' recoveries. *Garlock*, 504 B.R. at 82. As a result of its findings, the bankruptcy court rejected the plaintiffs' estimate of $1-1.3 billion in total mesothelioma liability and concluded $125 million—one-tenth of the amount sought by plaintiffs—accurately reflected the debtors' "liability for present and future mesothelioma claims." *Id.* at 97.

To safeguard the trust against fraudulent claims, the *Garlock* court implemented fraud-prevention

measures requiring claimants submitting claims to the trust to:

- Disclose all other claims that relate in any way to the alleged asbestos injuries;
- Authorize the trust to obtain a claimant's submissions to other asbestos trusts; and
- Authorize audits to ensure the accuracy of information provided to and claims paid by the trust.

Garlock Claims Resolution Procedures § 6.8, C.A.J.A.1084-86. Submitting a fraudulent claim subjects a claimant and his counsel to sanctions—and the audit provision ensures that the availability of sanctions isn't just an empty threat. *Id.* §§ 11.1, 11.3, C.A.J.A.1096-97.

Since *Garlock*, nearly every Section 524(g) trust has included almost identical fraud-prevention measures to protect debtors and their insurers (who often fund the trusts). Asbestos claimants receive the recovery to which they're entitled, while the trusts (and the debtors and insurers that fund them) are protected from fraudulent and duplicative bankruptcy claims.

The United States Trustee—charged with acting as the "bankruptcy watch-do[g] to prevent fraud, dishonesty, and overreaching in the bankruptcy arena," H.R. Rep. No. 95-595, at 88 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6049—has objected to plans that *lack* these measures. The Trustee has repeatedly argued that both Section 524(g) and Section 1129(a)(3)'s good-faith standard *require* the type of fraud-prevention measures found in the *Garlock* plan. See, e.g., Obj. of U.S. Tr. to Disclosure Statement and Joint Prepackaged Plan of Reorganization at 1-2, 10-

18, *In re Maremont Corp.*, No. 19-10118 (Bankr. D. Del. Feb. 14, 2019), ECF No. 112. The Western District of North Carolina, where Kaiser's petition was filed, has no United States Trustee.

III. The Present Controversy.

1. Respondents Kaiser Gypsum Company and Hanson Permanente Cement, Inc. (together, "Kaiser") manufactured construction materials containing asbestos. Pet. App. 5a. Before the cascade of asbestos litigation—and before courts interpreted insurance policies "to impose a 'continuous trigger' of insurance coverage," *Federal-Mogul Global*, 684 F.3d at 358 n.4—Kaiser obtained insurance from Truck that now requires Truck to defend and pay asbestos-related claims, J.A.538. Truck is financially responsible for virtually every dollar owed to Kaiser's asbestos claimants up to a per-claim limit of $500,000 (minus a small, fixed per-claim deductible, typically $5,000)—with no aggregate limit. E.g., C.A.J.A.790, 839, 4507.

In the tort system, Truck paid hundreds of millions of dollars on Kaiser's behalf in over 38,000 lawsuits nationwide. J.A.163-64; Pet. App. 5a. Kaiser's corporate representative has conceded that Kaiser wasn't "treated fairly" in the tort system and acknowledged that it was "suspicious that it was the subject of misconduct" and "fraud" in these cases. J.A.106. In a sample of 857 tort plaintiffs who sued Kaiser *before* filing claims against other companies' Section 524(g) trusts, those plaintiffs "extracted more than 60% higher amounts from Kaiser than those who resolved their Kaiser claims after filing with [Section 524(g)] trusts." J.A.194. The takeaway is that plaintiffs' ability to conceal the breadth of their exposures matters.

2. After the *Garlock* bankruptcy court revealed widespread fraud and pioneered trust procedures to

counter it, Kaiser and Truck discussed a reorganization for Kaiser. J.A.297-300.

a. Kaiser and Truck discussed plans for a prenegotiated plan of reorganization to negotiate a fair resolution of Kaiser's asbestos liabilities using the method for valuing asbestos claims, designed to exclude fraudulent inflation, developed in the *Garlock* bankruptcy. But Kaiser "unilateral[ly]" "abort[ed]" that plan and filed for bankruptcy without a pre-negotiated plan in place. J.A.301.

Still, Truck offered to bear the "great majority of the bankruptcy costs," so long as there was a "consensual resolution that benefitted all parties, including Truck." J.A.300. But Kaiser excluded Truck from all negotiations with claimants' representatives. J.A.301.

The plan jointly proposed by Kaiser and the asbestos claimants radically departed from the post-*Garlock* standard. It provided for a Section 524(g) trust that lacked the now-standard fraud-prevention measures and created a two-track system for insured and uninsured claims. Pet. App. 7a.

Kaiser and its parent company would fund (through a one-time capital transfer and assignment of insurance rights) a small Section 524(g) trust for *uninsured* claims and deductible payments. Pet. App. 6a-8a. In exchange, Kaiser, its parent, and various affiliates, officers, and directors were protected against any future lawsuits. Pet. App. 6a-8a, 286a-87a. Kaiser's parent had its equity interests reinstated and retained ownership of the reorganized debtors. Pet. App. 216a. *Insured* claims—for which Kaiser practically speaking bore almost no financial responsibility—wouldn't be resolved through the trust claims process, even though Kaiser's insurance rights

were transferred to the trust. Instead, those claims would be resolved in the tort system with no requirement that they be first presented to the trust (and subject to the trust's fraud-prevention measures). Pet. App. 227a.[1] All 14,000 claims pending at the time of bankruptcy were insured. J.A.328, 332-34.

b. Truck objected to the plan based on the lack of fraud-prevention measures. Kaiser didn't dispute that the plan exposed Truck to fraudulent claims; it remarked that all "that matters" was that the plan protected Kaiser. J.A.106. In light of Truck's objections, however, the bankruptcy court questioned whether a Section 524(g) plan that lacked the now-standard fraud-prevention measures was confirmable. J.A.121-23. Kaiser and the claimants amended the proposed plan to add those measures, but only for the *uninsured* claims resolved by the trust—not for the 14,000 known insured claims for which Truck bears nearly exclusive financial responsibility. Pet. App. 226a-27a; J.A.327, 332-34. Kaiser's representative admitted it had delegated "the rights to decide what's in the trust" to claimants' counsel who in turn "oppose[d]" including the insured claims in the trust (along with its fraud-prevention measures). J.A.340.

Kaiser also amended the plan to include an express finding by the district court that Kaiser's actions in the bankruptcy—including ceding control to opposing counsel and refusing to seek exposure information for insured claims—didn't violate its coverage obligation to cooperate with and assist Truck. J.A.338, 546, 549-51. Truck objected to confirmation of the plan and

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[1] Once a verdict or settlement is reached, the plaintiff could then obtain the deductible from the trust. J.A.416-24, C.A.J.A.5921-22.

to the express finding purporting to resolve the cooperation coverage defense. Pet. App. 991, 143a-46a.

c. Truck identified two fundamental ways in which the plan violated Chapter 11. First, it failed to comply with various provisions of Section 524(g) because (among other things) the trust didn't "assume the liabilities of [the] debtor," instead mandating that 14,000 asbestos claims against Kaiser be resolved in the tort system without the fraud-prevention measures set out in the trust. 11 U.S.C. § 524(g)(2)(B)(i)(I); Pet. App. 144a. Second, the plan wasn't "proposed in good faith" because it took no measures to prevent fraud in the bankruptcy claims that were insured. 11 U.S.C. § 1129(a)(3).

3. The bankruptcy court nonetheless recommended that the district court confirm the plan, J.A.536, and the district court did so without meaningfully addressing Truck's objections to the Section 524(g) trust and channeling injunction, Pet. App. 27a-328a. Instead, the district court first concluded that Kaiser's policies required cooperation only in individual tort suits, such that Kaiser's collusion in bankruptcy didn't violate any duty. Pet. App. 94a, 107a-15a.

The district court next concluded that Truck couldn't otherwise object to the rest of the plan because it wasn't a party in interest and so lacked bankruptcy standing to object because the plan purported to be "neutral" as to Truck's rights and liabilities. Pet. App. 94a-97a, 102a-04a; see 11 U.S.C. § 1109(b). The court concluded that neither Truck's status as a creditor nor the plan's mandate that insured claims be resolved in the tort system without fraud-prevention measures rendered Truck a party in interest. Pet. App. 95a-96a, 98a-99a, 103a n.25.

4. The Fourth Circuit affirmed without addressing the merits of Truck's objections to the Section 524(g) trust and channeling injunction. Pet. App. 26a. It too decided that Truck couldn't object to the plan because it wasn't a "party in interest" under Section 1109(b). Pet. App. 24a.

The court recognized that an insurer like Truck is a party whose interest "could be affected" by proceedings. Pet. App. 15a-16a. But it denied Truck party-in-interest status based on an additional requirement not stated in the Code: The court adopted the "insurance-neutrality" doctrine, applied by some other circuits, which excludes an insurer from participating unless the plan "increase[s] the insurer's pre-petition obligations or impairs the insurer's pre-petition policy rights." Pet. App. 16a. Because, in the court's view, Truck had the same contractual exposure to fraud before and after the plan, confirmation didn't "sufficiently affec[t]" Truck. Pet. App. 16a, 23a-24a. To the Fourth Circuit, even the district court's "preclusive" finding that Kaiser didn't violate its cooperation obligations left Truck's contractual rights unaltered, and didn't allow Truck to object to any other part of the plan. Pet. App. 17a-22a & n.9.

The court also held that Truck couldn't object to the plan in its capacity as a creditor. Pet. App. 24a-26a. Although the court recognized that the plain text of Section 1109(b) states that a "creditor" may be heard on "any issue," the court determined that Truck's creditor status permitted it only to raise objections that "relate to its status as a creditor." Pet. App. 24a-25a (emphasis omitted).

The Fourth Circuit didn't consider any of Truck's substantive objections, including whether the plan

complied with Section 524(g) or Section 1129's good-faith requirement. Pet. App. 26a.

SUMMARY OF ARGUMENT

I. The text, context, and history of Section 1109(b) confirm that it grants a broad right allowing parties with Article III standing to participate in Chapter 11 proceedings.

A. Section 1109(b) allows a "party in interest" to raise "any issue" in a Chapter 11 proceeding. The plain meaning of these terms invites those who are "concerned or affected, esp. with respect to advantage, personal or general," to take part in the proceeding. *Webster's New International Dictionary* 1294 (2d ed. 1943).

This broad right is confirmed by this Court's interpretation of "party in interest" under other statutes before the enactment of Section 1109(b). In those cases, this Court repeatedly held that a complainant was a "party in interest" if it could show the proceeding "may directly and adversely affect the complainant's welfare." *Western Pacific California Railroad Co.* v. *Southern Pacific Co.*, 284 U.S. 47, 51-52 (1931). In *Western Pacific* and other "party in interest" cases, the Court expressly relied on Article III principles. Those principles include the distinction between a party who "suffers in some indefinite way in common with people generally" and one who "has sustained or is immediately in danger of sustaining some direct injury" as a result of the challenged action. *Frothingham* v. *Mellon*, 262 U.S. 447, 488 (1923). When Congress "transplant[s]" "a statutory term * * * from another legal source," as it did with Section 1109(b)'s party-in-interest standard, "it brings the old soil with it." *Taggart* v. *Lorenzen*, 139 S. Ct. 1795, 1801 (2019) (citation omitted).

B. The Bankruptcy Code's statutory history reinforces that in Section 1109(b) Congress sought to expand the rights of participation to the limits of Article III. Under the "equity receivership" model that existed before the 1930s, participation in corporate reorganizations was extremely restricted, with even creditors and equity holders generally excluded. 7 Collier on Bankruptcy ¶ 1109.LH[2][a] (16th ed. rev. 2022). In successive enactments in the 1930s, Congress allowed creditors and stockholders the right to be heard on specific issues, Act of June 7, 1934, ch. 424, § 77B, 48 Stat. 912, 917 (formerly codified at 11 U.S.C. § 207 (1934)) (repealed 1938), and later "on all matters" in a reorganization, Chandler Act, ch. 575, § 206, 52 Stat. 883, 894 (1938) (formerly codified at 11 U.S.C. § 606 (1976)) (repealed 1979).

Section 1109(b) is the culmination of this process of expansion. Congress enacted Section 1109(b) when it adopted the Bankruptcy Code in 1978. Unlike prior statutes, Congress used a general term, "party in interest," followed by a *non-exclusive* list of specific parties in interest. And it broadly allowed a party in interest to be heard on "any issue." Section 1109(b)'s historical context further demonstrates that it's designed to allow all stakeholders to be heard.

II. Truck is a party in interest as Kaiser's insurer and as a creditor.

A. As Kaiser's insurer, Truck plainly qualifies as a party in interest because it has the near-exclusive obligation to pay the asbestos bankruptcy claims. The confirmed plan fails to extend to these insured claims any of the fraud-prevention measures that have become standard since the *Garlock* reorganization. This failure to protect against fraud violates multiple pro-

visions of the Code and renders the plan unconfirmable, as the United States Trustee has argued in other asbestos reorganizations. The parties disagree over Truck's entitlement to those safeguards on the merits, but the potential harm that withholding them would inflict on Truck—and thus its interest in whether the plan is confirmed—should be beyond dispute: Depriving Truck of those procedures exposes Truck to hundreds of millions of dollars in liability beyond what Truck would face under a plan that complied with the Code and included adequate fraud-protection measures. That direct pocketbook harm is more than adequate to demonstrate that the proceeding "may directly and adversely affect [Truck's] welfare" and render Truck a "party in interest." *Western Pacific*, 284 U.S. at 51-52.

B. Truck is also a party in interest as a creditor. Section 1109(b) allows "a creditor" to be heard on "any issue," without limitation. The Fourth Circuit erred in concluding that, in its capacity as a creditor, Truck could raise only arguments that "relate to its status as a creditor." Pet. App. 25a (emphasis omitted). This restriction had no basis in Section 1109(b) or in Article III. Truck satisfies the requirements of Article III because the relief it seeks—amendment or reversal of an unconfirmable plan and the introduction of fraud-prevention measures for all claims—will alleviate a pocketbook injury that is particular to Truck. And Truck is a party in interest that has a statutory right to participate because it's a creditor, regardless of whether its status as an insurer independently renders it a party in interest. No more is required.

III. The Fourth Circuit erred in applying the judge-made insurance-neutrality doctrine to exclude Truck from being heard in the bankruptcy.

A. The insurance-neutrality doctrine embraced by the Fourth Circuit is a "judicially self-imposed limit on the exercise of federal jurisdiction" that some courts have impermissibly engrafted onto Section 1109(b). *In re Thorpe Insulation Co.*, 677 F.3d 869, 888 (9th Cir. 2012) (cleaned up). These courts have candidly acknowledged that the doctrine is inconsistent with "a literal reading of section 1109(b)" and have described their holdings as a prudential choice, not a statutory or constitutional mandate. *In re James Wilson Associates*, 965 F.2d 160, 169 (7th Cir. 1992). That prudential choice is grounded in those courts' assessment that "other limitations on standing" not present in the Code's text promote the speed and efficiency of bankruptcy proceedings. *Ibid*. But that is a call for Congress—not courts—to make.

Courts may not demand that a litigant surmount hurdles to standing that aren't present in the text Congress enacted "merely because 'prudence' dictates." *Lexmark International, Inc*. v. *Static Control Components, Inc*., 572 U.S. 118, 128 (2014). Instead, courts must determine the scope of statutory rights according to the text of the particular statute, using "traditional tools of statutory interpretation." *Bank of America* v. *City of Miami*, 581 U.S. 189, 197 (2017). Once the scope of Congress's choice is clear, courts have "no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821).

As a result, once Article III standing is established, the only relevant question is whether "Congress has authorized" a litigant to be heard. *Lexmark*, 572 U.S. at 128. That's enough to reject the judge-made "insurance-neutrality" doctrine applied below.

Congress has authorized a broad class of parties to be heard in bankruptcy—a class that certainly includes an insurer with near-exclusive financial responsibility for claims against the debtor.

B. The court of appeals' approach frustrates Congress's design in Chapter 11 bankruptcies and silences the only party with a stake in raising crucial requirements of the Code. Section 1109(b) promotes the just resolution of bankruptcies by carrying into effect Congress's policy choice to "broaden the rights * * * to participate in corporate reorganization proceedings," not restrict them. *In re Amatex Corp.*, 755 F.2d 1034, 1042 (3d Cir. 1985) (citation omitted). This broad participation is beneficial because courts are statutorily obligated to ensure compliance with the Code, and hearing from all interested parties enhances courts' ability to fulfill that duty. 11 U.S.C. § 1129(a). The Fourth Circuit's approach, in contrast, hinders courts' ability to enforce the Code's requirements by excluding from participation the only parties that have an interest in seeing those requirements respected. Its approach disserves Congress's objectives, increases the already heavy burdens on courts, and magnifies the risk that collusive and unlawful plans will evade review.

ARGUMENT

I. Section 1109(b) Grants A Right To Be Heard To A Party With Article III Standing.

Section 1109(b) authorizes a "party in interest" in a bankruptcy proceeding to be heard on "any issue" in that proceeding. The plain meaning of Congress's words, this Court's prior interpretation of the same language in other statutes, and the statutory history of the bankruptcy laws all confirm that the right to be

heard afforded to a "party in interest" in Section 1109(b) is coextensive with the traditional standard for Article III standing. That standard is satisfied whenever a party can show "a personal stake in the case"—in other words, when it's "able to sufficiently answer the question: 'What's it to you?'" *TransUnion LLC* v. *Ramirez*, 141 S. Ct. 2190, 2203 (2021) (citations omitted).

A. Text, history, and precedent confirm that the scope of Section 1109(b) is coextensive with Article III.

1. Discerning Section 1109(b)'s scope starts "with the text of the statute." *Bartenwerfer* v. *Buckley*, 598 U.S. 69, 74 (2023) (citation omitted). It provides:

> 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.

11 U.S.C. § 1109(b).

The right Section 1109(b) confers to "appear" and "be heard" extends to anyone who is a "party in interest." Although Section 1109(b) enumerates various parties who qualify automatically, Congress's use of "including" makes clear that the list is illustrative rather than exhaustive. "[T]he term 'including'" ordinarily indicates "that the specifically mentioned [items] are not exclusive." *Herb's Welding, Inc.* v. *Gray*, 470 U.S. 414, 423 n.9 (1985). And the Code's rules of construction confirm that "including" is "not limiting." 11 U.S.C. § 102(3). So the critical question

is who is a "party in interest"—illuminated, but not limited, by the parties listed in the statute itself. See *United States Bank National Ass'n* v. *Village at Lakeridge, LLC*, 583 U.S. 387, 390 (2018) ("including" in the Code denotes "non-exhaustive" list encompassing others similar to the listed terms).

Because "party in interest" is nowhere defined in the Bankruptcy Code, construing it begins with the words' ordinary meaning. See *Schindler Elevator Corp.* v. *United States ex rel. Kirk*, 563 U.S. 401, 407 (2011). The word "party" as used in this context is best understood as "one concerned in an affair." *Webster's New International Dictionary* 1784 (2d ed. 1943). Although in other contexts "party" can refer to plaintiffs and defendants *already* involved in litigation, it cannot naturally bear that meaning here because Section 1109(b) governs who is *eligible* to appear and be heard in Chapter 11 proceedings. And "interest" denotes "[c]oncern, or the state of being concerned or affected, esp. with respect to advantage, personal or general." *Webster's Second*, *supra*, at 1294.

So a "party in interest" is a person that is concerned or affected by the proceeding at hand. Such a person may "raise," "appear," and "be heard on" "*any* issue" in the Chapter 11 case, 11 U.S.C. § 1109(b) (emphasis added)—and thus is entitled to present an argument "of whatever kind." *United States* v. *Gonzalez*, 520 U.S. 1, 5 (1997) (citation omitted); see *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214, 218-20 (2008).

2. That ordinary meaning is reinforced by judicial interpretations that had previously been given to the same term at the time Congress engrafted it into

Section 1109(b) in 1978. It's well established that "when a statutory term is 'obviously transplanted from another legal source,' it 'brings the old soil with it.'" *Taggart* v. *Lorenzen*, 139 S. Ct. 1795, 1801 (2019) (quoting Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 537 (1947)). This Court has applied that principle to the Bankruptcy Code on many occasions. See, e.g., *ibid.*; *Field* v. *Mans*, 516 U.S. 59, 69-70 (1995). By making "party in interest" the touchstone for the right to appear and be heard in Section 1109(b), Congress borrowed a term it had used in many other statutes where its meaning was settled by this Court's precedent as effectively coextensive with Article III standing.

a. When the Bankruptcy Code was enacted in 1978, this Court had already expounded on the meaning of "party in interest" many times in interpreting the Transportation Act of 1920 (Esch-Cummins Act), Pub. L. No. 66-152, ch. 91, sec. 400, § 1(20), 41 Stat. 456, 478 (formerly codified at 49 U.S.C. § 1(20) (1970)) (repealed 1976). The Transportation Act provided that "[a]ny construction, operation, or abandonment" of railroad lines contrary to certain statutory requirements "may be enjoined by any court of competent jurisdiction at the suit of * * * any party in interest." *Ibid.*

In *Western Pacific California Railroad Co.* v. *Southern Pacific Co.*, this Court held that "party in interest" under the Transportation Act included a competitor railroad "directly and adversely affect[ed]" by the challenged construction. 284 U.S. 47, 51-52 (1931). The Court rejected the argument that a "party in interest" must have "some clear legal right for

which it might ask protection under the rules commonly accepted by courts of equity." *Id.* at 51. At the same time, Congress had "no purpose to permit any individual so inclined to institute such a proceeding." *Ibid.* "The complaint," the Court explained, "must possess something more than a common concern for obedience to law." *Ibid.*

Western Pacific relied, in part, on one of the Court's seminal standing cases, *Frothingham* v. *Mellon*, 262 U.S. 447 (1923). In *Mellon*, the Court held a plaintiff must "show, not only that the statute" being challenged "is invalid, but that he has or is immediately in danger of sustaining some direct injury as the result of its enforcement." *Ibid.* Showing "merely that he suffers in some indefinite way in common with people generally" is insufficient to invoke the Court's jurisdiction. *Ibid.* Applying those principles, *Western Pacific* held that, because the competitor railroad had shown that the proceeding "may directly and adversely affect [its] welfare," it had "the standing of a 'party in interest' within intendment of the act." 84 U.S. at 52; see also *Claiborne-Annapolis Ferry Co.* v. *United States*, 285 U.S. 382, 390 (1932) (applying *Western Pacific* and holding that a competitor ferry company was a "party in interest").

The Court subsequently applied the same standard in *L. Singer & Sons* v. *Union Pacific Railroad Co.*, 311 U.S. 295 (1940). It reiterated *Western Pacific*'s holding that an individual doesn't qualify as a "party in interest" "unless he 'possesses something more than a common concern for obedience to law.'" *Id.* at 304. That led the Court to reject the claim of fruit sellers who sought to challenge an extension of a rail

line in a neighboring city—where they did no business—on the theory that the line would service a market where other merchants offered their wares. *Id.* at 301-04. That connection was too attenuated to allow suit because the fruit sellers' "welfare cannot be directly, but only indirectly and consequentially, affected" by the extension. *Id.* at 301. But this Court reaffirmed that "[a]n individual [with] some special and peculiar interest which may be directly and materially affected by alleged unlawful action" counts as a "'party in interest' within the meaning of the statute." *Ibid.*

The Court has applied the same reading of "party in interest" in other contexts as well. For example, in *Alton Railroad Co.* v. *United States*, 315 U.S. 15 (1942), the Court held that under the Motor Carrier Act of 1935, Pub. L. No. 74-255, ch. 498, § 205(h), 49 Stat. 543, 543, 550 (formerly codified at 49 U.S.C. § 305(g) (1976)) (repealed 1978)—which extended "the same right of relief in court by any party in interest" under the Transportation Act to orders of the Interstate Commerce Commission—railroad companies in competition with a motor-vehicle carrier approved by the Commission were "parties in interest." *Alton*, 315 U.S. at 18-20. The railroads "clearly ha[d] a stake as carriers in the transportation situation which the order of the Commission affected," as they compete with the motor vehicle carrier "for automobile traffic in territory served by him." *Id.* at 19.

So by the time Congress adopted Section 1109(b) in 1978, "party in interest" had acquired a well-understood meaning. Congress's decision to use that term in the Bankruptcy Code carried that meaning forward. As a result, when Congress incorporated the

phrase "party in interest" in Section 1109(b), it brought along with it the old-soil meaning of any individual "directly and adversely affect[ed]" by the reorganization. See *Western Pacific*, 284 U.S. at 51-52.

b. That standard is effectively coextensive with the demands of Article III standing. *Western Pacific* made this connection clear by grounding its interpretation of "party in interest" in *Mellon*, which recognized that plaintiffs who are "immediately in danger of sustaining some direct injury as the result of" the challenged action have Article III standing. 262 U.S. at 488; see *Western Pacific*, 284 U.S. at 51-52.

By 1978, the Court had long held that Article III requires the plaintiff to establish that he "has sustained, or is immediately in danger of sustaining, a direct injury as a result of [the challenged] action" and it excludes plaintiffs who assert nothing but "a general interest common to all members of the public." *Ex parte Levitt*, 302 U.S. 633, 636 (1937) (per curiam); see also *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 563 (1992) (plaintiff must be "'directly' affected" by the challenged action) (quoting *Sierra Club* v. *Morton*, 405 U.S. 727, 735 (1972)). By interpreting "party in interest" in *Western Pacific* and other cases to include one who is "directly and adversely affect[ed]" by the challenged action, this Court put it on the same footing as Article III. The right Section 1109(b) confers to raise "any issue" also aligns with Article III, which allows a party to present any *argument* in support of the "form of *relief* that is sought." *Davis* v. *FEC*, 554 U.S. 724, 734 (2008) (citation omitted; emphasis added); see also *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S 332, 353 (2006) (inquiry is whether "the *injury* * * * entitle[s the plaintiff] to seek a remedy") (emphasis added).

3. Section 1109(b)'s broad language conferring that participation right was no accident or afterthought. If Congress had intended to restrict participatory rights in Chapter 11 proceedings more narrowly than Article III, "it easily could have drafted language to that effect." *Gallardo ex rel. Vassallo* v. *Marstiller*, 596 U.S. 420, 429 (2022) (citation omitted). Indeed, in prior bankruptcy provisions and other statutes, Congress used language to *restrict* participation. See, e.g., 11 U.S.C. § 67(c) (1976) (repealed 1979) (restricting appellate rights to "person[s] aggrieved" by a specific order); 42 U.S.C. § 2000e-5(b), (f) (allowing "person claiming to be aggrieved" to file Title VII action); 18 U.S.C. § 1964(c) (allowing only person "injured in his business or property" to bring claim).

Courts have interpreted the restrictive language in those statutes to require a showing of more than Article III standing alone. See *In re Technicool Systems, Inc.*, 896 F.3d 382, 385 (5th Cir. 2018) ("person aggrieved" standard in bankruptcy is "more exacting than the test for Article III standing") (citation omitted); *Thompson* v. *North American Stainless, LP*, 562 U.S. 170, 177 (2011) ("person aggrieved" in Title VII "must be construed more narrowly than the outer boundaries of Article III"); *Denney* v. *Deutsche Bank AG,* 443 F.3d 253, 266 (2d Cir. 2006) (18 U.S.C. § 1964 is "more rigorous" than Article III).[2]

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[2] In other contexts, this Court has suggested that similar "person aggrieved" language "showed a congressional intention to define standing as broadly as is permitted by Article III," *Bank of America Corp.* v. *City of Miami*, 581 U.S. 189, 197 (2017) (citation omitted), leaving some room for debate as to the scope of a person aggrieved standard. But Congress chose to depart from the old

Congress eschewed such limitations in Section 1109(b), and its "choice to depart from the model of * * * closely related statute[s] is a choice [this Court] may [not] disregard." *SAS Institute, Inc.* v. *Iancu*, 138 S. Ct. 1348, 1355 (2018). Section 1109(b)'s plain text and surrounding context thus demand that any party with Article III standing be allowed to "raise" and "be heard" on "any issue."

B. Statutory history confirms that Section 1109(b)'s right to appear and be heard is coextensive with Article III.

This Court interprets provisions of the Bankruptcy Code in light of their "broader statutory history"—including corresponding statutory provisions in predecessor statutes like the Bankruptcy Act. *Fidelity Financial Services, Inc.* v. *Fink*, 522 U.S. 211, 220 (1998). Courts properly consider the "history of the law as previously existing" in "construing any act of legislation." *United States* v. *Wong Kim Ark*, 169 U.S. 649, 653-54 (1898); accord *BNSF* v. *Loos*, 139 S. Ct. 893, 906 (2019) (Gorsuch, J., dissenting) ("the record of *enacted* changes Congress made to the relevant statutory text over time" is "the sort of textual evidence everyone agrees can sometimes shed light on meaning"). "[A] change in the language of a prior statute presumably connotes a change in meaning." Antonin Scalia & Bryan Garner, *Reading Law: The Interpretation of Legal Texts* 256 (2012). Here, the statutory history of Section 1109(b) powerfully confirms the natural meaning of the text: Section 1109(b) represents the culmination of Congress's expansion

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Bankruptcy Act's "person aggrieved" limitation altogether in Section 1109(b).

over several decades of the right to appear and be heard in a Chapter 11 case.

1. Before the 1930s, the primary method of reorganizing corporations unable to keep up with their debts was the "equity receivership." *United States* v. *Key*, 397 U.S. 322, 329 (1970). The equity receivership was a "judge-made device [that] was designed to preserve the debtor business as a going concern by cancelling claims against it, in return for which cancellation the claimants received debt or equity interests in the new organization, which then acquired the assets of the old corporation in a judicial sale." *Ibid.*

Under the equity-receivership model, the right of intervention was "extremely limited," and the privilege of intervention "uncertain of attainment." SEC, *Report on the Study and Investigation of the Work, Activities, Personnel and Functions of Protective and Reorganization Committees*, Part VIII, at 191 (1940), available at tinyurl.com/4au6rxbt. A key premise was the legal fiction that non-parties' interests were adequately represented by others. Stockholders, for example, were deemed represented by the officers and directors of their corporation, while creditors were "theoretically represented by the receiver." *Id.* at 184-84. Both were ordinarily denied a right to participate in the proceedings. *Ibid.* As a result, while equity receiverships didn't technically "foreclose individual participation," they rarely allowed for it in practice. 7 Collier on Bankruptcy ¶ 1109.LH[2][a] (16th ed. rev. 2022).

2. In the decades since, Congress gradually abandoned that limited-participation framework. See *In re Keystone Realty Holding Co.*, 117 F.2d 1003,

1005 (3d Cir. 1941) (discussing Congress's expansion of "the right to be heard"). In 1934, when Congress adopted the first true corporate-reorganization statute, it provided that the debtor had the right to be heard on all questions, while any creditor or stockholder had "the right to be heard on the question of the permanent appointment of any trustee or trustees, and on the proposed confirmation of any reorganization plan." Act of June 7, 1934, ch. 424, § 77B, 48 Stat. 912, 917 (formerly codified at 11 U.S.C. § 207 (1934)) (repealed 1938).

In 1938, Congress overhauled the corporate reorganization laws and further broadened the right of participation. 7 Collier, *supra*, § 1109.LH[2][c]; *see* Chandler Act, ch. 575, § 206, 52 Stat. 883, 894 (1938) (formerly codified at 11 U.S.C. § 606 (1976)) (repealed 1979). Congress provided that "[t]he debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter." *Ibid.* This gave creditors, stockholders, and indenture trustees—in addition to debtors—complete participatory rights, without any limitation on the substantive issues on which they could be heard. But parties beyond those expressly named in the statute were still excluded.[3]

3. That changed when Congress adopted Section 1109 as part of the new Bankruptcy Code. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 1109, 92 Stat. 2549, 2629. In Section 1109(b), Congress enshrined even more expansive participatory rights

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[3] The Chandler Act allowed a "party in interest" to intervene "for cause shown," but not as of right. § 207, 52 Stat. at 894.

when it moved from an exclusive list of who could be heard to the general term "party in interest" followed by a non-exclusive list illustrating who fit that description.

In sum, the statutory history confirms what text, context, and structure make plain. "When Congress acts to amend a statute, [this Court] presume[s] it intends its amendment to have real and substantial effect." *Intel Corp.* v. *Advanced Micro Devices, Inc.*, 542 U.S. 241, 258-59 (2004) (citation omitted). Congress's deliberate choice to replace an exclusive list with the more general term "party in interest" followed by a non-exclusive, illustrative list had consequences on participatory rights. By using a term that was well understood at the time to encompass any directly and adversely affected party, Congress made plain its intent to expand such rights to the limits of Article III.

II. Truck Is A Party In Interest Under Section 1109(b) With The Right To Appear And Be Heard On Any Issue.

Under the text Congress enacted, Truck is a party in interest twice-over. First, because the financial burden of the claims (including fraudulent claims facilitated by the plan's failure to comply with the Code) falls almost entirely on Truck as Kaiser's insurer; and second, because Truck is a creditor—a group Congress expressly designated a party in interest.

A. Truck is a party in interest as an insurer because it's responsible for paying the bankruptcy claims.

As Kaiser's insurer, Truck will suffer a direct pocketbook injury as a result of the plan's unlawful

withholding of fraud-prevention measures only for insured claims, while extending such measures for uninsured claims. That amply qualifies Truck as a "party in interest" within the plain meaning of Section 1109(b) and the Article III principles that it embodies.[4]

1. Truck has a sufficient stake in this reorganization to be a party in interest because the plan will cause Truck harm that participation would redress. Kaiser's bankruptcy proceeding "may directly and adversely affect" Truck's "welfare," *Western Pacific*, 284 U.S. at 51, because Truck has a financial obligation to pay claims—even fraudulent claims—of Kaiser's asbestos creditors. That is a classic "pocketbook harm." *FEC* v. *Cruz*, 142 S. Ct. 1638, 1646 (2022).[5] As this Court observed in holding that another party had standing to challenge the resolution of a bankruptcy proceeding, "[f]or standing purposes, a loss of even a small amount of money is ordinarily an injury." *Czyzewski* v. *Jevic Holding Corp.*, 580 U.S. 451, 464 (2017) (citation omitted). Here, as in *Czyzewski*, "[t]he ruling [below] could well have cost petitioners considerably more." *Ibid.*

That injury is traceable to Kaiser's bankruptcy proceeding and the confirmed plan. That proceeding presented a crucial opportunity for Kaiser and Truck

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[4] The Fourth Circuit didn't examine Truck's Article III standing as an insurer—its Article III holding was limited to Truck's standing as a creditor. Pet. App. 25a-26a.

[5] The fact the insurance policies provide coverage for fraudulent claims doesn't, as the Fourth Circuit mistakenly reasoned, eliminate this injury. Pet. App. 23a. That Truck has agreed to defend fraudulent claims doesn't mean that Truck agreed to be defrauded.

to protect themselves from fraudulently inflated claims while ensuring adequate payment for all bona fide claims. Truck's merits arguments—which, "[f]or standing purposes," this Court "accept[s] as valid," *Cruz*, 596 U.S. at 298—posit that the bankruptcy court cannot confirm the plan as proposed without *Garlock*-style fraud-prevention measures. As Truck showed at length in the courts below, a plan without these measures fails to comply with Section 524(g)'s requirements and the good-faith requirement of Section 1129. E.g., Pet. C.A. Br. 33-55. For present purposes, the key point is that the withholding of these safeguards will cause Truck concrete harm.

Kaiser's bankruptcy not only could, but *did*, adversely affect Truck's welfare—in two ways. First, the confirmed plan failed to protect against fraudulent bankruptcy claims against Kaiser—claims for which Truck will be responsible. An insurer indisputably has an interest in the determination of a covered liability. See, e.g., *California Department of Toxic Substances Control* v. *Jim Dobbas, Inc.*, 54 F.4th 1078, 1085-86 (9th Cir. 2022) ("insurers easily satisfy the requirements of constitutional standing" to intervene in liability action).

Second, the plan's channeling injunction "permanently and forever stay[s], restrain[s] and enjoin[s]," Pet. App. 286a, any action against Kaiser, Kaiser's parent company, all of Kaiser's current and former directors and shareholders, and any "[e]ntities, other than * * * Insurers, that are * * * directly or indirectly liable" for Kaiser's asbestos claims, Pet. App. 201a. Truck now stands alone in carrying the financial burden of these claims. And "when a federal court gives its approval to a [bankruptcy] plan that allows a

party to put its hands into other people's pockets, the ones with the pockets are entitled to be fully heard and to have their legitimate objections addressed." *In re Global Industrial Technologies, Inc.*, 645 F.3d 201, 204 (3d Cir. 2011).

In *Global Industrial Technologies*, for instance, the Third Circuit held that insurers were parties in interest because they were "funding sources who will have to address the liabilities" of the debtor even though the plan "preserve[d] their coverage defenses." *Id.* at 212; see also *In re Congoleum Corp*., 414 B.R. 44, 57 (D.N.J. 2009) ("each [of seven] successive and different court[s] has found that the insurers have standing to challenge the Plan due to their fundamental stake in the outcome of the bankruptcy proceedings").

For similar reasons, the relief Truck seeks—a plan that includes the fraud-prevention measures now standard in Section 524(g) plans following *Garlock*, which already apply to *uninsured* claims under Kaiser's plan—would sufficiently redress the financial injury it faces. The bankruptcy proceeding offered a one-time opportunity to prevent fraudulent claims through claims procedures that are standard in other plans. Had the bankruptcy court ordered those procedures for all claims, insured and uninsured alike—it would have substantially reduced the value of the bankruptcy claims, and thus Truck's liability for those claims. See J.A.135; C.A.J.A.5221 (showing hundreds of millions of dollars in Kaiser payments to asbestos claimants before bankruptcy); *In re Garlock Sealing Technologies*, 504 B.R. 71, 94-95 (Bankr. W.D.N.C. 2014) (concluding that valuation of present and future asbestos claims based on past resolutions should be

reduced by over 90% due to fraudulent withholding of exposures).

Crucially, Truck wasn't required to demonstrate that a bankruptcy conducted in conformity with the Code was *certain* to improve its position. "Article III's strictures are met not only when a plaintiff complains of being deprived of some benefit, but also when a plaintiff complains that she was deprived of a chance to obtain a benefit." *Robertson* v. *Allied Solutions, LLC*, 902 F.3d 690, 697 (7th Cir. 2018); *Teton Historic Aviation Foundation* v. *U.S. Department of Defense*, 785 F.3d 719, 724 (D.C. Cir. 2015) (per curiam) ("a plaintiff suffers a constitutionally cognizable injury by the loss of an *opportunity to pursue a benefit* * * * even though the plaintiff may not be able to show that it was *certain to receive* that benefit") (citation omitted). Here, Truck was deprived of "a chance to obtain" the benefit of having claims against its insured—which its insured brought into bankruptcy—resolved subject to key fraud-prevention measures. *Czyzewski*, 580 U.S. at 464.

2. The Fourth Circuit reached the opposite conclusion only by disregarding Truck's obvious financial stake in the reorganization. The court reasoned that Truck "was not entitled to [fraud-prevention] measures before the bankruptcy," Pet. App. 23a, and therefore suffered no harm from the absence of those measures in Kaiser's plan. But that analysis proceeds from the wrong baseline—i.e., Truck's position "before the bankruptcy." *Ibid.* Once Kaiser filed its Chapter 11 petition, the Code's requirements became controlling: At that point, Truck was entitled to the fraud-prevention measures that the Code requires for any confirmable Section 524(g) plan. That is, once Kaiser

filed its petition, Chapter 11 became the benchmark for Truck's rights, and Section 1109(b) authorized Truck to raise and be heard on any departure from that benchmark that it alleged would likely cause it harm.

The respondents disagree with Truck's position on what the Code required. See Claimants' Br. in Opp. 19-21. But whether Truck's argument that it was entitled to particular procedures is sound is of no moment for present purposes. In assessing Truck's *standing* to participate in this Chapter 11 proceeding, the courts below were required to assume the validity of Truck's claim on the merits. *Cruz*, 596 U.S. at 298.

In one respect, even the Fourth Circuit recognized that Truck's insurer status rendered it a party in interest. But it nevertheless refused to hear Truck on "any issue." Pet. App. 24a-25a. The Fourth Circuit accepted that Truck could challenge the insurance finding (rejecting Truck's coverage defense) on the merits and undertook a detailed discourse on the contours of California insurance law. Pet. App. 17a-22a. But, notwithstanding its recognition that the finding "was prospectively binding on Truck" and barred Truck from asserting "a coverage defense in individual suits," Pet. App. 22a n.9, the Fourth Circuit concluded the plan didn't alter Truck's rights. Having considered Truck's merits arguments on this finding, the Fourth Circuit offered no justification for disregarding Truck's other challenges to the plan. If Truck has the ability to challenge the plan finding as a party in interest, Section 1109(b) permits Truck to be heard "on *any* issue" in the Chapter 11 case. See *infra* § II.B.

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Lest the trees obscure the forest, Truck's interest in this proceeding is unmistakable. Truck has the near-exclusive responsibility as Kaiser's insurer to pay for the asbestos claims against Kaiser. When Kaiser filed for bankruptcy, those claims became bankruptcy claims subject to the power of the bankruptcy court. Truck argues, as the U.S. Trustee has argued elsewhere, see *infra* § III.B, that the Code requires certain measures in the plan that protect against fraud in those asbestos bankruptcy claims. Withholding those measures means Truck's liability remains inflated. Because resolving the claims through the plan may directly affect Truck's financial liability, Truck is a party in interest.

B. Truck is a party in interest because it's a creditor.

Truck is also a party in interest because, as the Fourth Circuit recognized, Truck is a *creditor* of Kaiser. Section 1109(b) expressly includes a "creditor" as an example of a "party in interest," so Truck has the right to "appear and be heard on any issue" for that reason, too. See 11 U.S.C. § 1109(b).

Despite recognizing Truck's creditor status, the Fourth Circuit held that Truck couldn't be heard on its objections to the plan in that capacity because its objections "in no way relate to its status *as a creditor*." Pet. App. 25a. In effect, the Fourth Circuit rewrote Section 1109(b) to allow a creditor only "to assert that interest with respect to any issue to which it pertains." Pet. App. 24a-25a (quoting *In re James Wilson Associates*, 965 F.2d 160, 169 (7th Cir. 1992)).

That invented limitation is untenable. It defies Section 1109(b)'s plain text, which expressly permits parties in interest—expressly including "a creditor"—to appear and be heard on "*any* issue." 11 U.S.C. § 1109(b) (emphasis added). The Fourth Circuit erroneously attempted to ground this requirement—that a creditor must match each argument with an injury in its capacity as a creditor—in Article III. Pet. App. 25a. That limitation has no basis in Article III.

Article III requires plaintiffs to establish standing "separately for each *claim* that they press and each *form of relief* that they seek"—not for every *argument* that they make to support a claim for relief. *Cruz*, 596 U.S. at 299 (emphases added); see *Collins* v. *Yellen*, 141 S. Ct. 1761, 1779 (2021) (standing to challenge statutory removal restrictions where injury related to a particular agency action); *DaimlerChrysler*, 547 U.S. at 353 (relevant Article III question is whether "th[e] injury * * * entitle[s] [the plaintiff] to seek a remedy"). Here, Truck seeks only one form of relief—an order vacating confirmation of the plan—and that relief would directly redress its pocketbook injury.

The Fourth Circuit reasoned that Truck, as a creditor, was impermissibly trying to assert the rights of third parties. Pet. App. 25a. Not so. Truck asserts its own right to be heard, and does so to protect its own financial interests. The statute means what it says—that "a creditor" may raise "any issue" in a Chapter 11 proceeding. That's exactly what Truck seeks to do here. So Truck's creditor status is an independent reason that it's a party in interest under Section 1109(b).

III. The Insurance-Neutrality Doctrine Has No Statutory Basis And Should Be Discarded.

The Fourth Circuit, following some other courts, rejected a straightforward application of Section 1109(b) based not on anything in the statute but by embracing the so-called "insurance-neutrality" doctrine—"a judicially self-imposed limit on the exercise of federal jurisdiction" that some courts have engrafted onto Section 1109(b). *In re Thorpe Insulation Co.*, 677 F.3d 869, 888 (9th Cir. 2012) (cleaned up); compare *Global Industrial Technologies*, 645 F.3d at 211 ("Article III standing and standing under the Bankruptcy Code are effectively coextensive"), with *In re C.P. Hall Co.*, 750 F.3d 659, 660-61 (7th Cir. 2014) (injury that "suffices for Article III standing" is insufficient for party-in-interest status). That doctrine has no sound basis and should be rejected.

The insurance-neutrality doctrine, as applied in the decision below and in some other circuits, undisputedly conflicts with "a literal reading of section 1109(b)." *James Wilson Associates*, 965 F.2d at 169. This Court has made clear that courts cannot impose restrictions on the right to be heard that have no basis in statutory text "merely because 'prudence' dictates." *Lexmark International, Inc*. v. *Static Control Components, Inc*., 572 U.S. 118, 128 (2014). That precedent—along with the plain text of the statute—requires rejecting the insurance-neutrality doctrine applied below.

A. The insurance-neutrality doctrine has no basis in Article III or the Code.

Some courts have supplanted Congress's policy choice with their own view of what constitutes an "expeditious" and "efficient reorganization" of a Chapter 11 debtor. *In re Refco Inc.*, 505 F.3d 109, 118 (2d Cir. 2007) (citation omitted) (suggesting that "lenient" standing rules under Section 1109(b) would "thwar[t] the goal of a speedy and efficient reorganization"). These courts apply a restrictive "insurance-neutrality" doctrine. Under that doctrine, courts ask not whether a bankruptcy proceeding may directly affect an insurer's interests, but instead whether a specific plan "increase[s] the insurer's pre-petition obligations or impair[s] the insurer's pre-petition policy rights." Pet. App. 16a. That rule lacks any basis in Article III or the Code. It's therefore illegitimate and should be rejected.

1. Judge-made limitations on participation in federal-court litigation beyond what Article III and applicable statutes require cannot be reconciled with "the undisputed constitutional principle that Congress, and not the Judiciary, defines the scope of federal jurisdiction within the constitutionally permissible bounds." *New Orleans Public Service, Inc.* v. *Council of City of New Orleans*, 491 U.S. 350, 359 (1989) (citing *Kline* v. *Burke Construction Co.*, 260 U.S. 226, 234 (1922)). Once Congress has afforded a litigant a statutory right to be heard, courts "are bound to proceed to judgment and to afford redress to suitors before them in every case to which their jurisdiction extends." *Chicot County* v. *Sherwood*, 148 U.S. 529, 534 (1893). This "obligation" to "exercise the ju-

risdiction given them" is "virtually unflagging." *Colorado River Water Conservation District* v. *United States*, 424 U.S. 800, 817 (1976); see *Sprint Communications, Inc.* v. *Jacobs*, 571 U.S. 69, 77 (2013) (similar).[6] In short, this Court has made clear that courts may not demand that a litigant surmount hurdles to standing that aren't present in the text Congress enacted.

To be sure, courts have sometimes described federal jurisdiction as having both "constitutional" and "prudential" limits. *Allen* v. *Wright*, 468 U.S. 737, 750 (1984) (citation omitted). The prudential gloss on standing—"more than an intuition but less than a rigorous and explicit theory"—was based on a set of judicial policy concerns. *Elk Grove Unified School District* v. *Newdow*, 542 U.S. 1, 11-12 (2004) (citation omitted). In rare cases, the Court sometimes elected "to stay its hand" where a party lacked "prudential standing" even if that party had constitutional standing and a cause of action. *Id.* at 17-18.

But this Court interred that approach in *Lexmark*, reaffirming the centrality of Congress's role in determining who can invoke the judicial power of federal courts. 572 U.S. at 128. Applying "traditional principles of statutory interpretation," courts must ask not whether, in the court's "judgment[,] Congress *should* have authorized" the participation of a party in federal court, "but whether Congress in fact did so." *Ibid.* "Just as a court cannot apply its independent policy

[6] The narrow doctrines of federal-court abstention in matters of "state-federal relations" aren't at issue here, where a party in interest seeks merely to appear and be heard in an already pending federal bankruptcy proceeding. See, e.g., *Colorado River Water District*, 424 U.S. at 818.

judgment to recognize a cause of action that Congress has denied, it cannot limit a cause of action that Congress has created merely because 'prudence' dictates." *Ibid.* (citation omitted).

Indeed, the term "prudential standing" is "misleading, for the requirement at issue is in reality tied to a particular statute. The question is whether the statute grants the plaintiff the cause of action that he asserts." *City of Miami*, 581 U.S. at 196-97. *Lexmark* clarified that limitations on standing based on what courts may once have called "prudence" must be based on the statute—the "zone-of-interests" test, for instance, is properly understood as a question of the *statute's* reach, not the court's assessment of how broadly a statute *should* be construed. 572 U.S. at 129 (citing *Bennett* v. *Spear*, 520 U.S. 154, 163 (1997)). The court's role is to use "traditional tools of statutory interpretation" to determine whether Congress has authorized a party to seek redress from a federal court. *City of Miami*, 581 U.S. at 197 (citation omitted).

2. The insurance-neutrality doctrine is a judge-made rule with no foundation in Article III or the Code that cannot survive under *Lexmark*.

Although cloaked in the terminology of Article III standing, the doctrine is an impostor. It doesn't embody any Article III principle, and in practice it excludes parties even when they satisfy Article III, and even when events in the bankruptcy have a direct financial impact on them. In *Hall*, for example, the Seventh Circuit concluded that an excess insurer wasn't a party in interest and couldn't object to a settlement between the debtor and its primary insurer

even though the excess insurer faced "an imminent threat to its financial assets" that was "traceable to the settlement and could have been eliminated by the bankruptcy court's enjoining the settlement." 750 F.3d at 660-61.

Nor is insurance neutrality rooted in the Code. Courts have recognized that "the concept of [i]nsurance [n]eutrality is not found in the Bankruptcy Code." *In re Diocese of Camden*, 653 B.R. 309, 356 (Bankr. D.N.J. 2023). Indeed, some courts have candidly admitted that the point of the judicially crafted concept is "to prevent insurance companies from objecting to confirmation." *In re Boy Scouts of America and Delaware BSA, LLC*, 642 B.R. 504, 667 (Bankr. D. Del. 2022). But it isn't for courts to override plain statutory text with judicial concerns about speed and efficiency. Instead, courts must attend to the text of the particular statute, using "traditional tools of statutory interpretation." *City of Miami*, 581 U.S. at 197 (citation omitted). Once the scope of Congress's choice is clear, courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821).

That's enough to reject the judge-made insurance-neutrality doctrine applied below. Article III poses no impediment. And the plain text of the statutory provision at issue authorizes broad participation of parties that certainly include an insurer and creditor with near-exclusive financial responsibility for claims against the debtor. This Court has made clear that courts aren't free to impose prudential restrictions where Congress has conferred the right to be heard.

The insurance-neutrality doctrine represents just the kind of judicial "policy choice" that is the preserve of Congress, not the courts. *United States* v. *Noland*, 517 U.S. 535, 543 (1996). Here, the court below applied a judge-made standing limitation to preclude Truck's objections to the plan from being heard. Pet. App. 24a. The court acknowledged that this was the *sole* basis for its decision. *Ibid.* In the Fourth Circuit's view, it didn't matter whether Truck's interests could be affected by the bankruptcy proceedings. Pet. App. 23a-24a. All that mattered was the wooden before-and-after assessment of Truck's insurance policies under the insurance-neutrality doctrine. Pet. App. 16a, 23a-24a.

B. Section 1109(b)'s right to be heard promotes rigorous and considered bankruptcy outcomes.

Applying the broad right to be heard that Congress enacted in Section 1109(b) vindicates the participatory structure of Chapter 11 and promotes conformity to the demands of the Code. The experience of other courts that have long applied a plain-text reading of Section 1109(b)—including the Third Circuit, which is home to many major bankruptcies—demonstrates that the scheme Congress designed hardly sacrifices workability. See *Congoleum*, 414 B.R. at 57 (collecting seven "successive and different" courts holding "insurers have standing to challenge the Plan").

1. As many courts have recognized, Chapter 11 invites participation by any party that "holds a financial stake in the outcome of the proceeding such that the participant has an appropriate incentive to partic-

ipate in an adversarial form to protect his or her interests." *Thorpe*, 677 F.3d at 887 (quoting 7 Collier, *supra*, ¶ 1109.04). Through Section 1109(b), Congress has, in effect, allowed any party within the bounds of Article III standing to be heard. To shut interested parties, like insurers, *out* of the process "certainly does not comport with the notion of fair play that * * * underlies § 1109." *In re Congoleum Corp.*, 2005 WL 712540, at *2 (Bankr. D.N.J. Mar. 24, 2005) (citing *Phar-Mor, Inc*. v. *Coopers & Lybrand*, 22 F.3d 1228 (3d Cir. 1994)); *Baron & Budd, P.C.* v. *Unsecured Asbestos Claimants Committee*, 321 B.R. 147, 158 (D.N.J. 2005) (collecting cases and observing "that parties with potential responsibility to pay claims against debtors regularly have standing to participate in bankruptcy cases").

Moreover, shutting crucial stakeholders out of a bankruptcy proceeding undermines the value of the Chapter 11 process as a means of resolving all claims fairly. In the mass tort context, in particular, full participation is essential to resolve "the * * * holdup and collective action problems" that exist outside Chapter 11. Anthony J. Casey & Joshua C. Macey, *In Defense of Chapter 11 for Mass Torts*, 90 U. Chi. L. Rev. 973, 977, 1000 (2023). Indeed, "long-established principles of bankruptcy should lead judges to focus not on how these [restructuring] agreements affect what each party receives, but rather on how they can interfere with the flow of information needed to apply chapter 11's substantive rules." Douglas G. Baird, *Bankruptcy's Quiet Revolution*, 91 Am. Bankr. L.J. 593, 593 (2017)

Giving effect to Section 1109(b) "preserves the vitality of the adversarial process by assuring" that parties with "an actual * * * stake in the outcome" can present these issues "in a concrete factual context conducive to a realistic appreciation of the consequences of judicial action." *Lujan*, 504 U.S. at 581 (Kennedy, J., concurring) (quoting *Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982)).

Indeed, where "the bulk of the funding for the plan [is] to be provided by the Insurers," it strains text, context, and common sense not to conclude that those insurers "easily" have standing to object to the plan. *In re Congoleum Corp.*, 362 B.R. 167, 173-74 (Bankr. D.N.J. 2007). This is particularly so where the insurer wishes to object to "the unfairness of a plan which binds them contractually and which directly impacts their financial interests, unfairness which is traceable to conflicts of interest among Claimants' counsel"—precisely Truck's objection here. *Congoleum Corp.*, 414 B.R. at 57 (citation omitted) (holding that insurers "have standing to challenge the Plan due to their fundamental stake in the outcome of the bankruptcy proceedings"); *Global Industrial Technologies*, 645 F.3d at 211 (holding that Section 1109(b) and Article III are coextensive).

2. In contrast, the Fourth Circuit's approach frustrates the proper functioning of the bankruptcy process. Bankruptcy courts have a statutory obligation to determine whether a proposed plan complies with the requirements of the Code. 11 U.S.C. § 1129; see also *American United Mutual Life Insurance Co.* v. *City of Avon Park*, 311 U.S. 138, 146 (1940) (court must undertake "scrutiny of the circumstances" to

"exercise the 'informed, independent judgment' which is an essential prerequisite for confirmation of a plan") (citation omitted). By granting a broad right to be heard that encourages parties interested in the proceeding to raise arguments, Congress has promoted that aim while lessening the burden on courts to conduct their own independent inquiry. Silencing interested parties through prudential rules like the insurance-neutrality doctrine does just the opposite.

Permitting Truck to raise its objections to a plan that it will write the checks to fund accords with basic principles of bankruptcy, whose fundamental purpose is to "provid[e] a collective forum where parties can coordinate to resolve multiparty disputes." Anthony J. Casey & Joshua C. Macey, *The Bankruptcy Tribunal*, 96 Am. Bankr. L.J. 749, 750 (2022). This is particularly so in asbestos bankruptcies because Section 524(g) requires a supermajority of claimants to vote in support of a plan. 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb).

As a result, debtors often coordinate with asbestos claimants to design the plan before filing a petition. This can produce plans that disadvantage insurers and create an incentive for both the debtor and claimants to "use standing objections as a sword" to "neutraliz[e]" the "insurers' objections" to a plan that saddles them with liability. Leonard P. Goldberger, *Last Man Standing: Insurers' Participation in Plan Confirmation Process*, Am. Bankr. Inst. J., Nov. 2008, at 30, 31, 45; see also Mark D. Plevin et al., *The Future Claims Representative in Prepackaged Asbestos Bankruptcies: Conflicts of Interest, Strange Alliances, and Unfamiliar Duties for Burdened Bankruptcy Courts*, 62 N.Y.U. Ann. Surv. Am. L. 271, 288 (2006) (cataloguing collusive use of "pre-pack" plans of asbestos

reorganizations to craft "settlements * * * to be borne primarily by insurers—who are not afforded any role in negotiation").

That is all the more reason why the plain text of Section 1109(b) should control—and why the judge-made insurance-neutrality doctrine be discarded. Insurers responsible for these liabilities must have a seat at the table to ensure that courts are provided all of the facts and arguments necessary to make an informed decision whether the Code's criteria have been satisfied. Courts have an affirmative obligation under Section 1129 and Section 524(g) to make confirmation findings—they can't simply turn a blind eye and rubber stamp a result. But the insurance-neutrality doctrine "freezes * * * out of the process" parties other than the debtor's insiders and allies. Baird, *supra*, at 616.

The misinterpretation of Section 1109(b) applied below and elsewhere can result in there being *no* party with an incentive to raise these important arguments. In the *Maremont* and *Sepco* asbestos bankruptcies, for example, it fell to the United States Trustee to object to trusts that failed to include fraud-prevention measures. See Obj. of U.S. Tr. to Disclosure Statement and Joint Prepackaged Plan of Reorganization at 1-2, 10-18, *In re Maremont Corp.*, No. 19-10118 (Bankr. D. Del. Feb. 14, 2019), ECF No. 112; Obj. of U.S. Tr. at 10, 14-20, *In re Sepco Corp.*, No. 16-50058 (Bankr. N.D. Ohio Aug. 7, 2019), ECF No. 620. But here, the bankruptcy court is in one of six districts that have no United States Trustee.

Even in districts with a Trustee, the insurance-neutrality doctrine undermines the Trustee's important role. The Trustee's authority to participate in bankruptcy cases is governed by a provision whose text mirrors Section 1109(b). 11 U.S.C. § 307 ("[T]rustee may raise * * * any issue"). If a party in interest can raise only arguments that redress an injury to that party, it would imperil the Trustee's role as a "bankruptcy watch-do[g] to prevent fraud, dishonesty, and overreaching in the bankruptcy arena." H.R. Rep. No. 95-595, at 88 (1977), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6049.

So if the only party with a financial incentive to guard against fraudulent claims is shut out, there will be no one to raise these objections. This case proves the point. No appellate review of the plan's compliance with the Code has ever been undertaken because the only litigant with any incentive to object to the plan's failure to comply with the Code—Truck—was shut out of the process.

Far from harming efficiency, permitting Truck to raise and be heard on its objections to the plan would have *helped* the bankruptcy court discharge its own duty to ensure compliance with the Code and prevent fraudulent claims against Kaiser in the bankruptcy.[7] The Code permits a court to confirm a bankruptcy plan "only if" the plan "complies with the applicable provisions" of the Code and was "proposed in good

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[7] Nor does the insurance-neutrality doctrine advance efficiency interests. In the decision below, for example, the doctrine caused a lengthy dispute—unrelated to the plan's compliance with the Code—over the extent to which California insurance law permitted or prohibited Kaiser's conduct in the bankruptcy. See Pet. App. 17a-22a.

faith." 11 U.S.C. § 1129(a). And the bankruptcy court has an obligation to disallow claims that are "unenforceable * * * under * * * applicable law." *Id.* § 502(b)(1). Disallowance "will be ordered where" claims "are fictitious or a sham." *Pepper* v. *Litton*, 308 U.S. 295, 310 (1939). It makes no difference that the insured claims will be adjudicated in state courts—resolving claims through a trust or state court litigation "does not mean that th[e bankruptcy court] does not have jurisdiction over these claims, nor that it can allow facially invalid or fraudulent claims to be paid out." *Diocese of Camden*, 653 B.R. at 360-61.

Section 1109(b) expands, rather than contracts, the right to be heard. The insurance-neutrality doctrine applied below and in other courts defies the plain text and "frustrate[s] the purpose of § 1109(b)" in defiance of the "tradition" that Chapter 11 reorganizations demand "greater participation" by all potentially affected parties. *Global Industrial Technologies*, 645 F.3d at 211 (citation omitted).

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The insurance-neutrality doctrine is contrary to the text of Section 1109(b), defies this Court's precedents regarding prudential standing rules, and undermines the collaborative design of Chapter 11. This Court should reject it and apply the plain text of Section 1109(b), recognizing that the provision is coextensive with Article III.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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