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

REPLY BRIEF FOR PETITIONER

MICHAEL A. ROSENTHAL
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166
(212) 351-4000

JONATHAN C. BOND
DAVID W. CASAZZA
ADDISON W. BENNETT
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

ALLYSON N. HO
Counsel of Record
ROBERT B. KRAKOW
RUSSELL H. FALCONER
ELIZABETH A. KIERNAN
STEPHEN J. HAMMER
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201
(214) 698-3100
AHo@gibsondunn.com

Counsel for Petitioner

RULE 29.6 STATEMENT

The corporate disclosure statement in the Brief for Petitioner remains accurate.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes

Rules

Other Authorities

REPLY BRIEF FOR PETITIONER

Section 1109(b) allows a "party in interest" to appear and be heard on "any issue" in a Chapter 11 proceeding. Truck, as both the party financially responsible for the majority of Kaiser's bankruptcy debts and a creditor, is a party in interest twice over. The Fourth Circuit erred in barring Truck from being heard based on the judge-made insurance-neutrality doctrine with no basis in the Bankruptcy Code.

Respondents make little effort to defend that doctrine. Indeed, they are (in Kaiser's words) in "violent agreement" with Truck that a "party in interest" under Section 1109(b) means anyone "directly and adversely affected by the reorganization." Kaiser Br. 29; Claimants Br. 27. Where the parties diverge is whether Truck is such a party. Three undisputed facts establish that it is.

First, each asbestos claim against Kaiser—whether a live tort suit, yet-to-be filed claim, or latent injury—is a federal bankruptcy claim under the jurisdiction of a federal bankruptcy court and subject to resolution under a federal statute—Section 524(g).

Second, Truck is responsible for paying the overwhelming majority of these claims.

Third, the fraud-prevention measures Truck seeks—which the plan *already* requires for *uninsured* claims—would prevent improper inflation of those claims. Respondents' fraud-protection-for-me-but-not-for-thee posture confirms that while the *magnitude* of Truck's threatened injury may be up for debate, the *fact* of it isn't. That's what matters. So Truck is a party in interest as Kaiser's insurer.

Respondents' primary move is to argue that Truck isn't a party in interest as an insurer because the plan purports to leave it in the same position after the bankruptcy as before. That's just the insurance-neutrality doctrine without the name. The key point is that once the asbestos claims came into bankruptcy court—through *Kaiser*'s voluntary petition—only two outcomes were possible: a plan with fraud-prevention measures or a plan without them. That choice directly and adversely affects Truck. Respondents also suggest that Truck's harm is speculative or that it can't be heard because it hasn't established that the Code requires fraud-prevention measures. Both arguments fail because they require a party to win on the merits to establish its right to be heard, and this Court has repeatedly rejected that approach. Any remaining doubts about Truck's interest in the proceeding are resolved by the fact that the plan includes, at Kaiser's request, a declaratory judgment barring Truck from asserting certain claims in future coverage disputes.

Alternatively, Truck is a party in interest as a creditor—as Section 1109(b) expressly recognizes. Respondents primarily repeat their demands for atextual prudential limitations and never grapple with Congress's categorical choice to allow creditors to be heard and raise "any issue" in a proceeding.

Lacking a statutory basis for the decision below, respondents and their *amici* cue the fear-mongering about "clutter" and "chaos" if courts give effect to the Code's plain language. But Section 1109(b) gives parties in interest a *voice* in the reorganization—not a *vote*. They can't block confirmation unless courts

agree on the merits. And courts retain the full panoply of tools for curbing abusive or improper litigation conduct.

In Section 1109(b), Congress used inclusive, illustrative language that ensures broad participation in the inherently collaborative process of reorganization. That policy choice assists courts in carrying out their independent statutory "obligation" to "direct a debtor to conform his plan to the requirements" of the Code. *United Students Aid Funds, Inc.* v. *Espinosa*, 559 U.S. 260, 277 (2010). The judgment below should be reversed.

ARGUMENT

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

Respondents make no serious attempt to defend the insurance-neutrality doctrine applied below and now agree with Truck that a "party in interest" means anyone "directly and adversely affected by the reorganization." Kaiser Br. 29; Claimants Br. 27. As Truck showed in its merits brief (at 21-28), that rule follows inexorably from text, history, and precedent—all of which establish that Section 1109(b) creates a broad right to be heard coextensive with Article III standing. While respondents disagree with Truck on various points and dispute that Section 1109(b) tracks Article III, those disagreements are academic because respondents fundamentally agree with Truck that a direct-and-adverse effect satisfies Section 1109(b). Claimants Br. 27; Kaiser Br. 43.

Seeking to salvage the judgment below, respondents try to smuggle the insurance-neutrality doctrine back in under various guises—all of which amount to the view that only *some* direct-and-adverse effects

count (and only *some* issues can be raised). That effort can't overcome the language of the Code or the import of this Court's precedent. It merely underscores that respondents can prevail only by imposing extra-textual limitations on a statute whose expansive language eschews them.

A. Respondents primarily contend that the statutory context limits parties in interest to persons with "legally protected interests in the debtor's assets." *E.g.*, Claimants Br. 23; Kaiser Br. 21. Specifically, they argue that because every entity expressly listed in Section 1109(b) possesses a "legally protected interes[t] in the debtor's assets," any "party in interest" must as well. *Ibid.* That can't be right, because then the listed entities exhaust the category—"party in interest" would add nothing. The Code, however, establishes that the list is illustrative, not exhaustive, by defining the term "including" as "not limiting." 11 U.S.C. § 102(3); see *Herb's Welding, Inc.* v. *Gray*, 470 U.S. 414, 423 n.9 (1985) ("including" indicates that "specifically mentioned [items] are not exclusive").

The U.S. Trustee doesn't have "legally protected interests in the debtor's assets" either, yet other Code provisions treat the Trustee as a party in interest. *E.g.*, 11 U.S.C. § 330(a)(2) ("the United States Trustee * * * or any other party in interest * * * "); *id.* § 707(b)(7)(A) ("No * * * United States trustee * * * or other party in interest * * * "). A separate provision (11 U.S.C. § 307) allows the Trustee to be "heard on any issue in any case" but doesn't refer to the Trustee as a party in interest. Those references to "the Trustee or any *other party in interest*" confirm that

respondents' "interests in the estate's assets" theory can't be right.

Respondents' extra-textual limitation also can't be right because it would impermissibly require a party in interest to prevail on the merits to establish its right to be heard. This Court has consistently rejected the suggestion that a litigant must win on the merits to be heard. *ASARCO Inc.* v. *Kadish*, 490 U.S. 605, 624 (1989) ("although federal standing often turns on the nature and source of the claim asserted, it in no way depends on the merits of the claim"); *FEC* v. *Cruz*, 596 U.S. 289, 298 (2022) ("For standing purposes" court must "accept as valid the merits").

B. The parties agree that *Western Pacific California Railroad Co.* v. *Southern Pacific Co.*, 284 U.S. 47 (1931), and its progeny reflect what "party in interest" was "commonly understood" to mean when Section 1109(b) was enacted in 1978. Kaiser Br. 20; Truck Br. 22-28. Respondents misread those cases to suggest they construe "party in interest" to require significantly more than Article III.

1. Respondents can't dispute that *Western Pacific* expressly drew on this Court's seminal Article III decision, *Frothingham* v. *Mellon*, 262 U.S. 447 (1923), to describe the nature of a "party in interest." Kaiser splits hairs to suggest (at 29) that *Western Pacific* borrowed only the principle that those with generalized concerns aren't parties in interest. That's wrong: the Court held that the petitioner was a party in interest precisely *because*, like Truck, it was "peculiarly concerned," setting it apart from those with only "a common concern for obedience to law." *Western Pacific*, 284 U.S. at 52. Respondents don't deny that *Western Pacific*'s

standard—directness and adversity—similarly underlies this Court's Article III cases. Truck Br. 26.

Respondents insist that *L. Singer & Sons* v. *Union Pacific Railroad Co.*, 311 U.S. 295 (1940), imposes yet another extra-textual limitation—a "proximate cause" requirement. See Kaiser Br. 25. Not so. "Proximate cause" appears only once, in a passage quoting the lower court's opinion. See *L. Singer*, 311 U.S. at 301. And the Court reiterated that "party in interest" requires a "special and peculiar interest which may be *directly and materially affected*." *Id.* at 304 (emphasis added). That tracks the Article III standard. See, *e.g.*, *Ex parte Levitt*, 302 U.S. 633, 634 (1937) (per curiam); *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 563 (1992).

2. Respondents contend that this Court must limit Section 1109(b)'s text because of a "presum[ption] that Congress does not extend a statutory right to be heard to the outer bounds of Article III." Kaiser Br. 13, 24; Claimants Br. 31. That turns *Lexmark* upside down. *Lexmark* requires courts to "determine the meaning of the congressionally enacted provision" using "traditional principles of statutory interpretation." *Lexmark International, Inc.* v. *Static Control Components, Inc.*, 572 U.S. 118, 128 (2014). It *prohibits* courts from "ask[ing] whether in our judgment Congress *should* have authorized" the party's participation. *Ibid*.

In any event, even if such a presumption applied, Section 1109(b) would overcome it. Congress eliminated prior constraints on participation and extended it to Article III's limits—using expansive party-in-interest language and authorizing a party in interest to raise "any

issue." "Congress' use of 'any'" grants the right to raise an issue "of whatever kind"—indeed, "Congress could not have chosen a more all-encompassing phrase than 'any'" issue. *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214, 220-21 (2008). Congress's expansive language "does not demonstrate ambiguity. It demonstrates breadth." *Pennsylvania Department of Corrections* v. *Yeskey*, 524 U.S. 206, 212 (1998).

C. Respondents seek refuge in pre-Code history. Kaiser Br. 15-19. But from the Bankruptcy Act of 1898, through Chapter X of the Chandler Act of 1938, to the Bankruptcy Code in 1978, Congress consistently *expanded* participation. Truck Br. 28-31; Professors *Amici* Br. 5-6. Section 1109(b) is the culmination of that steady expansion, ensuring "fair representation" and "prevent[ing] excessive control over the proceedings by insider groups." Bankr. R. 10-210(a), adv. comm. note (reproduced at 11 U.S.C. App., at 1445 (1976)); 7 Collier on Bankruptcy ¶ 1109.LH[2][a] (16th ed. rev. 2022); Truck Br. 4, 30-31; Associations *Amici* Br. 6; Professors *Amici* Br. 5-6. Respondents don't, and can't, dispute that Congress has afforded parties in interest greater rights of participation in every iteration of the bankruptcy laws.

Instead, respondents misconstrue the Code's precursors to argue that "party in interest" bore a narrow meaning. Kaiser Br. 16-19. But as Judge Learned Hand explained, the phrase bore a "more general" meaning, extending even to creditors whose claims were "not dischargeable," and who had "nothing to fear from a discharge." *In re Feuer*, 4 F.2d 892, 893 (2d Cir. 1925). It reached "every party having any interest in or connection with the case." Collier on

Bankruptcy ¶ 835 (4th ed. 1937). Respondents' reliance on intervention cases is equally misplaced. Kaiser Br. 18. Section 207 of the Chandler Act permitted a "party in interest" to intervene "for cause shown." 52 Stat. 883, 894 (1938). So those cases naturally consider whether a potential intervenor met the for-cause requirement—not whether the movant was a party in interest. See Kaiser Br. 18.[1]

Respondents' argument from history thus fails on its own terms. In any event, their account doesn't come to grips with Congress's continual expansion of the right to be heard—enshrined today in the plain text of Section 1109(b).

D. Respondents retreat to policy concerns about allowing "peripheral parties to derail a reorganization." *E.g.* Kaiser Br. 33. But their "parade of horribles" can't "surmount the plain text of the statute." *Arthur Andersen LLP* v. *Carlisle*, 556 U.S. 624, 629 (2009). In any event, their speculative fears are unfounded. For one thing, Truck is no "peripheral" party—it's responsible for defending all 14,000 pending asbestos claims against Kaiser, and for paying the first $500,000 per claim of Kaiser's asbestos debts, with no aggregate limits. For another, the non-debtor employees, investors, and law professors marching in respondents' parade who supposedly would sidetrack bankruptcies would almost certainly fail Section 1109(b)'s directness requirement.

---

[1] Kaiser argues (at 27, 32) that Section 1109(b) is somehow curtailed by Bankruptcy Rule 2018. Not so. The rule, promulgated under the Rules Enabling Act, "implements" and cannot supersede Section 1109(b). Adv. comm. note, Fed. R. Bankr. P. 2018; 28 U.S.C. § 2075.

Even more fundamentally, the Code gives parties in interest a voice—not a vote. Courts retain full authority to reject parties' requests on the merits, even summarily. See Fed. R. Bankr. P. 9014. Courts retain the full panoply of tools for managing complex litigation and policing misconduct.

Respondents also posit that giving full effect to Section 1109(b)'s text would undermine the Code's "traditional purposes." Kaiser Br. 33. That is backwards. Imposing extra-textual limits would frustrate a provision "intended to confer broad" access to bankruptcy proceedings by turning it into "an additional obstacle" to participation. *In re Global Industrial Technologies, Inc.*, 645 F.3d 201, 211 (3d Cir. 2011); Truck Br. 44-50; Professors *Amici* Br. 8. That would obstruct, rather than assist, courts in fulfilling "the[ir] obligation * * * to direct a debtor to conform [its] plan to the requirements" of the Code. *Espinosa*, 559 U.S. at 277; 11 U.S.C. § 1129(a)(1); U.S. *Amicus* Br. 22-23.

Chapter 11 is designed to mitigate the risk that "a few insiders, whether representatives of management or major creditors, [will] use the reorganization process to gain an unfair advantage." *Bank of America National Trust & Savings Ass'n* v. *203 North LaSalle Street Partnership*, 526 U.S. 434, 444 (1999). Shutting out parties with a stake in the reorganization—like an insurer facing millions of dollars in financial liability under the plan—heightens that risk. This risk is particularly acute in Section 524(g) reorganizations, where (as here) debtors may make concessions to obtain approval from the required super-majority of claimants. In exchange for those concessions, debtors obtain a discharge and channeling injunction that leaves the reorganized debtor and its ultimate parent with no stake

in the resolution of asbestos claims. Only an insurer, like Truck, has the incentive to object to plans that fall short of the Code's requirements. Associations *Amici* Br. 14-16.

* * * * *

Plain text, statutory history, and this Court's precedent all point in the same direction. Congress conferred a right to be heard on any issue in a bankruptcy proceeding to parties that may be directly and adversely affected by the reorganization—a standard that corresponds to Article III requirements.

II. Truck Is A Party In Interest.

No one disagrees that an insurer is a party in interest where a plan explicitly abrogates coverage defenses or otherwise alters the policy's terms such that the insurer's "quantum of liability" "materially" changes. See, *e.g.*, Associations *Amici* Br. 16-17. Indeed, Kaiser's plan contains a "plan finding" against Truck on Kaiser's obligations under the policies—and even the Fourth Circuit below agreed that Truck is a party in interest entitled to challenge that finding. The problem is that some courts, including the Fourth Circuit below, "*limit* their inquiry to this question, overlooking the many other ways" a reorganization may directly and adversely affect insurers. *Id.* at 16 (emphasis added). Those courts then compound their error (as below) by ignoring the plain text of Section 1109(b) that a party in interest may be heard on "*any* issue."

At the root of both problems is the insurance-neutrality doctrine, which imposes atextual limits on who is a party in interest and what issues they may raise. That doctrine is fatally flawed because it can

only answer the party-in-interest inquiry by looking at a specific plan at the conclusion of the reorganization. That gets Section 1109(b) backwards. The party-in-interest inquiry asks whether a litigant *may* be directly affected (to be determined when the petition is filed and the reorganization begins) not whether a litigant actually was affected (which could only be determined at confirmation based on a specific plan). Section 1109(b) can't depend on a plan-specific rule—that standard would be unusable for the Code provisions empowering a party in interest to request acts unrelated to a specific plan or that occur before a plan is confirmed or even proposed. Truck Br. 4.

Tellingly, respondents barely protest interring insurance neutrality as a freestanding doctrine. But like *Lemon*'s ghost, the insurance-neutrality specter later returns to life in their argument, embodied in other proffered limitations on Chapter 11 participation simply without the "insurance neutrality" label. Merely abandoning that ersatz doctrine's name does nothing to reconcile it with the Code. The Court should put it to rest.

Under the proper standard, Truck is a party in interest twice over. As Kaiser's insurer, it's financially responsible for the vast bulk of claims against the debtor. And Truck is a party in interest as a creditor with the statutory right to raise any issue. For both reasons, this Court should reverse.

A. Truck is a party in interest because it insures Kaiser's asbestos liabilities.

As an insurer, Truck has a direct interest in Kaiser's reorganization. Truck bears the financial burden of defending and paying 14,000 asbestos claims

against Kaiser. Those claims may be litigated in the tort system, but they are still bankruptcy claims subject to the bankruptcy court's jurisdiction. How the reorganization handles those claims has a direct, adverse financial impact on Truck. Both this direct pecuniary interest and the plan finding—directly adverse to Truck on a key coverage dispute—each independently renders Truck a party in interest that can be heard on *any* issue, and more than satisfies the requirements of Article III standing.

Respondents erect a series of supposed additional hurdles grounded in prudential reasons to silence Truck. Section 1109(b) doesn't permit these obstacles, and this Court should reject them.

1. Truck is a party in interest because it's financially responsible for the vast bulk of claims against the debtors. Indeed, it's the only party with an incentive to mitigate fraudulent claims.[2] Truck Br. 31-35. Respondents disagree because (they say) Truck faces similar exposure in the tort system before and after the bankruptcy. Kaiser Br. 14, 41-43; Claimants Br. 19, 25-26. That argument fundamentally ignores the practical and legal consequences of Kaiser's voluntary bankruptcy petition, which transformed *all* of its asbestos debts—which Truck will pay—into bankruptcy claims. 28 U.S.C. § 1334; 11 U.S.C. § 101(5)(a) (defining "claim" as any "right to payment, whether or not

[2] Respondents offer an incomplete account of the government's role below. The bankruptcy court considered the government's arguments (as creditor) relating to its environmental claims but didn't permit the government to argue "matters related to asbestos claims." Bankr. Ct. Doc. 1785 at 29, 31-32; see U.S. Mot. for Divided Arg. at 3.

such right is reduced to judgment"); *Tennessee Student Assistance Corp.* v. *Hood*, 541 U.S. 440, 447-48 (2004).[3]

At that point, there were two possible paths to confirmation: either the plan would require asbestos claims to be resolved *with* fraud-prevention measures, or *without* them. It's self-evident that choice may directly and adversely affect Truck. That respondents and their *amici* repeatedly accuse Truck of seeking a "windfall" merely by wanting to avoid being victimized by fraud confirms that conclusion.

Section 1109(b) asks only whether the bankruptcy court's treatment of the 14,000 known pending claims (and untold future claims) "may directly and adversely affect" Truck, which is responsible for paying those claims. See *Western Pacific*, 284 U.S. at 51-52. The answer can only be yes. Indeed, there can be no real dispute that, had the fraud-prevention measures *already in the plan* for the debtor's *uninsured* claims also applied to the debtor's *insured* claims, Truck would pay less to resolve those claims. Respondents have never explained how this threatened injury can be too "speculative" when it comes to the insured claims (which Truck pays) but not for the uninsured claims (which the trust pays, with fraud-prevention measures).

2. Even setting aside that obvious financial stake, Truck is a party in interest because the plan

---

[3] That these are all *bankruptcy claims* lays to rest Claimants' contention (at 41-42) that the fraud-prevention measures improperly intrude on state courts. Nor do respondents explain why it's proper for the plan to require these measures for *uninsured claims* but not for *insured claims*.

required a ruling adverse to Truck defining Kaiser's obligations to Truck under the insurance policies. Truck Br. 13-15, 36. Under Section 1109(b)'s plain text, that direct adversity entitled Truck to be heard on "any issue"—including objections under Sections 524(g) or 1129. Applying the insurance-neutrality doctrine, however, the Fourth Circuit reached the merits of Truck's objections to the plan finding but ignored Section 1109(b)'s "any issue" language and declined to reach the merits of Truck's other plan objections. The Court should reverse and remand for that reason alone.

Kaiser insists (at 40) that the Fourth Circuit didn't impermissibly treat Truck as a party in interest for some issues and not others but was just "determining whether Truck was a 'party in interest' in the first place." Not so. The courts below weren't evaluating the narrow question of whether Truck was a party in interest. They were resolving, at the insistence of Kaiser and over Truck's objection to litigating the issue as part of confirmation, a dispute about Truck's and Kaiser's legal rights under the policies. Truck was undeniably a party in interest in the confirmation proceeding because this issue was litigated as part of confirmation. Truck was entitled to be heard on "any issue," not just the plan finding.

3. Claimants strongly disagree with the substance of Truck's objections, but that's irrelevant. Truck isn't required to *win* on the merits merely to have its arguments heard. This Court has already rejected a similar argument when it held that a creditor had standing even though it "would have gotten nothing" and may "still get nothing" even if its appeal prevailed. *Czyzewski* v. *Jevic Holding Corp.*, 580 U.S.

451, 463-64 (2017). Respondents argue *Czyzewski* is distinguishable because it concerned "realized financial losses." Claimants Br. 36. But the arguments here are the same. It's enough that the bankruptcy proceeding *may* reduce Kaiser's (and therefore Truck's) exposure by resulting in a plan with fraud-prevention measures, just as it was enough that the appeal *might* have offered Czyzewski an opportunity for a recovery. *Ibid.* It's of no moment that Truck's objections, "like any" objections, "*might* prove fruitless"—"the mere *possibility* of failure does not eliminate the value" of the fraud-prevention measurers or Truck's injury in being denied them. *Ibid.*; contra Kaiser Br. 42.

a. Respondents insist that Truck show, for each substantive argument it raises, that it "comes within the class of entities" that the relevant Code provision protects—that is, that insurers are within the zone-of-interest of Section 524(g). Kaiser Br. 44. Section 1109(b) eschews such a zone-of-interest procedure by allowing a party to raise "any issue." Respondents never confront Congress's use of "any." There's no dispute here that Truck has the capacity to challenge the plan's preclusive coverage determination (as even the Fourth Circuit agreed) and that alone should allow it to raise "any issue" in the proceeding.

But even if Claimants' provision-by-provision zone-of-interest standard applied, Truck meets it. Section 524(g) expressly contemplates that entities providing "insurance to the debtor" will be central figures in a Section 524(g) plan and may be protected by the injunction. 11 U.S.C. § 524(g)(4)(A)(ii)(III). And Section 1129(a)(3)'s broad "good faith" requirement

has little bite if it doesn't protect against collusion between debtors and their largest creditors.[4]

Moreover, the purportedly insurance-neutral plan here *did* alter Truck's pre-petition position. The plan assigned all the insurance rights from Truck's policies to the trust, Pet.App.48a, insulated Kaiser and its corporate parents from financial exposure to asbestos claims, Pet.App.147a-50a, 286a-87a, and rendered a binding declaratory judgment on Truck's coverage defense, Pet.App.22a n.9, 107a-14a, 244a-45a. Any rule that calls this plan "neutral" can't be right.[5]

b. Claimants argue Truck can't complain that the bankruptcy "did not *improve* Truck's position." Claimants Br. 26, 40. But agreeing to insure fraudulent claims against one's insured is hardly the same as agreeing to be defrauded—especially not where the insured enables the fraud. And asking a court to mitigate fraud isn't a demanding a windfall.

Claimants ignore that it was Kaiser—not Truck—that initiated this proceeding by voluntarily filing for bankruptcy, at which point its asbestos debts became bankruptcy claims. This puts to rest Claimants' suggestion (at 41) that Truck is asking for protection from "unidentifiable non-parties" unrelated to the bankruptcy. Truck is arguing that asbestos claimants—*creditors* in this bankruptcy—must submit to fraud-

---

[4] It doesn't matter whether the *proceeds* of the insurance policies are assets of the estate, contra Claimants Br. 33, because there's no dispute that the insurance *policies* and coverage rights are assets of Kaiser's estate.

[5] The bankruptcy filing itself also affects Truck's liability by triggering a plaintiff-recruitment campaign that increases the number of claims against the debtor. Associations *Amici* Br. 14-15.

prevention measures before recovering on their bankruptcy claims. Truck's financial injury is directly traceable to whether the plan does or doesn't include fraud-prevention measures for *all* asbestos bankruptcy claims (insured or uninsured). Applying those measures to all claims would remedy Truck's injury.

4. Claimants (at 8-10, 37)—but not Kaiser—dispute the prevalence of fraud and contend that the effect of withholding fraud-prevention measures is too speculative. But "[w]e are now past the time when these cases [demonstrating fraud] can be referred to as mere anomalies." Peggy L. Ableman, *The Garlock Decision Should Be Required Reading for All Trial Court Judges in Asbestos Cases*, 37 Am. J. Trial Advoc. 479, 488 (2014). The documentation of fraudulent asbestos claims is extensive—how-to manuals for lying during depositions, duplicative claims records, evidence of deliberate withholding of exposure information, and strategic timing of trust and court filings. Truck Br. 5, 8. Courts across the country—*Garlock* being only the most notable—have exposed these fraudulent claims and practices.[6]

a. Claimants' suggestion (at 36) that Truck offered only a "theory" that "fails for lack of record evi-

[6] Lester Brickman, *Fraud and Abuse in Mesothelioma Litigation*, 88 Tul. L. Rev. 1071, 1116-22 (2014) (collecting cases); accord J.A.141-42, 154-55, 167-60, 219-28, 265-81. Contrary to Claimants' description (at 8-9), *Garlock* didn't just examine 15 cases—it received evidence from "205 additional cases" showing the same pattern of fraud, leaving the court "certain that more extensive discovery would show more extensive abuse." *In re Garlock Sealing Technologies, LLC*, 504 B.R. 71, 85-86 (Bankr. W.D.N.C. 2014); accord J.A.128-33.

dence" is wrong. Truck offered experts with extensive experience in asbestos cases, including *Garlock*. J.A.126 (Bates), J.A.208 (Brickman). One of Truck's experts reviewed 857 claims against Kaiser and concluded that claimants who resolved their claims against Kaiser in the tort system *before* filing with trusts received 60 percent higher recoveries compared to those who resolved their claims *after* filing with trusts—the same divergent pattern found in *Garlock*. J.A.159; accord J.A.194-95. Claimants who resolved in tort first—and for whom the expert had complete information—inflated Kaiser's proportionate liability by failing to disclose exposures to the products of (on average) 11 other potential defendants. J.A.189-94.

Claimants complain that Truck improperly relied on *Garlock*'s record without proving Kaiser was affected in the same way. Br. 37. But Truck's expert compared the database from *Garlock* and Kaiser's claims history before Garlock's bankruptcy and found that over 80 percent of Kaiser claimants had also filed claims against Garlock. JA.135-36, J.A.183. Moreover, "the plaintiffs in more than half of the unresolved mesothelioma asbestos claims against Kaiser are represented by law firms that were identified in *Garlock* as having handled cases where exposure evidence was withheld." J.A.141-43, J.A.168. Based on these analyses, Truck's expert concluded that "because the [plan] proposes to resolve all insured * * * claims against the Debtors in the tort system, many of those claims are likely to be infected by the same improper evidence suppression scheme" and thus Truck "will continue to be victimized by the fraud" "[u]nless fraud prevention measures" are added to the plan for *all* claims—insured and uninsured. J.A.210-11.

b. Claimants' cherry-picked quotations (at 37) don't undermine these statistical findings. It isn't surprising that witnesses didn't identify specific fraudulent claims because the entire scheme is designed to make that identification impossible without the extraordinary case-specific discovery that took place in *Garlock* but not here. J.A.134, 215-17, 229-30. Even so, Truck's expert confirmed that "Kaiser too was greatly impacted by the strategic withholding of exposure information by plaintiffs," resulting in fraudulently inflated payments. J.A.181. Kaiser's corporate representative admitted that "a lot can be said about fraud" and "didn't think we were treated fairly." J.A.106; J.A.332. In the face of this evidence, Claimants' assertion (at 36) of "speculative" harm falls flat.[7]

Indeed, the pattern of fraudulent claims against Kaiser is precisely why fraud-prevention measures are so consequential—simple disclosure and audit requirements would ensure that claimants are properly compensated, protecting trusts, insurers, and honest claimants who may otherwise lose out to the deceit of others. Truck Br. 9-10.

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

Even if Truck weren't a party in interest as an insurer (and it is), reversal still would be required because Truck is "a creditor" and a "party in interest"

---

[7] Kaiser urges this Court to defer to the findings below (at 42) but it's difficult to square the bankruptcy court's conclusion that fraud-prevention measures are necessary for *uninsured claims*, J.A.123, with its conclusion that fraud is purely speculative for *insured claims*, C.A.J.A.44a.

entitled to "be heard on any issue" in this Chapter 11 "case." 11 U.S.C. § 1109(b).

1. As an initial matter, respondents are wrong to suggest that Truck's creditor status falls outside the question presented. Truck "fram[ed] the question [presented] * * * broadly" to ask whether it was a "party in interest" under Section 1109(b). *Yee* v. *City of Escondido,* 503 U.S. 519, 535 (1992); Pet. i. To answer the question presented, this Court must "construe what Congress has enacted." *Rumsfeld* v. *Forum for Academic & Institutional Rights, Inc.*, 547 U.S. 47, 56 (2006). And Congress expressly described "a creditor" as a "party in interest." 11 U.S.C. § 1109(b).

Truck briefed this point in the bankruptcy court, C.A.J.A.4154, the district court, C.A.J.A.566-67, the Fourth Circuit, Truck C.A. Br. 31, and this Court, Pet. 11, 14-15, 17, 21-22; Truck Br. 37-38; cf. *Reno* v. *Catholic Social Services, Inc.*, 509 U.S. 43, 57 n.18 (1993) (resolving issue not "explicitly addressed in the questions presented" but "fairly included" when "both parties have touched on it in their briefs"). It's properly before the Court.

Moreover, Truck's creditor status is intertwined with its insurance. Truck's claims were for millions of dollars in unpaid deductibles Kaiser owed under the policies. J.A.391-92. Those claims were offset, in part, by insurance-related cost-sharing payments Truck owed Kaiser. J.A.391-92. Because the insurance policies remain executory contracts between Kaiser and Truck, it's unsurprising that the same contracts give rise to insurance rights (an asset for the estate) and creditor claims (a debt of the estate). That's precisely

why a contract counter-party, like Truck, is a party in interest. U.S. *Amicus* Br. 16, 30.

2. Section 1109(b) allows "a creditor" to "be heard on *any* issue." So Truck as a creditor is entitled to present an argument "of whatever kind." *United States* v. *Gonzalez*, 520 U.S. 1, 5 (1997) (citation omitted). Respondents concede that Truck was a creditor by virtue of holding claims against Kaiser at the start of the bankruptcy. Kaiser Br. 9; Claimants Br. 34. That's enough.

Kaiser attempts to defend the Fourth Circuit's contrary holding by asserting (at 47) that Truck "cannot mix-and-match one interest for Article III * * * and another for Section 1109(b)." But Congress expressly permitted a creditor to raise "*any* issue"—not, as the Fourth Circuit erroneously held, only those issues "relating to its interests as a creditor." Pet.App.25a. Article III provides no basis to disregard Congress's directive: it requires standing for each *remedy*, not each legal argument made in support. *Cruz*, 596 U.S. at 301-02; see also *Alaska Airlines, Inc.* v. *Brock*, 480 U.S. 678, 680 (1987) (addressing on the merits relief from one provision of a statute based on argument that another provision is unconstitutional). Truck is injured by the judgment below—confirmation of the plan and plan finding—and seeks a form of relief on appeal (vacatur of the plan) to remedy its injury. *Czyzewski*, 580 U.S. at 463-64.

3. Respondents go beyond the decision below by arguing that Truck can't "rely on its status as an unpaid creditor at *the start* of the Chapter 11 proceeding to invoke Section 1109(b) *now*." Kaiser Br. 47. Once again, respondents are at war with the text. The

Code defines a creditor as any entity "that has a claim against the debtor that arose at the time of or before the order for relief" without regard to whether a particular plan proposes to repay the claim. 11 U.S.C. § 101(10)(a). To be sure, a creditor may be deemed "impaired" or "unimpaired" for purposes of other Code provisions, depending on its treatment under a particular plan. 11 U.S.C. §§ 1123(b), 1124. When that distinction matters, the Code makes it clear. For example, only creditors holding "impaired" claims can vote on the plan. See 11 U.S.C. § 1126; see also *id.* § 1129(a)(7), (b)(1) (affording "impaired" claimholders procedural and substantive protections in confirmation). Congress knew "how to make such" distinction between paid and unpaid creditors "manifest." *Jama* v. *Immigration and Customs Enforcement*, 543 U.S. 335, 341 (2005). In Section 1109(b), it didn't.

Respondents misread another provision, Section 1126(f), as precluding unimpaired creditors from *objecting*. Section 1126 is concerned with the procedures for the *vote* required prior to confirmation under Section 1129. See 11 U.S.C. § 1126(a) (right to vote); *id.* § 1126(b) (pre-petition voting); *id.* §§ 1126(c), (d) (supermajority requirement); *id.* § 1126(e) (good-faith voting challenge); *id.* § 1126(g) (presumed no vote by unpaid claimholders). Section 1126(f) simply directs that unimpaired creditors are deemed to accept the plan and therefore can't *vote* to reject it. See *id.* § 1129(a)(8) (requiring vote to accept only by impaired classes). Nothing in Section 1126(f) strips creditors of other rights under the Code, including the right to be heard. Unsurprisingly, courts routinely consider objections from unimpaired creditors, even if those objections fail on the merits. See, *e.g.*, *In re PG&E Corp.*, 46

F.4th 1047, 1052 (9th Cir. 2022)); *In re LATAM Airlines Group S.A.*, 55 F.4th 377, 387-89 (2d Cir. 2022). Respondents conflate the right to *vote* on a plan under Section 1126(f) with the right to have a *voice* to object under Section 1109(b).

4. Claimants fall back (at 34) on courts' "traditional rights to limit intervenors' participation" at their discretion. But that's no basis for ignoring plain statutory text that a party in interest may be heard "on any issue." Claimants' suggestion (at 34-35) that Section 105(a) affords courts "discretion" to supersede Section 1109(b) is equally misplaced—Section 105(a) merely permits bankruptcy courts to "enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. § 105(a). It doesn't "authoriz[e]" the court "in the name of equity to make wholesale substitution of underlying law controlling" rights in the bankruptcy; those rights are governed by "what the Bankruptcy Code itself provides." *Raleigh* v. *Illinois Department of Revenue*, 530 U.S. 15, 24-25 (2000).

* * * * *

It's up to Congress to decide "whether a statute should sweep broadly or narrowly." *United States* v. *Rodgers*, 466 U.S. 475, 484 (1984). Congress chose to sweep broadly in Section 1109(b). Applying that text faithfully will realize Chapter 11's design of bringing all stakeholders to the table and assisting the court in its "obligation" to ensure the reorganization "conform[s] * * * to the requirements" of the Code. *Espinosa*, 559 U.S. at 277.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted,

MICHAEL A. ROSENTHAL
GIBSON, DUNN & CRUTCHER LLP
200 Park Avenue
New York, New York 10166
(212) 351-4000

JONATHAN C. BOND
DAVID W. CASAZZA
ADDISON W. BENNETT
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
(202) 955-8500

ALLYSON N. HO
Counsel of Record
ROBERT B. KRAKOW
RUSSELL H. FALCONER
ELIZABETH A. KIERNAN
STEPHEN J. HAMMER
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201
(214) 698-3100
AHo@gibsondunn.com

Counsel for Petitioner

February 23, 2024