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 RESPONDENTS OFFICIAL COMMITTEE OF ASBESTOS PERSONAL INJURY CLAIMANTS AND FUTURE CLAIMANTS' REPRESENTATIVE

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QUESTION PRESENTED

Whether an insurer whose legally protected interests are not affected by a Chapter 11 case is nevertheless a "party in interest" entitled to raise "any issue" in that case under 11 U.S.C. § 1109(b).

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INTRODUCTION

For decades, Debtors made and sold construction products that contained asbestos – a substance later shown to cause incurable disease and agonizing death for countless people. Faced with mounting damages exposure, Debtors sought indemnification under insurance policies they had purchased from petitioner Truck Insurance Exchange ("Truck"). In those policies, Truck had agreed to investigate and defend each covered claim and to indemnify Debtors without any aggregate coverage limit. Truck tried to avoid these obligations through coverage litigation, but it lost. Truck cannot modify its court-determined coverage duties by filing for bankruptcy relief, because the Bankruptcy Code expressly bars insurance companies from doing so.

This case is Truck's effort to reach the same place by a different route. After Debtors' own financial distress drove them to seek bankruptcy relief, they formulated a Plan that satisfied Claimants, all of Debtors' other creditors (including multiple governments), and all of Debtors' other insurers. Truck alone resisted. Spinning a yarn of pervasive fraud from nothing but a different case's record, distrust of state courts, and contempt for a "plaintiffs bar" it labels "fraudsters," Truck objected that the Plan should have required Claimants in Truck-covered cases to run a peculiar procedural gauntlet designed for Truck's (not Debtors') benefit. All three courts below rejected Truck's request.

The Court should affirm that conclusion. The text and context of § 1109(b) of the Bankruptcy Code confirm that an insurer is a "party in interest" in a bankruptcy case when the proposed reorganization plan directly affects its pre-petition legally protected interests in the debtor's assets. For many years,

courts have used "insurance neutral" as shorthand to describe a proposed reorganization plan that will not alter an insurer's legal rights and interests within the meaning of § 1109(b)'s "party in interest" standard. The lower courts' uniform determination that Debtors' Plan is "insurance neutral" thus disposes of Truck's claim to be a "party in interest" entitled to "be heard on any issue in" Debtors' bankruptcy case.

Truck does not meaningfully deny that the Plan is "insurance neutral." It instead contends that any person who might benefit from a bankruptcy case both has Article III standing to seek that benefit and can demand an audience in that case as a § 1109(b) "party in interest." But the Bankruptcy Code is not sensibly read to require bankruptcy courts to entertain every argument pressed by any stranger hunting for a windfall. That is all the more true of arguments pressed by an insurer using its insured's bankruptcy case to seek relief from its own obligations – relief that the insurer could not secure directly by filing for bankruptcy itself.

The government seeks to extend § 1109(b) further still. It contends that § 1109(b) grants each counterparty to an executory contract with a debtor a right to the courts' attention bounded only by the specter of sanctions, and not by Article III. But Truck never advanced that contention below or here; it lacks support in this Court's cases; and it conflicts with circuit-level law the government does not confront.

The government's unwillingness to defend Truck's reading of § 1109(b) also betrays a more fundamental problem with Truck's position: Truck lacks Article III standing. Truck contends that unidentified asbestos claimants will commit future discovery "fraud" that state courts can neither deter nor detect, that this

"fraud" will cause Truck to pay too much to resolve those claimants' cases, and that a federal court thus should enjoin those future claimants from seeking relief in their home courts absent engrafting Truck's additional discovery requirements onto the applicable state laws and procedures. Truck does not point to any case in which this Court has countenanced such a theory. And in retelling its fraud story as though it were received truth, Truck ignores the bankruptcy court's finding – one that the district court adopted after de novo review, and the Fourth Circuit had no occasion to disturb – that nothing but "a lot of conjecture and assumption and just assuming that everybody is in cahoots" supports that story. Because Truck thus lacks Article III standing, the Court should dismiss the case.

STATEMENT

A. Legal Background

1. Chapter 11 of the Bankruptcy Code aims to "preserv[e] going concerns and maximiz[e] property available to satisfy creditors." *Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. Lasalle St. P'ship*, 526 U.S. 434, 453 (1999) (citing *Toibb v. Radloff*, 501 U.S. 157, 163 (1991)). Voluntary Chapter 11 reorganizations thus help a "debtor and [its] creditors try to negotiate a plan that will govern the distribution of valuable assets from the debtor's estate and often keep the [debtor's] business operating as a going concern." *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 455 (2017).

Chapter 11 cases begin with the filing of a bankruptcy petition and disclosures of the details of the debtor's financial condition. 11 U.S.C. § 521(a)(1). Creditors and equity-holders then assert their rights, *see id.* § 501(a), and the bankruptcy court confirms a plan to resolve those claims, *see id.* §§ 1122, 1123

(describing requirements governing plans); *see also id.* § 502 (procedure for "allowance" of claims). Confirming the plan "discharges the debtor from any debt that arose before" that point. *Id.* § 1141(d)(1).

Congress has empowered bankruptcy courts to "hear and determine all [bankruptcy] cases," 28 U.S.C. § 157(b)(1), subject to Article III court oversight. Bankruptcy Code § 105 authorizes bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Code. 11 U.S.C. § 105(a). Section 105 also subordinates participatory rights in a bankruptcy case to the court's case-management discretion:

> No provision of [the Code] providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

Id. These orders may include such rules that "prescrib[e] such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously" and that are not "inconsistent with another provision of [the bankruptcy laws] or with applicable Federal Rules of Bankruptcy Procedure." *Id.* § 105(d)(2).

Sometimes a Chapter 11 bankruptcy petition spawns subsidiary disputes. When one matures into full-blown litigation, it is treated as an "adversary proceeding[]" within the broader bankruptcy case. *See generally* 7 *Collier on Bankruptcy* ¶ 1109.04[1][a][i] (16th ed.). Bankruptcy courts administer those proceedings under rules that incorporate the Federal Rules of Civil Procedure in many respects. *See* Fed. R. Bankr. P. 7002 advisory committee notes (1983).

2. This case centers on § 1109(b), which 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).

Bankruptcy courts treat such a "party in interest" much like courts treat any other intervenor in a civil case. In an adversary proceeding, a "party in interest" may move to intervene. *See* Fed. R. Bankr. P. 7024 ("Rule 24 F.R.Civ.P. applies in adversary proceedings."); Fed. R. Civ. P. 24 (addressing intervention standards). In other bankruptcy proceedings, the Bankruptcy Rules also "implement[] [§] 1109 . . . of the Code" pursuant to the rule governing intervention. Fed. R. Bankr. P. 2018 advisory committee notes (1983); *see id.* (explaining that § 1109 parties in interest "have a right to be heard," and Rule 2018 grants the court the discretion to allow others to intervene as well).

Parties in interest enjoy various rights. *See*, *e.g.*, 11 U.S.C. § 554(b) (to request order that trustee "abandon any property of the estate that is burdensome to the estate"); *id.* § 727(c)(2) (to request order that trustee "examine the acts and conduct of the debtor to determine whether a ground exists for denial of discharge"); *id.* § 1105 (to request termination of trustee's appointment); *id.* § 1112 (to request conversion of Chapter 11 case into Chapter 7 case, or dismissal); *id.* § 1121(c) (to file reorganization plan); *id.* § 1126(e) (to request that court "designate an[] entity whose acceptance or rejection of such plan was not in good faith, or was not solicited or procured in good faith or in accordance with the provisions of this title"); *id.* § 1127(b)-(c) (to propose modifications to

another's plan); *id.* § 1128(b) (to object to confirmation); *id.* § 1174 (to request liquidation).[1]

3. Two other provisions of the Bankruptcy Code are relevant here. Section 109 addresses "[w]ho may be a debtor." 11 U.S.C. § 109 (heading). Section 109(b) excludes a "domestic insurance company" from Chapter 7. *Id.* § 109(b); *see also id.* § 109(d) (same for Chapter 11). Those exclusions arise because, under the McCarran-Ferguson Act, ch. 20, 59 Stat. 33 (1945), as amended, 15 U.S.C. § 1011 *et seq.*, "the business of insurance" is reserved to "the continued regulation and taxation by the several States." 15 U.S.C. § 1011; *see U.S. Dep't of Treasury v. Fabe*, 508 U.S. 491, 507-08 (1993) (explaining that the statute's "primary purpose" was "to restore to the States broad authority to tax and regulate the insurance industry" they had enjoyed before *United States v. South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944)).

Domestic insurance companies in financial distress thus turn to state law. *See* S. Rep. No. 95-989, at 31 (1978) ("Banking institutions and insurance companies engaged in business in this country are excluded from liquidation under the bankruptcy laws because they are bodies for which alternate provision is made

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[1] The rights of parties in interest are expansive. *See*, *e.g.*, 11 U.S.C. § 303(g) (to request appointment of interim trustee in involuntary Chapter 7 case); *id.* § 362(d)-(f) (to request relief from automatic stay provided under § 362); *id.* § 502(a) (to object to claim); *id.* § 521(i)(2) (to request dismissal of Chapter 7 or 13 case on certain conditions); *id.* § 706(b) (to request order converting Chapter 7 case into Chapter 11 case); *id.* § 1102(a)(4) (to request change to membership of committee); *id.* § 1104(a) (to request appointment of a trustee under certain circumstances); *id.* § 1108 (to request that trustee "operate the debtor's business"); *id.* § 1144 (to request revocation for order of confirmation "procured by fraud").

for their liquidation under various State or Federal regulatory laws."), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5817. Broadly speaking, state statutes "provide for the management of an insurer by the state insurance commissioner for an indefinite period until the company has been restored to a sound operating basis" – or, if that ultimately proves impossible, for procedures that yield "court approved agreements of either reinsurance or rehabilitation." 1 *Couch on Insurance* § 5:18, at 5-60 to 5-61 (2023 rev. ed.); *see also*, *e.g.*, Cal. Ins. Code § 1064.2(a) (describing process for appointing receiver "for an insurer" that, like Truck, is "domiciled in" California).

The second provision is 11 U.S.C. § 524(g). Congress enacted § 524(g) in 1994 to address the fact that, because one exposed to asbestos may not experience symptoms for years, an asbestos-driven bankruptcy poses peculiar difficulties for both the debtor and future claimants. *See* Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 111, 108 Stat. 4106, 4113-17. "[A] reorganization plan that failed to account for future asbestos liabilities would be of limited utility to the debtor, and likewise, a reorganization plan that did not address future claimants would fail to provide adequately for all parties with an interest in the debtor's assets." *In re Imerys Talc Am., Inc.*, 38 F.4th 361, 366 (3d Cir. 2022).

Section 524(g)'s solution to these difficulties traces to the reorganization of "the once-dominant American producer of asbestos, the Johns-Manville Corporation." *Id.* (citing H.R. Rep. No. 114-352, at 5 (2015)). "[I]ts reorganization process introduced a novel mechanism for dealing with these issues: a trust designed to compensate present and future asbestos claimants, coupled with an injunction against future asbestos liability." *Id.* "The combination of the trust and

injunction allowed the debtor to emerge from bankruptcy without the uncertainty of future asbestos liabilities hanging over its head, while ensuring claimants would not be prejudiced just because they had not yet manifested injuries at the time of the bankruptcy." *Id.*

Section 524(g) elaborates on that model. It authorizes a bankruptcy court to issue a "channeling injunction" that ends asbestos litigation (present and future) against the reorganized debtor on certain conditions. *See* 11 U.S.C. § 524(g)(1)(B). The debtor must establish and (at least partly) fund a trust that assumes its asbestos liabilities, and the debtor must propose a bankruptcy plan empowering the trust "to pay claims and demands." *Id.* § 524(g)(2)(B)(i)(I), (II), (IV). The conditions also include protections for future claimants due to the long latency of asbestos-related illness, including the appointment of a representative to advance their interests. *Id.* § 524(g)(4)(B)(i), (ii); *see also id.* § 524(g)(2)(B)(ii)(III).

The "discharge of a debt of the debtor," without more, in a § 524(g) case "does not affect the liability of any other entity on, or the property of any other entity for, such debt." *Id.* § 524(e). And, importantly, the channeling injunction "may" – but need not – "bar any action directed against" third-party insurers "alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor." *Id.* § 524(g)(4)(A)(ii).

Truck's discussion of § 524(g) draws heavily on one decade-old interlocutory bankruptcy court decision: *In re Garlock Sealing Technologies, LLC*, 504 B.R. 71 (Bankr. W.D.N.C. 2014). That decision concerned the methodology that a particular court would use to estimate the debtor's aggregate asbestos liability.

In that interlocutory order, the *Garlock* court declined to rely on the debtor's past settlements. It examined evidence from 15 cases – that "[we]re not purported to be a random or representative sample"[2] – which the debtor had "settled for large sums." *Id.* at 84-86. The court preliminarily found that "some plaintiffs and their lawyers" had "withh[e]ld evidence of exposure to other asbestos products" in litigation against solvent defendants and "[delayed] filing claims against bankruptcy defendants' asbestos trusts until after obtaining recoveries from" those defendants. *Id.* at 84. The court's estimate reflected this conclusion. *See id.* at 95.

Despite that non-final ruling, the *Garlock* case ultimately was resolved by a plan reflecting a more reliable methodology that resulted in a higher exposure estimate. The *Garlock* trust also requires claimants to disclose various medical and exposure information to the trust to qualify for a trust payment. The nature and amount of information depend on the category of claim pursued by the claimant. The requirements to which Truck refers (at 9-10) – to "[d]isclose all other claims that relate in any way to the alleged asbestos injuries" – apply to a relatively narrow category of "Extraordinary Claims," in which the claimant asserts that there are few or no other potential defendants responsible for their asbestos exposure. C.A.App. 1117. The *Garlock* trust, like virtually every other asbestos trust, is authorized to conduct audits of claims and seek relief including sanctions from the bankruptcy court and prosecution under 18 U.S.C. § 152. *See Garlock Sealing Techs. LLC*, 2017 WL 2539412, at *12 (W.D.N.C. June 12, 2017) (incorporating "Claims

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[2] That debtor had been a defendant in "twenty thousand mesothelioma cases." 504 B.R. at 82.

Resolutions Procedures" reproduced in C.A.App. 1084-86, 1096-97).

Garlock's findings were not subject to appellate review and do not purport to address asbestos litigation generally. No federal appellate court has discussed its treatment of § 524(g). Only a handful of reported decisions have done so. No decision reads *Garlock* as treating its disclosure procedures as legally required for every future § 524(g) trust. It is a separate case with a separate evidentiary record. *See*, *e.g.*, *Mt. McKinley Ins. Co. v. Pittsburgh Corning Corp.*, 2015 WL 4773425, at *6 (W.D. Pa. Aug. 12, 2015) (denying motion for relief from judgment filed by an insurer that previously had been found to lack standing to challenge "insurance neutral" plan; insurer's theory that the debtors had "conspired with plaintiffs' law firms to create a trust designed to pay fraudulent claims" was supported by "no evidence" and "remain[ed] mere conjecture").

B. Factual Background

Respondents Kaiser Gypsum Company and Hanson Permanente Cement Inc. ("Debtors") sold products that poisoned thousands of people. For decades, Kaiser Gypsum made or sold a wide array of construction products that contained asbestos. App. 41a. For its part, Hanson Permanente (a cement manufacturer) made masonry and plastic cements that also contained asbestos. *Id.*

"Since 1978, one or both of the Debtors have been named in more than 38,000 asbestos-related lawsuits." JA461. Many of the Claimants alleged wrongful death from mesothelioma or asbestosis – fatal conditions caused solely by exposure to asbestos. Debtors also faced substantial environmental liabilities: for 60 years, one or both owned or operated a facility near what is now a Superfund site. JA464.

"Claimants" are the respondent representatives of current claimants (the Official Committee of Asbestos Personal Injury Claimants, or "ACC") and future claimants (Future Claimants' Representative, or "FCR"). They serve by the bankruptcy court's appointment. *See* C.A.App. 2245 (appointment of ACC); C.A.App. 30, 143 (appointment of FCR).

Truck is Debtors' principal insurer. Debtors purchased primary commercial general liability ("CGL") policies from Truck covering January 1, 1965 through April 1, 1983 (renewed annually). C.A.App. 26. Under the governing policy language,[3] Truck agreed to investigate and defend each covered asbestos personal-injury claim or suit brought against Debtors, "even if such claim or suit is groundless, false or fraudulent." C.A.App. 792. Truck also indemnified Debtors for each covered claim up to a per-claim limit, typically $500,000. C.A.App. 26. Truck's policy included a "per occurrence" limitation, but it included no aggregate maximum coverage limit. C.A.App. 6210. Truck also was obligated to provide coverage without regard to the insureds' bankruptcy status. C.A.App. 804. Debtors agreed to pay only a modest deductible (usually $5,000 per claim) and to assist and cooperate with Truck in defending individual personal-injury claims asserted against them.

Liability policies like Truck's were not unusual in the mid-twentieth century. *See* Kenneth S. Abraham, *The Rise and Fall of Commercial Liability Insurance*, 87 Va. L. Rev. 85, 90 (2001) ("The four decades that followed promulgation of the first CGL policy [in 1941] were a period of growth and stability. The policy

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[3] There were multiple policies, but the differences are not material. *See London Mkt. Insurers v. Superior Court*, 53 Cal. Rptr. 3d 154, 161-63 (Cal. Ct. App. 2007).

became a component part of the post-war American industrial expansion. Just as the insurability axiom provides, American businesses could and did insure against the risk of liability."). It is hornbook law that, "because comprehensive general liability policies are marketed by insurers as 'comprehensive' in their scope, such a policy should be strictly construed when the insurer attempts to constrict its coverage." 7A *Couch on Insurance* § 103:8, at 103-30 (2013 rev. ed.).

As its exposure mounted, Truck tried to narrow its obligations through coverage litigation.[4] It first argued that the "per occurrence" limitation capped Truck's liability. Truck asserted that the relevant "occurrence" was "Kaiser's decision to manufacture and distribute asbestos products and, thus, that all asbestos injuries arose out of a single annual occurrence." *London Mkt. Insurers*, 53 Cal. Rptr. 3d at 157. The California appellate court rejected Truck's argument. *See id.* Truck also has attempted to shift certain of its responsibilities to excess insurers, but the California state courts thus far have rejected that line of attack, too. *See Truck Ins. Exch. v. Kaiser Cement*, 2022 WL 71771, at *1 (Jan. 7, 2022), *reh'g denied* (Cal. Ct. App. Feb. 3, 2022), *review granted*, No. S273179 (Cal. Apr. 13, 2022).

Decades of coverage litigation thus now has "settled" Truck's obligation to "defend each covered Asbestos Personal Injury Claim (without eroding coverage) and

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[4] Coverage litigation of this sort is common. *See* 14A *Couch on Insurance* § 202:3, at 202-13 (2020 rev. ed.) ("In case of doubt or a dispute as to whether there is a duty to defend, based on a dispute over whether an insurance policy affords coverage for the conduct alleged in the complaint against the insured, a declaratory judgment action or motion may be brought to make the determination.").

indemnify the Debtors for such claims up to the $500,000 per claim limit." C.A.App. 26.

C. Procedural Background

1. By 2016, Debtors faced significant liabilities. On the asbestos-litigation front, although Debtors benefitted from their insurance coverage, they owed more than $3 million in deductibles and faced potential liability not covered by the Truck policy, such as for punitive damages. C.A.App. 25-27. Debtors also faced substantial environmental exposure arising from their Superfund-site-adjacent properties. C.A.App. 27.

Debtors filed a bankruptcy petition, C.A.App. 1893, and commenced complex negotiations to produce a reorganization plan, C.A.App. 45. Those negotiations yielded a settlement resolving the personal-injury litigation with Claimants. C.A.App. 1573. Debtors also settled their environmental liabilities with municipal and private creditors, the Oregon Department of Environmental Quality, and multiple federal agencies. C.A.App. 1574-75. Further, Debtors negotiated settlements with more than a dozen insurers. C.A.App. 1576, 5455-56.

Truck chose not to participate in these post-petition negotiations. C.A.App. 1588. Instead, Truck only sought to negotiate after proponents of the Plan had already agreed on a term sheet. C.A.App. 45. Debtors, Claimants, and Truck then participated in a mediation. *Id.* The mediation failed. *Id.*

Truck proposed its own plan including provisions that (among other things) effectively rewrote its insurance policies, as the California courts had construed them. For example, the plan Truck proposed included caps on how much Truck would have to pay asbestos personal-injury claimants. C.A.App. 2342 (§ 6.3),

2378 (§ B.134). The Truck plan also relied on a channeling injunction applying only to Truck that would have required claimants to litigate their claims in the Western District of North Carolina, rather than in their home state fora. C.A.App. 2352-53 (§ 7.5), 2375-76 (§ B.114).

No one else supported Truck's plan. The bankruptcy court concluded that it was "patently unconfirmable," "not proposed in good faith," and inconsistent with "the 524(g) standards." C.A.App. 3619.

Meanwhile, Debtors and Claimants proposed the joint Plan. App. 6a-7a. Under it, uninsured claims would be submitted directly to a § 524(g) trust for resolution, while insured claims would be litigated in the tort system as they had been for decades before the bankruptcy. *Id.* The Plan left Claimants bringing those claims free to file personal-injury lawsuits in state civil courts against Debtors as nominal defendants. C.A.App. 13. Truck's obligations remained the same: it had to investigate and defend insured claims, subject to any coverage defenses. C.A.App. 51.

The United States weighed in at this point, raising objections and suggesting (among other things) additional trust audit provisions to remedy its concerns. *See* Bankr. Dkt. #1299, at 10-11, No. 16-31602. The United States did not advocate for the disclosures Truck seeks here and, once the Plan was amended to address the United States' objections, the United States filed no further objections.

The Plan requires a small minority of uninsured claimants seeking trust payments to provide enhanced disclosures of their exposure and claim histories, but only when they assert that there are few or no other potential defendants to blame for their asbestos

exposure.[5] App. 7a. The Plan did not change the treatment of insured claims, which Truck would litigate in the tort system before judges and juries under the laws and rules applicable in those venues. C.A.App. 31.

More than a dozen insurers and several state and municipal entities settled their claims with Debtors and declined to oppose the Plan. C.A.App. 1576, 5455-56. The United States, in its other capacities, negotiated settlements with Debtors relating to environmental claims. C.A.App. 31-33. When the Plan went out to vote, thousands of asbestos claimants – 100% of them – voted in favor of the Plan. C.A.App. 1859 n.6. In short, "[t]he Plan [received] unanimous support from all the other parties involved in the bankruptcy, save one – Truck." App. 8a.[6]

2. Truck sent Debtors a reservation-of-rights letter. C.A.App. 863-64. Even though the Plan was the product of years of contentious negotiations, Truck's letter asserted that the Plan "appear[ed] to be collusive" between Debtors and Claimants and "in violation of [the Debtors'] duty to cooperate and assist." C.A.App. 864. Truck speculated that Debtors' Plan

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[5] These claims are defined in the trust distribution procedures as "Extraordinary Claims" and refer to claims that are "held by a claimant whose exposure to asbestos (i) occurred *predominantly* as a result of working in a manufacturing facility of the Debtor during a period in which the Debtor was manufacturing asbestos-containing product at that facility or (ii) was at least *75%* the result of exposure to an asbestos-containing product or to conduct for which the Debtor has legal responsibility, and in either case there is *little likelihood of a substantial recovery elsewhere*." C.A.App. 6498-500 (emphases added).

[6] The Official Committee of Unsecured Creditors filed a limited objection, which was quickly resolved. *See* Bankr. Dkt. #2275, at 2, No. 16-31602.

"shields [Debtors] . . . from any future fraudulent conduct by [plaintiffs'] lawyers, but leaves Truck and other insurers completely exposed." *Id.*

After receiving Truck's reservation-of-rights letter, Debtors amended the Plan to seek a finding from the bankruptcy court that: (1) Debtors' conduct in the bankruptcy proceeding did not violate their duty to cooperate and assist Truck; (2) Debtors were not breaching any implied covenant of good faith and fair dealing. C.A.App. 1729. The record refers to this as the "Plan Finding."

3. The parties then conducted discovery before a hearing on the proposed Plan, in which Truck (and others) participated. C.A.App. 1621-22. Truck filed objections to the Plan, presented two expert witnesses on the subject of fraud, C.A.App. 1538, and submitted legal briefs, C.A.App. 1622.

The bankruptcy court then held a two-day confirmation hearing, at which Truck appeared. C.A.App. 1622. *First*, Truck asserted that the proposed Plan Finding would impermissibly alter Truck's rights under its policies. C.A.App. 1614. *Second*, Truck separately contended that the Plan was not filed in good faith as 11 U.S.C. § 1129(a)(3) requires. C.A.App. 1586, 4126-37. *Third*, Truck argued that the trust did not comply with § 524(g)'s requirements. C.A.App. 1586, 4137-45.

The bankruptcy court entered proposed findings of fact and conclusions of law overruling Truck's objections. The court first concluded that Truck was not a "party in interest" that could object to the Plan because the Plan was "insurance neutral." C.A.App. 1612. It explained that Truck "gains no advantages under this plan, but it also loses nothing. It returns to state court to defend these claims with all of its rights and defenses intact." C.A.App. 6211.

The court also rejected Truck's objections on their merits. *First*, it adopted the Plan Finding, concluding that, under California law, Debtors had breached neither their insurance agreements nor the covenant of good faith and fair dealing. C.A.App. 77-86. *Second*, it rejected Truck's assertion that the Plan was not negotiated in good faith, explaining that the Plan was "the product of extensive arms'-length negotiations among the ACC, the FCR, the Debtors and numerous other parties." C.A.App. 42. The court concluded that the Plan "reflects a consensual resolution of the Debtors' asbestos and environmental liabilities and maximizes the value of assets available to satisfy claims." *Id.* *Third*, the court found no basis for Truck's objection that the Plan violated § 524(g). C.A.App. 43.

The court specifically rejected as unsupported Truck's assertions that it would encounter fraud in state court. It noted that Truck's corporate representative admitted he could neither "identify [nor recall] a particular claim where Truck was able to actually say, look, we found trust submissions by this claimant that show they lied about their exposure history or whatever." C.A.App. 907. Truck's expert witnesses conceded they did not review any specific claims. C.A.App. 973 (Dr. Charles E. Bates); C.A.App. 964 (Lester B. Brickman, Esq.).

The court found "[t]he evidence that Truck presents for the potential . . . of fraud in this case is not particularly strong and it's not direct. There's a lot of conjecture and assumption and just assuming that everybody is in cahoots ranging from the debtor, the ACC, the FCR, and all the plaintiffs' firms, and it speculates as to future events of what would happen in state court." C.A.App. 6207.

The court also rejected the premise of Truck's objection – the notion that state courts were incapable of policing fraud. The court explained that it was "not inclined to indict its colleagues on the state benches, nor [did it] believe that a bankruptcy court in North Carolina is necessary to protect state courts from fraud." C.A.App. 44. It thus confirmed the Plan.

4. The district court reviewed the bankruptcy court's decision de novo, complete with additional briefing and a hearing. The court adopted the bankruptcy court's findings of fact and conclusions of law in all material respects. App. 11a. Contrary to what Truck represented at the certiorari stage, Pet. 10, the district court adopted all the "findings and conclusions" the bankruptcy court made on the merits of Truck's objections. App. 38a n.6; *see* App. 128a n.6 ("The Court has considered and overruled each objection to the Plan raised by Truck . . . ."); *see also*, *e.g.*, Claimants Cert. Opp. 6 ("[T]he district court . . . also overruled Petitioner's objections on the merits."); Debtors Cert. Opp. 8-9 (similar).

Truck appealed. Although Truck challenged the lower courts' § 1109(b) conclusion, it did so only to reach the merits; Truck did not assert that it was deprived of any right to participate, develop evidence, and assert its objections in the bankruptcy proceedings or in the district court. Truck emphasized that its request for relief was for remand with instructions to impose what it described as "*Garlock*" conditions for claims it had insured. Oral Arg. Tr. 37, No. 21-1858 (4th Cir. Oct. 25, 2022) ("4th Cir. Tr.").

5. The Fourth Circuit affirmed. That court held Truck was not a "party in interest" under § 1109(b). Rejecting Truck's objections to the Plan Finding under state law (in a holding Truck does not independently

challenge in this Court), the court determined that the Plan was "insurance neutral" – that is, it did nothing to alter Truck's "quantum of liability." App. 24a. Truck was therefore not a "party in interest" under § 1109(b). *Id*. The court also rejected Truck's position that, as a creditor, it has standing to object to the Plan in that capacity. The court explained that Truck did not have Article III standing to press arguments in that capacity because the Plan fully satisfied Truck's sole claim as a creditor. App. 25a.

SUMMARY OF ARGUMENT

I. The Fourth Circuit correctly held that, because the Plan does not affect Truck's pre-petition rights and obligations, Truck is not a "party in interest" in Debtors' bankruptcy case. Section 1109(b)'s text and structure confirm that, for a person to be a "party in interest," a bankruptcy plan must alter a person's legally protected interests in the debtor's property. For Truck, the Plan leaves those interests as it found them before the bankruptcy filing. Truck must investigate and defend the same covered claims, it retains all the same defenses, and it maintains the same policy limits. It is no worse (or better) off than it was before Debtors' bankruptcy. Because the Plan does not alter Truck's rights or liabilities, Truck is not a "party in interest" with standing to object to it.

Truck and the government propose novel and different rules that depart from the text and would make bankruptcy cases unmanageable. Truck contends that a "party in interest" need only imagine some way in which a bankruptcy case might hypothetically benefit them. The government offers a third view, contending that the mere possession of an executory contract with the debtor (however unaffected by the Plan) is sufficient. But as this Court's cases make

clear, the Bankruptcy Code does not allow persons with so little at stake to derail bankruptcy cases. If a hypothetical benefit alone were enough to confer "party in interest" standing, virtually anyone could intervene in bankruptcy proceedings and hold debtors and creditors hostage to their demands. The Code does not force bankruptcy courts to entertain such arguments.

II. The Court should dismiss the writ because Truck lacks Article III standing.

A. Truck lacks a cognizable injury-in-fact. Truck predicts that asbestos plaintiffs will commit "fraud" in future litigation, that Truck will be unable to test their claims in discovery, and that Truck therefore will overpay to resolve their claims. That is too speculative an injury to support standing.

B. Truck also lacks standing for additional reasons. Its injury is not fairly traceable to any conduct properly at issue in Debtors' bankruptcy. Further, the disclosure regime Truck demands would do nothing to deter the "fraud" it imagines.

C. The government seeks reversal based on the sweeping claim that Article III standing is irrelevant in most bankruptcy cases. But even Truck does not deny that it must satisfy Article III's demands. Further, the government ignores the fact that its contrary view implicates disagreement among the courts of appeals that the Court did not grant review to resolve, and contradicts the government's own position in other *in rem* actions. The government's theory thus presses a broad question about § 1109(b) over which Truck has not established standing to litigate and raises an important question of structural constitutional law that the Court did not grant review to decide.

ARGUMENT

I. TRUCK IS NOT A "PARTY IN INTEREST" ENTITLED TO APPEAR AND BE HEARD IN DEBTORS' BANKRUPTCY CASE

A. An Insurer Is Not A "Party In Interest" Unless A Bankruptcy Plan Alters Its Legally Protected Interests

Section 1109(b)'s meaning turns on the phrase "party in interest" – a phrase used throughout the U.S. Code as a unit and best interpreted as a whole. *See FCC v. AT&T Inc.*, 562 U.S. 397, 406 (2011) ("[T]wo words together may assume a more particular meaning than those two words in isolation."); Antonin Scalia & Brian A. Garner, *Reading Law: The Interpretation of Legal Texts* 356 (2012) ("Scalia & Garner, *Reading Law*") ("The full body of a text contains implications that can alter the literal meaning of individual words."); *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1825 (2020) (Kavanaugh, J., dissenting) ("[C]ourts must adhere to the ordinary meaning of phrases, not just the meaning of the words in a phrase."). As a unit, the phrase "party in interest" is clear. A person whose legally protected interests remain unaltered by a bankruptcy case is not a "party in interest" in that case.

1. Dictionary definitions make clear that a "party in interest" is one whose interests a legal proceeding will directly alter. Indeed, dictionaries contemporaneous with § 1109(b)'s enactment in 1978 distinguish a "party in interest" from other persons a proceeding might incidentally implicate. *See*, *e.g.*, *Party in Interest*, *Ballentine's Law Dictionary* 920 (3d ed. 1969) ("A party to an action who has an actual interest in the controversy, as distinguished from a nominal party."); *see also id.*, *Interested Person*, at 648 (referencing

"interested person," which provides: "[i]n reference to the right to intervene in an action, an interest in the matter in litigation of such direct and immediate character that the intervener will either gain or lose by the direct legal operation and effect of the judgment").

Black's Law Dictionary is particularly clear on that distinction. Its principal definition cross-references the phrase "real party in interest," which it defines as "the one, who, under applicable substantive law, has legal right to bring suit and not necessarily [the] person who will ultimately benefit from recovery." *Real Party in Interest*, *Black's Law Dictionary* 1137 (5th ed. 1979) (citation omitted). Other sources interpreting that related phrase reinforce this point, underscoring that "[o]ne who merely stands to benefit from the action, economically or otherwise, is not necessarily a real party." 4 *Moore's Federal Practice – Civil* § 17.10[1], at 17-11 (3d ed. 2023); *see also id.* at 17-16 ("Generally, real parties in interest have standing, but not every party who meets standing requirements is a real party in interest.") (footnote omitted). No definition indicates that one whose interest in a legal proceeding consists only of a speculative hope of an improved position is a "party in interest" in that proceeding.

Slicing the phrase into its component words, "party" and "interest," does not expand the phrase to such persons. On the contrary, although "interest" can bear a broad reading on its own,[7] definitions of "party"

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[7] *Interest*, *Black's Law Dictionary* at 729 ("The most general term that can be employed to denote a right, claim, title, or legal share in something."); *Interest*, *Webster's New International Dictionary* 1294 (2d ed. 1950) ("Concern, or the state of being concerned or affected, esp. with respect to advantage, personal or general").

further narrow the phrase "party in interest." *See*, *e.g.*, *Parties*, *Black's Law Dictionary* at 1008 ("The persons who . . . are directly interested in any affair, contract, or conveyance, or who are actively concerned in the prosecution and defense of any legal proceeding. . . . In civil actions they are called 'plaintiff' and 'defendant'. . . ."); *Party*, *Webster's New International Dictionary* at 1784 ("the plaintiff or the defendant in a lawsuit[;] . . . one directly disclosed by the record to be so involved in the prosecution or defense of a proceeding as to be bound by the decision").

2. The list of entities that § 1109(b) "includ[es]" as a "party in interest" confirms Claimants' reading. *See Samantar v. Yousuf*, 560 U.S. 305, 317 (2010) (defining "foreign state" by looking to "the types of defendants listed").

The entities specified in § 1109(b) have legally protected interests in the debtor's assets that any reorganization plan is likely to implicate. For example, the "debtor" must contribute all its property to the bankruptcy estate. *See Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 455 (2017) ("[F]or Chapter 11 bankruptcy . . . an estate is created comprising all property of the debtor."); *see also* 11 U.S.C. § 541(a)(1). The Bankruptcy Code then "sets forth a basic system of priority," under which "creditors" and "equity holders" may collect from the estate. *Czyzewski*, 580 U.S. at 457; *see also* 11 U.S.C. § 726(a)(1)-(6). The "trustee," in turn, is "accountable for all property received" and has various duties in managing the estate. *Id.* § 704; *see also* 6 *Collier on Bankruptcy* ¶ 704.01. And the "indenture trustee" and "committee[s]" of creditors or equity-security holders represent entities with comparable interests in the estate. 11 U.S.C. § 1103(c)(5); *see also id.* § 1102(b)(3). No

listed entity has the type of interest Truck asserts here – a hypothetical interest in improving its pre-petition position.

3. The "insurance neutrality" test is not, as Truck asserts (at, e.g., 44), "a judge-made standing limitation" that departs from § 1109's text. It is shorthand for the proper application of that text's ordinary meaning to a debtor's insurers.

The "insurance neutrality" test is simple. As the courts of appeals have held, an insurer's claim to "party in interest" status depends on whether it "has a legally protected interest that could be affected by a bankruptcy proceeding." *In re James Wilson Assocs.*, 965 F.2d 160, 169 (7th Cir. 1992). If the answer is yes, the insurer is a "party in interest," and so "is entitled to assert that interest with respect to any issue to which it pertains." *Id.* If no, then it is not.

In the 30 years since the Seventh Circuit's *James Wilson* decision, no court of appeals has rejected the insurance-neutrality test. *See*, *e.g.*, *In re Global Indus. Techs., Inc.*, 645 F.3d 201, 212 (3d Cir. 2011) (en banc) ("*GIT*") ("'Insurance neutrality' is a meaningful concept where . . . a plan does not materially alter the quantum of liability that the insurers would be called to absorb."); *In re Thorpe Insulation Co.*, 677 F.3d 869, 884-85 (9th Cir. 2012) (asking whether the plan is "insurance neutral"); *In re C.P. Hall Co.*, 750 F.3d 659, 661-63 (7th Cir. 2014) (harmonizing *James Wilson*, *GIT*, and *Thorpe*); *see also* App. 16a ("In determining whether a particular reorganization plan sufficiently affects an insurer's legal rights to render that insurer a party in interest, courts typically look to see whether the plan is 'insurance neutral.'"). Bankruptcy courts have also become accustomed to applying it. *See*, *e.g.*, *In re Pittsburgh Corning Corp.*, 453 B.R. 570, 585-89

(W.D. Pa. 2011); *In re Congoleum Corp.*, 2005 WL 712540, at *3 (D.N.J. Mar. 24, 2005). Insurers and insureds even negotiate for "insurance neutrality" provisions in contracts. *See In re Federal-Mogul Glob. Inc.*, 385 B.R. 560, 568 n.22 (Bankr. D. Del. 2008), *aff'd*, 402 B.R. 625 (D. Del. 2009), *aff'd*, 684 F.3d 355 (3d Cir. 2012). The standard has proved workable for decades.

That a debtor's insurer is not necessarily a "party in interest" is consistent with the Bankruptcy Code's structure. For reasons of history and federalism, the regulation of insurance companies largely is left to the States. The Code thus precludes domestic insurance companies from seeking reorganization under Chapter 11. *See* 11 U.S.C. § 109(b)(2), (d). Even § 524 makes clear that insurers have no right to derivative relief from an insured's reorganization plan. *See id.* § 524(e) (discharge of debt "does not affect the liability of any other entity on, or the property of any other entity for, such debt"); *id.* § 524(g)(4)(A)(ii)(III) (channeling injunction need not bar actions against insurers); *see also SuVicMon Dev., Inc. v. Morrison*, 991 F.3d 1213, 1223 (11th Cir. 2021) ("[T]he purpose of section 524 is to protect the debtor and not to shield third parties such as insurers who may be liable on behalf of the debtor. . . . [T]he discharge injunction is not intended to allow an insurer to escape its obligations based simply on the financial misfortunes of the insured . . . .") (cleaned up). Section 1109(b) does not grant a debtor's insurer any right to use its insured's bankruptcy case as a forum to indirectly demand relief that the Code bars it from seeking directly.

4. Applying the "insurance neutrality" test, the Fourth Circuit correctly held that Truck is not a "party in interest." The Plan "neither increase[d] Truck's obligations nor impair[ed] its prepetition

contractual rights." App. 95a. It did not expand the pool of claimants that could sue. Nor did it render Truck vulnerable to higher damage awards. It did not eliminate Truck's right to defend against claims Truck deemed fraudulent. The Plan did not *improve* Truck's position in the way Truck would like, but that is not enough to make it a "party in interest" in a bankruptcy case.

B. Truck's Hypothetical-Benefit Test Lacks Merit

Truck contends that it is a "party in interest" because a *different* plan *might have* improved its pre-petition position. *See* Br. 34 (characterizing "the relief Truck seeks" as "a plan that includes the fraud-prevention measures" Truck prefers). For Truck, any entity that might hypothetically benefit from some imagined plan provision has standing to be heard on "any issue" in a bankruptcy. 11 U.S.C. § 1109(b). That test does not conform to the statute.

1. Truck's hypothetical-benefit test misreads the Bankruptcy Code. The phrase "party in interest," in § 1109(b) as elsewhere, connotes a concrete stake in the legal rights and obligations a bankruptcy confers. *See supra* pp. 21-23. It does not extend to those who might hypothetically benefit from an imaginary bankruptcy plan.

Setting aside its phrase-slicing exercise addressed above (at 21-22), Truck derives its hypothetical-benefit test (at 23-26) from cases addressing the Transportation Act of 1920, ch. 91, § 402, 41 Stat. 456, 478 (formerly codified at 49 U.S.C. § 1(20) (1970) (repealed 1976)). Those cases undermine its position.

In Truck's lead case, *Western Pacific California Railroad Co. v. Southern Pacific Co.*, 284 U.S. 47 (1931), the Court addressed who was a "party in interest"

with statutory standing to object to a railroad construction not authorized by the Interstate Commerce Commission. The Court restricted "party in interest" status to those who can show "that some definite legal right possessed by [a] complainant is seriously threatened" or "that the unauthorized and therefore unlawful action of the defendant carrier may directly and adversely affect the complainant's welfare by bringing about some material change in the transportation situation." *Id.* at 51-52. It never suggested that a party with a purely hypothetical interest would qualify.

The Court applied the alteration-of-rights standard in *L. Singer & Sons v. Union Pacific Railroad Co.*, 311 U.S. 295 (1940). There, it made clear that one whose welfare "could only be indirectly and consequentially affected by" the challenged construction (such as one merely complaining that that construction would allow a competitor to expand, but "which in no other way affects" them, as occurred in that case) "in no proper sense brings about a material change in the transportation system directly affecting their peculiar interest which they have the right to prevent by suit." *Id.* at 304.

Contrary to Truck's conclusion (at 24), those cases support the "insurance neutrality" test. *Western Pacific* concluded that a person was a "party in interest" for Transportation Act purposes if a railroad's unlawful conduct would "bring[] about some material change in" the pre-proceeding status quo in a way that "may directly and adversely affect" that person's "welfare." 284 U.S. at 51-52. The "insurance neutrality" test stands for the same point: it similarly ties "party in interest" status to whether a proposed "plan . . . materially alter[s] the quantum of liability that the insurers would be called to absorb." *GIT*, 645 F.3d

at 212. *L. Singer & Sons*, in turn, makes clear that Truck's speculative hope to receive an indirect improvement to its position in Debtors' bankruptcy case does not make it a "party in interest."

Perhaps for this reason, the government downplays *Western Pacific* (at 19) and discourages the Court from accounting for the dozens of times the U.S. Code uses "party in interest" in other contexts (at 19 n.2). That is a tell: the government cannot abide either Truck's or its own reading of "party in interest" in any case but this one. Yet if, as Truck says (at 23), "party in interest" is a term whose "meaning" has been "settled by this Court's precedent," the government appears unwilling to live with that meaning in any other "statutory contexts" (U.S. Br. 19).

The government's reluctance to endorse Truck's hypothetical-benefit test is well-founded. Indeed, that test has no limiting principle. Under Truck's logic (at 32-35), *anyone* can be a party in interest: all they need do is imagine some plan provision – no matter how outlandish – that might conceivably benefit them. For example, a contract counterparty unaffected by a proposed reorganization plan could demand additional perquisites not provided in any agreement and, when denied, claim "party in interest" status based on its asserted right to an imagined-but-denied windfall. Or a debtor's former employee, otherwise unaffected by the bankruptcy, could ask the bankruptcy court for higher severance pay and conjure standing based on the benefit such relief might offer. Even a single creditor's equity holders could intervene, asking the plan to be rewritten to serve their individual interests.[8] Congress did not intend § 1109 to be so open-ended.

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[8] *See In re Refco Inc.*, 505 F.3d 109, 117-19 (2d Cir. 2007) (rejecting party-in-interest status for creditor's equity investors).

Cf. Holmes v. Securities Inv. Prot. Corp., 503 U.S. 258, 266 (1992) (rejecting an "expansive reading" of a statutory cause of action because it was "unlikel[y] that Congress meant to allow" that reading's results).

Truck's theory of bankruptcy standing would also upend the statutory scheme. As scholars have explained, "party in interest" was "not intended to include literally every conceivable entity that may be involved in or affected by the chapter 11 proceedings." 7 *Collier on Bankruptcy* ¶ 1109.03. Beyond the participation right in § 1109(b), parties in interest can, among other things, (1) move to dismiss bankruptcy proceedings, 11 U.S.C. § 1112(b)(1); (2) request a trustee to abandon property deemed burdensome to the estate, *id.* § 554(b); and (3) move for liquidation of the estate, *id.* § 1174. *See supra* pp. 5-6. Extending those rights to those without a true stake in the proceedings – especially to insurers, whose true stake often is in delay for its own sake[9] – would be profoundly disruptive. Indeed, were participation rights dispensed based on speculative theories of potential benefit, bankruptcy courts could lose control of proceedings. Congress did not use the phrase "party in interest" to invite such results.

For those reasons, Truck's criticism (at 35-36) that the Fourth Circuit used "the wrong baseline" lacks merit. The only way for "party in interest" to retain any meaning is to measure a party's claimed interest against its position "before the bankruptcy." App. 23a. That baseline supplies a simple, administrable rule:

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[9] *Cf. In re Imerys Talc Am., Inc.*, 38 F.4th 361, 371 (3d Cir. 2022) ("[I]t appears that the Insurers are only bringing this objection as a tactical one to delay Imerys's plan confirmation. This is just the sort of bad-faith tactic that [circuit precedent] recognized and cautioned against . . . .").

a court need only determine whether the bankruptcy alters the status quo for the party seeking standing. Indeed, courts successfully have used the "insurance neutrality" test to apply that very rule to insurers for decades. *See supra* pp. 24-25. Truck's alternate "baseline," by contrast, is unworkable. It asks (at 35) courts to measure standing not against the status quo, but against a hypothetical in which the party seeking standing receives a "benefit" based on whatever fanciful view of "the Code's requirements" it propounds. That abstruse standard is not the type of "clear[]" and "easier to apply" rule this Court prefers. *Hertz Corp. v. Friend*, 559 U.S. 77, 95-96 (2010).

2. Truck's comparison (at 27-28) to the phrase "person aggrieved" is unpersuasive. As Truck admits (at 27 n.2), courts do not always read "person aggrieved" to require more than Article III does. *See Bank of Am. Corp. v. City of Miami*, 581 U.S. 189, 197 (2017) (observing "person aggrieved" can evince "congressional intention to define standing as broadly as is permitted by Article III"). More importantly, Truck's conclusion does not follow: "person aggrieved" is not the only phrase Congress may use to require more than Article III standing.

One of Truck's own cases (at 41-42), *Lexmark International, Inc. v. Static Control Components, Inc.*, 572 U.S. 118 (2014), confirms this point. That case concerned the false-advertising cause of action under the Lanham Act, which on its face extended to "'any person who believes that he or she is likely to be damaged' by a defendant's false advertising." *Id.* at 129 (quoting 15 U.S.C. § 1125(a)(1)). "Read literally," the Court recognized, the provision's "broad language might suggest that an action is available to anyone who can satisfy the minimum requirements of Article

III." *Id.* But the Court was persuaded by "the 'unlikelihood that Congress meant to allow all factually injured plaintiffs to recover.'" *Id.* (quoting *Holmes*, 503 U.S. at 266). *Lexmark* avoided that result primarily by relying on the presumption "that a statutory cause of action extends only to plaintiffs whose interests 'fall within the zone of interests protected by the law invoked.'" *Id.* (quoting *Allen v. Wright*, 468 U.S. 737, 751 (1984)).

Lexmark thus refutes Truck's position in two ways. First, it clarifies that "person aggrieved" is hardly the only phrase Congress can use to require more than Article III standing of a person invoking a statutory right: *Lexmark* held that different language did so. Second, applying *Lexmark*'s zone-of-interests analysis to § 1109(b) only reinforces the conclusion explained above: a "party in interest" "is someone who has a legally recognized interest in the debtor's assets." *C.P. Hall,* 750 F.3d at 661 (applying *Lexmark*). Someone who might gain a windfall from a hypothetical favorable ruling does not qualify.

To be sure, as Truck notes (at 41-42), *Lexmark* clarified that the doctrine formerly called "statutory standing" is better described without using the term "standing." *See* 572 U.S. at 127-28. In light of that clarification, the early "insurance neutrality" cases' use of the "standing" label to describe "party in interest" status is an anachronism. *See*, *e.g.*, *James Wilson*, 965 F.2d at 169 (referring to § 1109(b) as making "a grant of standing"). But *Lexmark* also refused to read the cause-of-action provision at issue there, as Truck reads § 1109(b) here, in isolation from its statutory context – which may explain why the government does not cite *Lexmark* even once.

C. The Government's Novel Test Lacks Merit

1. The government advances a reading of "party in interest" all its own. Its unprecedented theory postulates that Truck's insurance contracts are property of the estate, and that is sufficient to make Truck a "party in interest." *See* U.S. Br. 16. Truck does not advance that view. Nobody pressed that view before the Fourth Circuit. And the government never demonstrates that any court has accepted it, either. This Court should neither entertain nor adopt it.

To justify this novel proposition, the government observes (at 20) that all the entities listed in § 1109(b) either hold property interests in the bankruptcy estate or represent those that do. It also asserts (at 21) that the "ongoing rights and obligations" attendant to "an executory contract of the debtor" are estate property. But if Congress had intended to make the possession of a contract right against the debtor sufficient to create party-in-interest status, it would have said so directly. Instead, Congress used the phrase "party in interest" with an established legal meaning and illustrated it with a list that does not extend to all contractual counterparties. *Cf.* Scalia & Garner, *Reading Law* 199-200 ("when the tagalong general term is given its broadest application, it renders the prior enumeration superfluous"; one "avoids this contradiction by giving the enumeration the effect of limiting the general phrase (while still not giving the general phrase a meaning that it will not bear)").

Further, the government overlooks the details of insurance policies like Truck's in the bankruptcy context. Courts distinguish between the property rights in the contract and the property rights in the *proceeds*. "When the proceeds of an insurance policy are payable to the debtor, they are property of the estate."

5 *Collier on Bankruptcy* ¶ 541.10[1]. But when (as here) the proceeds are payable to others, the proceeds commonly are not estate property. *See generally In re Edgeworth*, 993 F.2d 51, 55-56 (5th Cir. 1993). Here, Debtors do not "receive and keep" the proceeds of the Truck policy when Truck pays on claims, so the proceeds of the Truck policy are not property of the estate. *Id.*

Like Truck, the government offers no serious limiting principle for its view. Bankrupt entities are commonly counterparties to many contracts. Yet on the government's theory (at 30), the only limitation on the issues such a counterparty can raise in a bankruptcy arise from the fear of sanctions. But the requirement that arguments reflect good faith will be cold comfort to courts confronting an onslaught of those arguments made by parties with no real stake in those cases, delaying resolution for debtors and creditors. For example, the government's test could force bankruptcy courts considering a plan element affecting only secured creditors to resolve objections made by a food vendor with a contract to provide services in a debtor's office building. The same could be true for an office-supply vendor. Even a customer who had accepted the terms of service on a debtor's website presumably would have standing under the government's view. The government itself recently argued that the Court should not adopt such "sweeping interpretation[s]" of the Bankruptcy Code. Br. for Pet'r U.S. Trustee at 35, *Harrington v. Purdue Pharma L.P.*, No. 23-124 (U.S. Sept. 20, 2023).[10]

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[10] The government also notes (at 1) the interests of the U.S. Trustees. But their right to be heard arises from 11 U.S.C. § 307, not § 1109(b).

2. The Court also should reject the suggestion that Truck can rely on its status as a creditor. As Truck silently concedes, its "only claim" as a creditor (to future deductibles) "is fully satisfied under" the Plan that is now in effect. App. 25a. It thus is not a "party in interest" with standing to object on that ground. *See In re Ultra Petroleum Corp.*, 943 F.3d 758, 761 (5th Cir. 2019) (unimpaired creditors "could not object to [a reorganization] plan"); 1 Howard J. Steinberg, *Bankruptcy Litigation* § 6:33.50, at 641-42 (2d ed. 2023 Supp.) ("While a creditor may be a party in interest in the bankruptcy case, the creditor's standing to raise issues in certain types of proceedings may be limited if the ruling on the particular issues does not impact that creditor.") (collecting cases); App. 25a.

The Bankruptcy Code forecloses Truck's limitless view of standing. Independent of § 1109(b), courts deciding bankruptcy cases enjoy all their traditional rights to limit intervenors' participation with a view to the interests that justified their intervention in the first place. *See In re Financial Oversight & Mgmt. Bd. for Puerto Rico*, 872 F.3d 57, 64 (1st Cir. 2017) ("*FOMB*") (emphasizing that, although § 1109(b) grants a right to intervene, "[c]rucially, courts are not faced with an all-or-nothing choice"; on the contrary, they enjoy "broad discretion" to, among other things, "restrict intervention to the claims raised by the original parties or a particular set of issues") (citation omitted). Section 105 reflects similar discretion, highlighting that § 1109(b) should not "be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C.

§ 105(a); *see also*, *e.g.*, *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 374-75 (2007) (rejecting claim that procedural right conferred under Chapter 7 was "absolute," in light of § 105(a)).

The unqualified, unbounded right Truck locates in § 1109(b) thus is not necessary to protect insurers' "seat at the table" (at 48), as Truck contends. Instead, courts' "flexibility" to manage a case efficiently allows them "to get all interested parties to the table in the hopes of reaching an effective and fair solution, while at the same time preventing an expansion of scope capable of threatening the court's control over the matter." *FOMB*, 872 F.3d at 64 (cleaned up).

II. TRUCK LACKS ARTICLE III STANDING

Even if § 1109(b) "party in interest" status were coterminous with Article III standing, that still would not warrant reversal because Truck cannot carry its burden to show it has "the irreducible constitutional minimum of standing" that Article III requires. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

A. Truck Can Establish No Injury

"Article III confines the federal judicial power to the resolution of 'Cases' and "Controversies,'" *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423 (2021), "and Article III standing enforces the Constitution's case-or-controversy requirement," *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006) (cleaned up). Truck thus must "show" "(i) that [it] suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief." *TransUnion*, 594 U.S. at 423 (citing *Lujan*, 504 U.S. at 560-61). Truck cannot satisfy any of these requirements. Indeed, Truck cannot show it was injured at all.

First, Truck has made only "'[a]llegations of *possible* future injury'" of the sort this Court has "repeatedly reiterated . . . are not sufficient" to support Article III standing. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)) (brackets in *Clapper*). Shorn of rhetoric, Truck's theory (at, e.g., 31-37) is that asbestos claimants (and their counsel) who pursue the future litigation Truck agreed to defend might withhold truthful information about past asbestos exposures that they would have disclosed to an asbestos trustee under Truck's preferred plan, and that "fraud" might lead Truck to pay more to resolve those claims in litigation than it would have paid to resolve them through Debtors' bankruptcy. This Court never has held so speculative a predicted financial loss to be a basis for Article III standing. Truck's "pocketbook injury" cases (at 31-32) concerned the very different situation of a party with realized financial losses. *See FEC v. Cruz*, 142 S. Ct. 1638, 1646 (2022) (unpaid loan); *Czyzewski*, 580 U.S. at 463-64 (lost value of specified fraudulent-conveyance claim). Truck has no other case. The payment of this alleged "fraud" premium is not even "threatened" (only imagined) and is far from "certainly impending." *Clapper*, 568 U.S. at 401. It thus never could be an Article III injury-in-fact even in principle.

Truck's theory also fails for lack of record evidence. Standing law is not a set of "mere pleading requirements": "each element" of Article III standing "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation." *Lujan*, 504 U.S. at 561; *see also*, *e.g.*, *TransUnion*, 594 U.S. at 437-38 (evidence showed that asserted "risk of future harm" was "too speculative to support Article III standing").

The bankruptcy court put six months of discovery at Truck's disposal, and Truck nowhere argues it needed more. Yet Truck came up empty – without evidence of a single fraudulent claim against Debtors in this case.

Indeed, its own representative (like Debtors') testified that he could not identify a single false or fraudulent claim ever brought against Debtors. C.A.App. 907; C.A.App. 5903:12-14. After a full review of the record, the bankruptcy court explained that Truck's theory has no support beyond "a lot of conjecture and assumption and just assuming that everybody is in cahoots." C.A.App. 6207:7-10; *see also* C.A.App. 6207:11-12 (concluding that, at bottom, Truck "speculates as to future events of what would happen in state court"). The district court adopted that finding without reservation. JA457 n.6. Truck does not contest it in this Court – and, indeed, never cites any evidence from this record to support its dozens of incantations of "fraud." *E.g.*, Br. i, 2, 11-14.

Truck cannot backfill that failure of proof by relying on the record in a *different* case – *Garlock*. Indeed, the bankruptcy court below (which also oversaw the resolution of the *Garlock* case) rejected Truck's effort to extend *Garlock* beyond its record. *See* C.A.App. 6207:15-21 ("I don't read *Garlock* as a[n] indictment of the tort system . . . . I'm not inclined to indict my colleagues on the state benches and have the arrogance to believe that a bankruptcy court in North Carolina is necessary to protect all of them from fraud."). The district court agreed. *See* App. 64a ("[T]his [c]ourt does not read *Garlock* as an indictment of the tort system or a ruling that a party cannot get a fair trial in state and federal courts. [Petitioner]'s arguments also hinged on speculation . . . and are unsupported.").

At argument before the Fourth Circuit, Truck laid bare its ad hominem theory that "the plaintiffs bar"

is composed of "fraudsters" exposed in *Garlock*.[11] If Truck ever finds evidence of that theory, it is free to pursue appropriate relief. But rhetoric and hand-waving about another case's record cannot substitute for "the manner and degree of evidence required at" this "stage[] of the litigation." *Lujan*, 504 U.S. at 561. After a six-month search, Truck found no such evidence.

Truck cannot answer this by recharacterizing its injury as a lost "'chance to obtain a benefit.'" Br. 35 (quoting *Robertson v. Allied Sols., LLC*, 902 F.3d 690, 697 (7th Cir. 2018)). Truck suggests that its claimed deprivation of an asserted statutory participation right is a freestanding basis for Article III standing. But "Article III standing requires a concrete injury even in the context of a statutory violation." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016); *see also Summers v. Earth Island Inst.*, 555 U.S. 488, 496 (2009) ("[D]eprivation of a procedural right without some concrete interest that is affected by the deprivation – a procedural right *in vacuo* – is insufficient to create Article III standing."). Truck's theory does no more than repackage "a bare procedural violation, divorced from any concrete harm," so it does not "satisfy the injury-in-fact requirement of Article III." *Spokeo*, 578 U.S. at 341.[12]

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[11] *See* 4th Cir. Tr. 34:15-25 (The Court: "I am just trying to see [who] the fraudsters you claim are. I'm assuming you are talking about the lawyers?" Counsel: "Yes." The Court: "That is what you call it in your brief, the plaintiffs bar?" Counsel: "Yes." The Court: "Small P and small B." Counsel: "Yes.").

[12] Like *Czyzewski* (addressed above), Truck's circuit-level cases on the point (at 35) merely recognize that a lost opportunity to pursue a further benefit can qualify as an Article III injury in specific circumstances even if the plaintiff had not been *certain*

In truth, Truck's injury is no injury at all. As explained, the Plan leaves Truck in exactly the same position it was in pre-petition. App. 23a. Truck's desire to use the bankruptcy to collaterally attack its state-court coverage losses does not confer standing. *See Wendt v. 24 Hour Fitness USA, Inc.*, 821 F.3d 547, 551 (5th Cir. 2016) (holding that party cannot pursue claim in order to seek "windfall"); *Hunstein v. Preferred Collection & Mgmt. Servs., Inc.*, 48 F.4th 1236, 1250 (11th Cir. 2022) (en banc) (holding that a party made "no worse off" by an action has no right to object to it).

B. Truck Cannot Establish Traceability Or Redressability

Truck's posited "fraud" premium also is not "fairly traceable to" any "action" that Truck "challenge[s] in this case." *Lujan*, 504 U.S. at 560 (cleaned up). Truck does not contend that any party to Debtors' bankruptcy defrauded it. It instead (again) contends that unidentified non-party claimants might lie about their exposure histories in future litigation; unidentified courts might deny Truck the discovery it needs to test those claims; and Truck (though having this knowledge and sophisticated risk-assessment resources) might then make too high a settlement offer.

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to obtain that further benefit. *See Robertson*, 902 F.3d at 697 (holding that job applicant suffered cognizable injury when prospective employer rescinded her offer after background check, yet unlawfully withheld underlying report and explanation of rights under Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x); *Teton Historic Aviation Found. v. U.S. Dep't of Def.*, 785 F.3d 719, 724 (D.C. Cir. 2015) (per curiam) (noting undisputed finding that claimant suffered an injury-in-fact from lost opportunity "to compete" for "future" business). Truck's theory fails because (among other reasons) its injury itself is speculative – not because it already has suffered a certain injury with inherently uncertain consequences in the but-for world.

These injuries are not fairly traceable to anything that occurred in the bankruptcy case. Any overpayment in those circumstances results from Truck's decisions, rather than those of any party before this Court. *Cf.*, *e.g.*, *Simon v. Eastern Kentucky Welfare Rts. Org.*, 426 U.S. 26, 41-42 (1976) ("[T]he 'case or controversy' limitation of Art. III still requires that a federal court act only to redress injury that fairly can be traced to the challenged action of the defendant, and not injury that results from the independent action of some third party not before the court."); *Clapper*, 568 U.S. at 418 (finding Article III standing absent where plaintiffs' injuries were "self-inflicted," and thus not "fairly traceable" to challenged conduct).

Debtors' Plan thus creates no new right "allow[ing] a party to put its hands into [Truck's] pockets." Pet. Br. 33-34. Truck invokes (at 34) the Third Circuit's *GIT* decision, but in that case the plan "staggeringly increased – by more than 27 times – the pre-petition liability exposure." 645 F.3d at 212.[13] Debtors' Plan does not.

Truck contends that, because the bankruptcy court did not free Truck from contracts that expose it to others' hypothetical future wrongdoing, the resulting overpayments Truck fears it may make are fairly

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[13] Moreover, the Third Circuit has underscored that *GIT*'s holding turned on the record evidence presented in that case and cannot be invoked by an insurer's "bare assertions" of increased risk. *See In re Federal-Mogul Glob. Inc.*, 684 F.3d 355, 379 n.37 (3d Cir. 2012).

Truck's other causation case, *California Department of Toxic Substances Control v. Jim Dobbas, Inc.*, 54 F.4th 1078, 1085-86 (9th Cir. 2022), *cited in* Br. 33, concerned whether liability insurers had standing to intervene in a case brought against their insured that their insured was not defending. That issue is neither disputed nor relevant.

traceable to the bankruptcy proceeding itself. But no one argues Truck will have to pay *above* its contracted-for coverage limits, and a demand for government protection from unidentifiable non-parties' imagined future mischief never has been a basis for Article III standing. *Cf. Lujan*, 504 U.S. at 562 (If an "asserted injury arises from the government's allegedly unlawful regulation (or lack of regulation) of *someone else*, much more is needed. . . . [I]t becomes the burden of the plaintiff to adduce facts showing that those [third parties'] choices have been or will be made in such manner as to produce causation and permit redressability of injury.").

For those reasons, Truck's "fraud"-premium injury is not "likely [to] be redressed by judicial relief." *TransUnion*, 594 U.S. at 423; *see also Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 107 (1998) ("Relief that does not remedy the injury suffered cannot bootstrap a plaintiff into federal court; that is the very essence of the redressability requirement."). Truck's asserted injury hinges on the premise that every American court other than a bankruptcy court in North Carolina lacks the requisite tools to protect Truck from this "fraud." Yet state courts deploy discovery management, sanctions authority, or (in extreme cases) relief from judgment for fraud. State bars impose professional discipline on dishonest counsel. And civil and criminal fraud statutes are available as well. But even if Truck *had* supplied proof for its startling indictment of state-court practice, it could not plausibly explain why Truck's disclosure scheme would improve matters. After all, the disclosures will help Truck only if state courts then use them to dismiss claims – and yet Truck's whole argument hinges on its "indictment" of those very

courts. App. 64a. Because no court plausibly could enter an order to remedy the future injury Truck asserts, it is not redressable for purposes of Article III. *See Haaland v. Brackeen*, 599 U.S. 255, 294 (2023) (noting that only the court's "judgment . . . demonstrates redressability").

To be sure, Truck's desired outcome furthers Truck's interests by placing one-sided discovery requirements on all current and future Claimants that are contrary to the law of their chosen fora. But an insured's Chapter 11 filing does not authorize its insurer to foist such requirements on thousands of litigation adversaries: however convenient Truck might find such an order, it would be an inappropriate use of judicial power and thus no basis for Article III standing. *Cf. California v. Texas*, 141 S. Ct. 2104, 2116 (2021) (Article III prevents courts from issuing relief "grant[ing] unelected judges a general authority to conduct oversight of decisions of the elected branches of Government").

Finally, for the reasons explained above and (again) by the Fourth Circuit, Truck's status as a creditor is irrelevant because it was neither injured nor capable of receiving a remedy in that capacity. *See* App. 25a-26a (noting that, under *Warth v. Seldin*, 422 U.S. 490, 499 (1975), "to establish Article III standing, a party 'generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties'"). And as an unimpaired creditor, Truck is not injured and is "conclusively presumed to have accepted the plan." 11 U.S.C. § 1126(f).

Truck asserts (at 38) that as a creditor it may make any argument in support of its request for "an order vacating confirmation of the plan." Truck misses the point: without an injury in either capacity, Truck

has no basis to demand any remedy at all. *See DaimlerChrysler*, 547 U.S. at 353 (noting that, in *Lewis v. Casey*, 518 U.S. 343, 357 (1996), the Court had emphasized that "'[t]he remedy must of course be limited to the inadequacy that produced the injury in fact that the plaintiff has established'") (brackets in *DaimlerChrysler*). As for Truck's fallback suggestion that § 1109(b)'s participation right itself gives rise to standing (Br. 38), for the reasons already explained, *Spokeo* and its progeny are to the contrary.

C. The Government's Theory Of Standing Lacks Merit

Unwilling to defend Truck's claim to Article III standing, the government (and it alone) advances the novel claim (at 31) that "Article III standing is irrelevant here." The government's theory (at 31-32) is that, because Debtors "have invoked the district court's Article III jurisdiction" in seeking voluntary reorganization, Truck is but an opponent to Debtors' requested relief that need not show standing at all.

That remarkable proposition enjoys no support in the government's cases (*id.*), which have nothing to do with bankruptcy. Nor does the government attempt to square it with *Czyzewski*. The petitioners in that case also were objectors to a Chapter 11 plan, and the Court reached the question presented only after deciding that they had Article III standing. *See* 580 U.S. at 462 (citing *Spokeo*, 578 U.S. at 338).

Further, the government overlooks settled law governing another *in rem* context: the government itself invokes the jurisdiction of an Article III court when it files a complaint seeking forfeiture *in rem*, but that does not excuse a claimant opposing that forfeiture from demonstrating Article III standing. *See*, *e.g.*, *United States v. $8,440,190.00 in U.S. Currency*, 719

F.3d 49, 57 (1st Cir. 2013) ("Standing is a threshold consideration in all cases, including civil forfeiture cases."); *United States v. Cambio Exacto, S.A.*, 166 F.3d 522, 526 (2d Cir. 1999) ("[i]n order to contest a governmental forfeiture action, claimants must have . . . standing under . . . Article III of the Constitution").

The government also ignores the fact that Truck necessarily has invoked the federal courts' jurisdiction itself by seeking entry of its own alternative plan. Truck thus must prove its standing even under the government's proposed test. *Cf. Town of Chester v. Laroe Ests., Inc.*, 581 U.S. 433, 440 (2017) ("[A]n intervenor of right must have Article III standing in order to pursue relief that is different from that which is sought by a [different] party with standing.").

The government's position also implicates weighty questions the Court did not grant review in this case to decide. Most courts of appeals to consider the question have held that Article III justiciability requirements apply before bankruptcy courts; two have disagreed – including the Fourth Circuit, which deepened the split in a decision issued after the one under review.[14] Courts also routinely treat a party seeking

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[14] *Compare GIT*, 645 F.3d at 210 (objectors must satisfy Article III standing requirements); *In re Resource Tech. Corp.*, 624 F.3d 376, 382 (7th Cir. 2010) (same); *and In re Farmland Indus., Inc.*, 639 F.3d 402, 405 (8th Cir. 2011) (same), *with In re Highland Cap. Mgmt., L.P.*, 74 F.4th 361, 366-67 (5th Cir. 2023) ("Bankruptcy courts are not authorized by Article III of the Constitution, and as such are not presumptively bound by traditional rules of judicial standing."); *and Kiviti v. Bhatt*, 80 F.4th 520, 535 (4th Cir. 2023) (holding that Article III mootness principles do not apply in bankruptcy courts), *pet. for cert. pending*, No. 23-729 (U.S. Jan. 2, 2024); *see also In re Pettine*, 2023 WL 7648619, at *5 & n.26 (B.A.P. 10th Cir. Nov. 15, 2023) (cataloging split and agreeing with the former position).

an Article III court's review of a bankruptcy court's adverse order as "the party invoking federal jurisdiction" who thus "'bears the burden of establishing' the elements of Article III standing." *In re East Coast Foods, Inc.*, 80 F.4th 901, 906 (9th Cir. 2023) (quoting *Lujan*, 504 U.S. at 561). To the extent the government acknowledges these complexities, it does so (at 32 n.4) with footnoted equivocation, not substantive analysis.

Finally, the government overlooks that in this case, like in all cases under § 524(g), the bankruptcy court's ruling on confirmation was merely a recommendation to an Article III court; only "the district court that has jurisdiction over the reorganization case" could issue "the order confirming the plan of reorganization," and that court has continuing jurisdiction over the case. 11 U.S.C. § 524(g)(3)(A). The government cites no authority for the proposition that a district court may entertain requests for relief by a party lacking Article III standing.

This Court does not rest structural constitutional pronouncements on an *amicus*'s afterthought. Truck long ago forfeited any argument that it need not show Article III standing, and the single page of briefing the government devotes to the issue (at 31-32) falls well short of the attention it requires. The Court thus should not reverse on that ground. *See*, *e.g.*, *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005) ("we are a court of review, not of first view").

CONCLUSION

The judgment of the court of appeals should be affirmed. Alternatively, the Court should dismiss the writ because Truck lacks Article III standing.

Respectfully submitted,

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January 24, 2024

ADDENDUM

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STATUTORY PROVISIONS INVOLVED

1. Section 105 of the Bankruptcy Code, 11 U.S.C. § 105, provides:

§ 105. Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

(b) Notwithstanding subsection (a) of this section, a court may not appoint a receiver in a case under this title.

(c) The ability of any district judge or other officer or employee of a district court to exercise any of the authority or responsibilities conferred upon the court under this title shall be determined by reference to the provisions relating to such judge, officer, or employee set forth in title 28. This subsection shall not be interpreted to exclude bankruptcy judges and other officers or employees appointed pursuant to chapter 6 of title 28 from its operation.

(d) The court, on its own motion or on the request of a party in interest—

(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and

(2) unless inconsistent with another provision of this title or with applicable Federal Rules of Bankruptcy Procedure, may issue an order at any

such conference prescribing such limitations and conditions as the court deems appropriate to ensure that the case is handled expeditiously and economically, including an order that—

(A) sets the date by which the trustee must assume or reject an executory contract or unexpired lease; or

(B) in a case under chapter 11 of this title—

(i) sets a date by which the debtor, or trustee if one has been appointed, shall file a disclosure statement and plan;

(ii) sets a date by which the debtor, or trustee if one has been appointed, shall solicit acceptances of a plan;

(iii) sets the date by which a party in interest other than a debtor may file a plan;

(iv) sets a date by which a proponent of a plan, other than the debtor, shall solicit acceptances of such plan;

(v) fixes the scope and format of the notice to be provided regarding the hearing on approval of the disclosure statement; or

(vi) provides that the hearing on approval of the disclosure statement may be combined with the hearing on confirmation of the plan.

2. Section 109 of the Bankruptcy Code, 11 U.S.C. § 109, provides:

§ 109. Who may be a debtor

(a) Notwithstanding any other provision of this section, only a person that resides or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.

(b) A person may be a debtor under chapter 7 of this title only if such person is not—

(1) a railroad;

(2) a domestic insurance company, bank, savings bank, cooperative bank, savings and loan association, building and loan association, homestead association, a New Markets Venture Capital company as defined in section 351 of the Small Business Investment Act of 1958, a small business investment company licensed by the Small Business Administration under section 301 of the Small Business Investment Act of 1958, credit union, or industrial bank or similar institution which is an insured bank as defined in section 3(h) of the Federal Deposit Insurance Act, except that an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or

(3)(A) a foreign insurance company, engaged in such business in the United States; or

(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and

loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978) in the United States.

(c) An entity may be a debtor under chapter 9 of this title if and only if such entity—

(1) is a municipality;

(2) is specifically authorized, in its capacity as a municipality or by name, to be a debtor under such chapter by State law, or by a governmental officer or organization empowered by State law to authorize such entity to be a debtor under such chapter;

(3) is insolvent;

(4) desires to effect a plan to adjust such debts; and

(5)(A) has obtained the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(B) has negotiated in good faith with creditors and has failed to obtain the agreement of creditors holding at least a majority in amount of the claims of each class that such entity intends to impair under a plan in a case under such chapter;

(C) is unable to negotiate with creditors because such negotiation is impracticable; or

(D) reasonably believes that a creditor may attempt to obtain a transfer that is avoidable under section 547 of this title.

(d) Only a railroad, a person that may be a debtor under chapter 7 of this title (except a stockbroker or a commodity broker), and an uninsured State member bank, or a corporation organized under section 25A of

the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 1 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor under chapter 11 of this title.

(e) Only an individual with regular income that owes, on the date of the filing of the petition, noncontingent, liquidated debts of less than $2,750,000 or an individual with regular income and such individual's spouse, except a stockbroker or a commodity broker, that owe, on the date of the filing of the petition, noncontingent, liquidated debts that aggregate less than $2,750,000 may be a debtor under chapter 13 of this title.

(f) Only a family farmer or family fisherman with regular annual income may be a debtor under chapter 12 of this title.

(g) Notwithstanding any other provision of this section, no individual or family farmer may be a debtor under this title who has been a debtor in a case pending under this title at any time in the preceding 180 days if—

(1) the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case; or

(2) the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title.

(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section other than paragraph (4) of this subsection, an individual

may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

(2)(A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved nonprofit budget and credit counseling agencies for such district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from such agencies by reason of the requirements of paragraph (1).

(B) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in subparagraph (A) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling agency may be disapproved by the United States trustee (or the bankruptcy administrator, if any) at any time.

(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 7-day period beginning on the date on which the debtor made that request; and

(iii) is satisfactory to the court.

(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition, except that the court, for cause, may order an additional 15 days.

(4) The requirements of paragraph (1) shall not apply with respect to a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone. For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and "disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).

3. Section 524 of the Bankruptcy Code, 11 U.S.C. § 524, provides in relevant part:

§ 524. Effect of discharge

* * *

(e) Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

* * *

(g)(1)(A) After notice and hearing, a court that enters an order confirming a plan of reorganization under chapter 11 may issue, in connection with such order, an injunction in accordance with this subsection to supplement the injunctive effect of a discharge under this section.

(B) An injunction may be issued under subparagraph (A) to enjoin entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery with respect to any claim or demand that, under a plan of reorganization, is to be paid in whole or in part by a trust described in paragraph (2)(B)(i), except such legal actions as are expressly allowed by the injunction, the confirmation order, or the plan of reorganization.

(2)(A) Subject to subsection (h), if the requirements of subparagraph (B) are met at the time an injunction described in paragraph (1) is entered, then after entry of such injunction, any proceeding that involves the validity, application, construction, or modification of such injunction, or of this subsection with respect to such injunction, may be commenced only in the district court in which such injunction was entered,

and such court shall have exclusive jurisdiction over any such proceeding without regard to the amount in controversy.

(B) The requirements of this subparagraph are that—

(i) the injunction is to be implemented in connection with a trust that, pursuant to the plan of reorganization—

(I) is to assume the liabilities of a debtor which at the time of entry of the order for relief has been named as a defendant in personal injury, wrongful death, or property-damage actions seeking recovery for damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products;

(II) is to 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;

(III) is to own, or by the exercise of rights granted under such plan would be entitled to own if specified contingencies occur, a majority of the voting shares of—

(aa) each such debtor;

(bb) the parent corporation of each such debtor; or

(cc) a subsidiary of each such debtor that is also a debtor; and

(IV) is to use its assets or income to pay claims and demands; and

(ii) subject to subsection (h), the court determines that—

(I) the debtor is likely to be subject to substantial future demands for payment arising out of the same or similar conduct or events that gave rise to the claims that are addressed by the injunction;

(II) the actual amounts, numbers, and timing of such future demands cannot be determined;

(III) pursuit of such demands outside the procedures prescribed by such plan is likely to threaten the plan's purpose to deal equitably with claims and future demands;

(IV) as part of the process of seeking confirmation of such plan—

(aa) the terms of the injunction proposed to be issued under paragraph (1)(A), including any provisions barring actions against third parties pursuant to paragraph (4)(A), are set out in such plan and in any disclosure statement supporting the plan; and

(bb) a separate class or classes of the claimants whose claims are to be addressed by a trust described in clause (i) is established and votes, by at least 75 percent of those voting, in favor of the plan; and

(V) subject to subsection (h), pursuant to court orders or otherwise, the trust will operate through mechanisms such as structured, periodic, or supplemental payments, pro rata distributions, matrices, or periodic review of estimates of the numbers and values of present claims and future demands, or other comparable 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.

(3)(A) If the requirements of paragraph (2)(B) are met and the order confirming the plan of reorganization was issued or affirmed by the district court that has jurisdiction over the reorganization case, then after the time for appeal of the order that issues or affirms the plan—

(i) the injunction shall be valid and enforceable and may not be revoked or modified by any court except through appeal in accordance with paragraph (6);

(ii) no entity that pursuant to such plan or thereafter becomes a direct or indirect transferee of, or successor to any assets of, a debtor or trust that is the subject of the injunction shall be liable with respect to any claim or demand made against such entity by reason of its becoming such a transferee or successor; and

(iii) no entity that pursuant to such plan or thereafter makes a loan to such a debtor or trust or to such a successor or transferee shall, by reason of making the loan, be liable with respect to any claim or demand made against such entity, nor shall any pledge of assets made in connection with such a loan be upset or impaired for that reason;

(B) Subparagraph (A) shall not be construed to—

(i) imply that an entity described in subparagraph (A)(ii) or (iii) would, if this paragraph were not applicable, necessarily be liable to any entity by

reason of any of the acts described in subparagraph (A);

(ii) relieve any such entity of the duty to comply with, or of liability under, any Federal or State law regarding the making of a fraudulent conveyance in a transaction described in subparagraph (A)(ii) or (iii); or

(iii) relieve a debtor of the debtor's obligation to comply with the terms of the plan of reorganization, or affect the power of the court to exercise its authority under sections 1141 and 1142 to compel the debtor to do so.

(4)(A)(i) Subject to subparagraph (B), an injunction described in paragraph (1) shall be valid and enforceable against all entities that it addresses.

(ii) Notwithstanding the provisions of section 524(e), such an injunction may bar any action directed against a third party who is identifiable from the terms of such injunction (by name or as part of an identifiable group) and is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of—

(I) the third party's ownership of a financial interest in the debtor, a past or present affiliate of the debtor, or a predecessor in interest of the debtor;

(II) the third party's involvement in the management of the debtor or a predecessor in interest of the debtor, or service as an officer, director or employee of the debtor or a related party;

(III) the third party's provision of insurance to the debtor or a related party; or

(IV) the third party's involvement in a transaction changing the corporate structure, or in a loan or other financial transaction affecting the financial condition, of the debtor or a related party, including but not limited to—

(aa) involvement in providing financing (debt or equity), or advice to an entity involved in such a transaction; or

(bb) acquiring or selling a financial interest in an entity as part of such a transaction.

(iii) As used in this subparagraph, the term "related party" means—

(I) a past or present affiliate of the debtor;

(II) a predecessor in interest of the debtor; or

(III) any entity that owned a financial interest in—

(aa) the debtor;

(bb) a past or present affiliate of the debtor; or

(cc) a predecessor in interest of the debtor.

(B) Subject to subsection (h), if, under a plan of reorganization, a kind of demand described in such plan is to be paid in whole or in part by a trust described in paragraph (2)(B)(i) in connection with which an injunction described in paragraph (1) is to be implemented, then such injunction shall be valid and enforceable with respect to a demand of such kind made, after such plan is confirmed, against the debtor or debtors involved, or against a third party described in subparagraph (A)(ii), if—

(i) as part of the proceedings leading to issuance of such injunction, the court appoints a legal repre-

sentative for the purpose of protecting the rights of persons that might subsequently assert demands of such kind, and

(ii) the court determines, before entering the order confirming such plan, that identifying such debtor or debtors, or such third party (by name or as part of an identifiable group), in such injunction with respect to such demands for purposes of this subparagraph is fair and equitable with respect to the persons that might subsequently assert such demands, in light of the benefits provided, or to be provided, to such trust on behalf of such debtor or debtors or such third party.

(5) In this subsection, the term "demand" means a demand for payment, present or future, that—

(A) was not a claim during the proceedings leading to the confirmation of a plan of reorganization;

(B) arises out of the same or similar conduct or events that gave rise to the claims addressed by the injunction issued under paragraph (1); and

(C) pursuant to the plan, is to be paid by a trust described in paragraph (2)(B)(i).

(6) Paragraph (3)(A)(i) does not bar an action taken by or at the direction of an appellate court on appeal of an injunction issued under paragraph (1) or of the order of confirmation that relates to the injunction.

(7) This subsection does not affect the operation of section 1144 or the power of the district court to refer a proceeding under section 157 of title 28 or any reference of a proceeding made prior to the date of the enactment of this subsection.

* * *

4. Section 1109 of the Bankruptcy Code, 11 U.S.C. § 1109, provides, provides:

§ 1109. Right to be heard

(a) The Securities and Exchange Commission may raise and may appear and be heard on any issue in a case under this chapter, but the Securities and Exchange Commission may not appeal from any judgment, order, or decree entered in the case.

(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 this chapter.