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

JOINT UNOPPOSED MOTION OF RESPONDENTS FOR DIVIDED ARGUMENT

In accordance with Supreme Court Rule 28.4, the five respondents—Kaiser Gypsum Company, Inc., Hanson Permanente Cement, Inc. (together, Debtors), and Lehigh Hanson, Inc. (parent of Debtors; n/k/a Heidelberg Materials US, Inc.); jointly with the Official Committee of Asbestos Personal Injury Claimants and the Future Claimants' Representative (together, Claimants)—respectfully move for divided argument for respondents. Respondents propose that Debtors be allocated 15 minutes and Claimants be allocated 15 minutes. Petitioner Truck Insurance Exchange (Truck) does not oppose this motion.

This case involves a challenge to a Chapter 11 reorganization plan that both protects Debtors from future asbestos liability and provides relief for Claimants. After four years of negotiations among Debtors, Lehigh Hanson, Claimants, insurers, and government actors, Debtors filed a proposed Plan of Reorganization that had "the

unanimous support" of every entity involved in the bankruptcy "save one—Truck." Pet.App.8a. Under the Plan, Debtors would assign to a trust established to address asbestos claims their rights under insurance policies issued by Truck, their primary insurer from the 1960s into the 1980s. Pet.App.6a, 42a-43a; *see* 11 U.S.C. § 524(g). These policies, as confirmed by nearly 20 years of coverage litigation, require Truck to defend and indemnify Debtors in all asbestos-related personal-injury cases arising from this period. Pet.App.6a, 17a, 42a-43a. And although the policies generally cap coverage at $500,000 per claim, after deductible, and exclude punitive damages, they lack aggregate limits, thereby providing Debtors (and, under the Plan, the trust) with "effectively unlimited insurance." Pet.App.6a, 63a; J.A.384.

Although the Plan left "Truck in the same position as it was pre-bankruptcy," with all its "decades-old pre-petition coverage obligations (and defenses)" intact, Truck objected that the Plan did not "seek to now limit [its] potential liability exposure in the tort system" going forward, by requiring in future tort litigation disclosures that Truck alleged would prevent "fraudulent claims" by asbestos claimants. Pet.App.16a, 23a. The bankruptcy court, district court, and Fourth Circuit all agreed that Truck could not raise objections to the merits of the Plan: It was not a "party in interest" under 11 U.S.C. § 1109(b), because the Plan left its status unchanged. Pet.App.23a, 95a; J.A.387-88.

Both Debtors and Claimants urge the Court to affirm the judgment below, but their interests and arguments differ. Debtors and Claimants respectfully submit that,

in resolving this case, this Court would materially benefit from hearing argument from both Debtors and Claimants.

To start, Debtors and Claimants each have a unique interest in preserving the Plan from the objections of an intermeddler like Truck. Debtors manufactured or sold products containing asbestos, and their resulting personal-injury liabilities drove them to file the underlying bankruptcy petition. Claimants represent those (present and future) who hold those claims. "Chapter 11" of the Bankruptcy Code "strikes a balance between" these very sorts of interests —"between," that is, "a debtor's interest in reorganizing and restructuring its debts and the creditors' interest in maximizing the value of the bankruptcy estate." *Florida Dep't of Rev. v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 51 (2008). Debtors and Claimants thus have been separately represented, and have separately argued, at every stage of this case.

As a result of their different interests, Debtors and Claimants have unique domains of expertise. As the proponents of the Plan and the beneficiaries under Truck's insurance policies, Debtors are well situated to answer any of the Court's questions on the Plan, Debtors' relationship with Truck from the 1960s until the present, and how a ruling for Truck would destabilize Debtors' reorganization—a process that began eight years ago and is now substantially consummated. Claimants, by contrast, are uniquely positioned to address Truck's allegation—rejected by the lower courts as "unsupported" and "speculative," Pet.App.11a, 64a; *see* J.A.385—that its desired disclosure requirements are necessary to check "fraudulent tort claims,"

as well as to discuss the operations of and reasons for the provisions of the Section 524(g) trust. Pet.App.8a.

Importantly, Debtors and Claimants advance independent arguments in support of the judgment below. For example, Debtors alone have briefed at length the history of the term "party in interest" in bankruptcy law. Debtors Br. 15-21. And Claimants alone urge this Court to dismiss the writ of certiorari on the ground that Truck lacks Article III standing. Claimants Br. 34-45. Each set of respondents is uniquely suited to elaborate on the independent points it has presented to this Court. For these reasons, participation in oral argument by both Debtors and Claimants would materially assist the Court in resolving the question presented. *See* Stephen M. Shapiro et al., SUPREME COURT PRACTICE § 14.5 (11th ed. 2019) ("Having more than one lawyer argue on a side is justifiable, as Justice Jackson admitted, when they represent different parties with different interests or positions."); *see, e.g.*, *Frank v. Gaos*, 139 S. Ct. 304 (2018); *FCC v. Fox Television Stations, Inc.*, 567 U.S. 239 (2012); *Rapanos v. United States*, 546 U.S. 1000 (2005).

This case warrants divided argument. Neither Debtors nor Creditors can fully represent the interests of the other before the Court. Indeed, earlier this Term, this Court allowed divided argument in *Harrington v. Purdue Pharma L.P.*, No. 23-124, where, as here, the debtors and the personal-injury creditors who agreed to a Chapter 11 plan appeared separately to defend the fruit of their negotiations against a third-party objector—there, as here, with the United States also opposing the plan. 144 S. Ct. 376 (2023). There is no reason for a different approach here.

Debtors and Claimants therefore respectfully request that the Court allow divided argument for respondents, with 15 minutes allocated to Debtors and 15 minutes allocated to Claimants. This allocation will not require any enlargement of argument time.

January 30, 2024

Respectfully submitted,

/s/ *C. Kevin Marshall*

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CORPORATE DISCLOSURE STATEMENT

The Corporate Disclosure Statement in the Brief for Debtor-Side Respondents, p. ii, remains current.