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 UNITED POLICYHOLDERS AS *AMICUS CURIAE* SUPPORTING RESPONDENTS

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INTEREST OF *AMICUS CURIAE*

United Policyholders (UP) is a nonprofit that advocates for the interests of insurance policyholders. Founded in 1991, UP provides valuable information and assistance to the public concerning insurers' duties and policyholders' rights. It monitors legal developments in the insurance marketplace and serves as a voice for policyholders in legislative and regulatory forums. It also helps preserve the integrity of the insurance system by educating consumers and advocating for fairness in policy sales and claim handling. And it routinely files amicus briefs in this Court and others on issues affecting its member policyholders. *See, e.g., Great Lakes Insurance SE v. Raiders Retreat Realty Co., LLC*, No. 22-500; *Mallory v. Norfolk S. Ry. Co.*, No. 21-1168; *Humana Inc. v. Forsyth*, 525 U.S. 299, 314 (1999) (referring to UP's amicus brief).[1]

The interests of insurance policyholders that UP represents are directly implicated in this bankruptcy case, which involves the rights of insurers to challenge their policyholders' Chapter 11 bankruptcy reorganization plans where, as here, those plans do *not* alter the insurers' legally protected interests under the policyholder debtors' insurance policies. For debtors in mass-tort Chapter 11 cases such as this one, insurance commonly is their most valuable asset and therefore is critical to their ability to reorganize and make fair payments to their creditors, as the Bankruptcy

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[1] Pursuant to Rule 37.6, United Policyholders affirms that no counsel for a party authored this brief in whole or in part and that no one other than United Policyholders, its members, or its counsel made any monetary contributions intended to fund the preparation or submission of this brief.

Code envisions. *See Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. Lasalle St. P'ship*, 526 U.S. 434, 453 (1999) (citation omitted). And for those same policyholder debtors, the "'prompt and effectual' resolution of their bankruptcy cases 'within a limited period'"—a "chief" purpose of the Code, *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1803 (2019) (citations omitted)—is essential to their long-term business viability.

These interests are seriously endangered by the position taken in this case by Petitioner Truck Insurance Exchange, which sold commercial general liability (CGL) policies to Respondents-Debtors Kaiser Gypsum Company, Inc. and Hanson Permanente Cement, Inc. (Debtors). As Truck (and its *amici*) would have it, a debtor's insurer is a "party in interest" under Code Section 1109(b) who may challenge a proposed Chapter 11 reorganization plan any time a different plan would provide the insurer additional benefits. And that is true, Truck contends, even if, as here, the proposed plan fully protects the insurer's legal interests and would leave the insurer in exactly the same place it occupied before the bankruptcy commenced, with its potential liability unchanged.

As this case illustrates, the broad participatory right Truck advances is ripe for abuse and can be wielded to extort benefits from debtors that insurers are not entitled to under state law. Here, under the guise of opposing "collusion" between the Debtors and tort claimants that would require it to pay so-called "fraudulent" tort claims, Truck went so far as to threaten to refuse coverage under the Debtors' policies for any tort claim unless its demands for plan revisions were met. J.A.549-51. And a guise it was: as the bankruptcy court explained, Truck inserted itself into

Debtors' bankruptcy "because decades ago [it] improvidently wrote an unlimited insurance policy" and, "having paid out huge sums of money based on that decision," it would like "to improve that deal and use this case to limit its financial exposure." J.A.387-88.

Under any circumstances, these tactics are antithetical to the Code and the bankruptcy process, which takes insurance-policy rights and obligations as it finds them. But it is particularly intolerable where, as here, the insurer and its debtors' insurance-coverage dispute has already been adjudicated over decades—and the insurer has been found responsible by other courts for the coverage it agreed to provide. A plan confirmation proceeding in a Chapter 11 bankruptcy case is no place to litigate state-law insurance-coverage disputes, let alone *re*litigate them. Yet that, effectively, is what Truck sought here, objecting to the proposed reorganization, arguing for plan requirements for future asbestos claims that might limit its exposure, and threatening to deny Debtors the coverage to which courts have ruled they are entitled.

For these reasons, UP submits this brief in the interest of policyholders who find themselves in Chapter 11 bankruptcy, but whose efforts to utilize the bankruptcy procedures for the purposes Congress intended them are frustrated by objecting insurers.

SUMMARY OF ARGUMENT

Mass-tort Chapter 11 bankruptcies implicate many competing interests on the part of those whose legal rights stand to be affected by the proposed reorganization. The debtor, of course, wishes to resolve its debts and emerge from bankruptcy as a healthy going concern, and the debtor (or its trustee) has a fiduciary

duty to maximize the estate for the benefit of creditors. For their part, creditors, including current tort claimants, want maximum payment on the debts they are owed, and their interests, too, are represented by a fiduciary—an official creditors' committee. And others who may bring tort claims against the debtor in the future likewise desire the deepest pool of assets to pay their future claims, and they are represented by a fiduciary as well.

Drawing on input from these fiduciaries, courts in Chapter 11 proceedings must "strike a balance between a debtor's interest in reorganizing and restructuring its debts and the creditors' interest in maximizing the value of the bankruptcy estate." *Fla. Dep't of Revenue v. Piccadilly Cafeterias, Inc.*, 554 U.S. 33, 51 (2008) (citations omitted). They are charged with facilitating the negotiation of a reorganization 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). And they must do so expeditiously to carry out a "chief purpose" of the Code: "'to secure a prompt and effectual' resolution of bankruptcy cases 'within a limited period.'" *Taggart*, 139 S. Ct. at 1803 (citations omitted) (cleaned up). Indeed, with that exact purpose in mind, "Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate[.]" *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995) (citations omitted).

Then there are the debtor's insurers. The CGL policies they issue often represent the debtor's largest asset. But these insurers are wholly unlike debtors, creditors, future tort claimants, or the fiduciaries who

represent those parties' interests. Insurers have no fiduciary duties in the bankruptcy proceeding under the Bankruptcy Code—and certainly not any duty to protect and maximize the debtor's estate for the benefit of creditors. Nor are insurers entitled to the Code's protections. They are, instead, economically self-interested actors, motivated to limit their financial exposure on the debtor's CGL policies and delay any payment to creditors to whom the debtor may ultimately be found liable—just as they are motivated in their everyday operations. As in this case and many others, debtors' insurers typically act in their self-interest, raising objections and seeking changes to reorganization plans that are not even colorably supported in the applicable insurance policies or governing state law. And that only serves to disrupt and delay final plan confirmations, undermining bankruptcy's fundamental goals in the process.

Section 1109(b) of the Bankruptcy Code, as the Fourth Circuit and its sister circuits uniformly have construed it, properly accounts for all this—and for the "invariabl[e] … rise [in] disputes that implicate the interests of [the] many different stakeholders" in bankruptcy proceedings, "including those who are not formally parties to the litigation." *In re Point Ctr. Fin., Inc.*, 890 F.3d 1188, 1191 (9th Cir. 2018) (citation omitted). Under their so-called "insurance neutrality" construction of the provision, a debtor's insurer has a statutory right to challenge a proposed reorganization plan unless the plan protects the insurer's rights and leaves its potential quantum of liability unchanged. This construction, as respondents convincingly explain, follows from the text and surrounding context of Section 1109, as well as the broader structure of the

Code. As this brief demonstrates, the "neutrality" construction balances insurers' valid legal interests in a debtor's reorganization with the core purposes of the Code, providing insurers with a broad, but not limitless, participatory right in the reorganization proceeding as "part[ies] in interest." And it provides an administrable standard that has proven workable in the courts for more than three decades.

For their part, Truck and its *amici* advance an expansive (and atextual) reading of Section 1109(b) that extends even to insurers whose legal rights and interests indisputably will *not* be affected by a proposed reorganization plan. In their telling, an insurer (or, potentially, any other third party) is sufficiently "interest[ed]" for Section 1109(b) purposes so long as it can propose a different plan that provides the insurer a benefit that the plan under consideration—negotiated by the debtor and its creditors—does not. This reading of the statute, Truck and its *amici* claim, comports with fair play, better ensures that a reorganization plan will "compl[y]" with the Code's requirements, and promotes more "rigorous and considered bankruptcy outcomes." Pet. Br. 44; APCIA Br. 22.

Reality, however, tells a different story. What Truck and its *amici* do not—and cannot—deny is that the inherent self-interests of a Chapter 11 debtor's insurers are, in fact, diametrically opposed to those of debtors, creditors, and future tort claimants, and antithetical to bankruptcy's core purposes. Insurers want to minimize—not maximize—the value of their policyholder debtor's policies. They want to delay—not expedite—the final confirmation of a reorganization plan. And in many instances, as in this case, they even try to enlarge their rights beyond what the

debtor's policies provide, and what the governing substantive law allows. Expanding the pool of insurers who may object to reorganization plans, as Truck requests here, thus would defeat the Bankruptcy Code's core purposes, not aid in achieving them. Accordingly, while Truck's claim for "broad participatory rights" (Pet. Br. 2) may sound good in theory, it is bad bankruptcy law—and bad bankruptcy policy—in practice.

By contrast, adhering to Section 1109(b)'s text and the Code's structure and core purposes—as the Fourth Circuit's "insurance neutrality" construction does—effectively serves the Code's fundamental purposes: providing a fresh start for the debtor and a fair distribution of assets to the debtor's creditors, all in an efficient, expeditious, and equitable manner. That construction substantially reduces the time and expense of reorganization, thus minimizing the duration of the automatic stay, maximizing the value of the estate's assets, and resulting in swifter emergence from bankruptcy for debtors and equitable distributions to creditors. It does so without sacrificing insurers' legal rights, which must be protected in full by the proposed reorganization plan. And if they are not so protected, the text of Section 1109(b) affords insurers the right to participate in the reorganization proceeding and vindicate their claimed rights. The Court should affirm the judgment below.

ARGUMENT

I. In Mass-Tort Bankruptcies, Insurance Policies Are Often Debtors' Most Valuable Assets, But Insurers Have Powerful Incentives To Minimize The Policies' Value And Disrupt And Delay The Reorganization Process.

We are, and have been, in a time of mass-tort lawsuits, which have reverberated throughout the national economy and the corporate ecosystem. Mass-tort cases are complex and often involve "millions of victims and purported victims, thousands of defendants, hundreds of insurers, years of litigation, countless hours and transaction costs." Jeffrey W. Stempel, *Assessing the Coverage Carnage: Asbestos Liability and Insurance After Three Decades of Dispute*, 1 Conn. Ins. L.J. 349, 349 (2005/2006). Naturally, the size and complexity of such suits result in expenses for defendants that "are astronomical." Karen A. Geduldig, *Casey at the Bat: Judicial Treatment of Mass Tort Litigation*, 29 Hofstra L. Rev. 309, 322 (Fall 2000). And when it comes to mass asbestos personal-injury lawsuits such as those that led to the Debtors' bankruptcies here, the "bench, bar and public at large are only too well aware of the staggering costs" those lawsuits can generate. *Id.* at 322 n.71 (citation omitted).

Not surprisingly, mass-tort lawsuits have led some of this country's most well-known companies and organizations into bankruptcy, from Johns-Manville and A.H. Robins, to the Boy Scouts of America and a host of dioceses of the Catholic Church—to this very case. For these companies and organizations, CGL insurance policies not only typically are their

most valuable assets,[2] *see, e.g., A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1001 (4th Cir. 1986), they "may be the only resource which stands between" a company "and the potential financial ruin that can result from litigating huge numbers of claims." Eugene R. Anderson et al., *Litigating Mass Tort Cases* § 14A:1 (2009).

CGL insurance coverage came of age during the industrial expansion of post-World War II America. Businesses sought to insure against the unknowable risks of liability from their new products and technologically advanced operations, and the insurance industry obliged. *See* Elmer W. Sawyer, *Comprehensive Liability Insurance: The Casualty Insurance Educator—Series II* 26 (Woodhull Hay ed., 1943); J. Eglof, *Comprehensive General Liability Insurance: The Outsider*, Best's Fire & Casualty News, May 1941, at 19 ("Take each policy needed … weld them together in a Comprehensive coverage, limiting exclusions to a minimum and adding automatic coverage for any new venture an insured may care to undertake, and you have one of the most potent weapons for protection ever afforded a risk."). Because the risk of liability from these new products and operations was impossible to gauge, CGL coverage was designed to comprehensively cover both known and unknown risks, *see, e.g.*, *Pac. Bay Masonry, Inc. v. Navigators Specialty Ins.*, 561 F. Supp. 3d 881, 885 (N.D. Cal. 2021) ("CGL policies reflect the theory that insurance typically is designed to protect against contingent or unknown

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[2] The Debtors' CGL policies are particularly valuable because they contain no aggregate limits on coverage for asbestos claims, Pet.App.6a, amounting to "effectively unlimited insurance." Pet.App.63a; J.A.384.

risks of harm"), and courts gave effect to this broad scope. *See, e.g.*, *Keene Corp. v. Ins. Co. of N. Am.*, 667 F.2d 1034, 1046 (D.C. Cir. 1981) (interpreting CGL policy broadly so that "when it becomes known that an occurrence has set in motion a process that has a significant probability of resulting in a covered loss, the insurer on the risk at that time is liable for the full loss," regardless of whether the asbestos-caused injury manifested during the policy period).

Given the breadth of CGL coverage, this Court has recognized that a debtor's CGL policies serve as the "cornerstone" of mass-tort bankruptcy reorganization plans under Chapter 11. *Travelers Indem. Co. v. Bailey*, 557 U.S. 137, 141 (2009). And the insurers who write these policies thus are keenly interested in how their policyholder debtors reorganize their business in the bankruptcy process—and, more to the point, in how the debtors' CGL policies will be used to accomplish that objective.

This heightens the ordinary tensions that exist between insurers and their policyholders—tensions that are only exacerbated the greater policyholder's exposure to covered liabilities. *See, e.g.*, Eugene R. Anderson et al., *Insurance Coverage Litigation* § 1.01B (2d ed. Supp. 2024); Peter J. Kalis et al., *Policyholder's Guide to the Law of Insurance Coverage* § 20.01 (1st ed. Supp. 2024). Policyholders seek to maximize coverage, while insurers are driven to limit or evade their coverage obligations entirely, with litigation serving as their "bread and butter[.]" Eugene R. Anderson et al., *Insurance Nullification by Litigation*, Risk Mgmt., Apr. 1994, at 46. Any court decision in an insurer's favor is, of course, beneficial. But the lengthy

process of litigation itself—with discovery, trial proceedings, and appeals—is valuable in its own right, serving to delay coverage payments while the insurer continues earning money on policyholders' premiums in the interim, often for years or longer.

Simply put, "intransigence is a rational strategy for insurance companies to pursue" because that "intransigence is profit maximizing." Jay M. Feinman, *Incentives for Litigation or Settlement in Large Tort Cases: Responding to Insurance Company Intransigence*, 13 Roger Williams U. L. Rev. 189, 198–202 (2008). "Even if an insurance company ultimately has to pay a judgment, there is a financial advantage to delaying the payment and capturing the time value of the money." *Id.* at 199. And insurers aren't furtive about their "intransigence" strategy—indeed, they advertise it unabashedly as a key feature of their business model, not a bug. *See* Berkshire Hathaway Inc., 2022 Annual Report at A-2, https://www.berkshirehathaway.com/2022ar/2022ar.pdf ("This collect-now, pay-later model leaves [insurance] companies holding large sums – money we call 'float' – that will eventually go to others. Meanwhile, insurers get to invest this float for their own benefit. . . . When [an underwriting] profit is earned, we enjoy the use of free money – and, better yet, get *paid* for holding it.").[3]

Turning more particularly to the mass-tort bankruptcy context, the economic self-interest of the debtor's insurers—and their concomitant desire for

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[3] Insurers also are well aware that an intransigent litigation strategy—and the substantial costs it imposes on policyholders who do choose to litigate—has the ancillary benefit of deterring other policyholders who lack resources from pursuing their coverage claims in litigation.

delay—are supercharged. The statutory automatic stay of claims against a debtor that is triggered by a Chapter 11 bankruptcy filing affords the debtor's insurers a "payment holiday," during which insurers can mitigate their own damages by continuing to earn money on policyholders' premiums while delaying indemnity payments to claimants on covered claims. Insurers therefore are highly motivated to extend the holiday by asserting "bad-faith," "tactical" objections and otherwise litigating "to delay [a] plan['s] confirmation." *In re Imerys Talc Am., Inc.*, 38 F.4th 361, 371 (3d Cir. 2022) (noting it "appear[ed] that the Insurers are only bringing this objection as a tactical one to delay Imerys's plan confirmation[,] just the sort of bad-faith tactic that" other courts had "recognized and cautioned against").

None of this is theoretical either. From the inception of mass-tort bankruptcies in the 1980s, insurers have endeavored to make their self-interested voices heard. *See Travelers*, 557 U.S. at 140-41 (recounting insurer involvement in the seminal Johns-Manville bankruptcy case). And despite Congress's changes to the Code in the mid-1990s to provide more order in response to the wave of *sui generis* asbestos bankruptcies, by the early 2000s, insurers were frequently appearing as objectors in those cases.

Emblematic of the disruptive effect of aggressive insurer objections to asbestos bankruptcies was the Pittsburgh Corning reorganization, which played out over a period of 16 years. In April 2000, Pittsburgh Corning Corporation (PCC) filed its bankruptcy petition for the purpose of addressing approximately 235,000 pending asbestos claims against it. *See In re Pittsburgh Corning Corp.*, No. 00-22867 (JKF), 2013

Bankr. LEXIS 2124, at *11 (Bankr. W.D. Pa. May 24, 2013). PCC asserted that it had more than $1.3 billion of unexhausted insurance coverage available to respond to the asbestos claims. *Id.* at *52. In the ensuing years, PCC filed three different reorganization plans plus additional modified versions of each plan, each of which were contested by various objecting insurers. *See Mt. McKinley Ins. Co. v. Pittsburgh Corning Corp.*, 518 B.R. 307, 312-13 (W.D. Pa. 2014). Ultimately, a single insurer remained as the only objecting party, contesting plan confirmation through 2013, when the bankruptcy court confirmed the plan, until 2016, when the parties settled, terminating a then-pending appeal.

Over that time, PCC incurred tens of millions of dollars in estate professional fees,[4] and its ability to carry out normal business functions such as hiring employees and making investment decisions was restrained due to the uncertainty of the reorganization process. The seemingly endless insurer-driven litigation also prevented PCC's creditors from obtaining any recoveries from the estate until the plan's confirmation was final and non-appealable, and the plan became effective. As discussed more fully below, none of these outcomes is consistent with the fundamental purposes of bankruptcy law—but they are the inevitable consequence of Truck's arguments in this Court.

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[4] *See, e.g., In re Pittsburgh Corning Corp.*, No. 00-22876 (JKF) (Bankr. W.D. Pa.), D.I. 10645 (May 20, 2016) (fees for PCC's counsel).

II. The Fourth Circuit's "Insurance Neutral" Construction Of Section 1109(b) Serves The Core Purposes Of Bankruptcy And Fairly Balances The Rights Of Debtors, Creditors, And Other Interested Parties.

Truck's strategy in this case is pulled straight out of the insurer-intransigence playbook, as it claims a broad participatory right to object to the Debtors' reorganization plan with the ulterior (but perhaps principal) motives of delaying plan confirmation and modifying its state-law insurance obligations. The Fourth Circuit rejected that gambit, concluding that Truck could not satisfy Section 1109(b)'s "party in interest" requirement because the Debtors' reorganization plan "does not impair Truck's policy rights or otherwise alter Truck's quantum of liability but simply maintains Truck in its pre-petition position with all its coverage defenses intact[.]" Pet.App.24a. As Respondents demonstrate, this construction is firmly grounded in the statutory text and the structure of the Code, and it follows in a line of consistent appellate rulings.

Relevant here, the Fourth Circuit's construction also effectuates the core purposes of bankruptcy: to balance the interests of debtors, creditors, and others whose legally protected interests may be affected by a plan of reorganization, while ensuring an efficient and effectual approval of the plan. As noted, at its foundation, the Bankruptcy Code seeks both to provide debtors with a fresh start and to fairly distribute the debtor's assets to its creditors. Chapter 11 of the Code in particular aims to "preserv[e] going concerns and maximiz[e] property available to satisfy creditors[,]" *Bank of Am. Nat'l Tr. & Sav. Ass'n*, 526 U.S. at 453 (citation omitted), "strik[ing] a balance between a

debtor's interest in reorganizing and restructuring its debts and the creditors' interest in maximizing the value of the bankruptcy estate." *Piccadilly Cafeterias, Inc.*, 554 U.S. at 51 (citations omitted); *see also Czyzewski*, 580 U.S. at 455 (Chapter 11 facilitates the negotiation of a plan of reorganization between a debtor and its creditors "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").

Through it all, the Code's "chief purpose" is "'to secure a prompt and effectual' resolution of bankruptcy cases 'within a limited period.'" *Taggart*, 139 S. Ct. at 1803 (citations omitted). And, in order "to advance the swift and efficient administration of the bankrupt's estate[,]" "[c]ourts consistently have noted a public policy interest in reducing the number of ancillary suits that can be brought in the bankruptcy context . . . ." *In re Ray*, 597 F.3d 871, 874 (7th Cir. 2010) (citation omitted).

Requiring an insurer to establish that its legally protected interests could be affected by a proposed reorganization plan before it can participate in a Chapter 11 proceeding fulfills these core purposes, while balancing and protecting the competing interests of the debtor, its creditors, future tort claimants, and the debtor's insurers as well. That is further reason to adopt the Fourth Circuit's textually faithful construction and affirm the judgment below. *See, e.g.*, *Clark v. Rameker*, 573 U.S. 122, 129 (2014) (noting that the Court's "reading of the text is consistent with the purpose of the Bankruptcy Code's" provisions at issue); *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 71

(2011) (observing that the purpose of Code amendments "strengthens our reading of the [statutory] term" at issue).

First, construing "party in interest" to require a showing that the proposed plan could impair one's legally protected interest serves to maximize what is oftentimes a debtor's most valuable asset—its CGL insurance policies. Here, Truck issued CGL policies to the Debtors that, as is typical, broadly covered both known and unknown risks, including the claims against the Debtors by those allegedly exposed to asbestos. The policies require Truck to investigate and defend each covered asbestos personal-injury claim asserted against the Debtors. *See Truck Ins. Exch. v. Kaiser Cement & Gypsum Corp.*, No. B278091, 2022 Cal. App. Unpub. LEXIS 116 at *78-79 (Cal. Ct. App. 2d Dist. Jan. 7, 2022), review granted, 2022 Cal. LEXIS 2031 (Cal. April 13, 2022). They also obligate Truck to indemnify the Debtors for each covered claim up to a per-claim limit, typically of $500,000 per claim, with no maximum aggregate limit across the universe of claims. *Id.* at *79.

If Truck and their *amici* have their way, virtually any insurer could object to a proposed plan and hold up its confirmation, diminishing the value of a debtor's CGL coverage in the process. While delay in making coverage payments benefits insurers, that same delay works to the detriment of policyholder debtors and their creditors. And delay further enables the sort of strategic, economically self-interested behavior Truck engaged in here, leveraging its plan objections not only to try to extract additional benefits or concessions from the debtor beyond those provided in the policies themselves—but, further, to threaten

the refusal of the very coverage that Debtors' policies, as construed by California's courts, contractually obligate Truck to provide. *Supra* at 2-3.

Second, by maximizing the value of the debtor's insurance assets, the "insurance neutrality" construction increases the assets available to make distributions to creditors and future tort claimants. This, likewise, comports with the purposes of the Code and the strong interest in ensuring equitable payouts to creditors.

Third, the Fourth Circuit's construction increases the likelihood of a prompt and efficient resolution of plan confirmation proceedings—again, just as the Code envisions. Fewer objectors means less litigation, which leads to swifter final plan confirmation and quicker payments to creditors. *See Taggart*, 139 S. Ct. at 1803 (rejecting "proposal" that would "risk additional federal litigation, additional costs, and additional delays" and thus "interfere with 'a chief purpose of the bankruptcy laws': 'to secure a prompt and effectual' resolution of bankruptcy cases 'within a limited period'") (cleaned up). If, however, those with tenuous claims of "interest" could challenge a plan, that would bring "madness," with "settlements made impossible by crowds of objectors." *In re C.P. Hall Co. v. Columbia Casualty Co.*, 750 F.3d 659, 661 (7th Cir. 2014); *see also In re Refco Inc.*, 505 F.3d 109, 118 (2d Cir. 2007) ("Overly lenient standards [for granting standing] may potentially over-burden the reorganization process by allowing numerous parties to interject themselves into the case on every issue, thereby

thwarting the goal of a speedy and efficient reorganization").[5]

Fourth, the "insurance neutrality" construction of Code Section 1109(b) fully protects insurers' legal rights and interests under debtors' insurance policies. Under that construction, insurers are entitled to "party in interest" status unless a reorganization plan ensures that an "insurer's rights are completely unaffected" by the plan. *In re Thorpe Insulation Co.*, 677 F.3d 869, 886 (9th Cir. 2012). By preserving insurers' coverage rights and defenses, this standard keeps insurers in precisely the same position they would be in had their policyholder-debtors never filed for bankruptcy in the first place.

At the same time, there is no compulsion under the Code to offer a more generous participatory right to insurers than the Fourth Circuit's construction provides, as Respondent Claimants well explain. *See* Claimants' Br. 25. Insurers are not protected by Chapter 11 and cannot file for bankruptcy under the Code. *See* 11 U.S.C. § 109(b)(2), (d); *United States Dep't of Treasury v. Fabe*, 508 U.S. 491, 520 (1993) (recognizing "the longstanding decision of Congress to exempt insurance companies from the federal bankruptcy

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[5] Compounding matters is that not all insurer interests are even aligned, as this case demonstrates. Although Truck initiated the underlying coverage litigation here, the ruling that Truck's policies have no applicable aggregate limit for asbestos claims came at the behest of the *Debtors' excess insurers*, who sought to limit their own exposure. *London Market Insurers v. Superior Court of Los Angeles County*, 146 Cal.App.4th 648, 651 (Ct. App. 2d Dist. 2007). Truck's construction of Section 1109(b) risks importing into bankruptcy proceedings these sorts of lengthy, internecine insurer coverage battles as well, further complicating and delaying reorganization proceedings.

code"). Nor are they designated beneficiaries of automatic stays, which are designed to protect debtors. *See In re Pecan Groves*, 951 F.2d 242, 245 (9th Cir. 1991) (the debtor and trustee are the only designated beneficiaries of the automatic stay). And, in the specific context of mass-tort asbestos bankruptcies such as this one, discharge injunctions under Section 524(g) are designed to protect the debtor and "insurers who may be liable on behalf of the debtor[,]" but *not* "to allow an insurer to escape its obligations based simply on the financial misfortunes of the insured . . . ." *SuVicMon Dev., Inc. v. Morrison*, 991 F.3d 1213, 1223 (11th Cir. 2021).

Accordingly, insurers should not be heard to complain when an insurance-neutral reorganization plan does not improve the insurers' pre-bankruptcy position, particularly when the improvements insurers propose could jeopardize creditor settlements and derail the plan confirmation process altogether. Augmenting an insurer's contractual rights under state law is not a contemplated purpose of federal bankruptcy proceedings, or a result the Code allows. And it certainly should not come at the expense of a debtor's ability to reorganize promptly and effectually, as the Code and this Court's precedents require.

III. Truck's Expansive Reading Of "Party In Interest" Under Section 1109(b) Would Undermine The Fair And Efficient Functioning Of Reorganization Proceedings And Impair The Interests Of Debtors And Creditors.

Unlike the Fourth Circuit's construction, Truck reads "party in interest" expansively, contrary to Section 1109(b)'s text and context and the historical understanding of the phrase. In Truck's view, Section

1109(b) entitles an insurer (and, potentially, many other, at most tangentially "interest[ed]" third parties) to challenge a proposed reorganization plan if it can conjure a different plan that might benefit the insurer in a way the proposed plan does not—even when, as here, the plan proposed fully protects the insurer's legal interests.

This interpretation, as Respondents persuasively explain, is atextual, acontextual, and inconsistent with the structure of the Bankruptcy Code and the historical meaning of "party in interest." It also would undermine bankruptcy law's core purposes, distort the reorganization process, and inject grinding inefficiency into a process Congress intended to operate just the opposite, and should be rejected for those reasons as well. *See, e.g.*, *Taggart*, 139 S. Ct. at 1803 (rejecting interpretation that would "risk additional federal litigation, additional costs, and additional delays" because "[t]hat result would interfere with 'a chief purpose of the bankruptcy laws:' 'to secure a prompt and effectual' resolution of bankruptcy cases 'within a limited period'"); *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 245 (2010) (rejecting "construction" of statutory provision that "serves none of the purposes of the Bankruptcy Code").

Under Truck's uncabined reading, any insurer of a debtor can object to a proposed Chapter 11 plan merely by hypothesizing a reformulated plan that would benefit the objecting insurer more than the proposed one. This facile standard would result in lengthier delays in reorganization proceedings that would diminish the value of the estate to the detriment of legitimate creditors and future tort claimants, who would be forced to wait for distributions while the

bankruptcy automatic stay remains in place. As the Second Circuit has put it, "[g]ranting peripheral parties status as parties in interest thwarts the traditional purpose of bankruptcy laws which is to provide reasonably expeditious rehabilitation of financially distressed debtors with a consequent distribution to creditors who have acted diligently." *In re Refco Inc.*, 505 F.3d at 118 (rejecting similarly broad construction of Section 1109(b)) (citation omitted).

Allowing non-debtor, non-fiduciary insurers to commandeer the automatic stay and use it to serve their own interests also undermines the important role of settlements and compromise in the bankruptcy process. Settlements and compromise are favored in bankruptcy. *See Kearney v. Unsecured Creditors Comm.*, 987 F.3d 1284, 1295 (10th Cir. 2021) ("[S]ettlements are favored in bankruptcy.") (citations omitted). And, as Truck itself acknowledges, resolution of disputes is particularly important "in asbestos bankruptcies because Section 524(g) requires a supermajority of claimants to vote in support of a plan." Pet. Br. 47.

Ordinarily, if an insurer is unwilling to settle its policies for an amount that debtors and other estate fiduciaries believe is reasonable and in the best interest of the bankruptcy estate, debtors may seek to maximize the value of their insurance asset by assigning it through an insurance-neutral plan to a mass tort settlement trust to monetize at a later time. *See In re Federal-Mogul Global Inc.*, 684 F.3d 355, 359 (3d Cir. 2012). But if insurers are permitted to object to such an insurance-neutral plan and thereby delay confirmation, the once-valuable insurance asset could be

used as a cudgel to impose unnecessary costs and expenses on the bankruptcy estate. And that, perversely, would motivate debtors to settle with their insurers at what would otherwise be unreasonably low amounts, thereby devaluing one of the estate's most valuable assets and diminishing the pool of assets available to pay creditors.

In so doing, moreover, Truck's expansive "party in interest" standard would give non-creditor insurers more leverage over a reorganization plan than the Code gives to creditors with legitimate claims. Congress and the Court recognized long ago the abuses that can follow from holdup tactics such as those employed by Truck here. In *Lerner v. First Wisconsin Nat'l Bank*, 294 U.S. 116, 118 (1935), the Court noted the then-recent observation of the so-called "Donovan Report" to the House Judiciary Committee regarding "unscrupulous creditor[s] who desire[ ] to get something more than the others [and] may be tempted" to file certain papers "knowing that this will hold up the entire proceeding" and enable creditors to obtain more from the estate than what they are entitled to. A decade later, noting Congress's amendment of the Bankruptcy Code to better police the creditor-holdup problem, the Court observed how creditors would:

> use [ ] obstructive tactics and hold-up techniques [to] exact for themselves undue advantages from the other stockholders who are cooperating. Bad faith was to be attributed to claimants who opposed a plan for a time until they were bought off; those who refused to vote in favor of a plan unless . . . given some particular preferential advantage.

Young v. Higbee Co., 324 U.S. 204, 211 n.10 (1945); *see also In re DBSD N. Am., Inc.*, 634 F.3d 79, 104 (2d Cir. 2010) (rejecting creditor's use of its claims against debtors "as levers to bend the bankruptcy process" and "divert[ ] the progress of the proceedings to achieve an outside benefit"). Similar hold-up problems are present here—and significantly so.

Beyond exacerbating the hold-up dilemma created by expanding the field of insurer objectors, Truck's interpretation also would enable insurers to extract benefits from their policyholder debtors beyond what their contractual policy rights and state law provide. Indeed, that is precisely what Truck has attempted in this case. It proposed an alternate plan that would alter the Debtors' insurance policies, including by imposing limits on Truck's exposure to asbestos claimants and requiring those claimants to litigate their claims in the Western District of North Carolina. C.A.App. 2342 (§ 6.3), 2378 (§ B.134), 2352-53 (§ 7.5), 2375-76 (§ B.114). Truck even went so far as to threaten to deny coverage—coverage determined by California courts following decades of litigation between Truck and the Debtors—for every asbestos claim going forward if the measures Truck desired were not incorporated in the final plan. J.A.549-51.

These plain abuses of the Debtors' bankruptcy case, deployed to improve Truck's litigation position vis-à-vis tort claimants, are fundamentally incompatible with the Code's core purposes. So, too, is the attempted extortion of the policyholder Debtors to forfeit their judicially determined rights to coverage in exchange for Truck's wished-for plan. While (so far) unsuccessful in their apparent aims, Truck's tactics have succeeded in generating substantial delay and

expense—no doubt just as Truck planned, and inuring to its benefit (but no one else's).

Compounding all of this is that, as respondents point out, Truck's interpretation is not logically limited to a debtor's insurer. Kaiser Br. 33; Claimants' Br. 28. Under Truck's reading, even an insurer's employee, who claims she may lose her job if the proposed plan is adopted, seemingly would meet the definition of "party of interest." *See Hall*, 750 F.3d at 661-62. The cast of persons and entities who could rightfully claim "party in interest" status under Truck's interpretation would be limited only by one's imagination. At a bare minimum, who is included under Truck's elastic construction and who is not would produce further litigation and additional delay—again, contrary to the efficient and effectual consummation of reorganizations that the Code is designed to accomplish.

The adverse consequences from a ruling in Truck's favor are not limited to the insurance context either. According to Truck, a "party in interest" as to one issue or a discrete set of issues relating to a proposed reorganization plan should be considered a "party in interest" as to any conceivable issue. *See* Pet. Br. 17-18. But "standing is not dispensed in gross; rather, plaintiffs must demonstrate standing for each claim that they press and for each form of relief that they seek. . . ." *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2208 (2021). And, as courts have held in addressing the participatory rights of creditors, such "creditors lack standing to challenge those portions of a reorganization plan that do not affect their direct interests." *In re E.S. Bankest, L.C.*, 321 B.R. 590, 595 (Bankr. S.D. Fla. 2005) (citation omitted); *accord In re A.P.I. Inc.*, 331 B.R. 828, 862 (Bankr. D. Minn. 2005)

("Holders of unimpaired claims lack standing . . . to object to confirmation.") (citations omitted).

Finally, Truck's *amici* insist that Truck's broad construction of Section 1109(b) is necessary to ensure the "integrity of the bankruptcy process" by preventing the payment of fraudulent or illegitimate claims and overcoming debtor-claimant "collusion." APCIA Br. 14-15. But they offer no explanation why insurers must be the guardians of bankruptcy "integrity." Nor is there any indication Congress contemplated such a special role for insurers. And had it meant to, Congress would at least have mentioned insurers expressly in Section 1109(b) alongside the categories of Chapter 11 players listed there. But it did not do so.

Moreover, Truck's *amici* ignore that ensuring the payment of legitimate claims is a core function not only of the courts themselves, but of three separate fiduciaries who, unlike insurers, are duty-bound under the Bankruptcy Code to maximize the value of estate assets for the benefit of legitimate creditors: the debtor-in-possession, the official committee of creditors, and, as in mass-tort cases such as this one, the future claimants' representative.

Estate fiduciary. The filing of a bankruptcy petition creates a bankruptcy estate, which is administered by an estate fiduciary. 11 U.S.C. § 541. The fiduciary may be an independent trustee or, as is the case when a debtor seeks to reorganize under Chapter 11, the debtor plays the role of fiduciary by becoming the "debtor-in-possession" of the estate. 11 U.S.C. § 1107. A debtor-in-possession has most of the rights and powers of, and is bound by the same duties as, a trustee, 11 U.S.C. §§ 1106-1108, and they are "exten-

sive." *Commodity Futures Trading Comm'n v. Weintraub*, 471 U.S. 343, 352 (1985). It owes fiduciary obligations to the estate as a whole, obligated to preserve and maximize the estate's value. *Id.*

Official creditors' committees. The Code further authorizes the appointment of official committees of creditors in Chapter 11 cases, *see* 11 U.S.C. § 1102, and grants them the power to investigate debtors, negotiate a bankruptcy reorganization plan, and "perform such other services as are in the interest of those represented," 11 U.S.C. § 1103(c)(5). A creditors' committee has fiduciary duties of its own "to the entire class of creditors represented by such committee and are required to place the collective interest of the class they represent above their own personal stake in the bankruptcy case." *In re Residential Capital, LLC*, 480 B.R. 550, 559 (Bankr. S.D.N.Y. 2012).

Future claimants' representative. A future claimants' representative appointed by a bankruptcy court is yet another fiduciary in mass-tort Chapter 11 cases. Section 524(g) of the Code directs the bankruptcy court to appoint a "legal representative for the purpose of protecting the rights of persons that might subsequently" assert claims. *See* 11 U.S.C. § 524(g)(4)(B)(i). In that capacity, a future claimants' representative must "be able to fulfill the heightened duties owed by fiduciaries." *In re Imerys Talc Am., Inc.*, 38 F.4th at 376; *see also In re Kensington Int'l, Ltd.*, 368 F.3d 289, 304 (3d Cir. 2004) (future claimants' representative has "a duty to act as [a] zealous advocate[]" for future asbestos claimants and "a fiduciary duty to advance their interests and to see that they receive[ ] the greatest possible share of the bankruptcy estate").

Collectively, it is these fiduciaries who are charged with advancing the goals of the Bankruptcy Code. They have statutory duties to ensure that legitimate creditors—whether current claimants, future claimants, or both—are paid as much and as quickly as possible. Proposing a plan that would pay fraudulent claims would serve only to diminish the assets available to pay legitimate claimants, which would be incongruous with those fiduciary duties.

To be sure, state law often imposes on insurers duties of good faith and fair dealing that courts have characterized as fiduciary or quasi-fiduciary. But the Bankruptcy Code imposes no such duties on insurers in bankruptcy proceedings. And, as noted, insurers are inherently motivated to work directly counter to the goals the Code's designated fiduciaries are obligated to pursue. Thus, far from being critical to ensuring the "integrity of the bankruptcy process," recognizing the broad participatory right the insurers assert here would in fact undermine bankruptcies in all the ways described above.

IV. Truck's Arguments Are An Improper Effort To Relitigate Its Unsuccessful 20-Year Coverage Disputes With Debtors And Obtain Rights Beyond What Its Policies Provide.

Ultimately, Truck's objections to the Debtors' plan cannot be divorced from the parties' long-running coverage disputes leading up to the Debtors' bankruptcy. Truck and the Debtors have been litigating over Truck's coverage obligations for asbestos-related claims for more than two decades. *See Truck Ins. Exch.,* 2022 Cal. App. Unpub. LEXIS 116 at *3. But Truck has been unable to obtain what it has sought since it first sued the Debtors in 2001: a determination

that its coverage for those asbestos claims has been exhausted. That issue loomed large for the Debtors when, in 2016, facing thousands of asbestos claims and expecting an unknown number of future such claims, they filed this bankruptcy case in 2016.

In crafting a reorganization plan centered on a Section 524(g) trust for those claims, the Debtors knew their rights under the Truck policies would be key to the plan's viability. As such, like other mass-tort debtors before them, the Debtors included "insurance neutrality" language in the plan that expressly preserved Truck's pre-petition coverage defenses. Pet.App.6a-7a. They also structured the plan so that asbestos claims that could trigger Truck's policies would not be liquidated through the trust mechanism, but instead would be litigated in the tort system, as they had been pre-petition. C.A.App.51. There, Truck would be able to exercise its right to defend the claims, subject to all of its pre-petition coverage defenses, including the right to deny coverage if the Debtors failed to satisfy the policies' assistance-and-cooperation provisions. Pet.App.16a-18a, 95a, 230a-231a.

Truck's objections to the Debtors' plan revealed that it was not satisfied with simply having its coverage rights protected by the plan. What it really wanted was to enhance or leverage those rights into something more than the policies provided. This included a determination that its contractual right to its policyholder's assistance and cooperation in resolving claims effectively afforded it veto power over the Debtors' conduct in its bankruptcy case. Pet.App.17a. As the Fourth Circuit correctly recognized, however, no case supports such a broad construction of those con-

tractual rights. Pet.App.20a-21a. Nor does the Bankruptcy Code authorize judicial expansion of the scope or terms of a debtor's insurance policies. *See, e.g., In re SPM Mfg. Corp.*, 984 F.2d 1305, 1311 (1st Cir. 1993) (bankruptcy courts lack authority to "expand the contractual obligations of parties"); *In re MF Glob. Holdings Ltd.*, 469 B.R. 177, 194 (Bankr. S.D.N.Y. 2012) ("The filing of a bankruptcy petition does not alter the scope or terms of a debtor's insurance policy").

Truck didn't stop there. It further claimed that the Debtors' plan would increase Truck's quantum of liability for asbestos claims because, in failing to incorporate Truck's recommended plan measures, the Debtors' plan invited the filing of an unknowable number of fraudulent claims. Pet.App.23a. Here, Truck sought refuge in *In re Global Industrial Technologies, Inc.*, 645 F.3d 201 (3d Cir. 2011) (en banc). That case involved the solicitation of a plan proposing a trust for silica-related claims which attracted votes by thousands of purported silica claimants—despite the fact that the debtor faced fewer than 200 silica claims pre-petition. But that is nothing like this case, where the Debtors' plan fully preserves Truck's right to ferret out supposedly "fraudulent" claims by defending them in the tort system and outside the trust mechanism—just as it did before the Debtors filed bankruptcy. Pet.App.23a.

Given the nature of Truck's plan objections, and the fact that the plan neither deprived Truck of any pre-petition defenses nor altered Truck's quantum of liability, it is clear that Truck's objections to the Debtors' plan were not aimed at supporting the Debtors in resolving the claims of their creditors or, even, at protecting Truck's own coverage rights. Rather, they

were an effort to prolong the Debtors' reorganization, driven by a desire to leverage the bankruptcy to extract concessions from the Debtors and enlarge rights Truck has been unsuccessful in obtaining in the parties' decades-long coverage dispute. Nothing in the Bankruptcy Code or this Court's precedents permit the bankruptcy process to be usurped for such an aim. This Court should say so here and affirm the decision below.

CONCLUSION

For the foregoing reasons and those set forth in Respondents' briefs, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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