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Hear Me Out: The Supreme Court Gives a Voice to Parties-in-Interest

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Under the U.S. Supreme Court's recent decision in *Truck Insurance Exchange v. Kaiser Gypsum Co. Inc.*,[1] § 1109(b)'s party-in-interest inquiry is no longer subject to application of the insurance-neutrality doctrine. Insurers may now voice confirmation concerns free from barriers based on judicially imposed prudential considerations. While the ruling might ultimately result in much of the same outcome (just in a different procedural posture), the *Truck* decision strengthens the Bankruptcy Code's fundamental purpose and reinforces an interested party's right to be heard.

Truck's Road to the Supreme Court

Kaiser Gypsum Co. and its parent, Hanson Permanente Cement (the debtors), manufactured and sold products containing asbestos.[2] Truck Insurance Exchange had been contracted to defend asbestos personal-injury claims up to $500,000 per claim brought against the debtors,[3] and the policy had no maximum aggregate coverage limit.[4] In exchange, the debtors agreed to assist Truck in defending the claims and to pay a $5,000 deductible per claim.[5] The debtors faced thousands of asbestos-related lawsuits, forcing them to seek chapter 11 protection.[6]

The debtors proposed a plan with a § 524(g) trust.[7] Significantly, the plan treated the claims insured by Truck differently from those who were otherwise uninsured.[8] Pursuant to the plan, *insured* claims were to be pursued through traditional tort litigation, while *uninsured* claims were to be submitted directly to the trust for resolution.[9] Claimants submitting uninsured claims to the trust were required to identify other related claims they had filed and to authorize the trust to obtain documentation from such other asbestos-related trusts regarding any such claims.[10] Claimants with insured claims were not subject to these disclosure requirements.

Displeased with the disparate treatment of trust claims, Truck sought to object to plan confirmation, asserting (among other things) that the plan was not proposed in good faith as required by § 1129(a)(3).[11] According to Truck, because the plan did not require the same disclosures and authorizations for insured claims as it did for uninsured claims, it reflected a "'collusive agreement'" in which Truck could be exposed to millions of dollars in fraudulent claims.[12] Furthermore, Truck argued that the plan would impermissibly alter its rights under the insurance policies,[13] and that the trust established by the plan did not satisfy the requirements of § 524(g).[14]

Standing and the Insurance-Neutrality Doctrine

In addressing Truck's objections to confirmation, the district court accepted the bankruptcy court's proposed findings of fact and conclusions of law, and applied the judicially created insurance-neutrality doctrine. In a § 1109(b) analysis, the doctrine precludes standing for an insurer to object to confirmation of a chapter 11 plan if the plan neither impairs an insurer's rights under a policy nor increases the insurer's obligations. This neutrality is often asserted by the plan proponent (most commonly, the debtor) by adding language to the plan and confirmation order that the insurer's claims, rights, causes of action and defenses are preserved. The district court found that the debtors' plan was insurance-neutral, thus Truck lacked standing under the insurance neutrality doctrine to object to the plan.[15]

On appeal, the Fourth Circuit affirmed the district court's application of the insurance-neutrality doctrine and its finding that Truck lacked standing.[16] Specifically, the Fourth Circuit found that Truck need not be heard because the proposed plan did "not materially alter the quantum of liability that [Truck] would be called to absorb."[17]

Truck then hauled its appeal to the Supreme Court, which in turn pumped the brakes on the doctrine's application. In a unanimous opinion,[18]

1 144 S. Ct. 1414 (2024).
2 *Id.* at 1422.
3 *Id.*
4 *Truck Ins. Exch. v. Kaiser Gypsum Co. Inc. (In re Kaiser Gypsum Co. Inc.)*, 60 F.4th 73, 79 (4th Cir. 2023).
5 *Truck*, 144 S. Ct. at 1422.
6 *Id.*
7 *Id.*
8 *Id.*
9 *Id.*
10 *Id.*
11 *Id.* at 1423.
12 *Id.*
13 *Id.*
14 *Id.*
15 *Id.*
16 *Id. But see In re Global Indus. Techs. Inc.*, 645 F.3d 201, 211 (3d Cir. 2011) (advancing much-broader interpretation of § 1109(b) as being "effectively coextensive" with Article III standing).
17 *See Truck*, 60 F.4th at 83, 87.
18 Justice Samuel Alito did not participate.

the Court rejected the insurance-neutrality doctrine, finding that it "conflates the merits of an insurer's objection with the threshold § 1109(b) question of who qualifies as a 'party-in-interest.'"[19] The Court highlighted that the relevant inquiry when determining standing is "whether the reorganization proceedings might directly affect a prospective party, not how a particular reorganization plan actually affects that party."[20]

Text, Context, History and Purpose of § 1109(b)

Truck confronted the confines of the phrase "party-in-interest" under § 1109(b). More specifically, as framed by the Supreme Court, the issue was "whether an insurer with financial responsibility for a bankruptcy claim [like Truck] is a 'party-in-interest' under" § 1109(b).[21] Under the debtors' plan, Truck maintained "financial responsibility for a bankruptcy claim."[22] Accordingly, Truck was "sufficiently concerned with, or affected by, the proceedings" to have standing to object to confirmation of the plan.[23] In so holding, the Court examined the text, context, history and purpose of § 1109(b).

The Supreme Court first observed that the text is "capacious."[24] Specifically, § 1109(b) provides that "[a] party-in-interest ... may raise and may appear and be heard on any issue in a case under this chapter."[25] Section 1109(b) "includ[es] the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee" as statutory examples of parties-in-interest,[26] but these examples "are not limiting."[27]

Moreover, the Court emphasized its earlier "observation that Congress uses the phrase 'party-in-interest' in bankruptcy provisions when it intends the provision to apply 'broadly,'" such as the provision for a party-in-interest to object to a claim in § 502(a).[28] Pointing to the plain meaning and dictionary definitions of both "party" and "interest," the Court found that the meaning of party-in-interest in the chapter 11 plan-confirmation context "refers to entities that are potentially concerned with or affected by a proceeding."[29]

Beyond the text and statutory context, the Supreme Court found § 1109(b)'s historical roots and purpose telling. Tracking the historical development of broadened participation in bankruptcy laws over the years, the Court recognized that "Congress consistently has acted to promote greater participation in reorganization proceedings."[30] Such legislative action, according to the Court, underscores the purpose of § 1109(b): "Broad participation promotes a fair and equitable reorganization process."[31] Based on the text, context, history and purpose, parties "with financial responsibility for a bankruptcy claim" are parties-in-interest because such parties "may be directly and adversely affected by the reorganization plan."[32]

> **In *Truck*, the Supreme Court has neither created new rights nor restricted others. While many questions remain, one thing is clear: The decision has cleared the road for more voices to be heard.**

Balancing the Scales

In repudiating the insurance-neutrality doctrine and championing a broad interpretation of "party-in-interest" under § 1109(b), the Supreme Court has advanced fairness, promoted balance and guaranteed certain parties a right to be heard. However, as the Court made clear, § 1109(b) gives Truck and similarly situated parties "neither a vote nor a veto; it simply provides them a voice in the proceedings."[33]

The Supreme Court via *Truck* thus comports with the congressional progression for greater inclusion of voices. While the Bankruptcy Act of 1898, for example, gave debtors the right to be heard on all issues, creditors had a much more limited right to be heard. In contrast, § 1109(b)'s explicit granting to parties-in-interest a right to be heard provides an avenue for each affected party to voice its concerns to the court. This right to be heard remains important in the context of mass tort bankruptcy cases (like *Truck*), which have been criticized by scholars and commentators as being abusive and too debtor-driven.[34]

The goal of increased participation in chapter 11 proceedings supports the Supreme Court's "capacious" interpretation of § 1109(b). For example, the requirement that plans be "fair and equitable" derives from "the danger inherent in any reorganization plan proposed by a debtor ... that the plan will simply turn out to be too good a deal for the debtor's owners."[35] The court must hear from all interested parties and balance the interests in applying the provisions of the Bankruptcy Code. That is, all parties affected by a proceeding should have their "day in court." Bankruptcy is no exception to that entitlement.

A party affected by a proposed plan must be afforded the *opportunity* to be heard, whether the court ultimately agrees that the party is indeed so affected. However, precluding a party from being heard because of a lack of standing (ostensibly based on a premature determination that the party is incorrect in its objection) improperly puts the cart before the horse. The Supreme Court's decision in *Truck* stresses that it is not just the debtor who is behind the wheel driving the reorganization.

19 *Truck*, 144 S. Ct. at 1420.
20 *Id.*
21 *Id.* at 1423.
22 *Id.*
23 *Id.* at 1420.
24 *Id.* at 1424.
25 11 U.S.C. § 1109(b).
26 *Id.*
27 *See* 11 U.S.C. § 102(3).
28 *Truck*, 144 S. Ct. at 1424 (citing *Hartford Underwriters Ins. Co. v. Union Planters Bank NA*, 530 U.S. 1, 7 (2000)).
29 *Id.*
30 *Id.* at 1425.
31 *Id.*
32 *Id.* at 1423.
33 *Id.* at 1420.
34 *See, e.g.*, Lindsey D. Simon, "Bankruptcy Grifters," 131 *Yale L.J.* 1154, 1159 (2022) (describing "how courts [have] allowed piecemeal expansion to fundamentally change the scope of bankruptcy protections" and "propos[ing] specific procedural and substantive safeguards that would deter bankruptcy-grifter opportunism and increase transparency, thereby protecting victims as well as the bankruptcy process").
35 *See Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 444 (1999); *see also* 11 U.S.C. § 1129(b)(1).

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The Road Ahead

Time will tell just how impactful *Truck* will be in asbestos-driven cases, as well as in more typical chapter 11 cases. While the decision gives insurance providers with financial responsibility for claims an opportunity to be heard, it does not give them a vote or a veto on plan confirmation. Although *Truck* might lead to more contested confirmation hearings[36] and embolden insurance carriers to exert additional pressures on debtors and creditors, the practical impact on the parties' respective bargaining power is uncertain.

However, bankruptcy courts might have to hear and rule on the merits of more "good faith" objections to plan confirmation — even for insurance-neutral plans — and will have to define whether and how insurance neutrality impacts good faith. This could increase the costs of the chapter 11 process and add to the demands on judicial resources.

On the other hand, if insurance neutrality goes to the substance of § 1129 as the Supreme Court suggests, bankruptcy courts may then simply hear the same evidence and reach the same result that they would prior to the *Truck* decision, just for different reasons. Consistent with the *Truck* decision, the bankruptcy court going forward might find that a plan that does not increase an insurer's obligations or impair its pre-petition contractual rights is proposed in good faith rather than finding that an insurer does not have standing to object to a plan that does not increase its obligations or impair its pre-petition contractual rights. Thus, *Truck* may have simply changed the manner in which the court must apply the same evidence.

Truck's narrow ruling raises questions with which the lower courts may have to wrestle. Does standing depend on a direct *financial* effect, or on a direct and adverse effect, or does a direct nonfinancial effect suffice? While the Supreme Court acknowledged that not every party involved or affected by a bankruptcy case will be a party-in-interest, it did not provide guidance on determining the standing under § 1109(b) of "peripheral parties." While such a determination will necessarily be made on a case-by-case basis, the theoretic nature of the relevant inquiry in § 1109(b) that the Supreme Court endorsed (*i.e.*, "whether the reorganization proceedings *might* affect a prospective party"[37]) has the potential to lead to inconsistency and confusion in application, which itself might lead to standing for even "truly peripheral parties."[38]

Since the relevant question's answer depends on a party's ability to credibly assert a possible direct effect,[39] the Supreme Court may have thrust on the bankruptcy courts the unenviable obligation to entertain and consider the type of speculation that the Court dismissed as a "'parade of horribles' argument" when the debtors argued that there would be potential risks if "'peripheral parties' [were allowed] to derail a reorganization."[40] Lower courts will now determine whether the insurance-neutrality doctrine will continue in concept, albeit in the form of a good-faith analysis under § 1129(a)(3), and how *Truck* will generally impact determinations of standing outside of its narrow holding.

Conclusion

Debtors with mass tort claims can no longer silence insurance companies with financial responsibility for bankruptcy claims merely by including insurance-neutral provisions in their plans, yet debtors may still propose such provisions, and their inclusion may impact a determination of good faith. Because the purpose of § 1109(b) is "promoting a fair and equitable reorganization process," compelling courts to hear and evaluate the merits of an objection aligns with this purpose. In *Truck*, the Supreme Court has neither created new rights nor restricted others. While many questions remain, one thing is clear: The decision has cleared the road for more voices to be heard. abi

36 Truck was the only party that did not support the plan. *Id.* at 1422.

37 *Id.* at 1427 (emphasis added).
38 *Id.* at 1428.
39 Or possible direct financial effect or direct and adverse effect, *see supra.*
40 *Truck*, 144 S. Ct. at 1427.