Truck Insurance Exchange v. Kaiser Gypsum Company, Inc., et al.

Year: 2024
Court: United States Supreme Court
Case Number: 22-1079

In its amicus curiae brief, United Policyholders argues that an insurance company should not have the right to insert itself into the bankruptcy reorganization proceeding of its insured when the proposed reorganization has been found to be "insurance neutral." An insurer's attempts to gain broader participatory rights in the reorganization is ripe for abuse and does not serve the purposes of the bankruptcy code.

[Appreciation to Reed Smith Insurance Recovery partner Andrew Muha for the following synopsis of the outcome]

On June 6, 2024, the United States Supreme Court issued its ruling. The case presented the issue of whether a policyholder/debtor's insurer had standing to participate in the debtor's mass tort bankruptcy case under Section 1109(b) of the Bankruptcy Code despite the fact that the debtor's bankruptcy plan contained language that preserved all of the insurer's pre-bankruptcy coverage rights and defenses. In an 8-0 decision (with Justice Alito not participating), Justice Sonia Sotomayor wrote that the touchstone for "party-in-interest" standing under the statute was whether the party had any interest that might be affected by the debtor's bankruptcy. The Court concluded that the statute aimed to codify broad rights of participation by any party whose financial interests could be impacted by a bankruptcy case, and that an insurer whose coverage could be a source of recoveries for the debtor's creditors — as was the case here –qualified as a party that was entitled to those broad participatory rights. The Court held that whether the debtor's plan contained "insurance neutrality" language that preserved the insurer's pre-petition coverage rights and defenses was not pertinent to the statutory standing analysis, reasoning that standing necessarily preceded any merits issue (such as the effect of plan language) and must focus on whether the bankruptcy potentially could impact the insurer's rights, not whether the insurer's

interests actually were impacted by any particular bankruptcy plan.

Policyholder-debtors who are seeking to resolve mass torts in bankruptcy cases should expect insurers to try to make the most of the *Truck* decision, leveraging their own interests in minimizing their coverage obligations for mass tort claims. Yet the ruling may not portend a sea change in how mass tort bankruptcy cases are conducted. Bankruptcy courts in mass tort cases typically have allowed insurers to participate extensively in litigation over plan confirmation through the confirmation hearing, and only after that have invoked a plan's "insurance neutrality" provisions to rule that insurers lack standing to object. As a practical matter, the *Truck* decision may not afford insurers much more in the way of participation rights than what insurers customarily have enjoyed. Moreover, the decision includes explicit safeguards against the kinds of inflated participation rights that insurers may hope to extrapolate from it. Justice Sotomayor made clear that an insurer's standing rights under Section 1109(b) provide participating insurers with "neither a vote nor a veto" over a bankruptcy reorganization plan, and she noted that bankruptcy courts retain the equitable power (codified in Section 105 of the Bankruptcy Code) to maintain order and prevent abuses of process even by parties with standing to participate. **Given all this, policyholders should be prepared to help courts avoid over-reading the reasoning and effect of *Truck*, in the face of insurers' inevitable exhortations to those courts to do so.**

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