Supreme Court Holds that Insurers Have Standing to Object to Chapter 11 Bankruptcy Plans

June 11, 2024

In a unanimous 8-0 decision in *Truck Insurance Exchange v. Kaiser Gypsum Co. Inc. et al.* ("Truck Insurance"),[1] the Supreme Court held that an insurer with financial responsibility for claims in bankruptcy is a "party in interest" that may object to a plan of reorganization under chapter 11 of the Bankruptcy Code.[2]

Background. The case arose from the chapter 11 bankruptcy proceedings filed by Kaiser Gypsum Company, Inc. and its affiliate, Hanson Permanente Cement, Inc. (together, "Kaiser"). Kaiser filed for bankruptcy in 2016 to address liabilities stemming from approximately 14,000 asbestos-related lawsuits across the country. As part of the bankruptcy process, the debtors filed a proposed reorganization plan (the "Plan"), that created an Asbestos Personal Injury Trust under section § 524(g) of the Bankruptcy Code.[3]

Truck Insurance Exchange ("Truck") was Kaiser's primary insurer and was contractually obligated to defend each covered asbestos personal injury claim and to indemnify the debtors for up to $500,000 per claim. The Plan treated insured and uninsured claims differently, requiring insured claims to be filed in the tort system for the benefit of the insurance coverage, while uninsured claims were submitted directly to the Trust for resolution. As a result, while uninsured claims that were channeled to the Trust were subject to a disclosure requirement that helped screen out fraudulent and duplicative claims, insured claims went to the tort system without such a disclosure requirement.

Truck sought to oppose the Plan under § 1109(b) of the Bankruptcy Code,[4] which allows a "party in interest" to object to confirmation of a bankruptcy plan.[5] Truck argued that the Plan exposed Truck to millions in fraudulent, duplicative claims because the Plan

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1 No. 22-1079, slip op. (U.S. Jun. 6, 2024).

2 11 U.S.C. § 1109(b) ("A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter."). Once permitted, a party in interest is also allowed to propose modifications to a reorganization plan or object to its confirmation.

3 11 U. S. C. § 524(g).

4 11 U.S.C. § 1109(b).

5 11 U.S.C. § 1128(b).

failed to require claimants to disclose whether they had made parallel claims against other asbestos manufacturers. In contrast, the Plan did require such disclosure for the portion of claims covered by the debtor, such as the deductible.

The lower court rejected Truck's argument, holding that Truck lacked standing to object to the Plan because the Plan was "insurance neutral," as it did not increase Truck's pre-petition obligations or impair its contractual rights under its insurance policies.[6] The Fourth Circuit affirmed, joining the Seventh Circuit in following the "insurance neutrality doctrine."[7]

Truck appealed to the Supreme Court, where the asbestos claimants and Kaiser Gypsum itself (the debtor) filed separate briefs supporting the insurer's exclusion from the process. They argued that Truck could not be a party in interest because the Plan left the insurer in the same position as it would have been in the absence of the bankruptcy.

Holding. The Supreme Court reversed, holding that insurers with financial responsibility for bankruptcy claims can be a "party in interest" that may object to a plan of reorganization. The Court emphasized the financial burden the Plan imposed on Truck, as Truck would have to pay the vast majority of the trust's liabilities. As a result, the Court found that the "potential financial harm—attributable to Truck's status as an insurer with financial responsibility for bankruptcy claims—gives Truck an interest in bankruptcy proceedings and whatever reorganization plan is proposed and eventually adopted." In so holding, the Court rejected the "insurance neutrality doctrine" on the basis that the doctrine "makes little practical sense" and is inappropriate to determine whether a party fits within the plain meaning of "party in interest," which the Court interpreted to mean entities that are potentially concerned with or affected by a proceeding.

Implications of *Truck Insurance*. The Supreme Court's decision has broad implications for mass tort bankruptcies involving significant settlements funded by insurers. The Supreme Court has recognized that insurers, as the checkbook holders, have a right to be heard on plans that have a real economic impact on them, especially on issues relating to potentially fraudulent claims. The Supreme Court's decision highlights a concern about excessive or improper claims and suggests that the Court is prepared to read the Bankruptcy Code in a pragmatic and flexible way in order to ensure that parties with a real economic interest can be heard when there is a risk of such claims.

- Insurers should monitor bankruptcies that affect them and review plans to ensure that insured claims are being equitably treated under such plan terms and then be

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6 *In re Kaiser Gypsum Co., Inc.*, No. 16-31602 (JCW), 2021 WL 3215102 (W.D.N.C. July 28, 2021).

7 *In re Kaiser Gypsum Co., Inc.*, 60 F.4th 73 (4th Cir. 2023).

prepared to object where that is not the case. Where multiple insurers are implicated, insurers may want to have a separate ad hoc committee.

- Mass tort defendants considering chapter 11, particularly those preparing a pre-arranged bankruptcy plan, should also consider the interests of their insurers as a constituency that can put forward an objection to a plan and should seek to involve insurers in the early stages of negotiation concerning a bankruptcy plan.

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We are happy to discuss further if you have any questions or would like more detail regarding this opinion and its implications.

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