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 *AMICI CURIAE* PROFESSORS ANTHONY J. CASEY, LAURA COORDES, DIANE LOURDES DICK, BROOK E. GOTBERG, JOSHUA C. MACEY, AND ROBERT K. RASMUSSEN IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

The *amici curiae* are nationally recognized professors of law (collectively, the "Law Professors") who teach courses and seminars in bankruptcy law and reorganization, business law, and civil procedure. Anthony J. Casey is the Donald M. Ephraim Professor of Law and Economics and the Faculty Director of the Center on Law and Finance at the University of Chicago Law School. Laura Coordes is a Professor of Law at Arizona State University Sandra Day O'Connor College of Law. Diane Lourdes Dick is the Charles E. Floete Distinguished Professor of Law at the University of Iowa College of Law. Brook E. Gotberg a Professor of Law at Brigham Young University J. Reuben Clark Law School. Joshua C. Macey is an Assistant Professor at the University of Chicago Law School. Robert K. Rasmussen is the J. Thomas McCarthy Trustee Chair in Law and Political Science at the University of Southern California Gould School of Law.

The Law Professors have published numerous articles and casebooks that focus on the text, structure, legislative history, and policy objectives of title 11 of the United States Code (the "Bankruptcy Code") and the practical economic implications of the bankruptcy system. Accordingly, the Law Professors have a strong interest in the correct interpretation of the Bankruptcy Code and the effective implementation of

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici* or their counsel made any monetary contribution intended to fund the preparation or submission of this brief.

the public policies bankruptcy law is designed to promote.

SUMMARY OF ARGUMENT

In 11 U.S.C. § 1109(b), Congress granted broad access to bankruptcy proceedings, providing that all "part[ies] in interest" may be heard "on any issue." This language guarantees the widespread participation necessary to ensure that Chapter 11 proceedings facilitate fair, efficient, and global resolutions to multiparty disputes involving financially distressed firms. But in the decision below, the Fourth Circuit disregarded the plain text of this provision in favor of the judge-made "neutrality doctrine," holding that a debtor's insurer is not a "party in interest" under § 1109(b) when the reorganization plan is "insurance neutral." Pet. App. 24a.

To the extent prudential doctrines have a role to play in Chapter 11 proceedings, it must be consistent with both the text and purpose of the Bankruptcy Code. Respondents' reliance on the "insurance neutrality" doctrine is neither. It plainly contradicts the text and history of § 1109(b), which make clear that Congress intended to *expand* access to bankruptcy proceedings, not erect obstacles for parties with substantial financial stakes in a dispute's resolution. Moreover, Respondents' approach excludes interested parties and opens the door for collusion against them, frustrating a core purpose of the Bankruptcy Code: to facilitate the fair and global resolution of these disputes.

The effects of this approach would be especially deleterious for bankruptcy proceedings in the context of mass torts. Bankruptcy provides a valuable and desirable venue for the resolution of such disputes, ensuring equitable recovery for all tort claimants and preventing many of the inefficiencies that otherwise result from races to the courthouse. Such bankruptcies will almost always implicate interested liability insurers. But under Respondents' interpretation of § 1109(b), they risk exclusion from the proceedings, significantly impairing the ability of the bankruptcy forum to provide a fair and global resolution to the dispute.

This Court should reverse the decision below to ensure the widespread participation necessary for fair, efficient, and global resolutions of such disputes.

ARGUMENT

I. The Statutory Text and Purpose Compel Reversal.

In its decision below, the Fourth Circuit disregarded the plain meaning of § 1109(b), adopting a narrower reading that limits access to bankruptcy proceedings pursuant to the "insurance neutrality" rule. Applying this prudential doctrine, the Court held that a debtor's insurer is not a party in interest unless the reorganization plan "materially alter[s] the quantum of liability that the insurer would be called to absorb." Pet. App. 16a (cleaned up).

But "[j]ust as a court cannot apply its independent policy 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." *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 128 (2014) (citation omitted). Thus, to the extent prudential doctrines like the "insurance neutrality" rule have any role to play in proceedings under the Bankruptcy Code, that role must be consistent with the statutory text and the Code's overarching purpose. By invoking the "insurance neutrality" rule to narrow access to bankruptcy proceedings under § 1109(b), the Fourth Circuit has contradicted both.

A. Section 1109(b)'s Text Mandates Broad Access to Bankruptcy Proceedings.

Section 1109(b)'s text is clear: "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 [Chapter 11]." This unambiguous language broadly grants "anyone holding a direct financial stake in the outcome of the case" the opportunity to participate "in the adjudication of any issue that may ultimately shape the disposition of his or her interest." 7 Collier on Bankruptcy P 1109.01 (16th 2023).

Although the Bankruptcy Code does not specifically define a "party in interest," the term "is not limited by the small list of examples in § 1109(b)." *In re Amatex Corp.*, 755 F.2d 1034, 1042 (3d Cir. 1985). Rather, the use of the word "including" signals that the list of potential parties in the statute is merely illustrative, not exclusive. See *Fed. Land Bank of St. Paul v. Bismarck Lumber Co.*, 314 U.S. 95, 100 (1941) ("[T]he term 'including' is not one of all-embracing definition, but connotes simply an illustrative application of the general principle."). The Bankruptcy Code's own rules of construction confirm this, clarifying that the word "'including' [is] *not* limiting." 11 U.S.C. § 102(3) (emphasis added).

This broader reading finds further support in the statute's history. Section 1109(b) traces its roots to § 77B of the Bankruptcy Act of 1898, which gave debtors the right to be heard on any issue but otherwise limited access to creditors and stockholders who could be heard only on a limited set of issues. See *In re Amatex Corp.*, 755 F.2d at 1042 (discussing the origins of § 1109(b)); 7 Collier on Bankruptcy P 1109.LH (16th 2023) (same). Congress subsequently expanded access to bankruptcy proceedings through the introduction of § 206 of the Bankruptcy Act of 1938, which extended the right to be heard to indenture trustees and, on plans affecting the interests of the debtor's employees, to labor unions or employees' associations. See *In re Amatex Corp.*, 755 F.2d at 1042. According to the Advisory Committee's Note to Chapter X Rule 10-210(a), which implemented § 206, this amendment to the Code

was intended to "broaden" access, to provide "fair representation and to prevent excessive control over the proceedings by insider groups." 7 Collier on Bankruptcy P 1109.LH (16th 2023) (quotation omitted). By expanding the categories of persons with access to bankruptcy proceedings to include any "party in interest," § 1109(b) "continues in this tradition and should be understood in the same way." *In re Amatex Corp.*, 755 F. 2d at 1042.

The history of § 1109(b) thus confirms that the statute means precisely what it says: anyone with "a sufficient stake in the proceeding" has the right to be heard. *In re Glob. Indus. Techs., Inc.*, 645 F.3d 201, 210 (3d Cir. 2011). To require insurers like petitioner here to jump through additional hoops before they are permitted to challenge a reorganization plan that substantially affects their interests would be to elevate judge-made doctrine above—and at the expense of—the statutory text.

B. Restricting Access to Bankruptcy Proceedings Impedes Global Settlements.

Reading the "insurance neutrality" doctrine into § 1109(b) impedes access to bankruptcy proceedings, which in turn impairs an essential function of the proceedings themselves. A core purpose of the Bankruptcy Code is "providing a collective forum where parties can coordinate to resolve multiparty disputes that involve distressed firms." Anthony J. Casey & Joshua C. Macey, *The Bankruptcy Tribunal*, 96 Am. Bankr. L. J. 749, 750

(2022); see also Lindsey Simon, *The Settlement Trap*, 96 Ind. L. J. 661, 668 (2021) (explaining that every stakeholder "plays an important role in the process Congress designed through the Code"); Elizabeth Warren, *Bankruptcy Policy*, 54 U. Chi. L. Rev. 775, 785–89 (1987) (discussing how the distributional scheme of bankruptcy accommodates many parties' interests in an effort to address the "larger implications of a debtor's widespread default"). To facilitate this "essential function" and "bring the parties toward one global resolution," the Code's provisions "displace a substantial portion of non-bankruptcy law." Casey & Macey, 96 Am. Bankr. L. J. at 750–51; see also generally Anthony J. Casey, *Chapter 11's Renegotiation Framework and the Purpose of Corporate Bankruptcy*, 120 Colum. L. Rev. 1709 (2020).

Section 1109(b) is no exception. By ensuring broad access to bankruptcy proceedings, the statute "encourag[es] and promot[es] greater participation in reorganization cases." *In re Glob. Indus. Techs.*, 645 F.3d at 211. In many if not most cases, global resolution would not be possible without this widespread participation.

Layering prudential requirements onto the statutory text in a way that restricts access thwarts Congress's goal of facilitating global resolutions through bankruptcy proceedings. It also opens the door for participating parties to engage in collusion and fraud against excluded parties, like the debtor's insurers, which is precisely what petitioner objects to in this case. See Diane Lourdes Dick, *The Chapter 11 Efficiency*

Fallacy, 2013 BYU L. Rev. 759, 816 (2014) ("dominant stakeholders are able to essentially operate as a cartel, colluding to restrict access to, and raise the price of, restructuring outcomes"). A party sufficiently impacted by a reorganization must have the chance to be heard on any issue to ensure that the plan is not only productive and efficient, but also the result of a good-faith negotiation process. See Douglas G. Baird, *Bankruptcy's Quiet Revolution*, 91 Am. Bankr. L. J. 593, 616 (2017) (bankruptcy maneuvers that "freeze[] others out of the process" are "suspect").

The ability of any party in interest to raise issues and be heard is particularly important when the party seeks to object to the confirmation of a reorganization plan. As the Third Circuit succinctly stated, "when a federal court gives its approval to a 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 Glob. Indus. Techs., Inc.*, 645 F.3d at 204. Indeed, when an insurer faces millions of dollars in financial liability—like petitioner does here—common sense and fundamental bankruptcy policy dictate that it be considered a party in interest in the bankruptcy proceeding.

By construing § 1109(b) narrowly, the Fourth Circuit has transformed a provision "intended to confer broad [access]" to bankruptcy proceedings into an "additional obstacle to bankruptcy standing." *Id.* at 211 (cleaned up). This frustrates the purpose not only of § 1109(b) but of the Bankruptcy Code itself. To ensure

that bankruptcy proceedings can effectively facilitate global settlements, judges cannot pick and choose which interested parties get to participate based on atextual doctrines that serve to further restrict access. The Court should reverse the decision below and apply § 1109(b) as written, allowing any party with an Article III stake in the proceedings to be heard "on any issue." 11 U.S.C. § 1109(b).

II. Affirming the Fourth Circuit's Erroneous Ruling Would Jeopardize the Fair, Efficient, and Global Resolution of Mass Tort Bankruptcies.

Affirming the erroneous decision below would have detrimental and far-reaching consequences—particularly in the context of bankruptcies arising from mass torts, which almost always implicate interested liability insurers.

When a corporation is faced with mass tort liability, Chapter 11 provides a valuable alternative to the otherwise-inevitable "race to the courthouse," which can often create huge disparities in claimant recoveries and imperil the economic viability of debtor firms. Anthony J. Casey & Joshua C. Macey, *In Defense of Chapter 11 for Mass Torts*, 90 U. Chi. L. Rev. 973, 998–99 (2023); see also Samir D. Parikh, *Bankruptcy Is Optimal Venue for Mass Tort Cases*, Law360 (Feb. 28, 2022). Bankruptcy proceedings can "reduce inequities among tort claimants by ensuring that similarly situated claimants receive similar compensation" while

also reducing "economic inefficiencies that arise when a company has no way of escaping its debts." Casey & Macey, 90 U. Chi. L. Rev. at 999–1000; see also Michael A. Francus, *Texas Two-Stepping Out of Bankruptcy*, 120 Mich. L. Rev. Online 38, 50 (2023) (by "conven[ing] these mass torts in a single forum [and] providing an orderly process and distribution of [the debtor's] assets to its tort creditors," the bankruptcy forum "saves tort claimants litigation time and expense" while "provid[ing debtors with] certainty, confining liability to the amount determined in the bankruptcy").

But to curtail "potential for abuse" and facilitate a fair and global resolution, *all* interested parties must be given access to the proceedings. Casey & Macey, 90 U. Chi. L. Rev. at 979; see also Pamela Foohey, *Jevic's Promise: Procedural Justice in Chapter 11*, 93 Wash. L. Rev. Online 128 (2018) ("giv[ing] a voice to all parties involved in corporate reorganizations . . . increases parties' confidence in outcomes . . . and engenders trust in the legal institution as a whole"). When a debtor's insurer bears the ultimate fiscal responsibility for tort claims, excluding that insurer from the process perverts the incentives of plan participants and opens the door for collusion, which is precisely what petitioner alleges happened here. See Dick, 2013 BYU L. Rev. at 816.

Given the growing prevalence of Chapter 11 proceedings involving mass tort liability, see Casey & Macey, 90 U. Chi. L. Rev. at 974, the need for insurer

access to such proceedings is critical.[2] This Court should reverse the decision below to safeguard the broad access that Congress granted insurers like petitioner and all "parties of interest" in § 1109(b) so that Chapter 11 proceedings may continue to provide for the fair, efficient, and global resolution of these disputes.

CONCLUSION

For the foregoing reasons, the Court should reverse the decision below.

Respectfully submitted,

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[2] Another case on the Court's docket this Term, *Harrington v. Purdue Pharma L.P.*, No. 23-124, illustrates the magnitude and importance of these mass tort bankruptcy proceedings. Moreover, if the Court affirms in that case, bankruptcy-based solutions to mass tort disputes will continue to proliferate and the importance of ensuring widespread access to bankruptcy proceedings will only increase.