No. 22-1079

# In the Supreme Court of the United States

TRUCK INSURANCE EXCHANGE, PETITIONER

*v.*

KAISER GYPSUM COMPANY, INC., ET AL.

*ON WRIT OF CERTIORARI*
*TO THE UNITED STATES COURT OF APPEALS*
*FOR THE FOURTH CIRCUIT*

**BRIEF FOR THE UNITED STATES**
**AS AMICUS CURIAE SUPPORTING PETITIONER**

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## QUESTION PRESENTED

Whether an insurer with financial responsibility for a bankruptcy claim is a "party in interest" under 11 U.S.C. 1109(b) that may object to a Chapter 11 plan of reorganization.

## TABLE OF CONTENTS



## TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page



Constitution, statutes, and rules:

Statutes and rules—Continued: Page

Statutes and rules—Continued: Page

Miscellaneous: Page

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## INTEREST OF THE UNITED STATES

This case concerns who qualifies as a "party in interest" that may "be heard on any issue" in a Chapter 11 bankruptcy case. 11 U.S.C. 1109(b). The United States is the Nation's largest creditor and is affected by what issues may be raised in Chapter 11 proceedings and by whom. Similarly, certain federal officers and entities, including United States Trustees, participate in bankruptcy proceedings because they have statutory authorization to "be heard on any issue" in certain cases. See 11 U.S.C. 307, 557(e)(2), 762(b), 784, 1109(a), 1164. The United States therefore has a substantial interest in the question presented.

## STATEMENT

1. a. The Bankruptcy Code, 11 U.S.C. 101 *et seq.*, is designed to give the honest but unfortunate debtor a

"'fresh start'" while ensuring the maximum possible "equitable distribution" to creditors by exercising "jurisdiction over all of the debtor's property." *Central Va. Community Coll.* v. *Katz*, 546 U.S. 356, 363-364 (2006); see *Stellwagen* v. *Clum*, 245 U.S. 605, 617 (1918). Chapter 11 of the Code, 11 U.S.C. 1101 *et seq.*, provides for the reorganization of the debtor's financial obligations largely through negotiation between the debtor and its creditors of a "plan for dividing [the bankruptcy] estate's value" while the debtor remains a going concern. *Czyzewski* v. *Jevic Holding Corp.*, 580 U.S. 451, 454-455 (2017); see 7 *Collier on Bankruptcy* ¶ 1100.01, at 1100-05 to 1100-10 (Richard Levin & Henry J. Sommer eds., 16th ed. 2023).

After a bankruptcy petition is filed, the debtor discloses its creditors, its assets and liabilities, its current income and expenditures, and matters relating to its financial affairs. 11 U.S.C. 521(a)(1). Any creditor may submit a proof of claim, and any person holding an equity security of the debtor may file a proof of that interest. 11 U.S.C. 501(a); see 11 U.S.C. 101(5), (10), (16), and (17). A claim or equity interest is deemed allowed in the absence of an objection, 11 U.S.C. 502(a); otherwise, the court determines which claims and equity interests are "allowed" and to what extent, 11 U.S.C. 502.

A Chapter 11 bankruptcy is implemented by a reorganization plan approved by the bankruptcy court that divides allowed claims and equity interests into classes and specifies the treatment that each class will receive. 11 U.S.C. 1122, 1123. "The court shall confirm a [proposed] plan only if," among other things, "[t]he plan complies with the applicable provisions of [the Code]." 11 U.S.C. 1129(a)(1).

The confirmation of a plan, with exceptions not relevant here, "discharges the debtor from any debt"—*i.e.*, any "liability on a claim"—"that arose before the date of such confirmation," regardless of whether a proof of claim was filed or the claim was allowed. 11 U.S.C. 101(12), 1141(d)(1).

"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]." 11 U.S.C. 1109(b). Among other things, a "party in interest may object to confirmation of a plan." 11 U.S.C. 1128(b).

b. A central feature of the proposed reorganization plan in this case is the creation of an asbestos-personal-injury trust governed by 11 U.S.C. 524(g). Congress enacted Section 524(g) in 1994 to address unique problems involving individuals injured by asbestos products. H.R. Rep. No. 835, 103d Cong., 2d Sess. 40-41 (1994) (1994 House Report). "Asbestos-related disease has a long latency period—up to 30 years or more"—that presents a practical challenge for "deal[ing] with future claimants" whose "disease has not yet manifested" and who are "not yet before the court." *Id.* at 40. Section 524(g) provides for creating a "trust to pay the future claims" and issuing "an injunction to prevent future claimants from suing the debtor." *Ibid.*; see 11 U.S.C. 524(g)(1), (2), and (3)(A)(i). The reorganization plan must require the trust to "assume the liabilities of [the] debtor" for asbestos claims. 11 U.S.C. 524(g)(2)(B)(i)(I).

Section 524(g) includes "explicit requirements" imposing "high standards with respect to regard for the rights of [asbestos] claimants, present and future."

1994 House Report 41. Among other things, Section 524(g) requires a determination that a trust is necessary because the pursuit of asbestos-injury claims is otherwise "likely to threaten the plan's purpose to deal equitably with claims and future demands." 11 U.S.C. 524(g)(2)(B)(ii)(III). The trust is required to operate through mechanisms "that provide reasonable assurance that the trust will value, and be in a financial position to pay, present claims and future demands that involve similar claims in substantially the same manner." 11 U.S.C. 524(g)(2)(B)(ii)(V). A "separate creditor class" must also "be established for those with present [asbestos] claims, which must vote by a 75 percent margin to approve the plan." 1994 House Report 41; see 11 U.S.C. 524(g)(2)(B)(ii)(IV)(bb).

Section 524(g) reflects Congress's judgment that asbestos claimants are "ill-served" if companies facing "overwhelming [asbestos] liability" are "forced into liquidation and lose their ability to generate stock value and profits that can be used to satisfy claims." 1994 House Report 41. The trust is required "to own, or by the exercise of rights * * * be entitled to own * * * , a majority of the voting shares" of each debtor, its "parent corporation," or a subsidiary that is "also a debtor." 11 U.S.C. 524(g)(2)(B)(i)(III). And the trust must be "funded in whole or in part by the securities of 1 or more debtors involved in such plan and by the obligation of such debtor or debtors to make future payments, including dividends." 11 U.S.C. 524(g)(2)(B)(i)(II). The trust must then "use its assets or income to pay claims and demands." 11 U.S.C. 524(g)(2)(B)(i)(IV).

2. a. This bankruptcy case involves two debtor companies, respondents Hanson Permanente Cement, Inc. and Kaiser Gypsum Company, Inc. (collectively, debt-

ors). Hanson Permanente is the direct parent corporation of Kaiser Gypsum and of three other nondebtor companies, two of which continue to distribute and sell cement. Pet. App. 40a. Hanson Permanente also owns 3400 acres of land with a cement plant, rock plant, and quarry, which are leased to, and operated by, another affiliate and have a $179.7 million book value and $2.6-$6.5 million projected net annual cash flow. C.A. App. 5437, 5439; Pet. App. 39a, 70a. Kaiser Gypsum itself "currently has no material tangible assets or business operations" other than managing its "legacy asbestos-related and environmental liabilities." Pet. App. 40a. Those asbestos liabilities arose from debtors' previous manufacture and sale of construction products containing asbestos. *Ibid.* Since 1978, debtors have been defendants in more than 38,000 asbestos-related lawsuits, approximately 14,000 of which remained pending in 2016 when debtors sought Chapter 11 relief. *Id.* at 5a, 42a.

Petitioner is an insurance company that entered a series of comprehensive general-liability insurance contracts with debtors. Pet. App. 6a, 42a & n.9. Under those contracts, petitioner must investigate and defend each covered asbestos-personal-injury claim against the debtors and pay claims up to the policy limit (typically $500,000 per claim). *Ibid.* Debtors also maintained coverage with other insurers providing indemnification for asbestos claims exceeding the per-claim limits in petitioner's contracts. *Id.* at 6a n.2, 42a-43a.

b. Notwithstanding debtors' insurance coverage, they faced three kinds of risks of liability from asbestos litigation. First, debtors were obligated to pay an insurance deductible (almost always $5000) for each settled or paid claim. Pet. App. 42a n.9; J.A. 423. Second,

debtors were obligated to pay any punitive-damages awards, which were excluded from their insurance coverage. Pet. App. 6a, 43a; C.A. App. 2927. Although it is unclear how many asbestos cases have resulted in punitive damages against debtors, debtors identified four cases (out of roughly 24,000 already litigated) in which juries found them liable for punitive damages. See Pet. App. 44a. Two involved punitive-damages awards that were reduced to $4 million and $0; another settled after a jury awarded $100,000 in punitive damages; and the fourth settled after a jury found malice but before the amount of punitive damages was determined. C.A. App. 2930-2931. Third, debtors were obligated to pay any asbestos judgments that are not covered by insurance, Pet. App. 43a; C.A. App. 2927, though it is unclear how many, if any, such judgments have been, or will be, entered.

c. In 2016, debtors sought reorganization under Chapter 11, citing their "outstanding asbestos liabilities combined with the risk of unknown future asbestos claims, including claims for punitive damages." Pet. App. 5a.

The proposed reorganization plan (Pet. App. 160a-301a) would resolve debtors' non-asbestos-injury liabilities, including environmental liabilities, and provide for resolution in full of all claims of general unsecured creditors. *Id.* at 8a. Petitioner, an unsecured creditor, filed a claim for debtors' unpaid insurance deductibles, which would be paid in full under the plan. *Ibid.*

As relevant here, the proposed plan would also create a Section 524(g) trust that will assume all of debtors' asbestos-injury liabilities but not fully satisfy the claims of asbestos-personal-injury claimants. Pet. App. 8a.

The plan would provide the trust with $50-$62 million of funds by transferring to it (1) a $49 million cash payment from debtors or their parent company, respondent Lehigh Hanson; (2) a $1 million payment note from the reorganized debtors that would mature in five years and be secured by 100% of the equity of the reorganized debtors; and (3) any recovery up to $12 million on Hanson Permanente's $6.6 million claim (plus interest) against petitioner pending its resolution in a state-court appeal. *Id.* at 48a, 226a-227a; see *id.* at 198a-199a (defining payment note, pledge, and phase 1 claims); C.A. App. 2928 n.2, 6912, 6919. In addition, although the plan would not assign to the trust the debtors' insurance contracts, it would transfer to the trust "all of the Debtors' rights" under those contracts, including "all rights to coverage and insurance proceeds," Pet. App. 181a, 227a, which would be "[c]ritical to the trust's viability," *id.* at 6a. In consideration for those transfers, the trust "shall assume all liability and responsibility, financial or otherwise, for all Asbestos Personal Injury Claims," and the reorganized debtors "shall have no liability or responsibility, financial or otherwise, therefor." *Id.* at 138a-139a.

The proposed plan further provides that, when resolving the trust's liabilities for asbestos-injury claims, the trust will provide different treatment for insured and uninsured claims. Pet. App. 241a-243a. For insured claims, claimants generally must first file "suit against the [r]eorganized [d]ebtors in the tort system to obtain the benefit of [the] insurance coverage" owned by the trust. *Id.* at 241a. Petitioner, as insurer, will defend such suits, and debtors themselves "shall have no obligation to answer, appear or otherwise participate" except as necessary "to maintain [the insurance]

coverage." *Id.* at 242a. Any resulting tort judgment "cannot be enforced against the assets of the [r]e-organized [d]ebtors" other than the insurance policies. *Ibid.* Instead, any portion of a claim not covered by the trust's insurance-coverage rights (such as the deductible or punitive damages) "shall be paid [by the trust] in accordance with" the trust agreement and its distribution procedures. *Id.* at 242a-243a. The distribution procedures (J.A. 402-451) provide that the trust will pay a portion of the deductible (plus other amounts owed) by paying a "Payment Percentage" of the amount owed, J.A. 411, 423; see Pet. App. 241a, but will not pay any punitive damages, J.A. 442.

For uninsured claims, the proposed plan provides that a claimant's "sole recourse" is to seek payment from the trust, and the claim will be "determined and paid" under procedures providing for submitting a claim to the trust and for settlement, arbitration, or, if necessary, a tort lawsuit directly against the trust. Pet. App. 243a; see J.A. 424-427; J.A. 427 (prohibiting payment of punitive damages). If an uninsured claim is based on asbestos exposure attributed predominantly to debtors, J.A. 427, the claimant must provide documentation identifying "all other [related] claims" asserted by the claimant; a release expressly authorizing the trust to obtain any documentation from other asbestos trusts about any other claim submitted to them by the claimant; and a certification of the claim under penalty of perjury by the claimant's attorney (or the unrepresented claimant). J.A. 428-431. That information, which is not required for insured claims, assists the trust to pay only "valid, non-duplicative claims." Pet. App. 7a.

Finally, as relevant here, the proposed plan requires that the order confirming the plan make an express finding—the so-called "Plan Finding"—that debtors' conduct in connection with the bankruptcy, including its negotiations with representatives of asbestos claimants, did not breach debtors' assistance-and-cooperation obligations under its insurance agreements or any implied covenant of good faith or fair dealing. Pet. App. 273a, 278a-279a.

3. a. Petitioner objected to confirmation of the proposed plan, contending that it is a "party in interest" under 11 U.S.C. 1109(b) based on both its status as an insurer that has contracted to indemnify asbestos-injury claims and its status as an unsecured creditor. See Pet. App. 8a-10a. Petitioner challenged the so-called "Plan Finding" that debtors' bankruptcy conduct did not breach any cooperation obligation or covenant of good faith and fair dealing in their contracts with petitioner. *Id.* at 9a-10a. Petitioner separately argued that the plan was not proposed in good faith under 11 U.S.C. 1129(a)(3) because it does not require holders of insured claims to submit "the same disclosures and authorizations" required of holders of uninsured claims, and that such "disparate treatment would expose" petitioner, as debtors' insurer, "to millions of dollars in fraudulent tort claims." Pet. App. 8a. Petitioner further argued that the proposed trust does not comply with Section 524(g), including its requirements that the trust be entitled to own "a majority of the voting shares" of the debtors or their parent corporation, 11 U.S.C. 524(g)(2)(B)(i)(III), and that the pursuit of asbestos-injury claims is otherwise "likely to threaten the plan's purpose to deal equitably with claims and future demands," 11 U.S.C. 524(g)(2)(B)(ii)(III). See Pet. App. 10a, 71a-87a.

b. After the bankruptcy court recommended that the district court adopt proposed findings of fact and conclusions of law and order the plan's confirmation, J.A. 452-537, the district court entered such findings and conclusions, Pet. App. 27a-117a, as well as an order confirming the plan, *id.* at 118a-158a.

In response to petitioner's "party in interest" arguments, the district court determined that petitioner's status as an insurer of asbestos-injury claims gives petitioner "limited standing to object to the Plan solely on the grounds that the Plan is not insurance neutral," including petitioner's contention that the "Plan Finding" is invalid. Pet. App. 96a. The court therefore considered that objection but rejected it on the merits. *Id.* at 107a-115a.

The district court concluded that petitioner lacks "standing" to object to any other aspects of the plan. Pet. App. 96a, 102a-104a. First, the court determined that petitioner's status as an insurer of asbestos-injury claims is insufficient to confer standing to raise those objections because the plan is "insurance neutral," *id.* at 96a, 102a—*i.e.*, the plan "neither increases [petitioner's] obligations nor impairs its prepetition contractual rights under [its insurance policies]" and "simply restores [petitioner] to its position immediately prior to the [bankruptcy]." *Id.* at 95a; see *id.* at 94a-99a. The court noted that the proposed plan expressly provides that debtors "will continue to fulfill their cooperation obligations arising under" insurance policies and that petitioner's ability to "pursue coverage defenses" to individual asbestos-injury claims based on debtors' post-bankruptcy conduct "remain[s] intact." *Id.* at 95a. Second, the court noted that "[petitioner] is an unsecured creditor," but it is not contesting its treatment in that

capacity because its unsecured claim "will be paid in full under the Plan." *Id.* at 96a, 103a n.25. In the alternative, the court determined that petitioner's "objections [to the plan] lack merit." *Id.* at 96a; see *id.* at 60a-65a, 75a & n.16, 78a-79a.

4. The court of appeals affirmed. Pet. App. 1a-26a. The court concluded that petitioner was entitled to appeal "the district court's conclusion that it lacked § 1109(b) standing," *id.* at 13a; see *id.* at 12a-14a, but held that petitioner lacks statutory "standing" to challenge various provisions of the plan because petitioner is not a "party in interest" under Section 1109(b). *Id.* at 14a-26a. Accordingly, the court did not resolve the merits of petitioner's objections except for its objections to the "Plan Finding" and to the plan's purported alteration of petitioner's contract liability. *Id.* at 17a-23a.

The court of appeals determined that petitioner's status as debtors' insurer does not render petitioner a "party in interest." Pet App. 15a-24a. The court stated that Section 1109(b)'s "statutory list of potential parties in interest is not exhaustive" but the list indicates that "'party in interest' includes 'anyone who has a legally protected interest that could be affected by a bankruptcy proceeding.'" *Id.* at 15a (citation omitted). The court observed that a "debtor's insurer" can qualify as a "party in interest" if a particular bankruptcy plan "sufficiently affects an insurer's legal rights." *Id.* at 16a. The court evaluated that question by assessing "whether the plan is 'insurance neutral'"—*i.e.*, whether it "increase[s] the insurer's pre-petition obligations or impair[s] the insurer's pre-petition policy rights." *Ibid.*

The court of appeals determined that the plan here is "insurance neutral" on two grounds: (1) the "Plan Finding" is proper and does not alter petitioner's con-

tract rights because debtors' conduct during bankruptcy proceedings did not "breach their assistance-and-cooperation obligations or the implied covenant of good faith and fair dealing," Pet. App. 17a, and (2) the plan does not "alter[] [petitioner's] pre-bankruptcy 'quantum of liability'" because petitioner is "not entitled" in its litigation defense of insured asbestos-injury claims to the "fraud-prevention measures" that petitioner seeks. *Id.* at 23a (citation omitted).

The court of appeals further determined that petitioner's status as a creditor does not render petitioner a "party in interest." Pet. App. 24a-26a. The court recognized that Section 1109(b) "states that a party in interest, including 'a creditor,' may raise and be heard on 'any issue' in a Chapter 11 case." *Id.* at 24a. But the court stated that it need not decide whether the statute allows petitioner to present objections in that capacity because petitioner "still must have Article III standing" to do so. *Id.* at 25a. In the court's view, petitioner's "only claim [as a creditor] is fully satisfied under the Plan" and it has not "alleged any injury in fact as a creditor" arising from aspects of the plan that "in no way relate to its status *as a creditor* but instead implicate only the rights of third parties." *Ibid.*

## SUMMARY OF ARGUMENT

Petitioner is a party to insurance contracts with debtors that impose on petitioner significant financial and other obligations. Petitioner is also a creditor with an unsecured claim against debtors. Petitioner is therefore a "party in interest" entitled to be heard on "any issue" in the Chapter 11 case, 11 U.S.C. 1109(b), for two independent reasons: Its contracts with debtors are property of the estate, and it is a creditor.

A. Petitioner is a "party in interest" based on its insurance contracts with debtors.

1. The ordinary meaning of the phrase "party in interest" is broad and refers to a participant in an action or affair that is concerned with or affected by its potential effects. The Court need not determine the outermost boundaries of the term because, at the very least, a "party in interest" includes an entity that is a party to a contract with the debtor that is property of the estate and may be interpreted, assigned, or otherwise affected by the Chapter 11 proceedings.

2. The broader statutory context confirms that conclusion. Petitioner has an actual interest in property of the estate—its insurance contracts—just like debtors, creditors, equity holders, and others specifically identified in Section 1109(b)'s non-exhaustive list of "parties in interest." The wider statutory context also demonstrates that Congress intended to allow the participation of such persons in bankruptcy proceedings to assist the court, which has a statutory duty to confirm a proposed plan only if it complies with the Code, even when no party objects or raises an issue. That inclusive approach makes particularly good sense in Chapter 11 because it enables a court to hear a wider set of views, thus reducing the inherent danger that a plan proposed by a debtor after negotiation with creditors might give them an unfair advantage. This case illustrates that principle. Debtors and asbestos claimants have little interest in raising potential problems with a plan that serves their interests. Petitioner has a significant incentive to identify legal problems and has, in fact, identified issues that warranted consideration.

3. Section 1109(b)'s history further confirms petitioner's status as a "party in interest." Before 1938, the

Bankruptcy Act allowed only the debtor to be heard on all issues. Congress then expanded that right to creditors, stockholders, and indenture trustees, 11 U.S.C. 606 (1976), but provided only limited opportunities for a "party in interest" to participate. Even so, parties to the debtor's contracts were specifically described as "parties in interest." 11 U.S.C. 516(1) (1976). When the Bankruptcy Code later granted any "party in interest" the right to be heard on "any issue" in a Chapter 11 case, 11 U.S.C. 1109(b), that right extended to the parties to such contracts.

4. The court of appeals erred in limiting petitioner's right to be heard to particular issues. The court did not deny that petitioner is entitled to challenge the plan on *certain* grounds: It resolved the merits of petitioner's challenge to the "Plan Finding." But the court purported to determine whether petitioner is a "party in interest" based on its determination that the plan is "insurance neutral" because it will not impair petitioner's obligations and rights. That reasoning is flawed. If petitioner is a "party in interest," it is entitled to "be heard on" whether the plan is invalid because it affects those contractual obligations and rights. 11 U.S.C. 1109(b). Whether petitioner is entitled to be *heard* on that issue does not turn on whether a court determines, *after hearing from petitioner*, the merits of petitioner's objection.

The court of appeals further erred in concluding that petitioner is not entitled to be heard on other issues. Section 1109(b) unambiguously provides that a "party in interest" may be heard on "any issue" in a Chapter 11 case. No textual basis exists for failing to read "any issue" to mean what it says: A party in interest may be heard on whatever issues it presents.

B. Separately, petitioner is also a "party in interest" because it is a creditor. The court of appeals recognized that, under Section 1109(b), "'a creditor'" is a party in interest entitled to "be heard on 'any issue.'" Pet. App. 24a (citation omitted). But the court erroneously determined that petitioner lacks Article III standing to raise its objections if its claim as a creditor is unimpaired. The party *invoking* a court's jurisdiction is the one that must establish its standing to bring suit. Article III does not restrict an opponent's ability to *object* to relief. Here, debtors invoked the district court's jurisdiction to confirm their proposed plan, discharge their debts, and transfer their ongoing liability for future asbestos claims to an asbestos-injury trust. Article III standing is irrelevant to petitioner's right to object to that relief.

## ARGUMENT

### PETITIONER IS A "PARTY IN INTEREST" THAT IS ENTITLED TO OBJECT TO DEBTORS' CHAPTER 11 PLAN

Petitioner is a "party in interest" entitled to object to the confirmation of debtors' proposed Chapter 11 plan for two independent reasons. First, petitioner is a party to debtors' insurance contracts—which are themselves property of the bankruptcy estate—and, under those contracts, petitioner is obligated to pay substantial sums to indemnify asbestos-related claims for which the plan's asbestos-injury trust is liable. The bankruptcy disposition of those contracts and petitioner's obligations thereunder render petitioner a "party in interest" in the Chapter 11 proceedings. Second, petitioner is a creditor that, by the express terms of 11 U.S.C. 1109(b), is a "party in interest." And because petitioner is a "party in interest," petitioner is entitled to be heard on "any issue" in this Chapter 11 case, *ibid.*, including any issue concerning the plan's confirmation.

### A. Petitioner Is A "Party in Interest" Because Its Insurance Contracts With Debtors Are Property Of The Estate

Under Section 1109(b), "[a] party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under [Chapter 11]." 11 U.S.C. 1109(b). That statutory text, the broader statutory context, and Section 1109(b)'s statutory history demonstrate that petitioner is a "party in interest" based on its insurance contracts with debtors.

#### *1. The phrase "party in interest" is expansive*

The ordinary meaning of the phrase "party in interest" is broad. When used together and joined by "in," the words "party" and "interest" refer to a participant in an action or affair that is concerned with or affected by its potential effects. This case, however, presents no occasion for the Court to determine the phrase's outermost boundaries. At the very least, a "party in interest" encompasses a person, such as petitioner, that is a party to a contract of the debtor that imposes ongoing rights or obligations and is property of the estate that may be interpreted, assigned, or otherwise affected by the Chapter 11 proceedings. The insurance contracts in this case powerfully illustrate the significance of petitioner's interest. They impose on petitioner the obligation to indemnify up to $500,000 for each of thousands of asbestos-injury claims against debtors for which the asbestos-injury trust will be liable under the proposed plan. Under Section 1109(b), where a proposed plan "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 Indus. Techs., Inc.*, 645 F.3d 201, 204 (3d Cir.) (en banc), cert. denied, 565 U.S. 1014 (2011).

The word "party," when used in "*party* in interest," means "[a] person who constitutes or is one of those who compose * * * one or the other of two sides in an action or affair; one concerned in an affair; a participator." *Webster's New International Dictionary of the English Language* 1784 (2d ed. 1949) (*Webster's Second*) (def. 6); see *Webster's Third New International Dictionary of the English Language* 1648 (1971) (*Webster's Third*) (def. 5: "one (as a person or group) that takes part with others in an action or affair"; def. 2.a: "one (as a person or group) constituting alone or with others one of the two sides in a proceeding"); *The Random House Dictionary of the English Language* 1053 (1979) (*Random House*) (def. 9: "a person who or group that participates in some action, affair, plan, etc.; participant"). That meaning, which pertains to the phrase "*party* in interest," *Webster's Second* 1784, is particularly suitable in this context. A bankruptcy case is "an aggregation of individual controversies," *Ritzen Grp., Inc.* v. *Jackson Masonry, LLC*, 140 S. Ct. 582, 586 (2020) (citation omitted), that commonly involves numerous participants, each with an interest in the court's exercise of in rem jurisdiction "over all of the debtor's property," *Central Va. Community Coll.* v. *Katz*, 546 U.S. 356, 362-364 (2006). Any two participants—parties in interest—may simultaneously be aligned on some issues and opposed on others, reflecting the complicated and varied interests that are implicated by the distribution of the property of the estate.

The word "interest," in turn, means "[c]oncern, or the state of being concerned or affected, esp[ecially] with respect to advantage, personal or general." *Web-*

*ster's Second* 1294 (def. 2); see *Webster's Third* 1178 (def. 2.a: "the state of being concerned or affected, esp. with respect to advantage or well-being"); *Random House* 741 (def. 4: "concern; importance"). Thus, when used in the phrase "party in interest," the word reflects that a participant in an action or affair is one that is "concerned or affected," particularly where that concern or effect involves a potential advantage (or disadvantage) either for the participant "personal[ly]" or more "general[ly]." *Webster's Second* 1294.

That concern or effect may be financial in nature, but it is not textually limited to such matters. The meaning naturally extends to those who may be affected more generally by bankruptcy proceedings that will lead to adjustments of the debtor's obligations and distribution of estate property. That includes persons that are parties to—and thus have rights and obligations under—contracts with a debtor. Such contracts become property of the estate, 11 U.S.C. 541(a)(1), see *In re Vitek, Inc.*, 51 F.3d 530, 533 & nn.7-8 (5th Cir. 1995), which may be interpreted, assigned, or otherwise affected by the proceedings. See 11 U.S.C. 365, 1123(b)(2); *Mission Prod. Holdings, Inc.* v. *Tempnology, LLC*, 139 S. Ct. 1652, 1658 (2019).

Bankruptcy law has also long recognized that a governmental entity, as part of the "performance of its public duties," may participate in bankruptcy proceedings where its "only interest * * * is a public one," even if it lacks "any personal, financial or pecuniary interest in the property" at issue. *SEC* v. *United States Realty & Improvement Co.*, 310 U.S. 434, 460 (1940). In the 48 States with United States Trustees, Congress has expressly authorized the Trustee to "appear and be heard on any issue." 11 U.S.C. 307. Various provisions of the

Code expressly provide that certain other governmental agencies may similarly be heard on "any issue" in cases implicating their areas of responsibility. 11 U.S.C. 557(e)(2), 762(b), 784, 1109(a), 1164. And the Department of Justice may participate in order "to attend to the interests of the United States," as it may do in any "suit pending in a [federal] court." 28 U.S.C. 517.[1]

In another statute, this Court recognized the breadth of "party in interest." In a case arising under 1920 amendments to the Interstate Commerce Act the Court determined that the scope of that phrase was not limited to an entity that possesses a "clear legal right for which it might ask protection" but encompassed those that may more generally be "adversely affect[ed]" by the matter. *Western Pac. Cal. R.R.* v. *Southern Pac. Co.*, 284 U.S. 47, 51 (1931). While that does not mean that "party in interest" is a legal term of art that carries the same meaning in *all* statutory contexts (as petitioner suggests, Br. 22-26), the Court's decision reinforces the phrase's inherent breadth.[2]

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[1] The United States participates in bankruptcy cases in a wide range of contexts to attend to its sovereign interests. For instance, the United States may participate to ensure that bankruptcy orders do not interfere with regulatory actions, approve unlawful transactions with foreign entities, or create untoward tax consequences; to prevent the assignment of certain federal contracts, licenses, or permits without government approval; or to ensure that assets subject to criminal forfeiture in ongoing prosecutions are not sold or otherwise distributed.

[2] The phrase "party in interest" is used in numerous federal statutes besides the Bankruptcy Code, including at least 70 provisions appearing in other titles of the United States Code. In those provisions, the context may inform the type of "interest" needed to qualify as a "party in interest." Thus, in the provision construed in *Western Pacific*, the former Interstate Commerce Act authorized any "party in interest" to bring suit to enjoin a rail carrier's "construc-

***2. Statutory context confirms the breadth of "party in interest" as used in Section 1109(b)***

The statutory context in which Section 1109(b) uses the phrase "party in interest" confirms both its breadth and that a party to the debtor's own contracts is a "party in interest."

a. Section 1109(b) specifies that the term "party in interest[] *includ*[*es*] the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee." 11 U.S.C. 1109(b) (emphasis added). The Code explains that its uses of "'includes' and 'including' are not limiting," 11 U.S.C. 102(3), which reinforces the conclusion that "party in interest" captures the full textual breadth of that phrase.

Moreover, the enumerated list of entities that qualify as a "party in interest" strongly indicates that a party to a contract with a debtor is also a "party in interest." A debtor, a creditor, and a holder of an equity security of the debtor all seek to obtain or protect their interests in property of the estate. See 11 U.S.C. 101(5), (10), (13), and (17), 501(a). A "committee" of creditors or equity-security holders (which provides such "services as are in the interest of those represented"), 11 U.S.C. 1103(c)(5); see 11 U.S.C. 1102(b)(3), 1103(c), and an "indenture trustee" (who acts as trustee under an indenture such as a mortgage or deed of trust), 11 U.S.C. 101(28) and (29), do not themselves have interests in property of the estate but they represent those that do.

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tion, operation, or abandonment" of a railroad line without a certificate of public convenience and necessity. 49 U.S.C. 1(20) (1925). Given that context, the Court's interpretation of the phrase "party in interest" naturally drew on the Article III limitations on such an entity's ability to bring that suit. See Pet. Br. 24, 26.

Like those six listed parties in interest, a party to an executory contract of the debtor has an actual interest in property of the estate because the contract itself is property that confers ongoing rights and obligations on the parties to the contract. As noted, bankruptcy proceedings can interpret, assign, or otherwise affect that contract and therefore affect the interests of the parties thereto. See 11 U.S.C. 365, 1123(b)(2). Whether or not the bankruptcy case ultimately has such effects does not alter whether a party to a contract is a "party in interest" that is entitled to be "heard," 11 U.S.C. 1109(b), in the case that could well affect its interests. A "creditor," for instance, is a "party in interest" under Section 1109(b)'s express terms, even if that creditor holds a highly secured claim that is ultimately unimpaired. The same is true for those that are parties to the debtor's own contracts.

b. The wider statutory context confirms Section 1109(b)'s broad scope. Section 1109 applies "in a case under [Chapter 11]," 11 U.S.C. 103(g), and in a municipal bankruptcy case under Chapter 9, see 11 U.S.C. 901(a). Both Chapters 9 and 11 turn on the submission and confirmation of a reorganization plan. And in both of those contexts, "[t]he court shall confirm a [proposed] plan *only if*," among other things, "[t]he plan *complies with the applicable provisions of* [*the Code*]." 11 U.S.C. 1129(a)(1) (emphases added); see 11 U.S.C. 943(b)(1) (similar). That language "makes plain that bankruptcy courts have the authority—indeed, the obligation—to direct a debtor to conform [its] plan to" the applicable provisions of the Code "even if" no one "object[s]" or otherwise "raises the issue." *United Student Aid Funds, Inc.* v. *Espinosa*, 559 U.S. 260, 276-277 & n.14 (2010)

(interpreting parallel Chapter 13 requirement in 11 U.S.C. 1325(a)(1)).

A court's statutory obligation to approve only those reorganization plans that comply with the Bankruptcy Code's numerous—and often complicated—provisions illustrates that Section 1109 is designed to assist the court in its duty to apply the law properly. Section 1109 was drafted to ensure that "any party in interest" will "be heard on any issue in a case under [C]hapter 11" and therefore "enable the bankruptcy court to evaluate *all sides of a position* and to determine the public interest." 124 Cong. Rec. 32,403 (1978) (statement of Rep. Edwards) (emphasis added); accord *id.* at 34,003 (statement of Sen. DeConcini) (same).[3]

c. That inclusive approach makes good sense in Chapter 11. This Court has recognized that the Bankruptcy Code seeks to counter "the danger inherent in any reorganization plan proposed by a debtor" that "the plan will simply turn out to be too good a deal for the debtor's owners." *Bank of Am. Nat'l Trust & Sav. Ass'n* v. *203 N. LaSalle St. Partnership*, 526 U.S. 434, 444 (1999). Congress addressed "concern[s]" that "'a few insiders, whether representatives of management or major creditors, [could] use the reorganization process to gain an unfair advantage.'" *Ibid.* (quoting *Report of the Commission on the Bankruptcy Laws of the United States*, H.R. Doc. No. 137, 93d Cong., 1st Sess. Pt. I, at 255 (1973)). If a court in bankruptcy hears only a smaller set of voices and objections, the "risks of collusion" are heightened because the remaining partici-

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[3] This Court has previously relied on statements of Representative Edwards and Senator DeConcini, in light of their "key roles" as floor managers for the Bankruptcy Reform Act of 1978. *Begier* v. *IRS*, 496 U.S. 53, 64 n.5 (1990).

pants may more effectively "team[] up" to promote their own interests. *Czyzewski* v. *Jevic Holding Corp.*, 580 U.S. 451, 470 (2017).

This case is illustrative. There is little incentive for debtors and asbestos claimants to raise potential problems with a proposed Chapter 11 plan that provides both of those groups with what they seek. The plan here entirely eliminates debtors' own ongoing liability for asbestos-injury claims, along with much if not all of "the ongoing costs and distraction of managing [their] decades-old liabilities" (C.A. App. 2933), thereby allowing debtors to continue to exist under the same ownership. Debtors therefore have little incentive to minimize the costs to, or burdens on, others, including costs due to potential fraud in the asbestos claims for which debtors will no longer be liable. Similarly, classes of asbestos claimants have considerable sway in the plan negotiations because at least 75% of voting claimants must support a reorganization plan with an asbestos-injury trust. 11 U.S.C. 524(g)(2)(B)(ii)(IV)(bb). They, too, have little incentive to propose barriers to their ability to recover compensation from debtors' insurers. Although both debtors and claimants presumably seek to negotiate a confirmable plan, they have little reason to air potential problems with a plan that satisfies their own interests at others' expense.

Petitioner, by contrast, will bear the bulk of the financial expense and burdens of litigating approximately 14,000 pending claims against debtors because its contracts require it to defend claims and pay up to $500,000 per insured claim. Petitioner is therefore the party with a substantial incentive to identify potential legal deficiencies in debtors' proposed Chapter 11 plan.

Petitioner has indeed identified legal issues that cannot be easily dismissed as unworthy of review. For instance, petitioner challenged as inconsistent with 11 U.S.C. 1129(a)(3) the plan's failure to require any claimant with an insured asbestos-injury claim to supply the same type of anti-fraud disclosures and authorizations required of claimants with uninsured claims. Pet. App. 63a-64a. The district court declined to "mandate to state courts and other federal courts what kind of discovery is required in asbestos cases." *Id.* at 65a. But requiring an asbestos claimant with a nominally insured claim that will ultimately be litigated to submit the same information as one with an uninsured claim would not dictate the scope of discovery in tort litigation. It would simply recognize that the proposed plan itself makes the *trust* liable for *all* asbestos-injury claims regardless of insurance, *id.* at 138a, and that the same anti-fraud provisions should arguably apply to all such claims as a condition for seeking recovery of the trust's liability, even where the trust will seek insurance-based indemnification from petitioner. Even with indemnification, the trust is responsible for the portion of a claim reflecting the insurance deductible. And the trust may be responsible for *entire* claims if petitioner successfully asserts the type of insurance "coverage defenses" that the proposed plan expressly preserves. *Id.* at 95a. Imposing anti-fraud requirements for all asbestos claims is arguably not materially different from imposing them on the claimants with uninsured asbestos-injury claims, who will retain "the right to initiate a lawsuit in the tort system against the [trust]," J.A. 427.

Petitioner also contended that the plan does not satisfy the requirement that the trust will "own, or * * * be entitled to own * * * , a majority of the voting shares

of" each debtor. 11 U.S.C. 524(g)(2)(B)(i)(III); see Pet. App. 96a-97a. The district court noted that "[t]here is an argument" that the plan's provision of a $1 million payment note secured by 100% of debtor's shares "is pretextual." Pet. App. 73a n.15. The court nevertheless concluded that the note satisfies Section 524(g) because, if the trust is not paid in full within five years, it could foreclose on that security and "become the 100% owner of the [r]eorganized [d]ebtors." *Id.* at 75a & n.16. But because debtors' reorganization is feasible, 11 U.S.C. 1129(a)(11); Pet. App. 70a-71a, such a default is arguably not "a realistic possibility." *In re Plant Insulation Co.*, 734 F.3d 900, 915-916 (9th Cir. 2013), cert. denied, 572 U.S. 1062 (2014). Moreover, it appears that debtors' aggregate value may mean that the note is substantially oversecured. See p. 5, *supra*. Accordingly, if a default were to occur, debtors' ability to seek bankruptcy protection would mean that the trust could realistically acquire only "possession of [$1 million of] the *proceeds*" of the sale, assignment, or liquidation of the stock-based collateral, not actual ownership of a *majority* of *voting shares* in debtors. See C.A. App. 6919, 6926 (emphasis added).

Reading Section 1109(b)'s "party in interest" provision broadly facilitates an inclusive approach to bankruptcy litigation that appropriately promotes the presentation of such matters to the courts.

#### *3. Section 1109(b)'s history confirms its breadth*

Section 1109(b)'s inclusive approach to bankruptcy disputants reflects its evolution from historical antecedents in the former Bankruptcy Act of 1898. Section 1109(b) was "derived from section 206 of chapter X [of the Bankruptcy Act] (11 U.S.C. 606)," S. Rep. No. 989, 95th Cong., 2d Sess. 116 (1978), which was itself adopted

to expand the right to be heard in bankruptcy reorganizations. After 1938, the Bankruptcy Act described the parties to "contracts of the debtor" as "parties in interest." 11 U.S.C. 516(1) (1976). When Congress enacted the Bankruptcy Code in 1978, such entities obtained the right to be heard on any issue in a corporate reorganization.

Before the 1938 amendments to the Bankruptcy Act, the provisions governing corporate reorganizations were contained in Section 77B, which provided for "a plan of reorganization" that could modify the rights of creditors and shareholders. 11 U.S.C. 207(b) (1934) (repealed 1938). Only "[t]he debtor" had "the right to be heard on all questions." 11 U.S.C. 207(c) (1934) (repealed 1938). A "creditor or stockholder" also had a "right to be heard" on the "appointment of any trustee" and "confirmation of any reorganization plan." *Ibid.* By contrast, a creditor or shareholder had to "petition for leave to intervene" to be heard "on [the] other questions arising in the proceeding." *Ibid.*

In 1938, Congress replaced Section 77B with Chapter X of the Bankruptcy Act, 11 U.S.C. 501 *et seq.* (1940). See *In re Keystone Realty Holding Co.*, 117 F.2d 1003, 1005 (3d Cir. 1941). To "enable the courts more effectively to perform their functions," Chapter X expanded the types of parties with a "right to be heard on all matters," whose input could then "assist the trustee and the court," H.R. Rep. No. 1409, 75th Cong., 1st Sess. 47 (1937), and "prevent excessive control over the proceedings by insider groups," Bankr. R. 10-210(a), Advisory Comm. Note (reproduced at 11 U.S.C. App., p. 1445 (1976)). Section 206 of Chapter X, 11 U.S.C. 606 (1940), therefore 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 [bankruptcy] proceeding." *Ibid.*

Chapter X separately authorized "a party in interest" to object both to claims filed by creditors or shareholders and to distributions based on such claims. 11 U.S.C. 596, 625 (1940). But to be heard more broadly, the court, for cause shown, first had to "permit [the] party in interest to intervene generally or with respect to any specified matter." 11 U.S.C. 607 (1940). Chapter X did not define "party in interest." But it described parties that had executory contracts with a debtor as "parties in interest." 11 U.S.C. 516(1) (1940) (requiring notice "to the parties to such contracts and to such *other parties in interest* as the judge [would] designate") (emphasis added). That remained the law until Congress enacted the Bankruptcy Code. See 11 U.S.C. 516(1), 606, 607, 625 (1976).

c. In the Code, Congress further expanded the category of persons entitled to be heard on all issues in bankruptcy reorganizations, directing that any "party in interest" may be heard on "any issue" in a Chapter 11 case. 11 U.S.C. 1109(b). Nothing in the Code suggests that Congress thereby altered the recognition that "the parties to [a debtor's] contracts" were "parties in interest." 11 U.S.C. 516(1) (1976).

#### *4. The court of appeals erroneously limited petitioner's right to be heard to particular issues*

The court of appeals, like the district court, did not deny that petitioner—as a party to insurance contracts that are property of the estate—is a "party in interest" entitled to challenge the plan on *certain* grounds. Both courts accepted petitioner's contention that it is entitled to challenge at least the so-called "Plan Finding" by resolving that challenge on the merits. But they erred in

limiting the matters on which petitioner could be heard. A "party in interest" is entitled to be heard on "any issue" in a Chapter 11 case. 11 U.S.C. 1109(b). And no sound basis exists for curtailing the broad textual scope of that statutory pronouncement.

a. The district court agreed that petitioner has "standing" (*i.e.*, is a party in interest entitled) to "object to the Plan" on the ground that debtors' bankruptcy conduct breached their insurance contracts with petitioner and that the plan's requirement that the district court find otherwise (the "Plan Finding") was therefore invalid. Pet. App. 96a. Indeed, due process principles required the court to allow petitioner to challenge an aspect of the plan requiring an adverse and binding adjudication of petitioner's own contract rights, see *id.* at 22a n.9; such an adjudication would have been invalid and nonbinding if petitioner were not afforded notice and an opportunity to be heard, *id.* at 105a. The court accordingly addressed—and then rejected on the merits—petitioner's challenge to the Plan Finding. *Id.* at 107a-115a.

The court of appeals affirmed, similarly rejecting the same challenge to the plan on the merits. Pet. App. 17a-22a. The court, however, cloaked its analysis with the label of "insurance neutral[ity]," and purported to determine whether petitioner is a "party in interest" based on its conclusion about whether the plan will ultimately "increase [petitioner's] pre-petition obligations or impair [its] pre-petition policy rights." *Id.* at 16a. That analysis was flawed.

If petitioner is a "party in interest," then petitioner is entitled to "be *heard* on" whether the plan is invalid because it purportedly alters petitioner's obligations and rights under its insurance contracts. 11 U.S.C.

1109(b) (emphasis added). But whether petitioner is entitled to be heard on that issue does not turn on whether a court determines, *after hearing from petitioner*, the merits of petitioner's objection.

The court of appeals' mistake directly parallels an error that this Court has warned against in analogous Article III standing contexts. "In essence the question of standing is whether the litigant is entitled to have the court *decide* the merits" of its claim, *Allen* v. *Wright*, 468 U.S. 737, 750-751 (1984) (emphasis added; citation omitted), which "'in no way depends on the merits' of the claim," *Arizona State Legislature* v. *Arizona Indep. Redistricting Comm'n*, 576 U.S. 787, 800 (2015) (citation omitted). The Court has therefore emphasized that "one must not 'confuse weakness on the merits with absence of Article III standing.'" *Ibid.* (brackets and citation omitted). But that is effectively what the court of appeals did. It confused its views on the merits of petitioner's challenge with the absence of a right under Section 1109(b) for petitioner to be heard on that challenge.

b. The court of appeals, like the district court, further erred by concluding that petitioner—a party in interest entitled to challenge the Plan Finding—is not entitled to be heard on its other challenges to the plan. Pet. App. 26a.

Section 1109(b) unambiguously provides that a "party in interest * * * may appear and be heard on *any issue* in a [Chapter 11] case." 11 U.S.C. 1109(b) (emphasis added). "As this Court has 'repeatedly explained,'" *Patel* v. *Garland*, 596 U.S. 328, 338 (2022) (citation omitted), "the word 'any' has an expansive meaning, that is, 'one or some indiscriminately of whatever kind.'" *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214, 219 (2008) (quoting *United States* v. *Gonzales*, 520 U.S. 1, 5 (1997)).

No textual basis exists for failing to read "any issue" to mean what it says: A party in interest may be heard on "whatever kind" of issue (*ibid.*) it presents. And because petitioner is a "party in interest" that could be heard on its challenge to the Plan Finding, it is entitled to be heard on its other challenges.

That result is especially sensible in bankruptcy, where a court must allocate a fixed amount of property among competing classes of creditors and equity interests and where the disposition of that property may affect other parties in interest (such as parties to the debtors' contracts). The zero-sum nature of much of that distribution means that any particular issue in a case may affect a number of parties in interest. And Section 1109(b)'s language allowing a "party in interest" to raise "any issue" reflects Congress's judgment that such a party is in the best position to decide whether its own interests warrant participation on a particular issue. Those parties can be expected to make rational choices in light of the strength of their legal positions. And to the extent that a party in interest engages in vexatious or otherwise improper litigation conduct, courts have ample authority to police and sanction such behavior. See Fed. R. Bankr. P. 9011; see also *Law* v. *Siegel*, 571 U.S. 415, 427 (2014). "The specter of such penalties should deter bad-faith attempts" by parties to raise meritless issues that would waste judicial resources. *United Student Aid Funds*, 559 U.S. at 278.

### B. Petitioner Is Also A "Party in Interest" Because It Is A Creditor

Petitioner is a "party in interest" for the independent reason that it is an unsecured creditor of debtors. Section 1109(b) provides that a "party in interest, in-

cluding * * * a creditor * * * may appear and be heard on any issue in a [Chapter 11] case." 11 U.S.C. 1109(b).

The court of appeals recognized that under Section 1109(b) "'a creditor'" may "be heard on 'any issue.'" Pet. App. 24a. But the court noted that petitioner's "only claim" as a "creditor" would be "fully satisfied under the Plan." *Id.* at 25a. The court then concluded that petitioner could not raise objections on issues such as "the Plan's good-faith basis and the trust's compliance with § 524(g)" because the court held that petitioner failed to allege "any injury in fact as a creditor * * * giving it Article III standing to object." *Ibid.* That analysis lacks merit.

Article III standing is irrelevant here. It is well settled that "[t]he party *invoking* [the] federal jurisdiction [of an Article III court] bears the burden of establishing" its own Article III standing to bring that suit. *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (emphasis added); see *DaimlerChrysler Corp.* v. *Cuno*, 547 U.S. 332, 342 n.3 (2006). It is equally settled that "Article III does not restrict [an] opposing party's ability to object to relief." *Bond* v. *United States*, 564 U.S. 211, 217 (2011); see *Seila Law LLC* v. *Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2195 (2020). This Court has therefore described as "puzzling" the suggestion that a litigant opposing a request for relief carries any burden in that regard. *Clapper* v. *Amnesty Int'l USA*, 568 U.S. 398, 412 n.4 (2013).

In this case, it is *debtors* that have invoked the district court's Article III jurisdiction in order to confirm their proposed Chapter 11 plan to discharge their prepetition debts and transfer their ongoing liability for future asbestos-injury claims to the asbestos-injury trust. If the court lacked Article III jurisdiction to confirm

that plan, that jurisdictional defect would have required reversing the very order that debtors sought. It is a non sequitur to suggest that petitioner had to establish Article III standing to oppose that exercise of the district court's jurisdiction. While a statutory provision could arguably limit such participation in ongoing bankruptcy proceedings, Article III does not.[4]

Accordingly, because petitioner is a "creditor," it has the statutory right to be heard on "any issue" in this case. 11 U.S.C. 1109(b).

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[4] If a litigant in a bankruptcy case initiates a new "'adversary proceeding[],' essentially [a] full civil lawsuit[] carried out under the umbrella of the bankruptcy case," *Bullard* v. *Blue Hills Bank*, 575 U.S. 496, 505 (2015), that litigant, like a typical plaintiff filing suit in an Article III court, may need to establish Article III jurisdiction over that matter. Cf. 28 U.S.C. 1334(a) and (b) (granting district courts exclusive jurisdiction over bankruptcy "cases" but non-exclusive jurisdiction over bankruptcy-related civil "proceedings"). Even if Article III standing were unnecessary to a proceeding in bankruptcy court (as opposed to district court), but see, *e.g.*, *In re Resource Tech. Corp.*, 624 F.3d 376, 382 (7th Cir. 2010), any litigant that invokes the Article III jurisdiction of a reviewing court must establish its standing to seek appellate review. *West Virginia* v. *EPA*, 142 S. Ct. 2587, 2506 (2020); *Camreta* v. *Greene*, 563 U.S. 692, 701-703 (2011). There appears to be no dispute that petitioner has appellate standing in this Court because the judgment below denies petitioner the ability to raise objections implicating a concrete interest in its contract-based payment obligations. See Pet. App. 13a; cf. *Summers* v. *Earth Island Inst.*, 555 U.S. 488, 496 (2009).

## CONCLUSION

The judgment of the court of appeals should be reversed and the case remanded for further proceedings.

Respectfully submitted.

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